

73 54523

DECLARATION OF HORIZONTAL PROPERTY OWNERSHIP

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Brendonshire Courts  
Horizontal Property Regime

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RECEIVED FOR RECORD  
AUG 23 4 09 PM '73  
FAYE L. WILKINSON  
RECORDER  
OF MARION CO.

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TO

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Horizontal Property Regime

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DECLARATION OF HORIZONTAL PROPERTY OWNERSHIP

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Brendonshire Courts  
Horizontal Property Regime

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THIS DECLARATION, made this 23 day of August, 1973, by CONDOMINIUM ASSOCIATES (an Indiana Partnership), herein referred to as "DECLARANT" for itself, its successors, grantees and assigns,

WITNESSETH:

WHEREAS, Declarant now makes the following declarations:

1. Purpose: The purpose of this Declaration is to submit the land hereinafter described and the improvements now thereon, to the form of ownership acknowledged and established pursuant to and under the Horizontal Property Act of the State of Indiana, thereby creating a Horizontal Property Regime upon the tract, but also subject to the terms and conditions hereof.

2. Submission of Land to a Horizontal Property Regime: The following described real estate located in Marion County, Indiana, together with all the improvements now thereon is hereby submitted to a Horizontal Property Regime as the same is established and defined under the terms of the Horizontal Property Act of the State of Indiana:

A part of the Northwest quarter of Section 11, Township 16 North, Range 4 East, in Marion County, Indiana, more particularly described as follows:

Beginning at the Southwest corner of the aforementioned quarter section and North 00°00'00" West on and along the West line a distance of 250.00 feet; running thence South 89°06'00" East a distance of 475.00 feet; running thence South 00°00'00" East a distance of 200.00 feet; running thence South 89°06'00" East a distance of 170.00 feet; running thence South 00°00'00" East a distance of 50.00 feet to the South line of the aforementioned quarter section; running thence on and along the South line North 89°06'00" West a distance of 645.00 feet to the point of beginning, containing in all 2.921 acres; subject, however, to all legal highways, rights-of-ways and easements.

3. Name of Horizontal Property Regime: The Horizontal Property Regime shall hereinafter be known as Brendonshire Courts Horizontal Property Regime.

4. Association Name: The association of apartment owners shall be Brendonshire Courts Association.

5. Definitions: Unless the context shall otherwise require, the terms used herein, shall mean the following:

- (a) "Act" means the Horizontal Property Act of the State of Indiana, Acts 1963, Chapter 349, Sections 1 through 31, as amended. The Act is incorporated herein by reference.
- (b) "Apartment" means one (1) of the twenty-eight (28) living units plus one (1) garage unit constituting Brendonshire Courts, each particular living unit and one (1) garage being more particularly described in paragraphs 7 and 9 of this Declaration.
- (c) "Association" means the unincorporated association of co-owners of Brendonshire Courts, more particularly described in paragraph 12.
- (d) "Board of Managers" means the governing board of the Association elected by the co-owners in accordance with the By-Laws. The term "Board of Managers" as used herein and in the By-Laws, shall be synonymous with the term "Board of Directors" as used in the Act.
- (e) "Building" means one (1) of the four (4) buildings on the tract in which apartments are located. The buildings are more particularly described and identified in the plans and in paragraph 6 of this Declaration.
- (f) "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 this act. A true copy of the By-Laws is attached to this Declaration and incorporated herein by reference.
- (g) "Common Areas" or "Common Elements" means the common areas and facilities as defined in paragraph 8 of this Declaration.
- (h) "Common Expenses" means expenses of administration of the Association and expenses for the up-keep, maintenance, repair and replacement of the common areas and limited areas and all sums lawfully assessed against the owners by the Association or as declared by the Act, this Declaration or the By-Laws.
- (i) "Co-Owners" means the owners of all the apartments.
- (j) "Limited Common Areas" means the limited common areas and facilities as defined in paragraph 8-I of

this Declaration.

- (k) "Mortgagee" means the holder of a first mortgage lien on an apartment.
- (l) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof who owns the fee simple title to an apartment.
- (m) "Percentage Interest" means the percentage of undivided interest in the fee simple title to the common areas and limited areas appertaining to each apartment as specifically expressed in paragraph 7 of this Declaration.
- (n) "Percentage Vote" means that percentage of the total vote accruing to all of the apartments which is appurtenant to each particular apartment and accrues to the owner thereof. The Declarant states that there is twenty-eight (28) living units plus one (1) garage for each living unit. Additionally, there are fourteen (14) extra garages. Therefore, the percentage vote to which each owner shall be entitled on any matter upon which the co-owners are entitled to vote shall be one (1) vote per apartment. Ownership of all or any one (1) of the fourteen (14) extra garages shall not entitle such owner to a percentage vote.
- (o) "Plans" means the floor and building plans of the buildings and apartments prepared by Paul I. Cripe, Inc., certified by Paul I. Cripe, a registered professional engineer, under date of November 25, 1963, and a site plan and elevation of the tract and buildings prepared by Mid States Engineering Co., Inc., certified by M. N. Franklin, a registered land surveyor, under date of January 9, 1973, all of which are incorporated herein by reference.
- (p) "Property" means the tract and appurtenant easements, the apartments, the buildings, garages, improvements and property of every kind and nature whatsoever, real, personal or mixed, located upon the tract and used in connection with the operation, use and enjoyment of Brendonshire Courts.
- (q) "Brendonshire Courts" means the name by which the Property and Horizontal Property Regime shall be known. Brendonshire Courts is located in the southeast corner of the intersection of 52nd Place and Arlington Avenue in Indianapolis, Indiana.
- (r) "Tract" means the real estate described in paragraph 2 above.

6. Description of Buildings: There are four (4) buildings, each building containing seven (7) apartment units on the tract, as shown on the plans and on the survey. The buildings are identified and referred to on the survey and in this Declaration as Buildings I, II, III, and IV. Each building is a two-story structure with partial basements and is constructed of brick and frame. All are built in accordance with the plans.

The four (4) buildings contain a total of twenty-eight (28) separate apartments, with apartments identified "A" through "G" inclusive. All apartments are the same and each apartment with one (1) garage has an identical valuation. Each one (1) of the additional fourteen (14) garages numbered twenty-nine (29) through forty-two (42) inclusive on the survey are identical.

7. Apartment Identification and Percentage Interest: The legal description for each apartment shall consist first of the identifying roman numeral of the building in which the apartment is located, second the alphabetical letter designation of the particular apartment in that building and third an arabic numeral designation of the particular garage with each apartment. The percentage interest of each apartment owner in the common areas as hereinafter defined shall be 3.5270% and the percentage interest of each of the additional fourteen (14) garages in the common areas as hereinafter defined shall be 0.08888%.

8. Common Elements: The common element shall be those portions of the tract not included in the apartments or garages, including all items stated in the Horizontal Property Act, all tangible personal property required for the maintenance and operation of the apartments, and the following items:

- A. The land on which the improvements are located and any other land included in the horizontal property, whether or not contiguous thereto.
- B. All parts of the improvements which are not included within the apartments.
- C. Easements through the apartments for conduits, ducts, plumbing, wires, utilities and all other facilities providing services to apartments and to the common elements.



- D. Easements for support in every portion within an apartment which contributes to the support of the building.
- E. Installations for the furnishing of utility services to more than one (1) apartment, or to the common elements, or to an apartment other than the apartment containing such installation.

8-I. Limited Common Elements: The limited common elements shall consist of the following:

- A. Hot-water heaters, including pipes and electrical systems, to service and operate such heaters and to furnish hot water to the apartments of Buildings I and II. Said hot-water heaters, two (2) in number, are located one each in Apartment "A" of Building I and Apartment "G" of Building II.
- B. Easements of ingress and egress to all apartments in Buildings I and II, for the use and benefit of the owners and tenants of all apartments in Buildings I and II, for the purposes of supplying hot water to all apartments within said buildings and for the purposes of maintenance and repair of said hot-water heaters, pipes and electrical systems incidental to such service and operation of said hot-water heaters.
- C. The hot-water heaters (temperature and gallonage) shall not be manipulated, turned off, restricted, or otherwise adjusted without the unanimous written consent from all parties affected, directly or indirectly.

9. Easements: The following easements are covenants running with the land to each apartment owner:

- A. Utility Easements: Utility easements are reserved through the tract as may be required for utility services to adequately serve the apartments; provided, however, easements through any apartment shall only be to the plans and specifications for the apartment building, unless provided in writing and duly acknowledged according to law by the apartment owner so effected.
- B. Easements for Ingress and Egress: Easements of ingress and egress and right-of-way is reserved for pedestrian traffic over, through, on and across all sidewalks, paths, walk-ways, lanes, and avenues, as the same from time to time may exist, upon the common elements; and for vehicular traffic over, through and across such portion of the common elements as from time to time may be intended for such purposes.
- C. Easements in Parking Areas: Easements in parking areas are reserved for ingress, egress and free entry for pedestrian and vehicular traffic over, through, on and across all driveways and parking areas as from time to time may be established on the tract; and for the construction and maintenance thereon, of all types of utility services.

