

THE BY-LAWS OF  
WATERSCAPE HORIZONTAL PROPERTY REGIME  
AND OF  
WATERSCAPE HOMEOWNERS ASSOCIATION, INC.

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BY-LAWS OF  
WATERSCAPE HORIZONTAL PROPERTY REGIME  
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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 Waterscape Horizontal Property Regime to which these By-Laws are attached and made a part. 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. 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 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. Additional Definitions. Notwithstanding any other definition in the Declaration or Articles, the following terms as used in these By-Laws shall have the following meanings:

"Act" means the Horizontal Property Law of the State of Indiana, I.C. 32-1-6-1 et.seq. as amended by Acts of 1977. The Act is incorporated herein by reference.

"Annual Boat Dock Fee" means the Assessment levied pursuant to Section 6.07 herein.

"Annual Boat Docking Facilities Budget" means the annual budget of total Boat Docking Facilities Expenses as defined and determined in Section 6.01 herein.

"Annual Budgets" means the Annual General Budget and Annual Boat Docking Facilities Budget collectively.

"Annual General Budget" means the annual budget of total Common Expenses as defined and determined in Section 6.01 herein.

"Applicable Date" means the earliest of (i) five (5) years from the date that the first Condominium Unit has been conveyed to a purchaser; or, (ii) four (4) months after seventy-five percent (75%) of the Condominium Units that may be developed on the Real Estate have been conveyed to purchasers, or (iii) the date Declarant files of record in the office of the Recorder of Hamilton County, Indiana, an instrument waiving and releasing its reserved rights as set forth in Paragraph 20 of this Declaration, to expand or further expand Waterscape.

"Articles" means the Articles of Incorporation of the Association.

**"Assessment"** means all sums lawfully assessed against the Owners or the Boat Dock Owners by the Corporation or as declared or authorized by the Act, the Declaration, any Supplemental Declaration, the Boat Dock Addendum, these Articles or the By-Laws.

**"Association"** means Waterscape Homeowners Association, Inc., an Indiana not-for-profit corporation, being the association of Co-owners of Waterscape.

**"Board of Directors"** means the governing body of the Association, being the Initial Board of Directors referred to herein or subsequent Board of Directors elected by the Co-owners.

**"Boat Dock"** means the boat dock as defined in Paragraph 10 of the Declaration.

**"Boat Dock Addendum"** means a Boat Dock Addendum to Purchase Agreement in the form attached to the Declaration as Exhibit "E".

**"Boat Dock Agreement"** means and collectively refers to the Underlying License, the Boat Dock Addendums, the Boat Dock Owner Waiver and Assignment Agreements, the Boat Dock License Agreements, the Transfer Agreements, the Boat Dock Lease Agreements, the Declaration, the Articles and these By-Laws.

**"Boat Dock Fee Share"** means a percentage amount equal to one divided by the total number of boat docks appurtenant to the Real Estate which then exists.

**"Boat Dock Lease Agreement"** means an agreement by and between the Declarant or the Association and a person under which such person leases the use of a boat dock for a term not more than twelve (12) months upon substantially the same terms and conditions, and subject to substantially the same limitations as to the Boat Dock Owners and Boat Dock Licensees.

**"Boat Dock Lessee"** means a person who leases a boat dock under the Boat Dock Lease Agreement.

**"Boat Dock Licensee"** or **"Licensee"** means an owner of a portion of the Real Estate, but not an Owner of a Condominium Unit, who purchases and attains the use of a boat dock under a Boat Dock Addendum and Boat Dock License Agreement.

**"Boat Dock Owner"** means an Owner who purchases and obtains the use of a Boat Dock under a Boat Dock Addendum and a Boat Dock License Agreement.

**"Boat Dock Owner Waiver and Assignment Agreement"** means an agreement between the Declarant (or the Association) and an Owner under which an Owner disclaims and waives any and all of his rights, privileges, title and interest in his Boat Dock and the Boat Docking Facilities and quitclaim grants, conveys and assigns such interest in this Boat Dock and the Boat Docking Facilities to the Declarant (or the Association).

**"Boat Docking Facilities"** means the boat docking facilities as defined in Paragraph 10 of the Declaration.

**"Boat Docking Facilities Budget"** means the annual budget prepared by the Board pursuant to Section 6.01 herein.

**"Boat Docking Facilities Expenses"** means expenses of administration of the Boat Docking Facilities by the Association and expenses for the operation, upkeep, maintenance, dredging, repair, replacement of the Boat Docking Facilities (to the extent provided in the Declaration, any Supplemental Declaration, the Boat Dock Addendums, the Boat Dock License Agreements, the Articles, these By-Laws and any other applicable Boat Dock Agreements) and all sums lawfully assessed against the Boat Dock Owners or the Boat Dock Licensees by the Association or as declared by the Act, this Declaration, any Supplemental Declaration, the Boat Dock Addendums, the Boat Dock License Agreements, any other applicable Boat Dock Agreements, the Articles or these By-Laws including but not limited to insurance costs, adequate reserves and administrative costs.

**"Boat Docking Facilities Replacement Reserve Fund"** means the reserve established and maintained under Section 6.04 herein.

**"Boat Docking Facilities Working Capital Fund"** means the reserve fund established and maintained under Section 6.10 herein.

**"Building"** means any structure on the Tract in which one or more Condominium Units are located, including any additional structure on the Real Estate containing one or more Condominium Units which may be submitted and subjected to the Act and the Declaration by Supplemental Declarations as herein provided. The initial Building is more particularly described and identified on the Plans and in Paragraph 3 of the Declaration and any additional Buildings will be identified in Supplemental Declaration or Plans that will be filed therewith.

**"By-Laws"** means these By-Laws of the Association and Waterscape providing for the administration and management of the Property and restrictions on its use as required by and in conformity with the provisions of the Act.

**"Common Areas"** means the common areas and facilities as defined in Paragraph 6 of the Declaration.

**"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 herein) and all sums lawfully assessed against the Owners by the Association or as declared by the Act, this Declaration or the By-Laws, but not including the Boat Docking Facilities Expenses.

**"Condominium Unit" or "Unit"** means each one of the living units constituting Waterscape, each individual living unit being more particularly described and identified on the Plans and in Paragraphs 4 and 5 of the Declaration, and each additional living unit which may be submitted and subjected to the Act and the Declaration by Supplemental Declarations. "Condominium Unit" includes the undivided interest in the Common Areas and Limited Areas appertaining to such Unit.

"Co-owner" or "Co-owners" means the Owners of all the Condominium Units.

"Corporation" means Waterscape Homeowners Association, Inc., an Indiana nonprofit corporation.

"Declaration" means the Declaration of Horizontal Property Regime of Waterscape recorded or to be recorded, in the office of the Recorder of Hamilton County, Indiana as the same may be amended from time to time.

"Directors" means all the members of the Board of Directors and "Director" means any individual member thereof.

"Expansion Parcel" means that portion of the Real Estate added to the Tract pursuant to and in accordance with Paragraph 20 of the Declaration.

"Fannie Mae" or "FNMA" means the Federal National Mortgage Association.

"General Operating Reserve" means the reserve established and maintained under Section 6.06 herein.

"General Replacement Reserve" means the reserve for Common Area and Limited Area Replacements, as established under Section 6.04 herein.

"Initial Board" or "Initial Board of Directors" means those individuals appointed by Declarant as Directors pursuant to the power reserved to Declarant by Section 3.02 in their capacity as the Board of Directors.

