Covenants

For

HOLIDAY PARK - BROWNSBURG

Hendricks County
DECLARATION OF
HOLIDAY PARK
HORIZONTAL PROPERTY REGIME

THIS DECLARATION, MADE THIS 1ST DAY OF October, 1992, BY THE "DECLARANT", HOLIDAY HOMES CORPORATION, AN INDIANA CORPORATION.

WITNESSETH:

A. WHEREAS DECLARANT IS THE OWNER IN FEE SIMPLE OF THE FOLLOWING DESCRIBED REAL ESTATE, LOCATED IN HENDRICKS COUNTY, INDIANA, TO-WIT:

SEE EXHIBIT "A"

B. WHEREAS DECLARANT IS THE OWNER IN FEE SIMPLE OF CERTAIN REAL ESTATE WITHIN THE ABOVE DESCRIBED REAL ESTATE DESCRIBED AS SECTION 1, HOLIDAY PARK HORIZONTAL PROPERTY REGIME, AND MORE PARTICULARLY DESCRIBED AS FOLLOWS:

SEE EXHIBIT "B"

C. WHEREAS, DECLARANT, BY EXECUTION OF THIS DECLARATION OR A SUPPLEMENTAL DECLARATION OR DECLARATIONS, CREATES A HORIZONTAL PROPERTY REGIME UPON THE TRACT, SUBJECT TO THE PROVISIONS OF THE HORIZONTAL PROPERTY ACT OF THE STATE OF INDIANA AND THE TERMS AND CONDITIONS OF THIS DECLARATION.

NOW, THEREFORE, DECLARANT HEREBY MAKES THIS DECLARATION AS FOLLOWS:

1. THE FOLLOWING DEFINITIONS SHALL APPLY THROUGHOUT THIS DECLARATION:

   (A) "ACT" MEANS THE HORIZONTAL PROPERTY ACT OF THE STATE OF INDIANA, ACTS 1963, CHAPTER 349, SECTIONS 1 THROUGH 31, AS AMENDED. THE ACT IS INCORPORATED HEREIN BY REFERENCE.

   (B) "ADDITIONAL SECTIONS" MEANS THE REAL ESTATE REFERRED TO IN PARAGRAPH 16, WHICH MAY IN PART OR IN WHOLE FROM TIME TO TIME BE ANNEXED TO AND INCLUDED WITHIN "THE REGIME" AS PROVIDED IN PARAGRAPH 16, ALL OF WHICH WILL BE A PART OF THE PROPOSED TRACT.
(c) "ASSOCIATION" means the incorporated association of co-owners of "the regime", here particularly described in paragraph 13.

(d) "BOARD OF MANAGERS" means the governing body of the association elected by the co-owners in accordance with the by-laws. The term "BOARD OF MANAGERS", as used herein and in the by-laws, shall be synonymous with the term "BOARD OF DIRECTORS" as used in the act.

(e) "BUILDING", if and when used, shall mean and be the same as "dwelling unit", or "DWELLING UNITS" where more than one such unit is contained in one edifice.

(f) "BY-LAWS" means the by-laws of the association providing for the administration and management of the property as required by and in conformity with the provisions of the act. A true copy of the by-laws is attached to this declaration and incorporated herein by reference.

(g) "COMMON AREAS" means the common areas and facilities appurtenant to the property as defined in paragraph 4 of this declaration.

(h) "COMMON EXPENSES" means expenses of administration of the association, expenses for the upkeep, maintenance, repair and replacement of the common areas and limited areas, except as otherwise expressly provided in this declaration or the by-laws, and all sums lawfully assessed against the owners by the association or as declared by the act, this declaration or the by-laws.

(i) "CO-OWNERS" means the owners of all the dwelling units.

(j) "DECLARANT" means the owner of the real estate described at the time of the filing of this declaration, its successors and assigns to its interest herein, other than those persons who purchase dwelling units by deed from the declarant, unless the conveyance indicates an intent that grantee become the declarant.

(k) "DWELLING UNIT" means one of the individual units constituting "the regime", each individual unit being here particularly described and identified on the plans and in paragraphs 4 and 5 of this declaration.
(1) "FORMULA" MEANS THE METHOD SET FORTH IN PARAGRAPH 8 OF THIS DECLARATION FOR COMPUTING THE PERCENTAGE INTEREST APPLICABLE TO EACH DWELLING UNIT.

(2) "THE REGIME" MEANS THE NAME BY WHICH THE PROPERTY AND HORIZONTAL PROPERTY REGIME SHALL BE KNOWN.

(3) "LIMITED AREAS" MEANS THE LIMITED COMMON AREAS AND FACILITIES AS DEFINED IN PARAGRAPH 7 OF THIS DECLARATION.

(4) "OWNER" MEANS A PERSON, FIRMA, CORPORATION, PARTNERSHIP, ASSOCIATION, TRUST OR OTHER LEGAL ENTITY OR ANY COMBINATION THEREOF WHO OWNS THE FEUDAL TITLE TO A DWELLING UNIT.

(5) "PERCENTAGE INTEREST" MEANS THE PERCENTAGE OF UNDIVIDED INTEREST IN THE FEUDAL TITLE TO THE COMMON AREAS AND LIMITED AREAS APPERTAINING TO EACH DWELLING UNIT AS DETERMINED IN ACCORDANCE WITH PARAGRAPHS 8 AND 17 OF THIS DECLARATION.

(6) "PERCENTAGE VOTE" MEANS AN OWNER'S PERCENTAGE VOTE AND IS THE RELATIONSHIP OF HIS VOTE TO THE TOTAL ELIGIBLE VOTES EXPRESSED AS A PERCENTAGE AS DETERMINED IN ACCORDANCE WITH PARAGRAPHS 8 AND 17 OF THIS DECLARATION.

(7) "SECTION" MEANS A PART OF THE TRACT UPON WHICH DWELLING UNITS ARE CONSTRUCTED AND ANNEXED TO "THE REGIME" AS PROVIDED IN PARAGRAPH 16. EACH PARTICULAR SECTION SHALL BE IDENTIFIED BY AN ARABIC NUMERAL DESIGNATION CORRESPONDING TO THE ORDER OF ANNEXATION.


(U) "TRACT" MEANS THE TOTAL REAL ESTATE DESCRIBED IN PARAGRAPH C ABOVE, OF WHICH THE RESPECTIVE SECTIONS WILL BE A PART.

2. DECLARATION. DECLARANT HEREBY EXPRESSLY DECLARES THAT THE PROPERTY SHALL BE A HORIZONTAL PROPERTY REGIME IN ACCORDANCE WITH THE PROVISIONS OF THE ACT.


THE DWELLING UNITS IN THE ADDITIONAL SECTION OR SECTIONS, WHEN ANNEXED, SHALL BE IDENTIFIED NUMERICALLY, THE EXACT NUMBER OF DWELLING UNITS TO BE IDENTIFIED AND REFERRED TO IN THE SUPPLEMENTAL DECLARATION AND SUPPLEMENTAL PLANS ANNEXING SUCH SECTION OR SECTIONS TO "THE REGIME".

4. IDENTIFICATION OF DWELLING UNIT. EACH DWELLING UNIT IS ALSO IDENTIFIED BY AN ARABIC NUMBER OF THE PLAN, SAID REFERRING TO THE INDIVIDUAL DWELLING UNIT.

THE LEGAL DESCRIPTION FOR EACH DWELLING UNIT SHALL CONSIST OF THE ARABIC NUMBER DESIGNATION OF THE PARTICULAR DWELLING UNIT ALONG WITH THE ARABIC NUMBER DESIGNATION OF THE BUILDING CONTAINING THE DWELLING UNIT.