D. Easements for Maintenance and Repair: Easements through the apartments and the common elements are hereby reserved for the maintenance, repair and replacement of any portion of said apartments or common elements. Use of these easements, however, for access to the apartments shall be limited to reasonable hours and with reasonable prior notice, except that access may be had at any time in the case of emergency.

E. Emergency Easements of Ingress and Egress: Easements shall exist over all portions of any apartment unit which may be used as avenues of exit whenever reasonably required for emergency exit.

F. Easements for Connection: Easements reserved in common elements for use in connection with other apartments. The Declarant hereby reserves unto itself the right to grant easements over any of the common elements of this regime to be used for, by or in connection with any other apartments which may hereafter be erected in the vicinity of the property covered hereby, to the same extent as if some common elements were common elements of said other apartments, or as may become necessary for the purposes of the Declarant, its grantees, lessees, successors or assigns, serving its adjacent properties with utility services, drainage, recreation, and easements for ingress and egress.

10. Apartment Ownership: Apartments shall be constituted as follows:

A. Real Property: Each apartment, together with space in it, as shown on the surveyor's plans attached hereto and together with all appurtenances thereto, shall constitute a separate apartment parcel of real property which may be owned in fee simple and which may be conveyed, transferred and encumbered in the same manner as any other parcel or real property, independently of all other parts of the Regime Property, subject only to the provisions of this Declaration. Each shall consist of the following, and all other interests herein designated to each unit:

- (1) An undivided share in the common elements.
- (2) Membership in the Association and an undivided share in the common surplus thereof.
- (3) The right to use, occupy, and enjoy common facilities subject to the provisions of this Declaration and the By-Laws, rules and regulations of the Association.
- (4) All easements described herein.

B. Boundaries: Each apartment shall be bound as to both horizontal and vertical boundaries as shown on the surveyor's plans, subject to such encroachments as are contained in the building whether the same exists now or are created by construction, settlement or movement of the building, or permissible repairs, reconstruction or alterations. Such boundaries are intended to be as follows:

(1) Upper and Lower Boundaries:

The upper and lower boundaries of the apartment shall be the following boundaries extended to an intersection with the perimetrical boundaries.

(a) The upper boundaries shall be the horizontal plane of the undecorated finished ceiling of the second floor.

(b) The lower boundaries shall be the horizontal plane of the undecorated finished floors of the basements.

(2) Perimetrical boundaries:

The perimetrical boundaries of the apartment shall be the vertical planes and the undecorated finished interior of the walls bounding each apartment, extended to the inner sections with each other and with the upper and lower boundaries. Such boundaries shall include the front and rear portions of any apartment containing the same.

C. Appurtenances to Apartments: The owner of each apartment shall own a share and certain interests in the Regime Property as appurtenances to his apartment, including, but in no way limited to, the following:

(1) Common Elements and Common Surplus:

The undivided share in the land and other common elements and in the common surplus which is appurtenant to each apartment as set forth in Exhibit "A" attached hereto and hereby made a part of this Declaration. The right to share in the common elements and the common surplus does not include the right to withdraw or to require payment or distribution thereof, except upon termination and dissolution as provided herein.

(2) Parking Spaces: Unmarked parking spaces shall be used only by the owners, tenants, guests, lessees, or invitees of any regime parcel. The parking spaces are available generally for tenants, guests, invitees and licensees of each apartment owner, without reservation or restriction. Such parking space shall constitute a common element.

D. Liability for Common Expense: Each apartment owner shall be liable for a proportionate share of the common expenses of the Association, such share being the same as the undivided share of the common elements, which is appurtenant to his apartment; said percentage interests being set forth in paragraph 4 hereof.

11. Use Restrictions: In order to provide for a congenial occupation of the buildings and to provide for the protection of the value of the apartments, the use of the property shall be restricted to and be in accordance with the following provisions:

- A. Apartment Use: The apartments shall be used for single family residence only.
- B. Common Element Use: The common elements shall be used for the furnishing of services and facilities for which the same are reasonably intended, for the enjoyment of the apartments.
- C. Nuisances: No nuisances shall be allowed upon the property nor shall any use or practice be allowed which is a source of annoyance to residents or which interferes with the peaceful possession and proper use of the property by the owners.
- D. Lawful Use: No immoral, improper, offensive or unlawful use shall be made of the property nor any part thereof and all valid laws, zoning ordinances and regulations of all governmental bodies having jurisdiction thereof shall be observed. The respective responsibilities of apartment owners in the Association of complying with the requirements of governmental bodies which require maintenance, modification or repair of the property shall be the same as hereinabove provided for the maintenance and repair of that portion of the property subjected to such requirements.
- E. Interpretation: In interpreting deeds, mortgages and plans with existing physical boundaries of the units or of a unit reconstructed in substantial accordance with the original plans thereof shall be conclusively presumed to be its boundaries rather than the metes and bounds expressed in the deed, mortgage or plan, regardless of the settling or lateral movement of the building and regardless of minor variances between boundaries shown on the plan or in the deed and those of the building.
- F. Regulations and Restrictions: Concerning the use of the property may be promulgated by the Association as hereinabove set forth; provided, however, that copies of such regu-

lations and restrictions are furnished to each apartment owner prior to the time that the same become effective. The initial regulations and restrictions shall be deemed effective until amended by the Association, are annexed hereto and made a part hereof as Exhibit "B", Article VI of said exhibit. Any amendments thereto shall be recorded in the Office of the Recorder of Marion County, Indiana, as amendments to said exhibit. Such regulations and restrictions shall not impair or limit the rights of mortgagees as elsewhere recited.

12. Association and Administration of Regime Property:

- A. Association: The operation of the Horizontal Regime Property shall be by Brendonshire Courts Association.
- B. By-Laws: The By-Laws of the Association are attached hereto as Exhibit "B".
- C. Duties and Powers: The duties and powers of the Association shall be those set forth in the Declaration and the By-Laws as herein referred to, together with those duties and powers reasonably implied to be effective and purposes thereof and together with all duties and powers authorized for the Association; provided, however, that if there are conflicts or inconsistencies between the Declaration and By-Laws, the terms prevail, and the Apartments owners covenant to vote in favor of such amendments in the By-Laws as will remove such conflicts or inconsistencies. The powers and duties of the Association shall be exercised in the manner provided by the By-Laws, and any duties or rights of the Association in accordance with the provisions of this Declaration, shall be so exercised, except that wherever this Declaration requires the act or approval of the Board of Managers of the said Association, such approval must be that of the Board done or given in accordance with the By-Law.
- D. Notice or Demand: All notices or demands of any purpose shall be given by the Association to the apartment owners and the apartment owners to the Association and other apartment owners in the manner provided for notices to members of the Association by the By-Laws thereof.
- E. Funds, Titles and Benefits: All funds and the titles of all properties acquired by the Association and the proceeds thereof after deducting therefrom the costs incurred by the Association in acquiring the same, shall be held for the benefit of all apartment owners who may now or hereafter become

members for the purposes herein stated. All income received by the Association from the rental or licensing of any part of the common elements (as well as such income anticipated) shall be used for the purpose of reducing prospective common expenses prior to establishing the annual assessment therefor.

F. Limitations from Liability of the Association: Notwithstanding the duty of the Association to maintain and repair parts of the Regime Property, the Association shall not be liable to any apartment owner for injury or damage, other than the cost of maintenance and repair, caused by any latent condition of the property to be maintained and repaired by the Association, or caused by the elements or by other owners or persons.

G. Approval or Disapproval of Matters: Whenever the decision of an apartment owner is required upon any matter whether or not the subject of the Association meeting, such decision shall be expressed by the same persons who cast the vote of such owner if in an Association meeting, unless the joinder of record owners is specifically required by this Declaration.

H. Power to Delegate Authority: The Association, by and through its Board of Managers, is hereby vested with full power and authority to delegate so much of its powers, duties and authorities as granted by this Declaration of Horizontal Property Ownership, and the By-Laws of said Association attached hereto. Specifically, said Association may enter into a Management Contract with persons, associations or corporations, upon such conditions or terms as the Board of Directors may elect. All management costs and fees as may be contained in such agreement or contract, shall be common expenses assessed in the manner herein provided.

I. Acquisition of Additional Interest: The Association is expressly authorized and empowered, from time to time, to acquire interests in real property of any kind and description, including but not necessarily limited to, easements, rights-of-way, licenses, uses, fee simple ownership, leasehold estates and any and all other forms of ownership, use or possession, in and to clubhouses, recreational facilities, waterways, roadways, alleys, pathways, walkways and all other avenues of ingress, egress and right of entry for the use and benefit of each apartment owner within its membership. The Association is hereby authorized and empowered to pass, adopt and establish rules, regulations, covenants and restrictions concerning the use of the same and concerning the use of all common properties generally, by said apartment owners.

The costs and expenses of maintenance, repair and replacement of such interests in land or facilities so acquired, shall be an equal common expense to all apartment owners within said Association. Further, in the event this Association acquires such interests in common with other Horizontal Property Ownerships, the common expenses attributable to each apartment within this Regime, shall be that sum which is the portion of the total expenses therefor, divided by the total number of apartments herein.

