



*First American
Title Insurance Company*

Not Just for One Transaction, But for Life

First American Title Insurance Company
Indianapolis Downtown—Corporate
251 E. Ohio Street, Suite 200
Indianapolis, IN 46204
Telephone (317) 684-7556

Subdivision Covenants and Restrictions

The information is provided as a public service only. The information on this site is general in nature, unofficial and is not a valid reference for any legal purposes. The user agrees to hold harmless, protect, indemnify, and forever release First American Title Insurance Company and its officers, directors, agents, and employees, from and against any and all liabilities, losses, damage, expenses and charges, including but not limited to attorneys' fees and expenses of litigation, which may be sustained or incurred by the user under, or arising directly or indirectly out of the use of the information contained in this site.

44 SB

FILED
OCT 23 2006
LAWRENCE TOWNSHIP ASSESSOR

Cross Reference: Instrument No. 98-0045461
MARION COUNTY RECORDER

655847 OCT 26 2006

**AMENDED AND RESTATED
DECLARATION OF COVENANTS AND RESTRICTIONS
FOR HISTORIC STANDISH ESTATES**

DULY RETURNED FOR CANCELLATION
SUBJECT TO FINAL ACCEPTANCE
FOR TRANSFER

TABLE OF CONTENTS

	Page
1. Definitions	1
2. Declaration	3
3. Description of Historic Standish Estates	3
4. Lots and Easements	3
5. Common Area	3
6. Ownership of Common Area	3
7. Delegation of Use of the Common Area	4
8. Encroachments and Easements In Common Area	4
9. Easement for Utilities and Public and Quasi Public Vehicles	4
10. Corporation; Membership Voting; Functions	4
(a) Membership in Corporation	4
(b) Class and Voting Rights	5
(c) Functions	5
11. Board of Directors	5
(a) Management	5
(b) Duties of the Board of Directors	5
(c) Powers of the Board of Directors	6
(d) Limitation on Board Action	7
(e) Compensation	7
(f) Non-Liability of Directors	7
(g) Additional Indemnity of Directors	8
(h) Bond	9
12. Real Estate Taxes	8
13. Utilities	8
14. Maintenance, Repairs and Replacements	9
15. Architectural Control	10
(a) The Architectural Review Board	10
(b) Purposes	10
(c) Conditions	10
(d) Procedures	10
(e) Maintenance of Architectural Control	11
(f) Additional Approval	11
16. Party Walls	11
(a) General Rules of Law to Apply	11
(b) Sharing of Repair and Maintenance	11
(c) Destruction by Fire or Other Casualty	11
(d) Weatherproofing	11
(e) Right to Contribution Runs with Land	12

(f)	Arbitration	12
17.	Assessments	12
(a)	Annual Accounting	12
(b)	Proposed Annual Budget for Common Expenses	12
(c)	Regular Assessments	13
(d)	Special Assessments	13
(e)	Failure of Owner to Pay Assessments	13
(f)	Subordination of Assessment Lien to Mortgage	14
18.	Mortgages	14
a)	Notice to Corporation	14
(b)	Notice of Unpaid Assessments	15
(c)	Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums	15
(d)	Notice of Condemnation or Casualty Loss	15
(e)	Notice to Insurers and Guarantors	15
19.	Insurance	15
(a)	Casualty Insurance	15
(b)	Public Liability Insurance	16
(c)	Other Insurance	16
(d)	General Provisions	17
(e)	Insurance by Owners	17
(f)	Condemnation Awards	17
20.	Casualty and Restoration	17
(a)	Restoration of Dwelling Units	17
(b)	Restoration of Common Area	17
21.	Covenants and Restrictions	19
22.	Amendment of Declaration	22
23.	Acceptance and Ratification	24
24.	Negligence	24
25.	Costs and Attorneys' Fees	24
26.	No Waiver	24
27.	Severability Clause	24
28.	Pronouns	24
29.	The Plat	24

Exhibit "A" Real Estate comprising Historic Standish Estates
Exhibit "B" Standard Covenants-Fort Harrison Architectural Review Commission

AMENDED AND RESTATED
DECLARATION OF COVENANTS AND RESTRICTIONS
FOR HISTORIC STANDISH ESTATES

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS AND RESTRICTIONS FOR HISTORIC STANDISH ESTATES is executed as of the date set forth below, by the undersigned on behalf of Historic Standish Estates Homeowners Association, Inc.

WITNESSETH:

WHEREAS, the Historic Standish Estates located in Marion County, Indiana was established by and is subject to a certain "Declaration of Covenants and Restrictions for Historic Standish Estates (hereafter "Declaration"), which was recorded on March 20, 1998 as **Instrument No. 1998-0045461** in the Office of the Recorder of Marion County, Indiana; and

WHEREAS, the original developer of Historic Standish Estates, pursuant to the authority granted in the Declaration, caused to be incorporated under the laws of the State of Indiana a nonprofit corporation presently under the name "Historic Standish Estates Homeowners Association, Inc.." (hereafter, "Corporation"), whereby all Owners in Historic Standish Estates are Members of the Association; and

WHEREAS, Paragraph 23 of the Declaration states that the Declaration's provisions may be amended by the affirmative vote of not less than Seventy-Five Percent (75%) of all Owners at a meeting of the members duly called for such purpose; and

WHEREAS, the Owners and Members within Historic Standish Estates desire to amend and restated the provisions of the Declaration; and

WHEREAS, after written notice was duly given, a Special Meeting of the Corporation was held on October 18, 2005, at which at quorum was present; and

WHEREAS, at said Special Meeting, the votes of not less than Seventy-Five Percent (75%) of all Owners cast at said meeting were cast in favor of the following amendments to the Declaration; and

NOW, THEREFORE, the Declaration is hereby amended and restated as set forth in the preceding Table of Contents and as follows:

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

(a) "Applicable Date" means the date determined pursuant to Paragraph 10(b) of this Declaration.

