

DECLARATION OF HORIZONTAL PROPERTY OWNERSHIP

JAMISON RESIDENTIAL CONDOMINIUMS

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# DECLARATION OF HORIZONTAL PROPERTY OWNERSHIP

## JAMISON RESIDENTIAL CONDOMINIUMS

This Declaration is made on July 8, 1988, by Jamison Development Partnership, an Indiana General Partnership (the "Declarant").

### **Recitations:**

- A. Declarant is the owner of the fee simple title to the real estate (the "Tract") described in Exhibit "A" attached to and a part of this Declaration, which Tract is located in St. Joseph County, Indiana.
- B. Declarant, by execution of the Declaration hereby 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, which Horizontal Property Regime shall have the name Jamison Residential Condominiums.

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 Act of the State of Indiana, Acts 1963, Chapter 349 (Indiana code 32-1-6), as amended and/or supplemented. The Act is incorporated herein by reference.
- (b) "Association" means Jamison Residential Association, Inc., an Indiana not-for-profit corporation, in which each Owner of a Unit in the Regime is a member.
- (c) "Board of Directors" means the governing body of the Association elected by the Owners in accordance with the By-Laws.
- (d) "Buildings" mean the Buildings located or to be located on the Tract in which all units are located, each such Building being three stories with basements.
- (e) "By-Laws" means the by-Laws of the Association providing for the administration and management of the Property and the Regime as required by the Act. A true copy of the By-Laws is attached to this Declaration and incorporated herein by reference, and is recorded in the records of the Recorder of St. Joseph County, Indiana, immediately following this Declaration on the same date.
- (f) "Common Areas" means the Common Areas and facilities appurtenant to the Property as defined in paragraph 6 of this Declaration.
- (g) "Common Expenses" means all sums lawfully assessed against the Owners by the Association, expenses of administration, maintenance, repair or replacement of the Common Areas and facilities, expenses agreed upon as Common Expenses by the Association, and expenses declared Common Expenses by the provisions of the Act, the Declaration, or By-Laws, but may not include any direct or indirect expenses arising out of the rental of any Unit or any of the Common Areas.

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- (h) “Declarant” is Jamison Development, an Indiana General partnership, or any successor to it in title to the Tract, or any mortgagee acquiring title to all or any portion of the Property pursuant to a mortgage executed by the Declarant.
- (i) “Limited Areas” means the Limited Common Areas and facilities as defined in paragraph 7 of this Declaration.
- (j) “Mortgagee” means the holder of the first mortgage lien on all or any part of the property and the holder of the first mortgage lien on a Unit which has given written notice of its mortgage lien to the Association.
- (k) “Jamison Residential” is the name by which the Property and the Regime shall be known.
- (l) “Owner” or “Co-Owner” means a person, firm, corporation, partnership, association, trust or other legal entity or any combination thereof which owns the fee simple title to a Unit.
- (m) “Percentage Interest” means the percentage of undivided interest in the fee simple title of the Common Areas and Limited Areas appertaining to each Unit as specifically set forth in Exhibit “C”, attached to and a part of this Declaration.
- (n) “Percentage Vote” means that percentage of the total vote accruing to all of the Units which is pertinent to each particular 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 in the same Percentage interest appurtenant to such Unit as set forth in Exhibit “C”.
- (o) “Plans” means the floor plans and building plans of the buildings and apartment prepared by Architecture Design Group, Registered Architects, under the date of March 19, 1988, and recorded on July 20, 1988, in the records of the Recorder of St. Joseph County, Indiana, Condominium Plat Book 2 as instrument No. **8819325**, as the same may be amended from time to time, the Declarant reserving the right to amend such plans in a manner consistent with the plans filed for record in the Office of the Recorder of St. Joseph County, Indiana, and to amend and supplement said plans by plans which may be prepared subsequently and incorporated as a part of this Declaration by amendment to this Declaration, all of which are incorporated herein by this reference.
- (p) “Property” means the Tract and appurtenant easements, the Units, the Buildings, improvement and property of every kind and nature whatsoever, real, personal or mixed, located upon the Tract, including such property located on any additions or annexations thereto.
- (q) “Regime” means the Horizontal Property Regime created by the recording of this Declaration.
- (r) “Tract” means the real estate described in Exhibit “A”, attached to and a part of this Declaration.
- (s) “Unit” means one of the living units constituting Jamison Residential, each Unit being more particularly described and identified on the Plans and in paragraphs 4 and 5 of this Declaration. Each Unit includes the undivided interest in the Common Areas and Limited Areas appertaining to such Unit.