The said Association is hereby empowered and authorized to give, grant, convey and enter into easements with other Horizontal Property Regimes or any other firm, person or corporation creating easements, licenses, rights-of-way and uses in and to any and all types of utility services, streets, walkways, roadways and all other types of avenues for ingress, egress and entry, recreational facilities and parking areas, as the same may from time to time exist within this Horizontal Property Regime and to common elements of this Regime, exclusive of any portion of the interior of the buildings herein; provided, however, as a condition to such grant, conveyance or agreement each of the parties thereto shall assume, as a common expense, in its pro-rata share of the costs and expenses of the maintenance thereof. Further, the costs and expenses shall be in an equal sum to each apartment contained in all of the apartments having an interest therein. All grants, conveyances, easements and agreements entered into by virtue of this paragraph shall be approved by not less than a majority of the Board of Managers of the Association. Furthermore, all such grants, conveyances, agreements and easements shall automatically terminate upon the termination of the existence of this Horizontal Property Regime.

13. Maintenance and Repair of Common Elements, Apartments, Alterations and Improvements: Responsibility for the maintenance of the apartments and restrictions upon the alterations and improvements thereof shall be as follows:

A. Apartments:

(1) By the Association: The Association shall maintain, repair and replace, at its sole expense, the following:

- (a) All portions of an apartment, except interior surfaces, contributing to the support of the apartment building which portions shall include, but not necessarily be limited to,

the outside walls of the apartment building, and all fixtures on the exterior thereof, boundary walls of apartments, basement floors and second floor ceiling joices and slabs, load bearing columns of load bearing walls.

(b) All conduits, ducts, plumbing, wiring, water and power lines and all other facilities for the furnishing of any utility services which are contained in the portions of an apartment maintained by the Association.

(c) All incidental damages caused to an apartment by such work shall be promptly repaired at the expense of the Association.

(2) By the Apartment Owner: The responsibility of the apartment owner shall be as follows:

(a) To maintain, repair, and replace at his expense, all portions of his apartment, except the portions to be maintained, repaired and replaced by the Association. Such work shall be done without disturbing the rights of other apartment owners.

(b) To maintain, repair and replace, at his expense, the air conditioning and heating equipment servicing his apartment, and all appliances and fixtures located within his apartment.

(c) Not to paint or otherwise decorate or change the appearance of any portion of the building not within the walls of the apartment, unless the written consent of the Association is first obtained.

(d) To promptly report to the Association or its agent any defect or need for repairs, the responsibility for the remedy of which is with the Association.

(e) Not to make any alterations in the portions of the apartment or the building which shall be maintained by the Association, nor to remove any portion thereof, nor to



make any additions thereto, nor to do anything which would or might jeopardize or impair the safety or soundness of the building without first obtaining the written consent of the Association, and of all first mortgagees of individual units therein, nor shall any apartment owner impair any easement without first obtaining the written consents of the Association and of the apartment owner or owners for whose benefit such easement or easements shall exist.

**B. Common Elements:**

(1) By the Association: The maintenance and operation of the common elements, including limited common elements, shall be the responsibility and expense of the Association.

(2) Alteration and Improvements: The Association shall have the right to make or cause to be made such alterations and improvements to the common elements (which do not prejudice the rights of any apartment owner unless his written consent has been obtained); provided, however, the making of such alterations and improvements are first approved by the Board of Managers of the Association and all first mortgagees of individual units. The cost of such requesting apartment owners shall be assessed as a common expense unless in the judgment of not less than seventy-five per cent (75%) of the Board of Managers, the same are exclusively or substantially exclusively for the benefit of the apartment owner or owners requesting the same, in which case, such requesting apartment owner or owners shall be assessed therefor in proportion as they approve jointly, and failing such approval in such proportion as may be determined by the Board of Managers of the Association. After the completion of the improvements including the common elements, which are contemplated by this Declaration there shall be no alteration or further improvement of common elements except as herein provided.

14. Sale or Lease of Apartment by Owner: For the purpose of maintaining the congenial and residential character of Brendonshire Courts, and for the protection of the co-owners with regard to financially responsible residence, sale or lease of an apartment by an owner other than Declarant shall be subject to the following conditions and restrictions:

A. Sale or Lease: No apartment owner may dispose of an apartment or any interest therein by sale or by lease without approval of the Board of Managers of the Association, except as provided elsewhere herein, which approval of the Association shall not be unreasonably withheld and shall be obtained in the manner hereinafter provided.

(1) Notice to Association: An apartment owner intending a sale or a lease of his apartment or any interest therein shall give notice to the Association of such intention, together with the name and address of the intended purchaser or lessee, such other information as the Association reasonably may require and the terms of the proposed transaction. The giving of such notice shall constitute a warranty and representations by the apartment owner to the Association and any purchaser or lessee produced by the Association as hereinafter provided, that the apartment owner believes the proposal to be bona fide in all respects.

(2) Election of Association: Within twenty (20) days after receipt of such notice, the Board of Managers of the Association shall either approve the transaction or furnish a purchaser or lessee approved by the Association (and give notice thereof to the person desiring to sell or lease his apartment) who will accept the transaction upon terms as favorable to the seller or lessor as the terms stated in the notice except that a purchaser or lessee furnished by the Association may have not less than thirty (30) days subsequent to the date of approval within which to close the transaction, and except that the approval of a corporation may be conditioned as elsewhere stated. The approval of the Board of Managers of the Association shall be in recordable form, signed by any two (2) members of the Board and shall be delivered to the purchaser or lessee. The failure of the Association to act within such thirty (30) day period shall be deemed to constitute approval, following which the Association nevertheless shall prepare and deliver written approval in

recordable form, as aforesaid.

15. Insurance: The insurance which shall be carried upon the property shall be governed by the following provisions:

A. Authority to Purchase: Except insurance furnished by the Declarant during the ownership by the Declarant; all insurance policies upon the property (except as hereinafter allowed) shall be purchased by the Association for the benefit of the apartment owners and their respective mortgagees as their interests may appear and shall provide for the issuance of certificates of insurance and mortgage endorsements to the holders of the first mortgages on the apartments, or any of them, and if the insurance companies will agree, shall provide that the insurer waives its rights of subrogation as to any claims against apartment owners, the Association and their respective servants, agents and guests. Such policies and endorsements shall be deposited with the Board of Managers, who must first acknowledge that the policies and any proceeds thereof will be held in accordance with the terms hereof.

B. Apartment Owners: Each apartment owner may obtain insurance, at his own expense, affording coverage upon his personal property and for his personal liability as may be required by law, but all such insurance shall contain the same waiver or subrogation, if possible, as that referred to in paragraph A of this Article.

C. Coverage:

(1) Casualty: The building and all other insurable improvements upon the land and all personal property as may be owned by the Association shall be insured in an amount equal to the maximum insurable replacement value thereof (exclusive of excavation and foundations) as determined annually by the insurance company affording such coverage. Such coverage shall afford protection against:

- (a) Loss or damage by fire and other hazards covered by the standard extended coverage endorsement;

- (b) Such other risks as from time to time are customarily carried on similar buildings considering location and use, including but not necessarily limited to, vandalism, malicious mischief, wind-storm and/or water damage.
- (2) Public liability and property damage in such amounts and in such forms as shall be required by the Association, including but not necessarily limited to water damage, legal liability, hired automobile, non-owned automobile and off-premises employee coverages.
- (3) Workmen's compensation policy to meet the requirements of law.
- (4) All liability insurance shall contain cross liability endorsements to cover liabilities of the apartment owners as a group to an apartment owner.
- D. Premiums: Premiums upon insurance policies purchased by the Association shall be paid by the Association and charged as common expenses.
- E. Beneficiaries: All insurance policies purchased by the Association shall be for the benefit of the Association, the apartment owners and their mortgagees, as their respective interests may appear, and shall provide all proceeds be payable to the Association or the Board of Managers, who shall hold such proceeds as Trustee for the individual owners and mortgagees. The interest of each owner and his mortgagee in such proceeds shall be equal to the owner's percentage interest.
- (1) Common Elements: Proceeds on account of damage to common elements--that undivided share for each apartment owner and his respective mortgagee, if any, which is set forth in Exhibit "A".
- (2) Apartments: Proceeds on account of apartments shall be held in the following undivided shares:
- (a) Partial destruction when the building is to be restored--for the owner or damaged apartments in proportion to the cost of repairing the damages suffered by each damaged apartment.
- (b) Total destruction of the building or where the building is not to be restored--for all apartment owners, the share of each being that share set forth in Exhibit "A".

(3) Mortgages: In the event of a mortgagee's endorsement has been issued to an apartment owner, the share of the apartment owner shall be held in trust for the mortgagee and the apartment owner as their respective interests may appear.

F. Distribution of Proceeds: Proceeds of insurance policies received by the Association or Board of Managers shall be distributed to or for the benefit of the beneficial owners in the following manner:

(1) Reconstruction or Repair: If the damage for which the proceeds were paid is to be repaired or reconstructed, the proceeds shall be paid to defray the costs thereof as elsewhere provided. Any proceeds remaining after defraying such costs shall be distributed to the beneficial owners, all remittances to apartment owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of an apartment and may be enforced by it.

