

DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
OF  
ST. MARY'S COMMONS  
HORIZONTAL PROPERTY REGIME

THIS DECLARATION of the St. Mary's Commons Horizontal Property Regime ("Declaration") made this 11<sup>th</sup> day of October, 1996, by Alabama Street Redevelopment, LLC, an Indiana limited liability company ("Alabama, LLC") and St. Mary's Commons II, LLC, an Indiana limited liability company ("St. Mary's, LLC"), (both entities are hereinafter jointly referred to as the "Declarant").

WITNESSETH:

WHEREAS, Alabama, LLC is the sole owner of the fee simple title to certain real estate and improvements thereon, located in Marion County, Indiana, more particularly described in Exhibit "A" hereto and St. Mary's, LLC is the sole owner of the fee simple title to certain real estate and improvements thereon, located in Marion County, Indiana, more particularly described in Exhibit "B" hereto (both parcels are hereinafter called the Real Estate"); and

WHEREAS, Declarant anticipates that Declarant might become the sole owner of the fee simple title to other real estate adjacent to the Real Estate, more particularly described in Exhibit "C" hereto (hereinafter called "Adjacent Real Estate"), all or part of which Declarant anticipates may be added to the Real Estate by portions to be designated by Declarant from time to time (the Real Estate and Adjacent Real Estate being hereinafter referred to together as the "Tract"); and

WHEREAS, Declarant, by execution of this Declaration, hereby creates a Horizontal Property Regime (the "Regime") upon the Real Estate, subject to the provisions of the Horizontal Property Law of the State of Indiana (the "Act") and the terms and conditions of this Declaration

WHEREAS, Declarant anticipates that as portions of the Adjacent Real Estate are from time to time acquired and developed, they may be added to the Regime by amendment to this Declaration, so that the Regime created hereby is to be "expandable", as that term is defined in the Act.

NOW, THEREFORE, Declarant hereby makes this Declaration, and declares that the Real Estate shall be a "Horizontal Property Regime" as provided in the Act, and that said Regime shall be expandable to include all or any part of the Adjacent Real Estate, as the same may be annexed from time to time, subject to and in accordance with the following terms and conditions:

Section 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) "Association" means St. Mary's Commons Co-Owners Association, Inc., an Indiana not-for-profit corporation, being the association of Co-Owners of St. Mary's Commons, more particularly described in Section 12 hereof.

c) "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.

d) "Building" means any structure on the Real Estate or any Additional Section, after annexation, in which Common Areas, limited Common Areas or one or more Condominium Units are located. The Buildings are more particularly described and identified on the Plans and in Section 2 of this Declaration.

e) "By-Laws" means the Code of By-Laws of St. Mary's Commons Co-Owners Association, Inc. providing for the administration and management of the Association 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.

f) "Common Areas" means the common areas, limited common areas and facilities as defined in Section 5 of this Declaration.

g) "Common Expenses" means expenses of administration of the Association, expenses for the upkeep, maintenance, repair and replacement of the Common Areas and all other costs and expenses incurred by the Association for the benefit of the Common Areas or for the common benefit of all Owners; provided, however, that Common Expenses shall not include any costs of initial construction or initial renovation of any Building or other Property or improvements on any portion of the Tract, nor any costs of repairs covered by any warranty of Declarant as builder of the Condominium Units, nor to any costs or repairs arising out of construction, renovation or other activities on any portion of the Adjacent Real Estate prior to its annexation to the Regime.

h) "Condominium Unit" means any one of the living units constituting St. Mary's Commons, each individual living unit being more particularly described and identified on the Plans and in Sections 3 and 4 of this Declaration. "Condominium Unit" includes the undivided interest in the Common Areas and Limited Areas appertaining to such unit.

i) "Co-Owners" means all of the Owners of all of the Condominium Units in the Regime.

j) "Declarant" shall mean and refer to Alabama Street Redevelopment, LLC, an Indiana limited liability company and St. Mary's Commons II, LLC, an Indiana limited liability company, and any successors and assigns of Alabama Street Redevelopment, LLC or St. Mary's Commons II, LLC whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any mortgagee acquiring title to any portion of the Property pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.