(b) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Corporation, as hereinafter defined. The Articles of Incorporation are incorporated herein by

reference.

- (c) "Board of Directors" means the governing body of the Corporation elected by the Members in accordance with the By-Laws of the Corporation.
- (d) "Building" means any one of the separate structures which has two attached Dwelling Units.
- (e) "By-Laws" shall mean the Code of By-Laws of the Corporation and shall provide for the election of directors and officers and other governing officials of the Corporation. The By-Laws are incorporated herein by reference.
- (f) "Common Area" means the ground designated as such upon the Plat of Historic Standish Estates.
- (g) "Common Expense" means expenses for administration of the Corporation, and expenses for the upkeep, maintenance, repair and replacement of the Common Area and such exterior portions of the Lots and Dwelling Units as designated in this Declaration, and any other costs or expense incurred by the Corporation for the benefit of the same or the Owners, and all sums lawfully assessed against the Members of the Corporation.
- (h) "Corporation" means Historic Standish Estates Homeowners Association, Inc., an Indiana nonprofit corporation, its successors and assigns, whose members shall be the Owners of Lots, or appointees as provided in Paragraph 11 of this Declaration; such Corporation being more particularly described in Paragraph 10 of this Declaration.
- (i) "Declarant" shall mean and refer to Hawthorne Indiana, Ltd., an Indiana corporation, and any successors and assigns of it whom it designates in one or more written recorded instruments, to have the rights of Declarant hereunder including, but not limited to any mortgagee acquiring title to any portion of the Tract pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.
- (j) "Dwelling Unit" means the living unit located upon a Lot, and the garage appurtenant thereto.
- (k) "Lot" means any plot of ground designated as such upon the recorded Plat of Historic Standish Estates and upon which one (1) Dwelling Unit is constructed, is to be constructed or has existed. When Lot is used it shall be deemed to include the Dwelling Unit located thereon.
- (l) "Member" means a member of the Corporation.
- (m) "Mortgagee" means the holder of a first mortgage lien on a Lot.
- (n) "Historic Standish Estates" means the name by which the Tract, as described in Paragraph A above, which is the subject of this Declaration and which the Corporation manages, shall be known.

(o) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, who owns the fee simple title to a Lot.

(p) "Plat" means the plat of the Tract prepared by Schneider Engineering Corporation, certified by Edward G. Giacoletti, a registered land surveyor, under date of March 20, 1998, and recorded as Instrument Number 98-0045462 in the office of the Recorder of Marion County, Indiana, which is incorporated herein by reference.

(q) "Tract" means the real estate described in Paragraph A above.

2. Declaration. Declarant hereby expressly declares that the Tract shall be held, conveyed and transferred in accordance with the provisions of this Declaration.

3. Description of Historic Standish Estates. Historic Standish Estates consists of thirty (30) Lots numbered 1 through 30 inclusive, together with the Common Area as designated on the Plat. The Common Area and the size of the Lots are as designated on the Plat. The legal description for each Lot in Historic Standish Estates shall be in the following form:

Lot _____ in Historic Standish Estates, a subdivision in Marion County, Indiana, as per plat thereof recorded _____, 19___, as Instrument Number _____ in the Office of the Recorder of Marion County, Indiana.

4. Lots and Easements. The boundaries of each Lot in Historic Standish Estates shall be as shown on the Plat; provided, however, in the event any vertical boundary line of any Dwelling Unit does not coincide with the actual Lot line because of inexactness of construction, settling after construction or for any other reasons, whether from the initial construction or subsequent reconstruction, the boundary lines shall be deemed to be treated for purposes of occupancy, possession, maintenance, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent easements for exclusive use shall exist in favor of the Owner of each Lot in and to such base line outside the actual boundary line of the Lot.

5. Common Area. Common Area includes all the area designated as such on the recorded Plat of Historic Standish Estates.

6. Ownership of Common Area. The Common Area shall be conveyed to or owned by the Corporation, and shall be held for the use and enjoyment of the Members, all of whom shall have the non-exclusive right and easement of enjoyment in and to the Common Area which right shall pass with title to every Lot, subject to the provisions of this Declaration, including but not limited to, the following:

(a) The right of the Corporation, upon approval by a written instrument signed by two-thirds of all Members by two-thirds of all first mortgagees, to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed by the Corporation.

(b) The right of the Corporation to adopt such rules and regulations regarding the Common Area as it deems necessary as provided in Paragraph 11(d).

(c) The Common Area in Historic Standish Estates shall be conveyed to or owned by the Corporation at the time of conveyance of the first Lot in Historic Standish Estates.

