

**AMENDED AND RESTATED  
CODE OF BYLAWS  
OF  
THE HOLCOMB ESTATE  
HORIZONTAL PROPERTY REGIME  
AND OF  
THE HOLCOMB ESTATE OWNERS ASSOCIATION, INC.**

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**CODE OF BYLAWS OF  
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**ARTICLE 1**

**Identification and Applicability**

**Section 1.01. Identification and Adoption.** These Bylaws are adopted simultaneously with the execution of a certain Declaration creating The Holcomb Estate Horizontal Property Regime to which these Bylaws are attached and made a part. The Declaration of Horizontal Property Ownership of The Holcomb Estate Horizontal Property Regime, (Declaration), is incorporated herein by reference, and all of the covenants, rights, restrictions and liabilities therein contained shall apply to and govern the interpretation of these Bylaws. Except as otherwise provided in Section 1.02 hereof, the definitions and terms as defined and used in the Declaration shall have the same meaning in these Bylaws and reference is specifically made to paragraph 1 of the Declaration containing definitions of terms. The provisions of these Bylaws shall apply to the Property and the administration and conduct of the affairs of the Association. These Bylaws shall also constitute the Bylaws of the Association.

**Section 1.02. Additional Definitions.** Notwithstanding any other definition in the Declaration, the following terms as used in these Bylaws shall have the following meanings:

- (a) **“Articles”** means the Articles of Incorporation of the Association.
- (b) **“Assessment”** means all sums lawfully assessed against the Owners or as declared or authorized by the Act, the Declaration, any Supplementary Declaration, the Articles, or these By-Law
- (c) **“Appurtenance”** means property that is considered incidental or related to the principal Property for purposes such as access, conveyance or inheritance.
- (d) **“Building”** means any structure on the Tract in which one or more Condominium Units are located, including any additional structure(s) containing one or more Condominium Units which may be submitted and subjected to the Act and the Declaration by Supplemental Declarations.
- (e) **“Common Areas”** means
  - (1) the land portion of the Tract except as otherwise provided herein,
  - (2) the foundations, roofs and exterior wall surfaces of the Buildings,
  - (3) the yards, gardens, open spaces, landscaping, parks, woodland areas, sidewalks, driveways, and parking areas, except to the extent the same are otherwise classified and defined herein as Limited Areas,

- (4) the irrigation system including all buried and above ground piping and controls, sprinkler heads and other supporting equipment,
- (5) central electricity, telephone, gas, water, and sanitary sewer lines or mains serving the Condominium Units,
- (6) exterior lighting fixtures and electrical service lighting the exterior of the Buildings and certain of the other Common Areas unless separately metered to a particular Condominium Unit,
- (7) master television antenna, cable or other telecommunications system with connecting wiring and outlets to each Condominium Unit, if any,
- (8) pipes, ducts, insulation, electrical wiring and conduits and public utilities lines that serve more than one Condominium Unit,
- (9) the recreational facilities, if any, located on the Tract,
- (10) sub-floors, ceilings and interiors of all structural walls, including all exterior perimeter and other load-bearing walls, walls between attached Condominium Units and walls between the garage and remainder of each Condominium Unit, except to the extent the same are otherwise classified and defined herein as part of the Condominium Unit or Limited Areas, and
- (11) all structures, structural components, facilities and appurtenances located outside of the boundary lines of the Condominium Units, except those areas and facilities expressly classified and defined herein as Limited Areas or as part of the Condominium Unit.

(f) **“Common Expenses”** means expenses of administration of the Association and expenses for the upkeep, maintenance, repair and replacement of the Common Areas and Limited Areas to the extent provided in the Declaration and all sums lawfully assessed against the Owners by the Association or as declared by the Act, this Declaration or the Bylaws.

(g) **“Condominium Unit”** means each one of the fifty-three (53) living units constituting The Holcomb Estate. In general, each individual living unit consists of all the space bounded by the inner surfaces of the walls, ceilings, and subfloors and all fixtures, facilities, utilities, equipment, appliances, and structural components designed and intended solely and exclusively for use and benefit of the Condominium Unit. The Appurtenances and Boundaries of the Condominium Unit are more particularly described and identified in Paragraphs 4 and 5 of the Declaration.

(h) **“Co-owners”** means the Owners of all the Property. See (m) and (p) below.

(i) **“Directors”** means all the members of the Board of Directors and “Director” means any individual member thereof.

(j) **“Limited Areas”** means those Condominium Units to which use thereof is limited are as follows:

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

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

(3) Air conditioning compressors, if any, attached to, or located in, a Building are limited to the use of the Condominium Units to which they are connected.

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

(5) Structural separations between Condominium Units or the space that would be occupied by such structural separations may become Limited Areas for the exclusive use of the Owner or Owners of the Condominium Units on either side thereof.

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

(k) **“Managing Agent”** means a reputable and recognized professional property management agent employed by the Board pursuant to Section 3.06.

(l) **“Majority Vote”** means a majority of the votes cast by Members at any duly constituted meeting of the Members at which a quorum is represented in person or by proxy.

(m) **“Member”** means a member of the Association and “Members” means more than one member of the Association.

(n) **“Owner(s)”** means the Person(s), Trust or Institution to which title of a Condominium Unit is recorded with Marion County Recorder. Owners or representatives of an Owner are Members of the Association.

(o) **“Percentage Interest”** means the percentage of undivided interest in the fee simple title to the Common Areas and Limited Areas appertaining to each Condominium Unit. The Percentage Interest of each Condominium Unit shall be equal for all purposes and shall be a percentage equal to the number one hundred (100) divided by the total number of Condominium Units that constitute a part of The Holcomb Estate. Thus, each of the 53 Units in The Holcomb Estate has 1.887 percent interest in the Corporation. Except as otherwise provided or permitted herein, the Percentage Interest appertaining to each separate Condominium Unit in the Common Areas and Limited Areas shall be a permanent nature and shall not be altered except in compliance with all requirements of the Act.

- (p) **“The Percentage Vote”** allocable to the Owner of a Condominium Unit in all matters with respect to The Holcomb Estate and the Condominium Association upon which the Co-owners are entitled to vote shall be the same as the Percentage Interest appertaining to each Condominium Unit.
- (q) **“Property”** means the Tract and appurtenant easements, the Condominium Units, the Buildings, and all other improvements, and property of every kind and nature whatsoever, real, personal or mixed, located upon the Tract and used in connection with the operation, use and enjoyment of The Holcomb Estate, excluding the personal property of Owners.
- (r) **“Regular Assessment”** means the Assessment levied pursuant to Section 6.02.
- (s) **“Special Assessment”** means the Assessment levied pursuant to Section 6.03.
- (t) **“Nonprofit Statute”** means the Indiana Nonprofit Corporation Act of 1991, as the same may be amended from time to time.
- (u) **“Tract”** means the real estate described in Exhibit B of the Declaration and such other portions of the Real Estate as have, as of any given time, been subjected to the Act and the Declaration either by the Declaration or by a Supplemental Declaration.

**Section 1.03. Individual Application.** All of the Owners, future Owners, tenants, future tenants, or their guests and invitees, or any other person that might use or occupy a Condominium Unit or any part of the Property, shall be subject to the restrictions, terms and conditions set forth in the Declaration, the Articles, these Bylaws and the Act, and to any rules and regulations adopted by the Board as herein provided.

## ARTICLE 2

### Meetings of Association

**Section 2.01. Purpose of Meetings.** At least annually, and at such other times as may be necessary, the meetings of the Co-owners shall be held for the purpose of electing the Board (subject to the provisions of Section 3.02 hereof), approving the annual budget, providing for the collection of Common Expenses and for such other purposes as may be required by the Declaration, the Articles, these Bylaws, the Act or the Non Profit Statute.

**Section 2.02. Annual Meetings.** The annual meeting of the Members shall be held in the months of April or May in each calendar year. At the annual meeting, with a Quorum of Owners present or represented by proxy, the Owners shall elect the Board of Directors in accordance with the provisions of these Bylaws and transact such other business as may properly come before the meeting.