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### **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 the Buildings and Plan of Development**

Declarant has constructed or is constructing 4 Buildings containing 32 total Units and the Common Areas and Limited Areas on the real estate, as described in the Plans. Each Building has three stories with a basement. The Plans which are recorded contemporaneously with the Declaration describe the Buildings, the Units, the Common Areas and the Limited Areas. Each Building is identified by a letter of the alphabet on the Plans.

### **4. Identification of Units**

Each Unit in the Buildings described on the Plans recorded contemporaneously with this Declaration are identified by a Unit number. Each Unit is identified by a number on the Plans referring to the individual Unit within the Buildings. Attached to this Declaration as Exhibit "C" is a list identifying each Unit, and showing the percentage interest appurtenant to each Unit.

### **5. Description of Unit**

- (a) Appurtenances. Each Unit shall consist of all space within the boundaries of such Unit as hereinafter defined and all portions of the Building situated within such boundaries, all as shown on the Plans, including but not limited to all furnishings, fixtures, facilities, furnaces, equipment, appliances, air conditioning units, ducts and piping connected to furnaces and air conditioning used solely and exclusively by the Unit even though the same are located outside the boundaries of the Unit and in some cases are located outside the Buildings, but not including any such portions of any of the Buildings designated for use, benefit, support, safety or enjoyment of any other Unit or Common Areas or which may be necessary for the safety, support, maintenance, use, and operation of any of the Buildings or which are Common Areas as defined by applicable law or this Declaration.
- (b) Boundaries. The boundaries of each Unit shall be as shown on the Plans measured between the interior unfinished surface of the floors, ceilings and interior walls of each Unit. 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 surface of the Unit because of inexactness of construction, settling after construction, or for any other reasons, the boundary lines of each Unit shall be deemed to be and treated for purposes of occupancy, possession, maintenance, decoration, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent easements for exclusive use shall exist in favor of the Owner of each Unit in and to such space lying outside of the actual boundary line of the Unit, but within the appropriate wall, floor or ceiling surfaces of the Unit. Minor

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deviations in measurements between the Plans and actual construction will not affect title to Units.

### **6. Common Areas and Facilities**

Common Areas for the use and benefit of the Owners of all of the Units include but are not limited to the following:

1. the Tract;
2. the foundations, columns, girders, beams, supports and roofs of the Buildings;
3. the yards, gardens, driveways, sidewalks, parking areas, recreational areas;
4. central electricity, gas, water, and sanitary sewer mains serving the Buildings, excepting therefrom the furnace and air conditioning equipment contained within or used exclusively for each Unit whether actually located inside the Unit;
5. exterior lighting fixtures and electrical service lighting the exterior of the Buildings and those lights outside each Unit;
6. pipes, ducts, electrical wiring and conduits and public utility lines;
7. floors, ceiling and perimeter walls, except the interior surface thereof;
8. all facilities and appurtenances located outside of the boundary lines of the Unit, except those areas and facilities expressly defined as part of a Unit, and those structural components, central installations of utilities and other similar portions of the Buildings, a portion of which may be located within the boundary lines of the Units, but which are not designed, intended and used solely and exclusively for the enjoyment, use and benefit of one certain Unit wherein they are located or to which they are attached.

### **7. Limited Areas and Facilities**

Limited Areas and those Units to which use thereof is limited are as follows:

- (a) The halls, corridors, lobbies, stairs, stairways, entrances and exits of each Building shall be limited to the use of the Owners of the Units located in such Building, with stairways and hallways leading to less than all Units being limited for use only by Owners of those Units.
- (b) Decks and patios, together with an area around such deck bounded by a line two feet from the exterior edge of each side of the deck or patio and parallel to the side of the deck or patio, shall be limited to the exclusive use of the Unit to which they are attached.
- (c) Balcony decks shall be limited to the exclusive use of the Unit to which they are attached.
- (d) The exterior surface of doors and windows in the perimeter walls in each Unit shall be limited to the exclusive use of the Unit to which they appertain.