7. Delegation of Use of the Common Area. Any Member may delegate, in accordance with provisions of this Declaration and the rules or regulations promulgated by the Corporation, his right of enjoyment, and use of the Common Area and facilities to members of his family, his tenants or contract purchasers who reside on any Lot.

8. Encroachments and Easements in Common Area. If by reason of inexactness of construction, settling after construction or for any other reasons, any Common Area encroaches upon any Lot, an easement shall be deemed to exist and run to the Corporation for the maintenance, use and enjoyment of such 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 common facilities, if any, located in any other Dwelling Units or in the Common Area and serving his Dwelling Unit.

9. 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 delivery vehicles shall have the right to enter upon Common Area in the Tract 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 underground Utilities, including but not limited to water, sewers, gas, cable television, telephone and electricity on the Tract; provided, however, nothing herein shall permit the installation of sewers, electric lines, water line or other utilities, except as initially designed and approved by Declarant on the Plat or as thereafter may be approved by Declarant or by the Board of Directors. By virtue of this easement the electrical and telephone utilities are expressly permitted to erect and maintain the necessary equipment on the Tract and to affix and maintain electrical and telephone wires, circuits and conduits on and under the exterior walls of the Dwelling Units. In the event any utility furnishing service should request a specific easement by a separate recordable document, Declarant shall have the right to grant such easement on such Tract, without conflicting with the terms of this Paragraph. The easements granted herein shall in no way affect any other recorded easement on the Tract.

An easement is also granted to the Corporation, its officers, agents and employees and to any management company selected by the Corporation to enter in or to cross over the Common Area to perform its duties.

10. Corporation; Membership; Voting; Functions.

(a) Membership in Corporation. Each Owner of a Lot which is subject to assessment shall, automatically upon becoming an Owner, be and become a Member of the Corporation and shall remain a Member until such time as his ownership of a Lot ceases, but membership shall terminate when such Owner ceases to be an Owner, and will be transferred to the new Owner of his Lot; provided, however, that any person who holds the interest of an Owner in a Lot merely as security for the performance of an obligation shall not be a member until and unless he realizes upon his security, at which time he shall automatically be and become an Owner and a Member of the Corporation.

(b) Class and Voting Rights. The Corporation shall have one (1) class of membership, which shall be all. Each Member shall be entitled to one (1) vote for each Lot of which such Member is the owner with respect to each matter submitted to a vote of Members upon which the Members are entitled to vote. When more than one (1) person constitutes the Owner of a particular Lot, all such persons shall be Members of the Corporation, but all of such persons shall have only one (1) vote for such Lot, which vote shall be exercised as they among themselves determine, but in no event shall more than one (1) vote be cast with respect to any such Lot.

(c) Functions. The Corporation has been formed for the purpose of providing for the maintenance, repair, upkeep, replacement, administration, operation and ownership of the Common Area and for the maintenance, repair and replacement of such exterior portions of the Lots as designated in this Declaration, to pay taxes assessed against and payable with respect to the Common Area and to pay any other necessary expenses and costs in connection with the Common Area, and to perform such other functions as may be designated to it to perform under this Declaration.

11. Board of Directors.

(a) Management. The business and affairs of the Corporation shall be governed and managed by the Board of Directors. No person shall be eligible to serve as a member of the Board of Directors unless he is, or is deemed in accordance with this Declaration to be, an Owner.

(b) Duties of the Board of Directors. The Board of Directors shall be the governing body of the Corporation representing all of the Owners and being responsible for the functions and duties of the Corporation, including, but not limited to, providing for the administration of the Tract, the management, maintenance, repair, upkeep and replacement of the Common Area (unless the same are otherwise the responsibility or duty of Owners), and the maintenance, repair, upkeep and replacement of such exterior portions of the Dwelling Units and Lots as designated in this Declaration, and the collection and disbursement of the Common Expenses. The Board may, on behalf of the Corporation, employ a reputable and recognized professional property management agent (herein called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary, provided any such management agreement shall be for a term of three (3) years or less and shall provide that any such agreement may be terminated by either party with or without cause upon sixty (60) days written notice to the other party. Any decision not to employ a professional property management agent shall require the prior consent of the Owners of at least sixty-seven percent (67%) of the total number of Lots and fifty-one percent (51%) of the vote of Mortgagees whose mortgage interests have been made known to the Board of Directors pursuant to this Declaration. The Managing Agent, if one is employed, shall assist the Board in carrying out its duties, which include, but are not limited to:

(i) Protection, repair and replacement of the Common Area, unless the same are otherwise the responsibility or duty of Owners of Lots; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Corporation, the Board or any Managing Agent must provide any on-site or roving guards, security service or security system for protection or surveillance, and the same need not be furnished;

(ii) Procuring of utilities in connection with the Lots and Dwelling Units, removal of garbage and waste, and snow removal from the Common Area;