5. FURTHER DESCRIPTION OF DWELLING UNITS.

(A) BOUNDARIES. THE DIMENSIONS REQUIRED TO DETERMINE THE BOUNDARIES OF EACH DWELLING UNIT SHALL BE SHOWN ON THE PLANS AND WILL INCLUDE ALL THE SPACE BOUNDED BY THE BOTTOM OF THE CONCRETE GARAGE FLOOR AND COVERED PORCH SLAB, AND THE TOP OF THE FLOOR JOISTS TO THE BOTTOM OF ALL CEILING JOISTS INCLUDING GARAGE AND COVERED PORCH CEILING JOISTS IN A HORIZONTAL PLANE AND THE INSIDE SURFACES OF ALL PERIMETER STUD WALLS EXTENDED TO INCLUDE THE COVERED PORCH IN A VERTICAL PLANE. IN THE EVENT ANY HORIZONTAL OR VERTICAL BOUNDARY LINE AS SHOWN ON THE PLANS DOES NOT COINCIDE WITH THE ACTUAL LOCATION OF THE RESPECTIVE WALL, FLOOR OR CEILING OF THE DWELLING UNIT BECAUSE OF IMPRACTICABILITY OF CONSTRUCTION, SETTLING AFTER
CONSTRUCTION, OR FOR ANY OTHER REASONS, THE BOUNDARY LINES OF EACH DWELLING UNIT SHALL BE DEIDED TO BE AND TREATED FOR PURPOSES OF OCCUPANCY, POSSESSION, MAINTENANCE, DECORATION, USE AND ENJOYMENT, AS IN ACCORDANCE WITH THE ACTUAL EXISTING CONSTRUCTION. IN SUCH CASE, VESTIGEMENT BASEMENTS FOR EXCLUSIVE USE SHALL EXIST IN FAVOR OF THE OWNER OF EACH DWELLING UNIT IN AND TO SUCH SPACE LYING OUTSIDE OF THE ACTUAL BOUNDARY LINE OF THE DWELLING UNIT, BUT WITHIN THE APPROPRIATE AREA OF THE DWELLING UNIT.

10. APPURTENANCES. EACH DWELLING UNIT SHALL CONSIST OF ALL SPACE WITHIN THE BOUNDARIES THEREOF AND ALL PORTIONS OF THE STRUCTURE THEROF SITUATED, INCLUDING, BUT NOT LIMITED TO, ALL FIXTURES, FACILITIES, UTILITIES, EQUIPMENT, APPLIANCES, AND STRUCTURAL COMPONENTS DESIGNATED AND INTENDED SOLELY AND EXCLUSIVELY FOR THE ENJOYMENT, USE AND BENEFIT OF THE DWELLING UNIT WHEREIN THEY ARE LOCATED, OR ATTACHED, BUT EXCLUDING THEREFROM THAT DESIGNED OR INTENDED FOR COMMON USE. ALL FIXTURES, EQUIPMENT AND APPLIANCES INTENDED FOR THE EXCLUSIVE ENJOYMENT, USE AND BENEFIT OF A DWELLING UNIT SHALL CONSTITUTE A PART OF SUCH A DWELLING UNIT, EVEN IF THEY ARE LOCATED PARTLY OR COMPLETELY WITHOUT THE BOUNDARIES OF SAID DWELLING UNIT, THOSE MAY INCLUDE BUT ARE NOT LIMITED TO AIR CONDITIONER CONDENSING UNITS, MATERIALS USED TO FURTHER ENCLOSE THE COVERED PORCH, WINDOWS AND DOORS INCLUDING GARAGE DOORS, ETC. IT ALSO INCLUDES ANY EXTENSION OF THE SLAB UNDER THE COVERED PORCH RESULTING IN AN UNCOVERED PATIO. THE FOREGOING SHALL NOT BE DEIDED A GRANT OF AUTHORITY TO, IN ANY WAY MODIFY OR CHANGE THE BUILDINGS AS HEREAFTER CONSTRUCTED EXCEPT AS AUTHORIZED UNDER THE PROVISIONS OF THE DECLARATION SET FORTH ELSEWHERE HEREIN.


7. LIMITED COMMON AREA AND FACILITIES. LIMITED AREAS AND THOSE DWELLING AREAS FOR WHICH THE USE THEREOF IS LIMITED AS FOLLOWS:

(A) FRONT PORCH. THE FRONT PORCH THROUGH WHICH ACCESS TO A DWELLING UNIT IS OBTAINED IS LIMITED TO THE USE OF THE DWELLING UNIT OR DWELLING UNITS SERVED BY SUCH ENTRANCE WAY.
8. OWNERSHIP OF COMMON AREAS, AND PERCENTAGE INTEREST AND PERCENTAGE VOTE. EACH OWNER SHALL HAVE AN UNDIVIDED INTEREST IN THE COMMON AREAS AND LIMITED AREAS AS TENANTS IN COMMON WITH ALL OTHER OWNERS EQUAL TO HIS DWELLING UNIT'S PERCENTAGE INTEREST. EACH DWELLING UNIT'S PERCENTAGE INTEREST IN THE COMMON AREAS AND LIMITED AREAS SHALL BE DETERMINED IN ACCORD WITH THE FORMULA SET FORTH IN PARAGRAPH 16 OF THIS DECLARATION.

IF THE REGIME CONSISTS ONLY OF SECTION 1, EACH DWELLING UNIT'S PERCENTAGE INTEREST SHALL BE THAT AS EACH UNIT BEARS TO ALL UNITS IN THE SECTION. AS SECTIONS ARE ANNEXED, AS PERMITTED AND CONTEMPLATED BY PARAGRAPH 16 OF THIS DECLARATION, UPON EXECUTION OF THE APPPLICABLE SUPPLEMENTAL DECLARATION, THE PERCENTAGE INTEREST OF EACH DWELLING UNIT IN THE SECTION OR SECTIONS WHICH ARE A PART OF THE REGIME PRIOR TO SUCH ANNEXATION SHALL AUTOMATICALLY REDUCE IN ACCORD WITH THE FORMULA. THE OWNERS OF DWELLING UNITS IN THE SECTION OR SECTIONS WHICH ARE A PART OF THE REGIME PRIOR TO SUCH ANNEXATION SHALL BE GRANTED AND RECEIVE A PERCENTAGE INTEREST IN THE COMMON AREA OF SUCH SECTION OF THE ADDITIONAL TRACT BEING ANNEXED, THE PRECISE PERCENTAGE INTEREST TO BE DETERMINED ACCORDING TO THE FORMULA AND DESIGNATED IN THE SUPPLEMENTAL DECLARATION.

EACH OWNER SHALL HAVE AN EQUAL VOTE ON ANY MATTER UPON WHICH THE CO-OWNERS ARE ENTITLED TO VOTE. EACH OWNER IS ENTITLED TO ONE VOTE. A MULTIPLE OWNER, MEANING AN OWNER OF MORE THAN ONE UNIT, IS ENTITLED TO MULTIPLE VOTES, THAT IS, ONE VOTE FOR EACH UNIT OWNED.

THE PERCENTAGE INTEREST APPERTAINING TO EACH DWELLING UNIT AS DETERMINED BY PARAGRAPH 17 ALSO SHALL BE THE PERCENTAGE VOTE ALLOCABLE TO THE OWNER THEREOF IN ALL MATTERS WITH RESPECT TO THE REGIME AND THE ASSOCIATION UPON WHICH THE CO-OWNERS ARE ENTITLED TO VOTE, INCLUDING BUT NOT LIMITED TO, THE ELECTION OF THE BOARD OF MANAGERS.

9. ENCROACHMENTS AND EASEMENTS FOR COMMON AREAS. IF, BY REASON OF THE LOCATION, CONSTRUCTION SETTLING, OR SHIFTING OF A DWELLING UNIT, A COMMON AREA OR LIMITED AREA NOW ENCROACHED OR SHALL HEREAFTER ENCROACH UPON ANY DWELLING UNIT, THEN IN SUCH EVENT AN EASEMENT SHALL BE DEEMED TO EXIST AND RUN TO THE CO-OWNERS AND THE ASSOCIATION FOR THE MAINTENANCE, USE, AND ENJOYMENT OF SUCH COMMON AREA OR LIMITED AREAS.

EACH OWNER SHALL HAVE AN EASEMENT IN COMMON WITH EACH OTHER OWNER TO USE ALL PIPES, WIRES, DUCTS, CABLES, CONDUITS, UTILITY LINES, AND OTHER COMMON FACILITIES.
10. **REAL ESTATE TAXES.** REAL ESTATE TAXES ARE TO BE SEPARATELY TAXED TO EACH DWELLING UNIT AS PROVIDED IN THE ACT. IN THE EVENT THAT FOR ANY YEAR REAL ESTATE TAXES ARE NOT SEPARATELY ASSESSED AND TAXED TO EACH DWELLING UNIT, BUT ARE ASSESSED AND TAXED ON THE TRACT, OR A PART THEREOF, AS A WHOLE, THEN EACH OWNER SHALL PAY HIS PROPORTIONATE SHARE OF THE REAL ESTATE TAXES. EACH OWNER’S PROPORTIONATE SHARE WILL BE DETERMINED AS FOLLOWS:

(A) WITH RESPECT TO THE REAL ESTATE TAXES ASSESSED AGAINST THE LAND, THE AMOUNT OF SUCH TAXES SHALL BE A SUM EQUAL TO THAT OWNER’S PERCENTAGE INTEREST MULTIPLIED BY THE TOTAL REAL ESTATE TAXES ASSESSED AGAINST THE LAND. DECLARANT WILL PAY FOR THE TAXES ON THE REAL ESTATE UNTIL ANNEXED.