**Section 2.03. Special Meetings.** A special meeting of the Members may be called by resolution of the board or upon a written petition of Owners who have not less than ten percent (10%) of the Percentage Vote. The resolution or petition shall be presented to the President or Secretary of the Association (references herein to an officer shall be to that officer of the Association) and shall state the purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

**Section 2.04. Notice and Place of Meetings.** All meetings of the Members shall be held at any suitable place in Marion County, Indiana, as may be designated by the Board. Written notice stating the date, time and place of any meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered or mailed by the Secretary to each Member entitled to vote thereat not less than ten (10) days prior to the date of such meeting. Any written notice delivered to the Owners as part of a newsletter or other publication regularly sent to the Owners constitutes a written notice. All notices shall be mailed by first-class postal service mail, postage prepaid, or delivered to the Owners at their respective addresses as the same shall appear upon the records of the Association. A copy of each such written notice shall also be delivered or mailed simultaneously by the Secretary to each Mortgagee (a) who requests in writing that such notices be delivered to it, and (b) who has furnished the Association with its name and address in accordance with Section 12.01 of these Bylaws. Attendance at any meeting in person by agent or by proxy shall constitute a waiver of notice of such meeting. If an annual or special meeting of Members is adjourned to a different date, time or place, written notice is not required to be given of the new date, time or place so long as the new date, time and place is announced at the meeting pursuant to the Nonprofit Statute before adjournment.

In lieu of written notices from the Association sent pursuant to the above paragraph, an Owner may elect to receive notices from the Association by electronic mail. Any Owner choosing electronic mail shall be deemed to have waived the right to receive notices from the Association by postal service mail or personal delivery. However, any such Owner shall have the right at any time to withdraw his or her election to receive notice by electronic mail, and shall thereafter be sent notices by the Association pursuant to the above paragraph.

**Section 2.05. Voting.**

(a) Number of Votes. All persons who own a Condominium Unit shall jointly (and not severally) be entitled to cast one vote for each Condominium Unit they own on each matter coming before the meeting as to which they are entitled to vote.

(b) Multiple Owners. When more than one (1) person or entity constitutes the Owner of a particular Condominium Unit, all such persons or entities shall be Members of the Association, but all of such persons or entities shall have only one vote applicable to the Condominium Unit, which vote shall be exercised as they among themselves determine, but in no event shall more than one vote be cast with respect to any such Condominium Unit.

(c) **Voting by Corporation or Trust.** Where a corporation or trust is an Owner or is otherwise entitled to vote, the trustee may cast the vote on behalf of the trust and the agent or other representative of the corporation duly empowered by the board of directors of such corporation may cast the vote to which the corporation is entitled. The secretary of the corporation or a trustee of the trust so entitled to vote shall deliver or cause to be delivered prior to the commencement of the meeting a certificate signed by such person to the Secretary stating who is authorized to vote on behalf of said corporation or trust.

(d) **Proxy.** An Owner may vote either in person or by his duly authorized and designated attorney-in-fact. Where voting is by proxy, the Owner shall duly designate his attorney-in-fact in writing, delivered to the Secretary prior to the commencement of the meeting.

(e) **Quorum.** Except where otherwise expressly provided (in the Declaration, these Bylaws, the Act or the Nonprofit Statute), a Majority of Owners in person or by proxy shall constitute a quorum at all meetings of the Members. This means for The Holcomb Estate with 53 Units twenty-seven (27) Owners must be present in person or by proxy for a Quorum to be called.

#### **Section 2.06. Conduct of Meetings.**

(a) **Annual Meeting.** The President shall act as the chairman of all annual meetings of the Association if she or he is present. At all annual meetings, the chairman shall call the meeting to order at the duly designated time and business will be conducted in the following order:

(1) **Reading of Minutes.** The Secretary shall read the minutes of the last annual meeting and the minutes of any special meeting held subsequent thereto, unless such reading is waived by a Majority Vote.

(2) **Treasurer's Report.** The Treasurer shall report to the Owners concerning the financial condition of the Association and answer relevant questions of the Owners concerning the Common Expenses and financial report for the prior fiscal year and the proposed budget for the current fiscal year.

(3) **Budget.** The proposed budget for the current fiscal year shall be presented to the Owners for approval or amendment.

(4) **Election of Board of Directors.** Nominations for the Board may be made by an Owner from those persons eligible to serve. Such Nominations must be in writing and presented to the Secretary at least seven (7) days prior to the date of the annual meeting. Voting for the Board will be by paper ballot. The ballot shall contain the name of each Person nominated to serve as a member of the Board. Each Owner may cast the total number of votes to which he is entitled for as many nominees as are to be elected; however, he shall not be entitled to cumulate

his votes. Those persons receiving the highest number of votes shall be elected. Each voting Owner shall sign his ballot.

(5) **Other Business.** Other business may be brought before the meeting only by decision of the Board of Directors or upon a written request of an Owner submitted to the Secretary of the Association at least seven (7) days prior to the date of the meeting, except that such written request may be waived at the meeting if agreed by a majority of votes.

(6) **Adjournment.**

(b) **Special Meeting.** The President shall act as chairman of any special meetings of the Association if he or she is present. The chairman shall call the meeting to order at the duly designated time and the only business to be considered at such meeting shall be the matters for which such meeting was called, as set forth in the notice of such special meeting.

### ARTICLE 3

#### Board of Directors

**Section 3.01. Management.** The affairs of the Association and The Holcomb Estate shall be governed and managed by the Board of Directors. The Board shall be comprised of seven (7) individuals. (Per Twenty-first Amendment approved at Annual Meeting, April 29, 2008 and filed with Marion County Recorder.)

**Section 3.02. Qualifications.** Any individual who is an Owner is eligible to be a member of the Board of Directors. Where an Owner consists of more than one individual or is not an individual, then one of the individuals constituting the multiple Owner, or a partner, an officer or the trustee of an Owner shall be eligible to serve on the Board, except that no single Condominium Unit may be represented on the Board by more than one individual at a time. Additionally, to be elected and to continue to serve as a Director, the Owner, whether he or she be one of the multiple Owners or be represented as described above, must maintain primary residency in The Holcomb Estate, and be in good standing on the payment of all Regular Assessments and Special Assessments payable to the Association.

**Section 3.03 Term of Office and Vacancy.** Members of the Board shall be elected at each annual meeting of the Association as follows: 2010 – two (2) members, 2011 – two (2) members, 2012 – three (3) members. This pattern of election shall be repeated in subsequent years. Each member of the Board of Directors shall be elected for a term of three (3) years. A Director shall be limited to two successive terms, after which she or he will not be eligible to serve for a period of at least one year. If a Director is one of the Owners of a Condominium Unit owned by additional persons or entities, no such other multiple Owner, partner, officer or trustee of an

Owner of the same Condominium Unit will be eligible to serve for the one year period described in the prior sentence.

Each Director shall hold office throughout the term of his election and until his or her successor is elected and qualified.

Any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining Directors or by vote of the Owners if a Director is removed in accordance with Section 3.04. The Director ~~so~~ filling any vacancy shall serve until the next annual meeting of the Members and until his successor is elected and qualified. At the first annual meeting following any such vacancy, a Director shall be elected by the Owners for the balance of the term of the interim Director.

**Section 3.04. Removal of Directors.** A Director or Directors may be removed with or without cause by vote of a majority of Owners at a special meeting of the Members duly called and constituted for that purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Director so elected shall serve until the next annual meeting of the Members or until his successor is duly elected and qualified.