### **8. Ownership of Common Areas**

The Percentage interest appertaining to each Unit is set forth on Exhibit "C" to this Declaration. This percentage shall for all purposes be deemed to be the percentage of ownership each Unit has in the Common Areas and Limited Areas. The Percentage interest appertaining to each separate Unit may be changed only according to the terms of

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paragraph 18 of this Declaration. Each Unit's Percentage interest in the Common Areas shall be and remain as set forth in Exhibit "C" unless amended pursuant to paragraph 18.

**9. Encroachments and Easements for Common Areas**

If, by reason of location, construction, settling, or shifting of a Building, any Common Area or Limited Area now encroaches or shall hereafter encroach upon any Unit, then in such event, an easement shall be deemed to exist and run to the Owner of such Unit and to the Association for the maintenance, use and enjoyment of such Common Area or Limited Area. Each Owner is hereby granted 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 Units and serving that Owner's Unit.

**10. Real Estate Taxes**

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

**11. Utilities**

Each Owner shall pay for utilities which are separately metered, if any, for that Owner's Unit. All other expense of utilities shall be Common Expenses, unless otherwise agreed by a majority of the Owners.

**12. Association of Owners**

In order to provide for the maintenance, repair, replacement, administration and operation of the Common Areas and Limited Areas and in compliance with the provisions of the Act, an Indiana not-for-profit corporation has been formed, having the name Jamison Residential condominiums Association, Inc., which not-for-profit corporation is referred to in this Declaration and the By-Laws as the "Association". Each Owner shall be a member of the association, but membership shall terminate when such person ceases to be an Owner, with that Owner's membership and all rights in the Association transferred to the new Owner upon delivery of the deed conveying that Owner's Unit.

The Association shall elect a Board of Directors annually in accordance with and as prescribed by the By-Laws. An initial Board of Directors appointed by the Declarant shall serve until such time as provided in the By-Laws, at which time the Owners shall elect a Board of Directors. The Owners shall be entitled to cast their vote for the election of the Board of Directors (except for the initial Board of Directors) with each Unit having a vote reflecting its Percentage Vote.

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

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**13. Maintenance, Repairs and Replacements**

Each Owner shall, at his expense, be responsible for the maintenance, repairs, decoration and replacement of fixtures and appurtenances in his own Unit and Limited Areas where use is limited to such Unit only, including, but not limited to, carpeting, wall covering, repair or replacements of dry wall, plumbing and electrical repairs, air conditioning and furnace repairs. Maintenance of Limited Areas where use is by more than one Unit or Owner shall be maintained and repaired by the Association. Each Owner shall keep the Unit owned by that Owner in good condition and maintenance. Maintenance, repairs, replacements and upkeep of the Common Areas shall be furnished and paid for by the Association as part of the Common Expenses, including but not limited to all roads, driveways and sidewalks on the Property.

The Board of Directors shall adopt reasonable rules and regulations concerning maintenance, repairs, use and enjoyment of the Common Areas and Limited Areas.

The Board of Directors or its 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 any Unit for the purpose of inspection of the Common Areas and Limited Areas appurtenant thereto and replacement, repair and maintenance of the same. The Association may require the Owner of a Unit to keep his Unit and the Limited Areas solely appurtenant thereto In good repair and maintenance. If an Owner refuses to have such repairs or maintenance performed, the Association may have the same performed and add the entire cost to the Owner's share of Common Expenses as an assessment.

