



DECLARATION OF HORIZONTAL PROPERTY OWNERSHIP  
FOR  
ASHTON PLACE  
HORIZONTAL PROPERTY REGIME

(Continued)

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**DECLARATION OF HORIZONTAL PROPERTY REGIME**  
**FOR**  
**ASHTON PLACE**  
**HORIZONTAL PROPERTY REGIME**

This Declaration, made this \_\_\_\_ day of \_\_\_\_\_, 1996, by Sentry Development, Inc., an Indiana corporation (the "DECLARANT")

**WITNESSETH:**

WHEREAS, the following facts are true:

A. DECLARANT is the fee simple title holder of the real estate, located in Johnson County, Indiana, described in Exhibit "A" attached hereto and shown on Exhibit "B" attached hereto and hereinafter referred to as the "Real Estate".

B. DECLARANT is the sole owner of the fee simple title to that portion of the Real Estate, more particularly described as Block G in Instrument #96005729, recorded in Book C, Page 754 in the Johnson County Recorder's Office on March 22, 1996, and hereby made a part hereof by this reference (hereinafter referred to as the "TRACT").

C. DECLARANT, by execution of this Declaration, hereby creates a Horizontal Property Regime upon the TRACT, subject to the provisions of the Horizontal Property Law of the State of Indiana and the terms and conditions of this Declaration.

NOW THEREFORE, DECLARANT hereby makes this Declaration as follows:

I **DEFINITIONS.**

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

- (a) "ACT" means the Horizontal Property Law of the State of Indiana, Ind. Code S 32-1-6-1 et seq. as amended. The ACT is incorporated herein by reference.
- (b) "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.
- (c) "PROPERTY" means the TRACT and appurtenant easements, the Condominium Units, the buildings, garages, improvements, and property of every kind and nature whatsoever, real, personal and mixed, located upon the TRACT and used in connection with the operation, use and enjoyment of ASHTON PLACE, but does not include the personal property of the Owners.
- (d) "CONDOMINIUM UNIT" means each one of the living units constituting ASHTON PLACE, each individual living unit being more particularly described and identified on the Plans and in Paragraphs 4 and 5 of this Declaration, and each additional living unit which may be submitted and subject to the ACT and this Declaration by supplemental declarations as herein

provided. "CONDOMINIUM UNIT" includes the undivided interest in the Common Areas and Limited Areas appertaining to such unit.

(e) "ASSOCIATION" means ASHTON PLACE Homeowners Association, Inc., a to-b-formed Indiana not-for-profit corporation, being the association of Co-Owners of ASHTON PLACE, more particularly described in Paragraph 12 hereof.

(f) "BOARD OF DIRECTORS" means the governing body of the Association, being the initial Board of Directors referred to in the By-Laws or subsequent Board of Directors elected by the Co-Owners in accordance with the By-Laws.

(g) "BUILDING" means any structure on the TRACT in which one or more Condominium Units are located. The BUILDINGS are more particularly described and identified on the Plans. "BUILDING" also includes any additional structure containing one or more Condominium Units which may be submitted and subjected to the ACT and this Declaration by supplemental declarations as herein provided, and will be identified in supplemental declarations and on plans that will be filed therewith.

(h) "BY-LAWS" means the BY-LAWS of the Association providing for the administration and management of the Property as required by and in conformity with the provisions of the ACT. A true copy of the BY-LAWS is attached to this Declaration and incorporated herein by reference.

(i) "COMMON AREAS" means the common areas and facilities appurtenant to the Property as defined in Paragraph 6 of this Declaration.

(j) "LIMITED AREAS" means the limited common areas and facilities as defined in Paragraph 7 of this Declaration.

(k) "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.

(l) "CO-OWNERS" means the Owners of all the Condominium Units.

(m) "MORTGAGEE" means the holder of a first mortgage lien on a Condominium Unit.

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

(o) "PERCENTAGE INTEREST" means the percentage of undivided interest in the fee simple title to the Common Areas and Limited Areas appertaining to each Condominium Unit as specifically expressed in Paragraphs 4 and 8 of this Declaration.

(p) "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.

(q) "PLANS" means the floor and building plans and elevations of the Buildings and Condominium Units prepared by David Julian of Design House, Inc., a licensed professional

architect, under the date of \_\_\_\_\_, and a site plan of the Tract and Buildings prepared by Greenwood Surveying, Inc. d/b/a Projects Plus, certified by Jerry Ott, a Registered Land Surveyor, under the date of March 18, 1996 and any additional plans filed and incorporated within a Supplemental or Amended Declaration as hereinafter provided, all of which are incorporated herein by reference.

(r) "DECLARANT" shall mean and refer to Sentry Development, Inc., an Indiana corporation, and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including but not limited to, any mortgagee acquiring title to any portion of the Property pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.

2 DECLARATION.

DECLARANT hereby expressly declares that the property shall be a Horizontal Property Regime in accordance with the provisions of the Act.

3 DESCRIPTION OF FACILITIES.

The facilities at ASHTON PLACE will be as described in Paragraphs 6 and 7 hereof

4 LEGAL DESCRIPTION AND PERCENTAGE INTEREST.

Each Condominium Unit is identified on the plans by a unit number. The legal description for each Condominium Unit shall consist of the identifying number for such Condominium Unit as shown on the Plans, and shall be stated as "Condominium Unit (with identifying number) in ASHTON PLACE Horizontal Property Regime". The Percentage Interest of each Owner in the Common Areas and Limited Areas as hereinafter defined shall be that percentage interest included in each Condominium Unit as set forth in Paragraph 3 hereof.

5 DESCRIPTION OF CONDOMINIUM UNITS.

(a) APPURTENANCES.

Each Condominium Unit shall consist of all space within the boundaries thereof, as hereinafter defined, and all portions of the Building situated within such boundaries, including but not limited to all fixtures, facilities, utilities, equipment, appliances, and structural components designed and intended solely and exclusively for the enjoyment, use and benefit of the Condominium Unit wherein the same are located, or to which they are attached, but excluding therefrom that designed or intended for the use, benefit, support, safety or enjoyment of any other Condominium Unit or which may be necessary for the safety, support, maintenance use and operation of any of the Buildings or which are normally designed for common use; provided, however, that all fixtures, equipment and appliances designed or intended for the exclusive enjoyment use and benefit of a Condominium Unit shall constitute a part of such Condominium Unit, whether

or not the same are located within or partly within the boundaries of such Condominium Unit. The space within the basement, if any, under any Condominium Unit is considered a part of and for the exclusive use of such Condominium Unit. The space within any garage connected to each of the Condominium Units is considered a part of and for the exclusive use of the Condominium Unit to which it is connected. Also, the interior sides and surfaces of all doors and windows in the perimeter walls of a Condominium Unit, whether or not located within or partly within the boundaries of a Condominium Unit, and all interior walls and all of the floors and ceilings within the boundaries of a Condominium Unit, are considered part of the Condominium Unit.

(b) BOUNDARIES.

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

6 COMMON AREA AND FACILITIES.

"Common Areas" means (1) the Tract, excluding the Condominium Units, (2) the foundations, columns, girders, beams, supports and exterior surfaces and roofs of the Buildings, (3) the yards, gardens, sidewalks and parking areas, except to the extent the same are otherwise classified and defined herein as part of the Condominium Unit or Limited Areas, (4) central electricity, gas, water, air conditioning and sanitary sewer mains serving the Buildings, if any, (5) exterior lighting fixtures and electrical service lighting the exterior of the buildings unless separately metered to a particular Condominium Unit, (6) pipes, ducts, electrical wiring and conduits and public utilities lines which serve more than one Condominium Unit, (7) all streets that are not dedicated, (8) floors, roofs and exterior perimeter walls of the Buildings, except to the extent the same are otherwise classified and defined herein as a part of the Condominium Unit or Limited Areas, and (9) all facilities and appurtenances located outside of the boundary lines of the Condominium Units, except those areas and facilities expressly classified and defined herein as Limited Areas or as part of the Condominium Unit.

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7 LIMITED AREAS AND FACILITIES.

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

(a) The halls, corridors, lobbies, stairs, stairways, entrances and exits of each Building, if any, (except those located within the interior of Condominium Units) shall be limited to the use of the Condominium Units of such Building.

(b) Patios and porches falling completely within the area, if any, specifically shown and designated on the Plans as "porch/patio area" and any fences and gates therein enclosing or surrounding the same, and the driveways and sidewalks serving a particular Condominium Unit or Units, shall be limited to the exclusive use of the Condominium Unit or Units to which they appertain; provided, however, that any Owner of a Condominium Unit desiring the change or improve his porch/patio area so designated on the Plans shall first obtain the written approval as to the location, size, style, material, design, color and architecture of said improvement from the Board of Directors and provided further that the Owner to whose Condominium Unit said improvement is or is to be attached shall construct and maintain the improvement and maintain the area therein contained all at his own expense.