(B) WITH RESPECT TO THE REAL ESTATE TAXES ASSESSED AGAINST THE IMPROVEMENTS, THE RESPECTIVE OWNERS WILL BE FULLY OBLIGATED TO PAY THE AMOUNTS ASSESSED AGAINST SAID.

(C) ALL OTHER TAXES ASSESSED AGAINST THE REAL ESTATE OR IMPROVEMENTS SHALL BE CALCULATED BY THE SAME FORMULA AS SET FORTH IN (A) ABOVE AND PAID FOR ACCORDING TO EACH CO-OWNER’S PERCENTAGE INTEREST.

11. **UTILITIES.** EACH OWNER SHALL PAY FOR HIS OWN UTILITIES, WHICH ARE SEPARATELY ASSESSED. UTILITIES WHICH ARE NOT SEPARATELY ASSESSED SHALL BE TREATED AS AND BE PAID AS PART OF THE COMMON EXPENSES.

14. **EASEMENT FOR UTILITIES AND PUBLIC AND QUASI-PUBLIC VEHICLES.** ALL PUBLIC AND QUASI-PUBLIC VEHICLES, INCLUDING, BUT NOT LIMITED TO, POLICE, FIRE, AND OTHER EMERGENCY VEHICLES, TRASH AND GARBAGE COLLECTION, POST OFFICE VEHICLES AND PRIVATELY OWNED DELIVERY VEHICLES, SHALL HAVE THE RIGHT TO ENTER UPON THE STREETS, COMMON AREAS AND LIMITED AREAS OF “THE EASEMENT” IN PERFORMANCE OF THEIR DUTIES. AN EASEMENT IS ALSO GRANTED FOR ALL AREAS OF “THE EASEMENT” INCLUDING PRIVATELY OWNED UNITS, TO ALL UTILITIES AND THEIR AGENTS FOR LAYING, LUSSESS, INSTALLATION, REPLACEMENT, REPAIRING, AND MAINTAINING OF SUCH UTILITIES, INCLUDING BUT NOT LIMITED TO, WATER, SEWERS, GAS, TELEPHONES AND ELECTRICITY ON THE PROPERTY; PROVIDED, HOWEVER, NOTHING HEREIN SHALL PERMIT THE INSTALLATION OF SEWERS, ELECTRIC LINES, WATER LINES, OR OTHER UTILITIES, EXCEPT AS INITIALLY DESIGNED AND APPROVED BY DECLARANT OR AS THEREAFTER MAY BE APPROVED BY THE BOARD OF MANAGERS. BY VIRTUE OF THIS EASEMENT, THE ELECTRIC AND TELEPHONE UTILITIES ARE EXPRESSLY PERMITTED TO ERECT AND MAINTAIN THE NECESSARY EQUIPMENT ON THE PROPERTY AND TO AFFIX AND MAINTAIN ELECTRIC AND TELEPHONE WIRES, CIRCUITS AND CONDUITS ON, ABOVE, ACROSS AND UNDER THE ROOFS AND EXTERIOR WALLS OF THE BUILDINGS.
14. ASSOCIATION OF OWNERS. IN ORDER TO PROVIDE FOR THE MAINTENANCE, REPAIR, REPLACEMENT, ADMINISTRATION AND OPERATION OF THE PROPERTY AND IN COMPLIANCE WITH THE PROVISIONS OF THE ACT, THERE IS HEREBY CREATED AN ASSOCIATION OF THE CO-OWNERS OF THE DWELLING UNITS IN "THE REGIME" TO BE KNOWN AS THE HOLIDAY PARK CONDOMINIUMS CO-OWNERS' ASSOCIATION, INC. EACH OWNER SHALL BE A MEMBER OF THE ASSOCIATION, BUT MEMBERSHIP SHALL TERMINATE WHEN SUCH PERSON CEASES TO BE AN OWNER, AND SUCH MEMBERSHIP WILL BE TRANSFERRED TO THE NEW OWNER.

THE ASSOCIATION SHALL ELECT A BOARD OF MANAGERS ANNUALLY IN ACCORDANCE WITH AND AS PRESCRIBED BY THE BY-LAWS. THE CO-OWNERS SHALL BE ENTITLED TO CAST THEIR PERCENTAGE VOTE FOR THE ELECTION OF THE BOARD OF MANAGERS.

THE BOARD OF MANAGERS SHALL BE THE GOVERNING BODY OF THE ASSOCIATION, REPRESENTING ALL OF THE CO-OWNERS IN PROVIDING FOR THE MANAGEMENT, MAINTENANCE, REPAIR, REPLACEMENT AND U Keep OF THE PROPERTY.


THE BOARD OF MANAGERS SHALL ADOPT SUCH RULES AND REGULATIONS CONCERNING THE MAINTENANCE, REPAIRS, USE AND ENJOYMENT OF THE COMMON AREAS AND LIMITED AREAS AS IT DEEMS APPROPRIATE, INCLUDING THE APPOINTMENT OF COMMITTEES TO OVERSEE SAME.

THE BOARD OF MANAGERS OR THEIR DESIGNATED AGENT SHALL HAVE THE RIGHT AT REASONABLE TIMES AND UPON REASONABLE PRIOR NOTICE (EXCEPT IN CASES OF EMERGENCY IN WHICH CASE NO NOTICE SHALL BE REQUIRED), TO ENTER INTO THE COMMON AREAS AND LIMITED AREAS APPURTENANT TO THE DWELLING UNITS TO REPLACE, REPAIR, AND MAINTAIN SAME.

15. ALTERATIONS, ADDITIONS, AND IMPROVEMENTS. NO OWNER SHALL MAKE ANY ALTERATIONS OR ADDITIONS TO THE COMMON AREAS OR LIMITED AREAS WITHOUT THE PRIOR WRITTEN APPROVAL OF THE BOARD OF MANAGERS,
NOR SHALL ANY OWNER MAKE ANY ALTERATIONS TO HIS RESPECTIVE DWELLING UNIT OR WITHIN THE BOUNDARIES THEREOF WHICH WOULD ADVERSELY AFFECT THE SAFETY OR STRUCTURAL PORTION OF THE DWELLING UNIT.

10. EXPANSION BY SECTIONS. DECLARANT ANTICIPATES THAT IT WILL CONSTRUCT ADDITIONAL DWELLING UNITS ON ADDITIONAL SECTIONS BY EXPANSION WITHIN THE TRACT, ALL OR PART OF WHICH MAY BE EXPANDED IN THE MANNER HEREOFABER SET FORTH, AND SUBJECT TO THE PROVISIONS OF THE ACT. THE GENERAL PLAN OF DEVELOPMENT SHALL NOT EXCEED 58 UNITS TOTAL. A TIME LIMIT, NOT EXCEEDING TWELVE (12) YEARS, SHALL BE THE LIMIT WHERE ADDITIONAL SECTIONS MAY BE ADDED.

AT ANY TIME PRIOR TO JANUARY 1, 2004, DECLARANT, AT HIS OPTION, MAY, BUT IS NOT OBLIGATED TO CAUSE ALL OR PART OF THE ADDITIONAL SECTION OR SECTIONS WITHIN THE TRACT TO BE EXPANDED, SUBJECT TO THE FOLLOWING CONDITIONS:

(A) ANOTHER SECTION OR SECTIONS MAY BE ANNEXED IF THE DWELLING UNITS TO BE CONSTRUCTED IN SUCH SECTION OR SECTIONS HAVE BEEN COMPLETED TO SUCH AN EXTENT THAT THE UNITS LOCATION MAY BE ACCURATELY SET AND THE SUPPLEMENTAL PLANS TO BE FILED WITH THE SUPPLEMENTAL DECLARATION ARE COMPLETED AND CERTIFIED TO BY THE ENGINEER OR ARCHITECT AS FULLY AND ACCURATELY DEPICTING THE LAYOUT, LOCATION, AND DIMENSIONS OF THE DWELLING UNITS. DECLARANT SHALL RESERVE THE RIGHT TO DETERMINE THE DEVELOPMENTAL STANDARDS OF EACH SECTION.