"Insurance Trustee" means such bank with trust powers authorized to do business in Hamilton County, Indiana, as the Board of Directors may designate for the custody and disposition, as herein or in the Declaration provided, of insurance proceeds and condemnation awards.

"Majority of Owners" means and "Majority of the Percentage Vote" means the Owners entitled to cast more than fifty percent (50%) of the Percentage Votes in accordance with the applicable percentages set forth in the Declaration.

"Majority Vote" means a majority of the Percentage Vote present in person or by proxy and voting at any duly constituted meeting of the Members.

"Managing Agent" means a reputable and recognized professional property management agent employed by the Board pursuant to Section 3.07.

"Member" means a member of the Association and "Members" means more than one member of the Association.

"Mortgagee" means the holder, insurer or guarantor of a first mortgage lien on a Condominium Unit who has requested notice in accordance with the provisions of Section 12.01 hereof.



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

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

"Plans" means (i) the floor and building plans and elevations of the Building and Condominium Units located on the Tract prepared and certified by James E. Dankert, a licensed professional engineer under date of April 14, 1994, and (ii) the General Plan of Waterscape prepared by Paul I. Cripe, Inc., all of which are attached to the Declaration, as may be supplemented and amended to reflect the addition of Buildings and Condominium Units as contemplated by Paragraph 20 in the Declaration.

"Property" means the Tract and appurtenant easements, the Condominium Units, the Buildings, Boat Docking Facilities, 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 Waterscape, excluding the personal property of the Owners.

"Real Estate" means the real estate described in Paragraph A of the recitals above and more particularly described in Exhibit "A" attached to the Declaration.

"Regime" means Waterscape Horizontal Property Regime created by this Declaration pursuant to the Act.

"Regular Assessment" means the Assessment levied pursuant to Section 6.02 herein.

"Restoration" means (re)construction or (re)building of the Buildings, the Condominium Units, the Common Areas, the Limited Areas and Boat Dock Facilities to not less than the same condition as they existed immediately prior to any loss, damage or destruction with the same type of architecture and structure, using where appropriate new materials of like kind and quality.

"Special Assessment" means the Assessment levied pursuant to Section 6.03 herein.

"Special Boat Docking Facilities Assessment" means the Assessment levied pursuant to Section 6.08 herein.

"Statute" means the Indiana Nonprofit Corporation Act of 1991, as the same may be amended from time to time.

"**Supplemental Declaration**" means any supplement or amendment to the Declaration that may be recorded by Declarant and that extends the provisions of this Declaration to any part of the Real Estate and contains such complementary or supplementary provisions for such part of the Real Estate as are required or permitted by the Act or this Declaration.

"**Temporary General Budget**" means the annual general budget for a fiscal year based upon one hundred and ten percent (110%) of such last approved Annual General Budget as determined under Section 6.01 herein.

"**Tract**" means the real estate described in Paragraph B of the recitals above and such other portions of the Real Estate which have, as of any given time, been subjected to the Act and this Declaration either by this Declaration or a Supplemental Declaration as herein provided.

"**Transfer Agreement**" means an agreement to transfer and convey a Boat Dock between a Boat Dock Owner and a new Owner, (or the Association) in accordance with the applicable Boat Dock Agreements.

"**Underlying License**" means a certain License Addendum by and between the Indianapolis Water Company and the Shorewood Corporation, as dated October 19, 1970; and seconded October 20, 1970 as Instrument No. 70-46985 in the office of the Recorder of Hamilton County, Indiana and any governing rules, regulations or interpretations made with respect thereto.

"**Waterscape**" means the name by which the Property and Regime shall be known.

"**Working Capital Fund**" means the fund established by the Declarant under Section 6.05 herein.

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

Section 1.04. Certain References. All references in these By-Laws to the Statute and the Articles shall include the Statute and the Articles, respectively, as now in effect or as may be amended hereafter from time to time.

## 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 (subject to the provisions of Section 3.02

hereof), approving the Annual Budgets, providing for the collection of Common Expenses, and Boat Docking Facilities Expenses and for such other purposes as may be required by the Declaration, any Supplemental Declaration, the Articles, these By-Laws, the Act or the Statute.

Section 2.02. Annual Meetings. The annual meeting of the Members shall be held on the first Tuesday of December in each calendar year. At the annual meeting, the Owners shall (subject to the provisions of Section 3.02 hereof) elect the Board of Directors 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 for any reason or purpose, unless otherwise prescribed by the Statute or the Articles of Incorporation, 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 written resolution or petition shall be presented to the President or Secretary of the Association and describe the purpose for which the meeting is to be held 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 Meeting. All meetings of the Members shall be held at any suitable place in Hamilton County, Indiana, as may be designated by the Board. Written or printed notice stating the date, time and place of any meeting, a description, if required by the Statute or the Articles of Incorporation, or the matter or matters to be considered at the meeting and in the case of a special meeting or when required by any other provision of the Statute, the Articles of Incorporation of these By-Laws, and, the purpose or purposes for which the meeting is called, shall be delivered or mailed first class or registered mail by the Secretary to each Member entitled by the Act or the Articles of Incorporation to vote at not less than ten (10) days prior to the date of such meeting and no more than forty-five (45) days before the date of the 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 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 By-Laws. Notice of any such meeting may be waived in writing by any Member if the waiver is signed by the Member and is delivered to the Corporation for inclusion in the minutes or filing with the Corporation's records. Attendance at any such meeting in person, or by proxy, shall constitute a waiver of notice of such meeting. Each Member, who has in the manner above provided waived notice of a Members meeting, who personally attends a Members meeting or who is represented at a Members meeting by a proxy authorized to appear by an instrument of proxy, shall be conclusively presumed to have been given due notice of such meeting. A Member's attendance at a meeting waives objection to lack of notice or defective notice of the meeting, unless the Member at the beginning of the meeting objects to holding the meeting or transacting business at the meeting, and waives objection to consideration of a particular matter at the meeting that is not within the purpose described in the meeting notice, unless the Member objects to considering the matter when the matter is presented. Notice of any adjourned

meeting of Members shall not be required to be given if the date, time and place thereof are announced at the meeting at which the adjournment is taken, except as may be expressly required by law.

Section 2.05. Voting at Meetings.

(a) Number of Votes. Except as otherwise provided by law, by the Articles of Incorporation or these By-Laws, 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 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 Persons constituting such Owner or the partners shall file with the Secretary 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 those Persons constituting such multiple Owner or a majority of 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 a 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. A 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) Pledges. If the vote of an Owner or Owners has been pledged by mortgage, security agreement, conditional assignment, or other instrument, an executed copy of which has been filed with the Secretary, only the pledgee shall be entitled to cast the vote of such Owner or Owners upon those matters upon which the Owner's or Owners' vote is so pledged.

(f) Quorum. Except where otherwise expressly provided in the Declaration, these By-Laws, the Act or the Statute, a Majority of Owners shall constitute a quorum at all meetings of the Members. In the absence of a quorum, any officer entitled to preside at, or act as secretary of, such meeting shall have the power to adjourn the meeting from time to time until a quorum shall be constituted. At any such adjourned meeting at which a quorum shall be present, any matters may be considered which might have been considered at the original meeting, but only those Members entitled to vote at the original meeting shall be entitled to vote at any adjournment or adjournments thereof unless a new record date is fixed by the Board of Directors for the adjourned meeting.

