

DECLARATION OF NORTH DOUGLAS CONDOMINIUM REGIME

This Declaration, dated November ____, 2006, is made and declared by **CLELAND HOMES, INC.** (the "Declarant").

The Declarant desires to submit certain real estate in St. Joseph County, Indiana, to the provisions of the Condominium Law of the State of Indiana and to have the right to expand said Condominium, all as more fully set forth in this Declaration.

The Declarant makes this Declaration as follows:

ARTICLE I REAL ESTATE AND DECLARATION

1. Declarant is the sole owner of the fee simple title to the real estate located in St. Joseph County, Indiana and more particularly described in *Exhibit A*, attached hereto and made a part hereof. Said real estate described in *Exhibit A* is hereinafter referred to as the "Tract".

2. Declarant, by execution of this Declaration, submits the Tract to the provisions of the Condominium Law of the State of Indiana and thereby creates a Condominium Regime upon the Tract.

3. The additional real estate in St. Joseph County, Indiana, which in whole or in part may be added to the Tract by Declarant, as set forth in this Declaration, is more specifically described in *Exhibit B*, attached to and made a part of this Declaration. The real estate described in *Exhibit B* is referred to as "Expandable Area".

ARTICLE II

DEFINITIONS

The following terms, as used in this Declaration, unless the context clearly requires otherwise, shall mean the following:

1. "Act" means the Condominium Law of the State of Indiana, Indiana Code 32-25, as amended from time to time. The Act is incorporated in this Declaration by this reference, subject only to the terms and conditions of this Declaration that are not inconsistent with the provisions of the Act.

2. "Association" means **NORTH DOUGLAS CONDOMINIUM ASSOCIATION, INC.**, an Indiana nonprofit corporation, being the association of Owners of North Douglas Condominiums, more particularly described in Article XI of this Declaration.

3. "Board of Directors" means the governing body of the Association, being the initial Board of Directors referred to in the By-Laws or a subsequent Board of Directors elected by the Owners in accordance with the By-Laws.

4. "Building" means any structure on the Tract in which one or more Condominium Units are located. Building is more particularly described and identified on the Plans and in Article III of this Declaration. Building also includes any additional structure containing one or more Condominium Units which may be submitted and subjected to the Act and this Declaration by an amendment or amendments as provided in this Declaration, and will be identified in the amendment or amendments to this Declaration and on Plans that will be simultaneously filed for record.

5. "By-Laws" means the By-Laws of the Association providing for the administration and management of the Property and restrictions on its use as required by and in conformity with the provisions of the Act. A true copy of the By-Laws is attached to this Declaration and incorporated by this reference as ***Exhibit D***.

6. "Clubhouse and Pool" means the clubhouse and the swimming pool included in the Property available for use by all Owners pursuant to rules and regulations to be adopted by the Board of Directors.

7. "Common Areas" means the common areas and facilities defined in Article VI of this Declaration.

8. "Common Expenses" means expenses of administration of the Association and expenses for the upkeep, maintenance, repair and replacement of the Common Areas and Limited Common Areas (to the extent provided in this Declaration) and all sums lawfully assessed against the Owners by the Association or as declared by the Act, this Declaration or the By-Laws.

9. "Condominium Unit" means each one of the living units constituting North Douglas Condominiums, each individual living unit being more particularly described and identified on the Plans and in Articles IV and V of this Declaration. The "Condominium Unit" includes the undivided interest in the Common Areas and Limited Common Areas appertaining to that unit.

10. "Declarant" means and refer to **CLELAND HOMES, INC.**, an Indiana corporation, and any successors and assigns that **CLELAND HOMES, INC.** may later designate in one or more written, recorded instruments to have the rights of Declarant under this Declaration, including, but not limited to, any Mortgagee acquiring title to any portion of the Property pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.

11. "Expandable Area" means the real estate described in *Exhibit B*, attached to and made a part of this Declaration.

12. "Garages, Storage Buildings and Carports" means the garages, storage structures and carports as may be constructed that would be included in the Property to be leased or sold by the Association or Declarant to various Owners.

13. "Limited Common Areas" means the limited common areas and facilities as described in Article VI of this Declaration.

14. "Mortgagee" means the holder of a first mortgage lien on all or any part of North Douglas Condominiums, or on any a Condominium Unit.

15. "North Douglas Condominiums" means the name by which the Property and the Condominium Regime shall be known.

16. "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof who or which owns the fee simple title to a Condominium Unit.

17. "Percentage Interest" means the percentage of undivided interest in the fee simple title to the Common Areas and Limited Common Areas appertaining to each Condominium Unit as specifically expressed in Articles IV and VI and *Exhibit C* of this Declaration.

18. "Percentage Vote" means that percentage of the total vote accruing to all of the Condominium Units which is appurtenant to each particular Condominium Unit and accrues to the Owner thereof. The Percentage Vote to which each Owner shall be entitled on any matter upon which the Owners are entitled to vote shall be the same percentage as the Percentage Interest appurtenant to that Owner's Condominium Unit.

19. "Phase I" means that part of the Tract described as Phase I on the Plans filed simultaneously herewith.

20. "Plans" means the plats and floor plans certified and verified in accordance with the Act by Lang Feeny and Associates, Inc., licensed Professional Engineer, which will be filed for record in the office of the Recorder of St. Joseph County, Indiana, simultaneously with the filing

for record of this Declaration, as those Plans may be amended from time to time. The Declarant reserves the right to amend those Plans in a manner consistent with the Plans previously filed for record in the office of the Recorder of St. Joseph County, Indiana, and to amend and supplement those Plans by plans which may be prepared subsequently and incorporated in this Declaration by amendment to this Declaration, all of which are and will be incorporated in this Declaration by this reference.

21. "Property" means the Tract and appurtenant easements, the Condominium Units, the buildings, garages, Clubhouse and Pool, improvements and property of every kind and nature, real, personal or mixed, located on the Tract, including all property as shown on the Plans, and used in connection with the operation, use and enjoyment of North Douglas Condominiums, but does not include the personal property of Owner.

22. "Tract" means the Real Estate described in *Exhibit A*, attached to and made a part of this Declaration.