(2) Failure to Reconstruct or Repair: If it is determined in the manner elsewhere provided that the damage for which the proceeds are paid shall not be reconstructed or repaired, the proceeds shall be distributed to the beneficial owners, remittances to apartment owners and their mortgagees being payable jointly to them. This is a covenant for the benefit of any mortgagee of an apartment and may be enforced by it.

16. Reconstruction or Repair of Casualty Damage:

A. If any part of the common elements shall be damaged by casualty, the determination of whether or not to reconstruct or repair the same shall be made as follows:

(1) Partial destruction, which shall be deemed to mean destruction which does not render two-thirds (2/3) or more of the apartments untenable--shall be reconstructed or repaired unless at a meeting of the members of the Association, which shall be called prior to commencement of such reconstruction or repair, this Declaration is terminated by a vote of eighty per cent (80%) or more of the voting interests.

(2) Total destruction, which shall be deemed to mean destruction which does render two-thirds (2/3) or more of the apartments untenable--shall not be reconstructed or repaired unless at a meeting which shall be called within ninety (90) days after the occurrence of the casualty, or, if by such date, the insurance loss has not been finally adjusted, then within thirty (30) days thereafter, apartment owners who, in the aggregate, own eighty per cent (80%) or more of the

voting interests in favor of such reconstruction or repair.

- (3) Any such reconstruction or repair shall be substantially in accordance with the plans and specifications.
  - (4) Encroachments upon or in favor of apartments which may be created as a result of such reconstruction or repair shall not constitute a claim or basis of a proceeding or action by the apartment owner upon whose property such encroachment exists, provided that such reconstruction was either substantially in accordance with the plans and specifications or as the building was originally constructed. Such encroachments shall be allowed to continue in existence for so long as the building stands.
- B. Responsibility: If the damage is only to those parts of one (1) apartment for which the responsibility of maintenance and repair is that of the apartment owner, then the apartment owner shall be responsible for reconstruction and repair after casualty. In all other instances, the responsibility of reconstruction and repair after casualty shall be that of the Association.

(1) Estimate of Costs: Immediately after a casualty causing damage to property for which the Association has the responsibility of maintenance and repair, the Association shall obtain reliable and detailed estimates of the cost to replace 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 Managers desires.

(2) Assessments: If the proceeds of insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association (including the aforesaid fees and premiums, if any) assessments shall be made against the apartment owners who own the damaged property in sufficient amounts to provide funds to pay the estimated costs. If at any time during reconstruction and repair, or upon completion of reconstruction and repair, the funds for the payment of the costs thereof are insufficient, assessments shall be made against the apartment owners who own the damaged property in sufficient amounts to provide funds for the payment of such costs.

(3) Reconstruction Funds: The funds for payment of costs of reconstruction and repair after a casualty, which shall consist of proceeds of insurance and funds collected by the Association from assessments against apartment owners, shall be

distributed in payment of such costs in the following manner:

(a) If the amount of the estimated costs of reconstruction and repair exceeds the total of the annual assessments for common expenses made during the year in which the casualty occurred, then the sums paid upon assessments to meet such costs shall be deposited by the Association in a separate account for such funds. In all other cases, the Association shall hold the sums paid upon such assessments and disburse the same in payment of the costs of reconstruction and repair.

(b) The proceeds of insurance collected on account of a casualty, and the sums deposited with the Association (pursuant to paragraph 3A of this paragraph) from collection of assessments against apartment owners on account of such casualty, shall constitute a reconstruction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

- (1) Apartment Owner: The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with the apartment owner; to such contractors, suppliers and personnel as do the work or supply the materials or services required for such reconstruction or repair, in such amounts and at such times as the apartment owner may direct, or if there is a mortgage endorsement, then to such payees as the apartment owner and the first mortgagee jointly direct. Nothing contained herein, however, shall be construed so as to limit or modify the responsibility of the apartment owner to make such reconstruction or repair.

- (2) Association--Lesser Damage:  
If the amount of the estimated costs of reconstruction and repair is less than

the total of the annual assessments for common expenses made during the year in which the casualty occurred, then the reconstruction fund shall be disbursed in payment of such costs upon the direction of the Association or Board of Managers; provided, however, that upon request of a mortgagee who is a beneficiary of an insurance policy, the proceeds of which are included in the reconstruction fund, such funds shall be disbursed in the manner herein-after provided for the reconstruction and repair of major damage.

(3) Association--Major Damage:

If the amount of the estimated costs of reconstruction and repair of the building or other improvements is more than the total of the annual assessments for the common expenses made during the year in which the casualty occurred, then the reconstruction fund shall be disbursed in payment of such costs and in the manner directed by the Board of Managers of the Association and upon approval of an architect qualified to practice in and employed by the Association to supervise the work.

(4) Surplus: It shall be presumed that the first monies disbursed in payment of costs of reconstruction and repair shall be from insurance proceeds; and if there is a balance and a reconstruction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed jointly to the apartment owners and their mortgagees who are the beneficial owners of the fund.

(5) Common Elements versus Apartments: When the damage is to both common elements and apartments, the insurance proceeds shall be applied first to the cost of repairing common elements and the balance to the apartments in the shares above stated.



(4) Insurance Adjustments: Each apartment owner shall be deemed to have delegated to the Board of Managers his right to adjust with insurance companies all losses under policies purchased by the Association except in any case where the damage is restricted to one (1) apartment, subject to the rights of mortgagees of such apartment owners.

17. Assessments: Assessments against the apartment owners shall be made or approved by the Board of Managers of the Association and paid by the apartment owners to the Association in accordance with the following provisions:

A. Share of Expenses--Common Expenses--Each Apartment: Owner shall be liable for his share of the common elements as described in paragraph 10D and any common surplus shall be owned by each apartment owner in a like share.

B. Assessments other than Common Expenses: Any assessments, the authority to levy which is granted to the Association or its Board of Managers by the Horizontal Property Ownership Documents, shall be paid by the apartment owners to the Association in the portions set forth in the provision of the Horizontal Property Ownership Documents authorizing the assessment.

C. Accounts: All sums collected by the Association from assessments may be co-mingled in a single fund but they shall be held for the apartment owners in the respective shares in which they are paid and shall be credited to accounts from which shall be paid the expenses for which the respective assessments are made. Such accounts shall be as follows:

(1) Common Expense Account--to which shall be credited collections of assessments for all common expenses as well as payments received for defraying costs of the use of common elements;

(2) Alteration and Improvement Account--to which shall be credited all sums collected for alteration and improvement assessments;

(3) Reconstruction and Repair Account--to which shall be credited all sums collected for reconstruction and repair assessments;

(4) Emergency Account--to which shall be credited all sums collected for emergencies.

D. Assessments for Common Expense: Assessments for common expenses shall be made for the calendar year annually in advance on or before the second

Monday in December of the year preceding for which the assessments are made and at such other and additional times as the Board of Managers shall determine assessments for additional common expenses required for the proper management, maintenance and operation of the common elements. Such annual assessments shall be due and payable in twelve (12) equal consecutive monthly payments, on the first day of each month, beginning with January of the year for which the assessments are made. The total of the assessments shall be in the amount of the estimated common expenses for the year including a reasonable allowance for contingencies and reserves less than the amounts of unneeded common expense account balances and less the estimated payments to the Association for defraying the costs of the use of common elements. If an annual assessment is not made as required, a payment in the amount required by the last prior assessment shall be due upon each assessment payment date until changed by a new assessment.

E. Other Assessments: Other assessments shall be made in accordance with the provisions of the Horizontal Property Ownership Documents and if the time of payment is not set forth in the Horizontal Property Ownership Documents, the same shall be determined by the Board of Managers of the Association.

F. Assessments for Emergencies: Assessments for common expenses of emergencies which can not be paid from the common expense account shall be made only by the Board of Managers of the Association.

G. Assessments for Liens: All liens of any nature, including taxes and special assessments levied by governmental authority which are a lien upon more than one (1) apartment or upon any portion of the common elements, shall be paid by the Association as a common expense and shall be assessed against the apartments in accordance with the shares of the apartments concerned or charged to the common expense account, whichever in the judgment of the Board of Managers is appropriate.

H. Assessment Roll: The assessments against all apartment owners shall be set forth upon a roll of the apartments which shall be available in the office of the Association for inspection at all reasonable times by apartment owners or their duly authorized representatives. Such roll shall indicate for each apartment the name and address of the owner or owners, the assessments for all purposes and the amounts of all assessments paid and unpaid. A certificate made by the Association as to the status of an apartment owner's assessment account shall limit the liability of any person for whom made, other than the apartment owner. The Association shall issue such certificates to such persons as an apartment owner may request in writing.

