

DECLARATION OF HORIZONTAL PROPERTY OWNERSHIP

860131389

OAKS/MARMANA

HORIZONTAL PROPERTY REGIME

This Declaration made this 26th day of November, 1986,
by Property Management, an Indiana General Partnership (the
"Declarant").

WITNESSETH:

WHEREAS, the following facts are true:

A. Declarant is the sole owner of the fee simple title to
the following described real estate, located in Marion County,
Indiana, to-wit:

46 feet 3 inches off of the north side of Lot
Number ninety-three (93) in Ovid Butler's
Extension of his North Addition to College
Corner, now in the City of Indianapolis, the plat
of which is recorded in Plat Book 8, page 126, in
the Office of the Recorder of Marion County,
Indiana.

commonly known as 1335 North Broadway,
Indianapolis, Indiana.

50 feet by parallel lines off the entire south
side of Lot 92 in Ovid Butler's extended north
addition to College Corner, in the City of
Indianapolis, as per plat thereof, recorded in
Plat Book 8, page 126, in the Office of the
Recorder of Marion County, Indiana.

commonly known as 1404 North Broadway,
Indianapolis, Indiana.

42 1/2 feet by parallel lines off the entire
North side of Lot 92 in Ovid Butler's Extension
of an Addition to North Addition to College
Corner, now in the City of Indianapolis, as per
plat thereof, recorded in Plat Book 8, page 126,
in the Office of the Recorder of Marion County,
Indiana.

commonly known as 1408 North Broadway,
Indianapolis, Indiana.

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

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

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

(a) "Act" means the Horizontal Property Law of the State of Indiana, Acts, 1963, Chapter 349, Sections 1 through 31, as amended. The Act is incorporated herein by reference.

(b) "Oaks/Marwana" means the name by which the Property and Horizontal Regime shall be known.

(c) "Tract" means the three parcels of real estate described in paragraph A above and such other portions of the real estate which have, as of any given time, been subjected to the Act and this Declaration either by this Declaration or a supplemental declaration as herein provided.

(d) "Property" means the Tract and appurtenant easements, the Condominium Units, the Buildings, 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 Oaks/Marwana, but does not include the personal property of the Owners.

(e) "Condominium Unit" means each one of the living units constituting Oaks/Marwana, each individual living unit being more particularly described and identified on the Plans and in paragraphs 4 and 5 of this Declaration. "Condominium Unit" includes the undivided interest in the Common Areas and Limited Areas appertaining to such unit.

(f) "Association" means Oaks/Marwana Homeowners Association, Inc., an Indiana not-for-profit corporation, being the association of Co-owners of Oaks/Marwana, more particularly described in paragraph 12 hereof.

(g) "Board of Managers" means the governing body of the Association, being the initial Board of Managers referred to in the By-Laws or subsequent Board of Managers 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.

(h) "Building" means any structure on the Tract in which one or more Condominium Units are located. The Buildings are more particularly described and identified on the Plans and in paragraph 3 of this Declaration.

(i) "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.

(j) "Common Areas" means the limited common areas and facilities as defined in paragraph 7 of this Declaration.

(l) "Common Expenses" means expenses of administration of the Association and expenses for the upkeep, maintenance, repair and replacement of the Common Areas and Limited Areas (to the extent provided herein) and all sums lawfully assessed against the Owners by the Association or as declared by the Act, this Declaration or the By-Laws.

(m) "Co-Owners" means the Owners of all of the Condominium Units.

(n) "Mortgagee" means the holder of a first mortgage lien on a Condominium Unit.

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

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

(r) "Plans" means the floor and building plans and elevations of the Buildings and Condominium Units prepared and certified by James Stutzman, a licensed architect, dated July 31, 1986, and a site plan of the Tract and Buildings prepared by James Stutzman, a licensed professional engineer, under date of July 31, 1986, all of which are incorporated herein by reference.

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(s) "Declarant" shall mean and refer to Property Management, an Indiana General Partnership and any successors and assigns of Property Management whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any mortgages acquiring title to any portion of the Property pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.

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

3. Description of Buildings. There are two (2) Buildings containing thirteen (13) Condominium Units on the Tract as shown on the Plans. Construction is completed on all Condominium Units. A description of the Buildings and the Condominium Units contained therein is set forth in Exhibit "A" attached hereto and hereby made a part hereof by this reference.

