

see also bk 107 pg 268
Bonnie L. Maplew RHC

Comments see also Book 107 page 272-4
Bonnie L. Maplew RHC

7831 March 21, 1986
For Ratification & Dedication Sec 5
see also bk 107 pg. 269
Bonnie L. Maplew RHC

8893 May 13, 1992 33
For Administrator's Decd See
Book 320 page 251-52
Joy Bradley RHC
BOOK 33 PAGE 498

8126
DECLARATION OF

7832 March 21, 1986

HORIZONTAL PROPERTY OWNERSHIP

For Ratification & Dedication Sec 4
see also bk 107 pg. 270-1

EAGLE PARK

Bonnie L. Maplew RHC

HORIZONTAL PROPERTY REGIME

THIS DECLARATION, made this 26th day of April, 1985 by the "Declarant", Brownsburg Investments Partnership, a partnership.

WITNESSETH:

A. Whereas Declarant is the contract purchaser of the following described real estate, located in Hendricks County, Indiana, to-wit:

A part of the southwest quarter of the southeast quarter of Section 2, Township 16 North, Range 1 East of the Second Principal Meridian in Indiana. Said part being more particularly described as follows:

Commencing at a stone at the southwest corner of said quarter quarter section, thence north 88 degrees 39 minutes 15 seconds east on and along the south line of said quarter quarter section 841.00 feet to the BEGINNING POINT of this description; thence north 00 degrees 27 minutes 50 seconds west 177.00 feet; thence south 88 degrees 39 minutes 15 seconds west 133.00 feet; thence north 00 degrees 27 minutes 50 seconds west 523.64 feet; thence north 89 degrees 30 minutes 40 seconds east 638.49 feet to a point on the east line of said quarter quarter section; thence south 00 degrees 04 minutes 15 seconds west on and along said east line 364.88 feet to a point North 00 degrees 04 minutes 15 seconds east 326.34 feet of a stone at the southeast corner of said quarter quarter section; thence south 88 degrees 39 minutes 15 seconds west 133.52 feet; thence south 00 degrees 04 minutes 15 seconds west 326.24 feet to a point on the south line of said quarter quarter section; thence south 88 degrees 39 minutes 15 seconds west on and along said south line 365.60 feet to the beginning point of this description. Containing in all 8.61 acres, more or less, subject to all legal highways, rights-of-way and easements of record.

B. Whereas Declarant is the owner in fee simple of certain real estate within the above described real estate described as Section 1, Eagle Park Horizontal Property Regime, and more particularly described as follows:

ENTERED FOR RECORD
BOOK 103 PAGE 498-518

MAY 16 1985

Bonnie L. Maplew
RECORDER HENDRICKS COUNTY

See Mesa Bk 107 pg 268
Bonnie L. Mapples RHC

Comments see Mesa Book 107 page 272-4
Bonnie L. Mapples RHC

7831 March 21, 1986
For Ratification & Dedication Sec 5
See Mesa Bk 107 pg. 269
Bonnie L. Mapples RHC

8893 May 13, 1992 33
For Administrator's Deed See
Book 320 Page 251-52

8126
DECLARATION OF

Joy Bradley RHC
BOOK 123 PAGE **498**

7832 March 21, 1986
For Ratification & Dedication Sec 4
See Mesa Bk 107 pg. 270-1
Bonnie L. Mapples RHC

HORIZONTAL PROPERTY OWNERSHIP

EAGLE PARK

HORIZONTAL PROPERTY REGIME

THIS DECLARATION, made this 26th day of April, 1985 by the "Declarant", Brownsburg Investments Partnership, a partnership.

WITNESSETH:

A. Whereas Declarant is the contract purchaser of the following described real estate, located in Hendricks County, Indiana, to-wit:

A part of the southwest quarter of the southeast quarter of Section 2, Township 16 North, Range 1 East of the Second Principal Meridian in Indiana. Said part being more particularly described as follows:

Commencing at a stone at the southwest corner of said quarter quarter section, thence north 88 degrees 39 minutes 15 seconds east on and along the south line of said quarter quarter section 841.00 feet to the BEGINNING POINT of this description; thence north 00 degrees 27 minutes 50 seconds west 177.00 feet; thence south 88 degrees 39 minutes 15 seconds west 133.00 feet; thence north 00 degrees 27 minutes 50 seconds west 523.64 feet; thence north 89 degrees 30 minutes 40 seconds east 638.49 feet to a point on the east line of said quarter quarter section; thence south 00 degrees 04 minutes 15 seconds west on and along said east line 364.88 feet to a point North 00 degrees 04 minutes 15 seconds east 326.34 feet of a stone at the southeast corner of said quarter quarter section; thence south 88 degrees 39 minutes 15 seconds west 133.52 feet; thence south 00 degrees 04 minutes 15 seconds west 326.24 feet to a point on the south line of said quarter quarter section; thence south 88 degrees 39 minutes 15 seconds west on and along said south line 365.60 feet to the beginning point of this description. Containing in all 8.61 acres, more or less, subject to all legal highways, rights-of-way and easements of record.