I. Liability for Assessments: The owner of an apartment and his grantees shall be jointly and severally liable for all unpaid assessments due and payable at the time of a grantee to recover from the grantor the amounts paid by the grantee therefor. Such liability may not be avoided by a waiver of the use or enjoyment of any common element or by abandonment of the apartment for which the assessments are made. A purchaser of an apartment at a judicial or foreclosure sale or a first mortgagee who accepts a deed in lieu of foreclosure shall be liable only for assessments coming due after such sale and for that portion of due assessments pro-rated to the period after the date of such sale. Such a purchaser as aforesaid shall be entitled to the benefit of all unpaid assessments paid beyond the date such purchaser acquired title.

J. Lien for Assessments: The unpaid portion of an assessment which is due shall be secured by a lien upon

- (1) The apartment and all appurtenances thereto when notice claiming the lien has been recorded by the Association in the public records of Marion County, Indiana. The Association shall not, however, record such claim of lien until the assessment is unpaid for not less than twenty (20) days after it is due. Such a claim of lien shall also secure all assessments which come due thereafter until the claim of lien is satisfied.

K. Application:

- (1) Interest; Application of Payments: Assessments and installments thereof paid on or before ten (10) days after the date when due shall not bear interest but all sums not paid on or before thirty (30) days after the date when due shall bear interest at the rate of eight per cent (8%) per annum from the date when due until paid. All payments upon account shall be applied first to the interest and then to the assessment payment first due. All interest collected shall be credited to the common expense account.

- (2) Suit: The Association at its option may enforce collection of delinquent assessments by suit at law or by foreclosure of the liens securing the assessments or by any other competent proceeding and in either event, the Association shall be entitled to recover in the same action, suit or proceeding, the payments which are delinquent at the time of judgment or decree, together with interest thereon at the rate of eight per cent (8%) per annum, and all costs

incident to the collection and the action, suit or proceeding, including, without limiting the same, to reasonable attorney's fees.

18. Taxes and Special Assessments:

- A. Taxes, assessments and other charges of this State, or any political subdivision, or of any special improvement district, or of any other taxing or assessing authority shall be assessed against and collected on each individual apartment, each of which shall be carried on the tax books as a separate and distinct entity for that purpose, and not on the building or property as a whole. No forfeiture or sale of the building or property as a whole for delinquent taxes, assessments or charges shall ever divest or in any way affect the title to an individual apartment so long as taxes, assessments and charges on said individual apartment are currently paid.
- B. Any tax assessor may rely upon a certificate of the Association as to the share of each apartment and upon request or whenever appropriate, the Association shall issue such certificate.
- C. During the period of time that taxes and special assessments upon the property or any portion thereof are not assessed to apartments as aforesaid, the taxes and assessments not separately assessed to apartments shall be included in the budget of the Association and shall be paid by the Association. The Association shall assess each apartment owner in accordance with the manner hereinabove set forth for allocation of taxes and special assessments by tax assessors.
19. Utilities: Each apartment owner shall pay for his own utilities which are separately metered or billed, including but not necessarily limited to, gas, electric, heat and telephone. Utilities which are not separately metered or billed, including but not necessarily limited to, water and trash removal shall be treated as and paid as part of the common expenses, unless otherwise agreed by a majority of the percentage vote of the owners.

20. Compliance and Default: Each apartment owner shall be governed by and shall comply with the terms of the Horizontal Property Ownership Documents and Regulations adopted pursuant thereto and said Documents and Regulations as they may be amended from time to time. A default shall entitle the Association or other apartment owners to the following relief:

A. Legal Proceedings: Failure to comply with any of the terms of the Horizontal Property Ownership Documents and Regulations adopted pursuant thereto, shall be grounds for relief which may include, without intending to limit the same, an action to recover sums due for damages, injunctive relief, foreclosure of lien or any combination thereof, and which relief may be sought by the Association or if appropriate, by an aggrieved apartment owner.

B. Liability of Owners: All apartment owners shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness or by that of any member of his family or his or their guests, employees, agents, or lessees, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of any apartment or its appurtenances. Nothing herein contained, however, shall be construed so as to modify any waiver by insurance companies of rights of subrogation.

C. Costs and Attorney's Fees: In any proceeding arising because of an alleged default by an apartment owner, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorneys' fees as may be determined by the court.

D. No Waiver of Rights: The failure of the Association or of an apartment owner to enforce any right, provision, covenant or condition which may be granted by the Horizontal Property Ownership Documents shall not constitute a waiver of the right of the Association or apartment owner to enforce such right, provision, covenant or condition in the future.

E. Remedies Cumulative: All rights, remedies and privileges granted to the Association or an apartment owner pursuant to any terms, provisions, covenants or conditions of the Horizontal Property Ownership Documents shall be deemed to be cumulative, and the exercise of any one (1) or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same, from exercising such other and additional rights, remedies or privileges as may be granted to such party by the Horizontal Property Ownership Documents or at law or in equity.

21. Amendment: Except for alterations in the shares which can not be done except with the consent of all apartment owners whose shares are being affected, and their mortgagees, the Horizontal Property Ownership Documents may be amended in the following manner:

A. Declaration: Amendments to the Declaration shall be proposed and adopted as follows:

- (1) Notice: Notice of the subject matter of the proposed amendment in reasonably detailed form shall be included in the notice of any meeting at which a proposed amendment is considered.
- (2) Resolution: A resolution adopting a proposed amendment may be proposed by either the Board of Managers of the Association or by the apartment owners meeting as members of the Association and after being proposed and approved by either of such bodies, must be approved by the others. Managers and apartment owners not present at the meeting considering such amendment may express their approval in writing or by proxy. Such approvals must be by not less than seventy-five per cent (75%) of the apartment owners and their mortgagees.

- (3) Recording: A copy of each amendment shall be certified by at least two (2) officers of the Association as having been duly adopted and shall be effective when recorded in the public records of Marion County, Indiana. Copies of the same shall be sent to each apartment owner and his mortgagee in the manner elsewhere provided for the giving of notices but the same shall not constitute a condition precedent to the effectiveness of such amendment.

B. Association--By-Laws: The By-Laws of the Association shall be amended in the manner provided by such documents.

22. Termination: The Horizontal Property Ownership shall be terminated, if at all, in the following manner:

- A. By Agreement: The termination of the Horizontal Property Ownership may be effected by the agreement of all apartment owners and first mortgagees, which agreement shall be evidenced by an instrument or instruments executed in the manner required for conveyances of land. The termination shall become effective when such agreement has been recorded in the public records of Marion County, Indiana.

B. Destruction: If it is determined in the manner elsewhere provided that the property shall not be reconstructed after casualty, the Horizontal Property Plan of Ownership will be terminated and the said Documents revoked. The determination not to reconstruct after casualty shall be evidenced by a certificate of the Association certifying as to the facts effecting the termination, which certificate shall become effective upon being recorded in the public records of Marion County, Indiana.

C. Shares of Apartment Owners After Termination: After termination of the Horizontal Property Ownership, the apartment owners shall own the property as tenants in common in undivided shares and the holders of mortgages and liens against the apartment or apartments formerly owned by such apartment owners shall have mortgages and liens upon the respective undivided shares of the apartment owners shall be as set forth in Exhibit "A". All funds held by the Association and insurance proceeds, if any, shall be and continue to be held jointly for the apartment owners and their first mortgagees in proportion to the amount of the assessments paid by each apartment owner. The costs incurred by the Association in connection with a termination shall be a common expense.

D. Partition of Property: Following termination, the property may be partitioned and sold upon the application of any apartment owner. If the Board of Managers following a termination by not less than seventy-five per cent (75%) vote, determines to accept an offer for the sale of the property, each apartment owner shall be bound to execute such deeds and other documents reasonably required to effect such sale at such times and in such forms as the Board of Managers directs. In such event, any action for partition or other division of the property shall be held in abeyance pending such sale, and upon the consummation thereof shall be discontinued by all parties thereto.

E. Continuing Powers: The members of the Board of Managers acting collectively as agents for all apartment owners, shall continue to have such powers as in this Article are granted, notwithstanding the fact that the Association itself may be dissolved upon a termination.

23. Covenants Running with the Land: All provisions of the Horizontal Property Ownership Documents shall be construed to be covenants running with the land and with every part thereof and interest therein, including but not limited to, every apartment and the appurtenances thereto; and every apartment owner and claimant of the property or any part thereof or interest therein, and

his heirs, executors, administrators, successors and assigns shall be bound by all of the provisions of the Horizontal Property Ownership Documents.

24. Liens:

A. Notice of Lien: An apartment owner shall give notice to the Association of every lien upon his apartment other than for permitted mortgages, taxes and special assessments within five (5) days after the attaching of the lien.

B. Notice of Suit: Apartment owners shall give notice to the Association of every suit or other proceeding which will or may effect the title to his apartment or any other part of the property, such notice to be given within five (5) days after the apartment owner receives notice thereof.

C. Failure to Comply: Failure to comply with this Article concerning liens will not effect the validity of any judicial sale.