- (iii) Landscaping, painting, decorating, furnishing, maintenance and upkeep of the Common Area, and such exterior portions of the Dwelling Units and/or Lots as designated in this Declaration
 - (iv) Surfacing, paving and maintaining any private roads constituting a part of the Common Area;
 - (vi) Preparation of the proposed annual budget, a copy of which will be mailed or delivered to each Owner at the same time as the notice of annual meeting is mailed or delivered;
 - (vii) Preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year;
 - (viii) Keeping a current, accurate and detailed record of receipts and expenditures affecting the Common Area and the business and affairs of the Corporation, specifying and itemizing the Common Expenses; all records and vouchers (including current copies of the Declaration, Articles of Incorporation, By-Laws and Rules) shall be available for examination by an Owner, Mortgagee, insurer or guarantor of a first mortgage at any time during normal business hours;
 - (ix) Procuring and maintaining for the benefit of the Corporation and the Board the insurance coverages required under this Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable;
 - (x) Paying taxes assessed against and payable with respect to the Common Area and paying any other necessary expenses and costs in connection with the Common Area; and
 - (xi) Furnishing, upon request of any Mortgagee, insurer or guarantor of a first mortgage, an audited financial statement for the immediately preceding fiscal year.
- (d) Powers of the Board of Directors. The Board of Directors shall have such powers as are reasonably necessary or appropriate to accomplish the performance of its duties. These powers include, but are not limited to, the power:
- (i) To purchase for the benefit of the Owners such equipment, materials, labor, and services as may be necessary in the judgment of the Board of Directors;
 - (ii) To employ legal counsel, architects, engineers, contractors, accountants, and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of the Corporation;
 - (iii) To employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Common Area and such exterior portions of the Dwelling Units and/or Lots as designated in this Declaration;
 - (iv) To include the costs of all of the above and foregoing as Common Expenses of the Corporation and to pay all of such costs therefrom;

(v) To open and maintain a bank account or accounts in the name of the Corporation and to designate the signatories thereto;

(vi) To adopt, revise, amend, and alter from time to time reasonable rules and regulations with respect to use, occupancy, operation, and enjoyment of the Tract, including the Lots and Common Area, provided that the Board shall give advance written notice to the Owners of such rules and any revision, amendment, or alteration thereof.

(e) Limitation on Board Action. The authority of the Board of Directors to enter into contract shall be limited to contracts involving a total expenditure of less than Five Thousand Dollars (\$5,000.00), unless the prior approval of a Majority of Owners (as defined in Section 3.5(e) of the By-Laws) is obtained, except in the following cases:

(i) Supervision and management of the replacement or restoration of any portion of the Tract damaged or destroyed by fire or other casualty, where the cost thereof is payable out of insurance proceeds actually received; and,

(ii) Proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; however, specific items within the budget need not be approved separately by the Owners at the annual meeting. The Board may also reallocate funds to items in the budget so long as the total budgeted funds are not exceeded and by doing so, the total budget will not be increased; and

(iii) Expenditures necessary to deal with emergency conditions in which the Board of Directors reasonably believes there is insufficient time to call a meeting of the Owners.

The said Five Thousand Dollar (\$5,000.00) maximum shall automatically be adjusted every five (5) years from the date of execution of these By-Laws to reflect changes in the purchasing power of the dollar, as determined by the most recently published annual GNP Implicit Price deflator or any comparable index.

(f) Compensation. No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority vote of the Owners. The Managing Agent, if any is employed, shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

(g) Non-Liability of Directors. The Directors shall not be liable to the Owners or any other persons for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Corporation shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Corporation, unless any such contract shall have been made in bad faith. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of the Corporation.

(h) Additional Indemnity of Directors. The Corporation shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Corporation, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The Corporation shall also reimburse to any such Director the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority vote of the Owners that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Corporation or statements or advice made by or prepared by the Managing Agent (if any) or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Corporation to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

(i) Bond. The Board of Directors shall provide blanket fidelity bonds for the Managing Agent (if any), the treasurer of the Corporation, and such other officers or directors of the Corporation that handle or are responsible for funds indemnifying the Corporation against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors (provided, however, in no event shall the aggregate amount of the bond be less than a sum equal to three (3) months aggregate assessments on all Dwelling Units) and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. Fidelity bonds shall name the Corporation as an obligee and shall contain waivers of all defenses based upon the exclusion of persons serving without compensation from the definition of 'employees' or similar terms or expressions. Such bonds shall provide that they may not be canceled or substantially modified for any reason without at least ten (10) days prior written notice to the Corporation. The expense of any such bonds shall be a Common Expense.

12. Real Estate Taxes. Real estate taxes are to be separately assessed and taxed to each Lot. In the event that for any year the real estate taxes are not separately assessed and taxed to each Lot but are assessed and taxed on the Tract or part thereof as a whole, without a breakdown for each Lot, then each Owner shall pay his proportionate share of the real estate taxes assessed to the land comprising the Tract or that part thereof that is assessed as a whole. Any real estate taxes or other assessments which are chargeable against the Common Area shall be paid by the Corporation and treated as a Common Expense.

13. 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 Expense unless otherwise determined by the Corporation.

14. Maintenance, Repairs and Replacements. Maintenance, repairs, replacements and upkeep of the Common Area (including the private streets) shall be furnished by the Corporation, as a part of its duties, and the cost thereof shall constitute a part of the Common Expenses.

