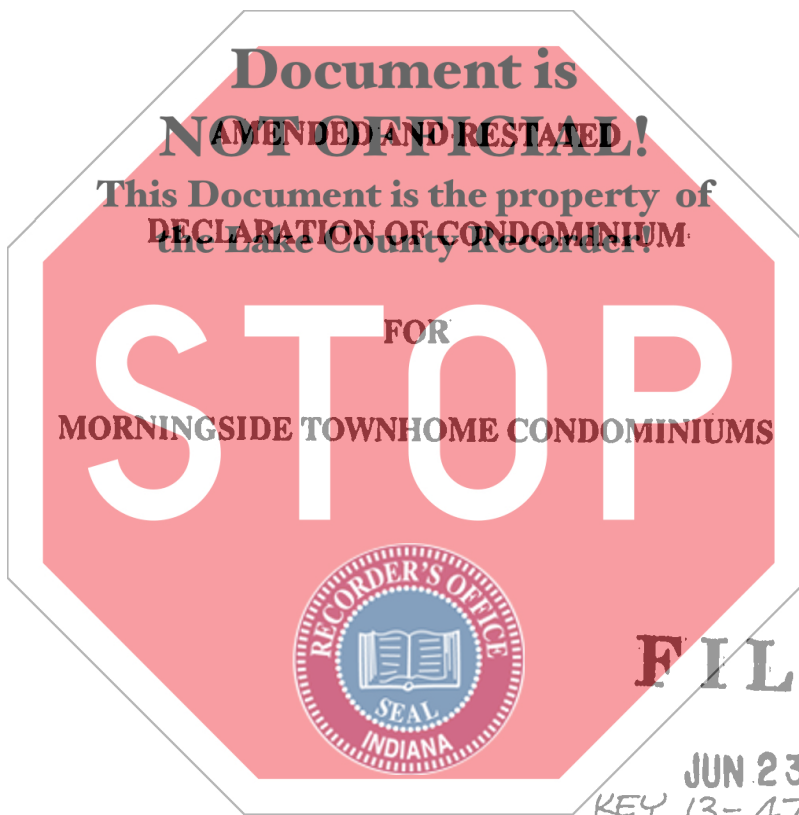


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RETURN TO: GLENN R. PATTERSON, ESQ.  
SINGLETON, CRIST, PATTERSON,  
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MUNSTER, INDIANA 46321



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SAMUEL ORLICH  
RECORDER

STATE OF INDIANA/S.S.N.G.  
LAKE COUNTY  
FILED FOR RECORD

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JUN 23 1993  
KEY 13-470-1 to 25  
*Glenn R. Anton*  
AUDITOR LAKE COUNTY

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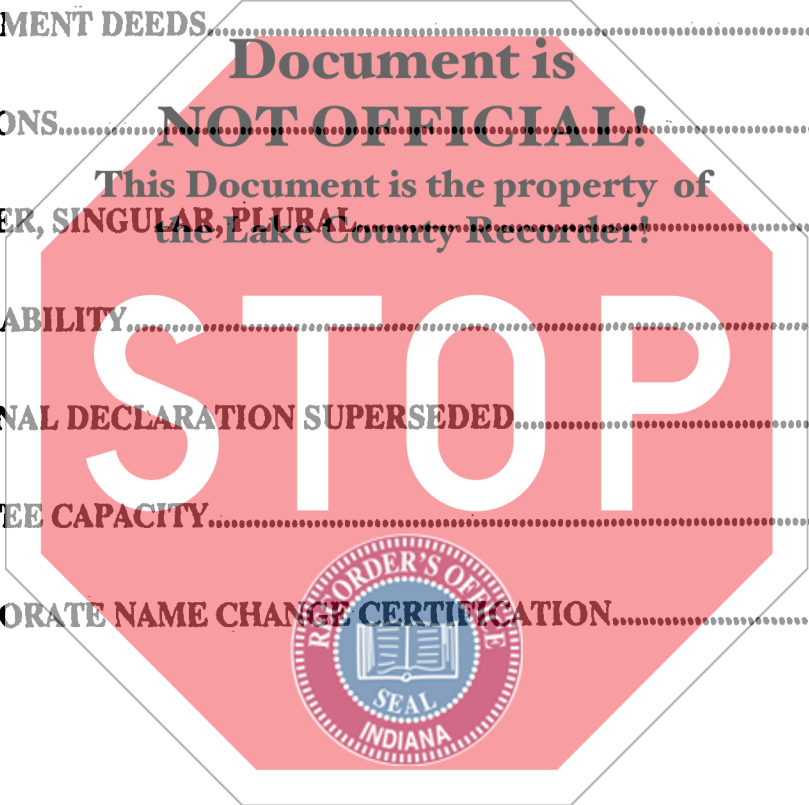
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**AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM**

This Amended And Restated Declaration Of Condominium is made this day by the *MERCANTILE NATIONAL BANK OF INDIANA AS TRUSTEE under Trust Agreement dated April 21, 1990, and known as Trust No. 5188* (herein the "Trust"), and affects the land and all improvements thereon, in the County of Lake, State of Indiana, and more specifically described as follows:

Commencing at the Southwest corner of Lot 33 in the Replat of Block One of Unit 8, Briar Ridge Country Club Addition, A Planned Unit Development in Schererville, Lake County, Indiana, as per plat thereof, recorded in Plat Book 63, page 39 in the Office of the Recorder of Lake County, Indiana, which Southwest corner is also the intersection of the Northerly right of way line of Muirfield Court and the Easterly right of way line of St. Andrews Drive East, thence Northeasterly along a curve concave to the Southeast and having a radius of 570.00 feet (the chord of which bears North 49 degrees 45 minutes 43 seconds East a distance of 112.22 feet) an arc distance of 112.40 feet to a point of reverse curve, thence Northeasterly along a curve concave to the Northwest and having a radius of 630.00 feet (the chord of which bears North 54 degrees 59 minutes 12 seconds East a distance of 9.34 feet) an arc distance of 9.34 feet, thence South 48 degrees 54 minutes 15 seconds East a distance of 184.12 feet, thence South 57 degrees 24 minutes 18 seconds East a distance of 135.00 feet, thence South 73 degrees 35 minutes 06 seconds East a distance of 120.33 feet, thence South 88 degrees 51 minutes 23 seconds East a distance of 675.00 feet, thence North 45 degrees 54 minutes 57 seconds East a distance of 168.48 feet to the Westerly line of Troon Court, thence South 44 degrees 05 minutes 03 seconds East along said Westerly line a distance of 76.00 feet; thence Southerly along a curve concave to the Northwest and having a radius of 129.29 feet (the chord of which bears South 23 degrees 31 minutes 47 seconds West a distance of 239.10 feet) an arc distance of 305.15 feet, thence North 88 degrees 51 minutes 23 seconds West, along the Northerly line of Muirfield Court, a distance of 705.84 feet to a point of curve, thence Northwesterly along a curve concave to the Northeast and having a radius of 520.29 feet (the chord of which bears North 68 degrees 52 minutes 49 seconds West a distance of 355.49 feet) an arc distance of 362.80 feet, thence North 48 degrees 54 minutes 15 seconds West a distance of 50.00 feet, thence North 41 degrees 05 minutes 45 seconds East a distance of 17.50 feet, thence North 48 degrees 54 minutes 15 seconds West a distance of 200.43 feet to the point of beginning, containing 4.970 Acres, more or less, all in Schererville, Lake County, Indiana.

(herein the "Real Estate").

**RECITALS, INTENTS AND PURPOSES**

**WHEREAS**, the Trust did cause to be recorded on July 16, 1990, as Document No. 111829 a Declaration Of Condominium for the horizontal property regime intended to be known as the "Morningside Townhome Condominiums" (herein the "Original Declaration"); and

WHEREAS, the Trust, and the Developer (as defined in the Original Declaration), have deemed it necessary and appropriate to amend and restate the Original Declaration for the purpose of clarifying various terms and provisions thereof, and for the purpose of complying with various provisions of the Horizontal Property Law of the State of Indiana, the same being Indiana Code 32-1-6-1 et seq. (the "Act"); and

WHEREAS, since the recording of the Original Declaration, and as of the date of this Amended And Restated Declaration, the Trust and the Developer have completed the construction of five (5) Buildings, containing fourteen (14) Apartments, out of a total of nine (9) Buildings and twenty-five (25) Apartments intended to be constructed upon the Real Estate.

WHEREAS, by this Amended And Restated Declaration it is intended that the Property, in accordance with the provisions herein contained, shall nevertheless remain subject to the benefits and burdens of and subject to the Act; and

WHEREAS, a condominium is a method of ownership which, when applied to a multi-family dwelling, provides for a separate title to each residential unit, which title shall consist of an Apartment and an undivided interest in and to all of the Property.

NOW, THEREFORE, Developer hereby declares, on behalf of itself, its successors, grantees and assigns, to its grantees and their respective heirs, successors and assigns, as well as to any and all persons having, acquiring or seeking to have or acquire any interest of any nature, whatsoever, in and to any part of the Property, as follows:

The Property, from and after the date of the recording of this Amended and Restated Declaration in the Office of the Recorder of Lake County, Indiana, shall be known as the Morningside Townhome Condominiums, and shall be and continue, subject to each and all of the terms and provisions hereof, and to the terms and provisions of the Act, until this Amended and Restated Declaration is terminated or amended in accordance with the provision herein elsewhere contained.

As used herein or elsewhere in the Condominium Documents, unless otherwise provided or unless the context requires otherwise, the following terms shall be defined as in this Article provided:

- A. **Apartment:** An enclosed space within a Building and designed for residential use and separately described and designated by number as shown on the Plans attached hereto as Exhibit "A".
- B. **Apartment Owner:** A Person who owns an Apartment.
- C. **Assessment:** That portion of the cost of maintaining, repairing and managing the Property, which is to be paid by each Apartment Owner, which respective portions are the Shares, as defined below.
- D. **Association:** "Morningside Townhome Condominiums Association, Inc.", and its successors, a corporation not for profit, organized under the laws of the State of Indiana, copies of the Articles of Incorporation and of the By-Laws of which are attached hereto and made a part hereof as Exhibits "B" and "C", respectively.

**E. Building:** Each residential structure located on the Property which has been built substantially in accordance with the Plans.

**F. Common Areas and Facilities:** Means and includes, without limitation:

1. The Real Estate on which the Buildings are located.
2. The landscaped areas surrounding the Buildings.
3. The roof of each Building and the exterior siding, facia, sheathing, and building paper on each Building.
4. The foundation, columns, girders, beams, supports and exterior walls of each Building.
5. The facilities which house electric conduits and wiring, sanitary and storm sewers, water and communication lines which are located outside the boundaries of each Apartment.
6. All other parts of the Property which are necessary to its existence.

**G. Common Expenses:** The actual and estimated cost of:

1. Maintenance, management, operation, repair and replacement of the Common Areas and Facilities and Limited Common Areas and Facilities and those parts of the Apartments as to which, pursuant to other provisions hereof, it is the responsibility of the Association to maintain, repair and replace.
2. Management and administration of the Association, including, without limiting the same, to compensation paid by the Association to a managing agent, accountants, attorneys and other employees, if any.
3. All sums lawfully assessed against the Apartment Owners by the Association.
4. Expenses agreed upon as Common Expenses by the Association.
5. Any other item held by or in accordance with other provisions of this Amended and Restated Declaration, the Condominium Documents, or required by statute.

**H. Common Profit:** The balance of all income, rents, profits and revenues from the Common Areas and Facilities remaining after the deduction of the Common Expenses.

**I. Condominium Documents:** This Amended and Restated Declaration and the exhibits annexed hereto as the same from time to time may be amended. Said exhibits are as follows:

Exhibit "A" The floor plan samples in three pages attached hereto, and the Amended and Restated plot plan with floor plans prepared by Torrenga Engineering, Inc., and filed for record in the Office of the Recorder of Lake County, Indiana, on the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, as Document No. 03040557.

Exhibit "B" Articles of Incorporation of Morningside Townhome Condominiums Association, Inc.

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Exhibit "C" By-Laws of Morningside Townhome Condominiums Association, Inc.

Exhibit "D" Rules and Regulations of the Association

**J. Amended and Restated Declaration:** This Amended and Restated Declaration as it may from time to time may be lawfully amended and supplemented.

**K. Developer:** Morningside Townhome Corporation, formerly known as O'Connell and Meyers Development Corp., and its successors and assigns.

**L. Limited Common Areas and Facilities:** Means and includes those Common Areas and Facilities designated in this Amended and Restated Declaration as reserved for the use of a certain Apartment or Apartments to the exclusion of the other Apartments, and shall include the following:

1. The driveway and sidewalk designed to service the Apartment, and to service the garage space which is a part of the Apartment.

2. The patio and steps and porches attached to or abutting an Apartment, and serving only such Apartment, but excluding railings which are Common Areas.

**M. Majority:** The Apartment Owners with fifty-one percent (51%) or more of the votes in accordance with the percentages assigned in this Amended and Restated Declaration to the Apartments.

**N. Plans:** The plans and specifications attached hereto as Exhibit "A".

**O. Person:** A natural person or any legal entity capable of holding title to real property.

**P. Property:** Means and includes the Real Estate, Buildings, all improvements and structures thereon and all easements, rights and appurtenances belonging thereto.

**Q. Share(s):** The percentages attributed to each Apartment, being that percentage derived by dividing the number one hundred (100) by the total number of Apartments.

## ARTICLE II

### USE OF COMMON AND LIMITED COMMON AREAS AND FACILITIES

The Common and Limited Common Areas and Facilities shall be used in accordance with and subject to the following provisions:

**A. Covenant Against Partition.** In order to effectuate the intent hereof and to preserve the condominium and the condominium method of ownership, the Property shall remain undivided and no person, irrespective of the nature of his interest in the Property, shall bring any action of proceeding or partition or division of the Property or any part thereof until the termination of the Amended and Restated Declaration in accordance with provisions herein elsewhere contained.

**B. Rules And Regulations Promulgated By Association.** No person shall use the Common Areas and Facilities or any part thereof in any manner contrary to or not in accordance with such rules and regulations pertaining thereto as from time to time may be

promulgated by the Association. Without in any manner intending to limit the generality of the foregoing, the Association shall have the right but not the obligation to promulgate rules and regulations limiting the use of the Common Areas and Facilities to members of the Association and their respective families, guests, invitees and servants.

**C. Repair Of Common And Limited Common Areas And Facilities.** Maintenance, repair, management and operation of the Common and Limited Common Areas and Facilities shall be the responsibility of the Association, but nothing herein contained, however, shall be construed so as to preclude the Association from delegating to persons, firms or corporations of its choice, such duties as may be imposed upon the Association by the terms of this Article II.C., and as are approved by the Board of Directors of the Association.

**D. Collection Of Expenses.** Expenses incurred or to be incurred for the maintenance, repair, management and operation of the Common and Limited Common Areas and Facilities shall be collected from Apartment Owners as assessed, in accordance with provisions contained elsewhere herein.

