

9703d

9343099

DECLARATION OF HORIZONTAL
PROPERTY OWNERSHIP
FOR
LENOX TRACE
HORIZONTAL PROPERTY REGIME

This Instrument Recorded 9-7-93
Sharon K. Cherry, Recorder, Hamilton County, IN

RECORDED
INDEXED
93 SEP -7 PM 3:52
SHERIFF'S OFFICE
RECORDER
HAMILTON CO. IN

DECLARATION OF HORIZONTAL
PROPERTY OWNERSHIP
FOR
LENOX TRACE
HORIZONTAL PROPERTY REGIME

TABLE OF CONTENTS

	<u>PAGE</u>
1. Definitions	1
2. Declaration	4
3. Description of Buildings	4
4. Legal Description and Percentage Interest	4
5. Description of Condominium Units	5
6. Common Area and Facilities	5
7. Limited Areas and Facilities	6
8. Ownership of Common Areas and Percentage Interest	7
9. Encroachments and Easements for Common Areas	7
10. Real Estate Taxes	7
11. Utilities	8
12. Association of Owners	8
13. Maintenance, Repairs and Replacement	9
14. Alterations, Additions and Improvements	9
15. Insurance	10

	PAGE
16. Casualty and Restoration	12
17. Covenants and Restrictions	16
18. Amendment of Declaration	17
19. Acceptance and Ratification	19
20. Negligence	20
21. Expandable Condominium and Declarant's Reserved Rights	20
22. Granting of Easements	23
23. Reservation of Rights to the Use of the Common Areas	24
24. Easement for Utilities and Public and Quasi Public Vehicles	24
25. Initial Management	25
26. Costs and Attorneys' Fees	25
27. Waiver	25
28. Severability Clause	26
29. Enforcement	26
30. Pronouns	26
31. Floor Plans	26
Exhibit A - Real Estate	
Exhibit B - Initial Tract	
Exhibit C - Percentage Interest	
Exhibit D - Expansion Real Estate	

9343099

7

**DECLARATION OF HORIZONTAL
PROPERTY OWNERSHIP**

Lenox Trace
Horizontal Property Regime

This Declaration, made this 7th day of September,
1993, by HILLS BUILDING AND CONSTRUCTION SERVICES NO. 5, INC.,
an Indiana corporation (the "Declarant"),

WITNESSETH:

WHEREAS, the following facts are true:

A. Declarant is the sole owner of the fee simple title to certain real estate, located in Hamilton County, Indiana, more particularly described in Exhibit A attached hereto and made a part hereof (hereinafter referred to as the "Real Estate").

B. Declarant is the sole owner of the fee simple title to that portion of the Real Estate more particularly described in Exhibit "B" attached hereto and made a part hereof (hereinafter referred to as the "Tract" or "Phase I").

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

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

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

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

(b) "Applicable Date" means the date determined pursuant to Section 3.02 of the By-Laws.

(c) "Articles" or "Articles of Incorporation" means the Articles of Incorporation of the Corporation, as hereinafter defined. The Articles of Incorporation are incorporated herein by reference.

9343099

(d) "Board of Directors" or "Board" means the governing body of the Corporation being the initial Board of Directors referred to in the By-Laws or any subsequent Board of Directors elected by the Members in accordance with the By-Laws of the Corporation.

(e) "Building" means any structure on the Tract in which one or more Condominium Units are located. The Buildings are more particularly described and identified on the Plans and in paragraph 3 of this Declaration. "Building" also includes any additional structure containing one or more Condominium Units which may be submitted and subjected to the Act and this Declaration by a Supplemental Declaration as herein provided, and will be identified in the Supplemental Declaration and on plans that will be filed therewith.

(f) "By-Laws" means the Code of By-Laws of the Corporation providing for the administration and management of the Property and restrictions on its use, as required by and in conformity with the Act. A true copy of the By-Laws is attached to this Declaration and incorporated herein by reference.

(g) "Common Areas" means the common areas and facilities appurtenant to the Property as defined in paragraph 6 of this Declaration.

(h) "Common Expense" means expenses for administration of the Corporation, and expenses for the upkeep, maintenance, repair and replacement of the Common Area and the Limited Areas (to the extent provided herein), and all sums lawfully assessed against the Members of the Corporation.