(B) THE DWELLING UNITS ON ANY SECTION TO BE ANNEXED SHALL BE CONSTRUCTED WITH LABOR AND MATERIAL OF COMPARABLE QUALITY TO THE DWELLING UNITS PREVIOUSLY CONSTRUCTED ALTHOUGH NOT NECESSARILY OF SIMILAR TYPE FLOOR PLAN, DESIGN OR EXTERIOR.

(C) DECLARANT, OR ITS ASSIGNS, SHALL BE THE SOLE OWNER OF THE FEE SIMPLE TITLE TO THE SECTION OR SECTIONS TO BE ANNEXED.

DECLARANT EXPRESSLY RESERVES THE RIGHT NOT TO ANNEX ANY OR ALL OF THE TRACT IN SECTIONS AFTER SECTION 1. NO OWNER SHALL ACQUIRE ANY RIGHTS WHATSOEVER IN THE TRACT EXCEPT AS TO THOSE SECTIONS WHICH ARE ANNEXED TO AND MADE A PART OF THE HORIZONTAL PROPERTY REGIME. AFTER EACH SECTION IS ANNEXED, THOSE CO-OWNERS OWNING DWELLING UNITS IN THE SECTION OR SECTIONS BEING TURNED OVER SHALL THEN INCUR AND PAY ALL COMMON EXPENSES ATTENDANT WITH THAT SECTION OR SECTIONS ACCORDING TO THE FORMULA AND THEIR RESPECTIVE PERCENTAGE INTEREST. UNITS UNDER CONSTRUCTION, MODELS, AND UNGSOLD UNITS AND THE COMMON AREAS ASSOCIATED WITH SUCH UNITS SHALL NOT BE ASSESSED AND SHALL BE MAINTAINED BY THE DECLARANT UNTIL SOLD.

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17. PERCENTAGE INTEREST. THE OWNER OF EACH DWELLING UNIT SHALL HAVE THE SAME PERCENTAGE INTEREST AND PERCENTAGE VOTE AS ALL OTHER SUCH OWNERS AND THERE SHALL BE NO DIFFERENTIATION BASED UPON THE SIZE OF SUCH DWELLING UNIT. EACH OWNER SHALL BE EQUAL AS TO PERCENTAGE INTEREST AND PERCENTAGE VOTE.

THE PERCENTAGE INTEREST AFFURTED TO EACH UNIT SHALL BE COMPUTED AND, UPON THE ANNEXATION OF AN ADDITIONAL SECTION OR SECTIONS, SHALL BE RECOMPUTED DIVIDING AMONG THE THEN-EXISTING DWELLING UNIT OWNERS AN EQUAL SHARE TO THE EXTENT THAT THE TOTAL SHARES AT ALL TIMES EQUAL 100%. THE PERCENTAGE INTEREST AND PERCENTAGE VOTE SHALL BE EXPRESSED AS A FRACTION IF NECESSARY WHEN THE NUMBER OF UNITS IS NOT EVENLY DIVISIBLE INTO 100 SO THAT THE TOTAL INTEREST AND VOTE EQUALS 100% AT ALL TIMES.

AS EACH SECTION IS DEVELOPED, DECLARANT SHALL RECORD A SUPPLEMENTAL DECLARATION ANNEXING AND ADDING SUCH SECTION TO THIS DECLARATION AND MAKING IT A PART OF "THE REGIME". DECLARANT RESERVES THE RIGHT TO ANNEX ADDITIONAL SECTIONS THEREOF THAT ARE NOT NECESSARILY IN NUMERICAL ORDER SHOWN ON THE PLANS. SUCH SUPPLEMENTAL DECLARATION SHALL CONTAIN THE FOLLOWING:

(A) A DESCRIPTION OF THE REAL ESTATE TO BE ANNEXED;
(B) A DESCRIPTION OF THE DWELLING UNITS DESCRIBED IN A MANNER CONSISTENT WITH THIS DECLARATION;
(C) THE PERCENTAGE INTEREST OF ALL DWELLING UNITS UPON ANNEXATION, COMPUTED IN ACCORDANCE WITH THE FORMULA.

EACH OWNER, BY ACCEPTANCE OF A DEED TO A DWELLING UNIT, ACKNOWLEDGES, CONSENTS, AND AGREES THAT THE FOLLOWING RIGHTS AND CONDITIONS SHALL BE APPLICABLE UPON THE RECORDING OF EACH SUPPLEMENTAL DECLARATION:

(A) THE SECTION DESCRIBED IN EACH SUPPLEMENTAL DECLARATION SHALL BE GOVERNED IN ALL APPLICABLE RESPECTS BY THE PROVISIONS OF THIS DECLARATION.
(B) THE PERCENTAGE INTEREST APPLICABLE TO EACH DWELLING UNIT SHALL BE AUTOMATICALLY REALLOCATED IN ACCORDANCE WITH THE SCHEDULE SET FORTH IN SUCH SUPPLEMENTAL DECLARATION, WHICH SHALL BE BASED UPON THE FORMULA. ON RECORDING OF EACH SUPPLEMENTAL DECLARATION, THE AMOUNT BY WHICH THE PERCENTAGE INTEREST OF A DWELLING UNIT IS REDUCED THEREBY SHALL BE DEEMED TO RELEASE AND DIVEST THAT AMOUNT FROM SUCH DWELLING UNIT OWNER AND REVERT TO THE DECLARANT, ITS SUCCESSORS AND ASSIGNS.
(C) EACH DEED, MORTGAGE, OR OTHER INSTRUMENT AFFECTING A DWELLING UNIT SHALL BE DEEMED GIVEN SUBJECT TO THE LIMITATION THAT THE PERCENTAGE INTEREST APPURTEINING TO EACH DWELLING UNIT SHALL BE, UPON THE RECORDING OF EACH SUPPLEMENTAL DECLARATION, ALTERED IN ACCORDANCE WITH THE SUPPLEMENTAL DECLARATION BASED UPON THE FORMULA.

(D) THE PERCENTAGE INTEREST IN THE COMMON AREAS AND LIMITED AREAS APPURTEINING TO EACH DWELLING UNIT SHALL BE DEEMED TO INCLUDE ANY ADDITIONAL COMMON AREAS AND LIMITED AREAS ANNEXED HERETO BY A SUPPLEMENTAL DECLARATION, WHICH SUPPLEMENTAL DECLARATION SHALL GRANT AND CONVEY TO THE OWNERS THE APPROPRIATE PERCENTAGE INTEREST, AND EACH DEED, MORTGAGE, OR OTHER INSTRUMENT AFFECTING A DWELLING UNIT SHALL BE DEEMED TO INCLUDE SUCH ADDITIONAL COMMON AREAS AND LIMITED AREAS, AND THE OWNERSHIP OF ANY DWELLING UNIT AND LIEN OF ANY MORTGAGE SHALL AUTOMATICALLY INCLUDE AND ATTACH TO SUCH ADDITIONAL COMMON AREA AND LIMITED AREA UPON RECORDING OF SUCH SUPPLEMENTAL DECLARATION.

(E) THE RECORDING OF A SUPPLEMENTAL DECLARATION SHALL NOT ALTER THE AMOUNT OF THE LIEN FOR COMMON EXPENSES ASSESSED TO A DWELLING UNIT IN A SECTION ALREADY A PART OF THE REGIME PRIOR TO SUCH RECORDING. THE LIEN FOR THE PRORATA SHARE OF COMMON EXPENSES FOR THE SECTIONS ANNEXED UPON SUCH RECORDING SHALL BE ASSESSED AND PAID AS PROVIDED IN THE BY-LAWS.

(F) EACH OWNER AGREES FOR HIMSELF AND ALL THOSE CLAIMING UNDER HIM, INCLUDING MORTGAGORS, THAT THIS DECLARATION AND EACH SUPPLEMENTAL DECLARATION IS AND SHALL BE DEEMED TO BE IN ACCORDANCE WITH THE ACT, AND FOR THE PURPOSE OF THIS DECLARATION AND THE ACT, ANY CHANGES IN PERCENTAGE INTEREST AS SET FORTH IN ANY SUPPLEMENTAL DECLARATION WHICH IS IN ACCORDANCE WITH THE FORMULA EXPRESSED HEREIN, SHALL BE DEEMED TO BE MADE BY AGREEMENT OF ALL OWNERS.