D. Register: The Association shall maintain a register of all permitted mortgages.

25. Acceptance and Ratification: All present and future owners, mortgagees, tenants and occupants of the apartments 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 Managers as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any apartment shall constitute an agreement that the provisions of this Declaration, the Act, the By-Laws and rules and regulations as each may be amended from time to time are accepted and ratified by such owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in an apartment or the property as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporations, partnerships, trusts, associations or other legal entities who may occupy, use, enjoy or control an apartment or apartments or any part of the property in any manner shall be subject to the Declaration, the Act,



the By-Laws and the rules and regulations applicable thereto as each may be amended from time to time.

26. Provisions Pertaining to Declarant: For so long as the Declarant continues to own any of the apartments, the following provisions shall be deemed to be in full force and effect, none of which shall be construed so as to relieve Declarant from any obligations as an apartment owner to pay assessments as to each apartment owned by it, in accordance with the Horizontal Property Ownership Documents.

A. For so long as the Declarant owns more than five (5) apartments, a majority of the Board of Managers of the Association shall be selected by the Declarant and such members as may be selected by the Declarant need not be a resident of any of the buildings.

B. The Declarant specifically disclaims any intent to have made any warranty or representation in connection with the property or the Horizontal Property Ownership Documents except as specifically set forth therein and no person shall rely upon any warranty or representations not so specifically made therein. The estimates of common expenses are deemed accurate, but no warranty or guarantee is made nor intended, nor may one be relied upon.

C. Declarant further states that Brendonshire Courts is an existing multi-family development and its form of ownership is being converted from that of single ownership of that of individual apartments ownership.

27. 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 apartment.

28. Captions: Captions used in the Horizontal Property Ownership Documents are inserted solely as a matter of convenience and shall not be relied upon or used in construing the effect or meaning of any of the text of the Horizontal Property Ownership Documents.

29. Gender, Singular, Plural: Whenever the context so permits, the use of the plural shall include the singular, the plural and any gender shall be deemed to include all genders.

30. Severability: If any provision of this Declaration, or any section, sentence, clause, phrase or word, or the application thereof in any circumstances be judicially held in conflict with the laws of the State of Indiana, then the said laws shall be deemed controlling and the validity of the remainder of this Declaration and the application of any such provision, section, sentence, clause, phrase or word in other circumstances shall not be affected thereby.

IN WITNESS WHEREOF, the Declarant has caused this Declaration of Horizontal Property Ownership to be executed this 23 day of August, 1973.

CONDOMINIUM ASSOCIATES (an Indiana Partnership)

BY: H. Joseph Vaughn  
H. Joseph Vaughn

BY: George H. Maley  
George H. Maley

BY: J. C. Burris  
J. C. Burris

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MARION )

Before me, a Notary Public in and for said County and State, personally appeared H. Joseph Vaughn, George H. Maley, and J. C. Burris, partners of Condominium Associates, (an Indiana Partnership), and acknowledged before me that they executed the foregoing instrument for and on behalf of said partnership and acknowledged same to be their free act and deed.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on this 23 day of August, 1973.

J. C. Burris  
Notary Public

My Commission Expires: May 23 1977.

This Instrument Prepared By:  
J. C. Burris  
322 Circle Tower  
Indianapolis, Indiana 46204  
635-1050

CODE OF BY-LAWS

OF

BRENDONSHIRE COURTS  
HORIZONTAL PROPERTY REGIME

*Exhibit "B"*

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 OF  
 CODE OF BY-LAWS  
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CODE OF BY-LAWS

OF

BRENDONSHIRE COURTS  
HORIZONTAL PROPERTY REGIME

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ARTICLE I

Identification and Applicability

Section 1.01. Identification and Adoption: These By-Laws are adopted simultaneously with the execution of a certain Declaration creating Brendonshire Courts 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 5 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.

Section 1.02. Individual Application: All of the Co-owners, future Owners, tenants, future tenants, or their guests and invitees, or any other person that might use or occupy an Apartment or any part of the Property, shall be subject to the rules, restrictions, terms and conditions set forth in the Declaration, these By-Laws and the Act.

ARTICLE II

Meetings of Association

Section 2.01. Purpose of Meetings. At least annually and at such other times as may be necessary, the meetings of the Co-owners shall be held for the purpose of electing the Board of Managers, approving the annual budget, providing for the collection of Common Expenses, and for such other purposes as may be

required by the Declaration, these By-Laws or the Act.

Section 2.02. Annual Meetings: The annual meeting of the members of the Association shall be held on the third Monday of January in each calendar year. At the annual meeting the Co-owners shall elect the Board of Managers of the Association in accordance with the provisions of these By-Laws and transact such other business as may properly come before the meeting.

Section 2.03. Special Meetings: A special meeting of the members of the Association may be called by resolution of the Board of Managers or upon a written petition of the Co-owners who have not less than a majority of the Percentage Vote. The resolution or petition shall be presented to the President or Secretary of the Association and shall state the purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

Section 2.04. Notice and Place of Meetings: All meetings of the members of the Association shall be held at any suitable place in Marion County, Indiana, as may be designated by the Board of Managers. Written notice stating the date, time and place of any meeting and, in the case of a special meeting, shall be delivered or mailed by the Secretary of the Association to each Co-Owner and, if applicable, to any Mortgagee not less than fourteen (14) days prior to the date of such meeting. The notice shall be mailed or delivered to the Co-owners at their address as it appears upon the records of the Association and to the Mortgagee at the address as it appears on the records of the Association. Attendance at any meeting in person or by proxy shall constitute a waiver of notice of such meeting.

Section 2.05. Voting:

(a) Number of Votes: Each Owner shall be entitled to cast that number of votes on each matter coming before the meeting which is equal to the percentage vote to which the Owner is entitled. The percentage vote of each apartment Owner shall be 3.52700% and of each Owner

of each of the additional fourteen (14) garages, shall be 0.08888%.

(b) Multiple Owner: Where the Owner of an apartment constitutes more than one person, or is a partnership, there shall be only one (1) voting representative entitled to all the Percentage Vote allocable to that apartment. At the time of acquisition of title to an apartment by a multiple Owner of a partnership, those persons constituting such Owner or the partners shall file with the Secretary of the Association an irrevocable proxy appointing one (1) of such persons or partners as the voting representative for such apartment, which shall remain in effect until such appointed representative relinquishes such appointment in writing, becomes incompetent, dies or such appointment is otherwise rescinded by order of a court of competent jurisdiction. Such appointed voting representative may grant a proxy to another to vote in his place at a particular meeting or meetings pursuant to paragraph (d) of this Section 2.05, which shall not constitute a permanent relinquishment of his right to act as voting representative for the apartment.

(c) Voting by Corporation or Trust: Where a corporation or trust is an Owner or is otherwise entitled to vote, the trustee may cast the Percentage Vote on behalf of the trust and the agent or other representative of the corporation duly empowered by the board of Directors of such corporation shall cast the Percentage Vote to which the corporation is entitled.

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



(e) Quorum: Except where otherwise expressly provided in the Declaration, these By-Laws or the Indiana Horizontal Property Act, the Owners representing a majority of the Percentage Vote shall constitute a quorum at all meetings. The term majority of Owners or majority of Percentage Vote, as used in these By-Laws, shall mean the Owners entitled to not less than fifty-one per cent (51%) of the Percentage Vote in accordance with the applicable percentage set forth in the Declaration.

(f) Conduct of Meeting: The Chairman of the meeting shall be the President of the Association. He 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 meeting and the minutes of any special meeting held subsequent thereto.
- (2) Treasurer's Report: The Treasurer shall report to the Co-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 calendar year shall be presented to the Co-owners for approval or amendment.
- (4) Election of Board of Managers: Nominations for the Board of Managers may be made by any Owner from those persons eligible to serve. Such nominations must be in writing and presented to the Secretary of the Association at least ten (10) days prior to the date of the annual meeting. Voting for Board of Managers will be by paper ballot. The ballot shall contain the name of each person nominated to serve as a Board member. Each Owner may cast the total number of votes to which he is entitled for as many nominees as are to be elected; however, he

shall not be entitled to cumulate his votes. Those persons receiving the highest number of votes shall be elected. Each voting Owner shall sign his ballot.

- (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 ten (10) 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.

### ARTICLE III

#### Board of Managers

Section 3.01. The affairs of the Association and Brendonshire Courts shall be governed and managed by the Board of Managers (herein collectively called "Board" or "Managers" and individually called "Manager"). The Board of Directors shall be composed of three (3) persons. No person shall be eligible to serve as a Manager unless he is an Owner or is an attorney, agent or employee of Declarant.

Section 3.02. Initial Board of Managers: The initial Board of Managers shall be H. J. Vaughn, George H. Maley and J. C. Burris, all of whom are representatives of Declarant. The initial Board shall hold their office until the first annual meeting of the Co-owners to be held in January of 1974; provided, however, the initial Board of Managers shall replace J. C. Burris with an Owner at the earliest practicable date after the first annual meeting but at the election of H. J. Vaughn and George H. Maley.

Section 3.03. Additional Qualifications: Where an Owner consists of more than one (1) person or is a partnership, corporation, trust or other legal entity, then one (1) of the persons constituting the multiple Owner, or a partner or an officer or trustee shall be eligible to serve on the Board of Managers, except that no single apartment may be represented on the Board of Managers by more than one (1) person at a time.