(g) Required Vote. When a quorum is present at any meeting, action on a matter (other than the election of directors) is approved if the votes cast favoring the action exceed the votes cast opposing the action, unless the Declaration, the Statute, the Articles of Incorporation or the By-Laws require a greater number of affirmative votes. Unless otherwise provided in the Articles of Incorporation or these By-Laws, Directors are elected by a plurality of the votes cast by the Members entitled to vote in the election at a meeting at which a quorum is present and may also be appointed by the Declarant in accordance with Section 3.02 hereof.

(h) Validity of a Vote, Consent, Waiver or Proxy Appointment. If the name on a vote, consent, waiver or proxy appointment corresponds to the name of a Member, the Corporation, if acting in good faith, may accept the vote, consent, waiver or proxy appointment and give it effect as the act of the Member. The Corporation may reject a vote, consent, waiver or proxy appointment if the authorized vote tabulation officer, acting in good faith, has a reasonable basis for doubt about the validity of the signature, or the signatory's authority. If so accepted or rejected, the Corporation and its officer are not liable in damages to the Member for any consequences of the rejection. Any of the Corporation's actions based on an acceptance or rejection of a vote, consent, waiver or proxy appointment under this Section is valid unless a court of competent jurisdiction determines otherwise.

(i) Voting List. After fixing a record date for a notice of a meeting of Members, the Corporation shall prepare a list of the names of the Corporation's Members who are entitled to notice of a Members meeting. The list must show the address and number of votes each Member is entitled to vote at the meeting and must be arranged in alphabetical order. The list of Members must be available for inspection by any Member for the purpose of communication with other Members concerning the meeting, beginning five (5) business days before the date of the meeting for which the list was prepared and continuing through the meeting, at the Corporation's principal office or at a place identified in the meeting notice in Hamilton County where the meeting will be held.

(j) Fixing a Record Date to Determine Members Entitled to Vote. The Board of Directors may fix a day and hour not more than fifty-five (55) days prior to meetings of the Members as the time as of which members entitled to notice of, and to vote at, such meeting shall be determined, and all persons who are Members at such time, and no others, shall be entitled to notice of, and to vote at, such meeting. In the

absence of such a determination, such date and time shall be fixed in accordance with the Act. Any determination of Members entitled to notice of, or to vote at, a Members meeting is effective for any adjournment of the meeting unless the Board of Directors fixes a new record date, which is only required if the meeting is adjourned to a date more than fifty-five (55) days after the record date for determining Members entitled to notice of the original meeting.

Section 2.06. Conduct of Meetings.

(a) Annual Meeting. The President 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 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 Annual Budgets for the current year.

(3) Annual Budgets. The proposed Annual Budgets for the current fiscal year shall be presented to the Owners for approval or amendment.

(4) Election of Board of Directors. After the Applicable Date, nominations for the Board may be made by any Member 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 Member 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. Prior to the Applicable Date, the nomination and election of the Board shall be governed by the provisions of Section 3.02 hereof.

(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 Owners.

(6) Adjournment. Upon the completion of the agenda above or as provided in Section 2.05(f) above, the meeting shall be adjourned by the President.

(b) Special Meeting. The President 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 the matters for which such meeting was called, as set forth in the notice of such special meeting.

### ARTICLE III

#### Board Of Directors

Section 3.01. Management. The affairs of the Association and Waterscape shall be governed and managed by the Board of Directors. Prior to the Applicable Date, the Board shall be composed of three (3) individuals; after the Applicable Date, the Board shall be composed of nine (9) individuals. No individual shall be eligible to serve as a Director unless he is, or is deemed in accordance with the Declaration to be, an Owner including an individual appointed by Declarant as provided in Section 3.02 hereof.

Section 3.02. Initial Board of Directors. The initial Board of Directors shall be Thomas E. Mullen, Sr., Thomas E. Mullen, Jr. and Curtis Halvorson, all of whom have been or shall be appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provisions of, these By-Laws, the Declaration, the Act or the Statute (a) the Initial Board shall hold office until the Applicable Date, and (b) in the event of any vacancy or vacancies occurring in the Initial Board for any reason or cause whatsoever, prior to the Applicable Date, every such vacancy shall be filled by an individual 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 juridic 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 appointment shall be deemed coupled with an interest and irrevocable until the Applicable Date, to exercise all of said Owner's right to vote as a Member 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 individual or is not a natural Person, then one of the individuals constituting the multiple Owner, or a partner, an officer or the trustee of a 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.

Section 3.04. Term of Office and Vacancy. Subject to the provisions of Section 3.02 hereof, three (3) members of the Board 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 Directors at each annual meeting until the Applicable Date. After the Applicable Date, each member of the Board of Directors shall be elected for a term of three (3) years, except that at the

first election after the Applicable Date three (3) Directors shall be elected for a three (3) year term, three (3) for a two (2) year term, and three (3) for a one (1) year term so that the terms of one-third (1/3) of the Directors shall expire annually. There shall be separate nominations for the office of each Director to be elected at such first election after the Applicable Date. Each Director 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 Directors or by vote of the Owners if a Director is removed in accordance with Section 3.05. The Director 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 Director shall be elected for the balance of the term of the Director so removed or in respect to whom there has otherwise been a vacancy.

Section 3.05. Removal of Directors. A Director or Directors, except the members of the Initial Board, may be removed with or without cause by vote or 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 Members 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 3.06. Duties of the Board of Directors. The Board shall provide for the administration of Waterscape, the maintenance, upkeep and replacement of the Common Areas, Limited Areas and Boat Docking Facilities (unless the same are otherwise the responsibility or duty of the Owners of Condominium Units), and the collection and disbursement of the Common Expenses and Boat Docking Facilities Expenses. After the Applicable Date, the Board may, 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 Limited Areas and Boat Docking Facilities, unless the same are otherwise the responsibility or duty of the 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 Waterscape, removal of garbage and waste, and snow removal from the Common Areas and Boat Docking Facilities;

(c) landscaping, painting, decorating, furnishing, maintaining and repairing the Common Areas and Boat Docking Facilities and, where applicable, the Limited Areas:

(d) surfacing, paving and maintaining private streets, drives, parking areas and sidewalks;



(e) assessment and collection from the Owners of the Owner's share of the Common Expenses;

(f) assessment and collection from the Boat Dock Owners and Boat Dock Licensees of their Boat Dock Fee Share of the Boat Docking Facilities Expenses;

(g) preparing and delivering annually to the Owners the proposed Boat Docking Facilities Budget;

(h) preparing and delivering annually to the Owners the proposed Annual General Budget;

(i) preparing and delivering annually to the Owners a full accounting of all receipts and expenses incurred in the prior year;

(j) keeping a current, accurate and detailed record of receipts and expenditures affecting the Property, specifying and itemizing the Common Expenses and Boat Docking Facilities Expenses;

(k) procuring and maintaining for the benefit of the Owners, the Association and the Board the insurance coverages required by Article VIII herein and such other insurance coverages as the Board, in its sole discretion, may deem necessary or advisable; and

(l) making available to Owners and Mortgagees current copies of the Declaration, By-Laws and rules and regulations governing Waterscape ("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 inspection upon request during normal business hours or under other reasonable circumstances. Upon written request by the United States Department of Housing and Urban Development ("HUD") or the Veterans Administration ("VA"), 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 3.07. 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; provided, however, any management agreement shall be terminable by the Association for cause upon thirty (30) days written notice and any such agreement may not exceed one (1) year renewable by agreement of the parties for successive one (1) year periods.