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

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

8 OWNERSHIP OF COMMON AREAS AND PERCENTAGE INTEREST.

Each Owner shall have an undivided interest in the Common Areas and Limited Areas, as tenants in common with all other Owners, equal to his Condominium Unit's Percentage Interest. The Percentage Interest of each Condominium Unit shall be equal for all purposes and shall be a percentage equal to the number one (1) divided by the total number of Condominium Units which, from time to time, have been submitted and subjected to the Act and this Declaration as herein provided and which constitute a part of ASHTON PLACE. Except as otherwise provided or permitted herein, the Percentage Interest appertaining to each separate Condominium Unit in the Common Areas and Limited Areas shall be of a permanent nature and shall not be altered without the unanimous consent of all the Owners and then only if in compliance with all requirements of the Act.

The Percentage Interest appertaining to each Condominium Unit shall also be the Percentage Vote allocable to the Owner thereof in all matters with respect to ASHTON PLACE and the Association upon which the Co-Owners are entitled to vote.

9 ENCROACHMENTS AND EASEMENTS FOR COMMON AREAS.

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

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

10 REAL ESTATE TAXES.

Real estate taxes are to be separately assessed and taxed to each Condominium Unit as provided in the Act. In the event that for any year real estate taxes are not separately assessed and taxes on the Property (or the Property and any other portions of the Real Estate) as a whole, then each Owner shall pay his proportionate share of such taxes to the extent attributable to the Property in accordance with his respective Percentage Interest.

11 UTILITIES.

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

12 ASSOCIATION OF OWNERS.

Subject to the rights of DECLARANT reserved in Paragraph 24 hereof, the maintenance, repair, upkeep, replacement, administration, management and operation of the Property shall be by ASHTON PLACE Homeowners Association, Inc. (the "ASSOCIATION"), a corporation organized as a not-for-profit corporation under the laws of the State of Indiana. Each Owner of a Condominium Unit shall, automatically upon becoming an owner of a Condominium Unit, be and become a member of the Association and shall remain a member until such time as his ownership ceases, but membership shall terminate when such person ceases to be an Owner, and will be transferred to the new Owner.

The Association shall elect a Board of Directors annually (except for an Initial Board of Directors defined in the By-Laws) in accordance with and as prescribed by the By-Laws. Each Owner shall be entitled to cast his Percentage Vote for the election of the Board of Directors, except for such Initial Board of Directors who shall serve for the period provided in the By-Laws. Each person serving on the Initial Board of Directors, whether as an original member thereof or as a member thereof appointed by DECLARANT to fill a vacancy, shall be deemed a member of the Association and an Owner solely for the purpose of qualifying to act as a member of the Board of



Directors and for no other purpose. No such person serving on the Initial Board of Directors shall be deemed or considered a member of the Association nor an Owner of a Condominium Unit for any other purpose (unless he is actually an Owner of a Condominium Unit and thereby a member of the Association).

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

13 USE OF COMMON AREAS AND MAINTENANCE, REPAIRS AND REPLACEMENTS.

The Board of Directors shall adopt rules and regulations concerning maintenance, repairs, use and enjoyment of the Common Areas and Limited Areas as it deems appropriate, and may amend and modify the same from time to time as it deems advisable, necessary or appropriate.

Each Owner shall, at his expense, be responsible for the maintenance, repairs, decoration and replacement within his own Condominium Unit, as is provided by the By-Laws. Each Owner shall repair any defect occurring in his Condominium Unit which, if not repaired, might adversely affect any Condominium Unit, Common Area or Limited Area. Maintenance, repairs, replacements and upkeep of the Common Areas and Limited Areas shall be furnished by the Association as part of the Common Expenses, except as otherwise provided herein or in the By-Laws.

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

14 ALTERATIONS, ADDITIONS AND IMPROVEMENTS.

No Owner shall make any alterations or additions to or which would affect the Common Areas or Limited Areas without the prior written approval of the Board of Directors, nor shall any Owner make any alteration in or to his respective Condominium Unit and within the boundaries thereof which 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 the 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 not be approved by the Association or any other Owners.

15 INSURANCE.

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

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Association as hereinabove set forth shall be paid to it or to the Board of Directors, who shall act as the insurance trustees and hold such proceeds for the benefit of the insured parties. In the event that the Board of Directors has not posted surety bonds for the faithful performance of their duties as such managers or if such bonds do not exceed the funds which will come into its hands, and there is a damage to a part or all of the Property resulting in a loss, the Board of Directors shall obtain and post a bond for the faithful performance of its duties as insurance trustee in an amount to be determined by a majority of the Owners but not to exceed 125% of the loss, before the Board of Directors shall be entitled to receive the proceeds of the insurance payable as a result of such loss. The sole duty of the insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Owners and their respective Mortgagees. The proceeds shall be used or disbursed by the Association or Board of Directors, as appropriate, only in accordance with the provisions of this Declaration.

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

Such master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Association, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms, (I) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners as hereinafter permitted, and (ii) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Owners do not elect to restore pursuant to Paragraph 16 of this Declaration.

The Co-Owners, through the Association, shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Association, the Board of Directors, any committee or organ of the Association or Board of Directors, any managing agent appointed or employed by the Association, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to ASHTON PLACE, all Owners of Condominium Units and all other persons entitled to occupy any Condominium Unit or other portions of ASHTON PLACE.

The Co-Owners, through the Association, shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation insurance, and such other insurance as the Board of Directors shall from time to time deem necessary, advisable or appropriate, including but not limited to, liability insurance on vehicles owned by the Association and officers' and directors' liability policies. Such insurance shall inure to the benefit of each Owner, the Association, the Board of Directors and any managing agent acting on behalf of the Association. Each Owner shall be deemed to have delegated to the Board of Directors his right to adjust with the insurance companies all losses under policies purchased by the Board of Directors.

The premiums for all such insurance hereinabove described shall be paid by the Association as part of the Common Expenses and shall be assessed to each Unit Owner pro-rata based on the square footage of the respective units. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall promptly be furnished to each Owner or Mortgagee whose interest may be affected thereby, which notice shall be furnished by the officer of the Association who is required to send notices of meetings of the Association.

In no event shall any distribution of proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certification of insurance. In such event, any remittance shall be to the Owner and his Mortgagee jointly.

Each Owner shall be solely responsible for and may obtain such additional insurance as he deems necessary or desirable at his own expense affording coverage upon his personal property, the contents of his Condominium Unit (including but not limited to, all floor, ceiling and wall coverings and fixtures, betterments and improvements installed by him) and his personal property stored elsewhere on the Property, and for his personal liability, but all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provision for the master casualty insurance policy to be obtained by the Association. Each Owner may obtain casualty insurance at his own expense upon his Condominium Unit but such insurance shall provide that it shall be without contribution as against the casualty insurance purchased by the Association. If a casualty loss is sustained and there is a reduction in the amount of the proceeds which would otherwise be payable on the insurance purchased by the Association pursuant to this paragraph due to proration of insurance purchased by an Owner under this paragraph, the Owner agrees to assign the proceeds of

this latter insurance, to the extent of the amount of such reduction, to the Association to be distributed as herein provided.

16 CASUALTY AND RESTORATION.

(a) Except as hereinafter provided, damage to or destruction of any Building due to fire or any other casualty or disaster shall be promptly repaired and reconstructed by the Association and the proceeds of insurance, if any, shall be applied for that purpose; provided, however, that repair and reconstruction shall not be compulsory in the event of "complete destruction of all of the Buildings" (hereinafter defined) and shall only be done in accordance with the provisions hereinafter set forth. As used herein, the term "complete destruction of all of the Buildings" means a determination, made by a vote of two-thirds (2/3) of all Co-Owners at a special meeting of the Association called for the purpose of making such determination, that total destruction of all of the Buildings has occurred. A special meeting of the Association shall be called and held within ninety (90) days after any fire or any other casualty or disaster damaging or destroying any of the Buildings for the purpose of making the determination of whether or not there has been a complete destruction of all of the Buildings. If such a special meeting is not called and held within such ninety (90) day period, then it shall be conclusively presumed that the Co-Owners determined that there was not a complete destruction of all of the Buildings, and the Association shall proceed with repair and reconstruction as herein provided.

(b) If the insurance proceeds, if any, received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, and if the Property is not to be removed from the Horizontal Property Regime, the cost for restoring the damage and repairing and reconstructing the Building or Buildings so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by all of the owners of Condominium Units in proportion to the ratio that the Percentage Interest of each Condominium Unit bears to the total Percentage Interest of all Condominium Units. Any such amounts payable by the Co-Owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein and in the Act.