**Section 3.05. Duties of the Board of Directors.** The Board shall provide for administration of The Holcomb Estate, the maintenance, upkeep and replacement of the Common Areas and Limited Areas (unless the same are otherwise the responsibility or duty of Owners of Condominium Units), and the collection and disbursement of the Common Expenses. The Board shall, on behalf of the Association, employ a Managing Agent upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent shall assist the Board in carrying out its duties, which include, but are not limited to:

- (a) protection, surveillance and replacement of the Common Areas and Limited Areas, unless the same are otherwise the responsibility or duty of Owners of Condominium Units; provided, however, that this duty shall not include or be deemed or interpreted as a requirement that the Association, 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;
- (b) procuring of utilities used in connection with The Holcomb Estate, removal of garbage and waste unless provided by the municipality, and snow removal from the Common Areas as determined by the Board, and where and when applicable, the Limited Areas;
- (c) landscaping, painting, decorating, furnishing, maintaining and repairing the Common Areas and, where applicable, the Limited Areas;
- (d) surfacing, paving and maintaining drives, parking areas and sidewalks;
- (e) assessment and collection from the Owners of the Owner's share of the Common Expenses.
- (f) preparing of the proposed annual budget;

- (g) preparing and delivering annually to the Owners a full accounting of all revenue received and expenses incurred in the prior year;
- (h) keeping a current, accurate and detailed record of receipts and expenditures affecting the Property specifying and itemizing the Common Expenses;
- (i) procuring and maintaining for the benefit of the Owners, the Association and the Board the insurance coverages required by Section 8.01 and such other insurance coverages as the Board, in its Sole discretion, may deem necessary or advisable; and
- (j) making available to Owners and Mortgagees current copies of the Declaration, By-Laws, Articles of Incorporation and rules and regulations governing The Holcomb Estate (“Organizational Documents”) and any other books, records and financial statements of the Association. The Board shall also make available to prospective purchasers of Condominium Units current copies of the Organizational Documents and the most recent annual audited financial statement, if such statement has been prepared. “Available” means available for circumstances. Upon written request by the United States Department of Housing and Urban Development or the Veterans Administration, the Board shall also prepare and furnish within a reasonable time an audited financial statement for the Association for the immediately preceding fiscal year.

**Section 3.06. Powers of the Board of Directors.** The Board shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:

- (a) to employ a Managing Agent to assist the Board in performing its duties;
- (b) to purchase for the benefit of the Owners such equipment, materials, labor and services as may be necessary in the judgment of the Board;
- (c) to employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board may be necessary or desirable in connection with the business and affairs of The Holcomb Estate;
- (d) to employ, designate, discharge and remove such personnel as in the judgment of the Board may be necessary for the maintenance, upkeep, repair and replacement of the Common Areas and, where applicable, the Limited Areas;
- (e) to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;
- (f) to open and maintain a bank account or accounts in the name of the Association; and
- (g) to adopt, revise, amend and alter from time to time rules and regulations with respect to use, occupancy, operation and enjoyment of the Property.

**Section 3.07. Limitation on Board Action.** The authority of the Board to enter into contracts shall be limited to contracts involving a total expenditure of less than \$50,000.00 without obtaining the prior approval of the Owners by a Majority Vote, except that in the following cases such approval shall not be necessary:

- (a) contracts for replacing or restoring portions of the Common Areas or Limited Areas damaged or destroyed by fire or other cause where the cost thereof is payable out of insurance proceeds actually received;
- (b) proposed contracts and/or proposed expenditures expressly set forth in the annual budget as approved by the Owners at the annual meeting. However, the Board may 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
- (c) expenditures necessary to deal with emergency conditions in which the Board reasonably believes there is insufficient time to call a meeting of the Owners.

**Section 3.08. Compensation.** No Director shall receive any compensation for his services as a Director except to such extent as may be expressly authorized by a majority of Owners. The Managing Agent shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

**Section 3.09. Meetings.**

- (a) Organizational Meeting. The Board shall meet each year within ten (10) days following the date of the annual meeting of the Association, at such time and place as shall be fixed at the annual meeting, for the purpose of organization, election of officers and consideration of any other business that may properly be brought before the meeting, and no notice shall be necessary to any newly elected Directors in order legally to constitute such meeting if a quorum is present.
- (b) Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Directors. The Secretary shall give notice of regular meetings of the Board to each Director personally, by electronic mail or by postal service mail at least five (5) days prior to the date of such meeting.
- (c) Special Meetings. Special meetings of the Board may be called by the President or any two (2) members of the Board. The Director or Directors calling such meeting shall give written notice thereof to the Secretary who shall either personally, by electronic mail or by postal service mail, and at least three (3) days prior to the date of such special meeting, give notice to the members of the Board. The notice of the meeting shall contain a statement of the purpose for which the meeting is called. Such meeting shall be held at such place and at such time within Marion County, Indiana, as shall be designated in the notice.

**Section 3.10. Waiver of Notice.** Before any meeting of the Board, any Director may, in writing, waive notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice. The presence of any Director at a meeting or his subsequent consent to the actions taken thereat, shall as to such Director, constitute a waiver of notice of the time, place and purpose thereof. If all Directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

**Section 3.11 Action Without a Meeting.** Any action required or permitted to be taken at any meeting of the Board may be taken by polling the Directors by electronic mail. The President will be responsible for assuring that adequate information on any matter so considered is available to the Directors and that opportunity has been given to all Directors for consideration and voting. Records of Directors' responses by electronic mail will be maintained by the Secretary and he or she will report the results of any actions by electronic mail at the next Meeting of the Board for review and entry into the minutes of that Meeting.

**Section 3.12. Quorum.** At all meetings of the Board a majority of the Directors shall constitute a quorum for the transaction of business and the votes of the majority of the Directors present at a meeting at which a quorum is present shall be the decision of the Board. With prior approval by the Board a Director who participates in a Meeting by teleconference will be counted present and included in the quorum. Such method of attendance shall be noted in the minutes of the Meeting.

**Section 3.13. 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 Association shall indemnify and hold harmless and defend each of the Directors against any and all liability to any Person arising out of contracts made by the Board on behalf of The Holcomb Estate or the Association, unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or these Bylaws. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of The Holcomb Estate or the Association and that in all matters the Board is acting for and on behalf of the Owners as their agent. The liability of any Owner arising out of any contract made by the Board or out of the aforesaid indemnity in favor of the Directors shall be limited to such percentage of the total liability or obligation thereunder as is equal to his Percentage Interest. Every contract made by the Board or the Managing Agent on behalf of The Holcomb Estate shall provide that the Board and the Managing Agent, as the case may be, are acting as agent for the Owners and shall have no personal liability thereunder, except in their capacity as Owners (if applicable) and then only to the extent of their Percentage Interest.

**Section 3.14. Additional Indemnity of Directors.** The Association shall indemnify, hold harmless and defend any individual, his or her heirs, assigns and legal representatives made a party to any action, suit or proceeding by reason of the fact that he or she is or was a Director, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him or her 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 or her duties. The Association 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 of 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 or her duties where, acting in good faith, such Director relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent or any officer or employee thereof, or any accountant, attorney or other Person employed by the Association 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 or she failed or neglected to attend a meeting or meetings of the Board.

**Section 3.15. Transactions Involving Affiliates.** No contract or other transaction between the Association and one or more of its Directors, or between the Association and any Person in which one or more of the Directors are directors, officers, partners, or employees or are pecuniarily or otherwise interested shall be void or voidable because such Director or Directors are present at the meeting of the Board that authorizes or approves the contract or transaction or because his or their votes are counted for such purpose if:

- (a) the fact of the affiliation or interest is disclosed or known to the Board or a majority thereof or noted in the minutes, and the Board authorizes, approves, or ratifies such contract or transaction in good faith by a vote sufficient for the purpose; or
- (b) the fact of the affiliation or interest is disclosed or known to the Co-owners, or a majority thereof, and they approve or ratify the contract or transaction in good faith by a vote sufficient for the purpose; or
- (c) the contract or transaction is commercially reasonable to the Association at the time it is authorized, ratified, approved or executed.

Affiliated or interested Directors may be counted in determining the presence of a quorum of any meeting of the Board thereof that authorizes, approves or ratifies any contract or transaction, and may vote thereat to authorize any contract or transaction with like force and effect as if they were not so affiliated or not so interested.