(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 Waterscape;

(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 Boat Docking Facilities and, where applicable, the Limited Areas;

(e) to appropriately classify and separate the costs of all of the above and foregoing as Common Expenses or Boat Docking Facilities Expenses and to pay all of such costs in accordance with the provisions herein;

(f) to open and maintain a bank accounts or investment 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 3.08. Limitation on Board Action. After the Applicable Date, the authority of the Board to enter into contracts shall be limited to contracts involving a total expenditure of less than \$15,000.00 without obtaining the prior approval of a Majority of Owners, except that in the following cases such approval shall not be necessary:

(a) contracts for replacing or restoring portions of the Common Areas, Boat Docking Facilities 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 proposed expenditures expressly set forth in the proposed Annual Budgets as approved by the Owners at the annual meeting; 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 Members.

Section 3.09. 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 allocated to the Common Expenses and Boat Docking Facilities Expenses in any manner determined in the sole discretion of the Board.

Section 3.10. Meetings.

(a) Organization 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 meeting of the Board to each Director personally or by United States 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 or by 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 Hamilton County, Indiana, as shall be designated in the notice.

Section 3.11. 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 3.12. Action Without a Meeting. Any action required or permitted to be taken at any meeting of the Board may be taken without a meeting if a consent in writing setting forth such actions so taken is signed by all Directors and such written consent is filed with the minutes of the proceedings of the Board.

Section 3.13. 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.

Section 3.14. 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 Persons arising out of contracts made by the Board on behalf of Waterscape or the Association, unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or these By-Laws. It is intended that the Directors shall have no personal liability with respect to any contract made by them on behalf of Waterscape 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 Waterscape 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 Interests.

Section 3.15. Additional Indemnity of Directors. The Association shall indemnify, hold harmless and defend any individual, his heirs, assigns and legal representatives made a party to any action, suit or proceeding by reason of the fact that he is or was a Director, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or willful misconduct in the performance of his 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 willful misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the 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 failed or neglected to attend a meeting or meetings of the Board.

Section 3.16. 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 (including Declarant or any shareholder of Declarant) 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 contract or transaction is between the Association and Declarant or any affiliate of Declarant entered into prior to the Applicable Date; or

(b) 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

(c) 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

(d) 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 the 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 3.17. 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 and the Association shall be named as an additional obligee thereon. Such fidelity bonds 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 and Boat Docking Facilities 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 allocated to Common Expenses and to Boat Docking Facilities Expenses in any manner determined in the sole discretion of the Board. The bonds may not be cancelled or substantially modified without thirty (30) days notice in writing to the Association, the Insurance Trustee and each servicer of a FNMA (Fannie Mae) owned mortgage in the Property.

## 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 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.

Section 4.02. Election of Officers. The officers of the Association shall be elected annually by the Board at the initial 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.

Section 4.03. The President. The President shall be elected from among the Directors and shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and 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 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 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 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. 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 a Treasurer who shall maintain a correct and complete record of accounts 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 may, from time to time, designate and elect from among the 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 By-Laws or the Board may prescribe.

## ARTICLE V

### 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 of his own Condominium Unit, except as may otherwise be provided herein. Each Owner shall promptly perform all maintenance and repair within his Condominium Unit which, if neglected, might adversely affect 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 appurtenant Limited Areas, and

all equipment serving the same except to the extent otherwise provided herein.

(b) Maintenance Exceptions. Maintenance, repairs and replacements for which each Owner is not individually responsible are (i) water lines, gas lines, plumbing and electric lines that service the Owner's Condominium Unit only and are located within or without exterior walls of the Condominium Unit, and including any lines in the area from below the floor to above the ceiling if they are within an extension of the exterior walls of the Condominium Unit, and (ii) for a period of one year after the issuance of the certificate of occupancy all air conditioning and heating equipment including filters and moving parts, which were a part of original construction (except for total replacement of the mechanical components, lavatory, toilet, bath, whirlpool, etc.) Such foregoing mechanical maintenance by the Association for the one year period after the issuance of the certificate of occupancy is for usual and ordinary mechanical maintenance of original construction only and where such repair is the result of wilful or negligent misuse by the Owner then a reasonable service charge shall be added to the Owner's next payment of the Regular Assessment collectable and enforceable as provided for herein.

(c) Appurtenant Maintenance. Each Owner shall be responsible for doors, screens and windows (including exterior and interior of all glass and screen surfaces), interior drywall, interior grouting and/or caulking and all other accessories appurtenant to the Condominium Unit or belonging to the Owner thereof. 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; but 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 6.12 hereof.

(d) Certain Limited Areas. Each Owner shall, at his expense, be responsible for the replacement of the air conditioning compressor, installed to service his Condominium Unit and for the decoration and general maintenance of other Limited Areas, including any balcony, patio, deck, porch or storage areas, to which there is direct access from the interior of his Condominium Unit. Any balcony, patio, deck, or porch shall be kept free and clean of snow, ice and any other accumulation by the Owner of such Condominium Unit who shall also make all repairs thereto caused or permitted by his negligence, misuse or neglect. All other repairs or replacements in, to or with respect to such balcony, patio, deck, or porch shall be made by the Association, and the cost thereof shall be a Common Expense. Any Owner of a Condominium Unit

desiring to fence in such area around his patio or porch shall first obtain the written approval as to the location, size, style, material, design, color and architecture of said fence from the Board of Directors in accordance with Section 5.03; and provided further, that the Owner to whose Condominium Unit said fence is or is to be attached shall construct and maintain the fence and any gates therein and maintain the area enclosed by the fence all at his own expense.

(e) Common Areas and Limited Areas. All maintenance, repairs and replacements to the Common Areas and Limited Areas (except as otherwise provided in the Declaration, any Supplemental Declaration, or these By-Laws) 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.

(f) Boat Docking Facilities. All maintenance, repairs and replacements to the Boat Docking Facilities (except as otherwise provided in the Declaration, any Supplemental Declaration, or these By-Laws) shall be furnished by the Association as part of the Boat Docking Facilities Expenses.

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 event 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 alterations or additions to or which would affect the Common Areas or Limited Areas including but not limited to, changing the color of any of 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. Declarant reserves the right to change the interior design and arrangement of all Condominium Units and alter the boundaries between Condominium Units so long as Declarant owns the Condominium Units so altered; no such change shall increase the number of Condominium Units nor change the Percentage Interest applicable to such Condominium Unit. If Declarant shall make any changes in the Condominium Units so authorized, such changes shall be reflected by a supplement to the Plans and such supplement to the Plans need not be approved by the Association or any other Owners. Declarant also reserves the right to screen porches without the approval of the Association or any Owners. An Owner may also screen a porch provided Owner shall first obtain written approval of the material, color and design from the Board of Directors, and provided further that such Owner shall (even though a porch is a Limited Area as defined in Paragraph 7 of the Declaration) maintain at his own expense such screened porch area with the maintenance to be in such manner as the Board of Directors deems appropriate and the color of such porch to be the same as the Condominium Unit to which it appertains.



Section 5.04. Real Estate Taxes.