**14. Alterations, Additions and Improvements.**

No Owner shall make any alterations or additions to the Common Areas or Limited Areas or change the color thereof without the prior written approval of the Board of Directors, nor shall any Owner make any alteration to his Unit without first having the plans for such alteration approved by the Association in writing. No such alteration may be made in violation of Indiana Code 32-1-6-6. However, inaction by the Board of Directors for 60 days after submission of plans to the Association for approval shall constitute approval by the Association. Declarant reserves the right to change interior designs and arrangement of any Unit and alter the boundaries between condominium Units so long as Declarant owns the Unit or Units so altered.

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#### **15. Insurance**

The insurance other than title insurance which shall be carried upon the Property and the property of the Owners shall be governed by the following provisions:

(a) Insurance by Association

- (1) Insurance on the Buildings, including but not limited to the Units, the Common Areas and Limited Areas, against loss or damage by fire and against loss or damage by risks now or hereafter embraced by standard extended coverage and vandalism and malicious mischief endorsements, shall be purchased by the Association in an amount sufficient to prevent the insured from being a co-insurer within the terms of the applicable policies, but in any event in an amount not less than one hundred percent (100%) of the full insurable replacement cost thereof. "The "full insurable replacement cost" of the building, including the Units, the Common Areas and Limited Areas, shall be determined from time to time by the Board of Directors, which determination may be based upon appropriate insurance appraisals, insurable replacement cost shall be deemed to be the cost of restoring the Building, including but not limited to Common Areas, Limited Areas, Units, and any part thereof, to substantially the same condition in which they existed prior to damage or destruction. The cost of any and all such appraisals shall be Common Expenses except that the additional cost of insuring any additions or alterations to his Unit or Limited Areas shall be paid by the Owner in addition to his share of Common Expenses.
- (2) Comprehensive public liability and property damage insurance against claims for personal injury or death or property damage suffered by the public or by any Owner, occurring in, on or about the tract or in, on or about the streets and passageways and other areas adjoining the Tract, such public liability and property damage insurance to afford protection to such limits as the Board of Directors shall deem desirable (but in no event for less the \$1,000,000.00 with respect to liability for personal injury to one person arising out of a single accident) shall be purchased by the Association.
- (3) Such workman's compensation insurance as may be necessary to comply with applicable laws shall be obtained and maintained by the Association as a Common Expense.
- (4) Employer's liability insurance in such amount as the Board of Directors shall deem desirable shall be obtained and maintained by the Association as a Common Expense.
- (5) A fidelity bond indemnifying the Association, the Board of Directors and the Owners for loss of funds resulting from fraudulent or dishonest acts of any officer or employee of the Association or of any other person handling the funds of the Association, the Board of

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Directors or the Owners in such amount as the Board in its discretion shall deem desirable may be obtained and maintained by the Association as a Common Expense.

- (6) The Association shall obtain such other insurance (including insurance with respect to officers' liability) in such reasonable amount as the Board of Directors shall deem desirable.

#### (b) Requirements

The premiums for the above described insurance, except as otherwise provided in the paragraph 15 shall be Common Expenses. All insurance provided for in subparagraph (a) shall be effected under valid and enforceable policies issued by the insurers of recognized responsibility authorized to do business in the State of Indiana. 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 a Unit, Common Areas, or Limited Areas. All policies of insurance described in this paragraph 15 shall name as insured each Owner and the Association. If a Unit is subject to a mortgage and the Association has been notified of the mortgage, the Mortgagee shall be named as an insured under a mortgage endorsement. In addition, all policies insuring against public liability and property damage shall contain an endorsement or clause whereby the insurer waives any right to be subrogated to any claim against the Association, its officers, members of the Board of Directors, the Declaring, any management agent, their respective employees and agents and the Owners and occupants and shall cover claims of one or more insured parties against other insured parties.

#### (c) Notification

Written notice of the insurance and any changes therein or termination thereof shall be promptly furnished by the Association to each Owner of a Unit or Mortgage of a Unit whose interest may be affected by such changes in insurance.