B. Whereas Declarant is the owner in fee simple of certain real estate within the above described real estate described as Section 1, Eagle Park Horizontal Property Regime, and more particularly described as follows:

ENTERED FOR RECORD

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10:56

103

MAY 16 1985 PAGE 498-518

Bonnie L. Mapples
RECORDER HENDRICKS COUNTY

BOOK 203 PAGE **499**

A part of the Southwest quarter of the Southeast quarter of Section 2, Township 16 North, Range 1 East of the Second Principal Meridian in Lincoln Township, Hendricks County, Indiana and being more particularly described as follows, to-wit:

Commencing at the southwest corner of said quarter quarter section; thence North 88 degrees 39 minutes 15 seconds East along the south line of said quarter quarter section 841.00 feet to the POINT OF BEGINNING; thence North 00 degrees 27 minutes 50 seconds West 172.00 feet; thence North 88 degrees 39 minutes 15 seconds East parallel with said south line 200.00 feet; thence South 00 degrees 27 minutes 50 seconds East 172.00 feet to the aforesaid south line; thence South 88 degrees 39 minutes 15 seconds West along said south line 200.00 feet to the Point of Beginning. Containing 0.79 acre, more or less and subject to all legal highways, rights-of-way and easements of record.

C. Whereas, Declarant, by execution of this Declaration or a Supplemental Declaration or Declarations, creates a Horizontal Property Regime upon the Tract, subject to the provisions of the Horizontal Property Act of the State of Indiana and the terms and conditions of this Declaration.

NOW, THEREFORE, Declarant hereby makes this Declaration as follows:

- (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) "Additional Sections" means the real estate referred to in paragraph 16, which may in part or in whole from time to time be annexed to and included within "the Regime" as provided in paragraph 16, all of which will be a part of the proposed tract.
- (c) "Associated" means the incorporated association of Co-Owners of "the Regime", more particularly described in paragraph 13.
- (d) "Board of Managers" means the governing body 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", if and when used, shall mean and be the same as "Dwelling Unit", or "Dwelling Units" where more than one such unit is contained in one edifice.

- (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 the Act. A true copy of the By-Laws is attached to this Declaration and incorporated herein by reference.
- (g) "Common Areas" means the common areas and facilities appurtenant to the Property as defined in paragraph 6 of this Declaration.
- (h) "Common Expenses" means expenses of administration of the Association, expenses for the upkeep, maintenance, repair and replacement of the Common Areas and Limited Areas, except as otherwise expressly provided in this Declaration or the By-Laws, 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 Dwelling Units.
- (j) "Declarant" means the Owner of the real estate described at the time of the filing of this Declaration, its successors and assigns to its interest herein, other than those persons who purchase Dwelling Units by deed from the Declarant, unless the conveyance indicates an intent that grantee become the Declarant.
- (k) "Dwelling Unit" means one of the individual units constituting "the Regime", each individual unit being more particularly described and identified on the Plans and in paragraphs 4 and 5 of this Declaration.
- (l) "Formula" means the method set forth in paragraph 17 of this Declaration for computing the adjustment to be made to the Percentage Interest applied to each Dwelling Unit as each Section is annexed.
- (m) "Storage Areas" shall mean storage areas intended and designed to serve and be used exclusively by the Owner of a particular Dwelling Unit, if any, as shown and designated on the Plans.
- (n) "The Regime" means the name by which the Property and Horizontal Property Regime shall be known.
- (o) "Limited Areas" means the limited common areas and facilities as defined in paragraph 7 of this Declaration.

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- (p) "Mortgagee" means the holder of any mortgage lien on a Dwelling Unit.
- (q) "Owner" means a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof who owns the fee simple title to a Dwelling Unit.
- (r) "Percentage Interest" means the percentage of undivided interest in the fee simple title to the Common areas and Limited Areas appurtenant to each Dwelling Unit as determined in accordance with paragraphs 8 and 16 of this Declaration.
- (s) "Percentage Vote" means that percentage of the total vote accruing to all of the Dwelling Units which is applicable to each particular Dwelling Unit and accrues to the Owners thereof. The Percentage Vote to which each Owner shall be entitled on any matter upon which the Co-Owners are entitled to vote shall be the same percentage as the Percentage Interest applicable to such Owner's Dwelling Unit.
- (t) "Section" means a part of the Tract upon which Dwelling Units are constructed and annexed to "the Regime" as provided in paragraph 16. Each particular Section shall be identified by an Arabic numeral designation corresponding to the order of annexation.
- (u) "Plans" means a plat showing the location of the buildings, the elevations, the dwelling units within the buildings, arabic identification numbers for each dwelling unit and the outside dimensions for each building for Section One, duly certified, all of which is incorporated herein by reference. "Plans" also shall include the Supplemental Plans which shall be prepared, verified and filed with each Supplemental Declaration, depicting the location of the buildings, the dwelling units within the buildings, arabic identification numbers for each dwelling unit and the outside dimensions for buildings, which are constructed on the Sections of the Tract when and if annexed to and made a part of "the Regime".
- (v) "Property" means the Tract and appurtenant easements, the Dwelling Units, the Buildings, improvements, and property of every kind and nature whatsoever, real, personal and mixed, and all replacements thereof, now or hereafter located upon the Tract and used in connection with the operation use and enjoyment of "the Regime".