4. Legal Description and Percentage Interest. Each Condominium Unit is identified on the Plans by a letter and a number. The legal description for each Condominium Unit shall consist of the identifying letter and number for such Condominium Units as shown on the Plans, and shall be stated as "Condominium Unit (with identifying letter and number) in Oaks/Marwana Horizontal Property Regime." The Percentage Interest of each Owner in the Common Areas and Limited Areas as hereinafter defined shall be the same percentage of interest as each Condominium Unit has set forth on Exhibit "B" attached hereto and hereby made a part hereof.

5. Description of Condominium Units.

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

within or partly within the boundaries of a Condominium Unit, and all interior walls and all of the floors and ceilings within the boundaries of a Condominium Unit, are considered part of the Condominium Unit.

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

6. Common Areas and Facilities. "Common Areas" means (1) the Tract, excluding the Condominium Units, (2) the foundations, columns, girders, beams, supports and exterior surfaces of roofs of the Buildings, (3) the yards, sidewalks, driveways, parking areas, basement areas (including laundry areas, storage areas, and bathrooms), attics, stairways, entrances and exits and corridors, except to the extent the same are otherwise classified and defined herein as part of the Condominium Unit or Limited Areas, (4) central electricity, gas, water, air conditioning and sanitary sewer mains serving the Buildings, if any, (5) exterior lighting fixtures and electrical service lighting the exterior of the buildings, unless separately metered to a particular Condominium Unit, (6) pipes, ducts, electrical wiring and conduits and public floors, roofs and exterior perimeter walls of the Buildings, except to the extent the same are otherwise classified and defined herein as part of the Condominium Units, except those areas and facilities expressly classified and defined herein as Limited Areas or as part of the Condominium Unit.

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

(a) The halls, corridors, lobbies, stairways, entrances and exits of each Building, if any, except; (i) those designated Common Areas on the Plans and (ii) those located within the interior of Condominium Units or designated part of the Condominium Units shall be limited to the use of the Condominium Units of such Building.

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

(c) The carports and any storage area located therein.

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

8. Ownership of Common Areas and Percentage Interest. Each Owner shall have an undivided interest in the Common Areas and Limited Areas, as tenants in common with all other Owners, equal to his Condominium Unit's Percentage Interest. The Percentage Interest in the Common Areas and Limited Areas appertaining to each Condominium Unit is set forth in paragraph 4 of this Declaration. Except as otherwise provided or permitted herein, the Percentage Interest appertaining to each separate Condominium Unit in the Common Areas and Limited Areas shall be of a permanent nature and shall not be altered without the consent of the Owners as provided in paragraph 19 herein and then only if in compliance with all requirements of the Act.

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

9. Encroachments, Easements for Common Areas and Ingress and Egress Easements. If, by reason of the location, construction, settling or shifting of a Building, any Common Area or Limited Area now encroaches or shall hereafter encroach upon any Condominium Unit, then in such event an easement shall be deemed to exist and run to the Co-owners and the Association for the maintenance, use and enjoyment of such Common Area or Limited Area. Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities located in any of the other Condominium Units and serving his Condominium Unit. Each Owner shall have an easement over the Common Areas for the purposes of ingress and egress from his Condominium Unit, the carports and the parking spaces and such easement shall be perpetual and appurtenant to the Condominium Unit.

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

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

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

The Association shall elect a Board of Managers annually (except for an Initial Board of Managers defined in the By-Laws) in accordance with and as prescribed by the By-Laws. Each Owner shall be entitled to cast his Percentage Vote for the election of the Board of Managers, except for such Initial Board of Managers who shall serve on the Initial Board of Managers, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a member of the Association and an Owner solely for the purpose of qualifying to act as a member of the Board of Managers and for no other purpose. A person serving on the Initial Board of Managers shall not be deemed or considered a member of the Association nor an Owner of a Condominium Unit for any other purpose unless he is actually an Owner of a Condominium Unit and thereby a member of the Association.

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

The Association and any aggrieved Condominium Unit Owner shall have a right of action against any Condominium Unit Owner for failure to comply with the provisions of the Declaration, By-Laws or decisions of the Association which are made pursuant to authority granted the Association in such documents. Condominium Unit Owners shall have a similar right of action against the Association.