(i) "Condominium Unit" means each one of the living units constituting Lenox Trace, each individual living unit being more particularly described and identified on the Plans and in paragraphs 4 and 5 of this Declaration, and each additional living unit which may be submitted and subjected to the Act and this Declaration by Supplemental Declarations as herein provided. "Condominium Unit" includes the undivided interest in the Common Areas and Limited Areas appertaining to such unit.

(j) "Co-owners" means the owners of all the Condominium Units.

9343099

7

(k) "Corporation" means Lenox Trace Homeowners Association, Inc., its successors and assigns, a not-for-profit corporation, whose Members shall be the Owners of Condominium Units, such Corporation being more particularly described in Paragraph 12 of this Declaration.

(l) "Declarant" means and refers to Hills Building and Construction Services No. 5, Inc., an Indiana corporation, and any successors and assigns of it 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 Tract pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.

(m) "Expansion Real Estate" means the real estate described in Exhibit D which is not currently owned by Declarant, but which may be acquired by Declarant and made a part of Lenox Trace as provided in Paragraph 21 of this Declaration.

(n) "Limited Areas" means the limited common areas and facilities as defined in paragraph 7 of this Declaration or those parts of the Common Areas limited to the use of certain Condominium Units.

(o) "Member" means a member of the Corporation.

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

(q) "Lenox Trace" means the name by which the Tract, which is the subject of this Declaration and which the Corporation manages, and the Horizontal Property Regime shall be known.

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

(s) "Percentage Interest" means the percentage of undivided interest in the fee simple title to the Common Areas and Limited Areas appertaining to each Condominium Unit as specifically expressed in paragraphs 4 and 8 of this Declaration.

9343099

(t) "Percentage Vote" means that percentage of the total vote accruing to all the Condominium Units which is appurtenant to each particular Condominium Unit and accrues to the Owner thereof. The Percentage Vote to which each Owner shall be entitled on any matter upon which the Owners are entitled to vote shall be the same percentage as the Percentage Interest appurtenant to such Owner's Condominium Unit.

(u) "Property" means the Tract and appurtenant easements, the Condominium Units, the Buildings, garages improvements and property of every kind and nature whatsoever, real, personal and mixed, located upon the Tract and used in connection with the operation, use and enjoyment of Lenox Trace, but does not include the personal property of Owners.

(v) "Plans" means the floor and building plans and elevations of the Buildings and Condominium Units prepared by Weihe Engineers, Inc., certified by Allen H. Weihe, a registered engineer, under date of Sept. 1, 1993, and a site plan of the Tract and Buildings prepared by Weihe Engineers, Inc., certified by Allen H. Weihe, a registered professional engineer and surveyor, under date of Sept. 1, 1993, all of which are incorporated herein by reference.

(w) "Phase I" means the real estate described in paragraph B of the recitals above.

(x) "Tract" means the real estate described in paragraph B of the recitals above and such other portions of the Real Estate or Expansion Real Estate which have, as of any given time, been subjected to the Act and this Declaration either by this Declaration or a supplemental declaration as herein provided.

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

3. Description of Buildings. There is one (1) Building two (2) stories in height containing sixteen (16) Condominium Units on the Tract as of the date hereof, as shown on the Plans. The Building is identified and referred to in the Plans and in the Declaration as Building 1.

4. Legal Description and Percentage Interest. Each Condominium Unit is identified on the plans by a Building number and Unit number. The legal description for each

9343099

Condominium Unit shall consist of the Building number and Unit number as shown on the Plans, and shall be stated as "Building _____, Unit _____ in Lenox Trace Horizontal Property Regime". The Percentage Interest of each Owner in the Common Areas and Limited Areas as hereinafter defined shall be that percentage interest included with each Condominium Unit as set forth on Exhibit "C" attached hereto and made a part hereof.

5. Description of Condominium Units.

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

(b) Boundaries. The boundaries of each Condominium Unit shall be as shown on the Plans without regard to the existing construction measured between the interior unfinished surface of the floors, roofs 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 roof 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

9343099

Condominium Unit, but within the appropriate wall, floor or roof surfaces of the Condominium Unit.