k) "Mortgagee" means the holder, insurer or guarantor of a first mortgage loan on a Condominium Unit.

l) "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; provided, however, that persons or entities owning a single Condominium Unit as tenants in common, joint tenants, tenants by the entireties, or any form of joint or divided ownership, shall be deemed one Owner for purposes of this Declaration. Persons or entities owning more than one Condominium Unit shall have the status of an owner for each Condominium Unit owned.

m) "Percentage Interest" means that percentage of the total undivided interest accruing to all of the Condominium Units which is appurtenant to each particular Condominium Unit and accrues to the Owner thereof. The Percentage Interest 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.

n) "Plans" means the floor and building plans of the Buildings and Condominium Units, and the site plans, surveys, and elevation plans of the Real Estate and Buildings, all of which are incorporated herein by reference, and any amendments which pertain to portions of the Adjacent Real Estate annexed to, and made a part of, the Regime by such amendments.

o) "Property" means the Real Estate and appurtenant easements, the Condominium Units, the Buildings, improvements, and property of every kind and nature whatsoever, real, personal or mixed, located upon the Real Estate or any Additional Sections after annexation to the Regime and used in connection with the operation, use and enjoyment of St. Mary's Commons, but does not include the personal property of the Owners.

p) "St. Mary's Commons" means the name by which the Horizontal Property Regime shall be known.

q) "Tract" means the Real Estate and the Adjacent Real Estate, as herein defined.

Section 2. Description of Buildings. There are Buildings containing Condominium Units on the Real Estate as shown on the Plans. A description of the Buildings and the Condominium Units contained or to be contained therein is set forth in the St. Mary's Commons Horizontal Property Regime Plat which are recorded as Instrument # 96-0145916 with the Recorder of Marion County, Indiana, and hereby made a part hereof by this reference.

Section 3. Legal Description and Percentage Interest. Each Condominium Unit is identified on the Plans by a letter. The legal description for each Condominium Unit shall consist of the identifying letter for such Condominium Units as shown on the Plans, and shall be stated as "Condominium Unit (with identifying letter) in St. Mary's Commons 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 "D" attached hereto and hereby made a part hereof.

Section 4. 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 interior and exterior sides and frames of all 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.

Section 5. Common Areas and Facilities. "Common Areas" shall include the following, except to the extent otherwise specifically designated in this Declaration as being within a Condominium Unit or as a Limited Area:

- a) the Real Estate, excluding the Condominium Units;
- b) the foundations, columns, girders, beams, supports and exterior surfaces of roofs of the Buildings;
- c) the yards, sidewalks, interior and exterior driveways, unenclosed parking areas, basement areas, attics, stairways, entrances, exits and corridors, except to the extent the same are otherwise classified and defined herein as part of the Condominium Units or Limited Areas;
- d) central electricity, gas, water, air conditioning and sanitary sewer mains serving the Buildings, excluding those separately metered to a particular Condominium Unit;

e) exterior lighting fixtures and electrical service lighting the exterior of the buildings unless separately metered to a particular Condominium Unit; and

f) 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 Limited Areas or as part of a Condominium Unit.

Section 6. Limited Areas and Facilities. Limited Areas and those Condominium Units to which use thereof is limited are as follows:

a) The 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 interior parking spaces, the balconies, and all exterior sides and surfaces of doors 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) 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.

Section 7. 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 applicable to each Condominium Unit shall be determined in accordance with the Formula set forth in Section 16(b) hereof. The Percentage Interest in the Common Areas and Limited Areas presently appertaining to each Condominium Unit is specified in Exhibit "D" hereto. If any Additional Sections are annexed, as permitted under Section 16(a), then upon execution and recordation of the applicable Amendment to this Declaration, the Percentage of each Condominium Unit which is part of the Regime prior to such annexation shall be recomputed in accordance with the Formula. Such recomputation will have the effect of reducing the Percentage Interest in those Common Areas which are a part of the Regime prior to such annexation, so as to allocate Percentage Interests therein to the Condominium Units added to the Regime by the Amendment. At the same time, such recomputation shall create Percentage Interests in favor of all of the Condominium Units in the Regime immediately following such annexation in the Common Areas created as a result of such annexation. The overall resulting Percentage Interests shall be determined according to the Formula and designated in the Amendment. In any computation of Percentage Interests, the figure obtained shall

be rounded to the nearest one-thousandth of a percent, and shall be so presented for all purposes of conveyance and for all purposes contemplated under this Declaration.