ARTICLE III
DESCRIPTION OF BUILDINGS, OTHER
IMPROVEMENTS, AND PLAN OF DEVELOPMENT

Declarant has constructed or is constructing (i) four Building containing 64 Condominium Units, (ii) the Garages, Storage Buildings, and Carports, and (iii) the Clubhouse and Pool, on the real estate constituting Phase I, which are described, located and shown in the Plans. Each of the four Buildings has two stories and no basement. The four Buildings are designated on the Plans as Building #s 1, 2, 3 and 14. No other Building will be constructed on Phase I.

Declarant proposes, but does not obligate itself, to expand the Condominium by adding to North Douglas Condominiums from time to time all or a portion or portions of the Expandable Area, and to construct or convert on land so added an additional Building or Buildings containing one or more Condominium Units. Additional Buildings may or may not have a basement, and shall consist of one or more stories, but not more than two and one-half stories. Additional Buildings will be described on an amendment or amendments to this Declaration and the amended Plans to be recorded simultaneously with that amendment or amendments to this Declaration.

The total number of Condominium Units constructed or converted on land added to North Douglas Condominiums will not exceed 200, so that the total number of Condominium Units in North Douglas Condominiums will not exceed 264.

The Plans recorded simultaneously with this Declaration are recorded in the office of the Recorder of St. Joseph County, Indiana, on _____, 2006, in Condominium Plat Book _____ as Document No. _____.

ARTICLE IV

LEGAL DESCRIPTION AND PERCENTAGE INTEREST

1. Each Condominium Unit is identified on the Plans by a Unit number. The Unit numbers in Phase I will be 1 through 48 in Buildings 1, 2 & 3 and the Unit numbers in Building 14 shall be 201 through 216. The Unit in the next Phase will be numbered consistent with the scheme established in this initial Phase. The legal description for each Condominium Unit shall consist of a Unit Number as shown on the Plans, and shall be stated as "*Unit ___ in North Douglas Condominium Regime recorded as Document Number _____, dated _____, _____, in the office of the Recorder of St. Joseph County, Indiana as amended from time to time, together with an undivided ___% Percentage Interest in the Common Areas and the Limited Common Areas*".

2. The undivided Percentage Interest of each Owner in the Common Areas and Limited Common Areas shall be that Percentage Interest included in each Condominium as set forth on ***Exhibit C***, attached to and made a part of this Declaration.

ARTICLE V

DESCRIPTION OF CONDOMINIUM UNITS

1. Appurtenances. Each Condominium Unit shall consist of all space within its boundaries as defined below, and all portions of the Buildings situated within such boundaries, including but not limited to all fixtures, facilities, utilities, equipment, appliances and structural components designed and intended solely and exclusively for the enjoyment, use and benefit of the Condominium Unit in which the same are located, or to which they are attached, but excluding therefrom that designed or intended for the use, benefit, support, safety or enjoyment of any other Condominium Unit, or which may be necessary for the safety, support, maintenance, use and operation of any of the Buildings, or which are normally designed for common use. However, all fixtures, equipment and appliances designed or intended for the exclusive enjoyment, use and benefit of a Condominium Unit shall constitute a part of that Condominium Unit, whether or not they are located entirely within or partly within the boundaries of that Condominium Unit. Also, the interior sides and surfaces of all doors and windows in the perimeter walls of a Condominium Unit, whether or not located within or partly within the boundaries of a Condominium Unit, and all interior finished surfaces of the walls, floors and ceilings within the boundaries of a Condominium Unit, are considered part of the Condominium Unit. An exterior deck, patio, stoop or balcony directly related to a Condominium Unit, if any, is considered part of that Condominium Unit.

2. Boundaries. The boundaries of each Condominium Unit shall be as shown on the Plans, without regard to the existing construction, measured from and including the interior unfinished surfaces of the lower most floors, upper most ceilings and perimeter walls of each Condominium Unit. If any horizontal or vertical or other boundary line as shown on the Plans does not coincide with the actual location of the respective wall, floor or ceiling surface of the Condominium Unit because of inexactness of construction, settling after construction, or for any other reasons, the boundary lines of each Condominium Unit shall be deemed to be and treated for purposes of ownership, occupancy, possession, maintenance, decoration, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent appurtenant easements for exclusive use shall exist in favor of the Owner of each Condominium Unit in and to such space lying outside of the actual boundary lines of the Condominium Unit, but within the appropriate wall, floor or ceiling surfaces of the Condominium Unit.

ARTICLE VI
COMMON AREAS AND FACILITIES AND
LIMITED COMMON AREAS AND FACILITIES

1. "Common Areas" means:

- a. the real estate constituting the Tract and such portions of the Expandable Area which have at any given time been subjected to the Act and this Declaration by an amendment to this Declaration, but excluding the Condominium Units.
- b. the foundations, columns, girders, beams, supports and exterior surfaces of roofs of the buildings.
- c. the foundations, columns, girders, beams, and supports of all balconies attached to the buildings.
- d. central electricity, gas, water, air conditioning and sanitary sewer mains serving the Buildings, if any.
- e. exterior lighting fixtures and electrical service lighting the exterior of the Buildings unless separately metered to a particular Condominium Unit.
- f. pipes, ducts, electrical wiring and conduits and public utility lines which serve one or more Condominium Unit.
- g. floors, roofs, exterior perimeter walls of the Buildings and interior walls of the Buildings separating the Condominium Units in such Buildings, except to the extent the same are otherwise classified and defined in this Declaration as part of the Condominium Unit or Limited Common Areas.
- h. all facilities and appurtenances located outside of the boundary lines of the Condominium Units, except those areas and facilities expressly classified and defined as Limited Common Areas or as part of the Condominium Unit.

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

- a. The halls, corridors, lobbies, stairs, stairways, entrances and exits, if any, of each Building except those located within the interior of Condominium Units shall be limited to the use of the Condominium Units of that Building.
- b. The exterior sides and surfaces of doors, windows and frames surrounding the same in the perimeter walls in each Condominium Unit, and balconies and decks attached or appertaining to a specific Condominium Unit specifically shown and designated on the Plans, shall be limited to the exclusive use of, and shall be maintained by, the Condominium Unit to which they are attached or appertain. An Owner required to perform maintenance work at his own expense under the provisions of this paragraph (b) may contract with the Association for the performance of any such maintenance for a negotiated fee.
- c. Any other areas designated and shown on the Plans as Limited Common Areas shall be limited to the Condominium Unit or Condominium Units to which they appertain as shown on the Plans.