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

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

The Board of 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 each individual Condominium Unit for the purpose of inspection of the Common Areas and Limited Areas appurtenant thereto and replacement, repair and maintenance of such Common Areas and Limited Areas.

14. Alterations, Additions and Improvements. No Owner shall make any alterations or additions to, or which would affect, the Common Areas or Limited Areas without the prior written approval of the Board of Managers, nor shall any Owner make any alteration in or to his respective Condominium Unit and within the boundaries thereof which would affect the safety or structural integrity of the Building in which the Condominium Unit is located. Declarant reserves the right to change the interior design and arrangement of all Condominium Units and alter the boundaries between Condominium Units so long as Declarant owns the Condominium Units so altered. No such change shall increase the number of Condominium Units or change the Percentage Interest applicable to such Condominium Unit. If Declarant shall make any changes in the Condominium Units so authorized, such changes shall be reflected by a supplement to the Plans and such supplement to the Plans need not be approved by the Association or any other Owners.

15. Insurance. (a) The Co-owners, through the Association, shall purchase a master casualty insurance policy issued in the name of the Association for the use and benefit of the Owners affording fire and extended coverage insurance insuring the Property in an amount consonant with the full replacement value of the Property improvements including the individual Condominium Units, the Common Areas and Limited Areas and facilities, and further including fixtures, building

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service equipment and common personal property and supplies belonging to the Association. For all Condominium Units which are subject to a first mortgage, the insurance must cover fixtures, equipment and other personal property inside individual Condominium Units if they are financed by the first mortgage. Certificates of Insurance shall be issued to each Condominium Unit Owner and each Mortgagee upon request and no such policy shall be cancelled or substantially modified without at least ten (10) days prior written notice to the Association and to each Mortgagee listed as Mortgagee in the policies. The insurance policy must contain the standard mortgage clause and must name the Mortgagee or the servicer of the Mortgagee. If a servicer is named as Mortgagee, its name should be followed by the phrase "its successors and assigns." The Board of Managers shall obtain an inflation guard endorsement if available. The Board of Managers shall also obtain "all risk" coverage if available. The Board of Managers shall be responsible for reviewing at least annually the amount and type of such insurance and shall purchase such additional insurance as is necessary to provide the insurance required above. If deemed advisable by the Board of Managers, the Board of Managers may cause such full replacement value to be determined by a qualified appraiser. The cost of any such appraisal shall be a Common Expense. Such insurance coverage shall be for the benefit of each Owner, and, if applicable, the Mortgagee of each Owner upon the following terms and conditions:

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

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

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

(c) The Co-owners, through the Association, shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Managers shall deem appropriate from time to time; however, such coverage shall be for at least One Million Dollars (\$1,000,000.00) for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. Such comprehensive public liability insurance policy shall cover the Association, the Board of Managers, any committee or organ of the Association or Board of Managers, any managing agent appointed or employed by the Association, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to Oaks/Marwana, all Owners of Condominium Units and all other portions of Oaks/Marwana. Coverage under this policy shall include, without limitation, legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Areas and Limited Areas, and, if available, legal liability arising out of lawsuits related to employment contracts of the Association. Such policy shall also provide that it may not be cancelled or substantially modified by any party without at least ten (10) days prior written notice to the Association and to each holder of a first mortgage on any Condominium Unit in the Property which is listed as a scheduled holder of a first mortgage in the insurance policy.

(d) The Co-owners, through the Association, shall also obtain any other insurance required by law to be maintained, including but not limited to workmen's compensation insurance, and such other insurance as the Board of Managers shall from time to time deem necessary, advisable or appropriate, including but not limited to, comprehensive liability insurance on vehicles owned by the Association, officers' and directors' liability policies, contractual and

all-written contract insurance, and employer's liability insurance. Such insurance coverage shall also provide for and cover cross liability claims of one insured party against another insured party. Such insurance shall inure to the benefit of each Owner, the Association, the Board of Managers and any managing agent acting on behalf of the Association.

(e) Each Owner shall deem to have appointed the Board of Managers to represent each Owner in any proceedings, negotiations, settlements or agreements with the insurance companies to adjust all losses under policies purchased by the Board of Managers.

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

(g) In no event shall any distribution of proceeds be made by the Board of Managers directly to an Owner where there is a mortgage endorsement on the certificates of insurance. In such event any remittance shall be to the Owner and his Mortgagee jointly.