**E. Use Of Common And Limited Common Areas And Facilities.** Subject to the rules and regulations from time to time pertaining thereto, all Apartment Owners may use the Common Areas and Facilities in such manner as will not restrict, interfere with or impede the use thereof by other Apartment Owners. All Apartment Owners having an interest in the Limited Common Areas and Facilities may use such areas and facilities in such manner as will not restrict, interfere with or impede the use thereof by other Apartment Owners having an interest therein.

**F. Alterations And Improvements.** The Association shall have the right to make or cause to be made such alterations and improvements to the Common and Limited Common Areas and Facilities as may be deemed necessary, provided the making of such alterations and improvements are first approved by the Board of Directors of the Association, and if required by law or contract, the approval of the first mortgagees of individual units shall be obtained. In the event Apartment Owners request that alterations or improvements be made, the cost of making such alterations and improvement shall be assessed as Common Expenses, unless in the judgment of a majority of the Board of Directors, such alterations and improvements are exclusively or substantially exclusively for the benefit of the Apartment or the Apartment Owners requesting the same, in which case such requesting Apartment Owner shall be assessed therefor in such proportions as they approve jointly and failing such agreement, in such proportions as may be determined by the Board of Directors of the Association.

**G. Shares Of Apartment Owners.** The Shares of the Apartment Owners in the Common and Limited Common Areas and Facilities shall be as stated in Article I.Q., and may be altered only by amendment hereof executed in form for recording by all of the Apartment Owners and first mortgagees of such Apartment Owners. No such alteration shall affect the lien of prior recorded mortgages unless written consent of the holder of such mortgage is obtained and recorded.

**H. Interest In Common Areas And Facilities.** The Share of an Apartment Owner in the Common and Limited Common Areas and Facilities is appurtenant to the Apartment owned by him, and inseparable from Apartment ownership.

**ARTICLE III  
MAINTENANCE AND REPAIR OF APARTMENTS**

**A. By The Association.** Other than in cases dealing with damages caused by casualty, as hereinafter provided, the Association, at its expense, shall be responsible for the maintenance, repair and replacement of:

1. All portions of the Apartment which constitute or contribute to the support of the Building, including foundations, columns, girders, beams, exterior supporting walls, roof, and outside wall wood siding, but excluding interior Apartment walls and all glass or glazing.

2. All lawn, landscaping and snow removal.

3. Patios, concrete sidewalks, steps and driveways and all other portions of the Property located outside of the boundaries of the Apartments as described in Article IV.B.

4. All incidental damage caused to an Apartment by the Association in performing the above work.

**B. By The Apartment Owner.** The Apartment Owner shall pay and shall be responsible for the maintenance, repair and replacement of:

1. All conduits, duct work, interior and exterior plumbing, electrical wiring and receptacles and fixtures servicing that Apartment Owner's Apartment, whether located within or without the boundaries of the Apartment as described in Article IV.B.

2. The heating and air conditioning unit servicing any one Apartment wherever located.

3. All such work which is not the specific responsibility of the Association to perform as provided herein.

The Apartment Owner agrees that no such work, as above provided, shall be undertaken without the written approval of the Board of Directors of the Association as to the person, firm or corporations selected by the Apartment Owner to perform the maintenance, repair or replacement above specified. The Apartment Owner further agrees not to paint or otherwise decorate or change the appearance or color of any portion to the exterior of the Apartment, and not to make any alterations to the Apartment, or to remove any portion thereof, or make any additions thereto, or to do anything which would or might jeopardize or impair the safety, soundness or soundproofing of the Building housing said Apartment, without first obtaining the written permission of the Board of Directors of the Association.

**C. Limitation As To Damages.** Nothing herein contained, however, shall be construed so as to impose a contractual liability upon the Association for maintenance, repair and replacement, but the Association's liability shall be limited to damages resulting from negligence.

**ARTICLE IV**  
**APARTMENTS SHALL BE CONSTITUTED AS FOLLOWS:**

**A. Real Property.** Each Apartment, together with the space within the boundaries thereof as described below in Article IV.B., and together with all appurtenances thereto, shall, for all purposes, constitute a separate parcel of real property which may be owned in fee simple and which may be conveyed, transferred and encumbered in the same manner as any other parcel of real property, subject only to the provisions of this Amended and Restated Declaration.

**B. Boundaries.** Each Apartment shall be bounded as to both horizontal and vertical boundaries as described below, subject to such encroachments as are contained in the Building whether the same exist now or are created by construction, settlement or movement of the Building, or permissible repairs, reconstruction or alterations. Said boundaries are intended to be as follows:

1. Horizontal Boundaries.

a. The interior planes formed by the lower edge of the rafters of the roofs abutting the Apartment, including the garage space, to include all garage and attic areas, and

b. The interior planes formed by the top of basement floors of Apartments having basements and the top of the subflooring abutting the Apartment located other than over a basement area, and the top of the floor of the garage space.

2. Vertical Boundaries

a. The interior face surfaces of the vertical party wall of the Apartment, and

b. The interior face surface of the exterior vertical walls of the Apartment.

**C. Appurtenances.** Each Apartment shall include and the same shall pass with each Apartment as an inseparable appurtenance thereto, whether or not separately described, conveyed or encumbered, all of the right, title and interest of an Apartment Owner in the Property, which shall include, but not be limited to:

1. Common and Limited Common Areas and Facilities: an undivided percentage interest in the Common and Limited Common Areas and Facilities, as set forth in Article I.Q.

2. The heating and air conditioning unit including ducts and lines, designed to serve each separate Apartment, together with all appliances located therein.

3. Easements for the benefit of the Apartment.

4. Association membership and funds and assets held by the Association for the benefit of the Apartment Owner.

5. All such appurtenances, however, shall be and continue to be subject to the easements for the benefit of other Apartments.



6. The following easements from each Apartment Owner to each other Apartment Owner and to the Association:

a. Ingress And Egress. Easements through the Common Areas and Facilities for ingress and egress for all persons making use of such Common Areas and Facilities in accordance with the terms of the Condominium Documents.

b. Maintenance, Repair And Replacement. Easements through the Apartment and Common Areas and Facilities for maintenance, repair and replacement of the Apartments and Common Areas and Facilities. Use of these easements, however, for access to the Apartments shall be limited to reasonable hours, except that access may be had at any time in case of emergency.

c. Structural Support. Every portion of an Apartment which contributes to the structural support of the Building shall be burdened with an easement of structural support for the benefit of the Common and Limited Common Areas and Facilities.

d. Utilities. Easements through the Apartments and Common Areas and Facilities for the furnishing of utility and communication services within the Building, which facilities shall include, but not be limited to, conduits, ducts, plumbing and wiring, provided, however, that the easements for such facilities through an Apartment shall be only substantially in accordance with the Plans.

e. Emergency Easements Of Ingress And Egress. Easements over all balconies and patios whenever reasonably required for emergency ingress and egress. Apartment Owners shall install or allow to be installed locks, security devices or other things which will or might impair such easements only in accordance with the rules and regulations respecting same as may be promulgated by the Association.



In order to provide for a congenial occupation of the Buildings and to provide for the protection of the values of the Apartments, the use of the Property shall be restricted to and be in accordance with the following provisions:

A. Use Of Apartments. The Apartment shall be used for single-family residences only.

B. Use Of Common And Limited Common Areas And Facilities. The Common Areas and Facilities shall be used for the furnishing of services and facilities for which the same are reasonably intended, for the enjoyment of the Apartments.

C. Restrictions As To Fireplaces. Any and all fireplaces shall utilize only natural gas logs. No wood, paper or any other combustible material shall be utilized.

D. Approval By Association. No Apartment or Unit shall be occupied by any person not approved in advance by the Board of Directors of the Association. The Association shall signify in writing such approval or disapproval within thirty (30) days after the same is requested in writing, provided that simultaneously with such request there is



submitted to the Association the name of the person in question, their residence address and three (3) business and three (3) social references, together with such other information as the Association might reasonably request. Any such approval once given may not thereafter be withdrawn. Failure of the Board of Directors to disapprove within such period conclusively shall be deemed to constitute approval. The provisions in this paragraph shall not be applicable to any mortgagee or purchaser lessee from such mortgagee as recited in Article XVIII hereof.

**E. Restrictions As To Pets.** Residents shall be permitted to keep two (2) domestic animals only if such animals do not disturb or annoy other residents. Residents keeping domestic animals, which comply with these restrictions, shall abide by municipal sanitary regulations, and shall be responsible for any inconvenience or damage caused by such animals.

**F. Nuisances.** No nuisance shall be allowed upon the Property, nor shall any use or practices be allowed which is the source of annoyance to residences or which interferes with the peaceful possession and proper use of the Property by its residents.

**G. Lawful Use.** No immoral, improper, offensive or unlawful use shall be made of the Property, nor any part thereof, and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The respective responsibilities of Apartment Owners and the Association in complying with the requirements of governmental bodies which require maintenance, modification or repair of the Property shall be the same as hereinafter provided for the maintenance and repair of that portion of the Property subject to such requirements.

**H. Interpretation.** In interpreting deeds, mortgages, and plans, the existing physical boundaries of the Apartment reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in the deed, mortgage or Plan, regardless of settling or lateral movement of the Building and regardless of minor variance between boundaries shown on the Plan.

**I. Rules And Regulations.** Rules and regulations concerning the use of the Property may be promulgated by the Association as hereinabove set forth; provided, however, that copies of such are furnished to each Apartment Owner prior to the time that the same becomes effective. The initial regulations, which shall be deemed effective until amended by the Association, are attached hereto and made a part hereof as Exhibit "D". Such regulations shall not impair or limit the rights of mortgagees as elsewhere recited.

## **ARTICLE VI** **CONVEYANCES**

The sale, leasing and mortgaging of Apartments shall be subject to the following provision until this Amended and Restated Declaration is terminated in accordance with the provisions herein elsewhere contained:

**A. Sale Or Lease.** No Apartment Owner may dispose of an Apartment or any interest therein by sale or by lease without approval of the Board of Directors of the Association, except as elsewhere provided herein, which approval of the Association shall be obtained in the manner hereinafter provided:

1. **Notice To Association.** An Apartment Owner intending to make a sale or lease of his Apartment or any interest therein, shall give a written notice to the Board of Directors of the proposed sale or lease at least thirty (30) days prior to

the sale or lease together with the name and address of the intended purchaser or lessee, three (3) business and three (3) social references, a credit-report, a copy of the lease or offer to purchase and any other information as the Association might reasonably request. The term of any lease may be for one (1) year only. A lease with a term of less than one (1) year or more than one (1) is not authorized and may not be submitted to the Board of Directors for approval. The Board of Directors shall have thirty (30) days after receipt of the required information stated above to either approve of the Apartment Owners lessee or purchaser, or to elect to provide a lessee or purchaser as provided in the following paragraph.

2. **Election Of Association.** Within thirty (30) days after receipt of such notice and the information required by the Association, the Board of Directors of the Association shall either approve the transaction, or furnish a purchaser or lessee approved by the Association (and give notice thereof to the person desiring to sell or lease his/her Apartment) who will accept the transaction upon terms as favorable to the seller as the terms stated in the notice, except that a purchaser or lessee furnished by the Association may have not less than thirty (30) days subsequent to the date of approval within which to close the transaction. The approval of the Board of Directors of the Association shall be in recordable form, signed by any two (2) members of the Board, and shall be delivered to the purchaser or lessee. The failure of the Association to act within the such thirty (30) day period shall be deemed to constitute approval following which the Association, nevertheless, shall prepare and deliver written approval in recordable form, as aforesaid. The Apartment Owner giving such notice shall be bound to consummate the transactions with said purchaser or lessee as may be approved and furnished by the Association.

B. **Mortgage.** No Apartment Owner may mortgage his Apartment, nor any interest therein without the approval of the Association except to a bank, life insurance company, state savings and loan association, or federal savings and loan association. The approval of the other mortgagee may be upon conditions determined by the Board of Directors of the Association.

ARTICLE VII  
ADMINISTRATION

The administration of the Property, including, but not limited to, the acts required of the Association, shall be governed by the following provisions:

A. **Organization Of Association.** The Association shall be incorporated under the name of "Morningside Townhome Condominiums Association, Inc.", as a corporation not-for-profit under the laws of the State of Indiana under Articles of Incorporation of which a copy is attached as Exhibit "B".

B. **By-Laws Of Association.** The By-Laws of the Association shall be in the form attached as Exhibit "C" until such are amended in the manner therein provided.

C. **Powers Of Association.** The duties and powers of the Association shall be those set forth in this Amended and Restated Declaration, the Articles of Incorporation and the By-Laws, together with those reasonably implied to effect the purposes of the Association and this Amended and Restated Declaration; provided, however, that if there are conflicts or inconsistencies between this Amended and Restated Declaration and either the Articles of Incorporation or the By-Laws, the terms and provisions of this Amended and Restated Declaration shall prevail and the Apartment Owners covenant to vote in favor of such amendments in the Articles of Incorporation and/or By-Laws as will remove such conflicts or inconsistencies. The powers and duties of the Association shall be

exercised in the manner provided by the Articles of Incorporation and the By-Laws and any duties or rights of the Association which are granted by or to be exercised in accordance with the provisions of this Amended and Restated Declaration requires the act or approval of the Board of Directors of the Association, such act or approval must be that of the Board done or given in accordance with the By-Laws.

**D. Notices.** Notices or demands, for any purpose, shall be given by the Association to Apartment Owners and by Apartment Owners to the Association and other Apartment Owners in the manner provided for notices to members of the Association by the By-Laws of the Association.

**E. Title To Funds.** All funds and the titles of all properties acquired by the Association and the proceeds thereof after deducting therefrom the costs incurred by the Association in acquiring the same shall be held for the benefit of the Apartment Owners for the purposes herein stated.

**F. Use Of Income.** All income received by the Association from the rental or licensing of any part of the Common Areas and Facilities (as well as such income anticipated) shall be used for the purpose of reducing prospective Common Expenses prior to establishing the annual Assessment for Common Expenses.

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The insurance which shall be carried upon the Property shall be governed by the following provisions:

**A. Authority To Purchase.** Except builder risk and other required insurance furnished by Developer during construction, all insurance policies upon the Property (except as hereinafter allowed) shall be purchased by the Association for the benefit of the Apartment Owners and their respective mortgagees as their interests may appear and shall provide for the issuance of certificates of insurance mortgage endorsements to the holders of first mortgages on the Apartments or any of them and, if insurance companies agree, shall provide that the insurer waives its rights of subrogation as to any claims against Apartment Owners, the Association and their respective servants, agents and guests. Such policies and endorsements shall be deposited with the Insurance Trustee (as hereinafter defined) who must first acknowledge that the policies and any proceeds thereof will be held in accordance with the terms hereof.