ARTICLE VII
OWNERSHIP OF COMMON AREAS,
PERCENTAGE INTEREST AND
PERCENTAGE VOTE

Each owner shall have an undivided interest in the Common Areas and Limited Common Areas, as tenants in common with all other Owners, equal to his Condominium Unit's Percentage Interest. The Percentage Interest in the Common Areas and Limited Common Areas appertaining to each Condominium Unit is set forth in Article IV and *Exhibit C* of this Declaration. Except as otherwise provided or permitted in this Declaration, the Percentage Interest appertaining to each separate Condominium Unit in the Common Areas and Limited Common Areas shall be of a permanent nature and may not be altered without the unanimous consent of all the Owners and Mortgagees, and then only if in compliance with all requirements of the Act.

The Percentage Interest appertaining to each Condominium Unit shall also be the Percentage Vote allocable to its Owner in all matters with respect to North Douglas Condominiums and the Association upon which the Owners are entitled to vote.

ARTICLE VIII

ENCROACHMENTS AND EASEMENTS FOR COMMON AREAS

If, because of the location, construction, settling or shifting of a Building, any Common Area or Limited Common Area now encroaches or will subsequently encroach upon any Condominium Unit, then in that event, an easement shall be deemed to exist and run to the Owners of the Association for the maintenance, use and enjoyment of such Common Area or Limited Common Area.

Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other such common facilities located in any of the other Condominium Units and serving his Condominium Unit.

ARTICLE IX
REAL ESTATE TAXES

Real estate taxes are to be separately assessed and taxed to each Condominium Unit as provided in the Act. If for any year real estate taxes are not separately assessed and taxed to any Condominium Unit, but are assessed and taxed on the Property as a whole, then each Owner shall pay his proportionate share of such taxes in accordance with his respective Percentage Interest.

ARTICLE X

UTILITIES

Each Owner shall pay for his own utilities which are separately metered. Utilities which are not separately metered shall be treated as and paid as part of the Common Expenses, unless otherwise agreed by a majority of the Percentage Vote of Owners.

ARTICLE XI
ASSOCIATION OF OWNERS

The maintenance, repair, upkeep, replacement, administration, management and operation of the Property shall be by the North Douglas Condominium Association, Inc. Each Owner of a Condominium Unit shall, automatically upon becoming an Owner of a Condominium Unit, be and become a member of the Association and shall remain a member until such time as his ownership ceases, but membership shall terminate when such person ceases to be an Owner, and will be transferred to the new Owner.

The Association shall elect a Board of Directors annually, except for an Initial Board of Directors defined in the By-Laws, in accordance with and as prescribed by the By-Laws. Each Owner shall be entitled to cast his Percentage Vote for the election of the Board of Directors, except for such Initial Board of Directors which shall serve for the period provided in the By-Laws. Each person serving on the Initial Board of Directors, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a member of the Association and an Owner only for the purposes of qualifying to act as a subscribing member of the Association and/or a member of the Board of Directors and for no other purpose. No such person serving on the Initial Board of Directors will be deemed or considered a member of the Association nor an Owner of a Condominium Unit for any other purpose unless he is actually an Owner of a Condominium Unit and thereby a member of the Association.

The Board of Directors shall be the governing body of the Association, representing all of the Owners in providing for the management, administration, operation, maintenance, repair, replacement and upkeep of the Property exclusive of the Condominium Units.

ARTICLE XII

MAINTENANCE, REPAIRS AND REPLACEMENTS

Each Owner shall, at his expense, be responsible for the maintenance, repairs, decoration and replacement within his own Condominium Unit and, as provided in this Declaration or in the By-Laws, within Limited Common Areas reserved for his use. Each Owner shall repair any defect occurring in his Condominium Unit which, if not repaired, might adversely affect any Condominium Unit, Common Area or Limited Common Area.

Maintenance, repairs, replacements and upkeep of the Common Areas and Limited Common Areas shall be furnished by the Association as part of the Common Expenses, except as otherwise provided in this Declaration or in the By-Laws.

The Board of Directors shall adopt rules and regulations concerning maintenance, repairs, use and enjoyment of the Common Areas and Limited Common Areas as it deems appropriate, and may amend and modify the those rules and regulations from time to time as it deems advisable, necessary or appropriate, so long as such rules and regulations are not inconsistent with the Act, this Declaration and the By-Laws, as the same may be amended from time to time.

The Board of Directors or its designated agent shall have the right at reasonable times and upon reasonable prior notice (except in cases of emergency in which case no notice shall be required) to enter into each individual Condominium Unit for the purpose of inspection of the Common Areas and Limited Common Areas and replacement, repair and maintenance of such Common Areas and Limited Common Areas.

ARTICLE XIII

ALTERATIONS, ADDITIONS AND IMPROVEMENTS

An Owner may neither make any alterations or additions to or which would affect the Common Areas or Limited Common Areas without the prior written approval of the Board of Directors nor make any alterations in or to his own Condominium Unit and within its boundaries which would affect the safety or structural integrity of the Building in which the Condominium Unit is located. An Owner may not change the color of any of the Common Areas or Limited Common Areas without the prior written approval of the Board of Directors. Declarant reserves the right to change the interior design and arrangement of all Condominium Units and alter the boundaries between Condominium Units so long as Declarant owns the Condominium Units so altered. No such change may increase the number of Condominium Units or change the Percentage Interest applicable to any Condominium Unit. An Owner may not remove or otherwise injure or damage live shrubbery planted on Common Areas without consent of the Board of Directors.

ARTICLE XIV

CASUALTY, LIABILITY AND OTHER INSURANCE

1. The Owners, through the Association, shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring the Property in an amount consistent with the full replacement value of the improvements which, in whole or in part, comprise the Common Areas and the Limited Common Areas. If the Board of Directors can obtain that coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors shall be responsible for reviewing at least annually the amount and type of insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board of Directors, the Board of Directors may cause the full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall be for the benefit of each Owner, and, if applicable, the Mortgagee of each Owner upon the following terms and conditions:

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Association as hereinabove set forth shall be paid to it or to the Board of Directors as insurance trustee, or to the bank and trust company which may be designated by the Board of Directors to act as the insurance trustee (the "Insurance Trustee". The Insurance Trustee shall hold those proceeds for the benefit of the individual Owners and Mortgagees. The proceeds shall be used or disbursed by the Insurance Trustee, as appropriate, only in accordance with the provisions of this Declaration.

