

CODE OF BY-LAWS  
OF  
HIGH POINTE PLACE  
HORIZONTAL PROPERTY REGIME  
AND OF  
HIGH POINTE PLACE HOMEOWNERS  
ASSOCIATION, INC.

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CODE OF BY-LAWS

\*\* EXHIBIT "A" \*\*

OF

HIGH POINTE PLACE  
HORIZONTAL PROPERTY REGIME

AND OF

HIGH POINTE PLACE HOMEOWNERS  
ASSOCIATION, INC.

ARTICLE I

Identification and Applicability

Section 1.01. Identification and Adoption. These By-Laws are adopted simultaneously with the execution of a certain Declaration creating High Pointe Place Horizontal Property Regime (hereinafter sometimes referred to as "High Pointe Place") to which these By-Laws are attached and made a part thereof. The 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 By-Laws. The definitions and terms as defined and used in the Declaration shall have the same meaning in these By-Laws and reference is specifically made to paragraph 1 of the Declaration containing definitions of terms. The provisions of these By-Laws shall apply to the Property and the administration and conduct of the affairs of the Association. These By-Laws shall also constitute the By-Laws of the Association.

Section 1.02. 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, these By-Laws and the Act, and to any rules and regulations adopted by the Board of Managers as herein provided.

ARTICLE II

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 of Managers (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, these By-Laws or the Act.

Section 2.02. Annual Meetings. The annual meeting of the members of the Association shall be held on the second (2nd) Tuesday in October of each calendar year. At the annual meeting the Owners shall (subject to the provisions of Section 3.02 hereof) elect the Board of Managers of the Association in accordance with the provisions of these By-Laws and transact such other business as may properly come before the meeting.

Section 2.03. Special Meetings. A special meeting of the members of the Association may be called by resolution of the Board of Managers or upon a written petition of Owners who have not less than a majority of the Percentage Vote. The resolution or petition shall be presented to the President or Secretary 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 of the Association shall be held at any suitable place in Madison County, Indiana, as may be designated by the Board of Managers. 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 of the Association to each member entitled to vote thereat not less than ten (10) days prior to the date of such meeting. The notice shall be mailed or delivered to the Owners at the addresses of their respective Condominium Units and not otherwise. A copy of each such written notice shall also be delivered or mailed simultaneously by the Secretary of the Association 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 8.01 of these By-Laws. Attendance at any meeting in person, by agent or by proxy shall constitute a waiver of notice of such meeting.

Section 2.05. Voting.

(a) Number of Votes. Each Owner shall be entitled to cast one vote for each Condominium Unit he owns on each matter coming before the meeting as to which he is entitled to vote.

(b) Multiple Owner. Where the Owner of a Condominium Unit constitutes or consists of more than one person, or is a partnership, there shall be only one voting representative entitled to all of the Percentage Vote allocable to that Condominium Unit. At the time of acquisition of title to a Condominium Unit by a multiple Owner or a partnership, those per-

sons constituting such Owner or the partners shall file with the Secretary of the Association an irrevocable proxy appointing one of such persons or partners as the voting representative for such Condominium Unit, which shall remain in effect until all of such parties constituting such multiple Owner or the partners in such partnership designate another voting representative in writing, or such appointed representative relinquishes such appointment in writing, becomes incompetent, dies or such appointment is otherwise rescinded by order of a court of competent jurisdiction or the Owner no longer owns such Condominium Unit. Such appointed voting representative may grant a proxy to another to vote in his place at a particular meeting or meetings pursuant to paragraph (d) of this Section 2.05, which shall not constitute a permanent relinquishment of his right to act as voting representative for the 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 of the Association 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 of the Association prior to the commencement of the meeting.

(e) Quorum. Except where otherwise expressly provided in the Declaration, these By-Laws, the Act or the Indiana Not-For-Profit Corporation Act of 1971 (hereinafter referred to as the "Statute"), the Owners representing a majority of the Percentage Vote shall constitute a quorum at all meetings. The term majority of Owners or majority of Percentage Vote, as used in these By-Laws, shall mean the Owners entitled to more than fifty percent (50%) of the Percentage Votes in accordance with the applicable percentage set forth in the Declaration, as such may be amended from time to time.