Section 3.04. Term of Office and Vacancy: The Board of Managers shall be elected at each annual meeting of the Association. Managers shall hold office for a term of one (1) year or until their successors have been duly elected and qualified.

Any vacancy or vacancies occurring in the Board shall be filled by a vote of a majority of the remaining Managers or by vote of the Co-owners if a Manager is removed in accordance with Section 3.05 of this Article III.

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

Section 3.06. Duties of the Board of Managers: The Board of Managers shall provide for the administration of the Brendonshire Courts Horizontal Property Regime, the maintenance, upkeep and replacement of the Common Areas and Limited Areas, and the collection and disbursement of the Common Expenses. These duties include, but are not limited to:

- (a) protection, surveillance and replacement of the Common Areas and Limited Areas;
- (b) procuring of utilities used in connection with Brendonshire Courts, removal of garbage and waste, and snow removal from the Common Areas;
- (c) landscaping, painting, decorating and furnishing of the Common Areas and Limited Areas, the exterior of the Buildings, garages and walls;
- (d) surfacing, paving and maintaining streets, parking areas, garages and sidewalks;
- (e) washing and cleaning of exterior window surfaces of the apartments;
- (f) assessment and collection from the Owners of the Owner's pro rata share of the Common Expenses;

- (g) 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;
- (h) preparing and delivering annually to the Co-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 annual budget;
- (i) 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.

Section 3.07. Powers of the Board of Managers: The Board

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

- (a) to employ a managing agent or a real estate management company (either being hereinafter referred to as "Managing Agent") to assist the Board in performing its duties;
- (b) to purchase for the benefit of the Co-owners such equipment, materials, labor and services as may be necessary in the judgment of the Board of Managers;
- (c) to procure for the benefit of the Owners fire and extended coverage insurance covering the Buildings and the Property to the full insurable value thereof and to procure public liability and property damage insurance and Workmen's Compensation insurance, if necessary, for the benefit of the Owners and the Association;
- (d) to employ legal counsel, architects, contractors, accountants and others as in the judgment of the Board of Managers may be necessary or desirable in connection with the business and affairs of Brendonshire Courts;
- (e) to include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;
- (f) to open and maintain a bank account or accounts in the name of the Association;
- (g) to adopt, revise, amend and alter from time to time reasonable rules and regulations with respect to use, occupancy, operation and enjoyment of the Property.

Section 3.08. Limitation on Board Action: The authority

of the Board of Managers to enter into contracts shall be limited to contracts involving a total expenditure of less than \$2,500.00 without obtaining the prior approval of a majority of Owners, except in the following cases:

(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 Co-owners at the annual meeting.

Section 3.09. Compensation: No Manager, if an Owner shall receive any compensation for his services as such except to such extent as may be expressly authorized by a majority of the Owners; provided, however, that this clause shall not be applicable to H. J. Vaughn, one of the partners of Condominium Associates (an Indiana Partnership) who shall receive compensation for acting in the capacity of a Manager for the Association.

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

Special meetings of the Board may be called by the President or any two members of the Board. The person or persons calling such meeting shall give written notice thereof to the Secretary who shall either personally or by mail and at least three (3) days prior to the date of such special meeting, give notice to the Board members. The notice of the meeting shall contain a statement of the purpose for which the meeting is called. Such meeting shall be held at such place and at such time within Marion County, Indiana, as shall be designated in the notice.

Section 3.11. Waiver of Notice: Before any meeting of the Board, any Manager may, in writing, waive notice of such meeting

and such waiver shall be deemed equivalent to the giving of such notice. The presence of any Manager at a meeting shall, as to such Manager, constitute a waiver of notice of the time, place and purpose thereof. If all Managers are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

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

Section 3.13. Non-Liability of Managers: The Managers shall not be liable to the Co-owners for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Managers, except for their own individual willful misconduct, bad faith or gross negligence. The Co-owners shall indemnify and hold harmless each of the Managers against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of Brendonshire Courts, unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or By-Laws. It is intended that the Managers shall have no personal liability with respect to any contract made by them on behalf of Brendonshire Courts or the Association and that in all matters the Board is acting for and on behalf of the Co-owners and as their agent. The liability of any Owner arising out of any contract made by the Board or out of the aforesaid indemnity in favor of the Managers shall be limited to such percentage of the total liability or obligation thereunder as is equal to his Percentage Interest. Every contract made by the Board or the Managing Agent on behalf of Brendonshire Courts shall provide that the Board of Managers and the Managing Agent, as the case may be, is acting as agent for the Co-owners and shall have no personal liability thereunder, except in their capacity as

Owners and then only to the extent of their Percentage Interest.

Section 3.14. Additional Indemnity of Managers: The Co-owners shall indemnify any person, his heirs, assigns and legal representatives, made a part to any action, suit or proceeding by reason of the fact that he is or was a Manager of the Association, against the reasonable expenses, including attorneys' fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that such Manager is liable for gross negligence or misconduct in the performance of his duties. The Co-owners shall also reimburse to any such Manager the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if it shall be found by a majority of the Co-owners that such Manager was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Manager, no Manager shall be considered or deemed to be guilty of or liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Manager relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent of Brendonshire Courts or any officer or employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service unless such Manager had actual knowledge of the falsity or incorrectness thereof; nor shall a Manager be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Managers.

#### ARTICLE IV

##### Officers

Section 4.01. Officers of the Association: The principal officers of the Association shall be the President, Vice President,

Secretary and Treasurer, all of whom shall be elected by the Board. The Managers may appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary. Any two or more offices may be held by the same person, except that the duties of the President and Secretary shall not be performed by the same person.

Section 4.02. Election of Officers: The officers of the Association shall be elected annually by the Board at the initial meeting of each new Board. Upon an affirmative vote of a majority of all members of the Board, any officer may be removed either with or without cause and his successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

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

Section 4.04. The Vice-President: The Vice-President shall be elected from among the Managers and shall perform all duties incumbent upon the President during the absence or disability of the President. The Vice-President shall also perform such other duties as these By-Laws may prescribe or as shall, from time to time, be imposed upon him by the Board or by the President.

Section 4.05. The Secretary: The Secretary shall be elected from among the Managers. The Secretary shall attend all meetings of the Association and of the Board and shall keep or cause to be kept a true and complete record of the proceedings of such meetings,



shall perform all other duties incident to the office of the Secretary, and such other duties as from time to time may be prescribed by the Board. The Secretary shall specifically see that all notices of the Association or the Board are duly given, mailed or delivered, in accordance with the provisions of these By-Laws.

Section 4.06. The Treasurer: The Board shall elect from among the Managers a Treasurer who shall maintain a correct and complete record of account showing accurately at all times the financial condition of the Association and such other duties incident to the office of Treasurer. He shall be the legal custodian of all monies, notes, securities and other valuables which may from time to time come into possession of the Association. He shall immediately deposit all funds of the Association coming into his hands in some reliable bank or other depository to be designated by the Board and shall keep such bank account in the name of the Association.

Section 4.07. Assistant Officers: The Board of Managers may, from time to time, designate and elect from among the Co-owners an Assistant Secretary and Assistant Treasurer who shall have such powers and duties as the officers whom they are elected to assist shall delegate to them and such other powers and duties as these By-Laws or the Board of Managers may prescribe.

#### ARTICLE V

##### Assessments

Section 5.01. Annual Accounting: Annually, after the close of each calendar year and prior to the date of the annual meeting of the Association, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by a recognized accounting firm then serving the Association, which statement shall show all receipts and expenses received, incurred and paid during the preceding calendar year.

Section 5.02. Proposed Annual Budget: Annually, on or before the date of the annual meeting of the Association, the

Board of Managers shall cause to be prepared a proposed annual budget for the ensuing calendar year estimating the total amount of the Common Expenses for the ensuing year and furnish a copy of such proposed budget to each Owner prior to the annual meeting. The annual budget shall be submitted to the Co-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 ensuing calendar year. At the annual meeting of the Co-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 Co-owners be adjourned until an annual budget is approved at such meeting, either the proposed annual budget or the proposed annual budget as amended.

Section 5.03. Regular Assessments: The annual budget as adopted shall, based on the estimated cash requirement for the Common Expenses in the ensuing year as set forth in said budget, contain a proposed assessment against each apartment and additional garage based on the Percentage Interest of each apartment and additional garage. Immediately following the adoption of the annual budget, each Owner shall be given written notice of such assessment against each respective apartment and additional garage (herein called the "Regular Assessment"). The Regular Assessment against each apartment and additional garage shall be paid in equal monthly installments, commencing on the first day of February of such calendar year and on the first day of each calendar month thereafter through and including the following January 1. Payment of the monthly installments of the Regular Assessment shall be made to the Board of Managers or the Managing Agent, as directed by the Board of Managers; provided, however, Owners may elect to pay monthly assessments semi-annually or annually, in advance. The Regular Assessment for the year shall become a lien on each separate apartment and additional garage as of February 1 of each calendar year.