The interest in the trust fund of insurance proceeds of each Owner of a Condominium Unit that is damaged shall be the ratio of the direct damage of each Owner who is damaged to the damages of all Owners directly damaged by any event insured under said master casualty insurance policy.

The master casualty insurance policy, and the "all risk" coverage if obtained, shall, to the extent they are obtainable, contain provisions that (a) the insurer waives its right to subrogation as to any claim against the Association, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) the insurer waives any defense based on invalidity arising from the acts of the insured, and (c) the insurer contains an endorsement that such policy may not be terminated for non-payment of premiums without at least ten days prior written notice to Mortgagees and providing further, if the Board of Directors is able to obtain such "all risk" insurance on reasonable terms, (i) that the insurer may not be entitled to contribution against casualty insurance which may be purchased by individual Owners as hereinafter permitted, and (ii) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option will not be exercisable if the Owners do not elect to restore pursuant to Article XV of this Declaration.

2. The Owners, through the Association, shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Association, the Board of Directors, any committee or organ of the Association or Board of Directors, any managing agent that may be appointed or employed by the Association, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to

North Douglas Condominiums, all Owners of Condominium Units and all other persons entitled to occupy any Condominium Unit or other portions of North Douglas Condominiums.

3. The Owners, through the Association, shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall cover the Association, the Board of Directors, any committee or organ of the Association or Board of Directors, any managing agent that may be appointed or employed by the Association, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to North Douglas Condominiums, all Owners of Condominium Units and all other persons entitled to occupy any Condominium Unit or other portions of North Douglas Condominiums.

4. The premiums for all such insurance above described above shall be paid by the Association as part of the Common Expenses. When any such policy of insurance has been obtained by or on behalf of the Association, written notice thereof and of any subsequent changes, endorsements, or termination shall be promptly furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Association who is required to send notices of meetings of the Association.

5. No distribution of proceeds may be made by the Insurance Trustee directly to an Owner where there is a Mortgagee endorsement on the certificate of insurance. In that event, any remittance shall be to the Owner and his Mortgagee jointly.

6. Each Owner shall be solely responsible for loss or damage to the contents of his Condominium Unit however caused, including, but not limited to, all floor, ceiling and wall coverings and fixtures, betterments and improvements installed by him, and his personal property stored elsewhere on the Property, and the Association will have no liability to the Owner for loss or damage to the personal property in any Condominium Unit. Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk.

Each Owner shall have the right to purchase such additional insurance at his own expense as he may deem necessary, including but not limited to: (1) personal liability insurance provided all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Association and (2) casualty insurance on his Condominium Unit, but such insurance shall provide that it shall be without contribution as against the casualty insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable on the insurance purchased by the Association pursuant to this paragraph due to prorating of insurance purchased by an Owner under this paragraph, the Owner agrees to assign the proceeds of his latter insurance, to the extent of the amount of such reduction, to the Insurance Trustee to be distributed as provided in this Article XIV.

ARTICLE XV

CASUALTY AND RESTORATION

1. Except as hereinafter provided, damage to or destruction of any Building due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association. The proceeds of insurance, if any, shall be applied for that purpose; provided, however, that repair and reconstruction is not compulsory in the event of "complete destruction of all of the Buildings", as defined below, and shall only be done in accordance with the provisions set forth below. As used in this Article XV, the term "complete destruction of all of the Buildings" means a determination, made by a vote of two-thirds of all Owners at a special meeting of the Association called for the purpose of making a determination that total destruction of all of the Buildings has occurred. A special meeting of the Association shall be called and held within thirty days after any fire or other casualty or disaster damaging or destroying any of the Buildings for the purpose of making the determination of whether or not there has been a complete destruction of all of the Buildings. If a special meeting is not called and held within that thirty day period, or if the determination of whether or not there has been a complete destruction of all the Buildings has not been made within that thirty day period, then it shall be conclusively presumed that the Owners have determined that there was not a complete destruction of all of the Buildings, and the Association shall proceed with repair and reconstruction as provided in this Article XV.

2. If the insurance proceeds received by the Insurance Trustee as a result of a fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or if there are no insurance proceeds, and if the Property is not to be removed from the Condominium Regime, then the cost for restoring the damage and repairing and reconstructing the Building or Buildings that are damaged or destroyed, or the cost of restoring the damage and repairing and reconstructing the Building or Buildings in excess of insurance proceeds received shall be paid by all of the Owners of Condominium Units in proportion to the ratio that the Percentage Interest of each Condominium Unit bears to the total Percentage Interest of all Condominium Units. Any such amounts payable by the Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided in the Act. The provisions of this paragraph 2. are subject to the provisions of Section 6.07 of the By-Laws with respect to damage or destruction caused by the willful, intentional or negligent acts or omissions of an Owner or of a member of an Owner's family, or of a guest, tenant or other occupant or visitor of that Owner. An Owner shall pay the amount of any increase in insurance premiums on policies purchased and maintained by the Association that is occasioned by such willful, intentional or negligent acts or omissions.

3. For purposes of paragraphs 1. and 2. above, repair, reconstruction, and restoration shall mean construction or rebuilding of the Condominium Units to as near as possible the same condition as they existed immediately prior to the damage or destruction and with the same type of architecture.

4. If, under paragraph 1. above, it is determined by the Owners at the special meeting of the Association that there has been a complete destruction of all of the Buildings, the Owners shall, at said same special meeting, vote to determine whether or not the complete destruction of the Buildings shall be repaired and reconstructed. The Buildings will not be reconstructed or

repaired if it is the determination of the Owners at said special meeting that there has been a complete destruction of all of the Buildings, unless by a vote of two-thirds of all of the Owners a decision is made to rebuild, reconstruct and repair some or all of the Buildings. If two-thirds of all of the Owners vote and decide that some or all of the Buildings are to be rebuilt, reconstructed and repaired, the insurance proceeds, if any, received by the Insurance Trustee shall be applied, and any excess of construction costs over insurance proceeds, if any, received by the Insurance Trustee shall be contributed and paid as provided in paragraphs 1. and 2 above.