6. Common Area and Facilities. "Common Areas" means (1) the Tract, (2) the foundations, columns, girders, beams, supports and exterior surfaces of roofs of the Buildings, (3) the yards, gardens, sidewalks and parking areas, except to the extent the same are otherwise classified and defined herein as part of the Condominium Unit or Limited Areas, (4) central electricity, gas, water, air conditioning and sanitary sewer serving the Buildings (including those located in the interior of the Building), if any, (5) exterior lighting fixtures and electrical service lighting the exterior of the Buildings unless separately metered to a particular Condominium Unit, (6) pipes, ducts, electrical wiring and conduits and public utilities lines which serve more than one Condominium Unit, (7) all streets that are not dedicated, (8) floors, roofs and exterior perimeter walls of the Buildings, except to the extent the same are otherwise classified and defined herein as part of the Condominium Unit or Limited Areas, (9) recreation facilities, if any, and (10) all facilities and appurtenances located outside of the boundary lines of the Condominium Units, except those areas and facilities expressly classified and defined herein as Limited Areas or as part of the Condominium Unit.

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

(a) The halls, corridors, lobbies, stairs, stairways, entrances and exits of each Building, if any, (except those located within the interior of Condominium Units) shall be limited to the use of the Condominium Units of such Building served by such halls, corridors, lobbies, stairs, stairways, entrances, and exits.

(b) Balconies, patios, porches, storage areas and sidewalks serving a particular Condominium Unit shall be limited to the exclusive use of the Condominium Unit to which they are attached or appertain.

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

(d) Parking spaces or garages or storage areas on the Plans as designated on the deed from Declarant to an Owner shall be limited for the use of the Owner of the Condominium

9343099

Unit being conveyed and thereafter such right to use the applicable parking space, garages or storage area shall pass with title to such Condominium Unit even though not expressly mentioned in the document passing title. Although the Percentage Interest of any Owner having a garage(s) or storage area will not change as a result of such Owner having a garage(s) or storage area, such Owner shall have an additional amount added to his Regular Assessment (as defined in the By-Laws) to account for the cost of maintaining the garages. The Board of Directors shall determine the Additional Assessment which shall be the same for all garage owners. In addition, the Owner of a garage(s) shall be responsible for the maintenance of the garage door(s).

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

8. Ownership of Common Areas and Percentage Interest. Each Owner shall have an undivided interest in the Common Areas and Limited Areas, as tenants in common with all other Owners, equal to his Condominium Unit's Percentage Interest. The Percentage Interest in the Common Areas and Limited Areas appertaining to each Condominium Unit is set forth in Paragraph 4 of this Declaration. The Percentage Interest of each Condominium Unit shall be a percentage equal to the numbered square feet per Condominium Unit divided by the total number of square feet for all Condominium Units which, from time to time, have been submitted and subjected to the Act and this Declaration as herein provided and which constitute a part of Lenox Trace. Except as otherwise provided or permitted herein, the Percentage Interest appertaining to each separate Condominium Unit in the Common Areas and Limited Areas shall be of a permanent nature and shall not be altered without the unanimous consent of all the Owners and Mortgagees and then only if in compliance with all requirements of the Act.

The Percentage Interest appertaining to each Condominium Unit shall also be the Percentage Vote allocable to the Owner thereof in all matters with respect to Lenox Trace, and the Corporation upon which the Co-owners are entitled to vote.

9. Encroachments and Easements for Common Areas. 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 Corporation for the maintenance, use and enjoyment of such Common Area or Limited Area.

9343099

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.

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

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

12. Association of Owners. Subject to the rights of Declarant reserved in paragraph 25 hereof and obligations of the Owners, the maintenance, repair, upkeep, replacement, administration, management and operation of the Property shall be by the Corporation. Each Owner of a Condominium Unit shall, automatically upon becoming an owner of a Condominium Unit, be and become a member of the Corporation 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 Corporation shall elect a Board of Directors annually (except for an Initial Board of Directors defined in the By-Laws) in accordance with and as prescribed by the By-Laws. Each Owner shall be entitled to cast his Percentage Vote for the election of the Board of Directors, except for such Initial Board of Directors who shall serve for the period provided in the By-Laws. Each person serving on the Initial Board of Directors, 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 Corporation and an Owner solely for the purpose of qualifying to act as a member of the Board of Directors and for no other purpose. No such person serving on the Initial Board of Directors shall be deemed or considered a member of the Corporation 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 Corporation).