**Section 3.16. Bonds.** Blanket fidelity bonds shall be maintained by the Association for all officers, directors and employees of the Association and all other persons handling or responsible for funds of, or administered by, the Association. Where the Managing Agent has the responsibility for handling or administering funds of the Association, the Managing Agent shall be required to maintain fidelity bond coverage for its officers, employees and agents handling or responsible for funds of, or administered on behalf of, the Association. Such fidelity bond shall name the Association as an obligee and shall not be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or Managing Agent, as the case may be, at any given time during the term of each bond. In no event, however, may the aggregate

amount of such bonds be less than a sum equal to three (3) months' aggregate Assessments on all Condominium Units plus reserve funds. The bonds shall contain waivers by the issuers of the bonds of all defenses based upon the exclusion of persons serving without compensation from the definition of "employees" or similar terms of expressions. The expense of all such bonds shall be a Common Expense.

## ARTICLE 4

### Officers

**Section 4.01. Officers of the Association.** The principal officers of the Association shall be the President, Vice President, Secretary and Treasurer, all of whom shall be elected by the Board. The Directors may appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary. Any two (2) or more offices may be held by the same person, except that the duties of the President and Secretary shall not be performed by the same person.

**Section 4.02. Election of Officers.** The officers of the Association shall be elected annually by the Board at the initial organizational meeting of the Board. Upon an affirmative vote of a majority of all members of the Board, any officer may be removed either with or without cause and his successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose. Any election or vote relating to officers may not be conducted by electronic mail.

**Section 4.03. The President.** The President shall be elected from among the Directors and shall be the chief executive officer of the Association. She or he shall preside at all meetings of the Association and of the Board, shall have and discharge all the general powers and duties usually vested in the office of president or chief executive officer of a nonprofit corporation organized under the laws of Indiana, including but not limited to the power to appoint committees from among the Owners as he may deem necessary to assist in the affairs of the Association and to perform such other duties as the Board may from time to time prescribe.

**Section 4.04. The Vice President.** The Vice President shall be elected from among the Directors and shall perform all duties incumbent upon the President during the absence or disability of the President. The Vice President shall also perform such duties as these Bylaws may prescribe or as shall, from time to time, be imposed upon him or her by the Board or by the President.

**Section 4.05. The Secretary.** The Secretary shall be elected from among the Directors. The Secretary shall attend all meetings of the Association and of the Board and shall keep or cause to be kept a true and complete record of the proceedings of such meetings, shall perform all other duties incident to the office of the Secretary, and such other duties as from time to time may be prescribed by the Board. If the Secretary is not able to be present in person at a Meeting the Board may select a secretary pro tempore to take minutes of the Meeting. The Secretary shall

specifically see that all notices of the Association or the Board are duly given, mailed, transmitted or delivered, in accordance with the provisions of these Bylaws.

**Section 4.06. The Treasurer.** The Board shall elect a Treasurer who shall maintain a correct and complete record of account showing accurately at all times the financial condition of the Association and who shall perform such other duties incident to the office of Treasurer. He or she shall be the legal custodian of all monies, notes, securities and other valuables which may from time to time come into possession of the Association. He or she shall immediately deposit all funds of the Association coming into his hands in some reliable bank or other depository to be designated by the Board and shall keep such bank account or accounts in the name of the Association. The Treasurer may permit the Managing Agent to handle and account for monies and other assets of the Association to the extent appropriate as part of its duties.

**Section 4.07. Assistant Officers.** The Board may, from time to time, designate and elect from among its members an Assistant Secretary and an Assistant Treasurer who shall have such powers and duties as the officers whom they are elected to assist shall delegate to them and such other powers and duties as these Bylaws or the Board may prescribe.

## ARTICLE 5

### Management

#### **Section 5.01. Maintenance, Repairs and Replacements.**

(a) **Condominium Units.** Each Owner shall, at his expense, be responsible for the maintenance, repairs, decoration and replacement within his or her own Condominium Unit, except as may otherwise be provided herein.

1. Each Owner shall promptly perform all maintenance and repair within his or her Condominium Unit which, if neglected, might adversely affect the Property.

2. Each Owner shall furnish, and shall be responsible at his or her own expense for the maintenance, repairs and replacement of his Condominium Unit and related Limited Areas, and all equipment serving the same except to the extent otherwise provided herein.

3. Maintenance, repairs and replacements for which each Owner is individually responsible at his or her own expense include, but are not necessarily limited to:

(i) water lines, gas lines, plumbing, and electric lines that service the Owner's Condominium Unit only and are located within the walls of the Condominium Unit including any lines in the area from below the floor to above the ceiling.

(ii) all partitions and interior walls, ceilings and floors;

(iii) appliances, telephones, telephone lines, television and/or Internet cables, air conditioning and heating equipment (whether located wholly or partially inside or outside the Condominium Unit);

(iv) doors, windows and sky light systems, frames and trim surrounding same, screens and the exterior and interior of all glass and screen surfaces;

(v) interior grouting and/or caulking and all other accessories related to the Condominium Unit or belonging to the Owner thereof.

4. In the event that the maintenance or repair of any Condominium Unit is reasonably necessary in the discretion of the Board to protect the Common Areas or Limited Areas, or to preserve the appearance or value of the Property, or is otherwise in the interest of the general welfare of the Co-owners, the Board shall have the power to undertake such maintenance or repair. No such maintenance or repair shall be undertaken without a resolution by the Board and reasonable written notice to the Owner of the Condominium Unit proposed to be maintained. The cost of any such maintenance or repair shall be assessed against the Condominium Unit on which such maintenance or repair is performed and, when so assessed, a statement for the amount thereof shall be rendered promptly to the then Owner of the Condominium Unit at which time the Assessment shall become due and payable and a continuing lien and obligation of said Owner in all respects as provided in Section 6.06 hereof.

**(b) Certain Limited Areas.**

1. Each Owner shall, at his or her expense, be responsible for the maintenance, repair and replacement of any air conditioning compressor, heat pump, or other appurtenant device installed to service his or her Condominium Unit.

2. Each Owner shall be responsible for the decoration and general maintenance of any balcony, patio, deck, or porch to which there is direct access from the interior of his or her Condominium Unit. This shall include, but not be limited to

(i) keeping any such balcony, patio, deck, or porch free and clean of dirt, debris and any other accumulation;

(ii) making all repairs to any such balcony, patio, deck, or porch caused or permitted by Owner negligence, misuse or neglect. All other repairs or replacement in, to or with respect to such balcony, patio, deck or porch shall be a Common Expense and performed by the Association.

3. The Association will not be responsible for removing snow and ice from an Owner's balcony, patio, deck or porch. It is the Owner's responsibility and if an Owner fails to remove snow and ice, it is at the Owner's peril and risk. The Association shall not be held responsible for any damages or injuries that might be suffered by anyone because of the Owners' failure to remove the snow or ice.

**(c) Common Areas and Limited Areas.** All maintenance, repairs and replacements to the Common Areas and Limited Areas (except as otherwise provided in the Declaration, a Supplemental Declaration, or these Bylaws) shall be furnished by the Association as part of the Common Expenses. The Board of Directors may adopt rules and regulations concerning maintenance, repairs, use and enjoyment of the Common Areas and Limited Areas.

**Section 5.02. Right of Entry.** The Board of Directors, the Managing Agent, or any other Person authorized by the Board or the Managing Agent shall have the right, at reasonable times and upon reasonable prior notice (except in cases of emergency in which no notice shall be required), to enter into each individual Condominium Unit for the purposes of inspection of the

Common Areas and Limited Areas appurtenant thereto and replacement, repair and maintenance of the same.

**Section 5.03. Alterations and Additions.** No person shall make any alternations or additions to the Common Areas or Limited Areas without the prior written approval of the Board of Directors, nor shall any Owner make any alteration or addition within the boundaries of his Condominium Unit that would affect the safety or structural integrity of the Building in which the Condominium Unit is located.