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

may be named as an insured, on behalf of the Association, an authorized representative, including any trustee with whom the Association may enter into an insurance trust agreement or any successor to such trustee who shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish this purpose. Each Condominium Unit Owner appoints the Association as attorney-in-fact for the purpose of purchasing and maintaining such insurance, and the following additional purposes: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability related thereto; the execution of all documents necessary in connection therewith; and the performance of all other acts necessary to accomplish such purposes.

16. Casualty and Restoration; Condemnation; Termination.

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

(b) If the insurance proceeds, if any, received by the Association as a result of any such fire or any other casualty or disaster are not adequate to cover the cost of repair and reconstruction, or in the event there are no insurance proceeds, and if the Property is not to be removed from the Horizontal Property Regime, the cost for restoring the damage and repairing and reconstructing the Building or Buildings so damaged or destroyed (or the costs thereof in excess of insurance proceeds received, if any) shall be paid by all of the Owners of Condominium Units in proportion to the ratio that the Percentage Interest of each Condominium Unit

bears to the total Percentage Interest of all Condominium Units. Any such amounts payable by the Co-owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein and in the Act.

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

(d) If, under subparagraph (a) above, it is determined by the Co-owners at the special meeting of the Association referred to therein that there has been a complete destruction of the Building, the Co-owners shall, at said same special meeting, vote to determine whether or not such complete destruction of the Building shall be repaired and reconstructed. The Building shall not be reconstructed or repaired if it is the determination of the Co-owners at said special meeting that there has been a complete destruction of all of the Buildings, unless by a vote of two-thirds (2/3) of all of the Co-owners a decision is made to rebuild, reconstruct and repair the Building. If two-thirds (2/3) of all of the Co-owners vote and decide that the Building is to be rebuilt, reconstructed and repaired, the insurance proceeds, if any, received by the Association shall be applied and any excess of construction costs over insurance proceeds, if any, received by the Association shall be contributed and paid as hereinabove provided in subparagraph (a) and (b).

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

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

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

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

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

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

(g) The proceeds of insurance collected on account of any such casualty, and the sums received by the Board of Managers from collections of assessments against Owners on account of such casualty, shall constitute a construction fund which shall be disbursed, if the Building to be reconstructed and repaired, in payment of the costs of reconstruction and repair in the following manner:

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

(ii) If the estimated cost of reconstruction and repair of the Building or other improvement is more than Five Thousand Dollars (\$5,000.00), then the construction fund shall be disbursed in payment of such costs upon approval of an architect qualified to practice in Indiana and employed by the Board of Managers to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, subcontractors, materialmen, the architect, or other persons who have rendered services or furnished materials in connection with the work, (1) that the sums requested by them in payment are justly due and owing and that said sums do not exceed the value of the services and material furnished; (2) that there is

no other outstanding indebtedness known to the architect for the services and materials described; and (3) that the costs estimated by the architect for the work remaining to be done subsequent to the date of such certificate, do not exceed the amount of the construction fund remaining after payment of the sum so requested.

(h) Encroachments upon or in favor of Condominium Units 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 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.

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

(j) In the event of the condemnation of all or any part of the Common Areas or of all or any part of any Building(s), Condominium Unit(s) or Lot(s), the Board of Managers is hereby authorized to negotiate with the condemning authority and/or to contest an award made for the appropriation of such Common Areas, Buildings or Condominium Units. For the purpose of such negotiation and/or of contest of such award to the Board of Managers as to Building and Condominium Units and Lots, the Board of Managers is hereby declared to be the agent and attorney-in-fact of any Owner affected by the condemnation. This appointment of the Board of Managers shall be deemed coupled with an interest and shall be irrevocable. Nothing contained herein, however, shall preclude any Owner from asserting any rights or claims to compensation which cannot be legally asserted by the Board of Managers.

Awards for the taking of all or part of a Building, Condominium Unit or Lot shall be collected by the Board of Managers and distributed to the affected Owner(s). To the extent possible, negotiated awards or awards resulting from a contest shall specify the allocation of the award among the Owner(s) affected. In the event that an Owner does not agree with the distribution of an award, said Owner shall be entitled

to have the dispute settled by arbitration. The protesting Owner shall appoint one arbitrator, the Board of Managers acting as agent for all other affected Owners shall appoint one arbitrator and the two appointed arbitrators shall appoint a third arbitrator. A majority decision of the arbitrators shall be binding on all Owners and shall be enforceable.