9343099

The Board of Directors shall be the governing body of the Corporation, 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. Subject to the provisions of paragraph 25 of the Declaration and Section 3.07(a) of the By-Laws, the Board of Directors shall at all times provide for professional management of the Lenox Trace unless all Mortgagees give their prior written approval for self-management.

13. Maintenance, Repairs and Replacements. Each Owner shall, at his expense, be responsible for the maintenance, repairs, decoration and replacement within his own Condominium Unit and to the extent provided in this Declaration or the By-Laws for the Limited Areas reserved for his use. Each Owner shall repair any defect occurring in his Condominium Unit which, if not repaired, might adversely affect any Condominium Unit, Common Area or Limited Area. Maintenance, repairs, replacements and upkeep of the Common Areas and Limited Areas shall be furnished by the Corporation as part of the Common Expenses, except as otherwise provided herein or in the By-Laws.

The Board of Directors 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 Directors or their designated agent shall have the right at reasonable times and upon reasonable prior notice (except in cases of emergency in which case no notice shall be required), to enter into each individual Condominium Unit for the purpose of inspection of the Common Areas and Limited Areas appurtenant thereto and replacement, repair and maintenance of such Common Areas and Limited Areas.

14. Alterations, Additions and Improvements. No Owner shall make any alterations or additions to or which would affect the Common Areas or Limited Areas without the prior written approval of the Board of Directors, 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 nor shall any Owner change the color of any of the Common Areas or Limited Areas without the prior written approval of the Board of Directors. Declarant reserves the right to change the interior design and arrangement of all Condominium Units and alter the boundaries between Condominium Units so long as Declarant owns the

9343099

Condominium Units so altered. No such change shall increase the number of Condominium Units. Declarant also reserves the right to construct and add to and make a part of Lenox Trace additional garages. If Declarant shall make any changes in the Condominium Units so authorized or any changes in the Common Areas or Limited Areas by adding garages, such changes shall be reflected by a supplement to the Plans executed by the Declarant and recorded in the Office of the Recorder of Hamilton County, Indiana. Such supplement to the Plans need not be approved by the Corporation or any other Owners.

15. Insurance. The Co-owners, through the Corporation, shall purchase a master casualty insurance policy affording fire and extended coverage insurance insuring the Property in an amount equal to the full replacement value of the improvements which, in whole or in part, comprise the Common Areas and Limited Areas. If the Board of Directors can obtain such coverage for reasonable amounts they shall also obtain "all risk" coverage. The Board of Directors 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 Directors, the Board of Directors 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:

All proceeds payable as a result of casualty losses sustained, which are covered by insurance purchased by the Corporation as hereinabove set forth, shall be paid to it or to the Board of Directors, who shall act as the insurance trustees and hold such proceeds for the benefit of the individual Owners and Mortgagees. The proceeds shall be used or disbursed by the Corporation or Board of Directors, as appropriate, only in accordance with the provisions of this Declaration and any surety bond or bonds obtained by the Board of Directors concerning the officers of the Corporation, as provided in the By-Laws, shall specifically include protection for any insurance proceeds so received.

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.

4343099

No Owner or any other party shall have priority over any rights of a Mortgagee pursuant to its mortgage in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of Condominium Unit and/or Common Areas.

Such master casualty insurance policy, and "all risk" coverage if obtained, shall (to the extent the same are obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Corporation, the Board of Directors, its agents and employees, Owners, their respective agents and guests, and (b) waives any defense based on the invalidity arising from the acts of the insured, and (c) contains an endorsement that such policy shall not be terminated for nonpayment of premiums without at least ten (10) days prior written notice to Mortgagees and providing further, if the Board of Directors is able to obtain such insurance upon reasonable terms, (i) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners as hereinafter permitted, and (ii) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash settlement, such option shall not be exercisable in the event the Owners do not elect to restore pursuant to paragraph 16 of this Declaration.