5. If, in any case of the complete destruction of all of the Buildings, less than two-thirds of all of the Owners vote in favor of the rebuilding, reconstruction and repair of some or all of the Buildings, no Buildings will be rebuilt, reconstructed or repaired and, in that event, the Property shall be deemed and considered to be removed from the provisions of the Act, and:

- a. The Property shall be deemed to be owned in common by the Owners of the Condominium Units.
- b. The undivided interest in the Property owned in common which shall appertain to each Owner of a Condominium Unit shall be the percentage of undivided interest previously owned by such Owner in the Common Areas and Limited Common Areas.
- c. Any liens affecting any of the Condominium Units shall be deemed to be transferred in accordance with the existing priorities to the percentage of the undivided interest of the Owner in the Property.
- d. The Property shall be subject to an action for partition at the suit of any Owner. In that event the net proceeds of sale, together with the net proceeds of the insurance on the Property, if any, shall be considered as one fund and shall be distributed to each Owner in a percentage equal to the Percentage Interest of that Owner, after first paying out of the respective share of that Owners, to the extent sufficient for the purpose, all liens on the Condominium Unit of that Owner and on the undivided interest in the Property owned by that Owner.

5. Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Association has the responsibility of maintenance and repair, the Board of Directors shall obtain reliable and detailed estimates of the cost to place the damaged 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.

6. The proceeds of insurance collected on account of any such casualty, and the sums received by the Board of Directors from collections of assessments against Owners on account of such casualty, shall constitute a construction fund which shall be disbursed, if the Building or Buildings are to be reconstructed and repaired, in payment of the costs of reconstruction and repair in the following manner:

- a. If the amount of the estimated cost of reconstruction and repair is less than \$50,000.00, then the construction fund shall be disbursed in payment of such costs upon order of the Board of Directors; 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 provided in the following paragraph b.

- b. If the estimated cost of reconstruction and repair of the Building or other improvement is \$50,000.00 or more, then the construction fund shall be disbursed in payment of such costs upon approval of a professional engineer qualified to practice in Indiana and employed by the Board of Directors to supervise such work, payment to be made from time to time as the work progresses. The professional engineer shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the professional engineer, or other persons who have rendered services or furnished materials in connection with the work, (i) that the sums requested by them in payment are justly due and owing and that said sums do not exceed the value of the services and materials furnished; (ii) that there is no other outstanding indebtedness known to the professional engineer for the services and materials described; and (iii) that the costs as estimated by the professional engineer for the work remaining to be done subsequent to the date of such certificate, does not exceed the amount of the construction fund remaining after payment of the sum so requested.
- c. Encroachments on or in favor of Condominium Units which may be created as a result of such reconstruction or repair may not constitute a claim or basis of a proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was either substantially in accordance with the Plans or as the Buildings were originally constructed. Such encroachments shall be allowed to continue in existence for so long as the Buildings stand.
- d. If there is any surplus of monies in the construction fund after the reconstruction or repair of the damage has been fully completed and all costs paid, those sums may be retained by the Board of Directors as reserve or may be used in the maintenance and operation of the Common Areas, or, in the discretion of the Board of Directors it may be distributed to the Owners in the Buildings affected and their Mortgagees who are the beneficial Owners of the fund. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against another Owner or any other person or entity for committing willful, intentional or negligent damage.

ARTICLE XVI
COVENANTS AND RESTRICTIONS

No tree, bush, shrubbery, or hedge more than four feet in height located on the Property may be removed without the consent of all Owners of Condominium Units in the Phase in which such tree, bush, shrubbery, or hedge is located and the consent of all Owners of Condominium Units in any Phase adjoining such Phase in which such tree, bush, shrubbery, or hedge is located.

Other covenants and restrictions applicable to the use and enjoyment of the Condominium Units and the Common Areas and Limited Common Areas are set forth in Article VII of the By-Laws, including the limitation that each of the Condominium Units shall be limited to residential use. These covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land that is a part of North Douglas Condominiums, and shall inure to the benefit of and be enforceable by any Owner, or by the Association. Present or future Owners of the Association shall be entitled to injunctive relief against any violation or attempted violation of these provisions and shall be entitled to damages for any injuries resulting from any violations thereof, but there shall be no right of reversion or forfeiture of title resulting from such violation.

ARTICLE XVII
AMENDMENT OF DECLARATION

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

1. Notice. Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting at which the proposed amendment is to be considered.

2. Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having the aggregate of at least a majority of the Percentage Vote.

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

4. Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than 75% in the aggregate of the Percentage Vote. If any Condominium Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions of the By-Laws.

5. Special Amendments. No amendment to this Declaration may be adopted which changes (i) the Percentage Interest with respect to any Condominium Unit or the applicable share of an Owner's liability for the Common Expenses, without the approval of 100% of the Owners and all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of the By-Laws, except for changes pursuant to Article XX below, or (ii) the provisions of Article XV above with respect to reconstruction or repair in the event of fire or any other casualty or disaster, without the unanimous approval of all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of the By-Laws.

6. Recording. Each amendment to This Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the office of the Recorder of St. Joseph County, Indiana, and such amendment will not become effective until so recorded.

7. Amendments by Declarant Only. Notwithstanding the foregoing or any other provision of this Declaration, the Declarant shall have the right, acting alone and without the consent or approval of the Owners, the Association, the Board of Directors, any Mortgagees or any other person, to amend or supplement this Declaration from time to time if (i) the amendment or supplement is necessary to conform this Declaration to the Act, as amended from time to time, or to any zoning or subdivision law or ordinance, (ii) the amendment or supplement is made to implement expansion of the Property and North Douglas Condominiums pursuant to Declarant's reserved rights to expand the same as set forth in Article XX below, (iii) the amendment or supplement is made in connection with the filing of an amendment or supplement to the Plans pursuant to Declarant's reserved right to change the interior design and arrangement of a Condominium Unit or Units owned by Declarant, alter the boundaries between Condominium

Units owned by Declarant, or the completion of construction of Buildings, or (iv) the amendment is necessary to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing & Urban Development, the Federal Housing Association, the Veteran's Administration or any other governmental agency or any other public, quasi-public or private entity which performs, or may perform in the future, functions similar to those currently performed by any of those entities.