(f) Conduct of Annual Meeting. The President of the Association shall act as the Chairman of all annual meetings of the Association if 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 of the Percentage 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 year and the proposed budget for the current 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 Managers. Nominations for the Board of Managers may be made by any Owner from those persons eligible to serve. Such nominations must be in writing and presented to the Secretary of the Association at least seven (7) days prior to the date of the annual meeting. Voting for the Board of Managers will be by paper ballot. The ballot shall contain the name of each person nominated to serve as a Board member. 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. The foregoing provisions are subject to the provisions of Section 3.02 hereof.

(5) Other Business. Other business may be brought before the meeting only upon a written request submitted to the Secretary of the Association at least seven (7) days prior to the date of the meeting; provided, however, that such written request may be waived at the meeting if agreed by a majority of the Percentage Vote.

(6) Adjournment.

(g) Conduct of Special Meeting. The President of the Association shall act as Chairman of any special meetings of the Association if he 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 consideration of the matters for which such meeting was called, as set forth in the notice of such special meeting.

### ARTICLE III

#### Board of Managers.

Section 3.01. Management. The affairs of the Association and High Pointe Place shall be governed and managed by the Board of Managers (herein collectively called "Board" or "Managers" and individually called "Manager"). The Board of Managers shall be composed of three persons. No

person shall be eligible to serve as a Manager unless he is, or is deemed in accordance with the Declaration to be, an Owner, including a person appointed by Declarant as provided in Section 3.02 hereof.

Section 3.02. Initial Board of Managers. The initial Board of Managers shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provisions of, these By-Laws or the Declaration or the Act or the Statute (a) the Initial Board shall hold office until the earliest of (1) Dec. 31, 1991, or (2) the date Declarant does not own any Condominium Units (the applicable date being herein referred to as the "Applicable Date"), and in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever, prior to the Applicable Date determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Condominium Unit, or by acquisition of any interest in a Condominium Unit by any type of judic acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Owner's right to vote and to vote as Declarant determines on all matters as to which members are entitled to vote under the Declaration, these By-Laws, the Act, the Statute or otherwise. This appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same.

Section 3.03. Additional Qualifications. Where an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner, or a partner of an officer or trustee shall be eligible to serve on the Board of Managers, except that no single Condominium Unit may be represented on the Board of Managers by more than one person at a time.

Section 3.04. Term of Office and Vacancy. Subject to the provisions of Section 3.02 hereof, one (1) member of the Board of Managers shall be elected at each annual meeting of the Association. The Initial Board shall be deemed to be elected and re-elected as the Board of Managers at each annual meeting until the Applicable Date provided in Section 3.02 hereof. After the Applicable Date, each member of the Board of Managers shall be

elected for a term of three (3) years, except that at the first election after the Applicable Date one member of the Board of Managers shall be elected for a three (3) year term, one for a two (2) year term, and one for a one (1) year term so that the terms of one-third (1/3) of the Managers shall expire annually. There shall be separate nominations for the office of each Manager to be elected at such first election after the Applicable Date. Each Manager shall hold office throughout the term of his election and until his successor is elected and qualified. Subject to the provisions of Section 3.02 hereof as to the Initial Board, any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining Managers or by vote of the Owners if a Manager is removed in accordance with Section 3.05 of this Article III. The Manager so filling a 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 Manager shall be elected for the balance of the term of the Manager so removed or in respect to whom there has otherwise been a vacancy.

Section 3.05. Removal of Managers. A Manager or Managers, except the members of the Initial Board, may be removed with or without cause by vote of a majority of the Percentage Vote at a special meeting of the Owners duly called and constituted for such purpose. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Manager so elected shall serve until the next annual meeting of the Owners and until his successor is duly elected and qualified.

Section 3.06. Duties of the Board of Managers. The Board of Managers shall provide for the administration of High Pointe Place Horizontal Property Regime, 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. After the Applicable Date, the Board shall, on behalf of the Association, 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. 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 respon-

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sibility 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 of 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 High Pointe Place, removal of garbage and waste, and snow removal from the Common Areas;
- (c) landscaping, painting, decorating, furnishing, maintenance and upkeep of the Common Areas and, where applicable, the Limited Areas;
- (d) surfacing, paving and maintaining private streets, parking areas and sidewalks to the extent the same are not included in a Condominium Unit or constitute Limited Areas;
- (e) assessment and collection from the Owners of the Owner's share of the Common Expenses;
- (f) 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;
- (g) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year; such accounting shall be delivered to each Owner simultaneously with delivery of the proposed annual budget for the current year;
- (h) keeping a current, accurate and detailed record of receipts and expenditures affecting the Property, specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours; payment vouchers for all expenditures shall, prior to payment, be approved by a member of the Board or such other person (which may include the Managing Agent) to whom the Board may delegate such duty and authority; and
- (i) procuring and maintaining for the benefit of the Owners, the Association and the Board the insurance coverages required under the Declaration and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable.