- (w) "Tract" means the total real estate described in paragraph C above, of which the respective Sections will be a part.

2. Declaration. Declarant hereby expressly declares that the Property shall be a Horizontal Property Regime in accordance with the provisions of the Act.

3. Description of Dwelling Units. There are three dwelling units in Section 1, as shown on the Plans. The Dwelling Units are identified and referred to in the Plans and in this Declaration as Dwelling Units numbered 1, 2 & 3. The Dwelling Units in the Additional Section or Sections, if annexed, shall be identified numerically, the exact number of Dwelling Units to be identified and referred to in the Supplemental Declaration and Supplemental Plans annexing such Section or Sections to "the Regime".

4. Identification of Dwelling Unit. Each Dwelling Unit is also identified by an Arabic number on the Plans, same referring to the individual Dwelling Unit.

The legal description for each Dwelling Unit shall consist of the Arabic number designation of the particular Dwelling Unit.

5. Further Description of Dwelling Units.

- (a) Appurtenances. Each Dwelling Unit shall consist of all space within the boundaries thereof as hereinafter defined and all portions thereof situated within such boundaries, including, but not limited to, all fixtures, facilities, utilities, equipment, appliances, and structural components designated and intended solely and exclusively for the enjoyment, use and benefit of the Dwelling Unit wherein the same are located, or to which they are attached, but excluding therefrom that designed or intended for the use, benefit, support, safety or enjoyment of any other Dwelling Unit or which may be necessary for the safety, support, maintenance, use and operation of any of the Dwelling Units or which are normally designed for common use; provided, however, that all fixtures, equipment and appliances designed or intended for the exclusive enjoyment, use and benefit of a Dwelling Unit shall constitute a part of such Dwelling Unit, whether or not the same is located within or partly within or without the boundaries of such Dwelling Unit.

- (b) **Boundaries.** The dimensions required to determine the boundaries of each Dwelling Unit shall be shown on the Plans and will include all areas of the space bounded by the bottom of the slab and the bottom of the floor joists to the bottom of the roof rafters in a horizontal plane and the outside surface of the perimeter stud walls in a vertical plane. In the event of any horizontal or vertical boundary line as shown on the Plans does not coincide with the actual location of the respective wall, floor or ceiling of the Dwelling Unit because of inexactness of construction, settling after construction, or for any other reasons, the boundary lines of each Dwelling Unit shall be deemed to be and treated for purposes of occupancy, possession, maintenance, decoration, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent easements for exclusive use shall exist in favor of the Owner of each Dwelling Unit in and to such space lying outside of the actual boundary line of the Dwelling Unit, but within the appropriate area of the Dwelling Unit.

6. Common Area and Facilities. Common areas mean and include (1) the Tract, (2) the respective Sections contained in that Tract, (3) the yards, gardens, sidewalks and driveways, except for those driveways designed to serve particular individual garage units, (4) central electricity, gas, water, and sanitary sewer mains serving the Dwelling Units, (5) exterior lighting fixtures and electrical service, except where separately metered to a particular Dwelling Unit, (6) pipes, ducts, electrical wiring and conduits, public utility lines and central television antenna wiring, (7) all facilities and appurtenances located outside of the boundary lines of the Dwelling Units, except those areas and facilities expressly defined as Limited Areas.

7. Limited Common Area and Facilities. Limited Areas and those Dwellings to which the use thereof is limited are as follows:

- (a) **Entranceways.** The entranceways through which access to a Dwelling Unit is obtained is limited to the use of the Dwelling Unit or Dwelling Units served by such entranceway.
- (b) **Patios and Balconies.** The patios, balconies, courtyards and decorative walls and fences are limited to the use of the Dwelling Unit or Dwelling Units to which they are appurtenant as designated.
- (c) **Driveways.** The driveways, walkways, and similar areas used for access to particular individual Dwelling Units serving such Dwelling Units are limited to the use of the Dwelling Unit so served.

8. Ownership of Common Area and Percentage Interest.

Each Owner shall have an undivided interest in the Common Areas and Limited Areas as tenants in common with all other Owners equal to his Dwelling Unit's Percentage Interest. Each Dwelling Unit's Percentage Interest in the Common Areas and Limited Areas shall be determined in accordance with the Formula set forth in paragraph 16 of this Declaration.

If the Regime consists only of Section 1, each Dwelling Unit's Percentage Interest shall be that as each Unit bears to all units in the Section. If any Sections are annexed, as permitted and contemplated by paragraph 16 of this Declaration, upon execution of the applicable Supplemental Declaration, the Percentage Interest of each Dwelling Unit in the Section or Sections which are a part of the Regime prior to such annexation will automatically reduce in accordance with the Formula. The Owners of Dwelling Units in the Section or Sections which are a part of the Regime prior to such annexation shall be granted and receive a Percentage Interest in the Common Area of such Section of the additional Tract being annexed, the precise Percentage Interest to be determined according to the Formula and designated in the Supplemental Declaration.