(a) Real estate taxes are to be separately taxed to each Condominium Unit as provided in the Statute. 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 (or any other portions of the Real Estate) as a whole, then each Owner shall pay his proportionate share thereof in accordance with his respective Percentage Interest. If real estate taxes are assessed on the Tract and other portions of the Real Estate, then the tax for the Tract shall be allocated on a proportionate square footage basis and the tax for the improvements on the Tract shall be allocated on a proportionate value basis as shall be determined by the Board of Directors.

(b) Boat Dock and Boat Docking Facilities. In the event that the Boat Docks are or become subject to any real estate or personal property taxes or assessments for municipal improvements or the value of the Boat Dock is considered in determining the value of the Boat Dock Owner's Condominium Unit, the Boat Dock Owner shall pay all such taxes or assessments attributable to his Boat Dock. In the event that for any year real estate taxes or assessments for municipal improvements or the value of the Boat Docking Facilities are not separately assessed and taxed to each Boat Dock, but are assessed and taxed on the Boat Docking Facilities as a whole, then each Boat Dock Owner and Boat Dock Licensee shall pay his Boat Docking Fee Share.

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, after the Applicable Date, alternative payment arrangements are authorized by a Majority of Owners.

Section 5.06. Limitation of Liability. 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. 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. 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, or occupancy or abandonment of his Condominium Unit or its appurtenances or of the Common Areas, Boat Docking Facilities 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 provisions of, the Declaration, the Act, these By-Laws, 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 VI

### Assessments

Section 6.01. Proposed Annual Budget. Annually, on or before the date of the annual meeting of the Association, the Board shall cause to be prepared the proposed Annual General Budget and the Annual Boat Docking Facilities Budget (collectively the "Annual Budgets") for the current fiscal year estimating the total amount of the Common Expenses and total amount of Boat Docking Facilities Expenses for the current fiscal year, and shall furnish a copy of such proposed Annual Budgets to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The Annual Budgets 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 and Annual Boat Dock Fees for the current fiscal year. At the annual meeting of the Owners, each Budget may be approved in whole or in part or may be amended in whole or in part by a separate Majority Vote for each budget; provided, however, that in no event shall the annual meeting of the Owners be adjourned until both Annual Budgets are approved and adopted at such meeting, either the proposed Annual Budgets or the proposed Annual Budgets as amended. The Annual Budgets, the Regular Assessments, Annual Boat Dock Fees and all sums assessed by the Association shall be established by using generally accepted accounting principles applied on a consistent basis. The Annual Budgets, the Regular Assessments and Annual Boat Dock Fees shall include the amounts required for funding the reserve accounts required by Section 6.04, 6.05, 6.06, 6.09, 6.10 and 6.11. The failure or delay of the Board to prepare proposed Annual Budgets 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 or Annual Boat Dock Fees as herein provided, whenever determined. Whenever, whether before or after the annual meeting of the Association, there is no Annual General 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 Annual General Budget or, at the option of the Board, based upon one hundred and ten percent (110%) of such last approved budget, as a Temporary General Budget. Whenever, whether before or after the annual meeting of the Association, there is no Annual Boat Docking Facilities Budget approved by the Owners as herein provided for such current fiscal year, the Boat Dock Owners and Boat Dock Licensees shall continue to pay Annual Boat Dock Fees based upon the Annual Boat Dock Fee for the immediately preceding year, and shall continue as the Annual Boat Dock Fee for such current fiscal year, subject to an increase of up to fifteen (15%) at the discretion of the Board of Directors.

Section 6.02. Regular Assessments. The Annual General Budget as adopted by the Owners shall, based on the estimated cash required for the Common Expenses in the current fiscal year and required reserve amounts 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 General Budget, each Owner shall be given written notice of such assessment against his respective Condominium Unit. In the event the Regular Assessment for a particular fiscal year is initially based upon a Temporary General Budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final Annual General Budget by the Owners to reflect the Assessment against each Condominium Unit based upon such Annual General 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 General Budget, including reserve funds as herein provided. 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 each month thereafter through and including the first day of the last month of such fiscal year. Payment of the monthly installments of the Regular Assessment shall be made to the Board of Directors or the Managing Agent, as directed by the Board of Directors, provided, however, Owners may elect to pay monthly assessments quarterly, 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 quarterly installments rather than monthly installments.

(a) if the Regular Assessment based upon the final Annual General Budget adopted by the Owners exceeds the amount of the Regular Assessment based upon the Temporary General 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 that is due shall be paid with such next payment and such next payment, and all payments thereafter during such fiscal year, whether monthly or quarterly, 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

(b) if the Regular Assessment based upon the Temporary General Budget exceeds the Regular Assessment based upon the final Annual General Budget adopted by the Owners, 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 a Owner had paid his Regular Assessment either quarterly, semi-annually or annually in advance, then the foregoing adjustments 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 General Budget finally adopted by the Owners.

(c) The Regular Assessments shall be payable in advance and shall commence at the time of closing and delivery of deed for the Condominium Unit. In computing the initial payment the amount of the Regular Assessments shall be calculated by apportioning the payment based upon a thirty (30) day month until the due date for payment of the next Regular Assessment occurs.

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 General Budget and thereafter, before the Annual General Budget and Regular Assessment are finally determined, approved and adjusted as herein provided, and 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 12.03 hereof prior to the final determination and adoption of the Annual General 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 Annual General 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. Monthly or quarterly (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 statement 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 By-Laws, the Declaration or the Act, the Board of Directors shall have the full right, power and authority to make Special Assessments to fund such Common Expenses 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 Common Expenses, including but not limited to, capital expenditures or the costs of any repair or reconstruction of damage caused by fire or other cause or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described herein, in the Declaration or the Act.

Section 6.04. Reserve for Common Area and Limited Area Replacements. The Board of Directors shall cause to be established and maintained a General Replacement Reserve fund for replacements by the allocation and payment to such General Replacement 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, landscaping, waterscaping ponds and other facilities and appurtenances. 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, conservative investment income and gains to be earned by such funds, and the advice of Declarant, the Managing Agent and any consultants the Board may employ or engage. Such contributions to the General

Replacement Reserve fund shall be conclusively deemed to be a Common Expense. Such contributions to the General Replacement Reserve fund shall be deposited in a separate interest bearing account with a bank or savings and loan association, or such other investment account as determined by the Board in its sole discretion. The General Replacement Reserve for replacements may be expended only for the purpose of effecting 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 General Replacement Reserve fund. 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 Working Capital Fund. To meet unforeseen Common Expenses or to purchase any additional equipment or services, Declarant shall establish a separate General Working Capital Fund equal to two months of the initial estimated Common Expenses for each Condominium Unit in the initial Tract. In each subsequent Expansion Parcel added to the Tract by Supplemental Declaration a like fund contribution shall be made. Declarant may not use any amounts in the General Working Capital Fund to pay any of its expenses, contributions to any reserve fund or construction costs or to make up any budget deficits while Declarant is in control of the Association. Within sixty (60) days after closing has been held for the first Condominium Unit in each Tract and each Expansion Parcel, the Declarant shall pay each unsold Condominium Unit's share of the General Working Capital Fund to the Association. Any amounts paid into this fund by the Declarant shall not be considered as advance payments of Regular Assessments. Each Condominium Unit's share of the General Working Capital Fund shall be collected at the time the sale of the Condominium Unit is closed and shall be transferred to the Association for deposit to the segregated General Working Capital Fund. The Declarant shall then reimburse itself for this payment from the funds collected at closing when the unsold Condominium Units are sold. The amount collected from the Owner at the Closing shall be applied as a credit against the Regular Assessments to be paid by such Owner.