(G) EACH OWNER AGREES TO EXECUTE AND DELIVER SUCH DOCUMENTS AS ARE NECESSARY OR DESIRABLE TO ACCOMPLISH THE ANNEXATION OF THE SECTIONS IN THE TRACT IN ACCORDANCE WITH THE PROVISIONS AND INTENT OF THIS PARAGRAPH 17.

(H) EACH OWNER, BY ACCEPTANCE OF A DEED TO A DWELLING UNIT, SHALL THEREBY APPOINT DECLARANT OR ITS NOMINEE AS SUCH OWNER'S ATTORNEY-IN-FACT FOR THE PURPOSE OF REALLOCATING FROM TIME TO TIME THE PERCENTAGE INTEREST APPURTEINING TO SUCH OWNER'S DWELLING UNIT IN ACCORDANCE WITH THE PROVISIONS OF THIS PARAGRAPH 16, AND, TO THE EXTENT
REQUISITED BY LAW TO CARRY OUT THE INTENT OF THIS PARAGRAPH 16, ON BEHALF OF SUCH OWNER TO CONSENT TO OR VOTE IN FAVOR OF THE AMENDMENT OF THIS DECLARATION, AS WELL AS TO DO ALL THINGS AS CONTAINED IN SUCH AGREEMENT ALLOWING DECLARANT TO ACT AS ATTORNEY-IN-FACT, WHICH AGREEMENT FOR A POWER OF ATTORNEY AND POWER OF ATTORNEY ARE INCORPORATED HEREIN BY REFERENCE. THE APPOINTMENT OF DECLARANT OR ITS NOMINEE AS SUCH ATTORNEY-IN-FACT AND THE GRANTING OF SUCH SPECIAL POWER TO DECLARANT OR ITS NOMINEE SHALL BE DEEMED TO BE COUPLED WITH AN INTEREST IN THE COMMON AREAS, AND SHALL BE IRREVOCABLE AND BINDING UPON THE HEIRS, SUCCESSORS AND ASSIGNS OF SUCH OWNER, BUT SHALL EXPIRE WHEN ALL OF THE ADDITIONAL TRACT HAS BEEN ANNEXED, DECLARANT TRANSFERS THE PROJECT OVER TO THE CO-OWNERS, OR ON JANUARY 1, 2004 OR 6 MONTHS AFTER THE LAST UNIT IS SOLD WHICHEVER FIRST OCCURS.


THE EASEMENTS GRANTED AND RESERVED IN THIS PARAGRAPH 16 SHALL BE EASEMENTS AND COVENANTS RUNNING WITH THE LAND AND ACCORDING TO THE BENEFIT OF THE ADDITIONAL SECTIONS.

16.
19. INSURANCE.

(A) THE CO-OWNERS, THROUGH THE ASSOCIATION OF CO-OWNERS, SHALL PROVIDE INSURANCE THAT SHALL:

1) PROVIDE THAT NOTWITHSTANDING ANY PROVISION THEREOF GIVING THE INSURER AN ELECTION TO RESTORE DAMAGE IN LIEU OF CASH SETTLEMENT, SUCH OPTION SHALL NOT BE EXERCISABLE IN THE EVENT THE OWNERS DO NOT ELECT TO RESTORE PURSUANT TO PARAGRAPH 20 BELOW, AND,


SUCH INSURANCE SHALL INURE TO THE BENEFIT OF EACH INDIVIDUAL OWNER, THE ASSOCIATION, THE BOARD OF MANAGERS, AND ANY MANAGING AGENT OR COMPANY ACTING ON BEHALF OF THE ASSOCIATION, AS THEIR INTERESTS MAY APPEAR. THE OWNERS, AS WELL AS THE LESSEES, IF ANY, SHALL BE ABLE TO RECOVER LOSSES INSURED WHERE APPLICABLE.

EACH OWNER SHALL HAVE THE RIGHT TO PURCHASE ADDITIONAL INSURANCE HE MAY DEEM NECESSARY, AND EACH OWNER SHALL BE SOLELY RESPONSIBLE FOR LOSS OR DAMAGE TO THE CONTENTS OF HIS OWN DWELLING UNIT, HOWEVER CAUSED, INCLUDING ALL FLOOR AND WALL COVERINGS, AND FIXTURES AND BETTERMENTS INSTALLED BY THE OWNER, AND HIS PERSONAL PROPERTY STORED ELSEWHERE ON THE PROPERTY. EACH OWNER SHALL BE SOLELY RESPONSIBLE FOR OBTAINING HIS OWN INSURANCE TO COVER ANY SUCH LOSS AND RISK INCLUDING, BUT NOT LIMITED TO, LIVING EXPENSES.

(B) THE CO-OWNERS THROUGH THE ASSOCIATION OF CO-OWNERS SHALL PURCHASE AND PAY FOR AS PART OF THE COMMON EXPENSES, A MASTER CASUALTY POLICY AFFORDING FIRE AND EXTENDED COVERAGE INSURANCE IN AN AMOUNT EQUAL TO THE FULL REPLACEMENT COSTS OF THE IMPROVEMENTS THAT IN WHOLE, OR IN PART, COMPRISE THE COMMON AREAS AND FACILITIES. THE CO-OWNERS THROUGH THE ASSOCIATION OF CO-OWNERS SHALL ALSO
PURCHASE AND PAY FOR AS PART OF THE COMMON EXPENSES A
MUSTER LIABILITY POLICY IN AN AMOUNT REQUIRED BY THE BY-
LAWS OR DECLARATION AS REVISED FROM TIME TO TIME BY A
DECISION OF THE BOARD OF MANAGERS OF THE ASSOCIATION,
WHICH POLICY SHALL COVER THE ASSOCIATION OF CO-OWNERS,
THE EXECUTIVE BODY, IF ANY, THE MANAGING AGENT, IF ANY,
ALL PERSONS ACTING OR WHO MAY COME TO ACT AS AGENTS OR
EMPLOYEES OF ANY OF THE FOREGOING WITH RESPECT TO THE
CONDONINIUM, ALL CONDOMINIUM UNIT OWNERS AND ALL OTHER
PERSONS ENTITLED TO OCCUPY ANY UNIT OR OTHER PORTIONS OF
THE CONDOMINIUM. SUCH OTHER POLICIES AS MAY BE REQUIRED
MAY BE OBTAINED AND PAID FOR AT PART OF THE COMMON
EXPENSES AND IN AMOUNTS AS DETERMINED BY THE BOARD OF
MANAGERS, THE CO-OWNERS THROUGH THE ASSOCIATION,
INCLUDING, WITHOUT LIMITATION, WORKMEN'S COMPENSATION
INSURANCE, LIABILITY INSURANCE ON MOTOR VEHICLES OWNED
BY THE ASSOCIATION, SPECIALIZED POLICIES COVERING LANDS OR
IMPROVEMENTS ON WHICH THE ASSOCIATION HAS OR SHARED
OWNERSHIP OR OTHER RIGHTS, AND OFFICERS' AND MANAGERS'
LIABILITY POLICIES.

13. WHEN ANY POLICY OF INSURANCE HAS BEEN OBTAINED BY OR ON
BEHALF OF THE ASSOCIATION OF CO-OWNERS, WRITTEN NOTICE OF
THE OBTAINMENT THEREOF AND OF ANY SUBSEQUENT CHANGES
THEREIN OR TERMINATION THEREOF SHALL BE PROMPTLY
FURNISHED TO EACH CO-OWNER OR MORTGAGEE WHOSE INTEREST
MAY BE AFFECTED THEREBY BY THE OFFICER REQUIRED TO SEND
NOTICES OF MEETINGS OF THE ASSOCIATION OF CO-OWNERS.

40. DISASTER, CASUALTY AND RESTORATION.

[4A] IN CASE OF FIRE OR ANY OTHER CASUALTY ON DISASTER,
OTHER THAN COMPLETE DESTRUCTION OF ALL BUILDINGS
CONTAINING THE CONDOMINIUM UNITS, THE IMPROVEMENTS SHALL
BE RECONSTRUCTED AND THE INSURANCE PROCEEDS APPLIED TO
RECONSTRUCT THE IMPROVEMENTS.