Section 3.07. Powers of the Board of Managers. The Board of Managers 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 of Managers;
- (c) to employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Managers may be necessary or desirable in connection with the business and affairs of High Pointe Place;
- (d) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Managers 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;
- (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 3.08. Limitation on Board Action. After the Applicable Date, the authority of the Board of Managers to enter into contracts shall be limited to contracts involving a total expenditure of less than \$4,000.00 without obtaining the prior approval of a majority of the Percentage 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 casualty where the cost thereof is payable out of insurance proceeds actually received;
- (b) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and
- (c) expenditures necessary to deal with emergency conditions in which the Board of Managers reasonably believes there is insufficient time to call a meeting of the Owners.

Section 3.09. Compensation. No Manager shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority of the Percentage Vote. The Managing Agent shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

Section 3.10. Meetings. Regular meetings of the Board of Managers may be held at such time and place as shall be determined from time to time by a majority of the Managers. The Secretary shall give notice of regular meetings of the Board to each Manager personally or by United States mail at least five (5) days prior to the date of such meeting.

Special meetings of the Board may be called by the President or any two members of the Board. The person or persons calling such meeting shall give written notice thereof to the Secretary who shall either personally or by mail, and at least three (3) days prior to the date of such special meeting, give notice to the Board members. 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 Madison County, Indiana, or any of the contiguous Counties, as shall be designated in the notice.

Section 3.11. Waiver of Notice. Before any meeting of the Board, any Manager 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 Manager at a meeting or his subsequent consent to the actions taken thereat, shall, as to such Manager, constitute a waiver of notice of the time, place and purpose thereof. If all Managers are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

Section 3.12. Quorum. At all meetings of the Board a majority of the Managers shall constitute a quorum for the transaction of business and the votes of the majority of the Managers present at a meeting at which a quorum is present shall be the decision of the Board.

Section 3.13. Non-Liability of Managers. The Managers 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 Managers, except for their own individual willful misconduct, bad faith or gross negligence. The Association shall indemnify and hold harmless and defend each of the Managers against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of High Pointe Place or the Association, unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or By-Laws. It is intended that the Managers shall have no personal liability with respect to any contract made by them on behalf of High Pointe Place 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 Managers 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 High Pointe Place shall provide that the Board of Managers 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 Managers. The Association 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 Manager of the Association, 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 Manager is liable for gross negligence or misconduct in the performance of his duties. The Association shall also reimburse to any such Manager the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority of the Percentage Vote that such Manager was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Manager, no Manager 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 Manager relied on the books and record of the Association or statements or advice made by or prepared by the Managing Agent of High Pointe Place or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service unless such Manager had actual knowledge of the falsity or incorrectness thereof; nor shall a Manager 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 Managers.

Section 3.15. Bond. If the Board of Managers deems it necessary, the Board of Managers shall provide surety bonds and shall require the Managing Agent, Treasurer and such other officers as the Board deems necessary to provide surety bonds, indemnifying the Association 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 Managers and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

#### ARTICLE IV

##### 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 Managers may appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary. Any two or more officers 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 meeting of each new 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.

Section 4.03. The President. The President shall be elected from among the Managers and shall be the chief executive officer of the Association. 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 an association or a stock 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 Managers and shall perform all duties incumbent upon the

President during the absence or disability of the President. The Vice President shall also perform such other duties as these By-Laws may prescribe or as shall, from time to time, be imposed upon him by the Board or by the President.

Section 4.05. The Secretary. The Secretary shall be elected from among the Managers. 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. The Secretary shall specifically see that all notices of the Association or the Board are duly given, mailed or delivered, in accordance with the provisions of these By-Laws.

Section 4.06. The Treasurer. The Board shall elect from among the Managers 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 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 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 of Managers may, from time to time, designate and elect from among the Owners 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 By-Laws or the Board of Managers may prescribe.

#### ARTICLE V

#### Assessments

Section 5.01. Annual Accounting. Annually, after the close of each fiscal year of the Association and prior to the date of the annual meeting of the Association next following the end of such fiscal year, the Board, if it deems it advisable, shall cause to be prepared and furnished to each

Owner a financial statement prepared by a certified public accountant or firm of certified public accountants then serving the Association, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

Section 5.02. Proposed Annual Budget. Annually, on or before the date of the annual meeting of the Association, the Board of Managers 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 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 (hereinafter defined) for the current fiscal year. 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 of the Percentage 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. 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. The annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Areas, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Areas. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Areas shall be maintained by the Association in a separate interest bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Madison County, Indiana selected from time to time by the Board. The failure or delay of the Board of Managers 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 upon one hundred and ten percent (110%) of such last approved budget, as a temporary budget.