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 St. Mary's Commons and the Association upon which the Co-Owners are entitled to vote.

Section 8. 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, and to use all Common Areas wherever located, and such easement shall be perpetual and appurtenant to the Condominium Unit.

Section 9. 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.

Section 10. Reciprocal Easements to and from Additional Sections. So long as all or any part of the Adjacent Real Estate is not annexed, and commencing at such time as Declarant acquires fee simple title to the Adjacent Real Estate, the Declarant shall reserve unto itself, its successors and assigns, for the use and benefit of that portion of the Adjacent Real Estate not annexed, an easement to enter upon the Common Areas to gain access, ingress and egress to the Adjacent Real Estate not annexed, and to permit renovation or construction of Buildings or other improvements upon such Adjacent Real Estate, and an easement for access to any and all necessary utility lines, mains, and other utility services within the Real Estate for the benefit of the Buildings or improvements upon the Adjacent Real Estate, whether or not such Buildings or improvements are to be added to the Regime. Declarant, or its successors or assigns, shall be responsible for repairing any damage to any Property arising out of the exercise of this easement. The easements reserved shall permit free and unrestricted use and access to the roadways and sidewalks by Declarant and any other owners or residents of the Adjacent Real Estate not annexed, their guests, invitees and all public and quasi-public vehicles.

Declarant specifically intends that the easements granted and reserved pursuant to this Section 10 not merge because the fee simple interests in the Real Estate and the

Adjacent Real Estate may hereafter be vested solely in the Declarant. The easements granted and reserved pursuant to this Section 10 shall be easements and covenants running with the land and accruing to the benefit of the Real Estate and the Adjacent Real Estate.

Section 11. Utilities. Each Owner shall pay for those utilities which are separately metered to his Condominium Unit. 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 Interest.

Section 12. Association of Owners. Subject to the rights of Declarant reserved in Section 25 hereof, the maintenance, repair, upkeep, replacement, administration, management and operation of the Property shall be by St. Mary's Commons Co-Owners 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 a vote equal to his Percentage Interest 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 the governing body of the Association, representing all of the Owners in providing for the management, administration, operation, maintenance, repair, replacement and upkeep of the Property exclusive of the Condominium Units.

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.

Section 13. Use of Common Areas. 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.

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.

Section 14. Maintenance, Decoration, Repairs and Replacements.

a) Common Areas. The Association will be responsible for the maintenance, repair, decoration, restoration, and replacement of the Common Areas. Maintenance, decoration, repairs, and replacements of the Common Areas shall be furnished by the Association and the cost thereof shall be part of the Common Expenses. The Association may elect to delegate such duties to a Managing Agent and may enter into a management contract for such purpose, provided that such agent and the terms of such contract are approved by a majority of the vote present or represented at any meeting of the Association. Declarant or an entity affiliated with Declarant may serve as the Managing Agent for the Regime so long as Declarant retains control of the Association, and may perform all property management functions on behalf of the Association. Any management contract made or which is deemed to arise between the Association and Declarant (or any affiliate) shall be terminable by the Association without cause and without penalty upon thirty (30) days' written notice at any time after Declarant relinquishes control of the Association. The Board of Directors has the right to adopt such rules and regulations concerning the maintenance, repairs, use and enjoyment of the Common Areas as it deems appropriate, including the appointment of committees to oversee the same. The Board of Directors shall have the exclusive right to determine the outside decor of each Building, including without limitation the color and type of paint and all other decor appurtenant to the exterior of each Building.