(c) For purposes of subparagraph (a) and (b), above, repair, reconstruction and restoration shall mean construction or rebuilding of the Condominium Units to as near as possible the same condition as they existed prior to the damage or destruction and with the same type of architecture

(d) If, under subparagraph (a) above, it is determined by the Co-Owners at a special meeting of the Association referred to therein that there has been a complete destruction of all of the Buildings, the Co-Owners shall, at said same special meeting, vote to determine whether or not such complete destruction of the Buildings shall be repaired and reconstructed. The Buildings shall not be reconstructed or repaired if it is the determination of the Co-Owners at said special meeting that there has been a complete destruction of all of the Buildings unless by a vote two-thirds

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(2/3) of all of the Co-Owners decide that the Buildings are to be re-built, reconstructed and repaired, in which event the insurance proceeds, if any, received by the Association shall be applied and any excess of construction costs over insurance proceeds, if any, received by the Association shall be contributed and paid as hereinabove provided in subparagraphs (a) and (b).

(e) If, in any case of the complete destruction of all of the Buildings, less than two-thirds (2/3) of all of the Co-Owners vote in favor of the rebuilding, reconstruction and repair of the Buildings, the Buildings shall not be re-built, reconstructed or repaired and, in such event, the Property shall be deemed and considered as to be removed from the provisions of the Act under Section 28 of the Act and in accordance with Sections 19 and 21 of the Act:

(i) the Property shall be deemed to be owned in common by the Condominium Unit Owners;

(ii) the undivided interest in the property owned in common which shall appertain to each Condominium Unit Owner shall be the percentage of undivided interest previously owned by such owner in the Common Areas;

(iii) any liens affecting any of the Condominium Units shall be deemed to be transferred in accordance with the existing priorities to the percentage of the undivided interest of the Condominium Unit Owner in the Property; and

(iv) the insurance proceeds on the Buildings containing Condominium Units shall be divided among the Co-Owners proportionately according to the fair market value of all the Condominium Units immediately before the casualty as compared with all other Condominium Units

(v) the Property shall be subject to an action for a partition at the suit of any Condominium Unit Owner, in which event the net proceeds of sale, together with the remaining net proceeds of the insurance on the Property, if any, shall be considered as (1) fund and shall be divided among all the Condominium Unit Owners in a percentage equal to the percentage of undivided interest owned by each Owner in the Property, after first paying out of the respective shares of the Condominium Unit Owners, to the extent sufficient for the purpose, all liens on the undivided interest in the Property owned by each Condominium Unit Owner.

(f) Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Association has the responsibility of maintenance and repair, the Board of Directors shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Directors desires.

(g) The Proceeds of insurance collected on account of any such casualty, and the sums received by the Board of Directors from collections of assessments against Owners on account

of such casualty, shall constitute a construction fund which shall be disbursed, if the Building or Buildings are to be reconstructed and repaired in the following manner:

(i) If the amount of the estimated cost of reconstruction and repair is less than Five Thousand Dollars (\$5,000.00), then the construction fund shall be disbursed in payment of such costs upon order of the Board of Directors; provided, however, that upon request of a Mortgagee, which is a beneficiary of any insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner hereinafter provided in the following Paragraph (ii).

(ii) If the estimated cost of reconstruction and repair of the Building or other improvement is more than Five Thousand Dollars (\$5,000.00), then the construction fund shall be disbursed in payment of such costs upon approval of an architect qualified to practice in Indiana and employed by the Board of Directors to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect, or other persons who have rendered services or furnished materials in connection with the work, (1) that the sums requested by them in payment are justly due and owing and that said sums do not exceed the value of the services and materials furnished; (2) that there is no other outstanding indebtedness known to the said architect for the services and materials described; and (3) that the cost as estimated by said architect for the work remaining to be done subsequent to that date of such certificate, does not exceed the amount of the construction fund remaining after payment of the sum so requested.

(iii) Encroachments upon or in favor of Condominium Units which may be created as a result of such reconstruction or repair shall be created as a result of such reconstruction or repair shall not constitute a claim or basis of a proceeding or action by the Owner upon whose property such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the Buildings were originally constructed. Such encroachments shall be allowed to continue in existence for so long as the Buildings stand.

(iv) In the event that there is any surplus of monies in the construction fund after the reconstruction or repair of the damage has been fully completed and all costs paid, such sums may be retained by the Board of Directors as a reserve or may be used in the maintenance and operation of the Common Areas, or, in the discretion of the Board of Directors if may be distributed to the Owners in the Buildings affected and their Mortgagees who are the beneficial owners of the fund. The action of the Board of Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against another Owner for committing willful or malicious damage

#### 17 COVENANTS AND RESTRICTIONS.

The covenants and restrictions applicable to the use and enjoyment of the Condominium Units and the Common Areas and Limited Areas are set forth in the By-Laws,

including the limitation that each of the Condominium Units shall be limited to residential use. These covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Association. Present or future Owners or the Association shall be entitled to injunctive relief against any violation or attempted violation of these provisions and shall be entitled to damages for any injuries resulting from any violations thereof, but there shall be no right of reversion or forfeiture of title resulting from such violation.

Notwithstanding anything to the contrary contained herein or in the By-Laws, including but not limited to any covenants and restrictions set forth in the By-Laws, DECLARANT shall have, until the date described in Paragraph 21 hereof as the date upon which DECLARANT'S right to use and maintain any Condominium Units owned by DECLARANT, such other portions of the Property (other than individual Condominium Units owned by persons other than DECLARANT, unless consented to by such other persons) and any portions of the Real Estate not then part of the Property, all of such number and size and at such locations as DECLARANT in its sole discretion may determine, as DECLARANT may deem advisable or necessary in its sole discretion to aid in the construction and sale of Condominium Units, or to promote or effect sales of Condominium Units or for the conduction of any business or activity attendant thereto, including, but not limited to, model Condominium Units, storage areas, construction offices, sales offices, management offices and business offices. DECLARANT shall have the right to relocate any or all of the same from time to time as it desires. At no time shall any of such facilities so used or maintained by DECLARANT be or become part of the Common Areas, unless so designated by DECLARANT, and DECLARANT shall have the right to remove the same from the Property at any time.

18 AMENDMENT OF DECLARATION.

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

(a) NOTICE.

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

(b) RESOLUTION.

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

(c) MEETING.

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

(d) ADOPTION.

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

(e) SPECIAL AMENDMENTS.

No amendment to this Declaration shall be adopted which changed (1) the Percentage Interest with respect to any Condominium Unit or the applicable share of an Owner's liability for the Common Expenses, without the approval of one hundred percent (100%) of the Co-Owners, except for changes pursuant to Paragraph 21 herein or (2) the provision of Paragraph 16 of this Declaration with respect to reconstruction or repair in the event of fire or any other casualty or disaster, without the unanimous approval of all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of the By-Laws.

(f) RECORDING.

Each amendment to the Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the Office of the Recorder of Johnson County, Indiana, and such amendment shall not become effective until so recorded.

(g) AMENDMENT BY DECLARANT ONLY.

Notwithstanding the foregoing or anything elsewhere contained herein, the DECLARANT shall have the right, acting alone and without the consent or approval of the Co-Owners, the Association, the Board of Directors, any Mortgagees or any other person to amend or supplement this Declaration from time to time if (i) such amendment or supplement is necessary to conform this Declaration to the Act, as amended from time to time, or (ii) such amendment or supplement is made to implement expansion of the Property and ASHTON PLACE pursuant to DECLARANT'S reserved rights to so expand the same as set forth in Paragraph 21 hereof, or (iii) if such amendment or supplement is necessary to satisfy the requirements of any federal mortgage agency.

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19 ACCEPTANCE AND RATIFICATION.

All present and future Owners, Mortgagees, tenants and occupants of the Condominium Units shall be subject to and shall comply with the provisions of this Declaration, the Act, the By-Laws appended hereto, and the rules and regulations as adopted by the Board of Directors as each may be amended or supplemented from time to time.

20 NEGLIGENCE.

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

21 EXPANDABLE CONDOMINIUM AND DECLARANT'S RESERVED RIGHTS.

ASHTON PLACE is and shall be an "expandable condominium", as defined in the Act, and DECLARANT expressly reserves the right and option to expand the Property and ASHTON PLACE in accordance with the provisions of the Act and the following provisions:

(a) The real estate described and defined herein as the Tract (in Paragraph B of the introductory recitals of this Declaration) is the real estate being subjected to the ASHTON PLACE Horizontal Property Regime by this Declaration and constitutes the first phase of the general plan of the development of the Real Estate. The balance of the Real Estate is the area into which expansion of ASHTON PLACE may be made by DECLARANT. The maximum number of Condominium Units which may be developed on the Real Estate, including Condominium Units on the Tract as defined in this original Declaration, shall be twenty-four(24). Subject to said limit as to the maximum number of Condominium Units to be developed on the Real Estate, ASHTON PLACE may be expanded by DECLARANT to include additional portions of the Real Estate in one (1) or more additional phases by the execution and recording on one (1) or more amendments or supplements to this Declaration; provided, however, that no single exercise of such right and option of expansion as to any part or parts of the real estate shall preclude DECLARANT from thereafter from time to time further expanding ASHTON PLACE to include other portions of the Real Estate, and such right and option of expansion may be exercised by DECLARANT from time to time as to all or any portions of Real Estate so long as such expansion is done on or before November 1, 2011. Such expansion is entirely at the discretion of DECLARANT and nothing contained in this original Declaration or otherwise shall require DECLARANT to expand ASHTON PLACE beyond the Tract (as defined and described in Paragraph B of the introductory recitals of this Declaration) or any other portions of the Real Estate which DECLARANT may voluntarily and in its sole discretion from time to time subject to this Declaration as provided above.