ARTICLE XVIII

ACCEPTANCE AND RATIFICATION

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

ARTICLE XIX

USE OF PROPERTY BY DECLARANT

Notwithstanding anything to the contrary contained in this Declaration or in the By-Laws, including but not limited to any covenants and restrictions set forth in the By-Laws, Declarant shall have, until the date described in Article XX below as the date upon which Declarant's right to expand the Property and North Douglas Condominiums terminates, the right to use and maintain any Condominium Units owned by Declarant and such other portions of the Property, other than individual Condominium Units owned by persons other than Declarant, and any portions of the Expandable Area not then part of the Property, all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the construction and sale of Condominium Units, or to promote or effect sales of Condominium Units or for the conducting of any business or activity attendant thereto, including, but not limited to, model Condominium Units, storage areas, construction yards, signs, construction offices, sales offices and management offices or any combination thereof. Declarant shall have the right to relocate any or all of the same from time to time as it desires to any Units then owned by Declarant or to any other Condominium Unit or other suitable location. Declarant shall also have the right and option, in its sole discretion, to construct additional structures or install a trailer on the Property, so long as the same is done in full compliance with all of the provisions of this Declaration and of the Act, for use as construction offices, sales offices and management offices or any combination thereof. At no time may any of such structures, Condominium Units or facilities so used or maintained by Declarant be or become part of the Common Areas, unless so designated by Declarant. Any Condominium Unit so used shall retain its identity as a Condominium Unit and may be sold as such. Declarant shall have the right to remove any other structure so used from the Property at any time, but not later than _____, 2012.

ARTICLE XX

EXPANDABLE CONDOMINIUM AND DECLARANT'S RESERVED RIGHTS

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

1. The Tract, defined in Articles I and II and described in *Exhibit A*, is being subjected to the North Douglas Condominiums by this Declaration and constitutes Phase I of the general plan of development of the North Douglas Condominiums. The Expandable Area, defined in Articles I and II and described in *Exhibit B*, is the area into which expansion of North Douglas Condominiums may be made by Declarant. The maximum number of Condominium Units which may be developed in North Douglas Condominiums is 264. Subject to said limit as to the maximum number of Condominium Units to be developed, North Douglas Condominiums may be expanded by Declarant to include all or part of the Expandable Area in one or more additional phases, each of which shall be numbered by a Roman numeral, by the execution and recording of one or more amendments to this Declaration; provided, however, that no single exercise of that right and option of expansion as to any part or parts of the Expandable Area shall preclude Declarant from thereafter from time to time further expanding North Douglas Condominiums to include other portions of the Expandable Area, and such right and option of expansion may be exercised by Declarant from time to time as to all or any part of the Expandable Area so long as such expansion is done on or before _____, 2016. Such expansion is entirely at the discretion of Declarant and nothing contained in this original Declaration or otherwise shall require Declarant to expand North Douglas Condominiums beyond the Tract or any part of the Expandable Area which Declarant may voluntarily and in his sole discretion from time to time subject to this Declaration by an amendment or amendments to this Declaration as provided above.

2. The Percentage Interest which will appertain to each Condominium Unit in North Douglas Condominiums, as North Douglas Condominiums may be expanded from time to time by Declarant in accordance with the terms hereof, including the Percentage Interest which appertains to each of the Condominium Units included in this original Declaration, shall be a percentage equal to the number of square feet in each Condominium Unit divided by the total number of square feet in all Condominium Units which, from time to time, have been subjected and submitted to this Declaration and then constitute a part of North Douglas Condominiums.

3. At the same time as the recording of any amendment to this Declaration expanding North Douglas Condominiums, Declarant shall also record revised and amended Plans as required by the Act. Any such amendment to this Declaration shall also include provisions reallocating Percentage Interests so that the Condominium Units depicted on the revised and amended Plans shall be allocated Percentage Interests in the Common Areas on the same basis as the Condominium Units depicted in the prior Plans, as set forth in paragraph 2 above. The reallocation of Percentage Interests shall vest when the amendment to This Declaration incorporating those changes has been recorded.

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

5. In furtherance of the foregoing, a power coupled with an interest is hereby granted to the Declarant, as attorney-in-fact, to shift the Percentage Interest in the Common Areas appertaining to each Condominium Unit to the percentages set forth in each amendment to this Declaration recorded pursuant to this Article XX. Each deed, mortgage or other instrument with respect to a Condominium Unit and the acceptance thereof shall be deemed a grant and acknowledgement of and consent to this power granted to the Declarant as attorney-in-fact, and shall be deemed to reserve to the Declarant as attorney-in-fact the power to shift and reallocate from time to time the percentages of ownership in the Common Areas and Limited Common Areas appurtenant to each Condominium Unit to the percentages set forth in each such recorded amendment to this Declaration.

6. Each Owner of a Condominium Unit by acceptance of a deed thereto, further acknowledges, consents and agrees, as to each such amendment to this Declaration that is recorded as follows:

- a. The portion of the Expandable Area described in each such amendment to this Declaration shall be governed in all respects by the provisions of this Declaration.
- b. The Percentage Interest in the Common Areas appurtenant to each Condominium Unit shall automatically be shifted and reallocated to the extent set forth in each such recorded amendment to this Declaration, and upon the recording of each such amendment to this Declaration, shall thereby be deemed to be released and divested from such Owner and reconveyed and reallocated among the other Owners as set forth in each such recorded amendment to this Declaration.
- c. Each deed, mortgage or other instrument affecting a Condominium Unit shall be deemed given subject to the conditional limitation that the Percentage Interest in the Common Areas and Limited Common Areas appurtenant to each Condominium Unit shall, upon the recording of each such amendment to this Declaration, be divested to the reduced percentage set forth in such amendment to this Declaration and vest among the other Owners, Mortgagees and others owning an interest in the other Condominium Units in accordance with the terms and percentages of each such recorded amendment to this Declaration.
- d. A right of revocation is hereby reserved by the Declarant in each such deed, mortgage or other instrument of a Condominium Unit to so amend and reallocate the Percentage Interest in the Common Areas appurtenant to each Condominium Unit.
- e. The Percentage Interest in the Common Areas appurtenant to each Condominium Unit shall include and be deemed to include any additional Common Areas and Limited Common Areas included in land to which North Douglas Condominiums is expanded by a recorded amendment to this Declaration. Each deed, mortgage or other instrument affecting a Condominium Unit shall be deemed to include those additional Common Areas

and Limited Common Areas. The ownership of any such Condominium Unit and a lien of any such mortgage shall automatically include and attach to such additional Common Areas and Limited Common Areas as any such amendment to this Declaration is recorded.