#### (d) Distribution of Proceeds

Proceeds of insurance policies received by the Association shall be distributed to or for the benefit of the Owners and their Mortgagees in the following manner:

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#### (1) Reconstruction or improvement

In case of fire or any other casualty or disaster, other than complete destruction of any Building, the improvements shall be reconstructed and the insurance proceeds applied to reconstruct the improvements in the same manner, style and quality as they were originally constructed. A Mortgagee shall be notified by the Association in a timely fashion in the event of substantial damage to or destruction of any Unit or any part of the Common Areas or Limited Areas. In the event of complete destruction of any Building, the Building will not be reconstructed and the insurance proceeds, if any, shall be divided among the Owners and Mortgagees as their respective interests may appear in accordance with the Percentage Interest of each Owner and the Property shall be considered removed from the Regime under Indiana code 32-1-6-28 unless by a vote of two-thirds of all of the Owners a decision is made to rebuild the Building, in which case the insurance proceeds shall be applied towards such rebuilding and any excess of construction costs over the insurance proceeds shall be paid by the Owners according to their Percentage Interests. The determination of whether any building is totally destroyed shall be made by a vote of the Owners at a meeting called for that purpose after prior written notice to all Owners. Mortgagees shall be bound by the Owner's decision and may consent by written instrument. In the event sums are required in excess of the insurance proceeds in order to rebuild the Building in the event of a casualty, the additional sums required shall be assessed as part of the Common Expenses and shall constitute a lien from the time of assessment as provided under Indiana statutes and in these instruments.

#### (2) Failure to Repair or Rebuild

If the Owners decide a Building is totally destroyed after a casualty or disaster, the Property shall be deemed to be owned in common by the Owners according to the Percentage Interest of each Owner with liens and rights to partition being handled as set forth in Indiana Code 32-1-6-21 as amended and supplemented from time to time.

#### (e) Association as Agent

The Board of Directors is hereby irrevocably appointed as agent and is hereby granted a power coupled with an interest, as attorney in fact, for each Owner and for each holder of any other interest in the Property (excepting Mortgagees) to adjust all claims arising under the insurance policies purchased by the Association and to execute and deliver releases upon the payment of claims.

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- (1) In no event may the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners or their Mortgagees.
- (2) Each Owner may obtain additional insurance at his own expense; provided, however, that no Owner may exercise his right to maintain insurance coverage in such a way as to decrease the amount which the Association, on behalf of all the Owners, may realize under any insurance policy which the Association may have in force at any particular time. Any Owner who obtains individual insurance policies covering any portion of his Unit shall be required to file a copy of such individual policy or policies with the Association within 30 days after purchase of such insurance. Each Owner shall be solely responsible for insurance on the contents of his own Unit, including all floor and wall coverings and fixtures and improvements installed by the Owner, which are in addition to the Unit as built, and also insurance covering his personal property stored on the Property.
- (3) The Association is required to secure insurance policies that will provide for the following if such provisions are obtainable:
  - i. A waiver of subrogation by the insurer as to any claims against the Association, the Declarant, the Owners and their respective servants, agents and guests;
  - ii. That the master liability policy may not be cancelled, invalidated or suspended on account of the conduct of any one or more individual Owners;
  - iii. That neither the master liability policy nor the master casualty policy may be cancelled, invalidated or suspended on account of the conduct of any officer or employee or the Board of Directors of the Association or for any other reason without at least 30 days prior notice in writing to the Board of Directors;
  - iv. That a “no other insurance” clause in the master policy shall exclude individual Owners’ policies from consideration.

### **16. Covenants and Restrictions.**

The covenants and restrictions applicable to the use and enjoyment of the Units are set forth in Article VI of the By-Laws. 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 the Association. Any Owner or the Association shall be entitled to injunctive relief against any violation or attempted violation of these provisions and shall be entitled to damages for any injuries resulting from any violations thereof, but there will be no right of reversion or forfeiture of title resulting from such violations. The Declarant expressly reserves the right to use any Unit or Units for sales offices and for construction offices during the time before the Regime is completed or before all the Units are sold.

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**17. Lease of Unit by Owner.**

For the purpose of maintaining the congenial and residential character of the Regime, and for the protection of the Owners with regard to financially responsible residents, lease of a Unit by an Owner other than the Declarant or a Mortgagee will be subject to the conditions and restrictions established from time to time by the Board of Directors. No such condition or restriction may require an Owner to use an exclusive rental agent prescribed by the Board or to lease a Unit for any prescribed period of time.