(a) Exterior Maintenance. In addition to maintenance upon the Common Area, the Corporation shall provide exterior maintenance upon each Lot which is subject to assessment hereunder as follows:

(i) paint, repair, replacement and maintenance of roofs, gutters, down spouts, mailboxes, exterior lights and exterior building surfaces of the Dwelling Unit and applicable garage (except that garage doors shall be maintained only as described in (ii) immediately below). Such exterior maintenance shall not include glass surfaces, screens and screen doors, door and window fixtures and other hardware and such other items as the Board of Directors may so designate (unless specifically designated in this Declaration as the Corporation's obligation) so long as such items of exception shall apply to all Lots equally.

(ii) stain or paint the exterior of all exterior doors, including garage doors.

(iii) repair, replacement and maintenance of the party fences separating Lots with abutting Dwelling Units and the concrete walkways provided from the back of each Dwelling Unit to its applicable garage.

(iv) maintenance of lawns and ornamental trees and foundation bedding as existing at the time of purchase by original Owner, but any repair and replacement of such items shall be reasonable in amount and size at the discretion of the Board of Directors. (All exterior flowering or blooming plants shall be provided and maintained by each Owner).

(v) repair, replacement and maintenance of parking areas, driveways and sidewalks.

(vi) snow removal of parking areas, driveways and sidewalks, except within fenced areas.

(b) Owners Maintenance. Each Owner shall be responsible for maintaining and keeping his Lot and all improvements thereon in a good, clean and sanitary condition and shall do all work thereon which is not required hereunder to be performed by the Corporation, including the interiors of patio areas and patio fences. The Corporation shall be responsible for repairing and maintaining any patio fences except for painting or staining the interior unless the Board of Directors shall otherwise provide.

(c) Shared Utilities Easement. With respect to each Building, consisting of two (2) Dwelling Units, there will be certain shared underground sewer and water utility conveyance and other equipment and structures for the joint benefit of each such Dwelling Unit as well as certain sewer and water utility conveyance and other equipment and structures for the individual benefit of each Dwelling Unit. The Corporation hereby reserves unto itself and to any applicable utility companies an easement over and under each Lot for purposes of repair, replacement and maintenance of any such sewer and water utility conveyance and other equipment and structures.

Notwithstanding any obligation or duty of the Corporation to repair or maintain any Lot or the Common Area, if, due to the willful, intentional or negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant, invitee or other occupant or visitor of such Owner, damage

shall be caused, or if maintenance, repairs or replacements shall be required thereby which would otherwise be a Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Corporation, unless such loss is covered by the Corporation's insurance with such policy having a waiver of subrogation clause. If not paid by such Owner upon demand by the Corporation, the cost of repairing such damage shall be added to and become a part of the assessment to which such Owner's Lot is subject.

If any owner shall fail so to maintain and keep his property or any part thereof in a good, clean and sanitary condition, the Corporation may perform any work necessary to do so and charge the Owner thereof for such cost, which cost shall be added to and become a part of the Owner's assessment, and such cost shall be immediately due, and shall be secured by the Corporation's lien on the Owner's property.

So long as the Tract is subject to this Declaration, each Owner, by his acceptance of a deed to any Lot, irrevocably grants to the Corporation, its agents and employees, the right to enter upon, across and over the Lot owned by such Owner under such conditions as are reasonably necessary to effect the maintenance, cleaning, repair or other work contemplated herein.

15. Architectural Control

(a) The Architectural Review Board. As a standing committee of the Corporation, there shall be, and hereby is, established an Architectural Review Board consisting of three (3) or more persons as may, from time to time, be provided in the By-Laws. The Architectural Review Board shall be appointed by the Board of Directors. In the absence of the Architectural Review Board, the Board of Directors shall act as such.

(b) Purposes. The Architectural Review Board shall regulate the external design, appearance, use, location and maintenance of the Tract and of improvements thereon in such manner as to preserve and enhance values and to maintain a harmonious relationship among structures, improvements and the natural vegetation and topography.

(c) Conditions. No improvements, alterations, repairs, change of colors, excavation, changes in grade or other work which in any way alters the exterior of any Lot or Dwelling Units or other improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant to an Owner shall be made or done without the prior approval of the Architectural Review Board, except as otherwise expressly provided in this Declaration or pursuant to rules adopted by the Board of Directors. No building, fence, wall, Dwelling Unit, or other structure or improvements of any kind shall be commenced, erected, maintained, improved, altered, made or done on any Lot without the prior written approval of the Architectural Review Board and as required by subparagraph (f) below.

(d) Procedures. In the event the Architectural Review Board fails to approve, modify or disapprove in writing an application within thirty (30) days after such application (and all plans, drawings, specifications and other items required to be submitted to it in accordance with such rules as it may adopt) have been given to it, approval will be deemed granted by the Architectural Review Board. A decision of the Architectural Review Board may be appealed to the Board of Directors which may reverse or modify such decision by a two-thirds (2/3) vote of the Directors then serving. The

Architectural Review Board may establish committees consisting of two (2) or more of its members, which committees shall exercise such powers of the Board as may be delegated to them.

(e) Maintenance of Architectural Control. The Association may not waive or abandon the procedure for regulating and enforcing the architectural design or exterior appearance of the Lots or for maintaining the exterior of the Lots or the Common Area (including the upkeep of common fences, driveways, lawns and plantings) without the prior written approval of all Owners and all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of this Declaration.