b) Condominium Units. Each Owner shall control and have the right to determine the interior decor of his Condominium Unit, but this shall not include the right to make structural changes to the Unit, nor the right to use interior decor which in the discretion of the Board of Directors adversely affects the external appearance of the Condominium Unit, as more particularly set forth in the By Laws of the Association. No act or omission which constitutes waste shall be committed or suffered in or upon any Condominium Unit, the Common Areas, or Limited Areas. Each Owner shall maintain and repair at his sole cost and expense all fixtures, appliances, equipment, and other improvements constituting a part of his Condominium

Unit under Section 4 hereof, and each Owner shall promptly repair any condition or defect existing or occurring in his Condominium Unit which, if not repaired, might adversely affect any Condominium Unit, Common Area or Limited Area. The Board of Managers and the Managing 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 Condominium Units and the Common Areas adjacent to each Condominium Unit to replace, repair, and maintain such Common Areas. In the event that any Owner fails or is unable to maintain or repair any condition or defect for which he is responsible and the Board of Managers or the Managing Agent have a reasonable basis for believing that such condition or defect has caused or threatens to cause immediate and substantial harm to any person or to any property outside such Owner's Condominium, the Board of Managers and the Managing Agent shall each have the right to enter such Owner's Condominium Unit to remedy or repair such condition or defect, and any costs or expenses incurred in connection therewith (including attorneys' fees) shall be payable by such Owner upon demand by the Board of Managers or the Managing Agent. Nothing herein contained shall be construed to represent a contractual liability to any Owner on the part of the Declarant, the Association, or the Board of Managers for maintenance, repair, or replacement of any Condominium Unit, Common Areas, or Limited Areas, and the liability of the Association, the Board of Managers, and the Managing Agent in this regard shall be limited to damages resulting from gross negligence, recklessness, or intentional misconduct, unless otherwise provided in the management contract in the case of the Managing Agent.

Section 15. 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 for 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.

Section 16. Subdivision and Expansion. The provisions of this paragraph shall govern the expansion of the Regime and the allocation and reallocation of Percentage Interests.

a) Expansion by Sections. Declarant anticipates that it may construct from time to time additional Condominium Units ["Additional Sections"] on various portions of the Adjacent Real Estate, for addition to the Regime in the manner hereinafter set forth. The additional development within the Tract shall be consistent with the density, plan of development, and exterior architectural style of the Condominium Units to be contained upon the Real Estate. Additional Sections shall not be added by Declarant at any time after the expiration of ten (10) years from the date of this Declaration, nor shall Declarant add any further sections if more than five (5) years have elapsed since the most recent prior section was added to the Regime. At any time, and from time to time, prior to the expiration of said ten (10) year period, Declarant, at its option, may cause all or any part of the Adjacent Real Estate to be added to the Regime, subject to the following conditions:

1) An Additional Section may not be annexed unless the Condominium Units to be constructed or renovated in such Additional Section have been substantially completed, and unless the Plans therefor are completed, certified by a licensed professional engineer or registered architect as fully and accurately depicting the layout, location, and dimensions of the Condominium Units, and recorded along with an Amendment conforming to the requirements of Subsection (c) of this Section 16; and

2) The Condominium Units on any Additional Sections shall be constructed with labor and material of comparable quality to the Condominium Units previously constructed, although not necessarily of similar design, either as to interior floor plan or structural design. Declarant reserves the right to determine all developmental standards of each Additional Section other than those standards particularly set forth in this Section 16.

Declarant expressly reserves the right not to annex all or any of the Adjacent Real Estate. Upon annexation of each Additional Section to the Regime, each Owner shall acquire a Percentage Interest, as recomputed in accordance with this Section 16, in the Common Areas in such Additional Section, at which time each Owner thenceforth shall also incur and pay his Percentage Interest share of the Common Expenses attendant with such Additional Section, along with the Common Expenses attendant with the Real Estate and all Additional Sections previously added to the Regime. In no event shall the Regime be merged with any other horizontal property regime, but the Association may cooperate with other co-owners associations in obtaining

joint management, maintenance, or repair services in order to increase the cost efficiency of obtaining such services.