The Co-owners, through the Corporation, shall also purchase a master comprehensive public liability insurance policy in such amount or amounts as the Board of Directors shall deem appropriate from time to time. Such comprehensive public liability insurance policy shall cover the Corporation, the Board of Directors, any committee or organ of the Corporation or Board of Directors, any managing agent appointed or employed by the Corporation, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to Lenox Trace, all Owners of Condominium Units and all other persons entitled to occupy any Condominium Unit or other portions of Lenox Trace.

The Co-owners, through the Corporation, 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 Directors shall from time to time deem necessary, advisable or appropriate. 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 Corporation, the Board of Directors and any managing agent acting on behalf of the Corporation.

9343099

The premiums for all such insurance hereinabove described shall be paid by the Corporation as part of the Common Expenses. When any such policy of insurance hereinabove described has been obtained by or on behalf of the Corporation, 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 Corporation who is required to send notices of meetings of the Corporation.

In no event shall any distribution of proceeds be made by the Board of Directors directly to an Owner where there is a mortgagee endorsement on the certificate of insurance. In such event any remittances shall be to the Owner and his Mortgagee jointly.

Each Owner shall be solely responsible for loss or damage to the contents of his Condominium Unit however caused (including, but not limited to, all floor, ceiling and wall coverings and fixtures, light fixtures, appliances and betterments and improvements installed by him) and his personal property stored elsewhere on the Property, and the Corporation shall have no liability to the Owner for loss or damage to the contents of any Condominium Unit. Each Owner shall be solely responsible for obtaining his own insurance to cover any such loss and risk. Each Owner shall have the right to purchase such additional insurance at his own expense as he may deem necessary, including but not limited to: (1) personal liability insurance provided all such insurance shall contain the same provisions for waiver of subrogation as referred to in the foregoing provisions for the master casualty insurance policy to be obtained by the Corporation, and (2) casualty insurance upon his Condominium Unit but such insurance shall provide that it shall be without contribution as against the casualty insurance purchased by the Corporation. 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 Corporation 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 Corporation to be distributed as herein provided.

16. Casualty and Restoration.

(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 Corporation and the proceeds of insurance, if any, shall be

7

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 Corporation called for the purpose of making such determination, that total destruction of all of the Buildings has occurred. A special meeting of the Corporation shall be called and held within thirty (30) days after any fire or any other casualty or disaster damaging or destroying any of the Buildings for the purpose of making the determination of whether or not there has been a complete destruction of all of the Buildings. If such a special meeting is not called and held within such thirty (30) 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 thirty (30) 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 Corporation shall proceed with repair and reconstruction as herein provided.

In the event of substantial damage to or destruction of any Condominium Unit or any part of the Common Areas, the affected Mortgagee or Mortgagees shall be given timely written notice of such damage or destruction.

(b) If the insurance proceeds, if any, received by the Corporation 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 damage to such Condominium Unit bears to the total damage of all Condominium Units. Any such amounts payable by the Co-owners shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided herein and in the Act.

(c) For purposes of subparagraph (a) and (b) above, repair and 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.

9343099

(d) If, under subparagraph (a) above, it is determined by the Co-owners at the special meeting of the Corporation referred to therein that there has been a complete destruction of all 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 Corporation shall be applied and any excess of construction costs over insurance proceeds, if any, shall be contributed and paid as hereinabove provided in subparagraphs (a) and (b).

(e) If, in any 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 Owners;

(ii) the undivided interest in the Property owned in common which shall appertain to each 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 Owner in the Property; and

(iv) The Property shall be subject to an action for partition at the suit of any 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 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 Owners, to the extent sufficient for

9343099

the purpose, all liens on the undivided interest in the Property owned by each Owner.

(f) Immediately after a fire or other casualty or disaster causing damage to any property for which the Board of Directors or Corporation has the responsibility of maintenance and repair, the Board of Directors 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 Directors desire.

(g) The proceeds of insurance collected on account of any such casualty, and the sums received by the Board of Directors from collections of assessments against Owners on account of such casualty, shall constitute a construction fund which shall be disbursed, if the Building or Buildings are 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 Twenty Thousand Dollars (\$20,000.00), then the construction fund shall be disbursed in payment of such costs upon order of the Board of Directors; provided, however, that upon request of a Mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such fund shall be disbursed in the manner hereinafter provided in the following paragraph (ii).