Section 6.06. General Operating Reserve. The Board of Directors may establish and maintain a reserve fund for general operating expenses ("General Operating Reserve") of a non-recurring nature by the allocation and payment to such General Operating Reserve fund not less frequently than annually of such amount as the Board in its discretion determines to be reasonable under the circumstances. Such contribution to the General Operating Reserve fund shall be conclusively deemed to be a Common Expense. Such contribution to the General Operating Reserve fund shall be deposited in a separate interest bearing account with a bank or savings and loan association or such other investment account as determined by the Board in its sole discretion. The General Operating Reserve may be expended only for operating contingencies of a non-recurring nature. The proportionate interest of any Owner in any General Operating 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 6.07. Annual Boat Dock Fee Assessment. The Annual Boat Docking Facilities Budget as adopted by the Owners shall be based on the estimated cash required for the Boat Docking Facilities Expenses in the current fiscal year and required reserve amounts as set forth in said Annual Boat Docking Facilities Budget, containing a proposed Annual Boat Dock Fee assessment against each Boat Dock Owner and Boat Dock Licensee based on the Boat Dock Fee Share of each Boat Dock Owner and Boat Dock Licensee. Immediately following the adoption of the Annual Boat Docking Facilities Budget, each Boat Dock Owner and Boat Dock Licensee shall be given written notice of such Annual Boat Dock Fee assessment against their respective Condominium Unit and Boat Dock. The Annual Boat Dock Fee assessment shall be due and payable in full on or before April 1st of each calendar year or on a date established by the Board of Directors; provided, however that the Board of Directors may, in its sole discretion, provide for payment of the Annual Boat Dock Fees in monthly, quarterly or semi-annual installments throughout each fiscal year. The Board of Directors may further provide for the payment of interest charges not to exceed twelve percent (12%) per annum from and after each April 1st, for the privilege of paying the Annual Boat Dock Fee assessment in installments after April 1st. In the event a Boat Dock Owner acquires his Boat Dock after April 1st of a fiscal year, the new Boat Dock Owner shall be liable for, and his Boat Dock and Condominium Unit shall be delivered and received subject to a lien for, any unpaid Annual Boat Dock Fee assessment in accordance with Section 12.03 hereof. The Board of Directors may at its sole discretion, pro rate the first Annual Boat Dock Fee assessment due and payable from a new Boat Dock Owner who acquires the Boat Dock directly from the Declarant or the Association after April 1st of a fiscal year.

Section 6.08. Special Boat Docking Facilities Assessment. From time to time Boat Docking Facilities Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise including, but not by way of limitation, any assessments or costs imposed by Shorewood Corporation or Indianapolis Water Company under the Underlying License. At such time and without approval of the Owners, Boat Dock Owners, or the Boat Dock Licensees, unless otherwise provided in these By-Laws, the Declaration or the Act, the Board of Directors shall have the full right, power and authority to make a Special Boat Docking Facilities Assessment to fund Boat Docking Facilities Expenses which, upon resolution of the Board, shall become a lien on each Condominium Unit, pro rated in accordance with the Boat Dock Fee Share of each Boat Dock Owner and Boat Dock Licensee. Without limiting the generality of the foregoing provisions, Special Boat Docking Facilities Assessments may be made by the Board of Directors from time to time to pay Boat Docking Facilities Expenses including but not limited to capital expenditures or the costs of any repair or reconstruction or restoration of damage caused by fire or other causes or disaster to the extent insurable proceeds are insufficient therefor under the circumstances described herein or in the Declaration or Act.

Section 6.09. Reserve for Boat Docking Facilities. The Board of Directors shall cause to be established and maintained a Boat Docking Facilities Replacement Reserve Fund for replacement by the allocation and payment to such Boat Docking Facilities Replacement 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 Boat Docking Facilities including but not limited to shoreline and retaining wall repair, dredging of lake or silt removal, environmental restoration

expenditures, complete Boat Dock replacement, including but not limited to decking, support posts and anchoring, and any reasonably anticipated assessments or costs by Shorewood Corporation or the Indianapolis Water Company under the Underlying License. In determining the amount, the Board shall take into consideration the expected useful life of such Boat Docking Facilities, projected increase in the cost of materials and labor, conservative investment income and gains to be earned by such funds, and the advice of Declarant, the Managing Agent, Indianapolis Water Company, Shorewood Corporation and any consultants the Board may employ or engage. Such contributions to the Boat Docking Facilities Replacement Reserve Fund shall be conclusively deemed to be a Boat Docking Facilities Expense. Such contributions to the Boat Docking Facilities Replacement Reserve Fund shall be deposited in a separate interest bearing account with a bank or savings and loan association, or such other investment account as determined by the Board in its sole discretion. The Boat Docking Facilities Replacement Reserve Fund for replacements may be expended only for the purpose of effecting the periodic maintenance, repair, renewal or replacement of the Boat Docking Facilities. The Board shall annually review the adequacy of the Boat Docking Facilities Replacement Reserve Fund. The Boat Docking Fee Share of a Boat Dock Owner shall represent the proportionate interest of a Boat Dock Owner in such Fund which shall be considered an appurtenance of his Boat Dock and Condominium Unit and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Boat Dock or Condominium Unit to which it appertains and shall be deemed to be transferred with such Boat Dock and Condominium Unit.

Section 6.10. Boat Docking Facilities Working Capital Fund. To meet unforeseen Boat Docking Facilities Expenses or to purchase any additional Boat Docking Facility equipment or services, Declarant shall establish a separate Boat Docking Facilities Working Capital Fund equal to fifteen percent (15%) of the initial Boat Docking Facilities Expenses for each Boat Dock of each Condominium Unit in the initial Tract. In each subsequent Expansion Parcel added to the Tract by Supplemental Declaration a like fund contribution shall be made. Within sixty (60) days after closing has been held for the first Boat Dock and Condominium Unit in the Tract and each Expansion Parcel, the Declarant shall pay each unsold Condominium Unit's share of the Boat Docking Facilities Working Capital Fund to the Association. Any amounts paid into this Fund by the Declarant shall not be considered as advance payments of Annual Boat Docking Fee assessments. Each Boat Dock Owner's Share of the Boat Docking Facilities Working Capital Fund shall be collected at the time the sale of the Boat Dock and Condominium Unit is closed and shall be transferred to the Association for deposit to the segregated Boat Docking Facilities Working Capital Fund. The Declarant shall then reimburse itself for its payments to this fund from the funds collected at each closing when the unsold Condominium Units in the Tract and Expansion Parcels are sold. The amount collected from the Boat Dock Owner at the closing shall be applied as a credit against the first Annual Boat Dock Fee assessment to be paid by such Boat Dock Owner.

Section 6.11. Boat Docking Facilities Operating Reserve. The Board of Directors may establish and maintain a reserve fund for general operating expenses of the Boat Docking Facilities of a non-recurring nature ("Boat Docking Facilities Operating Reserve") by the allocation and payment to such Boat Docking Operating Reserve Fund not less frequently than annually of such

amount as the Board in its sole discretion determines to be reasonable under the circumstances. Such contributions to the Boat Docking Operating Reserve Fund shall be conclusively deemed to be a Boat Docking Facilities Expense. Such contribution to the Boat Docking Operating Reserve Fund shall be deposited in a separate interest bearing account with a bank or savings and loan association or such other investment action as determined by the Board in its sole discretion. The Boat Docking Operating Reserve may be expended only for operating contingencies of a non-recurring nature. The Boat Docking Fee Share of a Boat Dock Owner shall represent the proportionate interest of a Boat Dock Owner which shall be considered an appurtenance of his Boat Dock and Condominium Unit and shall not be separately withdrawn, assigned or transferred or otherwise separated from the Boat Dock or Condominium Unit to which it appertains and shall be deemed to be transferred with such Boat Dock and Condominium Unit.