(b) The Percentage Interest which will appertain to each Condominium Unit in ASHTON PLACE as ASHTON PLACE may be expanded from time to time by DECLARANT in accordance with the terms hereof (including the Percentage Interest which appertains to each of the Condominium Units included in this original Declaration) shall be equal and shall be a percentage equal to the number one (1) divided by the total number of Condominium Units which, from time to time, have been subjected and submitted to this Declaration and then constitute a part of ASHTON PLACE.

(c) Simultaneously with the recording of amendments or supplements to this Declaration expanding ASHTON PLACE, DECLARANT shall record new Plans as required by the Act. Such amendments or supplements to this Declaration shall also include provisions reallocating Percentage Interest so that the Condominium Units depicted on such new Plans shall be allocated Percentage Interest in the Common Areas on the same basis as the Condominium Units depicted in the prior Plans. Such reallocations of Percentage Interests shall vest when the amendment or supplement to the Declaration incorporating those changes has been recorded.

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

In furtherance of the foregoing, a power coupled with an interest is hereby granted to the DECLARANT, as attorney-in-fact, to shift the Percentage Interest in the Common Areas appurtenant to each Condominium Unit to the percentage set forth in each such amendment or supplement to this Declaration recorded pursuant to this Paragraph 21. Each deed, mortgage or other instrument with respect to a Condominium Unit and the acceptance thereof shall be deemed a grant and acknowledgment of and consent to such power to said attorney-in-fact the power to shift and reallocate from time to time the percentages of ownership in the Common Areas appurtenant to each Condominium Unit to the percentages set forth in each such recorded amendment or supplement to this Declaration.

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

(i) The portion of the Real Estate described in each such amendment or supplement to this Declaration shall be governed in all respects by the provisions of this Declaration.

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(ii) The Percentage Interest in the Common Areas appurtenant to each Condominium Unit shall automatically be shifted and reallocated to the extent set forth in each such recorded amendment or supplement to this Declaration and upon the recording of each amendment or supplement to this Declaration, shall thereby be and be deemed to be released and divested from such owner and reconveyed and reallocated among the other Owners as set forth in each such recorded amendment or supplement to this Declaration.

(iii) Each deed, mortgage or other instrument affecting a Condominium Unit shall be deemed given subject to the conditional limitation that the Percentage Interest in the Common Areas appurtenant to each Condominium Unit shall, upon the recording of each amendment or supplement to this Declaration, be divested pro tanto to the reduced percentage set forth in such amendment or supplement to this Declaration and vested among the other Owners, mortgagees and others owning an interest in the other Condominium Units in accordance with the terms and percentages of each such recorded amendment or supplement to this Declaration.

(iv) A right of revocation is hereby reserved by the grantor in each such deed, mortgage or other instrument of a Condominium Unit to so amend and reallocate the Percentage Interest in the Common Areas appurtenant to each Condominium Unit.

(v) The Percentage Interest in the Common Area appurtenant to each Condominium unit shall include and be deemed to include any additional Common Areas included in land to which ASHTON PLACE is expanded by a recorded amendment or supplement to this Declaration and each deed, mortgage or other instrument affecting a Condominium Unit shall be deemed to include such additional Common Areas and the ownership of any such Condominium Unit and lien of any such mortgage shall automatically include and attach to such additional Common Areas as such amendments or supplements to this Declarations are recorded.

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

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

(viii) Each Owner, by acceptance of the deed conveying his Condominium Unit, agrees for himself and all those claiming under him, including mortgagees, that this Declaration and each amendment or supplement to this Declaration is and shall be deemed to be in accordance with the Act and for the purposes of this Declaration and the Act, any change in the respective

Percentage Interest in the Common Areas as set forth in each such amendment or supplement to this Declaration shall be deemed to be made by agreement of all Owners.

(ix) Each Owner agrees to execute and deliver such documents necessary or desirable to cause the provision of this Paragraph 21 to comply with the Act as it may be amended from time to time.

22 GRANTING OF EASEMENT.

The Board of Directors of the Association is granted the authority to grant easements to utility companies (excluding transportation companies) upon such terms and conditions and for such consideration as they deem appropriate.

23 RESERVATION OF RIGHTS TO THE USE OF THE COMMON AREAS.

(a) If, at any time, and from time to time, any portion of the Real Estate has not been subjected and submitted to this Declaration or to the Act by an amendment or supplement to this Declaration and the Owner or Owners of such portion or portions of the Real Estate not so subjected to the Declaration or to the Act develop single or multi-family dwelling units on such portions then the Owner or Owners of such portions of the Real Estate shall have the benefit of the Common Areas or portions thereof, to include the roads, the Pool (if any) and associated facilities, for the use of the persons and families living in such dwelling units upon the same terms and conditions as the use of such Common Areas by the owners of the Condominium Units, their families and guests. The Owner or Owners of such portions of the Real Estate shall then pay for the use of such facilities based on the cost of operation and maintenance of such facilities for the year of such usage and based on the number of living units so entitled to utilize such facilities in proportion to all of the living units on the Real Estate exclusive of real estate subjected to the Act and the Condominium Units. The owner or owners of such living units shall make payments for the usage provided herein to the Association at the same time as the Owners of the Condominium Units pay their assessments to the Association.

(b) DECLARANT shall have, and hereby reserves, an easement over, across, upon, along, in, through, and under the Common Areas and, to the extent necessary, the Limited Areas, for the purposes of installing, maintaining, repairing, replacing, relocating and otherwise servicing utility equipment, facilities and installations to serve the Property, to provide access to and ingress and egress to and from the Property and to any such portions of the Real Estate which are not part of the Property, to make improvements to and within the Property and any such portions of the Real Estate which are not part of the Property, and to provide for the rendering of public and quasi-public services to the Property and such portions of the Real Estate which are not part of the Property. The foregoing easement shall be a transferable easement and DECLARANT may at any time and from time to time grant similar easements, rights or privileges to other persons and parties for the same purposes. By way of example, but not in limitation of the generality of the foregoing, DECLARANT, and others to whom DECLARANT may grant such similar easements, rights or

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privileges, may so use the Common Areas and, to the extent necessary, the Limited Areas, to supply utility services to the Property and any portions of the Real Estate which are not part of the Property and to permit public and quasi-public vehicles, including but not limited to police, fire and other emergency vehicles, trash and garbage collection, post office vehicles and privately-owned delivery vehicles, and their personnel to enter upon and use the streets, the Common Areas and, to the extent necessary, the Limited Areas of ASHTON PLACE in the performance of their duties.

24 INITIAL MANAGEMENT.

As set forth in the By-Laws, the Initial Board of Directors consists and will consist of persons selected by DECLARANT. The Board of Directors has entered or will hereafter enter, into a management agreement with DECLARANT (or a corporation or other entity appointed by DECLARANT) for a term which will expire not later than May 5, 1998, under which DECLARANT (or such appointee of DECLARANT, as appropriate) will provide supervision, fiscal and general management and maintenance of the Common Areas and, to the extent the same is not otherwise the responsibility of Owners of individual Condominium Units, the Limited Areas, and, in general, perform all of the duties and obligations of the Association. Such management agreement is or will be subject to termination by DECLARANT (or its appointee, as appropriate) at any time prior to the expiration of its term, in which event the Association shall thereupon and thereafter resume performance of all of its duties and obligations and functions. Notwithstanding anything to the contrary contained herein, so long as such management agreement remains in effect, DECLARANT (or its appointee, as appropriate), shall have the exclusive right to manage the Property and to perform all the functions of the Association.

25 COSTS AND ATTORNEY'S FEES.

In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the By-Laws or the Act, or to comply with any provision of the Declaration, the Act, the 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 costs and reasonable attorneys' fees incurred in connection with such default or failure.

26 WAIVER.

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

27 SEVERABILITY CLAUSE.

The invalidity of any covenant, restriction, condition, limitation or other provisions of this Declaration or the By-Laws filed herewith shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration or the attached By-Laws.