Section 5.03. 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 Condominium Unit based on the Percentage Interest of each Condominium Unit. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Condominium Unit (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Condominium Unit based upon such annual budget as finally adopted by the Owners. 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 Condominium Unit shall be paid in advance in equal quarterly installments, commencing on the first day of the first month of each fiscal year and quarterly thereafter through and including the first day of the last quarter of such fiscal year. Payment of the quarterly installments of the Regular Assessment shall be made to the Board of Managers or the Managing Agent, as directed by the Board of Managers; provided, however, Owners may elect to pay quarterly assessments semi-annually or annually, in advance. At the election and option of the Board, the Regular Assessment may be required to be paid by the Owners in advance in equal monthly installments rather than quarterly installments. In the event the Regular Assessment for a particular fiscal year of the Association was initially based upon a temporary budget,

- (a) if the Regular Assessment based upon the final annual budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the temporary budget, that portion of such excess applicable to the period from the first day of the current fiscal year to the date of the next payment of the Regular Assessment which is due shall be paid with such next payment and such next payment, and all payments thereafter during such fiscal year, whether quarterly or monthly, shall be increased so that the Regular Assessment as finally determined shall be paid in full by the remaining payments due in such fiscal year, or

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- (b) if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual budget adopted by the Owner, such excess shall be credited against the next payment or payments of the Regular Assessment coming due, whether quarterly or monthly, until the entire amount of such excess has been so credited; provided, however, that if an Owner had paid his Regular Assessment either semi-annually or annually in advance, then the adjustments set forth under (a) or (b) above shall be made by a cash payment by, or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.

The Regular Assessment for the current fiscal year of the Association shall become a lien on each separate Condominium Unit as of the first day of each fiscal year of the Association, even though the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Condominium Unit or any interest therein, shall not relieve or release such Owner or his successor as owner of such Condominium Unit from payment of the Regular Assessment for such Condominium Unit as finally determined, and such Owner and his successor as owner of such Condominium Unit shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Association pursuant to Section 8.02 hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessment for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Quarterly or monthly (if so determined by the Board) 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 5.04. 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 other-

wise provided in these By-Laws, the Declaration or the Act, the Board of Managers 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 (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Managers from time to time to pay for capital expenditures, to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in the Declaration, and to pay for any Condominium Units purchased by the Association pursuant to its right of first refusal set forth in the Declaration under the circumstances described in the Declaration.

Section 5.05. Failure of Owner to Pay Assessments. (a) No Owner may exempt himself from paying Regular Assessments and Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Areas and, in the proper case, of the Limited Areas, of the property, and toward any other expense lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas or by abandonment of the Condominium Unit belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special 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 Assessments or Special Assessments when due, the lien for such Assessment on the Owner's Condominium Unit may be filed and foreclosed by the Board for and on behalf of the Association as provided by law. Upon the failure of an Owner to make timely payments of any Regular Assessments or Special Assessments, when due, the Board may in its discretion, accelerate the entire balance of the unpaid Assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. 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 Assessments or

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

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

Section 5.06. Initial Budgets and Assessments. Notwithstanding anything to the contrary contained herein, in the Declaration, in the Act, in the Statute or otherwise, until the Applicable Date the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without meetings of or concurrence of the Co-owners. The Agency, power of attorney and proxy granted to the Declarant by each Owner pursuant to Section 3.02 hereof shall be deemed to cover and include each Owner's right to vote on and approve the annual budget and any Regular Assessments and Special Assessments until the Applicable Date. LIBER 1989 PAGE 493

Section 5.07. Maintenance and Repairs. Every Owner shall promptly perform all maintenance and repair within his own Condominium Unit which, if neglected, would affect the value of the Property. In addition, each

Owner shall furnish, and shall be responsible at his own expense for, the maintenance repairs and replacements of his Condominium Unit and Limited Areas, and all equipment serving the same. Such maintenance, repairs and replacements which each Owner is responsible to make personally and at his own expense include, but are not necessarily limited to, water lines, gas lines, plumbing and electric lines which service the Owner's Condominium Unit only and are located within exterior walls of the Condominium Unit including any lines in the area from below the floor to above the roof if they are within an extension of the exterior walls of the Condominium Unit; all partitions and interior walls, ceilings and floors; appliances, to include garbage disposals, dishwashers, stoves, ranges and refrigerators, telephones, air conditioning and heating equipment (whether located wholly or partially inside or outside the Condominium Unit), doors, screens and windows (including exterior and interior of all glass and screen surfaces), lamps, and interior and exterior grouting and/or caulking and all other accessories appurtenant to the Condominium Unit or belonging to the Owner thereof.