[4B] IN THE EVENT OF COMPLETE DESTRUCTION OF ALL OF THE
BUILDINGS CONTAINING CONDOMINIUM UNITS, THE BUILDING(S)
SHALL NOT BE RECONSTRUCTED, EXCEPT AS OTHERWISE PROVIDED,
AND THE INSURANCE PROCEEDS, IF ANY, SHALL BE DIVIDED
AMONG THE CO-OWNER(S) PROPORTIONED ACCORDING TO THE FAIR
MARKET VALUE OF ALL OTHER CONDOMINIUMS AND THE PROPERTY
CONSIDERED AS TO BE REMOVED FROM THE CONDOMINIUM
UNDER SECTION 26 OF THE ACT UNLESS BY VOTE OF TWO THIRDS
(2/3) OF ALL OF THE CO-OWNERS A DECISION IS MADE TO
REBUILD THE BUILDING, IN WHICH CASE THE INSURANCE
PROCEEDS SHALL BE APPLIED AND ANY EXCESS OF CONSTRUCTION
COSTS OVER INSURANCE PROCEEDS SHALL BE CONTRIBUTED AS
PROVIDED HEREIN IN THE EVENT OF LESS THAN TOTAL
DESTRUCTION OF THE BUILDINGS.
(C) A determination of total destruction of the buildings containing condominium units shall be determined by a vote of two thirds (2/3) of all co-owners at a special meeting of the association of co-owners called for that purpose.

(D) Where the improvements are not insured or where the insurance proceeds are not sufficient to cover the cost of repair or reconstruction and the property is not to be removed from the horizontal property regime, the co-owners shall contribute the balance of any such costs in the percentage by which a condominium unit owner owns an undivided interest in the common areas and facilities as expressed in the declaration. Such amount shall be assessed as part of the common expense and shall constitute a lien from the time of assessment as provided in section 24 of the act.

(E) If, pursuant to A, B and C above, it is not determined by the co-owners to rebuild after a casualty or disaster has occurred, then in that event:

(1) The property shall be deemed to be owned in common by the condominium unit owners.

(2) 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 and facilities.

(3) 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 property.

(4) 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 yund 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.

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22. MEMBERSHIP IN THE CO-OWNERS ASSOCIATION. THE TRACT IS SUBJECT TO THE COVENANTS AND RESTRICTIONS CONTAINED HEREIN. FOR THE PURPOSE OF THIS DECLARATION, UPON THE RECORDING OF THIS DECLARATION AND ANY SUBSEQUENT AMENDMENTS AND SUPPLEMENTAL DECLARATION, ALL THE RIGHTS AND OBLIGATIONS ACCRUING TO A DWELLING UNIT SHALL INCLUDE, BUT NOT BE LIMITED TO, THE OBLIGATION TO PAY THE MONTHLY ASSESSMENTS AS PROVIDED IN SUCH DECLARATION, WHICH MONTHLY ASSESSMENTS ARE A LIEN ON EACH DWELLING UNIT, AND THE NECESSITY AND RIGHT TO BECOME A MEMBER OF THE CO-OWNERS' ASSOCIATION, AND TO HAVE A VOTE FOR EACH DWELLING UNIT OWNED, PURSUANT TO THE FORMULA HERETOFORE SET OUT.

23. COVENANTS AND RESTRICTIONS. THE COVENANTS AND RESTRICTIONS APPLICABLE TO THE USE AND ENJOYMENT OF THE DWELLING UNITS ARE SET FORTH IN THE CODE OF BY-LAWS OF THE CO-OWNERS ASSOCIATION. THESE COVENANTS AND RESTRICTIONS ARE FOR THE MUTUAL BENEFIT AND PROTECTION OF THE PRESENT AND FUTURE OWNERS AND SHALL RUN WITH THE LAND AND INURE TO THE BENEFIT OF AND BE ENFORCEABLE BY THE OWNER, CO-OWNERS OR BY THE ASSOCIATION. PRESENT OR FUTURE OWNERS OF THE ASSOCIATION SHALL BE ENTITLED TO INJUNCTIVE RELIEF AGAINST ANY VIOLATION OF THESE PROVISIONS, BUT THERE SHALL BE NO RIGHT TO REVERSION OR FORFEITURE OF TITLE RESULTING FROM SUCH VIOLATION.

24. AMENDMENT OF DECLARATION. EXCEPT AS OTHERWISE PROVIDED IN THIS DECLARATION, AMENDMENTS TO THIS DECLARATION SHALL BE PROPOSED AND ADOPTED IN THE FOLLOWING MANNER:

(A) NOTICE. NOTICE OF THE SUBJECT MATTER OF THE PROPOSED AMENDMENT SHALL BE INCLUDED IN THE NOTICE OF ANY MEETING AT WHICH THE PROPOSED AMENDMENT IS CONSIDERED. THE AMENDMENTS TO DECLARATION DEALING WITH THE ADDITIONAL SECTIONS AND REASSIGNMENT OF PERCENTAGE INTEREST IN THE RESPECTIVE SECTIONS, HOWEVER, ARE NOT SUBJECT TO THE CONDITIONS OF THIS SECTION AND MAY BE ADOPTED BY THE BOARD OF MANAGERS WITHOUT NOTICE.

THE RESTRICTIONS AND PROHIBITIONS AGAINST AMENDMENTS ARE FURTHER QUALIFIED BY ANY RIGHT OR GRANT GIVEN TO THE DECLARANT BY VIRTUE OF THE AGREEMENT OF POWER OF ATTORNEY AND POWER OF ATTORNEY EXECUTED BY THE RESPECTIVE OWNERS IN FAVOR OF THE DECLARANT OR ITS ASSIGNS, WHICH AGREEMENT AND POWER OF ATTORNEY ARE AGAIN INCORPORATED HEREIN BY REFERENCE.
A RESOLUTION TO ADOPT A PROPOSED AMENDMENT MAY BE PROPOSED BY THE BOARD OF MANAGERS OR THE OWNERS OF AT LEAST A MAJORITY OF THE PERCENTAGE VOTE.

THE RESOLUTION CONCERNING A PROPOSED AMENDMENT MUST BE ADOPTED BY THE DESIGNATED VOTE AT A MEETING DULLY HELD IN ACCORDANCE WITH THE PROVISIONS OF THE BY-LAWS.

ANY PROPOSED AMENDMENT TO THIS DECLARATION MUST BE APPROVED BY A VOTE OF NOT LESS THAN A MAJORITY OF THE PERCENTAGE VOTE.

NO AMENDMENT TO THIS DECLARATION SHALL BE ADOPTED WHICH CHANGES:

1) THE PERCENTAGE INTEREST WITH RESPECT TO ANY DWELLING UNIT OR THE APPLICABLE SHARE OF AN OWNER’S LIABILITY FOR THE COMMON EXPENSE WITHOUT THE APPROVAL OF ALL OF THE OWNERS, EXCEPT AS OTHERWISE PROVIDED RELATING TO ANNEXATION;

2) THE PROVISIONS OF PARAGRAPH 16 OF THIS DECLARATION EXCEPT BY DECLARANT IN THE MANNER PROVIDED THEREIN;

3) THE PROVISIONS OF PARAGRAPH 18 OF THIS DECLARATION WITHOUT THE CONSENT OF THE DECLARANT.

EXECUTED BY THE PRESIDENT AND SECRETARY OF THE ASSOCIATION AND SHALL BE RECORDED IN THE OFFICE OF THE RECORDER OF HENDRICKS COUNTY, INDIANA, AND SUCH AMENDMENT SHALL NOT BECOME EFFECTIVE UNTIL SO RECORDED.

CONVEYANCE, MORTGAGE OR LEASE THEREOF. EACH OWNER AGREES TO EXECUTE AND DELIVER SUCH OTHER DOCUMENTS, IF ANY, AS MAY BE NECESSARY OR DESIRABLE TO COMPLY WITH THE ACT AS IT MAY BE AMENDED FROM TIME TO TIME. ALL PERSONS, CORPORATIONS, PARTNERSHIPS, TRUSTS, ASSOCIATIONS, OR OTHER LEGAL ENTITIES WHO MAY OCCUPY, USE, ENJOY OR CONTROL A DWELLING UNIT OR DWELLING UNITS OR ANY PART OF THE PROPERTY IN ANY MANNER SHALL BE SUBJECT TO THE DECLARATION, THE ACT, THE BY-LAWS, AND THE RULES AND REGULATIONS APPLICABLE THERETO AS EACH MAY BE AMENDED FROM TIME TO TIME.