28 PRONOUNS.

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

29 FLOOR PLANS.

The Plans setting forth the layout, location, identification numbers, and dimensions of the Condominium Units and the Property are incorporated into this Declaration by reference, and have been filed in the Office of the Recorder of Johnson County, Indiana in Horizontal Property Plan file \_\_\_\_\_, page \_\_\_\_\_ as of \_\_\_\_\_, as Instrument Number \_\_\_\_\_.

IN WITNESS WHEREOF, the undersigned has caused this Declaration to be executed the day and year first above written.

ATTEST:

ASHTON PLACE

Mary French  
Mary French, Secretary

Rick French, Pres.  
Rick French, President

STATE OF INDIANA     )  
  ) SS:  
COUNTY OF JOHNSON    )

Before me, a Notary Public in and for said County and State, personally appeared RICK FRENCH and MARY FRENCH, the President and Secretary, respectively, of ASHTON PLACE, an Indiana corporation, who acknowledged the execution of the foregoing Declaration of Horizontal Property Ownership for and on behalf of said corporation.

WITNESS my hand and Notarial Seal this 13th day of June, 1996.

My Commission Expires:

6-17-97

Angela G. Reynolds  
Notary Public ANGELA G. REYNOLDS  
Residing in Johnson County, IN

THIS DOCUMENT PREPARED BY: Joe N. Van Valer, VAN VALER LAW FIRM, 299 West Main Street, Post Office Box 7575, Greenwood, Indiana 46142. (317)881-7575

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LEGAL

A PART OF THE EAST HALF OF THE NORTHEAST QUARTER SECTION 6, TOWNSHIP 13 NORTH, RANGE 4 EAST OF THE SECOND PRINCIPAL MERIDIAN, PLEASANT TOWNSHIP, JOHNSON COUNTY, INDIANA, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:

BEGINNING ON THE EAST LINE OF SAID QUARTER SECTION SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST (ASSUMED BEARING) 1593.71 FEET FROM THE NORTHEAST CORNER OF SAID QUARTER SECTION, ALSO BEING THE SOUTHEAST CORNER OF A TRACT DEEDED TO DIXON IN DEED RECORD 275, PAGE 410 BEING THE POINT OF BEGINNING; THENCE CONTINUING SOUTH 00 DEGREES 00 MINUTES 00 SECONDS EAST ALONG SAID EAST LINE 413.69 FEET TO THE SOUTHEAST CORNER OF SAID HALF QUARTER SECTION; THENCE SOUTH 88 DEGREES 44 MINUTES 35 SECONDS WEST ALONG THE SOUTH LINE OF SAID HALF QUARTER SECTION LINE 332.00 FEET TO THE SOUTHEAST CORNER OF ASHTON PARKE VILLAGE SUBDIVISION RECORDED IN PLAT CABINET "C", SLIDE 738 "A & B"; THENCE NORTH 00 DEGREES 00 MINUTES 00 SECONDS WEST ALONG THE EAST LINE OF SAID SUBDIVISION PARALLEL TO THE EAST LINE OF SAID HALF QUARTER SECTION 420.97 FEET TO THE SOUTHWEST CORNER OF SAID DIXON TRACT; THENCE SOUTH 90 DEGREES 00 MINUTES 00 SECONDS EAST ALONG THE SOUTH LINE OF SAID DIXON TRACT 331.93 FEET TO THE POINT OF BEGINNING, CONTAINING 3.18 ACRES MORE OR LESS, SUBJECT HOWEVER TO ALL LEGAL RIGHT-OF-WAYS, EASEMENTS AND RESTRICTIONS OF RECORD.

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EXHIBIT "A"





CODE OF BY-LAWS  
OF  
ASHTON PLACE  
HORIZONTAL PROPERTY REGIME  
ASHTON PLACE HOMEOWNERS ASSOCIATION, INC.

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**CODE OF BY-LAWS  
OF  
ASHTON PLACE  
HORIZONTAL PROPERTY REGIME  
ASHTON PLACE HOMEOWNERS ASSOCIATION, INC.**

ARTICLE I

Identification and Applicability

Section 1.1 Identification and Adoption

These By-Laws are adopted simultaneously with the execution of a certain Declaration creating Ashton Place Horizontal Property Regime to which these By-Laws are attached and made a part thereof. The Declaration is incorporated herein by reference, and all of the covenants, rights, restrictions and liabilities therein contained shall apply to and govern the interpretation of these By-Laws. The definitions and terms as defined and used in the Declaration shall have the same meaning in these By-Laws and reference is specifically made to Paragraph 1 of the Declaration containing definitions of terms. The provisions of these By-Laws shall apply to the Property and the administration and conduct of the affairs of the Association. These By-Laws shall also constitute the By-Laws of the Association.

Section 1.2 Individual Application

All of the Owners, future Owners, tenants, future tenants, or their guests and invitees, or any other person that might use or occupy a Condominium Unit or any part of the property, shall be subject to the restrictions, terms and conditions set forth in the Declaration, these By-Laws and the Act, and to any rules and regulations adopted by the Board of Directors as herein provided.

ARTICLE II

MEETINGS OF ASSOCIATION

Section 2.1 Purpose of Meetings

At least annually, and at such other times as may be necessary, the meetings of the Co-Owners shall be held for the purpose of electing the Board of Directors (subject to the provisions of 3.2 hereof), approving the annual budget, providing for the collection of Common Expenses and for such other purposes as may be required by the Declaration, these By-Laws or the Act.

Section 2.2 Annual Meetings

The annual meeting of the members of the Association shall be held on the first Saturday of March in each calendar year. At the annual meeting the Owners shall (subject to the provisions of

Section 3.2 hereof) elect the Board of Directors of the Association in accordance with the provisions of these By-Laws and transact such other business as may properly come before the meet

### Section 2.3 Special Meetings

A special meeting of the members of the Association may be called by Resolution of the Board of Directors or upon a written petition of Owners who have not less than a majority of the Percentage Vote. The resolution or petition shall be presented to the President or Secretary of the Association and shall state the purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

### Section 2.4 Notice and Place of Meetings

All meetings of the members of the Association shall be held at any suitable place in Johnson County, Indiana, as may be designated by the Board of Directors. Written notice stating the date, time and place of any meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered or mailed by the Secretary of the Association to each member entitled to vote thereat not less than ten (10) days prior to the date of the such meeting. The notice shall be mailed or delivered to Owners at the address of their respective Condominium Units and not otherwise. A copy of each such written notice shall also be delivered or mailed simultaneously by the Secretary of the Association to each Mortgagee (a) who requests in writing that such notices be delivered to it, and (b) who has furnished the Association with its name and address in accordance with Section 8.1 of these By-Laws. Attendance at any meeting in person, by agent or by proxy shall constitute a waiver of notice of such meeting.

### Section 2.5 Voting

(a) Any person, firm, corporation, trust, or other legal entity or a combination thereof, owning any unit in said project duly recorded in his or its name, shall be a member of the Association, and either in person or by proxy entitled to a vote equivalent to his percentage interest in the common areas for each unit so owned at all meetings of the Association. Any provision to the contrary notwithstanding, co-owners or joint owners shall be deemed one owner. The authority given by a member to another person to represent such member at meetings of the Association shall be in writing, signed by such member or if a unit is jointly owned then by all joint owners, or if such member is a corporation, by the proper officers thereof, and shall be filed with the Secretary, and unless limited by its terms, such authority shall be deemed good until revoked in writing. An executor, administrator, guardian, or trustee may vote in person or by proxy at any meeting of the Association with respect to any unit owned or held by him in such a capacity, whether or not the same shall have been transferred to his name by a duly recorded conveyance. In case such unit shall not have so been transferred to his name, he shall satisfy the Secretary that he is the executor, administrator, guardian or trustee holding such unit in such capacity. Whenever any such unit is owned by two or more jointly, the vote therefor may be exercised by any one of the owners present in the absence of protest by the other or others, PROVIDED, HOWEVER, that when the vote of the

owner or owners has been pledged by mortgage, deed of trust, or agreement of sale of any unit or interest therein, an executed copy of which is on file with the Secretary, only the vote of the pledgee will be recognized upon those matters upon which the owner or owners vote is so pledged.

Any specified percentage of owners means the owners of units to which are appurtenant to such percentage in the aggregate of common interests.

#### Section 2.6 Quorum

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

In the event that Owners holding at least fifty percent (50%) of the undivided interest of the Common Areas and Limited Areas are not present in person or by proxy, the meeting shall be adjourned for twenty-four (24) hours, at which time it shall reconvene and any number of Owners present at such subsequent meeting shall constitute a quorum. Unless otherwise expressly provided in the Declaration or the Articles of Incorporation, any action may be taken at any meeting of the Owners upon a majority vote of the Owners who are present in person or by proxy and who are voting.