**B. Apartment Owners.** Each Apartment Owner shall obtain insurance, at his own expense, affording coverage upon his own personal property, Apartment additions and alterations (at one hundred percent (100%) replacement cost value) and for his own personal liability or as may be required by law, but all such insurance shall contain the same waiver of subrogation as that referred to in subparagraph A. of this Article, and must be obtained from an insurance company which the Association obtains coverage against the same risk, liability or peril.

**C. Coverage.**

1. **Casualty.** The Property and all other insurable improvements thereon, including the Common Areas and Facilities, and all personal property as may be owned by the Association shall be insured by the Association in an amount equal to one hundred percent (100%) replacement value thereof as determined



annually by the insurance company affording such coverage. Such coverage shall afford protection against loss or damage by what is commonly known as "All Risk Insurance".

2. Liability. The Association shall obtain and keep in force a Comprehensive Automobile and General Liability policy to cover the Association expenses for premises and operations, independent contractors contractual liability and incidental products and complete operations, if any, endorsed with what is called "The Broad Form Comprehensive General Liability Endorsement", with limits not less than One Million Dollars (\$1,000,000.00) per occurrence combined single limit, which policy shall be purchased to provide protection of the Association members, its officers, directors and all persons acting or who may come to act as servants, agents or guest thereof.

3. Other Coverage. The Association shall obtain and keep in force, a directors and officers liability policy. The Association may, at the option of the Board of Directors, purchase for the benefit of the Co-Owners of the Association, such other insurance coverages, including without limitation, worker's compensation insurance, and specialized policies coverage land or improvements on which the Association has or shares ownership or other rights.

4. Premiums. Premiums upon the insurance policies purchased by the Association, as above provided, shall be paid by the Association and charged as an expense of the Association.

D. Beneficiary Of Policies. In the event of a casualty loss to the Property, all insurance proceeds indemnifying the loss or damage shall be paid to the Board of Directors of the Association as Insurance Trustee. The Board, acting as Insurance Trustee, shall receive and hold all such insurance proceeds in trust for the purposes hereinafter contained, and for the benefit of the Association, the Apartment Owners, and their respective mortgagees. The Board, in its discretion, may decline to serve as Insurance Trustee and may appoint in its place any bank in Indiana with trust powers. Any substitute Insurance Trustee appointed by the Board shall succeed to all of the powers vested in the Board under the terms herein provided.

E. Insurance Trustee. The sole duty of the Insurance Trustee shall be to receive such insurance proceeds for the benefit of the Association, the Apartment Owners and their respective mortgagees in the following Shares:

1. Common Areas And Facilities. Proceeds on account of damage to Common Areas and Facilities: that undivided Share of each Apartment Owner and his mortgagee, if any, which is set forth in Article I.Q.

2. Apartments. Proceeds on account of damage to Apartments shall be held in the following undivided Shares:

a. Partial Destruction - When A Building Is To Be Restored: For owners of damaged Apartments in proportion to the cost of repairing the damage suffered by each damaged Apartment. Upon the request of the Insurance Trustee, the Association shall certify to the Insurance Trustee the appropriate portions of the aforesaid, and each Apartment Owner shall be bound by, and the Insurance Trustee may rely upon, such certification.

b. Total Destruction Of The Property - Or Where The Property Is Not To Be Restored: For each Apartment Owner the Share of each being that Share set forth in Article I.Q.

3. Mortgagees. In the event a mortgagee endorsement has been issued to an Apartment, the share of the Apartment Owner shall be held in trust for the mortgagee and the Apartment Owner as their respective interests may appear.

F. Distribution Of Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the beneficial owners after first paying or making provision for the payment of the expense of the Insurance Trustee in the following manner:

1. Reconstruction Or Repair. If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the cost thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, all remittances to Apartment Owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of an Apartment and may be enforced by it.

2. Failure To Reconstruct Or Repair. If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial owners, remittances to Apartment Owners and their mortgagees being payable jointly to them, this is a covenant for the benefit of any mortgagee of an Apartment, and may be enforced by it.

3. Certificate. In making distribution to Apartment Owners and their mortgagees, the Insurance Trustee may rely upon a certificate of the Association as to the names of the Apartment Owners and their respective Shares. Upon request of the Insurance Trustee, the Association forthwith shall deliver such certificate.

G. Obtainment Of Policy And Changes. When any policy of insurance has been obtained by or on behalf of the Association or the Apartment Owners, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Apartment Owner or mortgagee whose interest may be affected thereby, by the officer required to send notices of meetings of the Apartment Owners.

ARTICLE IX  
RECONSTRUCTION OR REPAIR OF CASUALTY DAMAGE

A. Decision To Reconstruct Or Repair. If any part of the Common Areas and Facilities shall be damaged by casualty, the determination of whether or not to reconstruct or repair the same shall be made as follows:

1. Partial. In case of fire or any other casualty or disaster, other than complete destruction of all of the Buildings on the Property, the Buildings and improvements shall be reconstructed and the insurance proceeds applied thereto.

2. Total. In the event of complete destruction of all of the Buildings on the Property, the Buildings shall not be reconstructed, except as otherwise provided, and the insurance proceeds, if any, shall be divided among the Apartment Owners in accordance with their Shares, and the Property shall be considered as to be removed from the condominium unless by a vote of two-thirds (2/3) of all the Apartment Owners a decision is made to rebuild all the Buildings, in which case the insurance proceeds shall be applied and any excess of construction costs over insurance proceeds shall be contributed as provided herein in the event of less than total destruction of the Buildings. A determination of total destruction of all of the



Buildings shall be determined by a vote of two-thirds (2/3) of all Apartment Owners at a special meeting of the Association of Apartment Owners called for that purpose.

3. Reconstruction. Any such reconstruction or repair shall be substantially in accordance with the Plans.

4. Continuation Of Encroachments. Encroachments upon or in favor of Apartments which may be created as a result of such reconstruction or repair shall not constitute a claim or basis of a proceeding or action by the Apartment Owner upon whose Apartment such encroachment exists, provided that such reconstruction was either substantially in accordance with the Plans or as the Building was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the Buildings stand.

5. Certificate. The Insurance Trustee may rely upon a certificate of the Association certifying as to whether or not the damaged Property is to be reconstructed or repaired. The Association, upon request of the Insurance Trustee, shall deliver such certificate as soon as practical.

B. Responsibility. If the damage is only to those parts of one Apartment for which the responsibility of maintenance and repair is that of the Apartment Owner, then the Apartment Owner shall be responsible for reconstruction and repair after casualty. In all other instances the responsibility of reconstruction and repair after casualty shall be that of the Association.

1. Estimate Of Costs. Immediately after a casualty causing damage to Property for which the Association has the responsibility of maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to place the damage Property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires.

2. Assessments. Where the insurance proceeds are not sufficient to cover the cost of reconstruction and the Property is not to be removed from the Horizontal Property Regime, the Apartment Owners shall contribute the balance of any such costs in the percentage by which an Apartment Owner owns an undivided interest in the Common Areas and Facilities as expressed in this Amended and Restated Declaration. Such amount shall be assessed as part of the Common Expense and shall constitute a lien from the time of Assessment.

3. Construction Funds. The funds for payment of costs of reconstruction and repair after casualty, which shall consist of proceeds of insurance held by the Insurance Trustee and funds collected by the Association from Assessments against Apartment Owners, shall be disbursed in payment of such costs in the following manner:

a. Association. If the amount of the estimated costs of reconstruction and repair exceeds the total annual Assessments for Common Expenses made during the year in which the casualty occurred, then the sums paid upon Assessments to meet such cost shall be deposited by the Association with the Insurance Trustee. In all other cases, the Association shall hold the sums paid upon such Assessments and disburse the same in payment of the costs of reconstruction and repair.

b. Insurance Trustee. The proceeds of insurance collected on account of a casualty, and the sums deposited with the Insurance Trustee by the Association from collections of Assessments against Apartment Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

i. Apartment Owner. The portion of insurance proceeds, if any, representing damage for which the responsibility of reconstruction and repair lies with the Apartment Owner; to such contractors, suppliers and personnel as do the work or supply the materials or services required for such reconstruction or repair, in such amounts and at such times as the Apartment Owner may direct, or if there is a mortgagee endorsement, then to such payees as the Apartment Owner and the first mortgagee jointly direct. Nothing contained herein, however, shall be construed so as to limit or modify the responsibility of the Apartment Owner to make such reconstruction or repair.

ii. Association: Lesser Damage. If the amount of the estimated costs of reconstruction and repair is less than the total of the annual Assessments for Common Expenses made during the year in which the casualty occurred, then the construction fund shall be disbursed in payment of such costs upon the order of the Association; provided, however, that upon request of a mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner hereafter provided for the reconstruction and repair of major damage.

iii. Association: Major Damage. If the amount of the estimated costs of reconstruction and repair is more than the total of the annual Assessments for Common Expenses made during the year in which the casualty occurred, then the construction fund shall be disbursed in payment of such costs in the manner required by the Board of Directors of the Association and upon approval of an architect qualified to practice in Indiana and employed by the Association to supervise the work.

iv. Surplus. It shall be presumed that the first moneys disbursed in payment of costs in reconstruction and repair shall be from insurance proceeds; and if there is a balance in a construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed jointly to the Apartment Owners and their mortgagees who are the beneficial owners of the fund.

v. When the damage is to both Common Areas and Facilities and Apartments, the insurance proceeds shall be applied first to the costs of repairing the Common Areas and Facilities, and the balance to the Apartments in the shares above stated.

4. Insurance Adjustments. Each Apartment Owner shall be deemed to have delegated to the Board of Directors his right to adjust with insurance companies all losses under policies purchased by the Association except in any case where the damage is restricted to one Apartment, subject to the rights of mortgagees of such Apartment Owners.

**ARTICLE X  
TAXES AND SPECIAL ASSESSMENTS**

**A. Assessment Of Taxes.** Taxes, assessments and other charges of the State of Indiana, or any political subdivision, or of any special improvement district, or of any other taxing or assessing authority shall be assessed against and collected on each individual Apartment and shall be paid by each Owner.

**B. Payment By Association.** During the period of time the taxes and special Assessments and other charges upon the Property or any portion thereof are not assessed to individual Apartment Owners as aforesaid, the taxes, assessments and other charges not separately assessed to Apartment Owners shall be included in the budget of the Association and shall be paid by the Association. The Association shall assess each Apartment Owner in accordance with the percentage of ownership specified herein.

**ARTICLE XI**

**ASSESSMENTS**

Assessments against the Apartment Owners shall be made or approved by the Board of Directors of the Association and paid by the Apartment Owners to the Association in accordance with the following provisions:

**A. Share Of Expense.** Common Expenses. Each Apartment Owner shall be liable for his Share of the Common Expenses and any common surplus shall be owned by each Apartment Owner in a like share.

**B. Assessments Other Than Common Expenses.** Any Assessments, the authority to levy which is granted to the Association or its Board of Directors by the Condominium Documents, shall be paid by the Apartment Owners to the Association in the proportions set forth in the provisions of the Condominium Documents authorizing the Assessments.

**C. Accounts.** All sums collected by the Association from Assessments may be commingled in a single fund; but they shall be held for the Apartment Owners in the respective shares in which they are paid and shall be credited to accounts from which shall be paid the expenses for which the respective Assessments are made. Such accounts shall be as follows:

1. Common Expense Account. To which shall be credited collections of Assessments for all Common Expenses as well as payments received for defraying costs of the use of Common Areas and Facilities.

2. Alteration And Improvement Account. To which shall be credited all sums collected for alternations and improvement Assessments.

3. Reconstruction And Repair Account. To which shall be credited all sums collected for reconstruction and repair Assessments.

**D. Assessment For Common Expenses.** Assessments for Common Expenses shall be paid by each Apartment Owner in advance on a calendar quarterly basis; the amount so paid shall be set by the Board of Directors and shall be based upon the amount of the estimated or projected Common Expenses for the year computed by the Treasurer of the Association, consonant with the yearly budget; the amount to be paid shall be paid on the first day of each quarter to the Treasurer of the Association, the total amount each individual Apartment Owner shall pay shall be based upon the Apartment Owner's Share.



**E. Other Assessments.** Other Assessments shall be made in accordance with the provisions of the Condominium Documents and if the time of payment is not set forth in the Condominium Documents, the same shall be determined by the Board of Directors of the Association.

**F. Assessments For Emergencies.** Assessments for emergencies which cannot be paid from the Common Expense account shall be made only by the Board of Directors of the Association.

**G. Assessments For Liens.** All liens of any nature, including taxes and special assessments levied by governmental authority which are a lien upon more than one Apartment or upon any portion of the Common Areas and Facilities, shall be paid by the Association as a Common Expense and shall be assessed against the Apartments in accordance with the Shares of the Apartment Owners concerned or charged to the ordinary expense account, whichever in the judgment of the Board of Directors is appropriate.

**H. Assessment Roll.** The Assessments against all Apartment Owners shall be set forth upon a roll of the Apartments which shall be available in the office of the Association for inspection at all reasonable times by Apartment Owners or their duly authorized representatives. Such roll shall indicate for each Apartment the name and address of the Apartment Owner(s), the Assessments for all purposes and the amounts of all Assessments paid and unpaid. A certificate made by the Association as to the status of an Apartment Owner's Assessment account shall limit the liability of any person for whom made other than the Apartment Owner. The Association shall issue such certificate to such persons as an Apartment Owner may request in writing.

**I. Liability For Assessments.** Each Apartment Owner and his grantee shall be jointly and severally liable for all unpaid Assessments due and payable at the time of a conveyance but without prejudice to the rights of the grantee to recover from the grantor the amounts paid by the grantee therefor. Such liability may not be avoided by a waiver of the use or enjoyment of the Common Areas and Facilities or by abandonment of the Apartment for which the Assessments are made. A purchaser of an Apartment at a judicial or foreclosure sale or a first mortgagee who accepts a deed in lieu of foreclosure shall be liable only for the Assessments coming due after acquisition of title and for that portion of due Assessments prorated to the period after the date title is acquired. Such a purchaser as aforesaid shall be entitled to the benefit of all prepaid Assessments paid beyond the date such purchaser acquires title.

**J. Lien For Assessments.** The unpaid portion of an Assessment which is due shall be secured by a lien upon:

1. The Apartment and all appurtenances thereto and shall constitute a lien from the time of Assessment of such Common Expenses prior to all other liens except only:

a. Tax liens on the Apartment in favor of any assessing unit and special district; and

b. All sums paid on a first mortgage of record.

2. The Board of Directors shall perfect such lien by filing notice of the same within sixty (60) days from the date such Assessment was due and may foreclose the lien under the laws of the State of Indiana governing mechanic's and materialmen's liens. In any such foreclosure, the delinquent Apartment Owner may be required to pay a reasonable rental for the Apartment, and the Association in such foreclosure shall be entitled to the appointment of a receiver to collect such

delinquent Assessment. The Association may, in addition to or in the alternative to such foreclosure action, file suit to recover a money judgment for unpaid Common Expenses and such action shall not constitute a waiver of the lien securing such unpaid Assessment.