b) Percentage Interest. The Owner of each Condominium Unit shall have a Percentage Interest appurtenant to his Condominium Unit based upon the number of Condominium Units the Owner owns divided by the total number of all of the Condominium Units in the Regime at that time in accordance with Section 7(a)(1) of the Act (hereinafter called the "Formula"). The total Percentage Interests shall at all times equal one hundred percent (100%), or as close to one hundred percent (100%) as is mathematically possible, after taking into account the rounding thereof as required by Section 7.

c) Procedures for Amendment. As each Additional Section is developed, Declarant may record an Amendment annexing and adding such Additional Section to this Declaration and making it a part of the Regime. Declarant reserves the right to annex Additional Sections in any manner or order it may choose. Such Amendment shall contain the following:

- 1) A description of the portion of the Adjacent Real Estate to be annexed;
- 2) A description of the Condominium Units described in a manner consistent with this Declaration and the Act; and
- 3) The Percentage Interest of each of the Condominium Units in the Regime after such annexation, computed in accordance with the Formula.

d) Rights of Owners Affected by Expansion. Each Owner, by acceptance of a deed to a Condominium Unit, acknowledges, consents, and agrees that the following rights and conditions shall be applicable upon the recording of each Amendment:

- 1) The Condominium Units created from the Additional Section described in each Amendment shall be governed in all applicable respects by the provisions of this Declaration.
- 2) The Percentage Interest applicable to each Condominium Unit shall be automatically reallocated in accordance with the figure set forth in such Amendment, which reallocation shall be in accordance with the Formula. On recording of each Amendment, the amount by which the Percentage Interest of a Condominium Unit Owner is reduced

shall thereupon divest from such Condominium Unit Owner and revert to the Declarant, its successors and assigns.

3) Each deed, mortgage, or other instrument affecting a Condominium Unit shall be deemed to be subject to the limitation that the Percentage Interest appurtenant to each Condominium Unit shall be, upon the recording of each Amendment, altered in accordance with each Amendment and the Formula.

4) The Percentage Interest in the Common Areas shall be deemed to include any additional Common Areas annexed hereto by such Amendment. Each Amendment shall grant and convey to the Owners the appropriate Percentage Interest in the Common Areas added by such Amendment, and each deed, mortgage, or other instrument affecting a Condominium Unit shall be deemed to include and attach to such additional Common Areas.

5) The recording of an Amendment shall not alter the amount of the lien for Common Expenses previously assessed to a Condominium Unit which was already a part of the Regime prior to such recording. The lien for the share of Common Expenses from and after such recording shall be assessed and paid based upon the recomputed Percentage Interest.

6) Each Owner agrees to execute and deliver such documents as are necessary or desirable to accomplish the annexation of the Additional Sections in the Tract in accordance with the provisions of this Section 16.

e) Removal from Tract. In the event Declarant elects not to annex all or part of the Adjacent Real Estate, as permitted by this Section 16, Declarant shall file an Amendment which shall permanently remove that portion of the Adjacent Real Estate which Declarant elects not to annex, and said portion thereafter shall not be subject to any possibility of becoming a part of the Regime. In addition, any portion of the Adjacent Real Estate for which an Amendment has not been filed within ten (10) years of the date hereof shall automatically be removed from the possibility of becoming a part of the Regime. When, because of the annexation of all of the Adjacent Real Estate, the passage of time, or the filing of an amendment under this Subsection (e), the Regime is no longer subject to expansion, the Percentage

Interests then in effect shall not be altered except in accordance with Section 18 of this Declaration.

Section 17. 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 and improvements including the individual Condominium Units, the Common Areas and Limited Areas and facilities, and further including fixtures, building 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 secured 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 canceled or substantially modified without at least thirty (30) 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 its duties as such managers or if such bonds do not exceed the funds which will come into its hands, and there is a damage to a part or all of the Property resulting in a loss, the Board of 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 (i) 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 (ii) 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, (x) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners as hereinafter permitted and (y) 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 Section 18 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 Two Million Dollars (\$2,000,000.00) 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 St. Mary's Commons, all Owners of Condominium Units and all other portions of St. Mary's Commons. 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 canceled or substantially modified by any party without at least thirty (30) 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 worker'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 such Owner and Mortgagee jointly.

h) Each Owner shall be solely responsible for, and may obtain, such additional insurance as the Owner deems necessary or desirable at the Owner's own expense affording coverage upon his personal property, the



contents of the Owner's Condominium Unit (including, but not limited to, all floor, ceiling and wall coverings and fixtures, betterments and improvements installed by the Owner) and the Owner's personal property stored elsewhere on the Property, and for the Owner's 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 the Owner's own expense upon the Owner's 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 hereby 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.