17. Covenants and Restrictions. The covenants and restrictions applicable to the use and enjoyment of the Condominium Units and the Common Areas and Limited Areas are set forth in the By-Laws, including the limitation that each of the Condominium Units shall be limited to residential use. These covenants and restrictions are for the mutual benefit and protection of the present and future Owner or 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 and shall be entitled to damages for any injuries resulting from any violations thereof, but there shall be no right of reversion or forfeiture of title resulting from such violation.

Notwithstanding anything to the contrary contained herein or in the By-Laws, including but not limited to any covenants and restrictions set forth in the By-Laws, Declarant shall have, until the Applicable Date as defined in Article III of the By-Laws, the right to use and maintain any Condominium Units owned by Declarant, such other portions of the Property (other than individual Condominium Units owned by persons other than Declarant) and any portions of the Real Estate not then part of the property, all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the construction, reconstruction or rehabilitation of Condominium Units and sale of Condominium Units or for the conducting of any business or activity attendant thereto, including, but not limited to, model sales offices, management offices and business offices. Declarant shall further have the right to lease Condominium Units owned by Declarant to tenants with a minimum initial term of thirty (30) days. Declarant shall have the right to relocate any or all of the same from time to time as it desires. At no time shall any facilities so used or maintained by Declarant be or become part of the Common Areas, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Property at any time.

18. Sale, Lease or Other Transfer of Condominium Unit by Owner. For the purpose of maintaining the congenial and residential character of Oaks/Marwana, and for the protection of the Owners with regard to insuring having financially responsible residents, the lease of any Condominium Unit by any Owner other than Declarant shall be subject to the following conditions and restrictions:

(a) Lease. No Owner shall lease his Condominium Unit or enter into any other rental or letting arrangement for his Condominium Unit without first submitting the written application to the Board of Managers for review. Unless the Board of Managers refuse to consent to the application within seventy-two (72) hours after receipt, it shall be deemed to be approved. Such consent shall not be unreasonably withheld. No lease for a term of less than ninety (90) days, however, shall be approved. In any event, Owner shall use the lease form which has been approved by the Board of Managers.

(b) Sale. The Association shall have no right of first refusal to purchase any Condominium Unit which an Owner wishes to sell and an Owner may sell his Condominium Unit free of any such restriction.

(c) Miscellaneous. The above provisions with respect to the Association's right to approve a lease of a Condominium Unit shall remain in full force and effect only until the Property is removed from the provisions of the Act. Any lease or attempted lease by an Owner of his Condominium Unit, except in accordance with the provisions of this paragraph 18 shall be void ab initio.

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

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

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

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

(d) Adoption. Any proposed amendment of a material nature as hereinafter defined (hereinafter referred to as "Material Amendment") must be approved by a vote of not less than Sixty-Six and two-thirds percent (66 2/3%) in the aggregate of the Percentage Vote. In the event any Condominium Unit is subject to a first mortgage, the Mortgagee (hereinafter referred to as "Eligible Mortgagee") shall be notified of the meeting and the proposed Material Amendment in the same manner as an Owner if the Eligible Mortgagee has given prior notice of its mortgage interest to the Board of Managers in accordance with the By-Laws, and any proposed Material Amendment must be

approved by a vote of not less than fifty-one percent (51%) of Eligible Mortgagees. An Eligible Mortgagee who receives a written request to approve non-material additions or amendments and does not deliver or post to the requesting party a negative response within thirty (30) days shall be deemed to have approved such request.

A change to any of the following shall be deemed to be a Material Amendment:

- (i) voting rights;
- (ii) assessments, assessment liens, or subordination of assessment liens;
- (iii) reserves for maintenance, repair and replacement of Common Areas;
- (iv) responsibility for maintenance and repairs;
- (v) reallocation of interests in the Common Areas or Limited Areas, or rights to their use;
- (vi) boundaries of any Unit;
- (vii) convertibility of Units into Common Areas or vice versa;
- (viii) expansion or contraction of the project, or the addition, annexation or withdrawal of Property to or from the project;
- (ix) insurance or fidelity bonds;
- (x) leasing of Condominium Units;
- (xi) imposition of any restrictions on a Condominium Unit Owner's right to sell or transfer his or her Condominium Unit;
- (xii) a decision by the Association to establish self-management when professional management had been required previously by an Eligible Mortgage holder;
- (xiii) restoration or repair of the property (after a hazard damage or partial condemnation) in a manner other than that specified in the documents;
- (xiv) any action to terminate the legal status of the Property after substantial destruction or condemnation occurs; or
- (xv) any provision that expressly benefit Mortgage holders, insurers or guarantors.