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The Percentage Interest appurtenant to each Dwelling Unit as determined by paragraph 17 also shall be the Percentage Vote allocable to the Owner thereof in all matters with respect to the Regime and the Association upon which the Co-Owners are entitled to vote, but not limited to, the election of the Board of Managers.

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

Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines, and other common facilities.

10. Real Estate Taxes. Real Estate taxes are to be separately taxed to each Dwelling Unit as provided in the Act. In the event that for any year real estate taxes are not separately assessed and taxed to each Dwelling Unit, but are assessed and taxed on the Tract, or a part thereof, as a whole, then each Owner shall pay his proportionate share of the real estate taxes. Each Owner's proportionate share will be determined as follows:

- (a) With respect to the real estate taxes assessed against the land, the amount of such taxes shall be made according to the Percentage Interest and the Formula and will apply to all real estate in Sections effectively brought into the Horizontal Property Regime. Declarant will pay for the taxes on the real estate until annexed, at which time the Owners will pay all of same according to the Percentage Interest.
- (b) With respect to the real estate taxes assessed against the improvements, the respective Owners will be fully obligated to pay the amounts assessed against same.
- (c) All other taxes assessed against the real estate or improvements shall be calculated by the Formula and paid for according to the Percentage Interest.

11. Utilities. Each Owner shall pay for his own utilities, which are separately metered. Utilities which are not separately metered shall be treated as and paid as part of the Common Expenses.

12. Easement for Utilities and Public and Quasi-Public Vehicles. All public and quasi-public vehicles, including, but not limited to, police, fire, and other emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles, shall have the right to enter upon the streets, Common Areas and Limited Areas of "the Regime" in performance of their duties. An easement is also granted for all areas of "the Regime" including privately owned units, to all utilities and their agents for ingress, egress, installation, replacement, repairing, and maintaining of such utilities, including, but not limited to, water, sewers, gas, telephones, and electricity on the property; provided, however, nothing herein shall permit the installation of sewers, electric lines, water lines, or other utilities, except as initially designed and approved by Declarant or as thereafter may be approved by the Board of Managers. By virtue of this easement, the electric and telephone utilities are expressly permitted to erect and maintain the necessary equipment on the Property and to affix and maintain electric and telephone wires, circuits and conduits on, above, across and under the roofs and exterior walls of the Buildings.

13. Association of Owners. In order to provide for the maintenance, repair, replacement, administration and operation of the Property and in compliance with the provisions of the Act, there is hereby created an association of the Co-Owners of the Dwelling Units in "the Regime" to be known as the Eagle Park Co-Owners Association, Inc. Each Owner shall be a member of the Association, but membership shall terminate when such person ceases to be an Owner, and such membership will be transferred to the new Owner.

The Association shall elect a Board of Managers annually in accordance with and as prescribed by the By-Laws. The Co-Owners shall be entitled to cast their Percentage Vote for the election of the Board of Managers.

The Board of Managers shall be the governing body of the Association, representing all of the Co-Owners in providing for the management, maintenance, repair, replacement and upkeep of the property.

14. Maintenance, Decoration, Repairs and Replacements. The Co-Owners' Association will be responsible for the maintenance, repairs, decoration and replacement of the exterior of each Dwelling Unit except the glass portions. The Board of Managers reserve the exclusive right to determine the outside decor of each Dwelling Unit inclusive, but not exclusive of, color and paint, and all decor appurtenant to the aesthetics of each individual unit. Exclusive of those aesthetics that are visible from outside the Dwelling Units, Owner shall control and reserve the right of decoration of his or her Dwelling Unit on the inside. Each Owner shall repair any defect occurring in his Dwelling Unit which, if not repaired, might adversely affect any Dwelling Unit, Common Area or Limited Areas. Maintenance, repairs, replacements and upkeep of the Common Areas shall be furnished by the Association as part of the Common Expenses.

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The Board of Managers shall adopt such rules and regulations concerning the maintenance, repairs, use and enjoyment of the Common Areas and Limited Areas as it deems appropriate, including the appointment of committees to oversee same.

The Board of Managers or their designated agent shall have the right at reasonable times and upon reasonable prior notice (except in cases of emergency in which case no notice shall be required), to enter into the Common Areas and Limited Areas appurtenant to the Dwelling Units to replace, repair, and maintain same.

15. Alterations, Additions, and Improvements. No Owner shall make any alterations or additions to the Common Areas or Limited Areas without the prior written approval of the Board of Managers, nor shall any Owner make any alterations to his respective Dwelling Unit or within the boundaries thereof which would adversely affect the safety or structural portion of the Dwelling Unit.