Section 18. 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 subsections (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 subsection (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 Buildings, the Co-Owners shall, at said same special meeting, vote to determine whether or not such complete destruction of the Buildings shall be repaired and reconstructed. The Buildings shall not be reconstructed or repaired if it is the determination of the Co-Owners at said special meeting that there has been a complete destruction of all of the Buildings, unless by a vote of two-thirds (2/3) of all of the Co-Owners a decision is made to rebuild, reconstruct and repair the Buildings. If two-thirds (2/3) of all of the Co-Owners vote and decide that the Buildings are 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 subsection (a) and (b).

e) If, in the case of the complete destruction of all of the Buildings, less than two-thirds (2/3) of all of the Co-Owners vote in favor of the rebuilding, reconstruction and repair of the Buildings, the Buildings shall not be 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:

(i) If the amount of the estimated cost of reconstruction and repair is less than Five Thousand Dollars (\$5,000.00), then the construction fund shall be disbursed in payment of such costs upon order of the Board of 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 subsection (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 contest of such award to the Board of Managers as to Buildings 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 in a court of competent jurisdiction.

Section 19. 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. 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 Additional Real Estate not then part of the Regime, 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.

Section 20. Sale, Lease or Other Transfer of Condominium Unit by Owner.

For the purpose of maintaining the congenial and residential character of St. Mary's Commons, 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 for a term of less than ninety (90) days. In any event, Owner shall use the lease form which has been approved by the Board of Managers, and a copy of such lease shall be provided by the Owner to the Board of Managers promptly after execution thereof.

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.

Section 21. 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, including any annual meetings.

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 Interest.

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 Material Amendment (as hereinafter defined) to this Declaration must be approved by a vote of not less than two thirds (2/3) of the Percentage Interest. 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 a majority of Eligible Mortgagees. An Eligible Mortgagee who receives a written request to approve 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, or the Declarant, if required, 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 to 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 Section 21 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. The right of the Declarant to act pursuant to rights reserved or granted under this Section 21 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 Section, 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.

Section 22. 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 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.

Section 23. Negligence. Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by the Owner's own negligence or by that of any member of the Owner's family, 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 such Owner's use, misuse, occupancy or abandonment of the Owner's Condominium Unit or its appurtenance or of the Common Areas or Limited Areas.

Section 24. Granting of Easements. The Board of Managers or 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.

Section 25. 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 Real Estate, to provide access to and ingress and egress to and from the Real Estate, to make improvements to and within the Real Estate, and to provide for the rendering of public and quasi public services to the Real Estate. 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 Real Estate and any portions of the Regime which are not part of the Real Estate 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 St. Mary's Commons in the performance of their duties.

Section 26. 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 Kevin R. Krulewich (the "Managing Agent") for a term which will expire not later than December 31, 2006, unless earlier terminated or extended by agreement of the parties, under which the Managing Agent 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 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 shall have, and Declarant hereby reserves to itself, the exclusive right to manage the Property and to perform all the functions of the Association.

Section 27. 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 By-Laws, the Act, 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.

Section 28. Failure of Owner to Pay Assessments.

a.) No Owner may become exempt from liability for 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 the Owner's 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(b) of the By-Laws.

Section 29. 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 of the rest of this Declaration or the attached By-Laws.

Section 30. 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.

Section 31. 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 Regime file \_\_\_\_\_, as of OCTOBER 17, 1996, as Instrument No. 96-0145216.