24. RIGHTS OF MORTGAGE PURCHASER. IN THE EVENT FEDERAL HOME LOAN MORTGAGE CORP., OR OTHER PURCHASER OF A MORTGAGE OF ANY PROPERTY IN THIS REGIME SHOULD REQUEST OR REQUIRE IT, THE DECLARANT OR BOARD OF MANAGERS MAY FULLY SATISFY ANY NEEDED REQUIREMENTS TO MAKE THE REGIME AND THE MORTGAGE FNLVC ELIGIBLE AND THE RIGHT TO ACT FOR AND ON BEHALF OF SUCH CO-OWNERS WITH REGARD TO SAME IS HEREBY CONFERRED, AMONG OTHER THINGS IN THE AGREEMENT FOR POWER OF ATTORNEY AND POWER OF ATTORNEY EXECUTED HEREBY BY EACH CO-OWNER.

27. NEGLIGENCE. EACH OWNER SHALL BE LIABLE FOR THE EXPENSE OF ANY MAINTENANCE, REPAIR, OR REPLACEMENT RENDERED NECESSARY BY HIS NEGLIGENCE OR BY THAT OF ANY MEMBER OF HIS FAMILY OR HIS OR THEIR GUESTS, EMPLOYEES, AGENTS, OR LESSEES, TO THE EXTENT THAT SUCH EXPENSE IS NOT COVERED BY THE PROCEEDS OF INSURANCE CARRIED BY THE ASSOCIATION. AN OWNER SHALL PAY THE AMOUNT OF ANY INCREASE IN INSURANCE PREMIUMS OCCASIONED BY HIS USE, MISUSE, OCCUPANCY, OR ABANDONMENT OF HIS DWELLING UNIT OR ITS APPURTENANCES OR OF THE COMMON AREAS OR LIMITED AREAS.

28. RESERVATION OF RIGHTS. DECLARANT RESERVES THE RIGHT TO AMEND THIS DECLARATION WITHOUT CONSENT OF THE RESPECTIVE OWNERS UNTIL 6 MONTHS AFTER THE LAST DWELLING UNIT IS SOLD, THE PROJECT IS TURNOVER TO THE CO-OWNERS ASSOCIATION, OR JANUARY 1, 2004, WHICHEVER FIRST OCCURS. IN THE EVENT THERE IS AN ANNEXATION OR ANNEXATIONS OR AN ADDITIONAL SECTION OR SECTIONS, THE SAME RULE WILL APPLY TO AMENDMENTS AND SUPPLEMENTS TO THIS DECLARATION AS PERTAIN TO EACH INDIVIDUAL SECTION. DECLARANT ALSO RESERVES THE RIGHT TO DETERMINE THE MODE AND METHOD OF SALE OF THE DWELLING UNITS UNTIL THE LAST SUCH UNIT IN EACH RESPECTIVE SECTION IS SOLD.

29. COSTS AND ATTORNEYS' FEES. IN A PROCEEDING ARISING BECAUSE OF FAILURE OF AN OWNER TO MAKE ANY PAYMENTS REQUIRED OR TO COMPLY WITH ANY PROVISION OF THE DECLARATION, THE ACT, THE BY-LAWS, OR THE RULES AND REGULATIONS ADOPTED PURSUANT THERETO EACH MAY BE AMENDED FROM TIME TO TIME, THE ASSOCIATION SHALL BE ENTITLED TO RECOVER ITS REASONABLE ATTORNEYS' FEES INCURRED IN CONNECTION WITH SUCH DEFAULT OR FAILURE.
30. WAIVER. No owner may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the common areas or limited areas or by abandonment of his dwelling unit or does the association waive the right to place a lien on the dwelling unit and foreclose same by failing to do so when payment is not timely made of the common expenses by the owner when due.

31. SEVERABILITY CLAUSE. The invalidity of any covenant, restriction, condition, limitation, or other provision of this declaration or the by-laws filed herewith shall not impair or affect in any manner the validity, enforceability, or affect the rest of this declaration or the attached by-laws.

32. PLANS. The plans, as described in paragraph 1(s) of this declaration, are incorporated into this declaration by reference, and have been filed in the office of the recorder of Hendricks County, Indiana, in book page 1992, as amended plans as may, from time to time, be so filed pursuant to this declaration, are also incorporated into this declaration.

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

34. ADDITIONAL EASEMENT RIGHTS. Declarant further reserves unto itself an easement and the full right, title and authority to relocate, alter or otherwise change the location of any drainage, utility and sewer easement and to grant such further easements, licenses and rights-of-way, temporary or permanent, exclusive or non-exclusive, surface or otherwise, as declarant may deem necessary or appropriate, for ingress, egress, utility and similar purposes on or within the tract or any portion of the tract. Declarant further reserves the right to more specifically describe or to change the description of any such drainage, utility and sewer easement, or other easement, license or right-of-way by
WRITTEN INSTRUMENT, AMENDED PLAT OR AMENDMENT TO THE PLAT RECORDED IN THE OFFICE OF THE RECORDER OF HENDRICKS COUNTY, INDIANA AND ANY OWNER OF ANY DWELLING UNIT SHALL TAKE TITLE SUBJECT TO THE RIGHTS AND EASEMENTS RESERVED HEREIN; PROVIDED, HOWEVER, THE RIGHTS RESERVED IN THIS SECTION SHALL NOT BE EXERCISED IN A MANNER WHICH UNREASONABLY AND ADVERSELY AFFECTS ANY BUILDING OR PORTION THEREOF OR ANY DWELLING UNIT OWNER’S USE OR ENJOYMENT THEREOF ON WHICH UNREASONABLY RESTRICTS THE RIGHTS OF INGRESS AND EGRESS TO ANY DWELLING UNIT. THE RIGHTS AND EASEMENTS RESERVED BY DECLARANT IN THIS SECTION SHALL RUN WITH THE LAND AND DECLARANT’S RIGHT TO FURTHER ALTER OR GRANT EASEMENTS SHALL AUTOMATICALLY TERMINATE ONE (1) YEAR AFTER DECLARANT SHALL HAVE CONVEYED THE LAST DWELLING UNIT WITHIN THE PROPERTY OR ON JANUARY 1, 2004, WHICHEVER FIRST OCCURS.

IN WITNESS WHEREOF, THE UNDERSIGNED HAS CAUSED THIS DECLARATION TO BE EXECUTED THE DAY AND YEAR FIRST ABOVE WRITTEN.

HOLIDAY HOMES CORPORATION

BY:  

WILLIAM J. ROACH, PRESIDENT

STATE OF INDIANA )
COUNTY OF HENDRICKS )

BEFORE ME, A NOTARY PUBLIC, IN AND FOR SAID COUNTY AND STATE, PERSONALLY APPEARED WILLIAM J. ROACH, PRESIDENT OF HOLIDAY HOMES CORPORATION, WHO ACKNOWLEDGED THE EXECUTION OF THE ABOVE AND FOREGOING DECLARATION OF HORIZONTAL PROPERTY OWNERSHIP.

WITNESS MY HAND AND NOTARIAL SEAL THIS 7TH DAY OF OCT.

1996.

MY COMMISSION EXPIRES:  

March 26, 1996

NOTARY PUBLIC
PRINTED NAME: Barnet E. Roach
COUNTY OF RESIDENCE: Hendricks

THIS INSTRUMENT PREPARED BY:

CHARLES E. HOSTETTER
ATTORNEY AT LAW
515 W. GREEN ST., SUITE 200
BLOOMSBURG, INDIANA 46112
"EXHIBIT A"

LEGAL DESCRIPTION FOR HOLIDAY PARK PHASE I

A part of the Northwest quarter of Section 14, Township 16 North, Range 1 East of the Second Principal Meridian in Lincoln Township, Hendricks County, Indiana, and being more particularly described as follows, to-wit:

Commencing at a stone found marking the Northeast corner of said quarter section; thence South 89 degrees 52 minutes 37 seconds West along the North line of the Northeast quarter of the Northwest quarter of said Section a distance of 1326.23 feet measured (1326.26 feet by recorded plat) to a stone with a cast "A" fence post marking the Northwest corner of the Northeast quarter of the Northwest quarter of said Section, said corner also being the Northwest corner of Maple Brook Gardens, Second Section, as per plat thereof recorded in Plat Book 5, page 108-109 in the office of the Recorder of Hendricks County, Indiana; thence South 00 degrees 41 minutes 42 seconds West along the West line of Maple Brook Gardens Second Section and First Section 1404.00 feet to the Southwest corner of Maple Brook Gardens First Section, as per plat thereof recorded in Plat Book 5, pages 50-51 in the office of the Recorder of Hendricks County, Indiana; said corner also being the POINT OF BEGINNING; thence North 89 degrees 59 minutes 42 seconds East along the South line of said Maple Brook Gardens, First Section 195.00 feet; thence North 00 degrees 41 minutes 42 seconds West along the Southerly line of Maple Brook Gardens First Section 7.00 feet; thence North 89 degrees 59 minutes 42 seconds East along the South line of said Maple Brook Gardens, First Section 130.00 feet to the Southeast corner of said Maple Brook Gardens, First Section; thence North 00 degrees 41 minutes 42 seconds East 140.00 feet to the Southwest corner of Lot 13 in said Maple Brook Gardens, First Section; thence North 15 degrees 34 minutes 42 seconds East along the Easterly line of said Lot 13 a distance of 76.43 feet to the Southwest corner of Maple Brook Gardens Third Section, as per plat thereof recorded in Plat Book 7, page 46 in the office of the Recorder of Hendricks County, Indiana; thence South 65 degrees 11 minutes 19 seconds East along the South line of said Maple Brook Gardens, Third Section 400.28 feet to the Southeast Corner of said Third Section, also the approximate center line of the Nash-Truckness Legal Drain; thence South 06 degrees 30 minutes 21 seconds West along said approximate center line 173.52 feet; thence South 00 degrees 41 minutes 25 seconds West along said approximate center line 322.01 feet; thence South 13 degrees 42 minutes 46 seconds West along said approximate center line 195.52 feet; thence South 27 degrees 46 minutes 22 seconds West along said approximate center line 40.69 feet; thence South 39 degrees 38 minutes 24 seconds West along said approximate center line 139.10 feet; thence South 37 degrees 44 minutes 16 seconds West along said approximate center line 508.73 feet to the South line of the Southeast quarter of the Northwest quarter; thence South 89 degrees 53 minutes 19 seconds West 237.56 feet to the Northwest corner of the Southeast quarter of the Northwest quarter of said Section 14, said corner also being on the East line of Chadwick Square, Section One, as per plat thereof recorded in Plat Book 7, page 98 in the office of the Recorder of Hendricks County, Indiana; thence North 00 degrees 41 minutes 42 seconds East along the East line of said Chadwick Square, Section One and its extension thereof 1177.67 feet to the Point of Beginning. Containing 16,807 acres, more or less, and subject to all legal highways, rights-of-way and easements of record.
A part of the Northwest quarter of Section 14, Township 9 North, Range 2 East, of the Second Principal Meridian in Lincoln Township, Hendricks County, Indiana, and being more particularly described in follows:

Commencing at a stone found marking the Northwest corner of said quarter section; thence South 89 degrees 35 minutes 37 seconds West along the north line of the Northwest quarter of the Northwest quarter of said Section 14 a distance of 1265.23 feet measured 1265.24 feet by recorded plan; in a stone with a cut "A"; thence North 2 degrees 31 minutes 16 seconds East along the north line of the Northwest quarter of said Section 925.16 feet to the point of beginning recorded in plat Book 9, pages 108-109 in the office of the Recorder of Hendricks County, Indiana; thence South 86 degrees 45 minutes 43 seconds West along the west line of Maple Brook from said point and first point 925.16 feet to the point of beginning of said Recorde in plat Book 9, pages 96-97 in the office of the Recorder of Hendricks County, Indiana; thence due North 45 degrees 41 minutes 43 seconds West along the East line of the subdivision to the west line of Chadwick Roads Subdivision 551.79 to REFERENCE POINT "A"; thence South 89 degrees 18 minutes 18 seconds East 139.10 feet to all to the POINT OF BEGINNING; thence North 2 degrees 31 minutes 16 seconds East along the north line of the Northwest quarter of said Section 925.16 feet to the point of beginning recorded in plat Book 9, pages 108-109 in the office of the Recorder of Hendricks County, Indiana; thence South 86 degrees 45 minutes 43 seconds West along the west line of Maple Brook from said point and first point 925.16 feet to the point of beginning of said Record in plat Book 9, pages 96-97 in the office of the Recorder of Hendricks County, Indiana; thence due North 45 degrees 41 minutes 43 seconds West along the East line of the subdivision to the point of Tangency of said curve. Said point of tangency being North 89 degrees 18 minutes 18 seconds West 230.18 feet from the radius point of said curve; thence North 2 degrees 31 minutes 16 seconds East 139.10 feet to the Point of Beginning. Containing 0.186 acres, more or less, and subject to all legal highways, rights-of-way and easements of record.

ALSO: Commencing at the abovementioned REFERENCE POINT "A"; thence South 05 degrees 41 minutes 43 seconds East 145.69 feet to the POINT OF BEGINNING; thence South 05 degrees 41 minutes 43 seconds East 83.00 feet; thence South 05 degrees 41 minutes 43 seconds East 72.71 feet; thence South 39 degrees 07 minutes 18 seconds West 33.94 feet to the point of curvature of a curve to the right having a radius of 39.30 feet; thence South 39 degrees 07 minutes 18 seconds West 135.50 feet to the point of curvature of a curve to the right having a radius of 39.30 feet; thence North 2 degrees 31 minutes 16 seconds East 19.10 feet from the radius point of said curve; thence Northwesterly, Northerly, Northwesterly and Northerly along the arc of said curve 99.47 feet to the Point of Tangency of said curve, said point of tangency being North 89 degrees 18 minutes 18 seconds West 230.18 feet from the radius point of said curve; thence South 05 degrees 43 minutes 43 seconds West 69.97 feet to the Point of Beginning. Containing 0.214 acres, more or less, and subject to all legal highways, rights-of-way and easements of record.

ALSO: Commencing at the abovementioned REFERENCE POINT "A"; thence South 05 degrees 41 minutes 43 seconds East along the line of the abovementioned Chadwick Roads Subdivision 495.36 feet to the Southwest corner of the Northwest Quarter of said Section 14, said corner also being on the East line of Chadwick Roads Section One, as said point thereof recorded in plat Book 4, pages 108-109 in the office of the Recorder of Hendricks County, Indiana; thence North 05 degrees 41 minutes 43 seconds West 139.10 feet to the point of beginning recorded in plat Book 9, pages 108-109 in the office of the Recorder of Hendricks County, Indiana; thence West 89 degrees 18 minutes 18 seconds West 139.10 feet to the point of tangency of said curve to the right having a radius of 39.30 feet; thence West 89 degrees 18 minutes 18 seconds West 139.10 feet from the point of tangency, thence West 89 degrees 18 minutes 18 seconds West 139.10 feet to the Point of Beginning. Containing 0.315 acres, more or less, and subject to all legal highways, rights-of-way and easements of record.

ALSO: Commencing at the abovementioned REFERENCE POINT "A"; thence North 37 degrees 44 minutes 16 seconds East along the approximate centerline of the Nash-Trueblood Road Drain 135.07 feet to the POINT OF BEGINNING; thence North 50 degrees 59 minutes 42 seconds East 139.10 feet, thence North 05 degrees 41 minutes 43 seconds West 49.97 feet to the approximate centerline of said Nash-Trueblood Road Drain; thence South 05 degrees 41 minutes 43 seconds West 139.10 feet, thence South 05 degrees 41 minutes 43 seconds West 139.10 feet to the Point of Beginning. Containing 0.315 acres, more or less, and subject to all legal highways, rights-of-way and easements of record.

ALSO: Commencing at the abovementioned REFERENCE POINT "C"; thence North 27 degrees 18 minutes 41 seconds East along the approximate centerline of the Lebanon-Merrillville Road Drain 135.07 feet to the POINT OF BEGINNING; thence North 50 degrees 59 minutes 42 seconds East 139.10 feet, thence North 05 degrees 41 minutes 43 seconds West 49.97 feet to the approximate centerline of said Lebanon-Merrillville Road Drain; thence South 27 degrees 18 minutes 41 seconds West 139.10 feet to the Point of Beginning. Containing 0.315 acres, more or less, and subject to all legal highways, rights-of-way and easements of record.
ALSO: Commencing at the aforesaid reference point "P"; thence North 27 degrees 48 minutes 25 seconds East along the approximate centerline of said Main-Footpath Lien Drain 409.88 feet; thence North 4 degrees 1 minute 56 seconds East 156.66 feet along said centerline of said Main-Footpath Lien Drain; thence West 104 degrees 1 minute 33 seconds 129.66 feet; thence South 88 degrees 58 minutes 54 seconds East 148.88 feet to the aforesaid centerline of the said Main-Footpath Lien Drain; thence North 4 degrees 1 minute 56 seconds 390.00 feet to the aforesaid reference point "P"; the premises described herein being subject to all legal highways, rights-of-way and assessments of record.