(e) 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.

(f) Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein, the Declarant shall have the right acting alone and without the consent or approval of the Co-owners, the Association, the Board of Managers, any Mortgagees or any other person to amend or supplement this Declaration, the By-Laws or other documents from time to time if (i) such amendment or supplement is necessary to conform this Declaration of the Act, as amended from time to time, (ii) such amendment or supplement is made to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Veterans Administration or any other governmental agency or any other public, quasi public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (iii) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages, or, (iv) if such amendment or supplement is made to correct clerical or typographical errors. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this paragraph 19 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, or other instrument affecting a Condominium Unit and acceptance thereof shall be deemed to be grant and acknowledgment of, and a consent to the reservation of, the power of the Declarant to vote in favor of, make, execute and record any such amendments. But the right of the Declarant to act pursuant to rights reserved or granted under this paragraph 19 shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Real Estate.

(g) Additional Restrictions on Amendments.

(1) The consent of Owners of Condominium Units to which at least Sixty-Six and two-thirds percent (66 2/3%) of the votes in the Association are allocated and the approval of the eligible holders of first mortgages on Condominium Units to which at least Sixty-Six and two-thirds percent (66 2/3%) of the votes of Condominium Units subject to a mortgage appertain shall be required to terminate the Condominium Regime for reasons other than substantial destruction or condemnation of the property.

(2) As used in this paragraph, the term "eligible holder" shall mean a holder, insurer or guarantor of a first mortgage on a Condominium Unit who has requested notice in accordance with the provisions of Section 8.03(a) of the By-Laws.

20. Acceptance and Ratification. All present and future Owners, Mortgagees, tenants and occupants of the Condominium Units shall be subject to and shall comply with the provisions of this Declaration, the Act, the By-Laws appended hereto, and the rules and regulations as adopted by the Board of Managers as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Condominium Unit shall constitute an agreement that the provisions of this Declaration, the Act, the By-Laws and rules and regulations as each may be amended or supplemented from time to time are accepted and ratified by each 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 Condominium Unit 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 a Condominium Unit or Condominium 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 or supplemented from time to time.

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

22. Granting of Easements. The Board of Managers of the Association is granted the authority to grant easements to utility companies (excluding transportation companies) upon such terms and conditions and for such consideration as it deems appropriate.

23. Reservation of Rights to Use the Common Areas. Declarant shall have, and hereby reserves, an easement over, across, upon, along, in, through and under the Common Areas and, to the extent necessary, the Limited Areas, for the purposes of installing, maintaining, repairing, replacing, relocating and otherwise servicing utility equipment, facilities and installations to serve the Property, to provide

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access to and ingress and egress to and from the Property, to make improvements to and within the Property, and to provide for the rendering of public and quasi public services to the Property. The foregoing easement shall be a transferable easement and Declarant may at any time and from time to time grant similar easements, rights or privileges to other persons and parties for the same purposes. By way of example, but not in limitation of the generality of the foregoing, Declarant, and others to whom Declarant may grant such similar easement, rights or privileges, may so use the Common Areas and, to the extent necessary, the Limited Areas, to supply utility services to the Property and any portions of the Real Estate which are not part of the Property and to permit public and quasi public vehicles, including but not limited to police, fire and other emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles, and their personnel to enter upon and use the streets, the Common Areas and to the extent necessary, the Limited Areas of Oaks/Marwana in the performance of their duties.