(ii) If the estimated cost of reconstruction and repair of the Building or other improvement is more than Twenty Thousand Dollars (\$20,000.00), 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 Directors 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 materials furnished; (2) that there is no other outstanding indebtedness known to the said architect for the services and materials described; and (3) that the costs as estimated by said architect for the work remaining to be done subsequent to the date of such certificate, does not exceed the amount of the construction fund remaining after payment of the sum so requested.

(iii) 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 Buildings were originally constructed. Such encroachments shall be allowed to continue in existence for so long as the Buildings stand.

(iv) 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 Directors as a reserve or may be used in the maintenance and operation of the Common Areas, or, in the discretion of the Board of Directors 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 Directors in proceeding to repair or reconstruct damage shall not constitute a waiver of any rights against another Owner for committing willful or malicious damage.

(h) If any Condominium Unit or portion thereof or any of the Common Areas is made the subject of a condemnation or eminent domain proceeding or is otherwise sought to be acquired by a condemning authority, then the affected Mortgagee or Mortgagees shall be given timely written notice of such proceeding or proposed acquisition.

17. Covenants and Restrictions. The covenants and restrictions applicable to the use and enjoyment of the Condominium Units and the Common Areas and Limited Areas are set forth in the By-Laws, including the limitation that each of the Condominium Units shall be limited to residential use. These covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner, or by the Corporation. Present or future Owners or the Corporation 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 date described in Paragraph 21 hereof as the

date upon which Declarant's right to expand the Property and Lenox Trace terminates, the right to use and maintain any Condominium Units owned by Declarant, such other portions of the Property (including any Clubhouse but not including individual Condominium Units owned by persons other than Declarant) and any portions of the Real Estate not then part of the Property, all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem advisable or necessary in its sole discretion to aid in the construction and sale of Condominium Units, or to promote or effect sales of Condominium Units or for the conducting of any business or activity attendant thereto, including, but not limited to model Condominium Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. 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 of such facilities so used or maintained by Declarant be or become part of the Common Areas, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Property at any time.

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

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

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

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

(d) Adoption. Any proposed amendment to this Declaration must be approved by a vote of not less than seventy-five percent (75%) in the aggregate of the Percentage Vote. In the event any Condominium Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed amendment in the same manner as an Owner if the Mortgagee has given prior notice of its mortgage interest to the Board of Directors in accordance with the provisions of the By-Laws.

9343099

(e) Special Amendments. No amendment to this Declaration shall be adopted which changes (1) the Percentage Interest with respect to any Condominium Unit or the applicable share of an Owner's liability for the Common Expenses, without the approval of one hundred percent (100%) of the Co-owners and all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of the By-Laws except for changes pursuant to paragraph 21 herein, or (2) the provisions of paragraph 16 of this Declaration with respect to reconstruction or repair in the event of fire or any other casualty or disaster, without the unanimous approval of all Mortgagees whose mortgage interests have been made known to the Board of Directors in accordance with the provisions of the By-Laws or (3) the provisions of paragraph 12 regarding the obligation of the Board of Directors to provide professional management for Lenox Trace or (4) the provisions of paragraph 15 providing for no priority of an Owner or other person over a Mortgagee as to insurance or condemnation proceeds.

(f) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Corporation shall include an affidavit stating that Owners representing seventy-five percent (75%) of the aggregate of Percentage Vote or such other amount as required by this Declaration have approved the amendment and shall be recorded in the Office of the Recorder of Hamilton County, Indiana, and such amendment shall not become effective until so recorded.

(g) 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 Corporation, the Board of Directors, any Mortgagees or any other person at any time prior to the Applicable Date to amend or supplement this Declaration 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, or (ii) such amendment or supplement is made to implement expansion of the Property and Lenox Trace pursuant to Declarant's reserved rights to expand the same as set forth in paragraph 21 hereof, or (iii) such amendment is necessary 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 & Urban Development, the Federal Housing Administration, the Veteran's 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 or (iv) such amendment is necessary to correct clerical or typographical errors or to clarify Declarant's original intent

or (v) such amendment is necessary to implement any changes in Lenox Trace permitted to be made by Declarant under this Declaration.