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 or other occupant or visitor of such Owner, damage shall be caused to the Common Areas or to a Condominium Unit or Limited Area owned by or reserved for the use of others, or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a waiver of subrogation clause. Maintenance, repairs and replacements to the Common Areas or the Condominium Units or Limited Areas shall be subject to the rules and regulations adopted from time to time by the Board.

To the extent that equipment, facilities and fixtures within any Condominium Unit shall be connected to similar equipment, facilities or fixtures affecting or serving other Condominium Units or any Common Areas or Limited Areas, then the use thereof by the owner of such Condominium Unit shall be subject to the rules and regulations adopted from time to time by the Board. The authorized representatives of the Association or Board of Managers or the Managing Agent for the Association, shall be entitled to reasonable access to any Condominium Unit as may be required in

connection with maintenance, repairs or replacements of or to the Common Areas or Limited Areas or any parts thereof, or any equipment, facilities or fixtures affecting or serving other Condominium Units or any Common Areas or Limited Areas.

#### ARTICLE VI

##### Restrictions, Entry and Rules and Regulations

Section 6.01. 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 High Pointe Place and in addition to those set forth in the Declaration. These are as follows:

- (a) All Condominium Units shall be used exclusively for residential purposes and no Condominium Unit may be partitioned or subdivided.
- (b) No additional buildings shall be erected or located on the Tract other than the Building 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 Managers and after approval of two-thirds (2/3) of the Co-owners.
- (c) Nothing shall be done or kept in any Condominium Unit or in the Common Areas or Limited Areas which 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 which will result in a cancellation of insurance on any Building or any part of the Common Areas or contents thereof, or which 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 waste 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 on the outside of the windows or placed on the outside walls of any Building, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any Building without the prior consent of the Board.
- (f) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Condominium Unit or in the Common Areas or Limited Areas of the property, except as specifically set forth herein. Small

dogs, cats or customary household pets may, with the prior written approval of the Board of Managers, be kept in a Condominium Unit provided that such pet is not kept, bred, or maintained for any commercial purpose and does not create a nuisance nor any annoyance to any other Co-owner. Pet shall be taken outdoors only under leash and while attended by its owner and its Owner shall be fully liable for any injury or damage to persons or property, including the Common Areas or Limited Areas, caused by such pet. The tethering of pets shall not constitute "attended." The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time including but not limited to a requirement that any Owner desiring to bring a pet on the property shall deposit with the Board a security deposit in an amount to be determined by the Board to cover any damage.

(g) Nothing shall be done or permitted in any Condominium Unit which will impair the structural integrity of any Building or which would structurally change any Building or which would affect the exterior appearance of any Condominium Unit, except as otherwise provided in the Declaration or these By-Laws. No Condominium Unit shall be used in any unlawful manner or in any manner which might cause injury to the reputation of High Pointe Place or which 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 musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines or loud persons.

(h) No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on, or so as to be visible from, any part of the Common Areas. The Common Areas shall be kept free and clear of rubbish, debris and other unsightly materials.

(i) No industry, trade, or other commercial or religious activity, educational or otherwise, designed for profit, altruism or otherwise, shall be conducted, practiced or permitted on the Property.

(j) No "for sale", "for rent" or "for lease" signs, or other signs, or other window or advertising display shall be maintained or permitted on any part of the Property or any Condominium Unit without the prior consent of the Board; provided, however, that the right is reserved by the Declarant and the Board to place or allow to be placed "for sale" or

"for lease" signs on or about the Property in connection with any unsold or unoccupied Condominium Units.

(k) All Owners and members of their families, their guests, 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.

(l) No boats, campers, trailers of any kind, buses, mobile homes, trucks, motor cycles, mini bikes, mopeds, or any other vehicles of any description other than normal passenger automobiles, shall be permitted, parked or stored anywhere within the Property; provided, however, that nothing herein shall prevent the parking or storage of vehicles used solely for transportation completely enclosed within a carport. No repair work shall be done on the Property on any vehicles, including passenger automobiles.