f. Each Owner shall have a perpetual easement, appurtenant to his Condominium Unit for the use of any such additional Common Areas and Limited Common Areas described in any recorded amendment to this Declaration, for the purposes therein set forth, except as to any portion the use of which is limited by exclusive easements granted to the Owners of specific Condominium Units and except as to Limited Common Areas as may be provided in any such amendment to this Declaration.

g. The recording of any such amendment to this Declaration shall not alter the amount of the lien for expenses assessed to or against a Condominium Unit prior to such recording.

h. Each Owner, by acceptance of the deed conveying his Condominium Unit, agrees for himself and all those claiming under him, including Mortgagees, that this Declaration and each amendment to this Declaration are and shall be deemed to be in accordance with the Act and for purposes of this Declaration and the Act, any changes in the respective Percentage Interest in the Common Areas as set forth in each such amendment to this Declaration shall be deemed to be made by agreement of all Owners.

i. Each Owner agrees to execute and deliver any and all documents necessary or desirable to cause the provisions of this Article XX to comply with the Act as it may be amended from time to time.

ARTICLE XXI
GRANTING OF EASEMENTS

The Board of Directors of the Association is granted the authority to grant easements to utility companies upon such terms and conditions and for such consideration as it deems appropriate.

ARTICLE XXII

RESERVATION OF RIGHTS TO THE USE OF THE COMMON AREAS

Declarant shall have, and hereby reserves, an easement over, across, upon, along, in, through and under the Common Areas and, to the extent necessary, the Limited Common Areas, for the purpose of installing, maintaining, repairing, replacing, relocating and otherwise servicing utility equipment, facilities and installations to serve the Property and any portions of the Expandable Area which are not then part of the Property, to provide access to and ingress and egress to and from the Property and to any such portions of the Expandable Area which are not part of the Property, to make improvements to and within the Property and any such portions of the Expandable Area which are not part of the Property, and to provide for the rendering of public and quasi-public services to the Property and such portions of the Expandable Area which are not part of the Property.

ARTICLE XXIII

EASEMENT FOR UTILITIES AND PUBLIC AND QUASI-PUBLIC VEHICLES

All public and quasi-public vehicles, including but not limited to police, fire and other emergency vehicles, trash and garbage collection, post office vehicles and privately owned taxi cabs and delivery vehicles, shall have the right to enter upon the streets, Common Areas and Limited Common Areas of North Douglas Condominiums in the performance of their duties. An easement is also granted to all utilities and their agents for ingress, egress, installation, replacement, repairing and maintaining of such utilities, including but not limited to water, sewers, gas, telephones and electricity on the Property; provided, however, nothing shall permit the installation of sewers, electric lines, water lines, or other utilities, except as initially designed and approved by the Declarant or as thereafter may be approved by the Board of Directors. By virtue of this easement the electric and telephone utilities are expressly permitted to erect and maintain the necessary equipment on the Property and to affix and maintain electric and telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the Buildings.

ARTICLE XXIV

SALE OR LEASE OF CONDOMINIUM UNIT BY OWNER

For the purpose of maintaining the congenial and residential character of North Douglas Condominiums, and for the protection of the Owners with regard to financially responsible residents, sale or lease of a Condominium Unit by an Owner other than the Declarant, Declarant being subject to no restrictions whatsoever on sale or lease of Condominium Units, shall be subject to the following conditions and restrictions:

1. Lease. No Owner may lease his Condominium Unit or enter into any other rental or letting arrangement for his Condominium Unit without the prior written consent of the Board of Directors. Such consent may not be unreasonably withheld. No lease for a term longer than two years may be approved. Any Owner desiring to enter into a lease for his Condominium Unit shall make written application to the Board of Directors which application shall state the reasons why the applicant wishes to lease the Condominium Unit, the name of the proposed tenant or tenants, and financial references of the proposed tenant or tenants. Within six business days following the receipt of said application, the Board of Directors shall issue its written approval or disapproval to the Owner, and specific reasons for any disapproval or refusal of the consent shall be given. If the Board fails to issue written approval or disapproval within that period, the application shall for all purposes be deemed approved, and the Owner shall be entitled to receive a written certificate in recordable form, executed by the President or Secretary of the Association, that the time for approval or disapproval of the proposed lease has expired.

2. Sale. The Association shall have the right of first refusal to purchase any Condominium Unit which an owner wishes to sell, which shall include any conveyance or transfer of any of the incidents of ownership of the Condominium Unit. Any Owner wishing to sell who receives a *bona fide* offer to purchase shall promptly give written notice to the Board of Directors of his desire to sell, together with the name and address of the intended purchaser, and the terms and conditions of such offer. Within six business days after the receipt of the notice, the Board of Directors shall determine if it should recommend exercise of the right to purchase or waive the right to purchase.

a. If the Board of Directors elects to waive the right to purchase, a certificate in recordable form, executed by the President or Secretary of the Association, certifying that the Association, through its Board of Directors, has waived its right to purchase, shall be delivered to the Owner, who may then proceed to sell and convey his Condominium Unit to that person and upon the same terms and conditions set forth in the Owner's notice to the Board of Directors. If the sale is not completed and closed within ninety days after the date of the certificate, then the Condominium Unit shall again become subject to the Association's right of first refusal as provided in this paragraph 2.

b. If the Board of Directors deems it advisable to exercise the Association's right to purchase the Condominium Unit, then it shall give written notice thereof to the Owner and shall, within fifteen days after the receipt of the notice from the Owner wishing to sell, call and cause to be held a meeting of all the Owners for the purpose of voting upon the proposed purchase. If the recommendation of the Board of Directors to purchase such Condominium Unit is approved by at least 75% in the aggregate of the total Percentage Vote, then the Association shall proceed immediately to purchase the offered

Condominium Unit from the offering Owner upon the same terms and conditions contained in the offer. The purchase price for the Condominium Unit shall be considered to be a Common Expense and be borne by the remaining Owners; provided, however, that the Owner who has made the offer to sell his Condominium Unit shall not be assessed for or required to pay his pro rata share of the expense incurred in connection with the purchase of the Condominium Unit.