3. If the Board of Directors determines to file foreclosure to collect such unpaid Assessments, the Board of Directors acting on behalf of the Association shall have the power to bid on the Apartment at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same.

**K. Application Of Payments.**

1. Interest - Application Of Payments. Assessments and installments thereof not paid on or before eight (8) days after the date when due shall be subject to a monthly late payment charge of five percent (5%) of the unpaid Assessment amount. All late payments collected shall be credited to the Common Expense account.

2. Suit And Collection Costs. The Board of Directors of the Association, at its option, may enforce collection of delinquent Assessments by actions at law or by foreclosure of the liens securing the Assessments or by any other competent proceeding and the delinquent Owner shall be assessed interest at the rate of twelve percent (12%) per annum, all costs, including collection fees, reasonable attorneys' fees and the costs of the suit proceedings.

**ARTICLE XII  
COMPLIANCE AND DEFAULT**

Each Apartment Owner shall be governed by and shall comply with the terms of the Condominium Documents and Rules and Regulations adopted pursuant thereto, as they may be amended from time to time. A default shall entitle the Association or other Apartment Owners to the following relief:

A. Legal Proceeding. Failure to comply with any of the terms of the Condominium Documents and Rules and Regulations adopted pursuant thereto, shall be grounds for relief which may include, without intending to limit the same, to an action to recover sums due for damages, injunctive relief, foreclosure of lien or any combination thereof, and which relief may be sought by the Association or if appropriate, by an aggrieved Apartment Owner.

B. Liability Of Owner. All Apartment Owners shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, or by that of any member of his family or his or their guests, employees, agents or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in insurance rates occasioned by use, misuse, occupancy, or abandonment of any Apartment or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

C. Costs And Attorneys' Fees. In any proceeding arising because of an alleged default by an Apartment Owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the Court.



**D. No Waiver Of Rights.** The failure of the Association or of an Apartment Owner to enforce any right, provision, covenant or condition which may be granted by the Condominium Documents shall not constitute a waiver of the right of the Association or Apartment Owner to enforce such right, provision, covenant or condition in the future.

**E. No Election Of Remedies.** All rights, remedies and privileges granted to the Association or any Apartment Owner pursuant to any terms, provisions, covenants or conditions of the Condominium Documents 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 thus exercising the same from exercising such other and additional rights, remedies or privileges as may be granted to such party by the Condominium Documents, or at law or in equity.

### **ARTICLE XIII** **AMENDMENT**

Except for alterations in the Shares which cannot be done except with the consent of all Apartment Owners whose Shares are being affected, and their mortgagees, the Condominium Documents may be amended in the following manner:

**A. Amended and Restated Declaration.** Amendments to the Amended and Restated Declaration shall be proposed and adopted as follows:

1. **Notice.** Notice of the subject matter of the proposed amendment in reasonably detailed form shall be included in the notice of any meeting at which a proposed amendment is considered.

2. **Resolution.** A resolution adopting a proposed amendment may be proposed by either the Board of Directors of the Association or by the Apartment Owners meeting as members of the Association, and after being proposed and approved by either of such bodies, must be approved by others. Directors and Apartment Owners not present at the meeting considering such amendment may express their approval in writing or by proxy. Such approvals must be by not less than seventy-five percent (75%) of the directors and seventy-five percent (75%) of the Apartment Owners and their mortgagees.

3. **Recording.** A copy of each amendment to this Amended and Restated Declaration shall be certified by at least two (2) officers of the Association as having been duly adopted and shall be effective when recorded in the Office of the Recorder of Lake County, Indiana. Copies of the same shall be sent to each Apartment Owner and his mortgagee in the manner elsewhere provided for the giving of notices, but the same shall not constitute a condition precedent to the effectiveness of such amendment.

**B. Association - Articles Of Incorporation and By-Laws.** The Articles of Incorporation and the By-Laws of the Association shall be amended in the manner provided by such documents.

**ARTICLE XIV  
TERMINATION**

The condominium shall be terminated, if at all, in the following manner:

**A. By Agreement.** The termination of the condominium may be effected by the agreement of all Apartment Owners and first mortgagees, which agreement shall be evidenced by an instrument or instruments executed in the manner required for conveyances of land. The termination shall become effective when such agreement has been recorded in the Office of the Recorder of Lake County, Indiana.

**B. Destruction.** If it is determined in the manner elsewhere provided that all of the Buildings on the Property shall not be reconstructed after casualty, the condominium shall terminate. The decision not to reconstruct shall be evidenced by a certificate of the Association certifying as to the facts affecting the termination, which termination shall become effective upon the certificate being recorded in the Office of the Recorder of Lake County, Indiana.

**C. Shares Of Apartment Owners After Termination.** After termination of the condominium, the Apartment Owners shall own the Property as tenants in common, in the undivided Share of each, and the holders of mortgages and liens against the Apartment or Apartments formerly owned by such Apartment Owners shall have mortgages and liens upon such respective undivided shares of the Apartment Owners. All funds held by the Association and insurance proceeds, if any, shall be and continue to be held jointly for the Apartment Owners and their first mortgagees in proportion to the amount of the Assessments paid by each Apartment Owner. The costs incurred by the Association in connection with a termination shall be a Common Expense.

**D. Sale After Termination.** Following termination, the property may be partitioned and sold upon the application of any Apartment Owner. If the Association, following a termination by not less than three-fourths (3/4ths) vote of the Owners, determines to accept an offer for the sale of such Property, each Apartment Owner shall be bound to execute such deeds and other documents reasonably required to effect such sale at such times and in such forms as the Board of Directors directs. In such event, any action for partition or other division of the Property shall be held in abeyance pending such sale, and upon the consummation thereof shall be discontinued by all parties thereto.

**E. Agents Of Owners.** The members of the Board of Directors acting collectively as agents for all Apartment Owners shall continue to have such powers as in this Article are granted, notwithstanding the fact that the Association itself may be dissolved upon a termination.

**ARTICLE XV  
COVENANTS RUNNING WITH THE LAND**

All provisions of the Condominium Documents shall be construed to be covenants running with the land and with every part thereof and interest therein, including, but not limited to, every Apartment and the appurtenances thereto.

**ARTICLE XVI  
LIENS**

**A. Protection Of Property.** All liens against an Apartment other than for permitted mortgages, taxes or special assessments will be satisfied or otherwise removed within thirty (30) days from the date the lien attaches. All taxes and assessments upon an Apartment shall be paid before becoming delinquent.

**B. Notice Of Lien.** An Apartment Owner shall give notice to the Association of every lien upon his Apartment other than for permitted mortgages, taxes and special assessments within five (5) days after the attaching of the lien.

**C. Notice Of Suit.** Apartment Owners shall give notice to the Association of every suit or other proceeding which will or may affect the title to his Apartment, or any other part of the Property, such notice to be given within five (5) days after the Apartment Owner receives notice thereof.

**D. Effect.** Failure to comply with the Article concerning liens will not affect the validity of any judicial sale.

**E. Register Of Mortgages.** The Association shall maintain a current register of all permitted mortgages.

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**ARTICLE XVII  
JUDICIAL SALES**

**A. Judicial Sales.** No judicial sale of any Apartment, nor any interest therein, shall be valid unless the sale is to a purchaser approved by the Board of Directors of the Association, which approval shall be in recordable form and shall be delivered to the purchaser and recorded in the Office of the Recorder of Lake County, Indiana.

**B. Unauthorized Transactions.** Any sale, mortgage or lease which is not authorized pursuant to the terms of this Amended and Restated Declaration or for which authorization has not been obtained pursuant to the terms of this Amended and Restated Declaration, shall be void unless subsequently approved by the Board of Directors of the Association.

**C. Foreclosures.** In the event proceedings are instituted to foreclose any mortgage on any Apartment, the Association, on behalf of one or more Apartment Owners, shall have the right to redeem the mortgagee for the amount due thereon or to purchase such Apartment at the foreclosure sale for the amount set forth to be due to the mortgagee in the foreclosure proceedings, and should the mortgagor fail to redeem such mortgagee, and in case of such redemption by the Association, the Association thus redeeming shall take and have absolute fee simple title to the property redeemed, free from any claim or right of any grantee, his heirs or assigns or such mortgagor, and every person claiming by, through or under such mortgagor. Nothing herein contained shall preclude a mortgage institution, bank, savings and loan association, insurance company or any other recognized lending institution from owning a mortgage on any Apartment, and such lending institution shall have an unrestricted, absolute right to accept title to the Apartment in settlement and satisfaction of said mortgage or to foreclose the mortgage in accordance with the terms thereof, and the laws of the State of Indiana, and to bid upon said Apartment at the foreclosure sale, provided said lending institution owning said mortgage shall give to the Association, its successor or assigns, written notice by certified mail of the said default mailed at least thirty (30) days prior to the institution of foreclosure proceedings, during which thirty (30) days the Association shall have the right to cure such default and



following such payment, such mortgagee shall be required to waive such default, and if such default is not cured as aforesaid, and should the Association or any member thereof individually or collectively fail to purchase such mortgage, together with any costs incident thereto from such mortgagee taking title on such foreclosure sale or taking title in lieu of foreclosure sale, may acquire such Apartment and occupy the same and let, relet, sell and resell the same without complying with the restriction limiting the occupation of said Property to persons approved by the Association. If the Association or any members as aforesaid redeems such mortgage or cures such default, it shall have a lien against the Apartment for all sums expended in connection therewith, and shall have the same rights to collect such sums as in the case of a past-due Assessment.

### **ARTICLE XVIII PROVISIONS PERTAINING TO DEVELOPER**

For so long as the Developer continues to own any of the Apartments subject to this Amended and Restated Declaration, or for so long as any of the real estate, which is subject to the Amended and Restated Declaration, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve Developer from any obligation of an Apartment Owner to pay Assessments as to each Apartment owned by him, in accordance with the Condominium Documents.

**A. Control By Developer.** A majority of the Board of Directors of the Association shall be elected by the vote of the Developer, and the directors elected by the Developer need not be residents or owners of Apartments.

**B. Attorney-In-Fact.** During such time as the Developer is in control pursuant to the above and foregoing provisions, all Apartment Owners acknowledge that they constitute and appoint Morningside Townhome Corporation their agent, attorney and proxy, with full power of substitution, to vote the vote standing in the name of each Apartment Owner, and entitled to vote by virtue of their membership in the Association, at all annual meetings, and at all special meetings called for purposes of amending this Amended and Restated Declaration, the Articles of Incorporation of Morningside Townhome Condominiums Association, Inc., the By-Laws of Morningside Townhome Condominiums Association, Inc., and the Rules and Regulations of the said Morningside Townhome Condominiums Association, Inc., by virtue of their taking title to an Apartment under this Amended and Restated Declaration.

**C. Absence Of Warranty.** The Developer specifically disclaims any intent to have made any warranty or representation in connection with the Property or the Condominium Documents, except as specifically set forth therein, and no person shall rely upon any warranty or representation not so specifically made therein. Any estimates of Common Expenses are deemed accurate, but no warranty or guaranty is made nor intended, nor may one be relied upon.

**D. Sales And Management Offices; Model Apartments.** The Developer may maintain sales and management offices and model Apartments in the condominium; however, there may be only one (1) management/sales office in each phase, constituting all or a part of one Apartment until such phase has been completely sold and conveyed, and one (1) model Apartment of each floor plan offered in such phase until such phase has been completely sold and conveyed. The Developer may relocate the sales and management office and models to other unsold Apartments within each phase as necessary to accommodate the sale of such Apartments. The Developer reserves the right to remove any such sales/management office and models from the Property.

**ARTICLE XIX**  
**BRIAR RIDGE COUNTRY CLUB ADDITIONS**

**A.** The Property hereinabove described and subject to the Act is an integral part of Briar Ridge Country Club Additions, a planned unit development, and shall be subject to, and Apartment Owners shall own their Apartments pursuant to the terms of the Declaration of Covenants, Conditions and Restrictions of Briar Ridge Country Club Additions, dated July 3, 1981, recorded August 21, 1991, as Document No. 641109 in the office of the Recorder of Lake County, Indiana, and as amended, the Articles of Incorporation, By-Laws, and the Rules and Regulations of Briar Ridge Property Owners Association, Inc.

**B.** The Apartment Owners of the Apartments will and shall be assessed for the cost and charges of all taxes, insurance, repair, replacement, construction and maintenance of the common areas of Briar Ridge Country Club Additions, including any walks, roads, streets, street illumination, garbage removal, snow removal, sprinkler system, landscaping, open spaces, greenbelts, storm water drainage and retention systems, security stations and personnel, fencing, parking areas, and the construction and maintenance of any buildings as may, from time to time, be authorized by the Board of Directors of Briar Ridge Property Owners Association, Inc., and other facilities, activities and charges required by the Declaration of Covenants, Conditions and Restrictions of Briar Ridge Country Club Additions, or that the Board of Directors of Briar Ridge Property Owners Association, Inc. shall determine to be necessary or desirable to meet the primary purpose of Briar Ridge Property Owners Association, Inc.

**C.** The Briar Ridge Country Club Additions will provide a unique living opportunity surrounding a championship golf course providing complete country club facilities. The areas to be devoted to residential areas will consist of single-family and multi-family home-site areas, all served by open areas that will be maintained as open greenbelts, areas or spaces. Such greenbelts will be owned and managed by the Briar Ridge Property Owners Association, Inc. The streets within the subdivision will be private and maintained by the Briar Ridge Property Owners Association, Inc. Membership in the Briar Ridge Property Owners Association, Inc. will be mandatory for Apartment Owners, and regular assessments will be levied as provided in the immediately preceding paragraph. All lot owners and Apartment Owners within Briar Ridge Country Club Additions should understand that the golf course is not a part of the development, and is not a part of, or appurtenant to, ownership of a lot or Apartment in Briar Ridge Country Club Additions, and ownership of a lot or Apartment within said Briar Ridge Country Club Additions shall not entitle such owners to membership in the golf course. Membership in and the dues and fees charged with respect to the golf course will be controlled by Briar Ridge Country Club, Inc., based upon the Briar Ridge Country Club, Inc. Articles of Incorporation, By-Laws, and Rules and Regulations adopted in accordance therewith.

**D.** In the event of conflict between the provisions of this Amended and Restated Declaration of Condominium, the Articles of Incorporation, By-Laws, and Rules and Regulations of Morningside Townhome Condominium Association, Inc., and the Declaration of Covenants, Conditions and Restrictions of Briar Ridge Country Club Additions, the Articles of Incorporation, By-Laws and Rules and Regulations of Briar Ridge Property Owners Association, Inc., the covenants, conditions, restrictions and provisions of the latter documents relating to Briar Ridge Country Club Additions and Briar Ridge Property Owners Association, Inc. shall govern and control.