**18. Amendment of Declaration.**

Amendments to this Declaration and any exhibits thereto may be made by Declarant at any time during the period Declarant retains control of the Board of Directors to correct errors in the legal description, if needed, or any other errors in the condominium documents or to make such other changes in this Declaration, the By-Laws and all exhibits thereto which do not materially affect any rights of any Owner or Mortgagee including, but not limited to, amendments for the purpose of facilitating conventional mortgage loan financing for existing or prospective Owners and to enable the purchase of such mortgage loans by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association and/or any other agency of the Federal government or the State of Indiana or other lender without the consent or permission of any Owners or Mortgagees. Amendments other than those which may be by Declarant as aforesaid, 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 the proposed amendment may be proposed by the Board of Directors or a majority of the Owners or Declarant.

(c) Meeting.

The resolution concerning a proposed amendment must be adopted by the designated vote of Owners at a meeting duly held in accordance with the provisions of the By-Laws.

(d) Adoption.

Any proposed amendment to this Declaration must be approved by a vote of not less than 75% of the Percentage Interests of the Owners of all Units. A

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Mortgagee shall be notified of the meeting and the proposed Amendment in the same manner as an Owner.

(e) Special Amendments.

No amendment to this Declaration may be adopted which changes (1) the Percentage Interest with respect to any Unit or the Applicable share of an Owner's liability for the Common Expenses, or (2) the abandonment or termination of the Horizontal Property Regime (except in the instance of complete destruction of all Buildings under paragraph 15 and the relevant law applicable thereto) without the approval of 100% of the Owners and the written approval of each Mortgagee. Additionally, no amendment to this Declaration which materially adversely affects the rights of any Mortgagee, or which permits a Unit to be partitioned or subdivided or which gives an Owner or any other party priority over any rights of a Mortgagee in case of distribution of insurance proceeds or condemnation awards upon the taking of any portion of the Tract by eminent domain can be made without the written approval of all Mortgagees.

(f) Recording.

Each amendment to the Declaration made by Declarant shall be executed by the Declarant with all other amendments being signed by the President and Secretary of the Association and acknowledged before a Notary Public, and shall be recorded in the office of the Recorder of St. Joseph County, Indiana, and any such amendment will not be effective until so recorded.

### **19. Acceptance and Ratification.**

All present and future Owners, Mortgagees, tenants and occupants of the Units shall be subject to and shall comply with the provisions of this Declaration, the Act, the By-Laws, and the rules and regulations as adopted by the Board of Directors, as each may be amended from time to time. The acceptance of a deed of conveyance or a mortgage or the act of occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, the Act, The By-Laws and rule and regulations, as each may be amended from time to time, are accepted and ratified by such Owner, mortgagee, tenant or occupant, and all such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in a Unit or the Property as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage and lease thereof. All persons, corporations, partnerships, trusts, associations, or other legal entities who may occupy, use, enjoy or control a Unit or 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.

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#### **20. Negligence.**

Each Owner shall be liable for the expense of any maintenance, repair or replacement rendered necessary by his negligent or willful acts or omissions 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 Unit or its appurtenances or of the Common Areas or Limited Areas.

#### **21. Costs and Attorney's Fees**

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

#### **22. Declarant's Sales Office, Management Office and Model Condominium**

The Declarant reserves the right to maintain a sales office, management office and model unit in one or more of the Units so long as the Declarant owns the Unit or leases the unit from the Owner of the Unit. This right is reserved pursuant to the provisions of Indiana Code 32-1-6-15.6.

#### **23. Waiver**

No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use of enjoyment of any of the Common Areas or Limited Areas or by abandonment of his Unit.

#### **24. Notice of Mortgagees**

Each Mortgagee shall be notified of any condemnation or eminent domain proceedings which are filed in any Court to take any portion of the Tract or the Common Areas, Limited Areas or any portion of a Unit. Additionally, each Mortgagee shall receive written notification from the Association of any default in the performance by the Mortgagee's individual Unit borrower of any obligation under the By-Laws, Declaration, rule and regulations, or other contractual agreement with the Association which has not been cured within 60 days, and shall also be notified of any substantial damage or destruction of any Unit or any part of the Common Areas or Limited Areas.