Section 5.04. Special Assessments: From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the Co-owners, unless otherwise provided in these By-Laws, the Declaration or the Indiana Horizontal Property Act, the Board of Managers shall have the full right, power and authority to make special assessments which, upon resolution of the Board, shall become a lien on each apartment and additional garage, prorated in accordance with the Percentage Interest of each apartment and additional garage (hereinafter called "Special Assessments").

Section 5.05. Failure of Owner to Pay Assessments: 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 or Special Assessment when due, the lien for such Assessment on the Owner's apartment may be filed and foreclosed by the Board for and on behalf of the Association as provided by law. In any action to foreclose the lien for Assessments, the Owner and occupant shall be jointly and severally liable for the payment to the Association of reasonable rental for such apartment, and the Board shall be entitled to the appointment of a receiver for the purpose of preserving the apartment and to collect the rentals and other profits therefrom for the benefit of the Association to be applied to the unpaid Regular or Special Assessment. The Board may, at its option, bring a suit to recover a money judgment for any unpaid Regular or Special Assessment without foreclosing or waiving the lien securing the same. In any action to recover a Regular 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 apartment.

Section 5.06. Maintenance and Repairs: Every Owner shall promptly perform all maintenance and repair within his own apartment, which, if neglected, would affect the value of the Property and is the responsibility of the Owner to make personally. Such maintenance and repairs include, but are not limited to, internal water lines, plumbing, electric lines, appliances, gas lines, telephones, air conditioning, doors, windows, lamps and all other accessories belonging to the Owner and appurtenant to the apartment.

#### ARTICLE VI

##### Restrictions on Use

Section 6.01. The following rules and restrictions on the use and enjoyment of the apartment, Common Areas, Limited Areas and the Property shall be applicable to the Owners of Brendonshire Courts and are in addition to those set forth in the Declaration. The restrictions of use hereinafter set forth shall be covenants running with the land.

Said restrictions of use are as follows:

- (a) All apartments shall be used exclusively for residential purposes and the occupancy shall be restricted to one (1) family.
- (b) No additional buildings shall be erected or located on the tract other than the buildings designated in the Declaration and shown on the plans.
- (c) Nothing shall be done or kept in any apartment 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 apartment or in the Common Areas or Limited Areas which will result in a cancellation of insurance on any building or contents thereof, or which would be in violation of any law or ordinance.
- (d) No waste shall be committed in the apartment, 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 roof or any other

part of any building without the prior written consent of the Board of Managers.

- (f) No animals, livestock or poultry of any kind shall be raised, bred or kept in any apartment or in the Common Areas or Limited Areas except that small pets, dogs, cats or customary household pets may be kept in an apartment.
- (g) Nothing shall be done or permitted in any apartment which will impair the structural integrity of any building or which would structurally change any building, except as otherwise provided in the Declaration or by these By-Laws; nor shall the premises be used in any unlawful manner or in any manner to cause injury to the reputation of the apartment or to be a nuisance, annoyance, inconvenience or damage to other tenants of the building or neighborhood, including without limiting the generality of the foregoing, noise by the use of any musical instrument, radio, television, loud speaker, amplifier, electrical equipment, or other equipment or machines.
- (h) No clothes, sheets, blankets, rugs, laundry or other things shall be hung out or exposed on any part of the Common Areas. The Common Areas shall be kept free and clear of rubbish, debris and other unsightly materials and such parts of the Common Areas as sidewalks, entrances and passages must not be obstructed or encumbered or used for any purpose other than ingress and egress to and from the premises.
- (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 window or advertising display shall be maintained or permitted on any part of the Property or in the apartment without the prior written consent of the Board of Managers.
- (k) No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Areas or Limited Areas, except with the prior written consent of the Board of Managers.
- (l) Garbage is to be disposed of by the use of the garbage disposals. Trash is to be disposed of as provided by the Board of Managers.
- (m) No garbage cans, supplies, milk bottles or other articles shall be placed on the porches, nor shall anything be hung from the windows or placed upon the window sills. Neither shall any linens, cloths, clothing, curtains, rugs or mops be shaken or hung from any of the windows or doors.

(n) None of the Common Elements of the Horizontal Property Regime shall be decorated or furnished by any apartment Owner or resident.

(o) Automobile parking spaces shall be solely and exclusively for that purpose. Such parking spaces shall not be used for the storage of trucks, boats, trailers of any kind, buses, mobile homes, motor homes, inoperative automobiles, motorcycles, minibikes or any other purpose whatsoever, other than parking facilities for automobiles or other vehicles owned by the individual apartment Owner, their invitees, guests, licensees or tenants, however, nothing herein shall prevent the parking or storage of such vehicles completely enclosed within the garage. An apartment Owner may not lease or assign his parking space except in conjunction with the lease of an apartment, which lease has been approved in accordance with the provisions of the applicable Declarations of Horizontal Property Ownership.

(p) Leasing of an apartment by an apartment Owner is not prohibited; however, a lease shall require the apartment Owner to make such request, in writing, to the Board of Managers setting forth the names of the lessee, type of instrument to be used and supply all information as may be required by the Board of Managers.

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

(r) Complaints regarding the service of the apartments shall be made in writing to the Board of Managers or to the Manager of the Association. Payment of the monthly assessments shall be made at the office of the Association, or at such other place or places as the Association shall direct, through its Board of Managers, from time to time. Payments made in the form of checks shall be made payable to the order of the Association.

The foregoing rules, regulations and restrictions shall not apply to the Declarant, Condominium Associates (an Indiana Partnership).

Section 6.02. Right of Entry: An Owner or occupant of an apartment shall grant the right of entry to the Managing Agent or any other person authorized by the Board in case of any emergency

originating in or threatening his apartment 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 apartment 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 convenient to the Owner. In case of emergencies, such right of entry shall be immediate.

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

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

ARTICLE VII

Amendment to By-Laws

Section 7.01. These By-Laws may be amended by a vote of not less than seventy-five per cent (75%) of the Percentage Vote of the Co-owners in a duly constituted meeting called for such purpose.

ARTICLE VIII

Mortgages

Section 8.01. Notice to Association: Any Owner who places a first mortgage lien upon his apartment or the Mortgagee shall notify the Secretary of the Association 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 or these By-Laws 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 or these By-Laws 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 or By-Laws or proxy granted to such Mortgagee in connection with the mortgage.

Section 8.02. Notice of Unpaid Assessments: The Association shall, upon request of a Mortgagee, a proposed mortgagee or purchaser who has a contractual right to purchase an apartment, furnish to such Mortgagee or purchaser a statement setting forth the amount of the unpaid Regular or Special Assessments against the apartment, which statement shall be binding upon the Association and the Co-owners, and any Mortgagee or grantee of the apartment shall not be liable for nor shall the apartment conveyed be subject to a lien for any unpaid assessments in excess of the amount set forth in such statement.



CONSENT TO SUBMIT REAL ESTATE TO  
THE HORIZONTAL PROPERTY ACT

Peoples Bank & Trust Company of Indianapolis, mortgagee of the following described real estate:

A part of the Northwest quarter of Section 11, Township 16 North, Range 4 East, in Marion County, Indiana, more particularly described as follows:

Beginning at the Southwest corner of the aforementioned quarter section and North 00°00'00" West on and along the West line a distance of 250.00 feet; running thence South 89°06'00" East a distance of 475.00 feet; running thence South 00°00'00" East a distance of 200.00 feet; running thence South 89°06'00" East a distance of 170.00 feet; running thence South 00°00'00" East a distance of 50.00 feet to the South line of the aforementioned quarter section; running thence on and along the South line North 89°06'00" West a distance of 645.00 feet to the point of beginning, containing in all 2.921 acres; subject, however, to all legal highways, rights-of-way and easements.

hereby consents to said real estate being submitted to the Horizontal Property Act of the State of Indiana, Acts 1963, Chapter 349, Section 1 through 31, as amended by the filing of the Declaration of Horizontal Property Ownership, Brendonshire Courts, Horizontal Property Regime.

IN WITNESS WHEREOF, Peoples Bank & Trust Company of Indianapolis has caused this Consent to be executed and its Corporate Seal affixed hereto this 22 day of August, 1973.

Peoples Bank & Trust Company of Indianapolis

By: Thomas E. Seaman

Attested by: Donald E. Skinner

STATE OF INDIANA )  
                                  ) ASSISTANT CLERK  
COUNTY OF MARION ) SS:

EXECUTIVE VICE-PRESIDENT

Before me, a Notary Public in and for said County and State, personally appeared E. W. GUILMANN and THOMAS E. SEAMAN the EXECUTIVE VICE PRESIDENT and ASST CASHIER respectively of Peoples Bank & Trust Company of Indianapolis, who acknowledged execution of the foregoing Consent to Submit Real Estate to the Horizontal Property Act, and who, having been duly sworn, stated that the representations therein contained are true.

WITNESS my hand and Notarial Seal this 22<sup>ND</sup> day of August, 1973.

My Commission Expires:

May 23 1977

This Instrument Prepared By:

J. C. Burris  
322 Circle Tower  
Indianapolis, Indiana 46204  
635-1050

John T. Reys  
Notary Public