Section 6.12. Failure of Owner to Pay Assessments. No Owner may exempt himself from paying 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 Buildings, and toward any other expenses lawfully agreed upon including but not limiting to the Boat Docking Facilities Expenses, by waiver of the use or enjoyment of the Common Areas or Boat Docking Facilities, or by abandonment of the Condominium Unit or Boat Dock belonging to him. Each Owner shall be personally liable for the payment of his respective Percentage Interest or Boat Dock Fee Share of all Assessments. Where the Owner constitutes more than one person, the liability of such person shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Assessment when due, a lien for such Assessment on the Owner's Condominium Unit and Boat Dock may be filed and foreclosed by the Board for and on behalf of the Association as provided by law; provided, however, any lien for delinquent Assessments or other charges that the Association has on a Condominium Unit or Boat Dock will be subordinate to a first mortgage on the Condominium Unit and Boat Dock if the mortgage was recorded before the delinquent Assessment was due. Upon the failure of an Owner to make timely payments of any Assessment when due, the Board may in its discretion accelerate the entire balance of the unpaid Assessments for the remainder of the current fiscal year 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 Boat Dock, and the Board shall be entitled to the appointment of the receiver for the purpose of preserving the Condominium Unit and Boat Dock and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Assessment without foreclosing or waiving the lien securing the same. In any action to recover an 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 and expenses, including but not limited to paralegal fees, from the Owner of the respective Condominium Unit.

Section 6.13. Waiver of Lien Upon Foreclosure. Notwithstanding anything to the contrary contained in the Declaration and these By-Laws, any sale or



transfer of a Condominium Unit or Boat Dock 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. No such sale, transfer or conveyance shall relieve the Condominium Unit, Boat Dock or the purchaser at such foreclosure sale, or grantee in the event of conveyance in lieu thereof, from liability for any installments of Assessments thereafter becoming due or from the lien therefor. Such unpaid share of any Regular or Special Assessments, shall be deemed to be a Common Expense, and any unpaid share of any Annual Boat Dock Fees shall be deemed a Boat Docking Facilities Expense, (the lien for which has been divested as aforesaid), collectible from all Owners and Boat Dock Licensees respectively as otherwise provided herein (including the party acquiring the Condominium Unit from which it arose), as provided in the Act.

Section 6.14. 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 Budgets and all 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 Budgets and any Assessments until the Applicable Date.

## ARTICLE VII

### 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, Boat Docking Facilities and the Property shall be applicable to Waterscape:

(a) All Condominium Units shall be used exclusively for residential purposes and for occupancy by a single family excepting Declarant specifically reserves the right to occupy and maintain a Condominium Unit as a sales office or sales area.

(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, excepting Declarant reserves the right to maintain a mobile office for construction, marketing or management.

(c) Nothing shall be done or kept in any Condominium Unit or in the Common Areas, Boat Docking Facilities 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, Boat Dock 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 any part of the Boat Docking Facilities, 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 waste shall be committed in any Condominium Unit, Boat Dock, 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 or balcony of any Building, and 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 consent of the Board. Interior window and door drapes or coverings shall be of a neutral translucent color and texture or of the same color of the exterior facade surrounding the window or door.

(f) 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 By-Laws. No Condominium Unit shall be used in any unlawful manner or in any manner that might cause injury to the reputation of Waterscape 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.

(g) The Common Areas, Boat Docking Facilities 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.

(h) 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, Boat Docking Facilities 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, Boat Docking Facilities and Limited Areas, including but not limited to rules relating to the keeping of animals, the parking or storage of vehicles, boats, jet skis or trailers and other matters incidental to the use of the Common Areas, Boat Docking Facilities and Limited Areas.

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

(j) No Owner shall be allowed to place or cause to be placed in the walkways, lobbies, vestibules, stairways, hallways or areas of a similar nature and used for a similar purpose, in the Common Areas, Boat Docking

Facilities, or Limited Areas, any furniture, objects or materials of any kind, without the consent of the Board.

(k) 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 not earlier than sundown of the evening before scheduled trash collection. In the event trash chutes are provided within the Building, then such chute shall be used by the Owners in a clean and sanitary manner that does not clutter the flooring and discharge point into the chute. In the event such garbage, trash or refuse is too bulky to place within the trash chute, then 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.

(l) No "for sale," "for rent" or "for lease" signs or other advertising display shall be maintained or permitted on the Property without the prior consent of the Board except that the right to place or display such signs is reserved to Declarant and the Association with respect to unsold or unoccupied Condominium Units.

(m) Common Areas, Boat Docking Facilities 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 By-Laws and the rules and regulations from time to time adopted by the Board.

(n) 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 Persons entitled to use or who may use any part of the Real Estate, shall at all times fully comply with the terms, covenants, provisions, conditions, limitations, restrictions and requirements contained and described in the Declaration, these By-Laws or other instruments recorded in the Office of the Recorder of Hamilton County with respect to the Property.

(o) 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 Common Areas, Limited Areas and Boat Docking Facilities, 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. The Board shall cause copies of such rules and regulations and all amendments thereto to be delivered or mailed promptly to all Owners.

Section 7.03. Enforcement. The Declarant, the Association and any of its Members shall have the right of enforcement of all restrictions and regulations adopted pursuant to this Article VII. Any costs, including reasonable attorneys fees, may be recovered from any Owner for violation

thereof; however, any reservation of right to the use of summary abatement or similar means to enforce restrictions against a Condominium Unit or its use shall require that judicial proceedings be instituted before any items of construction can be altered or demolished.

## ARTICLE VIII

### Insurance

Section 8.01. Building Coverage. The Board of Directors on behalf of the Co-owners shall obtain, maintain and pay the premiums upon, as a Common Expense, and keep 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 (but not including the Boat Docking Facilities) with "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 or 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 (but not including the Boat Docking Facilities). Such coverage shall be for at least One Million Dollars (\$1,000,000) for bodily injury, including deaths of persons 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.

(i) Such liability insurance shall contain no provisions relieving the insurer from liability for loss occurring while the hazard is increased, whether or not within the knowledge or control of the Board, or because of any breach of any warranty or condition or any

other act or neglect by the Board or any Owner or any other Person under either of them.

(ii) Such liability insurance shall 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, the Insurance Trustee, all Owners, all Mortgagees and every other Person in interest who shall have requested such notice of the insurer.

(c) Workmen's 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 as of the date of initial sale by Declarant, as shown on the Plans as amended from time to time, and replacements thereof, but does not mean any fixtures, alterations, installations or additions in or to a Condominium Unit made by an individual Owner of that Condominium Unit and not shown on the Plans or the Boat Docking Facilities. Fixtures, equipment and other personal property inside the Condominium Unit as shown on the Plans that will be financed by a first mortgage shall be included, whether or not such property is part of the Common Area.