(f) Additional Approval. The Tract lies within a designated Historic District. Therefore, anything to the contrary in this section notwithstanding, no improvements, alterations, repairs, change of colors, excavation, changes in grade or other work which in any way alters the exterior of any Lot or the Dwelling Units or other improvements located thereon from its natural or improved state existing on the date such Lot was first conveyed in fee by the Declarant to an Owner and no building, fence, wall, Dwelling Unit, or other structure or improvements of any kind shall be commenced, erected, maintained, improved, altered, made or done on any Lot without compliance with any and all rules and regulations or, if required, the prior written approval of the Fort Harrison Architectural Review Commission, or its successor in interest, including the requirements of the Standard Covenants attached hereto as Exhibit B.

16. Party Walls.

(a) General Rules of Law to Apply. Each wall which is built as a part of the original construction of any Dwelling Unit and garage upon the Tract and which connects two Dwelling Units and applicable garages shall constitute a party wall and, to the extent not inconsistent with the provisions of this Paragraph, the general rules of law regarding party walls and liability for property damage due to negligent or intentional or willful acts or omissions shall apply thereto.

(b) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall, proportionately.

(c) Destruction by Fire or Other Casualty. If any party wall is destroyed or damaged by fire or other casualty, then, to the extent that such damage is not covered by insurance maintained by any of the Owners who make use of such party wall, and repaired out of the proceeds of same, any Owner who has used the wall may restore it, and if the other Owner thereafter makes use of the wall, they shall contribute to the cost of restoration thereof in equal proportions without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent, intentional or willful acts or omissions.

(d) Weatherproofing. Notwithstanding any other provision of this Paragraph, to the extent that such damage is not covered and paid by the insurance provided for herein, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(e) Right of Contribution Runs with Land. The right of any Owner to contribution from any other Owner under this Paragraph shall be appurtenant to the land and shall pass to such Owner's successors in title.

(f) Arbitration. In the event of any dispute arising concerning a party wall, or under the provisions of this Paragraph, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators. (Should any party fail or refuse to appoint an arbitrator within ten (10) days after written request therefor from another party, the Board of Directors of the Corporation shall select an arbitrator for the refusing party.) The cost of the arbitrators shall be borne equally by the parties.

17. Assessments

(a) Annual Accounting. Annually, within ninety (90) days after the close of each fiscal year of the Corporation, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by a certified public accountant, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

(b) Proposed Annual Budget for Common Expense. Annually, before the date of the annual meeting of the Corporation, the Board of Directors shall cause to be prepared a proposed annual budget for the next fiscal year estimating the total amount of the Common Expenses for the next fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Corporation for adoption, and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the next fiscal year. At the annual meeting of the Owners at which a quorum is present, the annual budget may be approved in whole or in part or may be amended in whole or in part by a majority vote of the Owners; provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting, either the proposed annual budget or the proposed annual budget as amended. The annual budget, the Regular Assessments and all sums assessed by the Corporation shall be established by using generally accepted accounting principles applied on a consistent basis.

The annual budget shall include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Area and such exterior portions of the Lots and Dwelling Units as designated in this Declaration, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Area and such exterior expenses of the Lots as designated in this Declaration shall be maintained by the Corporation in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Marion County, Indiana selected from time to time by the Board.

The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Regular Assessments as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Corporation, there is no annual budget approved by the Owners as herein provided for such next fiscal year, the Owners shall pay Regular Assessments based upon the Board's proposed annual budget.

(c) Regular Assessments. The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the current fiscal year as set forth in said budget, contain a proposed assessment against each Lot, which shall be the same amount for each Lot. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Lot (herein called the "Regular Assessment"). The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Lot shall be paid in advance in equal monthly installments commencing on the first day of the first month of each fiscal year and monthly thereafter through and including the first day of the last month of such fiscal year. Payment of the monthly installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors; provided, however, Owners may elect to pay assessments quarterly, semi-annually or annually, in advance. The Regular Assessment for the current fiscal year of the Corporation shall become a lien on each separate Lot and Dwelling Unit as of the first day of each fiscal year of the Corporation, even though the final determination of the amount of such Regular Assessment may not have been made by that date. Monthly installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Corporation, and neither the Board nor the Corporation shall be responsible for providing any notice or statements to Owners for the same.

(d) Special Assessments. From time to time Common Expenses or Additional Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and provided that any such assessment for Common Expenses shall have the assent of two-thirds (2/3) of the votes of each class of members who are voting in person or by proxy at a meeting duly called for this purpose at which a quorum is present, the Board of Directors shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each Lot, prorated in equal shares (herein as to both Common Expenses and Additional Expenses called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures and to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in this Declaration.

(e) Failure of Owner to Pay Assessments. No Owner may exempt himself or herself from paying Regular or Special Assessments or any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas, or by abandonment of the Lot belonging to such Owner. Each Owner shall be personally liable for the payment of all Regular, Special and, if applicable, Additional Improvements Assessments. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular or Special Assessments when due, the lien for such assessment on the Owner's Dwelling Unit may be foreclosed by the Board for and on behalf of the Corporation as provided by law. Upon the failure of an Owner to make payments of any Assessments within ten (10) days after such are due, the Board, in its discretion, may:

- (1) impose a reasonable late charge, which will be considered an addition to the assessment, in an amount to be determined by the Board;

(2) accelerate the entire balance of the unpaid Assessments for the remainder of the fiscal year and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary;

(3) suspend such Owner's right to vote as provided in the Indiana Nonprofit Corporation Act of 1991, as amended.