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**25. Granting of Easements**

The Board of Directors is authorized to grant easements to utility companies (excluding transportation companies) upon such terms and conditions and for such consideration as they deem appropriate.

**26. Reservations of Rights to Use Common Areas**

Declarant shall have, and hereby reserves, an easement over, across, upon, along, in, through and under the Common Areas and, to the extent necessary, the Limited Areas, for the purposes of installing, maintaining, repairing, replacing, relocation and otherwise servicing utility equipment, facilities and installation to serve the Property and any portions of the real estate which are not part of the Property, to provide access to an ingress and egress to and from the Property and to such portions of the real estate which are not part of the Property, to make improvements to and within the Property and any such portions of the real estate which are not a part of the Property, and to provide for rendering of public and quasi-public services to the Property and such portions of the real estate which are not part to the Property.

**27. Easement for Public and Quasi-Public Vehicles**

All public and quasi-public vehicles, including, but not limited to police, fire and other emergency vehicles, trash, 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 Property in the performance of their duties.

**28. Enforcement**

The provisions of the Declaration, the By-Laws, the Articles of Incorporation of the Association, the Act and duly promulgated rules and regulations may be enforced by the Board of Directors or by any aggrieved Owner through court proceedings for injunctive relief, for damages or for both.

**29. Severability Clause**

The invalidity of any covenant, restriction, condition, limitation or other provision of the Declaration or the By-Laws will not impair or affect in any manner the validity, enforceability or effect of the rest of the Declaration or the By-Laws.

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

DECLARANT  
JAMISON DEVELOPMENT an  
Indiana General Partnership

By: \_\_\_\_\_  
Patrick J. McGraw  
Managing General Partner

DECLARATION OF HORIZONTAL PROPERTY OWNERSHIP

JAMISON RESIDENTIAL CONDOMINIUMS

**EXHIBIT "A"**

To Declaration of Horizontal Property Ownership of Jamison Residential Condominiums dated JULY 8, 1988.

**LEGAL DESCRIPTION**

A PART OF THE SOUTHEAST QUARTER OF SECTION 31, TOWNSHIP 38 NORHT, RANGE 3 EAST, CLAY TOWNSHIP, ST. JOSEPH COUNTY, INDIANA, DESCRIBED AS FOLLOWS:

BEGINNING AT A POINT SOUTH 00 00'00" WEST (ASSUMED BEARING), 100.00 FEET FROM THE NORTH LINE OF THE SOUTH HALF OF THE SOUTH HALF OF THE SOUTHEAST QUARTER OF SAID SECTION 31 AND NORTH 89 48'45" EAST, 14.00 FEET FROM THE EAST LINE OF LOT 10 IN THE ORIGINAL PLAT OF THE TOWN OF SCHROEDERVILLE; THENCE NORTH 89 48'45" EAST, 162.5 FEET; THENCE NORTH 00 00' 00" EAST, 100.00 FEET; THENCE NORTH 89 48' 45" EAST, 3.06 FEET; THENCE SOUTH 00 00'00" WEST, 300.00 FEET; THENCE NORTH 89 48'45" EAST, 44.70 FEET; THENCE SOUTH 00 00'00" WEST, 155.96 FEET; THENCE SOUTH 89 48'45" WEST, 210.26 FEET; THENCE NORTH 00 00'00" WEST, 355.96 FEET TO THE POINT OF BEGINNING, CONTAINING 1.52 ACRES.

SUBJECT TO ALL EASEMENTS, RESTRICTIONS AND/OR LIMITATIONS OR RECORD.