#### Section 2.7 Conduct of Meetings

Roberts Rules of Order (latest edition) shall govern the conduct of the Association's meetings when not in conflict with the Declaration or these By-Laws.

##### (a) Conduct of Annual Meeting

The President of the Association shall act as the Chairman of all annual meetings of the Association if he is present. At all annual meetings, the Chairman shall call the meeting to order at the duly designated time and business will be conducted in the following order:

##### (1) Reading of Minutes

The Secretary shall read the minutes of the last annual meeting and the minutes of any special meeting held subsequent thereto, unless such reading is waived by a majority vote of the Owners who are present in person or by proxy.

(2) Treasurer's Report

The Treasurer shall report to the Owners concerning the financial condition of the Association and answer relevant questions of the Owners concerning the Common Expenses and financial report for the prior year and the proposed budget for the current year.

(3) Budget

The proposed budget for the current fiscal year shall be presented to the Owners for approval or amendment.

(4) Election of Board of Directors

Nominations for the Board of Directors may be made by any Owner from those persons eligible to serve. Such nominations must be in writing and presented to the Secretary of the Association at least seven (7) days prior to the date of the annual meeting. Voting for the Board of Directors will be by paper ballot. The ballot shall contain the name of each person nominated to serve as a Board member. Each Owner may cast the total number of votes to which he is entitled for as many nominees as are to be elected; however, he shall not be entitled to cumulate his votes. Those persons receiving the highest number of votes shall be elected. Each voting Owner shall sign his ballot. The foregoing provisions are subject to the provisions of Section 3.2 hereof.

(5) Other Business

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

(6) Adjournment

(b) Conduct of Special Meeting

The President of the Association shall act as Chairman of any special meetings of the Association if he is present. The Chairman shall call the meeting to order at the duly designated time and the only business to be considered at such meeting shall be consideration of the matters for which such meeting was called, as set forth in the notice of such special meeting.

ARTICLE III

BOARD OF DIRECTORS

Section 3.1 Management

The affairs of the Association and Ashton Place shall be governed and managed by the Board of Directors (herein collectively called "Board" or "Directors" and individually called "Director"). The Board of Directors shall be composed of three persons. No person shall be eligible to serve as a Director unless he is, or is deemed in accordance with the Declaration to be, an Owner, including a person appointed by Declarant as provided in Section 3.2 hereof.

Section 3.2 Initial Board of Directors

The initial Board of Directors shall be Rich French, Mary French and Linda Hogan (herein referred to as the "Initial Board") appointed by Declarant. Notwithstanding anything to the contrary contained in, or any other provisions of, these By-Laws or the Declaration or the Act or the Statute (a) the Initial Board shall hold office until the earliest of (1) May 1, 2002 or (2) the date all of the Real Estate has been subjected and submitted to the Act and the Declaration by Declarant and Declarant files for record in the Office of the Recorder of Johnson County, Indiana, an instrument waiving and releasing its reserved right, as set forth in Paragraph 21 of the Declaration, to expand or further expand Ashton Place (the applicable date being herein referred to as 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 determined as provided above, every such vacancy shall be filled by a person appointed by Declarant, who shall thereafter be deemed a member of the Initial Board. Each Owner, by acceptance of a deed to a Condominium Unit, or by acquisition of any interest in a Condominium Unit by any type of jurisdiction acts inter vivos or causa mortis, or otherwise, shall be deemed to have appointed Declarant as such Owner's agent, attorney-in-fact and proxy, which shall be deemed coupled with an interest and irrevocable until the Applicable Date determined as provided above, to exercise all of said Owner's right to vote and to vote as Declarant determines on all matters as to which members are entitled to vote under the Declaration, these By-Laws, the Act, the Statute or otherwise. This appointment of Declarant as such Owner's agent, attorney-in-fact and proxy shall not be affected by incompetence of the Owner granting the same.

Section 3.3 Additional Qualifications

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

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Section 3.4 Term of Office and Vacancy

Subject to the provisions of Section 3.2 hereof, one (1) member of the Board of Directors 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 provided in Section 3.2 hereof. After the Applicable Date, each member of the Board of Directors shall be elected for a term of three (3) years. However, the Directors to be elected at such first election after the Applicable Date shall be elected individually for either a 1 year, 2 year or 3 year term. 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 3.2 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 3.5 of this Article III. 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 3.5 Removal of Directors

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

Section 3.6 Duties of the Board of Directors

The Board of Directors shall provide for the administration of Ashton Place Horizontal Property Regime, the maintenance, upkeep and replacement of the Common Areas and Limited Areas (unless the same are otherwise the responsibility or duty of Owners of Condominium Units), and the collection and disbursement of the Common Expenses. After the Applicable Date, the Board may, on behalf of the Association, employ a reputable and recognized professional property management agent (hereinafter called the "Managing Agent") upon such terms as the Board shall find, in its discretion, reasonable and customary. The Managing Agent shall assist the Board in carrying out its duties, which include, but are not limited to:

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

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

Section 3.7 Powers of the Board of Directors

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

- (a) to employ a Managing Agent to assist the Board in performing its duties;
- (b) to purchase for the benefit of the Owners such equipment, materials, labor and services as may be necessary in the judgment of the Board of Directors;
- (c) to employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Directors may be necessary or desirable in connection with the business and affairs of Ashton Place.

(d) to employ, designate, discharge and remove such personnel as in the judgment of the Board of Directors may be necessary for the maintenance, upkeep, repair and replacement of the Common Areas, and, where applicable, the Limited Areas:

(c) to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;

(f) to open and maintain a bank account or accounts in the name of the Association;

(g) to adopt, revise, amend, and alter, from time to time, rules and regulations with respect to use, occupancy, operation and enjoyment of the Property.

#### Section 3.8 Limitation on Board Action

After the Applicable Date, the authority of the Board of Directors to enter into contracts shall be limited to contracts involving a total expenditure of less than Five Thousand Dollars (\$5,000.00) without obtaining the prior approval of a majority of the Percentage Vote, except that in the following cases such approval shall not be necessary:

(a) contracts for replacing or restoring portions of the Common Areas or Limited Areas damaged or destroyed by fire or other casualty where the cost thereof is payable out of insurance proceeds actually received;

(b) proposed contracts and proposed expenditures expressly set forth in the proposed annual budget as approved by the Owners at the annual meeting; and

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

#### Section 3.9 Compensation

No Director shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority of the Percentage Vote. Any member of the Board of Directors may be employed by the Association in another capacity and receive compensation for such employment. The Managing Agent shall be entitled to reasonable compensation for its services, the cost of which shall be a Common Expense.

#### Section 3.10 Meetings

Regular meetings of the Board of Directors 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.

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

meeting, give notice to the Board member. 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 Johnson County, Indiana, or any of the contiguous counties, as shall be designated in the notice

Section 3.11 Waiver of Notice

Before any meeting of the Board, any 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 Quorum

At all meeting 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 which a quorum is present shall be the decision of the Board.

Section 3.13 Non-Liability of Directors

The Directors shall not be liable to the Owners or any other persons for any error or mistakes of judgment exercised in carrying out their duties and responsibilities as Directors, except for their own individual willful misconduct, bad faith or gross negligence. The Association shall indemnify and hold harmless and defend each of the Directors against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of Ashton Place or the Association, unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or By-Laws. It is intended that the Directors shall have not personal liability with respect to any contract made by them on behalf of Ashton Place or the Association and that in all matters the Board is acting for and on behalf of the Owners as their agent. The liability of any Owner arising out of any contract made by the Board or out of the aforesaid indemnity in favor of the 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 Ashton Place shall provide that the Board of Directors and the Managing Agent, as the case may be, are acting as agent for the Owners and shall have no personal liability thereunder, except in their capacity as Owners (if applicable) and then only to the extent of their Percentage Interest.

Section 3.14 Additional Indemnity of Directors

The Association shall indemnify, hold harmless and defend any person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Director of the Association, against the reasonable expenses, including attorney's fees,

actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal thereof, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Director is liable for gross negligence or misconduct in the performance of his duties. The 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 the Percentage Vote that such Director was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Director, no Director shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Director relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent of Ashton Place or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service unless such Director had actual knowledge of the falsity or incorrectness thereof; nor shall a Director be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Directors.

#### Section 3.15 Bond

The Board of Directors shall provide surety bonds and shall require the Managing Agent, Treasurer and such other officers as the Board deems necessary to provide surety bonds, indemnifying the Association against larceny, theft, embezzlement, forgery, misappropriation, wrongful abstraction, willful misapplication, and other acts of fraud or dishonesty, in such sums and with such sureties as may be approved by the Board of Directors and any such bond shall specifically include protection for any insurance proceeds received for any reason by the Board. The expense of any such bonds shall be a Common Expense.