In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Lot shall be jointly and severally liable for the payment to the Corporation of reasonable rental for such Lot, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Lot and to collect the rentals and other profits therefrom for the benefit of the Corporation to be applied to the unpaid Regular or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular or Special Assessments without foreclosing or waiving the lien securing the same. In any action to recover a Regular or Special, whether by foreclosure or otherwise, the Board, for and on behalf of the Corporation, shall be entitled to recover costs and expenses of such action incurred, including but not limited to collection costs of the Managing Agent and reasonable attorney's fees, from the Owner of the respective Lot.

(h) Subordination of Assessment Lien to Mortgage. Notwithstanding anything contained in this Declaration, the Articles or the By-Laws, any sale or transfer of a Lot to a mortgagee pursuant to a foreclosure on its mortgage or conveyance in lieu thereof, or a conveyance to any person at a public sale in a manner provided by law with respect to mortgage foreclosures shall extinguish the lien of any unpaid installment of any Regular or Special Assessment as to such installment which became due prior to such sale, transfer or conveyance; provided, however, that the extinguishment of such lien cannot relieve the prior owner from personal liability therefor. No such sale, transfer or conveyance shall relieve the Lot or the purchaser at such foreclosure sale or grantee in the event of conveyance in lieu thereof, from liability for any installments of Regular or Special Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular or Special Assessments, the lien for which has been divested as aforesaid shall be deemed to be a Common Expense collectible from all Owners (including the party acquiring the subject Lot from which it arose).

18. Mortgages.

(a) Notice to Corporation. Any Owner who places a first mortgage lien upon his Lot, or the Mortgagee, shall notify the Secretary of the Corporation thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of this Declaration, the By-Laws or otherwise shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record at the time provided. Unless notification of any such mortgage and the name and address of Mortgagee are furnished to the Secretary, either by the Owner or the Mortgagee, no notice to any Mortgagee as may be otherwise required by this Declaration, the By-Laws or otherwise shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of this Declaration, the By-Laws, a proxy granted to such Mortgagee in connection with the mortgage, or otherwise.

The Corporation shall, upon request of a Mortgagee who has furnished the Corporation with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in

the performance by its borrower of any obligations of such borrower under this Declaration or the By-Laws which is not cured within sixty (60) days.

(b) Notice of Unpaid Assessments. The Corporation shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Lot, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments or other charges against the Lot, which statement shall be binding upon the Corporation and the Owners, and any Mortgagee or grantee of the Lot shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments or charges in excess of the amounts set forth in such statement.

(c) Right of Mortgagee to Pay Real Estate Taxes or Insurance Premiums. Mortgagees shall have the right, but not the obligation, (1) to pay any taxes or other charges against the Common Area which are in default and (2) to pay any overdue premiums on hazard insurance for the Common Area or to secure new hazard insurance for the Common Area on the lapse of a policy. Any Mortgagee making such payment shall be owed immediate reimbursement by the Corporation.

(d) Notice of Condemnation or Casualty Loss. Mortgagees shall be timely notified of any condemnation or casualty loss which affects a material portion of Historic Standish Estates or any Lot. Mortgagees shall also be timely notified of any lapse, cancellation or material modification of any insurance policy or fidelity bond held by the Corporation.

(e) Notice to Insurers and Guarantors. Any guarantor of a first mortgage or any insurer shall, upon notification and request to the Corporation, receive the same notices as are required to be given to Mortgagees.

19. Insurance.

(a) Casualty Insurance. The Corporation shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring all of the Lots and the Common Area in an amount consonant with the full replacement value of the improvements which in whole or in part, comprise the Lots and Common Area. If the Board of Directors can obtain such 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 such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. Such insurance coverage shall be for the benefit of each Owner, the Corporation and if applicable, the Mortgagee of each Owner upon the terms and conditions hereinafter set forth.

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Corporation as hereinabove set forth shall be paid to it or to the Board of Directors, who shall act as the insurance trustees and hold such proceeds for the benefit of the individual Owners and Mortgagees. The proceeds shall be used or disbursed by the Corporation or Board of Directors, as appropriate, and only in accordance with the provisions of this Declaration and any surety bond or bonds obtained by the Board of Directors concerning the officers of the Corporation as provided in the By-Laws shall specifically include protection for any insurance proceeds so received.

The interest of each damaged Owner in the trust fund of insurance proceeds shall be the ratio of the direct damage of such Owner's damaged Lot to the damages of all Lots and Common Area directly damaged by any event insured under the said master casualty insurance policy.

Such master casualty insurance policy, and "all risk" coverage, if obtained, shall (to the extent the same are reasonably obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) contains an endorsement that such policy shall not be terminated for nonpayment of premiums or for any other reason or shall not be substantially modified without at least ten (10) days prior written notice to Mortgagees and at least ten (10) days prior written notice to the Corporation.