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

(n) No Owner shall be allowed to place or cause to be placed in Common Areas or Limited Areas any furniture, packages, or objects of any kind, without the consent of the Board of Managers.

(o) All garbage, trash and refuse shall be stored in appropriate containers inside the Condominium Unit, or the designated trash container; and shall be kept therein until not 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.

(p) No use shall be made of any part of the Real Estate which violates, and all Owners, members of their families, their guests, tenants, invitees and all occupants or other parties entitled to use or who may use any part of the Real Estate shall at all times fully comply with the Declaration, these By-Laws, ordinances of the City of Anderson, and laws of the State of Indiana.

Section 6.02. Right of Entry. All Owners and occupants of a

Condominium Unit shall be deemed to have granted the right of entry thereto to the Managing Agent or any other person authorized by the Board in case of an emergency originating in or threatening his Condominium Unit or the Building in which it is located, whether the Owner is present at the time or not. Any Owner shall permit other persons, or their representatives when so required, to enter his Condominium Unit for the purpose of performing installations, alterations or repairs to the mechanical or electrical services, or to make structural repairs, provided that requests for entry are made in advance and that such entry is at a time reasonably convenient to the Owner. In case of emergencies, such right of entry shall be immediate.

Section 6.03. Right of Board to Adopt Rules and Regulations.

The Board may promulgate such additional rules and regulations regarding the operation of the Property, including but not limited to the use of the 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 a majority of the Board, and the Board shall cause copies of such rules and regulations and all amendments thereto to be delivered or mailed promptly to all Owners.

ARTICLE VII

Amendment to By-Laws

Section 7.01. Subject to any contrary, overriding or superceding provisions set forth herein or in the Declaration, these By-Laws 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 19 of the Declaration. Amendments to these By-Laws shall be considered as amendments of the Declaration and shall be recorded in the office of the Recorder of Madison County, Indiana, as required by the Declaration and the Act. Notwithstanding anything to the contrary contained herein or in the Declaration, there shall be no amendment of the Declaration or these By-Laws prior to the Applicable Date without the consent and approval of Declarant.

ARTICLE VIII

Mortgages

Section 8.01. Notice to Association. Any Owner who places a first mortgage lien upon his Condominium Unit or the Mortgagee shall notify the Secretary of the Association thereof and provide the name and address of the Mortgagee. A record of such Mortgagee and name and address shall be

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maintained by the Secretary and any notice required to be given to the Mortgagee pursuant to the terms of the Declaration, these By-Laws or the Act 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 or the Mortgagee, no notice to any Mortgagee as may be otherwise required by the Declaration, these By-Laws or the Act shall be required and no Mortgagee shall be entitled to vote on any matter to which he otherwise may be entitled by virtue of the Declaration, these By-Laws, the Act, or proxy granted to such Mortgagee in connection with the mortgage.

The Association shall, upon request of a Mortgagee who has furnished the Association 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 the Declaration or these By-Laws which is not cured within sixty (60) days.

Section 8.02. 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 Regular Assessments or Special Assessments against the Condominium Unit, which statement shall be binding upon the Association and the 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 5.03 hereof.

#### ARTICLE IX

##### Miscellaneous

Section 9.01. Fiscal year. The fiscal year of the Association shall begin on the first day of January in each year and end on the last day of December next following.

Section 9.02. Seal. The Association may have and use a corporate seal, which seal (if one is adopted) shall be circular in form and mounted upon a metal die, suitable for impressing the same upon paper. About the upper periphery of the seal shall appear the words "HIGH POINTE PLACE HOMEOWNERS ASSOCIATION, INC.", and about the lower periphery thereof the

word "Indiana". In the center of the seal shall appear the word "Seal".  
PROVIDED, HOWEVER, that the use of said seal or an impression thereof shall  
not be required upon, and shall not affect the validity of, any instrument  
whatsoever.

Section 9.03. Personal Interests. No member of the Association shall  
have or receive any earnings from the Association, except a member who is  
an officer, director or employee of the Association may receive fair and  
reasonable compensation for his services as officer, director or employee,  
and a member may also receive principal and interest on moneys loaned or  
advanced to the Association as provided in the Statute.

055917

RECEIVED FOR RECORD  
At 3:36 o'clock P.M.  
Recorded in Book 1989 Page 458-500  
JUN 21 1989  
Kenneth Hoiser  
MADISON COUNTY RECORDER

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