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

ALABAMA STREET REDEVELOPMENT, LLC,  
an Indiana Limited Liability Company

By: Kevin R. Krulewich  
Kevin R. Krulewich, Manager

ST. MARY'S COMMONS II, LLC,  
an Indiana Limited Liability Company

By: Kevin R. Krulewich  
Kevin R. Krulewich, Manager

STATE OF INDIANA )  
 )SS:  
COUNTY OF MARION )

Before me, the undersigned Notary Public, personally appeared Kevin R. Krulewich, to me personally known and known to me to be the Manager of Alabama Street Redevelopment, LLC, 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 11 day of October, 1996.

*Susan Perry*  
\_\_\_\_\_  
Notary Public,



My Commission Expires:  
\_\_\_\_\_

County of Residence:  
SUSAN PERRY  
RESIDENT: MARION COUNTY, IN  
COMMISSION EXPIRES: 8/12/98

STATE OF INDIANA )  
 )SS:  
COUNTY OF MARION )

Before me, the undersigned Notary Public, personally appeared Kevin R. Krulewich, to me personally known and known to me to be the Manager of St. Mary's Commons II, LLC, 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 11 day of October, 1996.

*Susan Perry*  
\_\_\_\_\_  
Notary Public,



My Commission Expires:  
\_\_\_\_\_

County of Residence:  
SUSAN PERRY  
RESIDENT: MARION COUNTY, IN  
COMMISSION EXPIRES: 8/12/98

SA/PAK/7155-02.018

EXHIBIT "A"  
LAND DESCRIPTION  
ALABAMA STREET REDEVELOPMENT, LLC

Lots 26 and 27 in Martindale's Central Addition to the City of Indianapolis as per plat thereof recorded in Plat Book 3, page 164 in the Office of the Recorder of Marion County, Indiana.

ALSO 1.50 feet by parallel lines off the entire South side of Lot 25 AND 14.00 feet by parallel lines off the entire North side of Lot 28 in Martindale's Central Addition to the City of Indianapolis as per plat thereof recorded in Plat Book 3, page 164 in the Office of the Recorder of Marion County, Indiana.

EXHIBIT "B"  
LAND DESCRIPTION  
ST. MARY'S COMMONS II, LLC

Lots 15 and 16 in Martindale's Central Addition to the City of Indianapolis as per plat thereof recorded in Plat Book 3, page 164 in the Office of the Recorder of Marion County, Indiana.

ALSO 12.00 feet by parallel lines off the entire South side of Lot 17 in Martindale's Central Addition to the City of Indianapolis as per plat thereof recorded in Plat Book 3, page 164 in the Office of the Recorder of Marion County, Indiana.

EXHIBIT "C"  
LAND DESCRIPTION  
ST. MARY'S COMMONS, LLC

Lots 17, 18, 19, 20, 21, 22, 23, 24, 25, 28, 29 and 30 in Martindale's Central Addition to the City of Indianapolis as per plat thereof recorded in Plat Book 3, page 164 in the Office of the Recorder of Marion County, Indiana.

EXCEPTING THEREFROM:

1.50 feet by parallel lines off the entire South side of Lot 25 AND 14.00 feet by parallel lines off the entire North side of Lot 28 in Martindale's Central Addition to the City of Indianapolis as per plat thereof recorded in Plat Book 3, page 164 in the Office of the Recorder of Marion County, Indiana.

ALSO 12.00 feet by parallel lines off the entire South side of Lot 17 in Martindale's Central Addition to the City of Indianapolis as per plat thereof recorded in Plat Book 3, page 164 in the Office of the Recorder of Marion County, Indiana.



EXHIBIT "D"  
 ST. MARY'S COMMONS  
 CONDOMINIUM UNIT  
 LIVING AREA SQUARE FOOTAGE  
 AND PERCENTAGE INTEREST

<u>UNIT LETTER</u>	<u>LIVING AREA SQUARE FOOTAGE</u>	<u>PERCENTAGE INTEREST</u>
A	2347	13.68
B	2388	13.92
C	1965	11.46
D	2044	11.92
E	789	4.60
F	847	4.94
G	1696	9.89
H	1621	9.45
I	805	4.69
J	617	3.60
K	<u>2032</u>	<u>11.85</u>
<b>TOTALS</b>	<u>17,151 Sq. Ft.</u>	<u>100%</u>