**Section 5.04. Real Estate Taxes.** Real estate taxes are to be separately taxed to each Condominium Unit as provided in the Act. In the event that for any year real estate taxes are not separately assessed and taxed to each Condominium Unit, but are assessed and taxed on the Property as a whole, then each Owner shall pay his proportionate share as determined by the Board

**Section 5.05. Utilities.** Each Owner shall pay for his own utilities that are separately metered. Utilities that are not separately metered shall be treated as and paid as part of the Common Expenses, unless alternative payment arrangements are authorized by a majority of Owners.

**Section 5.06. Limitation of Liability.**

- (a) The Association shall not be liable for any failure of water supply or other services to be obtained by the Association or paid for out of the Common Expenses, or for injury or damage to person or property caused by the elements or by the Owner of any Condominium Unit, or any other Person, or resulting from electricity, water, snow or ice that may leak or flow from any portion of the Common Areas or Limited Areas or from any pipe, drain, conduit, appliance or equipment.
- (b) The Association shall not be liable to any Owner for loss or damage, by theft or otherwise, of articles that may be stored upon any of the Common Areas or Limited Areas.
- (c) No diminution or abatement of Assessments for Common Expenses shall be claimed or allowed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Areas or Limited Areas or from any action taken by the Association to comply with any law, ordinance, order or directive of any municipal or other governmental authority.

**Section 5.07. Negligence.** Each Owner shall be liable for the expenses of any maintenance, repair or replacement rendered necessary by his negligence or by that of his guests, employees, agents or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his Condominium Unit or its appurtenances or of the Common Areas or Limited Areas.

**Section 5.08. Costs and Attorneys' Fees.** In any proceeding arising because of failure of an Owner to make any payments required by, or to comply with any provision of, the Declaration, the Act, these Bylaws, or the rules and regulations adopted pursuant thereto, as each may be

amended from time to time, the Association shall be entitled to recover its reasonable attorneys' fees incurred in connection with such default or failure.

## ARTICLE 6

### Assessments

#### **Section 6.01. Proposed Annual Budget.**

(a) Annually, on or before the date of the annual meeting of the Association, the Board shall cause to be prepared a proposed annual budget for the current fiscal year estimating the total amount of the Common Expenses for the current 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 and the Regular Assessments shall include the amounts required for funding the reserve accounts required by Sections 6.04 and 6.05. The annual budget shall be submitted to the Owners at the annual meeting of the Association for adoption and, if so adopted, shall be the basis for the Regular Assessments for the current fiscal year.

(b) At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a Majority Vote; 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.

(c) The annual budget, the Regular Assessments and all sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis.

(d) The failure or delay of the Board 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 Common Expenses as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Association, there is no annual budget approved by the Owners as herein provided for such current fiscal year, the Owners shall continue to pay Regular Assessments based upon the last approved budget or, at the option of the Board, based up to one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

#### **Section 6.02. Regular Assessments.**

(a) The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the current fiscal year and required reserve amounts as set forth in said budget, contain a proposed Regular Assessment against each Condominium Unit based on the Percentage Interest of each Condominium Unit. 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.

(b) Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Condominium Unit.

(c) The Regular Assessment against each Condominium Unit 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 Managing Agent, as directed by the Board of Directors. Owners may elect to pay monthly assessments quarterly, semi-annually or annually, in advance.

(d) Monthly installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board or the Association, and neither the Board nor the Association shall be responsible for providing any notice or statements to Owners for the same.

**Section 6.03. Special Assessments.** From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the Owners, unless otherwise provided in these Bylaws (such as in Section 3.07 above), the Declaration or the Act, the Board of Directors shall have the full right, power and authority to make Special Assessments which, upon resolution of the board, shall become a lien on each Condominium Unit, prorated in accordance with the Percentage Interest of each Condominium Unit. 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, operating deficits or to pay for the cost of any repair or reconstruction of damage caused by fire or other cause or disaster to the extent insurance proceeds are insufficient therefore under the circumstances described herein or in the Declaration.

**Section 6.04. Reserve for Replacements.**

(a) The Board of Directors shall cause to be established and maintained a reserve fund for replacement by the allocation and payment to such reserve fund not less often than annually of an amount determined by the Board to be sufficient to meet the costs of periodic maintenance, repair, renewal and replacement of the Common Areas and Limited Areas, including, but not limited to, painting the exterior of buildings, repairing or replacing the recreational facilities, and resurfacing, repairing or replacing streets, parking areas, sidewalks, roofs and other facilities and appurtenances.

(b) In determining the amount, the Board shall take into consideration the expected useful life of such Common Areas and Limited Areas, projected increases in the cost of Materials and labor, interest to be earned by such funds, and the advice of the Managing Agent and any consultants the Board may employ. Such funds shall be conclusively deemed to be a Common Expense. Such funds shall be deposited in a special account with a lending institution on the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of, or fully guaranteed as to principal by, the United States of America.

(c) The reserve for replacements may be expended only for the purpose of affecting the periodic maintenance, repair, renewal or replacement of the Common Areas and Limited Areas and equipment of the Property. The Board shall annually review the adequacy of the reserve fund.

(d) The proportionate interest of any Owner in any reserve for replacements shall be considered an appurtenance of his Condominium Unit and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Condominium Unit to which it appertains and shall be deemed to be transferred with such Condominium Unit.

**Section 6 .05. General Operating Reserve.**

(a) The Board of Directors may establish and maintain a reserve fund for general operating expenses of a non-recurring nature by the allocation and payment to such reserve fund not less frequently than annually of such amount as the Board in its discretion determines to be reasonable under the circumstances. Such fund shall be conclusively deemed to be a Common Expense.

(b) Such fund shall be deposited in a special account with a lending institution the accounts of which are insured by an agency of the United States of America or may, in the discretion of the Board, be invested in obligations of or fully guaranteed as to principal by the United States of America.

(c) The general operating reserve may be expended only for operating contingencies of a non-recurring nature.

(d) The proportionate interest of any Owner in any reserve fund for general operating expenses shall be considered an appurtenance of his Condominium Unit and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Condominium Unit to which it appertains and shall be deemed to be transferred with such Condominium Unit.

**Section 6.06. Failure of Owner to Pay Assessments.**

No Owner may exempt himself or herself from paying Regular or Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Areas and Limited Areas and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas or Limited Areas, or by abandonment of the Condominium Unit belonging to such Owner. Each Owner shall be personally liable for the payment of all Regular and Special Assessments and all other charges. 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 Condominium Unit may be foreclosed by the Board for and on behalf of the Association as provided by law.

Upon the failure of an Owner to make payments of any Regular or Special Assessments within ten (10) days after such are due, the Board, in its discretion, may:

- (1) impose a uniform monthly late charge, which will be considered an addition to the Assessment, in an amount to be determined by the Board of up to twenty-five percent (25%) of the amount of the Assessment;
- (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 use the recreational facilities within The Holcomb Estate; and
- (4) suspend such Owner's right to vote.

In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Condominium Unit shall be jointly and severally liable for the payment to the Association of

reasonable rental for such Condominium Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Condominium Unit and to collect the rentals and other profits therefrom for the benefit of the Association 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 connection with any effort to collect or in any action to recover a Regular or Special Assessment, regardless of whether litigation is initiated, the Board, for and on behalf of the Association, shall be entitled to recover from the Owner of the Condominium Unit, not only the delinquent Regular or Special Assessments, but also all late charges imposed, all court costs, all costs of collection, charges, fees and expenses incurred by the Association with respect to such collection effort or action, including but not limited to charges, costs, fees or other expenses incurred by the Association to the Managing Agent for administering, monitoring or processing delinquent Owners' accounts, and reasonable attorney's fees.

The Association shall, upon demand, and for a reasonable charge not to exceed \$150, furnish a certificate signed by an officer or agent of the Association setting forth whether the assessments on a specified Condominium Unit have been paid. Such certificates shall be conclusive evidence of payment of any Assessment therein stated to have been paid.