DECLARATION OF HORIZONTAL PROPERTY OWNERSHIP

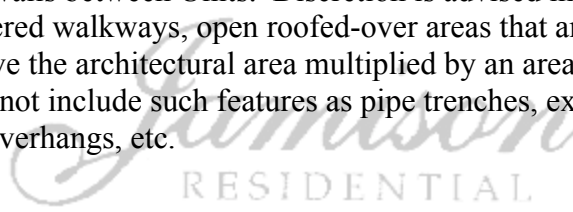
JAMISON RESIDENTIAL CONDOMINIUMS

**EXHIBIT "B"**

TO: Declaration of Horizontal Property Ownership of Jamison Residential Condominiums dated JULY 8, 1988.

**METHOD OF COMPUTING PERCENTAGE INTERESTS**

1. The Percentage Interest which will appertain to each Unit shall be a percentage equal to the number of square feet in each Unit divided by the total number of square feet in all Units which have been subjected and submitted to this Declaration and then constitute a part of the Regime.
  
2. The square foot areas of each of the Units is tabulated in accordance with AIA Document D101, "The Architectural Area and Volume of Buildings", as follows: The architectural areas of each Unit shall be the sum of the areas of the several floors of such Unit, including the basement, mezzanine, and intermediate floored tiers, lofts, and penthouses of headroom height, measured from the exterior faces of exterior walls or from the centerline of walls between Units. Discretion is advised in calculating areas of interstitial space. Covered walkways, open roofed-over areas that are paved, porches and similar spaces shall have the architectural area multiplied by an area factor of 0.50. The architectural area does not include such features as pipe trenches, exterior terraces or steps, chimneys, roof overhangs, etc.




DECLARATION OF HORIZONTAL PROPERTY OWNERSHIP

JAMISON RESIDENTIAL CONDOMINIUMS

**EXHIBIT "C"**

TO: Declaration of Horizontal Property Ownership of Jamison Residential Condominiums dated JULY 8, 1988.

**IDENTIFICATION OF UNITS AND PERCENTAGE INTERESTS OF UNITS**

<u>Unit</u>	<u>Sq. Footage</u>	<u>Undivided Interests in the Common Areas &amp; Facilities</u>
A-1	1922	.04325
A-2	1368	.03078
A-3	1368	.03078
A-4	1922	.04325
A-5	1084	.02439
A-6	1180	.02655
A-7	1180	.02655
A-8	1084	.02439
		
B-1	1922	.04325
B-2	1368	.03078
B-3	1368	.03078
B-4	1922	.04325
B-5	1084	.02439
B-6	1180	.02655
B-7	1180	.02655
B-8	1084	.02439
C-1	1922	.04325
C-2	1368	.03078
C-3	1368	.03078
C-4	1922	.04325
C-5	1084	.02439
C-6	1180	.02655
C-7	1180	.02655
C-8	1084	.02439
D-1	1922	.04325
D-2	1368	.03078
D-3	1368	.03078
D-4	1922	.04325
D-5	1084	.02439
D-6	1180	.02655
D-7	1180	.02655
D-8	1084	.02439

DECLARATION OF HORIZONTAL PROPERTY OWNERSHIP

JAMISON RESIDENTIAL CONDOMINIUMS

**Amendment to Declaration of Horizontal Property Ownership for Jamison Residential Horizontal Property Regime of 1988**

**Delete the Following Paragraph 26 in its entirety:** *Reservations of Rights to Use Common Areas.* Declarant [Pat McGraw] shall have, and hereby reserves, an easement over, across, upon, along, in, through and under Common Areas and, to the extent necessary, the Limited Areas, for the purposes of installing, maintaining, repairing, replacing, relocation and otherwise servicing utility equipment, facilities and installation to serve the Property and any portions of the real estate which are not part of the Property, to provide access to an ingress and egress to and from the property and to such portions of the real estate which are not part of the Property, to make improvements to and within the Property and any such portions of the real estate which are not a part of the Property, and to provide for the rendering of public and quasi-public services to the Property and such portions of the real estate which are not part of the Property.

**Rationale for Change:** The Declarant has completed all the work necessary for the construction of Jamison Residential, does not own units or common areas, has no need to come to the property with any authority or right to alter any portions of the Property etc. The Association has the authority to amend the “Declaration” Document according to Paragraph 18 at a meeting convened for the purpose.

The above amendment was approved by the membership on November 16,2001 by a vote of 24 to 2.