**ARTICLE XX**  
**INVALID OR UNENFORCEABLE PROVISIONS**

If any term, covenant, provision, phrase or other element of the Condominium Documents is held to be invalid or unenforceable for any reason whatsoever, such holding shall not be deemed to affect, alter, modify or impair in any manner whatsoever, any other term, provision, covenant or element of the Condominium Documents.

**ARTICLE XXI**  
**APARTMENT DEEDS**

Any transfer of an Apartment shall include all appurtenances thereto, whether or not specifically described.

**ARTICLE XXII**  
**CAPTIONS**  
**Document is**

Captions used in the Condominium Documents are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of the Condominium Documents.

**This Document is the property of  
the Lake County Recorder!**

**ARTICLE XXIII**  
**GENDER, SINGULAR, PLURAL**

Whenever the context so permits, the use of the plural shall include the singular, and any gender shall be deemed to include all genders.

**ARTICLE XXIV**  
**SEVERABILITY**

If any provision of this Amended and Restated Declaration, or any section, sentence, clause, phrase or word, or the application thereof, in any circumstances, be judicially held in conflict with the laws of the State of Indiana, then said laws shall be deemed controlling, and the validity of the remainder of this Amended and Restated Declaration and the application of any such provisions, section, sentence, clause, phrase or word in other circumstances, shall not be affected thereby.

**ARTICLE XXV**  
**ORIGINAL DECLARATION SUPERSEDED**

This Amended and Restated Declaration of Condominium supersedes the Original Declaration in its entirety, in every respect, including, but not limited to, all exhibits attached thereto, and the plot plans and floor plans filed and recorded in connection therewith.

**ARTICLE XXVI  
TRUSTEE CAPACITY**

This instrument is executed by the undersigned Trustee, not personally, but solely as Trustee under the terms of that certain agreement dated the 21st day of April, 1990, creating Trust No. 5188; and it is expressly understood and agreed by the parties hereto, anything herein to the contrary notwithstanding, that each and all of the covenants, undertakings, representations and agreements herein made are made and intended, not as personal covenants, undertakings, representations and agreements of the Trustee, individually, or for the purpose of binding it personally, but this instrument is executed and delivered by the MERCANTILE NATIONAL BANK OF INDIANA, AS TRUSTEE, solely in the exercise of the powers conferred upon it as such Trustee under said agreement and no personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforced against the MERCANTILE NATIONAL BANK OF INDIANA, on account hereof, or on account of any covenant, undertaking, representation or agreement herein contained, either express or implied, all such personal liability, if any, being hereby expressly waived and released by the parties hereto or holder hereof, and by all persons claiming by or through or under said parties or holder hereof.

Nothing contained herein shall be construed as creating any liability on Mercantile National Bank of Indiana personally under the provisions of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) or the Indiana Responsible Property Transfer Law (the Act) as amended from time to time or any other Federal, State or local law, rule or regulation. Mercantile National Bank of Indiana, personally, is not a "Transferor" under the Act and makes no representation concerning any possible environmental defects. In making any warranty herein the Trustee is relying solely on information furnished to it by the beneficiaries and not of its own knowledge and specifically exculpates itself from any liabilities, responsibilities or damages as a result of including any warranty in this instrument.

**ARTICLE XXVII  
CORPORATE NAME CHANGE CERTIFICATION**

The undersigned individuals, executing this Amended And Restated Declaration Of Condominium on behalf of the Developer, do hereby certify, warrant and represent that Morningside Townhome Corporation, the Developer herein, is the same Indiana corporation which was formerly known as O'Connell and Meyers Development Corp. The change of name of the corporation has been effected by the amendment of its Articles of Incorporation, to effect said name change, and said name change is not due to or a result of any merger, consolidation, dissolution, liquidation or other corporate reorganization.

IN WITNESS WHEREOF, said Trust and Developer have caused this instrument to be signed as of this \_\_\_\_\_ day of \_\_\_\_\_, 1993.

**TRUST:**

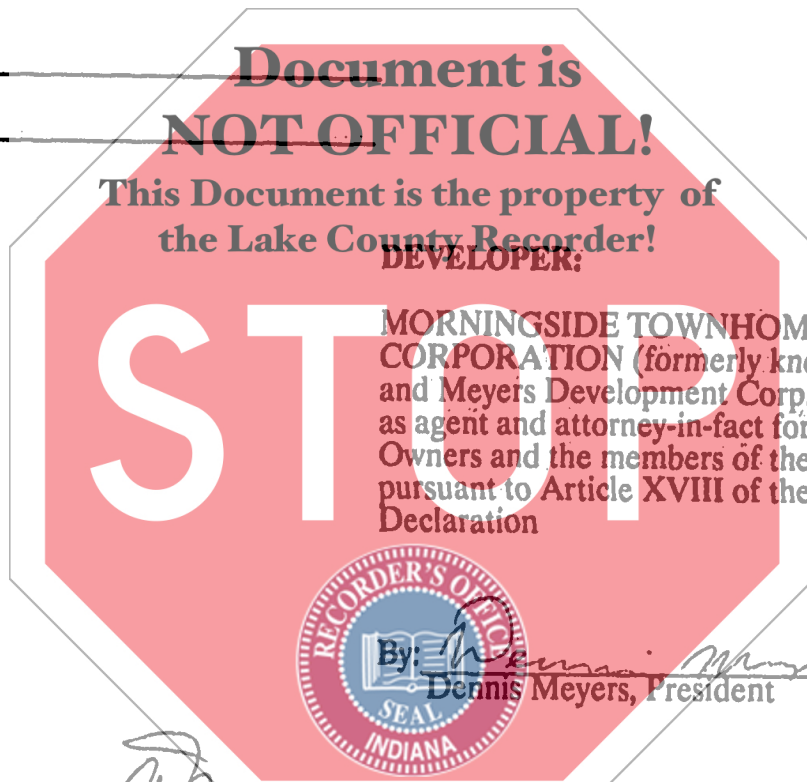
**MERCANTILE NATIONAL BANK OF INDIANA, AS TRUSTEE AFORESAID AND NOT PERSONALLY**

By: SEE SIGNATURE PAGE ATTACHED

Title: \_\_\_\_\_

**ATTEST:**

Title: \_\_\_\_\_



**DEVELOPER:**

**MORNINGSIDE TOWNHOME CORPORATION** (formerly known as O'Connell and Meyers Development Corp.), for itself and as agent and attorney-in-fact for the Apartment Owners and the members of the Association pursuant to Article XVIII of the Original Declaration



By: Dennis Meyers, President

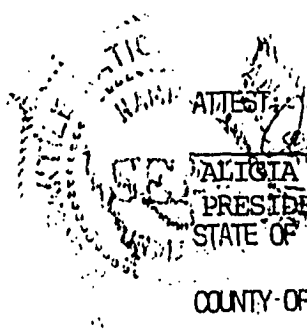
**ATTEST:**

Barbara Meyers, Secretary

THIS INSTRUMENT is executed by the undersigned Trustee, not personally, but solely as Trustee under the terms of that certain agreement dated the 21ST day of APRIL 19 90, creating Trust No. 5188 ; and it is expressly understood and agreed by the parties hereto, anything herein to the contrary notwithstanding that each and all of the covenants, undertakings, representations and agreements herein made are made and intend, not as personal covenants, undertakings, representations and agreements of the Trustee, individually, or for the purpose of binding it personally, but this instrument is executed and delivered by the MERCANTILE NATIONAL BANK OF INDIANA, AS TRUSTEE, solely in the exercise of the powers conferred upon it as such Trustee under said agreement and no personal liability or personal responsibility is assumed by, nor shall at any time be asserted or enforced against the MERCANTILE NATIONAL BANK OF INDIANA, on account hereof, or on account of any covenant, undertaking representation or agreement herein contained, either expressed or implied, all such personal liability, if any, being hereby expressly waived and released by the parties hereto or holder hereof, and by all persons claiming by or through or under said parties or holder hereof.

IN WITNESS WHEREOF, said MERCANTILE NATIONAL BANK OF INDIANA, has caused its name to be signed to these presents by a TRUST OFFICER and its corporate seal to be hereunto affixed and attested by its ASST. V.P. & TRUST OFFICER the day and year first above written.

MERCANTILE NATIONAL BANK OF INDIANA, AS TRUSTEE AFORESAID AND NOT PERSONALLY, BY: WILLIAM J. JONES, TRUST OFFICER



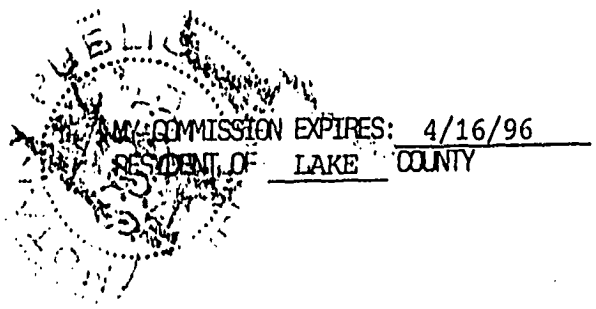
ATTEST: ALICIA TASSARO, ASSISTANT VICE PRESIDENT AND TRUST OFFICER STATE OF INDIANA ) SS: COUNTY OF LAKE )



I, ARLENE BANTA, A Notary Public in and for said County in the State of Indiana, DO HEREBY CERTIFY, that WILLIAM J. JONES and ALICIA TASSARO, of the Mercantile National Bank of Indiana, a National Banking Association, personally known to me to be the same persons whose names are subscribed to the foregoing instrument as such TRUST OFFICER and ASST. V.P. & TRUST OFFICER respectively, appeared before me this day in person and acknowledged that they signed and delivered the said instrument as their own free and voluntary acts, and as the free and voluntary act of said national banking association, as Trustee, for the uses and purposes therein set forth; and the said WILLIAM J. JONES did also then and there acknowledge that he, as custodian of the corporate seal of said national banking association, did affix the said corporate seal of said national banking association to said instrument as his own free and voluntary act, and as the free and voluntary act of said national banking association, as Trustee, for the uses and purposes therein set forth.

Given under my hand and Notarial Seal this 12TH day of MARCH, 1993.

ARLENE BANTA, NOTARY PUBLIC



MY COMMISSION EXPIRES: 4/16/96 RESIDENT OF LAKE COUNTY



STATE OF INDIANA }  
COUNTY OF LAKE } SS:

**ACKNOWLEDGMENT**

I, Annette M. Weiner, a Notary Public in and for said County in the State aforesaid, do hereby certify that DENNIS MEYERS and BARBARA MEYERS, personally known to me to be the President and Secretary, respectively of MORNINGSIDE TOWNHOME CORPORATION (formerly known as O'Connell and Meyers Development Corp.), appeared before me this day in person and acknowledged that they signed and delivered the said instrument on behalf of said corporation for the uses and purposes therein set forth.

Given under my hand and seal this 2nd day of April, 1993.

*Annette M. Weiner*  
Annette M. Weiner, Notary Public

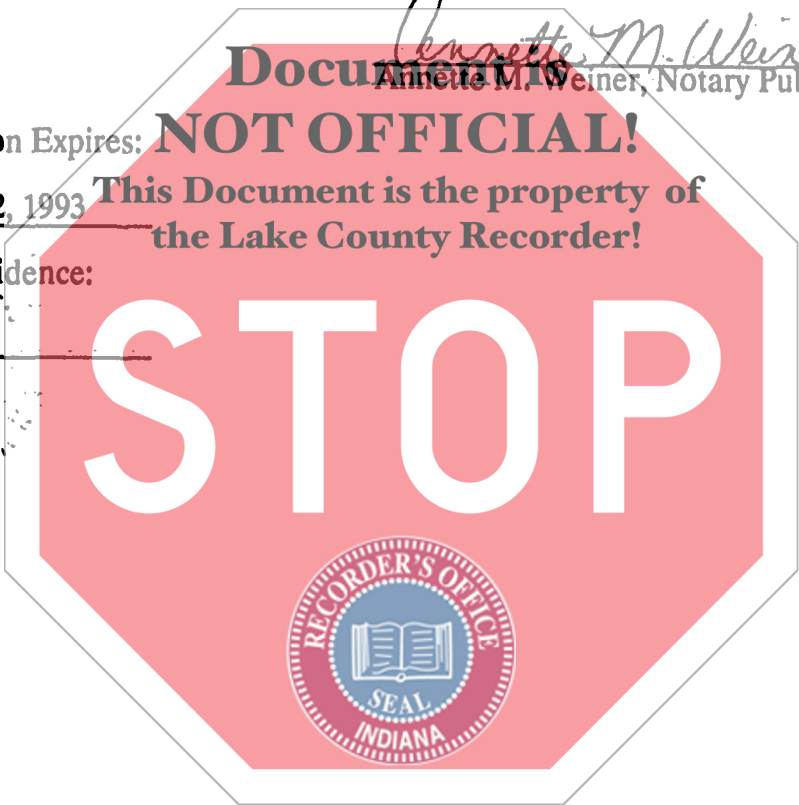
My Commission Expires: January 22, 1993

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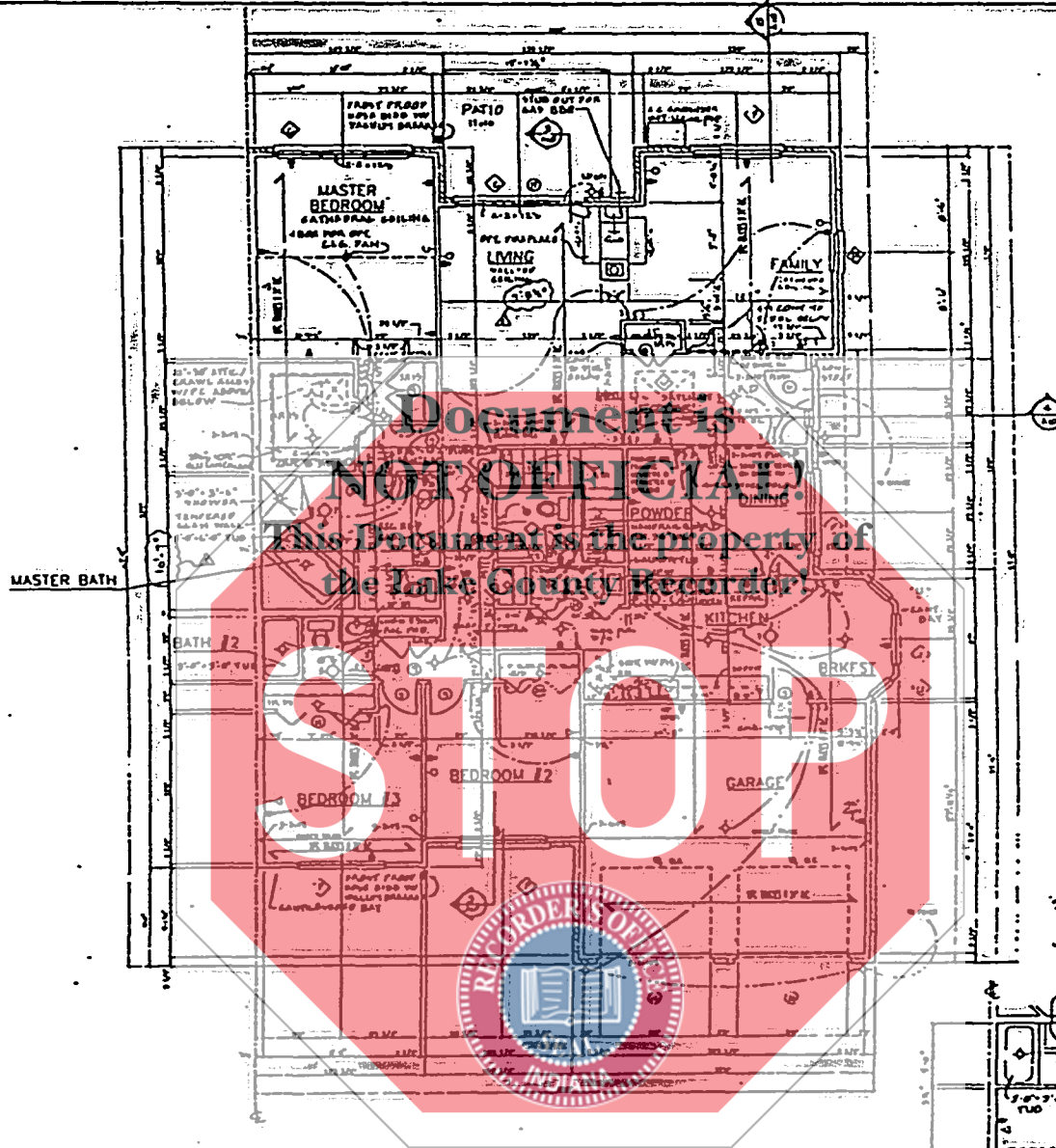
County of Residence:

Lake

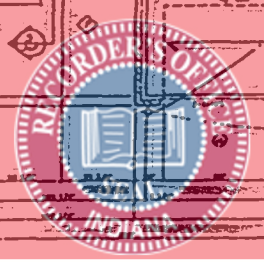


This Instrument prepared by Glenn R. Patterson, Esq., Singleton, Crist, Patterson, Austgen & Lyman, Suite 200, 9245 Calumet Avenue, Munster, Indiana 46321

grp\aw\declarat\mor-side.dec



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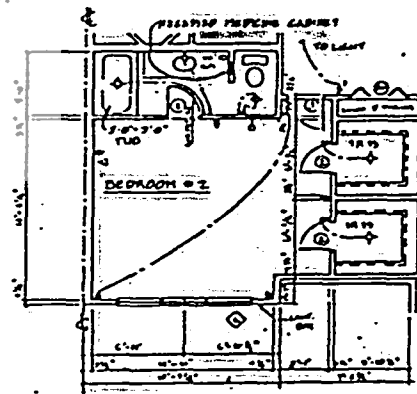
FIRST FLOOR PLAN

Each unit owner has a 1/25th share.

ROBERT G. WALKER, JR.  
 REGISTERED ARCHITECT  
 NO. 890076  
 STATE OF INDIANA

*Robert G. Walker, Jr.*

NOTE: ALL MEASUREMENTS SHOWN ON THIS PLAN ARE TO FACE UNLESS OTHERWISE NOTED.



2 BEDROOM OPTION

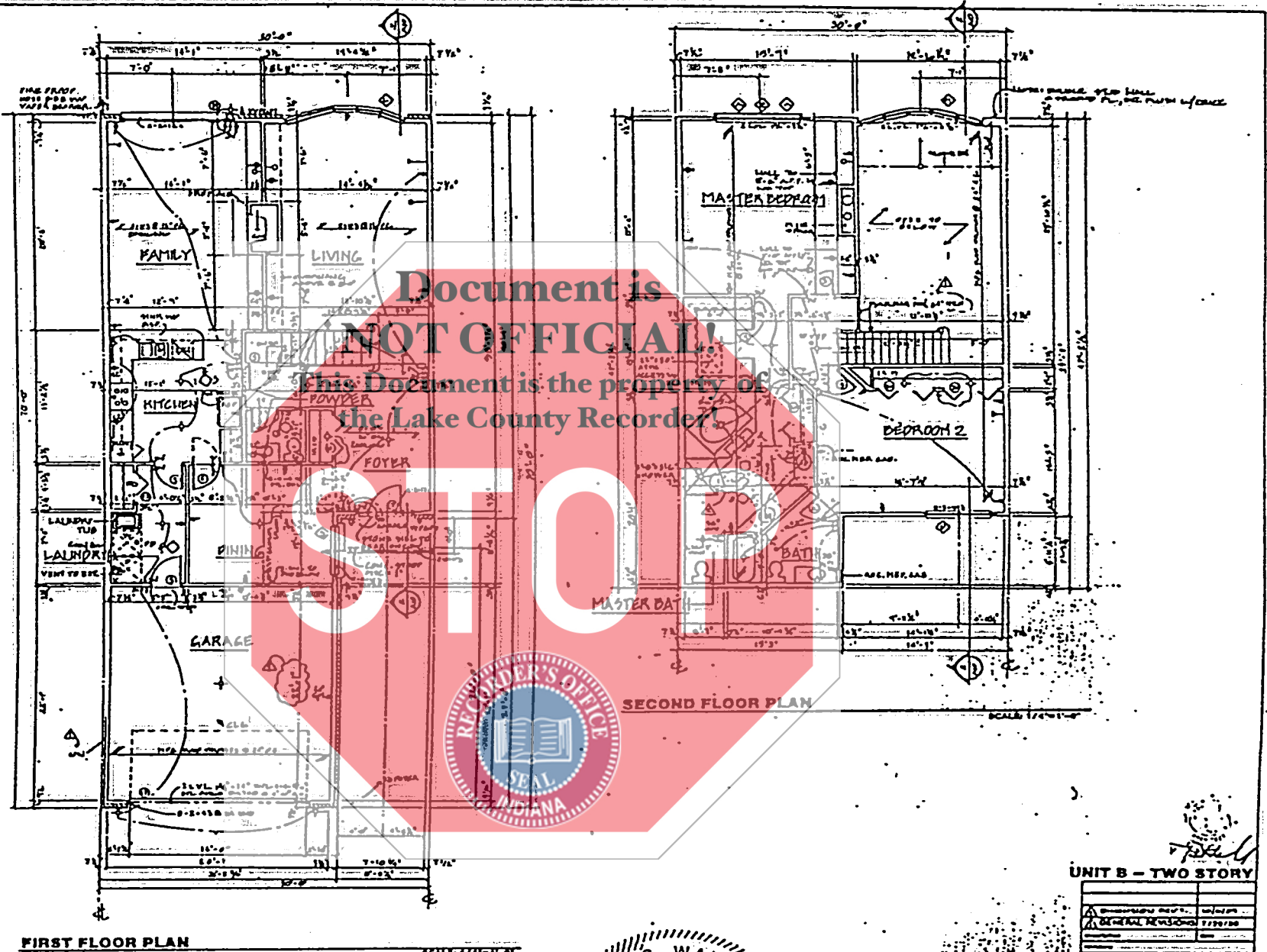
UNIT A - RANCH

OWNER'S NAME	DATE
GENERAL REVISIONS	7/28/88

**BRIAR RIDGE**  
 SCHERVILLE, INDIANA

Otis Associates  
 ARCHITECTS

FLOOR PLAN	7/28/88
SCALE	1/4" = 1'-0"
A3	



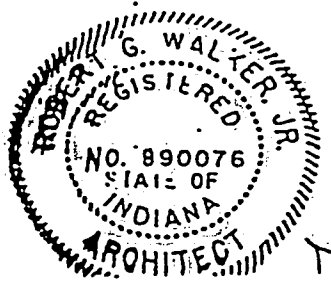
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EXHIBIT "A"  
PAGE 2

Each unit owner has a 1/25th share.



UNIT B - TWO STORY

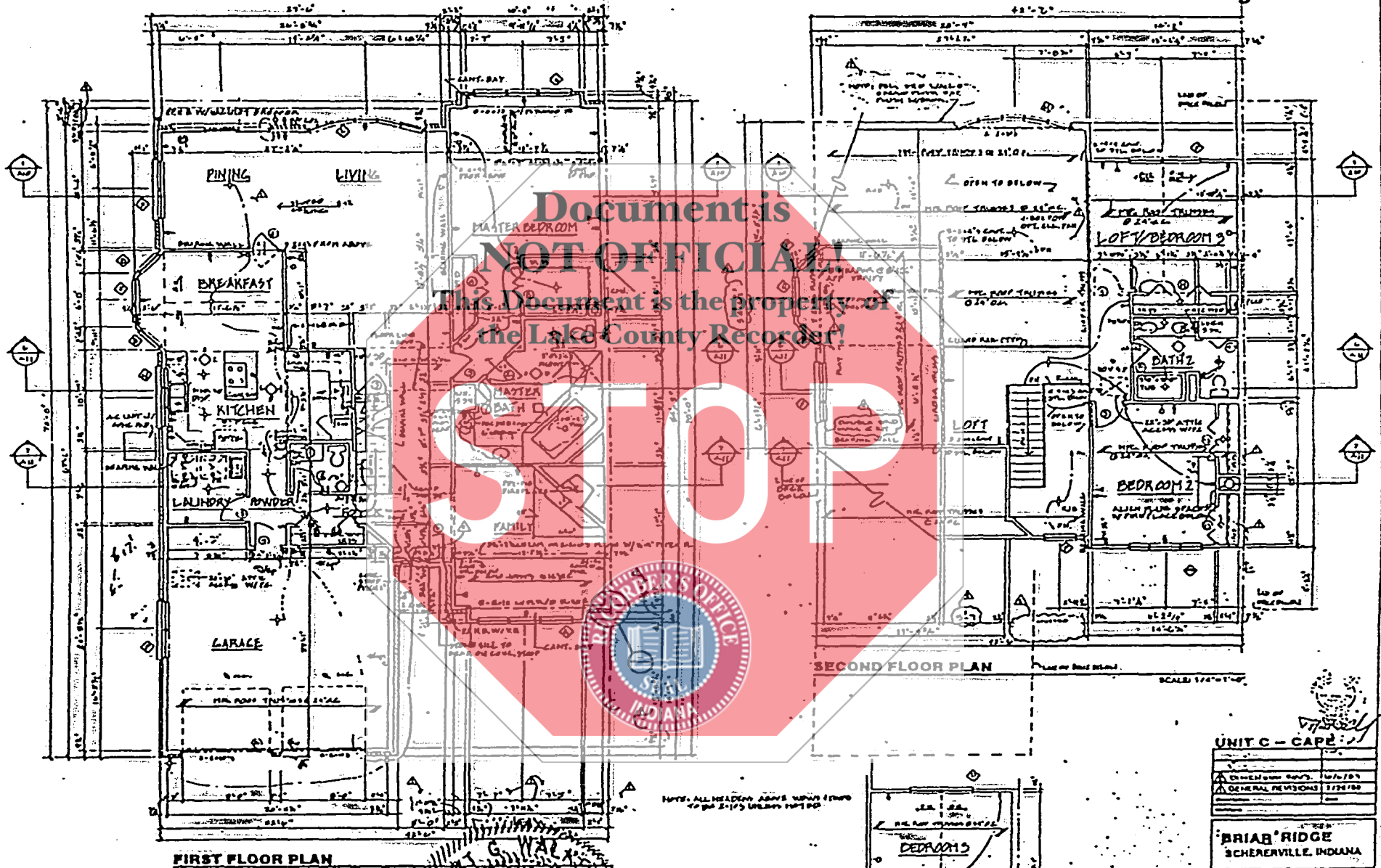
GENERAL REVISIONS	1/27/80
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**BRIAR RIDGE**  
SCHERERVILLE, INDIANA

Otis Associates  
ARCHITECTS

FLOOR PLANS	PLANS
	REVISIONS



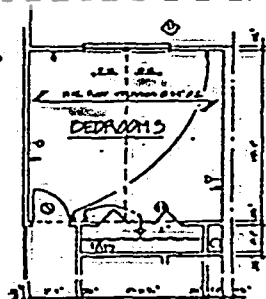
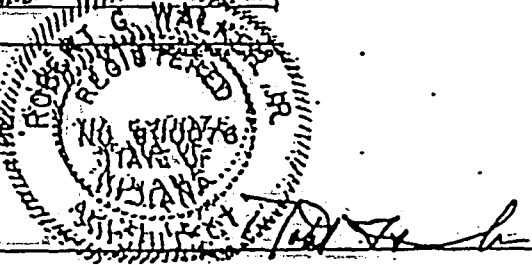


FIRST FLOOR PLAN

SECOND FLOOR PLAN

SCALE 1/8"=1'-0"

Each unit owner has a 1/25th share.



BEDROOM 3 OPTION

SCALE 1/8"=1'-0"

UNIT C - CAPE	
△ DIMENSIONS SHOWN	1/4"=1'-0"
△ GENERAL FINISHES	TYPE 1/20
BRIAR RIDGE SCHEERVILLE, INDIANA	
Otis Associates ARCHITECTS 3000 NORTH SHILOH INDIANAPOLIS, INDIANA 46218	
FLOOR PLANS	
NO. 670078	DATE 7/1/78
AS	



**FOR REMAINING PAGES OF EXHIBIT "A", SEE THE PLOT PLAN AND FLOOR PLANS FILED WITH AMENDED AND RESTATED DECLARATION OF CONDOMINIUM FOR MORNINGSIDE CONDOMINIUMS REFERRED TO IN ARTICLE I.I. (PAGE 3) OF SAID AMENDED AND RESTATED DECLARATION.**



STATE OF INDIANA  
OFFICE OF THE SECRETARY OF STATE

CERTIFICATE OF INCORPORATION

OF

MORNINGSIDE TOWNHOME CONDOMINIUMS ASSOCIATION, INC.

I, JOSEPH H. HOGSETT, Secretary of State of Indiana, hereby certify that Articles of Incorporation of the above corporation, have been presented to me at my office accompanied by the fees prescribed by law; that I have found such

Articles conform to law; all as prescribed by the provisions of the

Indiana Business Corporation Law,

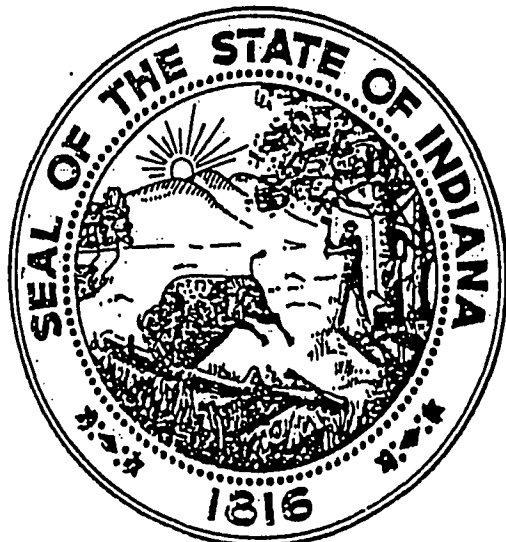
as amended.