#### **Section 6.07 Waiver of Lien Upon Foreclosure.**

(1) Notwithstanding anything to the contrary contained in the Declaration and these Bylaws, any sale or transfer of a Condominium Unit to a Mortgagee pursuant to a foreclosure of its mortgage or conveyance in lieu thereof, or a conveyance to any Person at a public sale in the manner provided by law with respect to mortgage foreclosures, shall extinguish the lien of any unpaid installment of any Assessment as to such installments that became due prior to such sale, transfer or conveyance, but extinguishment of such lien shall not relieve the prior Owner from personal liability therefor.

(2) No such sale, transfer or conveyance shall relieve the Condominium Unit or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from a liability for any installments of Assessments thereafter becoming due or from the lien therefore.

(3) Such unpaid share of any 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 Condominium Unit from which it arose), as provided by the Act.

## **ARTICLE 7**

### **Restriction, Entry and Rules and Regulations**

**Section 7.01. Restrictions on Use.** The following restrictions on the use and enjoyment of the Condominium Units, Common Areas, Limited Areas and the Property shall be applicable to The Holcomb Estate:

- (a) All Condominium Units shall be used exclusively for residential purposes and for occupancy by a single housekeeping unit. Any business activity conducted from the residency shall remain incidental (secondary) to its use and only with prior written

authorization by the Board and operated in accordance with the adopted Association rules and regulations governing residential business activity.

(b) No additional buildings shall be erected or located on the Tract other than the Buildings designated in the Declaration or a supplement or amendment to the Declaration, and shown on the Plans or plans filed with such a supplement or amendment to the Declaration, without the consent of the Board of Directors.

(c) Nothing shall be done or kept in any Condominium Unit or in the Common Areas or Limited Areas that will cause an increase in the rate of insurance on any Building or the contents thereof. No Owner shall permit anything to be done or kept in his Condominium Unit or in the Common Areas or Limited Areas that will result in a cancellation of insurance on any Building or any part of the Common Areas or contents thereof, or that would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.

(d) No nuisance shall be permitted and no damage shall be committed in any Condominium Unit, Common Areas or Limited Areas.

(e) No Owner shall cause or permit anything to be hung or displayed in the Common Area and Limited Area or on the outside of the windows or placed on the outside walls or balcony of any Building. No sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or be placed upon the exterior wall or roofs or any other parts of any Building without the prior written consent of the Board. Temporary celebratory displays such as flags and holiday decorations are permitted but, if deemed to be inappropriate, may be recalled by the Board.

(f) Satellite dishes that are one meter or less in diameter may be installed. Satellite dishes that are larger than one meter are prohibited. No more than one satellite dish may be installed by an Owner on or for his or her Condominium Unit. Prior written approval of the board is required before any satellite dish is installed. Satellite dishes must not be installed in a manner that will result in increased maintenance costs for the Association or for the other residents. The Board shall exercise its discretion in deciding whether to approve or deny any Owner's request, and may attach conditions on any approval given. The placement, installation, use and maintenance of antennas, including satellite dishes, shall be further subject to rules and regulations promulgated by the Board of Directors.

(g) No "for sale," "for rent" or "for lease" or any other advertising sign or display shall be maintained or permitted on the Common or Limited areas without the prior consent of the Board.

(h) Nothing shall be done or permitted in any Condominium Unit that will impair the structural integrity of any Building or that would structurally change any Building or that would affect the exterior appearance of any Condominium Unit, except as otherwise provided in the Declaration or these Bylaws.

(i) No Condominium Unit shall be used in any unlawful manner or in any manner that might cause injury to the reputation of The Holcomb Estate or that might be a nuisance, annoyance, inconvenience or damage to other Owners and occupants of Condominium Units or neighboring property, including without limiting the generality of the foregoing, noise by the use of any loud speakers, electrical equipment, amplifiers or other equipment or machines or loud person.

(j) The Common Areas and Limited Areas shall be kept free and clear of rubbish, debris and other unsightly materials. No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on any part of the Common Area or Limited Areas.

(k) All Owners, guests, tenants or invitees, and all occupants of any Condominium Unit or other persons entitled to use the same and to use and enjoy the Common Areas and Limited Areas or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Condominium Units, the Common Areas and Limited Areas; including but not limited to rules relating to the keeping of animals, the parking or storage of vehicles or trailers and other matters incidental to the use of the Common Areas and Limited Areas.

(l) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Areas or Limited Areas, except with written permission from the Board.

(m) All garbage, trash and refuse shall be stored in appropriate containers inside the Condominium Unit (including the garage) or in an inconspicuous place within the Limited Area appurtenant thereto and shall be kept therein until no earlier than sundown of the evening before scheduled trash collection. Garbage, trash and refuse shall be placed in sealed disposable plastic bags or other containers approved by the Board for scheduled trash collection and shall be placed at such locations for trash collection as are designated by the Board. Empty trash containers shall be returned to appropriate places by the end of the day of collection.

(n) Common Areas and Limited Areas shall be used only for the purposes for which they are designed and intended, and shall be used subject to the provisions of the Declaration, these Bylaws and the rules and regulations from time to time adopted by the Board.

(o) No use shall be made of any part of the Real Estate which violates the terms, covenants, provisions, conditions, limitations, restrictions and requirements contained and described in the Commitments Relative to Use or Development of Real Estate date January 10, 1983, and recorded January 31, 1983, as Instrument No. 83-6821 in the Office of the Recorder of Marion County, Indiana. All Owners, members of their families, their guests, tenants, invitees and all occupants or other persons entitled to use or who may use any part of the Real Estate, shall at all times fully comply with these restrictions.

(p) The Association shall have no right of first refusal to purchase any Condominium Unit which an Owner wishes to sell and an Owner may sell his/her Condominium Unit free of any such restriction.

**Section 7.02. Right of Board to Adopt Rules and Regulations.** The Board may promulgate such rules and regulations regarding the operation of the Property, including but not limited to the use of the Condominium Units, Common Areas and Limited Areas, as it may deem necessary from time to time and such rules as are adopted may be amended by a vote of the majority of the Board. The Board shall cause copies of such rules and regulations and all amendments thereto to be delivered or mailed promptly to all Owners.

## ARTICLE 8

### Insurance

**Section 8.01. Coverage.** The Board of Directors on behalf of the Co-owners shall obtain, maintain and pay the premiums upon, as a Common Expense, and kept in full force and effect at all times the following insurance coverage underwritten by companies duly authorized to do business in Indiana:

(a) Casualty or physical damage insurance in an amount equal to the full replacement cost of all buildings and improvements (as hereinafter defined) and all personal property owned by the Association with an “agreed amount” and “inflation guard” endorsements, without deduction or allowance for depreciation (as determined annually by the Board with the assistance of the insurance company affording such coverage), such coverage to afford protection against at least the following:

(i) loss or damage by fire or other hazards covered by the standard extended coverage endorsement together with coverage for Common Expenses with respect to Condominium Units during any period of repair of construction:

(ii) such other risks as are customarily covered with respect to projects similar in construction, location and use, including, but not limited to, vandalism, malicious mischief, windstorm, water damage, machinery, explosion or damage, and such other insurance as the Board may from time to time determine.

(b) Comprehensive public liability insurance in such amounts as may be considered appropriate by the Board including, but not limited to, water damage, legal liability, hired automobile, non-owned automobile, and any and all other liability incident to the Ownership and/or use of the Property or any portion thereof. Such coverage shall be for at least One Million Dollars (\$1,000,000) for bodily injury, including deaths of persons due to bodily injury and property damage arising out of a single occurrence. Coverage under the insurance policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the

operation, maintenance or use of the Common Areas and Limited Areas, and legal liability arising out of lawsuits related to employment contracts of the Association.

(c) Workers compensation and employer's liability insurance in respect to employees of the Association in the amounts and in the form necessary to comply with any applicable law.