For any casualty loss sustained to an Owner's Lot or Dwelling Unit which is covered by the above insurance, the Owner thereof shall be responsible for paying the deductible for each claim, not to exceed \$1,000.00 per claim.

Each Owner shall be solely responsible for loss or damage to the contents of his Dwelling Unit however caused and his personal property stored elsewhere on the Tract and the Corporation shall have no liability to the Owner for loss or damage to the contents of any Dwelling Unit or any personal property stored elsewhere on the Tract. 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.

(b) Public Liability Insurance. The Corporation 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 but not less than \$1,000,000 for bodily injury, including deaths of persons and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover the Corporation, the Board of Directors, any committee or organ of the Corporation or Board, any Managing Agent appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Tract, all Owners of Lots and all other persons entitled to occupy any Lot or Dwelling Unit. Such public liability insurance policy shall contain a "severability of interest" clause or endorsement which shall preclude the insurer from denying the claim of an Owner because of negligent acts of the Corporation or other Owners. Such public liability insurance policy shall contain a provision that such policy shall not be canceled or substantially modified without at least ten (10) days written notice to the Corporation.

(c) Other Insurance. The Corporation shall also obtain any other insurance required by law to be maintained, including but not limited to worker's compensation and occupational disease insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including, but not limited to, liability insurance on vehicles owned or leased by the Corporation and officers' and directors' liability policies. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Corporation, the Board of Directors and any Managing Agent acting on behalf of the Corporation. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under the policies purchased by the Board of Directors the proceeds of which are payable to the Board or the Corporation.

(d) General Provisions. The premiums for all insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Corporation, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof 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 Corporation who is required to send notices of meetings of the Corporation.

In no event shall any distribution of insurance proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance or insurance policy as it applies to such Owner's share of such proceeds. In such event any remittances shall be to the Owner and his Mortgagee jointly. The same method of distribution shall also apply to the distribution of any condemnation awards in connection with any taking of any of the Common Area. In the event of condemnation of all or any part of the Common Area the Corporation, as owner of the Common Area, shall represent the Owners in any negotiation or settlement regarding such condemnation. No Owners or any other party shall have priority over any rights of a Mortgagee pursuant to its mortgage in the case of distribution to such owners of insurance proceeds or condemnation awards for losses to or a taking of Common Area. Notwithstanding the foregoing, under no circumstances shall any distribution of insurance proceeds or condemnation awards be made by the Corporation to any Owners or Mortgagees, if to do so would be in violation of the Indiana Nonprofit Corporation Act or if the same would constitute a distribution of earnings, profits or pecuniary gain to the members of the Corporation; in any such event, any such insurance proceeds or condemnation awards shall be retained by the Corporation for use in the payment of its expenses of operation.

(e) Insurance by Owners. Each Owner shall have the right to purchase such additional insurance at his own expense as he may deem necessary.

(f) Condemnation Awards. All proceeds payable as a result of condemnation shall be paid to the Corporation who shall act as trustee and hold such proceeds for the benefit of the individual Owners and Mortgagees. Such proceeds shall be distributed as provided above.

20. Casualty of Dwelling Units and Common Areas.

(a) Restoration of Dwelling Units.

(1) Damage to or destruction of any Dwelling Unit due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Corporation and the proceeds of insurance, if any, shall be applied for that purpose.

(2) If the insurance proceeds, if any, received by the Corporation as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, the cost for restoring the damage and repairing and reconstructing the Dwelling Units so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by the owners of the Dwelling Units damaged in proportion to the ratio that damages to an Owner's Dwelling Unit have to the total damage to all Dwelling Units that are damaged. Any such amounts payable by the Owners of damaged Dwelling Units shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein.

(3) For purposes of subparagraphs (1) and (2) above, repair, reconstruction and restoration shall mean construction or rebuilding of the Dwelling 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) Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Corporation 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.

(5) 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 Dwelling Units are to be reconstructed and repaired, in payment of the costs of reconstruction and repair in the following manner:

(i) If the estimated cost of reconstruction and repair of each Dwelling Unit is more than One Hundred Thousand Dollars (\$100,000), then the construction fund shall be disbursed in payment of such costs upon approval of an architect 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 architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect, or other persons who have rendered services or furnished materials in connection with the work, (1) 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; (2) that there is no other outstanding indebtedness known to the said architect for the services and materials described; and (3) that the costs, as estimated by said architect for the work remaining to be done subsequent to the date of such certificate, do not exceed the amount of the construction fund remaining after payment of the sum so requested.

(ii) Encroachments upon or in favor of Dwelling Units 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 Owner upon whose property such encroachment exists, provided that such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Dwelling Units were originally constructed. Such encroachments shall be allowed to continue in existence for so long as the Dwelling Units stand.

(iii) In the event that there is any surplus of monies in the construction funds after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums shall be distributed to the Owners of the Dwelling Units 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 damaged Dwelling Units shall not constitute a waiver of any rights against another Owner for committing willful or malicious damage.

(b) Restoration of Common Area. In the event of damage to or destruction of any of the Common Area due to fire or any other casualty or disaster, the Corporation shall promptly cause the same to be repaired and reconstructed. The proceeds of insurance carried by the Corporation, if any, shall be applied to the cost of such repair and reconstruction