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the Lake County Recorder!

NOW, THEREFORE, I hereby issue to such Corporation this Certificate of Incorporation, and further certify that its corporate existence will begin March 16, 1990.



In Witness Whereof, I have hereunto set my hand and affixed the seal of the State of Indiana, at the City of Indianapolis, this Sixteenth day of March, 1990



Joseph H. Hogsett  
JOSEPH H. HOGSETT, Secretary of State

BY Connie McKay  
Deputy

EXHIBIT "B"

ARTICLES OF INCORPORATION

OF

MORNINGSIDE TOWNHOME CONDOMINIUMS ASSOCIATION, INC.

The undersigned incorporator or incorporators desiring to form a corporation (hereinafter referred to as the "Corporation"), pursuant to the provisions of the Indiana Not-For-Profit Corporation Act of 1971 as amended (hereinafter referred to as the "Act"), execute the following Articles of Incorporation.

**Document is  
NOT OFFICIAL!**

ARTICLE I

Name

This Document is the property of

the Lake County Recorder!

The name of the Corporation is MORNINGSIDE TOWNHOME  
CONDOMINIUMS ASSOCIATION, INC.

**STOP**

ARTICLE II

Purposes

The purposes for which the Corporation is formed are:

1. The Association is organized for the purpose of providing a convenient means of administering and providing for the maintenance, repair, replacement administration, operation, and preservation of the common areas, and limited common areas of Morningside Townhome Condominiums, real estate subject to the Indiana Horizontal Property Law by virtue of a Declaration filed in the office of the Recorder of Lake County, Indiana, and of such other areas that may come within its jurisdiction and authority, and to promote the health, safety, and welfare of the residents of said Morningside Townhome Condominiums, and to perform such other functions as may be designated to it.

2. Morningside Townhome Condominiums shall consist of a number of Condominium Units located upon real estate in Schererville, Lake County, Indiana, and more particularly described as follows:

Lot 33 of the re-plat of Block 1, Unit 8,  
Briar Ridge Country Club Additions to the  
Town of Schererville, Indiana, as shown of  
Record in Plat Book 63, page 39, in the

office of the Recorder of Lake County,  
Indiana.

3. The documents creating the Condominium provide for the ownership, operation, management, maintenance, and use of the Condominium Units as described in said documents. The corporation is organized for the purpose of providing a convenient means of administering the Condominiums by the owners thereof.

4. The Association shall not engage in any activities for the profit of its members and shall conduct its affairs in such fashion and for such purposes, other than for the pecuniary gain of its members, directors, officers or incorporators.

5. The Association shall have all of the common law and statutory powers of a corporation not-for-profit which are not in conflict with the terms of these Articles, and shall further exercise all of the powers and privileges and perform all of the duties and obligations of the Association as set forth in the Declaration, as the same may be amended from time to time.

6. The Association shall have all of the powers reasonably necessary to implement the purposes of the Association, including, but not limited to the following:

A. To make and collect assessments against members to defray the cost of the Condominiums.

B. To utilize the proceeds of the assessments in the exercise of its powers and duties.

C. To maintain, repair, and replace the Condominium property.

D. To reconstruct the improvements after casualty loss and to further improve the property.

E. To make and amend rules and regulations respecting the use of property in the Condominiums.

F. To approve or disapprove of proposed purchasers and mortgagees of Condominium Units.

G. To enforce by legal means the provisions of the Condominium Documents, these Articles, the By-Laws of the Association, and the Regulations for the use of the property in the Condominiums.

H. To contract for the management of the Condominiums and to delegate to such contractor all powers and duties of the Association, except such as are specifically required by the Condominium Documents to have



the approval of the Board of Directors, or of the members of the Association.

I. To hold all funds and the titles to all properties acquired by the Association, and the proceeds thereof, for the benefit of the members in accordance with the provisions of the Condominium Documents.

7. To transact any and all lawful business for which corporations may be incorporated under the Act.

### ARTICLE III

#### Term of Existence

The period during which the Corporation shall continue is perpetual.

**Document is NOT OFFICIAL!**

### ARTICLE IV

**This Document is the property of  
Principal Office and Resident Agent  
the Lake County Recorder!**

The post-office address of the principal office of the Corporation is P.O. Box 3234, Munster, Indiana 46321, and the name and post-office address of its Resident Agent in charge of such office is Samuel T. Miller, 9650 Gordon Drive, Highland, Indiana, 46322.

### ARTICLE V

#### Membership

A minimum of three (3) persons shall have signed the membership list. (Directors or Trustees or Incorporators may be included in the Membership.)

Section 1. Classes: There shall be only one class of membership; every owner or owners of any Condominium Unit as defined in the Declaration shall be members of the Association, and no other person or entity shall be entitled to membership.

Section 2. Rights, Preferences, Limitations, and Restrictions of Classes: Membership in the Association shall be established by recording in the Office of the Recorder of Lake County a deed or other instrument establishing a change of record title to a unit in the Condominiums, and the delivery to the Association of a certified copy of such instrument which shall entitle the new owner designated by such instrument therein to become a member of the Association.

Section 3. Voting of Rights of Classes. Each owner or owners by virtue of membership in the Association shall be entitled to vote and participate in all affairs of the Association. In the event the Condominium Unit is owned by more

than one natural person, as governed by the Condominium documents. the vote of said Unit shall be cast by the person named in a Certificate signed by all of the owners of the Condominium Unit and filed with the Secretary of the Association. Such Certificate shall be valid until revoked by a subsequent Certificate. If the Certificate is not on file, the vote of such co-owner or joint owner present at any meeting wherein action is taken shall be conclusive upon the other owners of said Unit. Likewise a proxy signed by a co-owner or joint owner of a Condominium Unit wherein the legal title is held in the name of more than one person, shall be conclusive and binding upon all owners of said Condominium Unit.

ARTICLE VI

Directors

Section 1. Number. The initial Board of Directors shall be composed of ~~three (3)~~ members. The number of directors may, from time to time, be fixed by the By-Laws of the Corporation at any number, not less than three (3). In the absence of a By-Law fixing the number of directors, the number shall be three (3).

Section 2. Qualifications. Directors must be members of the Corporation except as stated otherwise herein.

ARTICLE VII

Initial Board of Directors

Names and Post-Office Addresses. The names and post-office addresses of the first Board of Directors of the Corporation are as follows:

<u>Name</u>	<u>Address</u>	<u>City</u>	<u>State</u>	<u>Zip Code</u>
Richard A. O'Connell,	1525 - 935th Street,	Munster	IN	46321
Dennis E. Meyers,	406 Wilderness Court,	Schererville,	IN	46375
Barbara A. Meyers,	406 Wilderness Court,	Schererville,	IN	46375

ARTICLE VIII

Provisions for Regulation of the Affairs of Corporation

In addition to the powers provided for in these Articles of Incorporation, or by the Act, the directors or the members shall have the following powers:

1. The affairs of the Association, its management and operation, shall be governed by the terms and provisions of the

"Horizontal Property Law" of the State of Indiana, being Acts 1963, c.399, s.1 as amended, the same being Indiana Code, I.C. 23-7-1.1, et seq.

2. The power to make, alter, amend or repeal the By-Laws of the Association shall be vested in the members of the Association, subject to the terms, provisions, and conditions contained in the Declaration of Condominium.

3. Directors of the Association shall be elected at the annual meeting of the members in the manner determined by the By-Laws except that for so long as O'Connell and Meyers Development Corp. continues to own any of the Units subject to the terms of the Declaration of Condominium, or for so long as any of the real estate which is subject to the Declaration or may become subject thereto by future expansion as provided in said Declaration, the said O'Connell and Meyers Development Corp. shall have the right to elect a majority of the Directors, who need not be residents or owners of a Condominium Unit and who shall perform the duties of the Association.

4. Every director and every officer of the Association shall be indemnified by the Association against all expenses and liabilities, including attorney's fees, reasonably incurred by or imposed upon them in connection with any proceeding to which they may be a party, or in which they may become involved, by reason or their having been or being a director officer of the Association, or any settlement thereof, whether or not they are a director or officer at the time such expenses are incurred, except in such cases wherein the director or officers are adjudged guilty of willful misfeasance or malfeasance in the performance of their duties; provided that in the event of a settlement the indemnification herein shall apply only when the Board of Directors approves such settlement and reimbursement as being in the best interest of the Association. The foregoing right of indemnification shall be in addition to and not exclusive of all other rights to which such director or officer may be entitled.

#### ARTICLE IX

#### Statement of Property

A statement of the property and the estimate of the value thereof to be taken over by the Corporation at or upon its incorporation are as follows:

NONE

ARTICLE X

Incorporator(s)

The name and post-office address of each incorporator of the Corporation is as follows:

<u>Name</u>	<u>Address</u>	<u>City</u>	<u>State</u>	<u>Zip Code</u>
Richard A. O'Connell,	1525 - 35th Street,	Munster	IN	46321
Dennis E. Meyers,	406 Wilderness Court,	Schererville,	IN	46375

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IN WITNESS WHEREOF, the undersigned, being each of the incorporators designated in Article X, executes these Articles of Incorporation and certifies, under the penalties provided for perjury, to the truth of the contents hereof, this 12th day of March, 1990.

  
Richard A. O'Connell

  
Dennis E. Meyers

THIS INSTRUMENT WAS PREPARED BY:



SAMUEL T. MILLER  
Komyatte & Freeland, P.C.  
9650 Gordon Drive  
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BY - LAWS

OF

MORNINGSIDE TOWNHOME CONDOMINIUM ASSOCIATION, INC.

A Corporation Not-For-Profit  
Under the Laws of the State of Indiana

1. IDENTITY

These are By-Laws of MORNINGSIDE TOWNHOME CONDOMINIUMS ASSOCIATION, INC., a corporation not-for-profit under the laws of the State of Indiana, the Articles of Incorporation of which were filed in the Office of the Secretary of State on MARCH 16, 1990, and subject to the Certificate granted by the Secretary of State and the Declaration of Condominium affecting the land and all improvements thereon known as Morningside Townhome Condominiums. The Corporation has been organized for the purpose of administering a condominium upon the following lands in Lake County, Indiana:

The Corporation has an equitable interest in the following described real estate and intends to add other buildings thereon and include the same as part of the Condominium project, to-wit:

Lot 33 of the re-plat of Block 1, Unit 8, Briar Ridge Country Club Additions to the Town of Schererville, Indiana, as shown of Record in Plat Book 63, page 39, in the Office of the Recorder of Lake County, Indiana.

(a) The office of the Corporation shall be at P.O. Box 3234, Munster, Indiana.

(b) The fiscal year of the Corporation shall be the calendar year.

(c) The seal of the Corporation shall bear the name of the Corporation and the words "Corporation Not-for-Profit".

2. MEMBERS

(a) The annual members' meeting shall be held at the office of the Corporation at 8:00 o'clock p.m., Central Standard Time, on the second Monday in April of each year, for the purpose of electing Directors and of transacting any other business authorized to be transacted by the members; provided, however, if that day is a legal holiday, the meeting shall be held at the same hour on the next succeeding day.

(b) Special members' meetings shall be held whenever called by the President or by a majority of the Board of Directors, and must be called by such officers upon receipt of a written request from one-half (1/2) of the entire membership. Said written request shall set forth the purposes of the special meeting.

(c) Notice of all members' meetings, stating the time and place and the object for which the meeting is called shall be given by the President or Secretary unless waived in writing. Such notice shall be in writing to each member at his address as it appears on the books of the Corporation, and shall be mailed not less than ten (10) days, nor more than thirty (30) days prior to the date of the meeting. Proof of such mailing shall be given by the Affidavit of the person giving the notice. Notice of meeting may be waived before or after meetings, in writing, and filed with the Secretary.

(d) A quorum at members' meetings shall consist of twenty-five percent (25%) of those members that are otherwise entitled to vote in respect thereof and that are present, in person or by proxy. The joinder of a member in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such member for the purpose of determining a quorum.

(e) The vote of the owners of a unit owned by more than one (1) person shall be cast by the person named in a certificate signed by all of the owners of the unit and filed with the secretary of the Corporation. Such certificate shall be valid until revoked by a subsequent certificate.

(f) No member, whose dues or assessments are unpaid, shall be entitled to vote, during which time any dues or assessment remains unpaid.

(g) Proxies. Vote may be cast in person or by proxy. Proxies shall be valid only for the particular meeting designed therein, and must be filed with the Secretary before the appointed time of the meeting.

(h) Approval or disapproval of a unit owner upon any matter, whether or not the subject of a Corporation meeting shall be by the same person who would cast the vote of such owner if in a Corporation meeting.

(i) The Chairman and presiding officer at the Annual Meeting of Members shall be the President.

(j) The order of business at annual members' meetings and as far as practical at all other members' meetings, shall be as follows:

1. Election of Chairman of the meeting;
2. Calling of roll and certification of proxies;
3. Proof of notice of meeting or waiver of notice;
4. Reading and disposal of all unapproved minutes;
5. Reports of officers;
6. Reports of committees;
7. Election of inspectors of election;
8. Election of Directors;
9. Unfinished business;
10. New business;
11. Adjournment.

(k) Any action required or permitted to be taken at a meeting of the members may be taken without a meeting if a consent in writing, setting forth the action so taken shall be signed by all the members entitled to vote with respect to the subject matter thereof.

### 3. DIRECTORS

(a) The initial Board of Directors shall consist of three (3) members. The Board of Directors shall consist of not less than three (3), nor more than five (5) members, the exact number to be determined by the members at the time of election. Provided, that so long as O'Connell and Meyers Development Corp. continues to own any of the units subject to the Declaration of Condominium, or any unit on any Amendment to said Declaration, and after such time as the real estate set forth in said Declaration of Condominium, and any Amendment to said Declaration, is fully developed, by the construction and sale of Condominium Units, or until such time as O'Connell and Meyers Development Corp. voluntarily relinquishes control of the Corporation, the said O'Connell and Meyers Development Corp. shall have the right to determine the number of persons who shall serve on the Corporation Board of Directors and shall have the right to elect a majority of the Directors who shall so serve.

Said persons elected as Directors need not be residents or owners of a Condominium Unit.

After O'Connell and Meyers Development Corp. relinquishes ownership in all Condominium Units, or after such time as the real estate set forth in the Declaration of Condominium, or in any Amendment to said Declaration of Condominium, is fully developed by the construction and sale of Condominium Units, or until such time as O'Connell and Meyers Development Corp. voluntarily relinquishes control of the Corporation, all Directors must own a Condominium Unit in Morningside Townhome Condominiums to qualify to serve in such capacity.