Section 8.03. Form for Owners. 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 Interest and payable in case of loss to the Insurance Trustee. 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, the Insurance Trustee, 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 14 of the Declaration;

(f) provide that the policy is primary in the event an Owner has other insurance covering the same loss;

(g) 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; and

(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;

Public liability and property damage insurance shall be carried in a form or forms naming as the insured the Board of Directors as 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. Boat Docking Facilities Coverage. The Board of Directors on behalf of the Boat Dock Owners shall obtain, maintain and pay the premiums upon, as a Boat Docking Facilities Expense, and keep 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 Boat Docking Facilities with "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 Boat Docking Facilities Expenses with respect to the Boat Docking Facilities, during any period of repair or construction;

(ii) such other risks as are customarily covered with respect to boat docks 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 and ice damage, legal liability, hired automobile and boat, non-owned automobile and boat, and any and all other liability incident to the ownership and/or use of the Boat Docking Facilities or any portion thereof. Such coverage shall be for at least One Million Dollars (\$1,000,000) for bodily injury, including deaths of persons 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 Boat Docking Facilities, and legal liability arising out of lawsuits related to employment contracts of the Association attributable to the Boat Docking Facilities.

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

(ii) Such liability insurance shall 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, the Insurance Trustee, all Owners, all Mortgagees and every other Person in interest who shall have requested such notice of the insurer.

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

(d) Such other policies of insurance for the Boat Docking Facilities, 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 8.04 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 8.05. Form for Boat Dock Owners. Casualty insurance shall be carried in a form or forms naming as the insured the Association for the use and benefit of the Boat Dock Owners according to the loss or damage to their respective Boat Docks and Boat Dock Fee Share and payable in case of loss to the Insurance Trustee. 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 Boat Dock 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, the Insurance Trustee, 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 14 of the Declaration; and

(f) provide that the policy is primary in the event a Boat Dock 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 as trustee for each individual Boat Dock 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 Boat Dock Owner a current certificate of such insurance, without prejudice to the right of any Owner to maintain additional public liability insurance for his Boat Dock.

Section 8.06. 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) Boat Docking Facilities. Proceeds on account of damage to Boat Docking Facilities shall be allocated among the Boat Dock Owners in accordance with their respective Boat Dock Fee Share.

(c) 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 not take into consideration the cost of repairing any items specifically excluded from 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 interests 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 By-Laws.

Section 8.07. Distribution of Insurance Proceeds. Proceeds of insurance policies received by the Insurance Trustee shall be distributed to or for the benefit of the Owners, Boat Dock 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 therefor.

(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 respective reserve for replacements established pursuant to the reserve for replacements established pursuant

to Section 6.04 and 6.11, except that, with respect to a Condominium Unit in which there was damage to items excluded from insurance coverage pursuant to Section 8.02, the Owner of such Condominium Unit shall be entitled to receive out of such remaining proceeds his pro-rata share thereof determined according to his Percentage Interest.

(c) Failure to Reconstruct or Repair. In the event of complete loss or destruction of all the Buildings as determined under Paragraph 14(c) of the Declaration, or 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 19 and Section 21 of the Act. Such proceeds shall be divided among the Owners proportionately according to the fair market value of all the Condominium Units immediately before the damage as compared to with all other Condominium Units pursuant to Section 19 of the Act.

(d) Certificate. In making distributions to Owners, Boat Dock Owners and their Mortgagees, the Insurance Trustee may rely upon a certificate issued by the Board as to the names of the Owners, Boat Dock Owners and their respective shares of the distribution, and, with respect to the names of 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 Hamilton County, Indiana, as to the names of the holders of mortgages of record.

Section 8.08. Association as Owner's Agent. The Association, acting by its Board of Directors, is hereby irrevocably appointed agent for each Owner, Boat Dock Owner and Boat Dock Licensee, 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 8.09. Individual Policies - Recommendation of Declarant. 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 an insured 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 8.10. 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.

Section 8.11. Federal National Mortgage Association. Notwithstanding anything to the contrary contained herein, the Association shall purchase and maintain insurance coverages which meet the minimum coverages required by the Federal National Mortgage Association Project Standards for condominium projects similar to the Property.

## ARTICLE IX

### 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 as a result of condemnation, and Restoration or repair of the Property is required or authorized pursuant to Paragraph 14 or Paragraph 15 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 after the Applicable Date to any structure exceeding \$25,000.00, the Board shall 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 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. After the Applicable Date, 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 or repair, which shall consist of the proceeds of insurance held by or payable to the Insurance Trustee, such amounts from the respective 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 or Special Boat Docking Facilities Assessment against Boat Dock Owners, shall be deposited with 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, if such Restoration or repair is undertaken prior to the Applicable Date, from Declarant or the Board, with respect to the payments to be made to contractors undertaking the Restoration and/or repair.

Section 9.08. Insurance Trustee. 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, Boat Dock Owners, and their Mortgagees as provided herein and in the Declaration.

## ARTICLE X

### Fiscal Management

Section 10.01. Fiscal Year. The fiscal year of the Association shall begin each year on January 1 and end on the last day of December of the same year.

Section 10.02. Books of Account. Books of account of the Association shall be kept under the direction of the Treasurer in accordance with generally accepted accounting principles, and shall include a current, accurate and detailed record of receipts and expenditures affecting the Property, specifying and itemizing the Common Expenses and Boat Docking Facilities 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, Boat Dock Owner or a Mortgagee or any duly authorized agent or attorney of an Owner or Mortgagee at any time during normal business hours for purposes reasonably related to his interest as an Owner, Boat Dock Owner or Boat Dock Licensee.

Section 10.04. Auditing. Unless otherwise agreed by a Majority 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 and which shall be available within 120 days after the fiscal year end of the Association.

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 XI

### Amendment to By-Laws

Section 11.01. Procedure. Subject to any contrary, overriding or superseding 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 18 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 Hamilton 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.

Section 11.02. Amended and Restated By-Laws. An amended and restated By-Laws, containing the original By-Laws 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 Hamilton County, Indiana, be conclusive evidence of all amendments contained therein and may thereafter be referred to in lieu of the original By-Laws and the various amendments thereto.

## ARTICLE XII

### Mortgages

Section 12.01. Notice to Association. Any Owner who places a first mortgage lien upon his Condominium Unit or the Mortgagee shall notify the Secretary thereof 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 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 it otherwise may be entitled to vote by virtue of the Declaration, these By-Laws, the Act, 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 By-Laws 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 Waterscape or the Condominium Unit securing its mortgage,

(b) Any delinquency in the payment of any 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 interests 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 purposes for which any Condominium Unit or the Common Areas are restricted.

Section 12.03. Notice of Unpaid Assessments. The Association shall, upon request of the 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 (including the Annual Boat Dock Fees) in excess of the amount set forth in such statement or as such Assessments (including the Annual Boat Dock Fees) may be adjusted upon adoption of the final Annual General Budget and Annual Boat Docking Facilities Budget, as referred to in Article VI 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 10.04 and 10.05 of these By-Laws.

ARTICLE XIII

Miscellaneous

Section 13.01. Membership Certificates. Each Member shall automatically become a Member of the Association upon delivering of title to a Condominium Unit. Such membership shall be nontransferable and membership shall automatically transfer to the new Owner.

Section 13.02. Personal Interests. No Person shall have or receive any earnings from the Association, except a Person who is an officer, director, employee or independent contractor employed or engaged by the Association may receive fair and reasonable compensation for his services as officer, director, employee or independent contractor, and a Person may also receive principal and interest on monies loaned or advanced to the Association as provided under Indiana law.

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