(d) Such other policies of insurance, including insurance for other risks of a similar or dissimilar nature, as are or shall hereafter be considered appropriate by the Board of Directors.

The provisions of this Section 8 .01 shall not be construed to limit the power or authority of the Board to obtain and maintain insurance coverage, in addition to any insurance coverage required hereunder, in such amounts and in such forms as the Association or the Board may deem appropriate from time to time.

**Section 8.02. Definition.** As used in Section 8 .01, the term "all buildings and improvements" means, without limitation, the Common Areas, Limited Areas, and the standard partition walls, fixtures, pipes, wires, conduits and installations installed in Condominium Units, including any fixtures, alterations, installations or additions in or to the Condominium Unit made by an individual Owner of that Condominium Unit.

**Section 8.03. Form.** Casualty insurance shall be carried in a form or forms naming as the insured the Association for the use and benefit of the Owners according to the loss or damage to their respective Condominium Units and Percentage Interests and payable in case of loss to the Managing Agent or Insurance Trustee, as directed by the Board. Every such policy of insurance shall:

(a) provide that the liability of the insurer thereunder shall not be affected by, and that the insurer shall not, claim any right of set-off, counterclaim, apportionment, proration, or contribution by reason of any other insurance obtained by or for any Owner;

(b) contain no provisions relieving the insurer from liability for loss occurring while the hazard to such building is increased, whether or not within the knowledge or control of the Board, or because of any breach of warranty or condition or any other act or neglect by the Board or any Owner or any other Person under either of them;

(c) provide that such policy may not be cancelled or substantially modified (whether or not requested by the Board) except by the insurer giving at least thirty (30) days' prior written notice thereof to the Board, all Owners, all Mortgagees and every other Person in interest who shall have requested such notice of the insurer;

- (d) contain a waiver by the insurer of any right of subrogation to any right of the Board or Owners against any of them or any other Person under them;
- (e) provide that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Owners do not elect to restore pursuant to Paragraph 10 of the Declaration;
- (f) contain a standard mortgagee clause which shall
  - (i) provide that any reference to a mortgagee in such policy shall mean and include any Mortgagee, whether or not named therein and, where applicable, name as mortgagee Federal National Mortgage Association or Federal Home Loan Mortgage Corporation or their respective servicers, successors and assigns;
  - (ii) provide that such insurance as to the interest of any Mortgagee shall not be invalidated by any act or neglect of the Board or any Owner, or any persons under any of them;
  - (iii) waive any provision invalidating such mortgagee clauses by reason of the failure of any Mortgagee to notify the insurer of any hazardous use or vacancy, and requirement that the Mortgagee pay any premium thereon, and any contribution clause;
  - (iv) provide that without affecting any protection afforded by such mortgagee clause, any proceeds payable under such policy shall be payable to the Insurance Trustee; and
- (g) provide that the policy is primary in the event an Owner has other insurance covering the same loss.

Public liability and property damage insurance shall be carried in a form or forms naming as the insured the Board of Directors a trustee for each individual Owner, the Association, the Board of Directors, the Managing Agent, and any Person acting on behalf of the Association, and providing for payment of any proceeds therefrom to the Insurance Trustee. The Board shall promptly upon effecting such insurance deposit with each Owner a current certificate of such insurance, without prejudice to the right of any Owner to maintain additional public liability insurance for his Condominium Unit.

**Section 8.04. Allocation of Insurance Proceeds.** In the event of damage or destruction by fire or other cause to any part of the Property covered by insurance written in the name of the Board as trustee for Co-owners and their Mortgagees, the following provisions shall apply:

(a) Common Areas and Limited Areas. Proceeds on account of damage to Common Areas and Limited Areas shall be allocated among the Co-owners in accordance with their respective Percentage Interests.

(b) Condominium Units. Proceeds on account of damage to Condominium Units shall be allocated as follows:

(i) If the Building in which the damaged Condominium Unit is located is to be restored, insurance proceeds shall be allocated to such Condominium Unit in the proportion that the cost of Restoration of such Condominium Unit bears to the cost of Restoration of all damaged Condominium Units, such cost to be determined by the Board. In determining such cost, the Board shall take into consideration the cost of repairing or replacing any items specifically included in insurance coverage pursuant to the provisions of Section 8.02.

(ii) If the Building in which the damaged Condominium Unit is located is not to be restored, insurance proceeds shall be allocated to such Condominium Unit in accordance with the agreed amount of the replacement cost of such Condominium Unit.

(iii) In the event a mortgage endorsement has been issued with respect to a particular Condominium Unit, the amount of the insurance proceeds allocated to the Owner of such Condominium Unit shall be held in trust for the Mortgagee and the Owner as their interest may appear, but no Mortgagee shall have the right to determine or participate in the determination as to whether or not any damaged property shall be restored or repaired, and no Mortgagee shall have any right to apply or have applied to the reduction of a mortgage debt any insurance proceeds except distributions thereof made to the Owner and Mortgagee pursuant to the provisions of these Bylaws.

**Section 8.05. Distribution of Insurance Proceeds.** Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the Owners and their Mortgagees as their respective interests appear, in the following manner:

(a) Expense of Trust. All expenses of the Insurance Trustee shall be first paid or provision made therefore.

(b) Reconstruction or Repair. If the damage for which the proceeds are paid is to be repaired or reconstructed, the remaining proceeds shall be paid to defray the cost thereof pursuant to the provisions of Article IX. Any proceeds remaining after defraying such costs shall be retained by the Association and added to the reserve for replacements established pursuant to Section 6.04.

(c) Failure to Reconstruct or Repair. If it is determined that the damage for which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed in accordance with Section 21 of the Act.

(d) Certificate. In making distributions to Owners and their mortgagees, the Insurance Trustee may rely upon a certificate issued by the Board as to the names of the Owners and their respective shares of the distribution, and, with respect to the names of the mortgagees, may rely upon a certificate from an attorney-at-law who, or a title insurance company which, has examined the Mortgage Records in the office of the Recorder of Marion County, Indiana, as to the names of the holders of mortgages of record.

**Section 8.06. Association as Owner’s Agent.** The Association, acting by its Board of Directors, is hereby irrevocably appointed agent for each Owner and for each Owner of a mortgage or other lien upon a Condominium Unit and for each Owner of any other interest in the Property to negotiate all claims arising under insurance policies purchased by the Board, and to execute and deliver releases upon the payment of claims.

**Section 8.07. Individual Policies.** Any Owner or Mortgagee may obtain additional insurance (including a “condominium unit-Owner’s endorsement” for improvements and betterments to a Condominium Unit made or acquired at the expense of the Owner) at his own expense. Such insurance shall provide that it shall be without contribution as against the insurance maintained by the Board. Such insurance shall contain the same waiver of subrogation provision as that set forth in Section 8.03(d). If the insurance loss is sustained on the Property and the amount of insurance proceeds that would otherwise be payable to the Insurance Trustee is reduced due to proration of insurance purchased pursuant to this Section, the Owner shall assign the proceeds of the personally purchased insurance, to the extent of the amount of the reduction, to the Insurance Trustee to be distributed as provided in Section 8.05. The Declarant recommends that each Owner obtain, in addition to the insurance hereinabove provided to be obtained by the Board of Directors, a policy insuring against loss or damage to personal property used or incidental to the occupancy of the Condominium Unit, vandalism or malicious mischief, theft, personal liability and the like. Such policy should include a “condominium unit-Owner’s endorsement” covering losses to improvements and betterments to the Condominium Unit made or acquired at the expense of the Owner.

**Section 8.08. Certificates.** Upon request, the Association shall cause to be issued to each Owner and each Mortgagee a certificate of insurance evidencing the insurance carried by the Association.

## ARTICLE 9

### Damage or Destruction

**Section 9.01. Procedure for Restoration or Repair.** In the event of damage or destruction to the Property by fire, other cause, or a result of condemnation, and Restoration or repair of he

Property is required or authorized pursuant to Paragraph 10 or Paragraph 11 of the Declaration, such Restoration or repair shall be undertaken in accordance with the provisions of this Article.