16. Expansion by Sections. Declarant anticipates that it will construct additional Dwelling Units on the Additional Sections by expansion within the Tract, all or part of which may be expanded in the manner hereinafter set forth, and subject to the provisions of the Act. The general plan of development shall not exceed 52 units total. A time limit, not exceeding ten (10) years, shall be the limit where additional Sections may be added.

At any time prior to October 1, 1992, Declarant, at its option, may, but is not obligated to, cause all or part of the Additional Section or Sections within the Tract to be expanded, subject to the following conditions:

- (a) Another Section or Sections may be annexed if the Dwelling Units to be constructed in such Section or Sections have been substantially completed and the Supplemental Plans to be filed with the Supplemental Declaration are completed and certified to by the engineer or architect as fully and accurately depicting the layout, location, and dimensions of the Dwelling Units. Declarant shall reserve the right to determine the developmental standards of each Section.
- (b) The Dwelling Units on any Section to be annexed shall be constructed with labor and material of comparable quality to the Dwelling Units previously constructed although not necessarily of similar type floor plan, design or exterior.
- (c) Declarant, or its assigns, shall be the sole owner of the fee simple title to the Section or Sections to be annexed.

Declarant expressly reserves the right not to annex any or all of the Tract in Sections after Section 1. No owner shall acquire any rights whatsoever in the Tract except as to those Sections which are annexed to and made a part of the Horizontal Property Regime. After each Section is completed according to the plans, Declarant may turn that Section over to the Co-Owners, at which time those Co-Owners owning Dwelling Units in the Section or Sections being turned over shall then incur and pay all Common Expenses attendant with that Section or Sections according to the Formula and their respective Percentage Interest.

17. Percentage Interest. The Owner of each Dwelling Unit shall have the same Percentage Interest and Percentage Vote as all other such Owners and there will be no differentiation based upon the size of such Dwelling Unit. Each Owner shall be equal as to Percentage Interest and Percentage Vote.

The Percentage Interest appurtenant to each Unit shall be computed and, upon the annexation of an Additional Section or Sections, same shall be recomputed dividing among the then-existing Dwelling Unit Owners an equal share to the extent that the total shares at all times equal 100%. The Percentage Interest and Percentage Vote shall be expressed as a fraction if necessary and where the number of units is not evenly divisible into 100 so that the total interest and vote equals 100% at all times.

As each Section is developed, Declarant shall record a Supplemental Declaration annexing and adding such Section to this Declaration and making it a part of "the Regime". Declarant reserves the right to annex additional Sections thereof that are not necessarily in numerical order shown on the plans. Such Supplemental Declaration shall contain the following:

- (a) A description of the real estate to be annexed;
- (b) A description of the Dwelling Units described in a manner consistent with this Declaration;
- (c) The Percentage Interest of all Dwelling Units upon annexation, computed in accordance with the Formula.

Each Owner, by acceptance of a deed to a Dwelling Unit, acknowledges, consents, and agrees that the following rights and conditions shall be applicable upon the recording of each Supplemental Declaration:

- (a) The Section Described in each Supplemental Declaration shall be governed in all applicable respects by the provisions of this Declaration.
- (b) The Percentage Interest applicable to each Dwelling Unit shall be automatically reallocated in accordance with the schedule set forth in such Supplemental Declaration, which shall be based upon the For-

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mula. On recording of each Supplemental Declaration, the amount by which the Percentage Interest of a Dwelling Unit is reduced thereby shall be deemed to release and divest that amount from such Dwelling Unit Owner and revert to the Declarant, its successors and assigns.

- (c) Each deed, mortgage, or other instrument affecting a Dwelling Unit shall be deemed given subject to the limitation that the Percentage Interest appurtenant to each Dwelling Unit shall be, upon the recording of each Supplemental Declaration, altered in accordance with the Supplemental Declaration based upon the Formula.
- (d) The Percentage Interest in the Common Areas and Limited Areas appurtenant to each Dwelling Unit shall be deemed to include any additional Common Areas and Limited Areas annexed hereto by a Supplemental Declaration, which Supplemental Declaration shall grant and convey to the Owners the appropriate Percentage Interest, and each deed, mortgage, or other instrument affecting a Dwelling Unit shall be deemed to include such additional Common Areas and Limited Areas, and the ownership of any Dwelling Unit and lien of any mortgage shall automatically include and attach to such additional Common Area and Limited Area upon recording of such Supplemental Declaration.
- (e) The recording of a Supplemental Declaration shall not alter the amount of the lien for Common Expenses assessed to a Dwelling Unit in a Section already a part of the Regime prior to such recording. The lien for the prorata share of Common Expenses for the Sections annexed upon such recording shall be assessed and paid as provided in the By-Laws.
- (f) Each Owner agrees for himself and all those claiming under him, including Mortgagees, that this Declaration and each Supplemental Declaration is and shall be deemed to be in accordance with the Act, and for the purpose of this Declaration and the Act, any changes in Percentage Interest as set forth in any Supplemental Declaration which is in accordance with the Formula expressed herein, shall be deemed to be made by agreement of all Owners.
- (g) Each Owner agrees to execute and deliver such documents as are necessary or desirable to accomplish the annexation of the Sections in the Tract in accordance with the provisions and intent of this paragraph 16.