(b) Election of Directors shall be conducted in the following manner:

1. A majority of the members of the Board of Directors shall be elected by O'Connell and Meyers Development Corp. at the annual meeting of members. The remaining member or members of the Board of Directors shall be elected by a plurality of votes cast at the annual meeting of members of the Corporation. A nominating committee of three (3) members of the Corporation shall be appointed by the Board of Directors not less than ten (10) days prior to the annual meeting of members. The committee shall nominate one (1) person to serve on the three (3) person Board of Directors, or two (2) persons to serve on a five (5) person board of Directors, whichever the case may be. Additional nominations for such director or directorships may be made from the floor at the annual meeting. The election shall be by ballot (unless dispensed with by unanimous consent), and there shall be no cumulative voting.

2. At such time as O'Connell and Meyers Development Corp. shall no longer have the right to elect a majority of the members of the Board of Directors, as provided above, the members of the Board shall be elected by a plurality of the votes cast at the annual meeting of the members of the Corporation. A nominating committee of three (3) members shall be appointed by the Board of Directors not less than ten (10) days prior to the annual meeting of members. The committee shall nominate one (1) person for each Director then serving. Additional nominations for directorships may be made from the floor at the annual meeting of members. The election shall be by ballot (unless dispensed with by unanimous consent) and there shall be no cumulative voting.

3. Vacancies in the Board of Directors may be



filled until the date of the next annual meeting by the then remaining Directors.

(c) The term of each Director's service shall extend until the next annual meeting of the members, and thereafter until his successor is duly elected and qualified, or until he is removed in the manner elsewhere provided.

(d) The organizational meeting of the newly-elected Board of Directors shall be held within ten (10) days of their election at such time as shall be fixed by the Directors at the meeting at which they were elected, and no further notice of the organizational meeting shall be necessary providing a quorum shall be present.

(e) Regular Meetings of the Board of Directors may be held at such time and place as shall be determined, from time to time, by a majority of the directors. Notice of regular meetings shall be given to each Director, personally, or by mail, telephone or telegraph, at least three (3) days prior to the day named for such meeting, unless such notice is waived.

(f) Special meetings of the Directors may be called by the president and must be called by the Secretary at the written request of one-third (1/3rd) of the votes of the Board. Not less than three (3) days' notice of the meeting shall be given personally or by mail, telephone or telegraph, which notice shall state the time, place and purpose of the meeting.

(g) Any Director may waive notice of a meeting before or after the meeting, and such waiver shall be deemed equivalent to the giving of notice.

(h) A quorum at Directors' meetings shall consist of the Directors entitled to cast a majority of the votes of the entire Board. The acts of the Board approved by a majority of votes present at a meeting at which a quorum is present shall constitute the acts of the Board of Directors, except as specifically otherwise provided in the Declaration of Condominium. If at any meeting of the Board of Directors there be less than a quorum present, the majority of those present may adjourn the meeting from time to time until a quorum is present. At an adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice. The joinder of a Director in the action of a meeting by signing and concurring in the minutes thereof shall constitute the presence of such Director for the purpose of determining a quorum.

(i) The presiding officer of Directors' meetings shall be the President.

(j) Directors' fees, if any, shall be determined by the members.

#### 4. POWERS AND DUTIES OF THE BOARD OF DIRECTORS

All of the powers and duties of the Corporation shall be exercised by the Board of Directors, including those existing under the common law and statutes, the Articles of Incorporation of the Corporation, and the documents establishing the condominium. Such powers and duties of the Board shall be exercised in accordance with the provisions of the Declaration of Condominium which governs the use of the land, and shall include, but shall not be limited, to the following:

(a) To make and collect assessments against members of the Corporation as provided in the Declaration of Condominium.

(b) To use the proceeds of assessments in the exercise of its powers.

(c) The maintenance, repair, replacement and operation of the common areas and facilities, including the payments therefor.

(d) To make and amend rules and regulations governing the details of the operation and the use of the common areas and facilities in the condominium, which shall be adopted by a resolution proposed and passed upon by a majority of votes of Directors present at a meeting at which a quorum is present, except as specifically otherwise provided in the Declaration of Condominium.

(e) To approve or disapprove of proposed purchasers, lessees, and mortgagees of units in the manner provided by the condominium documents.

(f) To enforce by legal means the provisions of the condominium documents, the Articles of Incorporation, the By-Laws of the Corporation, and the regulations for the use of the property in the condominium.

(g) To contract personnel necessary for the maintenance, repair and replacement of the common areas and facilities, and to further provide for the removal of the same.

(h) To carry insurance for the protection of unit owners and the Corporation against liabilities as defined in the Declaration of Condominium.

(i) To employ personnel for reasonable compensation to

perform the service required for proper administration of the purposes of the Corporation.

(j) To appoint an architectural committee to examine any proposed improvements, or changes in the units or proposed changes to the common area or limited common areas; to approve or reject any such change; to furnish to the unit owner a detailed estimate of the cost of repairing or reconstructing any unit or facilities in the limited common area servicing such unit, which suffers a casualty loss; and to employ a contractor to make such repairs or reconstruction as provided in the Declaration of Condominium.

## 5. OFFICERS

(a) The executive officers of the Corporation shall be a President, who shall be a Director; may include a Vice President, who shall be a Director; and may include a Treasurer and a Secretary, all of whom shall be elected annually by the Board of Directors and who may be peremptorily removed by a vote of the Directors at any meeting. Any person may hold two (2) or more offices, except that the President shall not also be the Secretary. The Board of Directors shall, from time to time, elect such other officers and designate their powers and duties as the Board shall find to be required to manage the affairs of the Corporation.

(b) The President shall be the chief executive officer of the Corporation. He shall have all of the powers and duties which are usually vested in the office of the President of a Corporation, including, but not limited to, the power to appoint committees from among the members from time to time, as he may, in his discretion, determine appropriate, to assist in the conduct of the affairs of the Corporation.

(c) The Vice President, if elected, shall, in the absence or disability of the President, exercise the powers and perform the duties of the President. He shall also generally assist the President and exercise such other powers and perform such other duties as shall be prescribed by the Directors.

(d) The Secretary shall keep the minutes of all proceedings of the Directors and the members. He shall attend to the giving and serving of all notices to the members and Directors, and other notices required by law. He shall have custody of the seal of the Corporation and affix the same to instruments requiring a seal when duly signed. He shall keep the records of the Corporation, except those of the Treasurer, and shall perform all other duties incident to the Office of the Secretary of a corporation, as may be required by the directors or the President.

(e) The Treasurer shall have custody of all property of the Corporation, including funds, securities and evidences of indebtedness. He shall keep the assessment rolls and accounts of the members; he shall keep the books of the Corporation in accordance with good accounting practices; and he shall perform all other duties incident to the Office of the Treasurer. The Treasurer shall also have control over the approval of payment vouchers for work done on behalf of or at the specific instances and request of the Corporation. The payment vouchers shall be presented to the Treasurer, who shall verify the same with the maintenance director or committee.

(f) The compensation of all officers and employees of the Corporation shall be fixed by the Directors. This provision shall not preclude the Board of Directors from employing a Director as an employee of the Corporation, nor preclude the contracting with a Director for the management of the condominium.

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**6. FISCAL MANAGEMENT Lake County Recorder!**

The provisions for fiscal management of the Corporation set forth in the Declaration of the Condominium and Articles of Incorporation shall be supplemented by the following provisions:

a. Assessment Roll. The assessment roll shall be maintained in a set of accounting books in which there shall be an account for each unit. Such an account shall designate the name and address of the owner or owners, the amounts of each assessment against the owners, the dates and amounts in which the assessments come due, the amounts paid upon the account, and the balance due upon assessments.

b. Budget.

1. The Board of Directors shall adopt a budget for each calendar year which shall contain estimates of the cost of performing the functions of the Corporation, including, but not limited to, the following items:

a. Ordinary Expense Budget:

- i. Maintenance and operation of common elements;
- ii. Insurance;
- iii. Administration; and
- iv. Taxes, if any.



b. Capital Expense Budget:

1. Reserve Replacement Fund.

2. Copies of the proposed budget and proposed assessment shall be transmitted to each member on or before December 1st of the year preceding the year for which the budget is made.

(c) The depository of the Corporation shall be such bank or banks as shall be designated from time to time by the Directors, and in which the monies of the Corporation shall be deposited. Withdrawal of monies from such accounts shall be only by checks signed by such persons as are authorized by the Directors.

(d) A compilation of the accounts of the Corporation shall be made annually by an accountant.

(e) Fidelity bonds may be required by the Board of Directors from all officers and employees of the Corporation, and from any contractor handling or responsible for Corporation funds. The amount of such bonds shall be determined by the Directors, but shall be at least the amount of the total annual assessment against members for common expenses. The premiums on such bonds shall be paid by the Corporation.

(f) The common expenses of the Corporation shall be paid by each unit owner on a quarterly basis; the amount so paid shall be set by the Board of Directors and shall be based upon the amount of the estimated common expenses for the year computed by the Treasurer and based upon the projected yearly budget; the amount to be paid shall be paid on the first day of each month to the Treasurer of the Corporation; the total amount each individual unit owner shall pay shall be an equal share.

7. MEMBERSHIP CERTIFICATES AND TRANSFER

(a) Certificates representing membership in the Corporation shall be such form as shall be determined by the Board of Directors. Such certificate shall be signed by the President or Vice-President and by the Secretary and sealed with the corporate seal or a facsimile thereof. The signatures of such officers upon the certificate may be facsimiles if the certificate is manually signed on behalf of a transfer agent or registrar other than the Corporation or one of its employees. Each certificate shall be consecutively numbered or otherwise identified.

(b) When a member ceases to be the owner of a unit, such person's membership shall cease, but such person shall

remain liable to the Corporation for all dues and charges incurred prior to the giving of written notice to the Corporation that the person is no longer an owner.

8. PARLIAMENTARY RULES

Roberts Rules of Order (latest edition) shall govern the conduct of corporate proceedings when not in conflict with the Articles of Incorporation and By-Laws of the Corporation or with the Statutes of the State of Indiana, or the Declaration.

9. AMENDMENTS

Amendments to the By-Laws shall be proposed and adopted in the following manner:

(a) Notice of the subject matter of a proposed amendment shall be included in the notice of any meeting at which a proposed amendment is considered.

(b) A resolution adopting a proposed amendment must receive approval of two-thirds (2/3) of the votes of the entire membership of the Board of Directors and a majority of the entire membership of the Corporation. Directors and members not present at the meeting considering the amendment may express their approval in writing.

(c) Initiation. An amendment may be proposed by either the Board of Directors or by the membership of the Corporation as aforesaid, and after being proposed and approved by one of such bodies, it must be approved by the other.

(d) Effective Date. An amendment, when adopted, shall become effective only after being recorded into the Public Records of Lake County, Indiana.

(e) These By-Laws shall be amended, if necessary, so as to make the same consistent with the provisions of the Declaration of Condominium.

The foregoing were adopted as the By-Laws of MORNINGSIDE TOWNHOME CONDOMINIUMS ASSOCIATION, INC.. a corporation Not-for-Profit, under the laws of the State of Indiana, at the first meeting of the Board of Directors.

*Dennis E. Meyers*  
DENNIS E. MEYERS, Secretary

APPROVED: *Richard A. O'Connell*  
RICHARD A. O'CONNELL, President

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**RULES AND REGULATIONS OF  
MORNINGSIDE TOWNHOME CONDOMINIUMS ASSOCIATION, INC.**

1. Master Keying. There will be no master keying of the condominium units. Condominium owners requesting periodic inspections during periods of vacancy may do so by registering such request with the Association for such service.

2. Businesses. No business of any kind shall be conducted from any unit located within Morningside Townhome Condominiums. This provision shall not prohibit the use of a telephone for business purposes of a nature incident to a business located outside of Morningside Townhome Condominiums, or for the entertainment of or consultation with any business guest for any portion of a particular day. All other business activities, of whatever nature, kind, duration or extent, are prohibited.

3. Signs. Signs for sale or lease are permitted in one (1) window of the condominium unit only, and such sign shall exceed no more than six (6) square feet in total area; signs for any other purpose whatsoever as prohibited.

4. Miscellaneous Maintenance. Maintenance of certain special exterior equipment designated below must be maintained by the individual condominium unit owner, provided, however, the Association shall provide such service at the expense of the individual condominium unit owner:

- a. Television and radio antennas;
- b. Air conditioners and heating equipment;
- c. Garage door apparatus and transmitters;
- d. Lightbulb replacement, interior and exterior;
- e. Internal plumbing repairs;
- f. Glass cleaning, interior and exterior;
- g. Furnace filter replacement;
- h. Sump pump repair and sump cleaning;
- i. Dusk to Dawn lights.

5. Landscape Maintenance. Maintenance of all landscaping shall be the responsibility of the Association.

6. Snow Removal. Snow removal shall be the responsibility of the Association.



7. Garbage. Garbage for collection shall be bagged and placed near the street only on collection days. Garbage shall not be stored outside the condominium unit at any other location.

8. Internal Maintenance. Internal maintenance of the condominium unit shall be the owner's responsibility; the cleaning of both sides of all window glass shall be considered internal maintenance.

9. Garages. Garages are to be utilized for the parking of the unit owner's vehicle and for storage; garage doors are to be closed at all times except for ingress and egress by the owner.

10. Parking and Exterior Storage. Storage of any item in the driveway area shall be prohibited; unit owners shall utilize the garage to park their vehicles. No boats, campers, motorcycles, bicycles, recreational vehicles, or other equipment shall be stored or parked on the driveway, or in the street in front of the condominium unit.

11. Fences. Fences shall be prohibited.

12. Pets. Residents shall be permitted to keep two (2) domestic animals only if such animals do not disturb or annoy other residents. Residents keeping domestic animals which comply with these restrictions, shall abide by municipal sanitary regulations, and shall be responsible for any inconvenience or damage caused by such animals.

13. Pest Control. Pest control within a condominium unit shall be the responsibility of the condominium unit owner; pest control outside of the condominium unit, which shall be defined as outside of the fact of the exterior material construction of the building, shall be the responsibility of the Association.

14. Minimum Heat. The minimum heat allowed in any condominium unit at any time is 50° fahrenheit.

15. Barbecuing. Barbecuing shall be permitted within the confines of each condominium unit owner's patio area.

16. Unsightly Objects. The patio areas and the rear yards adjacent to each condominium unit are intended for recreational purposes. The storage of unsightly and noxious objects thereon shall be prohibited.

17. Noise, Odor, and Light Pollution. Loud noises, loud music, objectionable odors, and excessive external lighting which may be objectionable to other condominium unit owners is prohibited.

18. Dusk to Dawn Light. The Dusk to Dawn light located in the front yard shall not be turned off by the unit owner.

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