**Section 9.02. Estimate of Cost.** Promptly after the occurrence of the damage or destruction to the Property that the Association has the responsibility to restore or repair, the Board shall obtain reliable and detailed estimates of the cost to restore or repair. In the event of damage to any structure exceeding \$100,000.00 the Board may retain the services of an architect to supervise the Restoration or repair and the disbursement of the construction funds.

**Section 9.03. Plans and Specifications.** Any Restoration or repair must be either substantially in accordance with the Plans or according to plans and specifications approved by a majority of Owners and, if the damaged Property contains any Condominium Units, by all of the Owners of the damaged Condominium Units, which approval shall not be unreasonably withheld.

**Section 9.04. Sealed Bids.** The Board shall advertise for sealed bids with any licensed contractors, and then may negotiate with any contractor, who may be required to provide a full performance and payment bond for the restoration or repair of the damaged property.

**Section 9.05. Responsibility.** If the damage is only to those parts of a Condominium Unit for which the responsibility of maintenance and repair is that of an Owner, then the Condominium Unit Owner shall be responsible for the cost of Restoration and repair unless such damage is specifically covered by the insurance purchased by the Board, in which event the Association shall be responsible for said costs.

**Section 9.06. Construction Funds.** The funds for payment of the costs of Restoration of repair, which shall consist of the proceeds of insurance held by or payable to the Managing Agent or the Insurance Trustee (see Section 8.03 above), such amounts from the reserve for replacements as are authorized by the Board for the purpose of Restoration or repair, and the funds collected by the Board from Special Assessments against Owners, shall be deposited with the Managing Agent or the Insurance Trustee who shall apply or disburse the same in payment of the costs of Restoration or repair as provided in this Article.

**Section 9.07. Certificates.** The Insurance Trustee may rely upon a certificate from the Board to determine whether or not the damaged Property is to be restored or repaired and upon a certificate from the architect employed by the Board to supervise the Restoration or repair, or the Board, with respect to the payments to be made to contractors undertaking the Restoration and/or repair.

**Section 9.08. Managing Agent or the Insurance Trustee.** The Managing Agent or the Insurance Trustee shall not be liable for payment of insurance premiums, the renewal or the sufficiency of insurance policies, nor for the failure to collect any insurance proceeds or condemnation awards. The duty of the Insurance Trustee shall be to receive such proceeds or awards as are paid and to hold the same in trust for the purposes herein and in the Declaration stated, and for the benefit of the Co-owners and their Mortgagees as herein and in the Declaration provided.

## ARTICLE 10

### Fiscal Management

**Section 10.01. Fiscal Year.** The fiscal year of the Association shall be fixed by resolution of the Board of Directors.

**Section 10.02. Books of Account.** Books of account of the Association shall be kept under the direction of the Treasurer in accordance with good accounting practices, and shall include a current, accurate and detailed record of receipts and expenditures affecting the Property, specifying and itemizing the Common Expenses.

**Section 10.03. Inspection.** All books, records and accounts, and all vouchers accrediting the entries made thereupon, shall be available for examination by an Owner or any duly authorized agent or attorney of an Owner at any time during normal business hours for purposes reasonably related to his interest as an Owner.

**Section 10.04. Auditing.** Unless otherwise agreed by a Majority Vote of Owners, at the close of each fiscal year, the books and accounts of the Association shall be audited by an independent Certified Public Accountant whose report shall be prepared and certified in accordance with generally accepted auditing standards.

**Section 10.05. Annual Financial Statement.** Prior to the annual meeting of the Association, the Board of Directors shall cause to be prepared and delivered to the Co-owners an annual financial statement, certified to by the Treasurer, showing all income and all disbursements of the Association during the previous fiscal year. To the extent possible, such financial statement shall be based upon the report prepared pursuant to Section 10.04. The requirements of this Section 10.05 shall be satisfied if the Board causes to be delivered to each Owner prior to the annual meeting of the Association a copy of the report prepared pursuant to Section 10.04.

**Section 10.06. Execution of Association Documents.** With the prior authorization of the Board of Directors, all notes and contracts shall be executed on behalf of the Association by either the President or Vice President, and all checks shall be executed on behalf of the Association by such officers, agents, or other individuals as are from time to time so authorized by the Board.

## ARTICLE 11

### Amendment to Bylaws

**Section 11.01 Procedure.** Subject to any contrary, overriding or superseding provisions set forth herein or in the Declaration, these Bylaws may be amended in the same manner, and

subject to the same limitations and requirements as amendments to the Declaration, as set forth in Paragraph 14 of the Declaration. Amendments to these Bylaws shall be considered as amendments of the Declaration and shall be recorded in the office of the Recorder of Marion County, Indiana, as required by the Declaration and the Act.

**Section 11.02. Amended and Restated Bylaws.** An amended and restated Bylaws, containing the original Bylaws and all amendments theretofore made, may be executed any time or from time to time by a majority of the then Board of Directors and shall, upon recording in the office of the Recorder of Marion County, Indiana, be conclusive evidence of all amendments contained therein and may thereafter be referred to in lieu of the original Bylaws and the various amendments thereto.

## **ARTICLE 12**

### **Mortgages**

**Section 12.01. Notice to Association.** Any Owner who places a first mortgage lien upon his Condominium Unit or the Mortgagee may notify the Secretary or Managing Agent of that action and provide the name and address of the Mortgagee. A record of such Mortgagee's name and address shall be maintained by the Secretary and the Managing Agent and any notice required to be given to the Mortgagee pursuant to the terms of the Declaration, these Bylaws shall be deemed effectively given if mailed to such Mortgagee at the address shown in such record in 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 of the Mortgagee, no notice to any Mortgagee as may be otherwise required by the Declaration or these Bylaws shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled to vote by virtue of the Declaration, these Bylaws, or proxy granted to such Mortgagee in connection with the mortgage.

**Section 12.02. Notices To Mortgagees.** The Association shall promptly provide to any Mortgagee of whom the Association has been provided notice under Section 12.01 of these Bylaws notice of any of the following:

- (a) Any proposed termination of the Regime or any condemnation or casualty loss that affects either a material portion of The Holcomb Estate or the Condominium Unit securing its mortgage;
- (b) Any delinquency in the payment of Regular or Special Assessments owed by the Owner of any Condominium Unit on which said Mortgagee holds a mortgage, if said delinquency continues for more than sixty (60) days;
- (c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

- (d) Any proposed action that requires the consent of a specified percentage of Mortgagees; and,
- (e) Any proposed amendment of the Organizational Documents effecting a change in
  - (i) the boundaries of any Condominium Unit or the exclusive easement rights appertaining thereto,
  - (ii) the interest in the Common Areas or Limited Areas appertaining to any Condominium Unit or the liability for Common Expenses appertaining thereto,
  - (iii) the Percentage Vote appertaining to a Condominium Unit or
  - (iv) the purpose for which any Condominium Unit or the Common Areas are restricted.

**Section 12.03. Notice of Unpaid Assessments.** The Association shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Condominium Unit, furnish to such mortgagee or purchaser a statement setting forth the amount of the unpaid Assessments against the Condominium Unit, which statement shall be binding upon the Association and the Co-owners, and any Mortgagee or grantee of the Condominium Unit shall not be liable for, nor shall the Condominium Unit conveyed be subject to a lien for, any unpaid Assessments in excess of the amount set forth in such statement or as such Assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 6.02 hereof.

**Section 12.04. Financial Statements.** Upon the request of any Mortgagee, the Association shall provide to said Mortgagee the most recent financial statement prepared on behalf of the Association pursuant to Section 10.05 of these Bylaws.

## **ARTICLE 13**

### **Miscellaneous**

**Section 13.01. Personal Interests.** No Member shall have or receive any earnings from the Association. A Member may receive principal and interest on monies loaned or advanced to the Association as provided in the Statute.