(h) Special Requirements. Notwithstanding anything to the contrary contained herein, unless specifically controlled by a more restrictive provision under Indiana law or contained herein, the Corporation shall not without the prior written consent of at least two-thirds (2/3) of the first mortgagees (based upon one vote for each mortgage owned) of the Condominium Units or of the Owners (other than Declarant), be entitled to:

- (a) by act or omission, seek to abandon or terminate the Horizontal Property Regime;
- (b) change the pro rata interest or obligations of any individual Condominium Unit for the purpose of: (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each Condominium Unit in the Common Areas;
- (c) partition or subdivide any Condominium Unit;
- (d) by act or omission, seek to abandon, partition, subdivide, encumber, sell or transfer the Common Areas (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Areas shall not be deemed a transfer within the meaning of this clause);
- (e) use hazard insurance proceeds for losses to any part of the Property (whether to Condominium Units or to Common Areas) for other than the repair, replacement or reconstruction of such Property, except as provided in paragraph 16 of this Declaration in case of substantial damage to the Condominium Units.

19. 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

9343099

of this Declaration, the Act, the By-Laws appended thereto, and the rules and regulations as adopted by the Board of Directors 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 such Owner, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any person having at anytime 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.

20. **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 (including, but not limited to, any damage caused by any pet or any automobiles), to the extent that such expense is not covered by the proceeds of insurance carried by the Corporation. An Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his Condominium Unit or its appurtenances or of the Common Areas or Limited Areas.

21. **Expandable Condominium and Declarant's Reserved Rights.** Lenox Trace is and shall be an "expandable condominium," as defined in the Act, and Declarant expressly reserves the right and option to expand the Property and Lenox Trace in accordance with the provisions of the Act and the following provisions:

(a) The real estate described and defined herein as the Tract (in paragraph B of the introductory recitals of this Declaration) is the real estate being subjected to the Lenox Trace Horizontal Property Regime by this Declaration and constitutes the first phase of the general plan of development of the Real Estate. The balance of the Real Estate and the Expansion Real Estate is the area into which expansion of Lenox Trace may be made by Declarant. The maximum number of Condominium Units which may be developed on the Real Estate and the Expansion Real Estate, including Condominium Units on the

9343099

Tract as defined in this original Declaration, shall be 160. Subject to said limit as to the maximum number of Condominium Units to be developed on the Real Estate and the Expansion Real Estate, Lenox Trace may be expanded by Declarant to include additional portions of the Real Estate in one (1) or more additional phases by the execution and recording of one (1) or more amendments or supplements to this Declaration; provided, however, that no single exercise of such right and option of expansion as to any part or parts of the Real Estate and Expansion Real Estate shall preclude Declarant from thereafter from time to time further expanding Lenox Trace to include other portions of the Real Estate and Expansion Real Estate, and such right and option of expansion may be exercised by Declarant from time to time as to all or any portions of the Real Estate and Expansion Real Estate so long as such expansion is done on or before January 1, 2000. Such expansion is entirely at the discretion of Declarant and nothing contained in this original Declaration or otherwise shall require Declarant to expand Lenox Trace beyond the Tract (as defined and described in paragraph B of the introductory recitals of this Declaration) or any other portions of the Real Estate and Expansion Real Estate which Declarant may voluntarily and in its sole discretion from time to time subject to this Declaration by amendments or supplements to this Declaration as provided above.

(b) The Percentage Interest which will appertain to each Condominium Unit in Lenox Trace as Lenox Trace may be expanded from time to time by Declarant in accordance with the terms hereof (including the Percentage Interest which appertains to each of the Condominium Units included in this original Declaration) shall be a percentage equal to the square footage of such Condominium Unit divided by the total square footage of all Condominium Units which, from time to time, have been subjected and submitted to this Declaration and then constitute a part of Lenox Trace.

(c) Simultaneously with the recording of amendments or supplements to this Declaration expanding Lenox Trace, Declarant shall record new Plans as required by the Act. Such amendments or supplements to this Declaration shall also include provisions reallocating Percentage Interests so that the Condominium Units depicted on such new Plans shall be allocated Percentage Interests in the Common Areas on the same basis as the Condominium Units depicted in the prior Plans. Such reallocation of Percentage Interests shall vest when the amendment or supplement to the Declaration incorporating those changes has been recorded.

9343099