- (h) Each Owner, by acceptance of a deed to a Dwelling Unit, shall thereby appoint Declarant or its nominee as such Owner's attorney-in-fact for the purpose of reallocating from time to time the Percentage Interest appurtenant to such Owner's Dwelling Unit in accordance with the provisions of this paragraph 16, and, to the extent required by law to carry out the intent of this paragraph 16, on behalf of such Owner to consent to or vote in favor of the amendment of this Declaration, as well as to do all thing as contained in such agreement allowing Declarant to act as attorney-in-fact, which agreement for a power of attorney and power of attorney are incorporated herein by reference. The appointment of Declarant or its nominee as such attorney-in-fact and the granting of such special power to Declarant or its nominee shall be deemed to be coupled with an interest in the common areas, and shall be irrevocable and binding upon the heirs, successors and assigns of such Owner, but shall expire when all of the Additional Tract has been annexed, Declarant turns the project over to the Co-Owners, or on October 1, 1992, whichever first occurs.

In the event Declarant does not elect to annex Additional Sections within the Tract or any part thereof, as permitted by this paragraph 16, Declarant shall file a Supplemental Declaration which shall permanently remove that part of the Tract that has not been annexed from any right to be made a part of "the Regime"; provided, however, any Section for which a Supplemental Declaration has not been filed by October 1, 1992, shall automatically be removed from the possibility of becoming a part of "the Regime" in the manner provided in this Declaration. Upon the filing of such Supplemental Declaration removing a part of the Additional Tract from the possibility of becoming a part of "The Regime" in accordance with this Declaration, the Percentage Interest designated in the Declaration or Supplemental Declaration last filed shall not be altered without the consent of all Owners.

18. Easements to and from Additional Sections. In the event all or any part of the Additional Sections of the Tract are not annexed, Declarant reserves unto himself, his successors and assigns, for the use and benefit of that part of the Tract not annexed, the right and easement to enter upon the streets and Common Areas to provide ingress and egress to the Additional Sections. It is the purpose and intent of the easements herein granted or reserved to provide free and unrestricted use and access across the roadways and sidewalks for the Owners and residents of the Additional Sections, their guests, invitees, and all public and quasi-public vehicles.

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The easements granted and reserved in this paragraph 17 shall be easements and covenants running with the land and accruing to the benefit of the Additional Sections.

19. Insurance. The Co-Owners shall obtain fire and extended coverage insurance insuring the Dwelling Units in an amount equal to the full replacement cost thereof as determined by a qualified appraiser, in the form of a master casualty policy affording same that in whole or in part constitutes the several building units and common areas all pursuant to the Act (IC 32-1-6-18 et seq.) and such insurance shall:

- (1) Provide that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Owners do not elect to restore pursuant to paragraph 20, and,
- (2) Contain a "Replacement Cost Endorsement".

Such insurance coverage shall be for the benefit of each Owner and the Association and, if applicable, the Owner's Mortgagee. The proceeds shall be payable to the Association who shall hold such proceeds as trustee for the individual Owners and Mortgagees as their interests appear. The proceeds shall be used or disbursed only in accordance with the provisions of this paragraph 19 and paragraph 20 of the Declaration, as applicable, and any surety bond or bonds obtained by the Board covering the officers of "the Regime" as provided in the By-Laws shall specifically include protections for any insurance proceeds so received.

The Association also shall obtain comprehensive public liability insurance in such limits as the Board of Managers shall deem appropriate, together with Workmen's Compensation Insurance and other liability insurance, if so deemed necessary or appropriate by the Board of Managers. Such insurance shall inure to the benefit of each individual Owner, the Association, the Board of Managers, and any Managing Agent or company acting on behalf of the Association. The Owners, as well as the Lessees, if any, shall be able to recover losses insured where applicable.

Each Owner shall have the right to purchase additional insurance he may deem necessary, and each Owner shall be solely responsible for loss or damage to the contents of his own Dwelling Unit, however caused, including all floor and wall coverings, and fixtures and betterments installed by the Owner, and his personal property stored elsewhere on the Property. Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk including, but not limited to, living expenses.

20. Casualty and Restoration. In the event of damage or destruction of the Property by fire or other casualty, the following provisions shall be applicable:

- (a) **Partial Destruction.** In the event that less than two-thirds of the Dwelling Units in any Building are destroyed by the occurrence of fire or other casualty, then such Building shall be promptly repaired and restored. The proceeds of the insurance shall be applied to the cost of such restoration. If the insurance proceeds are not adequate to cover the cost of reconstruction or in the event there are no proceeds, each individual Owner shall have the responsibility for restoring his own Dwelling Unit at his own expense. The division of such Proceeds shall be determined by the Board of Managers of the Association, and when so determined in good faith shall be binding upon all Owners and Mortgagees where several Dwelling Units are located in the same Building and are partially destroyed.
- (b) **Restoration in the Event of Two-Thirds Destruction.** In the event that more than two-thirds of the Dwelling Units in any Building are destroyed by fire or other casualty, then restoration of the Dwelling Units must be approved within one hundred twenty (120) days from the date of damage or destruction by a majority vote of all of the Owners. If such approval is not obtained, the provisions of Section 21 of the Act shall apply. (I.C. 32-1-6-21)
- (c) Restoration, for purposes of subparagraphs (a) and (b) above, shall mean construction or rebuilding of the Dwelling Units to the same condition as they existed immediately prior to the destruction and with a similar type of architecture.
- (d) In the event restoration of Dwelling Units is necessary, the insurance funds for such restoration shall be disbursed by the Mortgagee, if any (if it elects to do so), that holds mortgages on 51% of the Dwelling Units that need to be restored, otherwise by the Association. Such distribution and payment of funds shall be in the manner and in accordance with the procedure normally used when disbursing funds for initial construction. Each insurer shall be notified of this provision by the Owners and each policy of insurance shall comply herewith.

21. Sale of Dwelling by Declarant. For the purpose of maintaining the residential character of the Regime, and for the protection of the Co-Owners, Declarant specifically reserves the mode and method of the original sale of each Unit until the last unit in the Regime is sold.

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22. Membership in the Co-Owners Association. The Tract is subject to the covenants and restrictions contained herein. For the purpose of this Declaration, upon the recording of this Declaration and any subsequent amendments and Supplemental Declaration, all the rights and obligations accruing to a Dwelling Unit shall include, but not be limited to, the obligation to pay the monthly assessments as provided in such Declaration, which monthly assessments are a lien on each Dwelling Unit, and the necessity and right to become a member of the Co-Owners Association, and to have a vote for each Dwelling Unit owned, pursuant to the formula heretofore set out.

The Declarant or Board of Managers reserve the right to construct recreational facilities within the Tract without being compelled to do so. In the event such facilities are to be constructed, those Co-Owners taking title to their respective Dwelling Unit prior to such decision to so construct recreational facilities shall have the option to participate in the common expense therefor. Those Co-Owners taking title to their respective Dwelling Unit after such decision may be required by the Declarant or said Board to share in the common expense therefor.

23. Covenants and Restrictions. The covenants and restrictions applicable to the use and enjoyment of the Dwelling Units are set forth in the Code of By-Laws of the Co-Owners Association. These covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by the Owner, Co-Owners or by the Association. Present or future Owners or the Association shall be entitled to injunctive relief against any violation or attempted violation of these provisions, but there shall be no right of reversion or forfeiture of title resulting from such violation.

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

- (a) Notice. Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting at which the proposed amendment is considered. The Amendments to Declaration dealing with the Additional Sections and reassignment of Percentage Interest in the respective Sections, however, are not subject to the conditions of this Section and may be adopted by the Board of Managers without notice.

The restrictions and prohibitions against amendments are further qualified by any right or grant given to the Declarant by virtue of the Agreement of Power of Attorney and Power of Attorney executed by the respective Owners in favor of the Declarant or its assigns, which Agreement and Power of Attorney are again incorporated herein by reference.

- (b) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Managers or the Owners of at least a majority of the Percentage Vote.
- (c) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly held in accordance with the provisions of the By-Laws.
- (d) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than a majority of the Percentage Vote. In the event any Dwelling Unit is subject to a mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has give prior notice of its mortgage interest to the Board of Managers in accordance with the provisions of the By-Laws.
- (e) Amendments. No amendment to this Declaration shall be adcpcted which changes:
- (1) The Percentage Interest with respect to any Dwelling Unit or the applicable share of an Owner's Liability for the common expense without the approval of all of the Co-Owners and Mortgagees, except as otherwise provided relating to annexation;
 - (2) The provisions of paragraph 20 of this Declaration with respect to reconstruction or repair in the event of fire or casualty, without the unanimous approval of all Mortgagees whose mortgage interests have been made known to the Board of Managers in accordance with the provisions of the By-Laws; or,
 - (3) The provisions of paragraph 16 of this Declaration except by Declarant in the manner provided therein;
 - (4) The provisions of paragraph 18 of this Declaration without the consent of the Declarant.
- (f) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Association and shall be recorded in the Office of the Recorder of Marion County, Indiana, and such amendment shall not become effective until so recorded.

25. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants, and occupants of the Dwelling Units shall be subject to and shall comply with the provisions of this Declaration, the Act, the By-Laws appended hereto, and the rules and regulations as adopted by the Board of Managers as each may be amended from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Dwelling Unit shall constitute an agreement that the provisions of this Declaration, the Supplemental Declarations, the Act, the By-Laws and any rules and regulations adopted pursuant thereto, 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 a Dwelling Unit or the Property as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. Each Owner agrees to execute and deliver such other documents, if any, as may be necessary or desirable to comply with the Act as it may be amended from time to time. All persons, corporations, partnerships, trusts, associations, or other legal entities who may occupy, use, enjoy or control a Dwelling Unit or Dwelling Units 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. Rights of Mortgage Purchaser. In the event Federal Home Loan Mortgage Corp., or other purchaser of a mortgage of any property in this Regime should request or require it, the Declarant or Board of Managers may fully satisfy such requirements and the right to act for and on behalf of such Co-Owners with regard to same is hereby conferred, among other things in the Agreement for Power of Attorney and Power of Attorney executed herewith by each Co-Owner.