24. Initial Management. As set forth in the By-Laws, the Initial Board of Managers consist and will consist of persons selected by Declarant. Prior to the Applicable Date, as defined in Article III of the By-Laws, all contracts or leases including any management agreement, entered into by the Board of Managers shall provide a right of termination without cause or penalty, at any time after the Applicable Date upon ninety (90) days notice to the other party. The Board of Managers has entered or will hereafter enter into a management agreement with Traynor Management Company, Inc. for a term which will expire not later than December 31, 1988, unless extended by agreement of the parties, under which Declarant (or such affiliate of Declarant, as appropriate) will provide supervision, fiscal and general management and maintenance of the Common Areas, and, to the extent the same is not otherwise the responsibility of Owners of individual Condominium Units, the Limited Areas, and, in general, perform all the duties and obligations of the Association. Such management agreement is or will be subject to termination by Declarant (or its affiliate, as appropriate) at any time prior to the expiration of its term, in which event the Association shall thereupon and thereafter resume performance of all of its duties and obligations and functions. Notwithstanding anything to the contrary contained herein, so long as such management agreement remains in effect, Declarant (or its affiliate, as appropriate) shall have, and Declarant hereby reserves to itself (or to its affiliate, as appropriate), the exclusive right to manage the Property and to perform all the functions of the Association.

25. Costs and Attorneys' Fees. In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the By-Laws or the Act, or to comply with any provision of the Declaration, the Act, the By-Laws, or the rules and regulations adopted pursuant thereto as each may be

amended from time to time, the Association shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such default or failure.

26. Failure of Owner to Pay Assessments.

(a) No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or Limited Areas or by Abandonment of his Condominium Unit. Each Owner shall be personally liable for the payment of all assessments by the Association.

(b) Upon failure by any Owner to make any payment of assessment on the date when due, the lien against the Owner's Unit may be foreclosed against as provided for by Section 5.05 of the By-Laws and applicable law. Any lien for assessments becoming payable after the recordation of a first mortgage on Owner's Unit shall be subordinate to the first mortgage on the Owner's Unit as more fully set forth in Section 5.05 of the By-Laws.

27. 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 effect the rest of this Declaration or the attached By-Laws.

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

29. Floor Plans. The Plans setting forth the layout, location, identification numbers, and dimensions of the Condominium Units and the Property are incorporated into this Declaration by reference, and have been filed in the office of the Recorder of Marion County, Indiana, in Horizontal Property Plan file _____, as of _____, 1986, as Instrument No. _____.

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

PROPERTY MANAGEMENT,
An Indiana General Partnership

By: Harold Peters
Harold Peters, General Partner

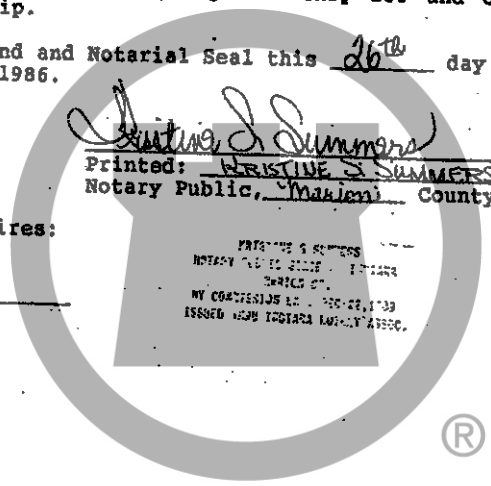
STATE OF INDIANA)
) SS:
COUNTY OF MARION)

Before me, the undersigned Notary Public, personally appeared Harold Peters, to me personally known and known to me to be the General Partner of Property Management, who acknowledged the execution of the above and foregoing Declaration of Horizontal Property Ownership for and on behalf of said Partnership.

Witness my hand and Notarial Seal this 26th day of November, 1986.

Kristine J. Summers
Printed: KRISTINE J. SUMMERS
Notary Public, Marion County

My Commission Expires:
12-22-89



CHICAGO TITLE

This instrument prepared by Stephen M. Coons, Attorney at Law,
COONS & SAINT, 440 North East Street, Indianapolis, Indiana
46204, (317) 639-1300.

CHICAGO TITLE

SCHEDULE OF PERCENTAGE OWNERSHIP
IN COMMON AREAS

<u>UNIT</u>	<u>INTEREST</u>
OAKS-A	.0769
OAKS-B	.0769
OAKS-C	.0769
OAKS-D	.0769
OAKS-E	.0769
OAKS-F	.0769
OAKS-G	.0769
MARWANA-A	.0769
MARWANA-B	.0769
MARWANA-C	.0769
MARWANA-D	.0769
MARWANA-E	.0769
MARWANA-F	.0769



CHICAGO TITLE

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