### ARTICLE IV

#### Officers

##### Section 4.1 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 or more offices may be held by the same person.

##### Section 4.2 Election of Officers

The officers of the Association shall be elected annually by the Board at the initial meeting of each new Board. Upon an affirmative vote of a majority of all members of the Board, any officer

may be removed either with or without cause and his successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

#### Section 4.3    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 of the Board, shall have and discharge all the general powers and duties usually vested in the office of president or chief executive officer of an association or a stock corporation organized under the laws of Indiana, including but not limited to the power to appoint committees from among the Owners as he may deem necessary to assist in the affairs of the Association and to perform such other duties as the Board may from time to time prescribe.

#### Section 4.4    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 4.5    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 4.6    The Treasurer

The Board shall elect from among the Directors a Treasurer who shall maintain a correct and complete record of account showing accurately at all times the financial condition of the Association and who shall perform such other duties incident to the office of the 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 4.7 Assistant Officers

The Board of Directors may, from time to time, designate and elect from among the Owners an Assistant Secretary and an Assistant Treasurer who shall have such power and duties as the officers whom they are elected to assist shall delegate to them and such other powers and duties as these By-Laws or the Board of Directors may prescribe.

ARTICLE V

Assessments

Section 5.1 Annual Accounting

Annually, after the close of each fiscal year of the Association and prior to the date of the annual meeting of the Association next following the end of such fiscal year, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by a certified public accountant or firm of certified public accountants then serving the Association, which statement shall show all receipts and expenses received, incurred and paid during the preceding fiscal year.

Section 5.2 Proposed Annual Budget

Annually, on or before the date of the annual meeting of the Association, the Board of Directors shall cause to be prepared a proposed annual budget for the current fiscal year estimating the total amount of the Common Expenses for the current fiscal year and shall furnish a copy of such proposed budget to each Owner at or prior to the time the notice of such annual meeting is mailed or delivered to such Owners. The annual budget shall be submitted to the Owners at the annual meeting of the Association for adoption and, if so adopted, shall be the basis for the Regular Assessments (hereinafter defined) for the current fiscal year. At the annual meeting of the Owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority of the Percentage Vote; provided, however, that in no event shall the annual meeting of the Owners be adjourned until an annual budget is approved and adopted at such meeting. The proposed annual budget, the Regular Assessments and all sums assessed by the Association shall be established by using generally-accepted account principles applied on a consistent basis. The annual budget and the Regular Assessments shall, in addition, be established to include the establishment and maintenance of a replacement reserve fund for capital expenditures and replacement and repair of the Common Areas, which replacement reserve fund shall be used for those purposes and not for usual and ordinary repair expenses of the Common Areas. Such replacement reserve fund for capital expenditures and replacement and repair of the Common Areas shall be maintained by the Association in a separate interest-bearing account or accounts with one or more banks or savings and loan associations authorized to conduct business in Johnson County, Indiana selected from time to time by the Board. The failure or delay of the Board of Directors to prepare a proposed annual budget and to furnish a copy thereof to the Owners shall not constitute a waiver or release in any manner of the obligations of the Owners to pay the Common Expenses as herein provided, whenever

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

### Section 5.3 Regular Assessments

The annual budget as adopted by the Owners shall, based on the estimated cash requirement for the Common Expenses in the current fiscal year as set forth in said budget, contain a proposed assessment against each Condominium Unit which may be based in part or in whole on the proportionate size of each Condominium Unit. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against his respective Condominium Unit (herein called the "Regular Assessment"). In the event the Regular Assessment for a particular fiscal year is initially based upon a temporary budget, such Regular Assessment shall be revised, within fifteen (15) days following adoption of the final annual budget by the Owners, to reflect the assessment against each Condominium Unit based upon such annual budget as finally adopted by the Owners. The aggregate amount of the Regular Assessments shall be equal to the total amount of expenses provided and included in the final annual budget, including reserve funds as hereinabove provided. The Regular Assessment against each Condominium Unit shall be paid in advance in equal monthly installments, commencing on the first day of the first month of each 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. In the event the Regular Assessment for a particular fiscal year of the Association was initially based upon a temporary budget,

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

(b) if the Regular Assessment based upon the temporary budget exceeds the Regular Assessment based upon the final annual 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 an Owner has paid his Regular Assessment either semi-annually or annually in advance, then the adjustments set forth under (a) or (b) above shall be made by a cash payment by, or refund to, the Owner on the first day of the second month following the determination of the Regular Assessment based upon the annual budget finally adopted by the Owners.



The Regular Assessment for the current fiscal year of the Association shall become a lien on each separate Condominium Unit as of the first day of each fiscal year of the Association, even through the final determination of the amount of such Regular Assessment may not have been made by that date. The fact that an Owner has paid his Regular Assessment for the current fiscal year in whole or in part based upon a temporary budget and thereafter, before the annual budget and Regular Assessment are finally determined, approved and adjusted as herein provided, sells, conveys or transfers his Condominium Unit from payment of the Regular Assessment for such Condominium Unit as finally determined, and such Owner and his successor as owner of such Condominium Unit shall be jointly and severally liable for the Regular Assessment as finally determined. Any statement of unpaid assessments furnished by the Association pursuant to Section 8.2 hereof prior to the final determination and adoption of the annual budget and Regular Assessment for the year in which such statement is made shall state that the matters set forth therein are subject to adjustment upon determination and adoption of the final budget and Regular Assessments for such year, and all parties to whom any such statement may be delivered or who may rely thereon shall be bound by such final determinations. Quarterly or monthly (if so determined by the Board) installments of Regular Assessments shall be due and payable automatically on their respective due dates without any notice from the Board of the Association, and neither the Board nor the Association shall be responsible for providing any notice or statements to Owners for the same.

Section 5.4 Commencement of Monthly Assessments; Reduced Assessments for Unsold Units

The monthly assessments provided for herein shall commence for all units in a particular building on the first day of the next month following the date of the incorporation of the building into the Ashton Place Horizontal Property Regime by appropriate recordings with the Johnson County Recorder; provided, however, that for any unit not yet conveyed by Declarant when the monthly assessment commences, the monthly assessment for such unit shall be waived until May 1, 2002 or until conveyance of the unit by Declarant, whichever occurs first at which time the monthly assessment for such unit shall be the monthly assessment applicable to other units.

Section 5.5 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 which, upon resolution of the Board, shall become a lien on each Condominium Unit, prorated in accordance with the Percentage Interest of each Condominium Unit (herein called "Special Assessment"). Without limiting the generality of the foregoing provisions, Special Assessments may be made by the Board of Directors from time to time to pay for capital expenditures, to pay for the cost of any repair or reconstruction of damage caused by fire or other casualty or disaster to the extent insurance proceeds are insufficient therefor under the circumstances described in the Declaration.

Section 5.6 Failure of Owner to Pay Assessments

(a) No Owner may exempt himself from paying Regular Assessments and Special Assessments, or from contributing toward the expenses of administration and of maintenance and repair of the Common Areas and, in the proper case, of the Limited Ages, of the Buildings, and toward any other expenses lawfully agreed upon, by waiver of the use or enjoyment of the Common Areas or by abandonment of the Condominium Unit belonging to him. Each Owner shall be personally liable for the payment of all Regular and Special Assessments. Where the Owner constitutes more than one person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any Regular Assessments or Special Assessments when due, the Board may in its own discretion, accelerate the entire balance of the unpaid Assessments and declare the same immediately due and payable, notwithstanding any other provisions hereof to the contrary. In any action to foreclose the lien for any Assessments, the Owner and any occupant of the Condominium Unit shall be jointly and severally liable for the payment to the Association of reasonable rental for such Condominium Unit, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the Condominium Unit and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Regular Assessments or Special Assessments. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular Assessment or Special Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular Assessment or Special Assessment, whether by foreclosure or otherwise, the Board, for and on behalf of the Association, shall be entitled to recover costs and expenses of such action incurred, including but not limited to reasonable attorneys' fees, from the Owner of the respective Condominium Unit.

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

Section 5.7 Initial Budgets and Assessments

Notwithstanding anything to the contrary contained herein, in the Declaration, in the Act, in the Statute or otherwise, until the Applicable Date the annual budget and all Regular Assessments and Special Assessments shall be established by the Initial Board without meetings of or concurrence of the Co-Owners. The agency, power of attorney and proxy granted to the Declarant by each

Owner pursuant to Section 3.2 hereof shall be deemed to cover and include each Owner's right to vote on and approve the annual budget and any Regular Assessments and Special Assessments until the Applicable Date.