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

28. Reservation of Rights. Declarant reserves the right to amend this Declaration without consent of the respective Owners until the last Dwelling Unit is sold, the project is turned over to the Co-Owners' Association, or October 1, 1992, whichever first occurs. In the event there is an annexation or annexations of an additional Section or Sections, the same rule will apply to amendments and supplements to this Declaration as pertains to each individual Section. Declarant also reserves the right to determine the mode and method of sale of the Dwelling Units until the last such unit in each respective Section is sold.

29. Costs and Attorneys' Fees. In a proceeding arising because of failure of an Owner to make any payments required or to comply with any provision of the Declaration, the Act, the By-Laws, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Association shall be entitled to recover its reasonable attorneys' fees incurred in connection with such default or failure.

30. 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 Dwelling Unit. Nor does the Association waive the right to place a lien on the Dwelling Unit and foreclose same by failing to do so when payment is not timely made of the Common Expenses by the Owner when due.

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

32. Plans. The Plans, as described in paragraph 1 (u) of this Declaration, are incorporated into this Declaration by reference, and have been filed in the Office of the Recorder of Hendricks County, Indiana, in Book _____, page _____, as of _____, 1985, and amended Plans as may, from time to time, be so filed pursuant to this First Amended Declaration.

33. Drainage & Sewer Easements. Declarant hereby reserves the open areas of the Tract as an undefined Drainage and Sewer Easement (D. & S. Easement). In doing so, it is the intention of Declarant to provide the needed flexibility to itself to properly install and allow to be maintained all sewer and drainage services, to the dwelling units constructed. The D. & S. Easement shall include all common areas. No other improvements or permanent structures (excluding walkways, pavement or driveways and fences) shall be placed within the D. & S. Easements and any fences so installed shall be and are expressly subject to the rights (including the right to remove where reasonably necessary without duty of replacement or reimbursement) of any public or private utility to construct, maintain, repair or remove any necessary facilities and the right of Declarant (while he develops the tract) and the Association to provide for and maintain appropriate drainage.

34. Additional Easement Rights. Declarant further reserves unto itself an easement and the full right, title and authority to relocate, alter or otherwise change the location of any drainage, utility, and sewer easement and to grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as Declarant may deem necessary or appropriate, for ingress, egress, utility and similar purposes on or within the Tract or any portion of the Tract. Declarant further reserves the right to more

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specifically describe or to change the description of any such drainage, utility and sewer easement, or other easement, license or right-of-way by written instrument, amended Plat or amendment to the Plat recorded in the Office of the Recorder of Hendricks County, Indiana and any Owner of any Dwelling Unit shall take title subject to the rights and easements reserved herein; provided, however, the rights reserved in this Section shall not be exercised in a manner which unreasonably and adversely affects any Building or portion thereof or any Dwelling Unit Owner's use or enjoyment thereof or which unreasonably restricts the rights of ingress and egress to any Dwelling Unit. The rights and easements reserved by Declarant in this Section shall run with the land and Declarant's right to further alter or grant easements shall automatically terminate one (1) year after Declarant shall have conveyed the last dwelling unit within the property or on October 1, 1992, whichever first occurs.

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

BROWNSBURG INVESTMENTS PARTNERSHIP
(A Partnership)

BY: William J. Roach and Van C. Bourn
William J. Roach and Van C. Bourn,
One Partner

BY: Charles E. Hostetter and Pamela Sue Hostetter
Charles E. Hostetter and Pamela
Sue Hostetter, One Partner

BY: Robert E. Herrold and Anne Herrold
Robert E. Herrold and Anne Herrold
One Partner

BY: Richard Isenhour and Joyce Isenhour
Richard Isenhour and Joyce Isenhour
One Partner

BY: Cheryl Crawford
Cheryl Crawford, One Partner

STATE OF INDIANA)
) SS:
COUNTY OF HENDRICKS

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Before me, a Notary Public in and for said County and State, personally appeared William J. Roach, Van C. Bourn, Charles E. Hostetter, Pamela Sue Hostetter, Robert A. Herrold, Anne Herrold, Richard Isenhour, Joyce Isenhour and Cheryl Crawford, respectively, of Brownsburg Investments Partnership, a partnership, who acknowledged the execution of the above and foregoing Declaration of Horizontal Property Ownership for and on behalf of said Partnership.

April Witness my hand and Notarial Seal this 26th day of ~~September~~, 1985

My Commission Expires:
Jan 25, 1987

Linda Richwine
Notary Public
Printed Name: Linda Richwine
County of Residence: Hendricks

This instrument prepared by:

Charles E. Hostetter
41 Boulevard Motif
Brownsburg, Indiana 46112