Legal title to the Condominium Unit shall be conveyed to the Association as an entity or to those persons then serving as the Board of Directors, as trustees for the benefit of the Owners, whichever the Board of Directors, in their sole discretion, deems appropriate.

If the proposed purchase is not approved by the required percentage of the Owners as set out above, then the Board of Directors, through the President or Secretary of the Association, shall promptly deliver a certificate in recordable form to the offering Owner who may proceed to sell his Condominium Unit under the same terms and conditions as if the Board of Directors had not elected to recommend the exercise of the right of the Association to purchase.

If, for any reason, either the Board of Directors or the Owners fail to act on the Association's right of first refusal within the time periods provided above, then the Association's right of first refusal shall be deemed to have been effectively waived, and the offering Owner shall be entitled to receive a certificate in recordable form, executed by the President or Secretary of the Association, certifying that the time for executing the Association's right of first refusal has expired.

If the Association purchases a Condominium Unit in accordance with this Article XXIV, the Board of Directors shall have the authority at any time thereafter to sell or lease the Condominium Unit upon such terms and conditions as the Board of Directors, in its sole discretion, deems desirable, without application to or approval of the Owners. The proceeds of any such sale shall be returned to the Owners in the same percentage as they had contributed to the purchase. If the Board of Directors elects to lease the Condominium Unit, then the lease rental payments shall be applied against the Common Expenses.

3. Duration of Association's Rights. The above provisions with respect to the Association's right to approve a lease of a Condominium Unit or the right to purchase a Condominium Unit shall remain in full force and effect until the Property is removed from the provisions of the Act or, unless extended by action of the Board of Directors, until the expiration of twenty years from the date of this Declaration, whichever first occurs.

Any notice of a proposed sale or lease to be given to the Board of Directors shall be deemed to be given and received by the Board of Directors if personally delivered to any member of the Board or if personally delivered at the office which is the principal place of business of the Association during regular business hours. Notice given by any other means shall be effective only upon actual receipt by a member of the Board of Directors.

Any sale or attempted sale, or any lease or attempted lease by an owner of his Condominium Unit, except in accordance with the provisions of this Article XXIV, shall be void; provided, however, that any certificate waiving the Association's right to purchase executed by

the Association and delivered to an Owner as provided in this paragraph may be relied upon by any purchaser or Mortgagee and shall, with respect to such purchaser or Mortgagee, be absolutely binding upon the Association and the Owners unless such purchaser or Mortgagee has actual knowledge that the certificate was procured fraudulently or by reason of a misrepresentation of a material fact.

4. Limitations to Mortgagee. With respect to a Mortgagee that is a bank, life insurance company, mortgage company, or savings and loan association, the provisions of paragraphs 1 through 3 of this Article XXIV shall be limited in their application as follows:

- a. The provisions of paragraph 2 are not applicable to a conveyance of a Condominium Unit to a Mortgagee as a result of a foreclosure of its mortgage or a conveyance in lieu thereof or to the conveyance of a Condominium Unit to any person at a public sale in the manner provided by law with respect to mortgage foreclosures. The provisions of paragraph 2 shall be applicable to and binding upon the Mortgagee or other person so obtaining title to a Condominium Unit with respect to any subsequent transfer or conveyance of the Condominium Unit.
- b. The provisions of paragraph 1 are not be applicable to a Mortgagee if the Mortgagee acquires possession of a Condominium Unit during the period that a foreclosure proceeding is pending or to a Mortgagee who obtains title to a Condominium Unit as a result of foreclosure of its mortgage or a conveyance in lieu thereof. The provisions of paragraph 1 shall be binding upon any other person obtaining title to the Condominium Unit from such Mortgagee or at any foreclosure or other judicial sale.

The provisions of this paragraph 4 may not be amended without the consent of all such Mortgagees.

ARTICLE XXV

COSTS AND ATTORNEYS' FEES

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

ARTICLE XXVI

WAIVER

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

ARTICLE XXVII

AGENT FOR SERVICE OF PROCESS

The agent for service of any process upon the Association or the Board of Directors shall be Cleland Homes, Inc. 1101 Lincolnway West, Mishawaka, Indiana 46544-1711. Service of process on the Owners of two or more Condominium Units in any action relating to the Common Areas or the Limited Common Areas, or more than one Condominium Unit in any other action, may be made on that agent.

ARTICLE XXVIII

MISCELLANEOUS

1. Severability Clause. The invalidity of any covenant, restriction, condition, limitation or other provision of this Declaration or the By-Laws will not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration or the By-Laws.

2. Pronouns. Any reference to the masculine, feminine or neuter gender in this Declaration shall, unless the context clearly requires the contrary, be deemed to refer to and include the masculine, feminine and neuter genders. Words in the singular shall include and refer to the plural, and vice versa, as appropriate.

[The balance of this page is intentionally left blank. Signatures are on next page.]

CLELAND HOMES, INC.
Declarant

By _____
Lance Cleland, President

Attest: _____
Larry Cleland, Secretary

STATE OF INDIANA)
)SS
ST. JOSEPH COUNTY)

Before me, a Notary Public in and for St. Joseph County, Indiana, on November ____, 2006, personally appeared Lance Cleland and Larry Cleland, the President and Secretary, respectively, of **CLELAND HOMES, INC.**, an Indiana corporation, known to me, and acknowledged the execution of the above Declaration of Condominium Regime.

Linda Leblang, Notary Public
Resident of St. Joseph County, Indiana
My commission expires April 5, 2009

Prepared by:
Kevin J. Butler
Paul G. Crowley
Butler and Crowley
726 East Washington
South Bend, IN 46617
574.233.9500 FAX 574.233.9502