Section 5.8 Maintenance and Repairs

Every Owner shall promptly perform all maintenance and repair within his own Condominium Unit which, if neglected, would affect the value of the Property. In addition, each Owner shall furnish, and shall be responsible at his own expense for, the maintenance, repairs and replacements of his Condominium Unit and Limited Areas, and all equipment serving the same. Such maintenance, repairs and replacements which each Owner is responsible to make personally and at his own expense include, but are not necessarily limited to, water lines, gas lines, plumbing and electric lines which service the Owner's Condominium Unit only and are located within exterior walls of the Condominium Unit; all partitions and interior walls, ceilings and floors; appliances, to include garbage disposal, dishwashers, stoves, ranges and refrigerators, telephones, air conditioning and heating equipment (whether located wholly or partially inside or outside the Condominium Unit), doors, screens and windows (including exterior and interior of all glass and screen surfaces), lamps, and interior and exterior grouting and/or caulking and all other accessories appurtenant to the Condominium Unit or belonging to the Owner thereof.

If, due to the willful, intentional and negligent acts or omissions of an Owner or of a member of his family or of a guest, tenant or other occupant or visitor of such Owner, damage shall be caused to the Common Areas or to a Condominium Unit or Limited Area owned by or reserved for the use of others, or if maintenance, repairs or replacements shall be required thereby which would otherwise be at the Common Expense, then such Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Association, unless such loss is covered by the Association's insurance with such policy having a Waiver of Subrogation clause. Maintenance, repairs and replacements to the Common Areas or the Condominium Units or Limited Areas shall be subject to the rules and regulations adopted from time to time by the Board.

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

## ARTICLE VI

### Restriction, Entry and Rules and Regulations

#### Section 6.1 Restriction on Use

The following restrictions on the use and enjoyment of the Condominium Units, Common Areas, Limited Areas and the Property shall be applicable to Ashton Place and in addition to those set forth in the Declaration. These are as follows:

- (a) All Condominium Units shall be used exclusively for residential purposes and no Condominium Unit may be partitioned or subdivided.
- (b) No additional buildings shall be erected or located on the Tract other than the Buildings designated in the Declaration or a supplement or amendment of the Declaration, and shown on the Plans or plans filed with such a supplement or amendment to the Declaration, without the consent to the Board of Directors.
- (c) Nothing shall be done or kept in any Condominium Unit or in the Common Areas or Limited Areas which will cause an increase in the rate of insurance on any Building or the contents thereof. No Owner shall permit anything to be done or kept in his Condominium Unit or in the Common Areas or Limited Areas which will result in a cancellation of insurance on any Building or any part of the Common Areas or contents thereof, or which would be in violation of any law or ordinance or the requirements of any insurance underwriting or rating bureau.
- (d) No nuisance shall be permitted and no waste shall be committed in any Condominium Unit, Common Areas, or Limited Areas.
- (e) No Owner shall cause or permit anything to be hung or displayed on the outside of the windows or placed on the outside walls of the Building, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roofs or any other parts of any Building without the prior consent of the Board.
- (f) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Condominium Unit or in the Common Areas or Limited Areas or on the Property, except that the pet dogs, cats or customary household pets may be kept in a Condominium Unit, provided that such pet is not kept, bred or maintained for any commercial purpose and does not create a nuisance. Pets shall be taken outdoors only under leash or other restraint and while attended by its owner and an Owner shall be fully liable for any injury or damage to persons or property, including Common Areas or Limited Areas, caused by his pet. The tethering of pets in any area outside an Owner's fenced Limited Area does not constitute "Attended". Pets shall be walked only in an area not common to residents and pet leavings on the main grounds and walks shall be picked up by the pet's owner and disposed of in a proper receptacle. The Board may adopt such other rules and regulations regarding pets as it may deem necessary from time to time including, but not limited to, a requirement that any Owner desiring to bring a pet on the Property shall deposit with the Board a security deposit in an amount to be determined by the Board to cover any damage that may be caused by such pet to the Common Areas. Any such security deposit shall be returned to the Owner when the pet is permanently removed from the Property, except to the extent said deposit has been used to repair damage caused by such pet. Any requirement for the depositing of such a security deposit shall not be deemed to release or any way limit an owner's responsibility and liability for injury and damage caused by his pets. Any pet which, in the judgment of the Board, is causing or creating a nuisance

or unreasonable disturbance or noise, shall be permanently removed from the Property within ten (10) days after written notice from the Board to the respective Owner to do so.

(g) Nothing shall be done or permitted in any Condominium Unit which will impair the structural integrity of any Building or which would affect the exterior appearance of any Condominium unit, except as otherwise provided in the Declaration or these By-Laws. No Condominium Unit shall be used in any unlawful manner or in any manner which might cause injury to the reputation of Ashton Place or which might be a nuisance, annoyance, inconvenience or damage to other Owners and occupants of Condominium Units or neighboring property, including without limiting the generality of the foregoing, noise by the use of any musical instruments, radio, television, loud speakers, electrical equipment, amplifiers or other equipment or machines or loud person.

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

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

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

(k) All Owners and members of their families, their guests or invitees, and all occupants of any Condominium Unit or other persons entitled to use the same and to use and enjoy the Common Areas and Limited Areas or any part thereof, shall observe and be governed by such rules and regulations as may from time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Condominium Units, the Common Areas and Limited Areas.

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

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

(n) No Owner shall be allowed to place or cause to be placed in the lobbies, vestibules, stairways, hallways or areas of a similar nature and used for a similar purpose, both Common Areas and Limited Areas, any furniture, packages or objects of any kind, without the consent of the Board of Directors.

(o) All garbage, trash and refuse shall be stored in appropriate containers inside the Condominium Unit (including garage) and shall be kept therein until not earlier than sundown of the evening before scheduled trash collection. Garbage, trash and refuse shall be placed in sealed disposable plastic bags or other containers approved by the Board for scheduled trash collection and shall be placed at such locations for trash collection as are designated by the Board.

(p) No use shall be made of any part of the Real Estate which violates, and all Owners, members of their families, their guests, tenants, invitees and all occupants or other parties entitled to use or who may use any part of the Real Estate shall at all times fully comply with, the terms, covenants, provisions, conditions, limitations, restriction and requirements contained and described in the applicable zoning ordinances of Johnson County, Indiana. Notwithstanding anything to the contrary contained herein, in the Declaration, in the Act or otherwise, this Section 6.1(p) may not be amended or modified in any manner whatsoever without the prior written consent of Declarant (so long as it owns any part of the Real Estate or any Condominium Units) and of any and all parties who, at any time, may have the right to enforce or prevent violations of, or the right to approve any changes in the terms, covenants, provisions, conditions, limitations, restrictions and requirements contained and described in said ordinances described above in Section 6.1(p).

(q) Common Areas shall be used only for the purpose for which they are designed and intended, and shall be used subject to the provisions of the Declaration and the rules and regulations from time to time adopted by the Board. For example, play areas for children shall be restricted to those areas of the Common Areas, if any, so designated by the Board.

#### Section 6.2 Right of Entry

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

#### Section 6.3 Right of Board to Adopt Rules and Regulations

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

### ARTICLE VII

#### Amendment to By-Laws

Section 7.1 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 amendment of the Declaration

and shall be recorded in the Office of the Recorder of Johnson 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 the Declarant.

## ARTICLE VIII

### Mortgages

#### Section 8.1 Notices to Association

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

The Association shall, upon request of a Mortgagee who has furnished the Association with its name and address as hereinabove provided, furnish such Mortgagee with written notice of any default in the performance by its borrower of any obligations of such borrower under the Declaration or these By-Laws which is not cured within sixty (60) days.

#### Section 8.2 Notice of Unpaid Assessments

The Association shall, upon request of a Mortgagee, a proposed mortgagee, or a proposed purchaser who has a contractual right to purchase a Condominium Unit, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular Assessments or Special Assessments against the Condominium Unit, which statement shall be binding upon the Association and the Owners, and any Mortgagee or grantee of the Condominium Unit conveyed by subject to a lien for any unpaid assessments in excess of the amount set forth in such statement or as such assessments may be adjusted upon adoption of the final annual budget, as referred to in Section 5.3 hereof.

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ARTICLE IX

Miscellaneous

Section 9.1 Fiscal Year

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

Section 9.2 Seal

The Association may have and use a corporate seal, which seal (if one is adopted) shall be circular in form and mounted upon a metal die, suitable for impressing the same upon paper. About the upper periphery of the seal shall appear the words "ASHTON PLACE HOMEOWNERS ASSOCIATION, INC.," and about the lower periphery thereof the word "Indiana". In the center of the seal shall appear the word "Seal". PROVIDED, HOWEVER, that the use of said seal or an impression thereof shall not be required upon, and shall not affect the validity of, any instrument whatsoever.

Section 9.3 Membership Certificates

Each member of the Association shall receive a certificate from the Association, signed by the president or vice-president, and secretary or assistant secretary thereof, stating that he is a member of the Association. Such certificates shall be nontransferable and a member's certificate shall become void and of no force and effect upon sale by a member of his Condominium Unit. Such membership certificates shall be in a form and style determined by the Board.

Section 9.4 Personal Interests

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

THIS INSTRUMENT PREPARED BY:  
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