

**DECLARATION OF HORIZONTAL  
PROPERTY OWNERSHIP**

**The Holcomb Estate  
Horizontal Property Regime**

**\_\_\_\_\_ October 11 \_\_\_\_\_, 1984**

**DECLARATION OF HORIZONTAL  
PROPERTY OWNERSHIP  
FOR  
THE HOLCOMB ESTATE  
HORIZONTAL PROPERTY REGIME**

TABLE OF CONTENTS

Paragraph	Page
Preliminary Recitals . . . . .	3 (1)*
1. Definitions . . . . .	3 (1)
2. Declarations . . . . .	6 (5)
3. Description of Buildings . . . . .	6 (5)
4. Legal Description . . . . .	6 (5)
5. Description of Condominium Units . . . . .	7 (5)
6. Common Area and Facilities . . . . .	7 (6)
7. Limited Areas and Facilities . . . . .	8 (7)
8. Ownership of Common Areas and Percentage Interest . . . . .	9 (7)
9. Encroachments and Easements for Common Areas . . .	9 (8)
10. Casualty and Restoration . . . . .	9 (8)
11. Condemnation . . . . .	10 (9)
12. Association of Owners . . . . .	12 (12)
13. Covenants and Restrictions . . . . .	13 (13)
14. Amendment of Declaration . . . . .	14 (14)
15. Acceptance and Ratification . . . . .	16 (16)
16. Expandable Condominium and Declarant’s Reserved Rights . . . . .	16 (17)
17. Granting of Easements . . . . .	20 (21)
18. Reservation of Rights to the Use of the Common Areas .	20 (21)
19. Initial Management . . . . .	21 (22)
20. Limitation on Declarant’s Liability for Assessments . . .	21 (22)
21. Sale Lease or Other Transfer of Condominium Unit by Owners . . . . .	21 (23)
22. Right to Combine Units . . . . .	22 (23)
23. Right of Action . . . . .	22 (24)
24. Costs and Attorneys’ Fees . . . . .	22 (24)
25. Waiver . . . . .	22 (24)
26. Severability Clause . . . . .	22 (24)
27. Pronouns . . . . .	23 (24)
28. Floor Plans . . . . .	23 (24)
29. Exculpation . . . . .	23 (25)

\* Page numbers in parenthesis refer to pages in the original document.

**DECLARATION OF HORIZONTAL  
PROPERTY OWNERSHIP**

**The Holcomb Estate  
Horizontal Property Regime**

This Declaration, made this 11th day of October, 1984, by HOLCOMB PROPERTIES, an Indiana general partnership (the "Declarant").

**WITNESSETH:**

WHEREAS, the following facts are true:

- A. Declarant is the sole owner of, or may hereafter acquire, the fee simple title to the real estate located in Marion County, Indiana, described in Exhibit A attached hereto and incorporated herein (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 incorporated herein (the "Tract").
- C. Declarant, by execution of this Declaration, desires to create a Horizontal Property Regime upon the Tract, subject to the provision of the Horizontal Property Law of the State of Indiana and the terms and conditions of this Declaration.

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

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

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

(b) "Applicable Date" means the earliest of (i) December 31, 1991, or (ii) four (4) months after seventy-five percent (75%) of the Condominium Units that may be developed on the Real Estate have been conveyed to developed on the Real Estate have been conveyed to purchasers, or (iii) the date Declarant files of record in the office of the Recorder of Marion County, Indiana, an instrument waiving and releasing its reserved rights, as set forth in Paragraph 16 of this Declaration, to expand or further expend The Holcomb Estate.

(c) "Association" means The Holcomb Estate Owners Association, Inc., an Indiana not-for-profit corporation, being the association of Co-owners of The Holcomb Estate more particularly described in Paragraph 12 hereof.

(d) "Board of Directors" or "Board" means the governing body of the Association, being the initial Board of Directors referred to in the By-Laws or subsequent Board of Directors reelected by the Co-owners in accordance with the By-Laws.

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

(f) "By-Laws" means the By-Laws of the Association providing for the administration and management of the Property, a true copy of which is attached to this Declaration and incorporated herein by reference.

(g) "Constitutional Majority" means those Owners eligible to cast not less than sixty-seven percent (67%) in the aggregate of the Percentage Vote eligible to be cast by the Co-Owners.

(h) "Common Areas" means the common areas and facilities defined in paragraph 6 of this Declaration.

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

(j) "Condominium Unit" means each one of the living units constituting The Holcomb Estate, 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 that may be submitted and subjected to the act and this Declaration by Supplemental Declarations as herein provided, together with the undivided interest in the Common Areas and Limited Areas appertaining to each such unit.

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

(l) "Declarant" means Holcomb Properties, an Indiana general partnership, 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

Property pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.

(m) "Insurance Trustee" means such bank with trust powers authorized to do business in Marion County, Indiana, as the Board of Directors may designate for the custody and disposition, as herein or in the By-Laws provided, of insurance proceeds and condemnation awards.

(n) "Limited Areas" means the limited common areas and facilities defined in Paragraph 7 of this Declaration.

(o) "Majority of Mortgagees" means those Mortgagees who hold first mortgages on Condominium Units to which are allocated at least fifty-one percent (51%) of the Percentage Vote allocated to Mortgaged Units.

(p) "Majority of Owners" and "Majority of the Percentage Vote" means the Owners entitled to cast more than fifty percent (50%) of the Percentage Votes in accordance with the applicable percentages set forth in this Declaration.

(q) "Mortgaged Unit" means a Condominium Unit that is subject to the lien of a mortgage held, insured or guaranteed by a Mortgagee.

(r) "Mortgagee" means the holder, insurer or guarantor of a first mortgage lien on a Condominium Unit who has requested notice in accordance with the provisions of Section 12.01 of the By-Laws.

(s) "Owner" means a Person who or which owns the fee simple title to a Condominium Unit.

(t) "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.

(u) "Percentage Vote" means that percentage of the total vote accruing to all of the Condominium Units which is appurtenant to each particular Condominium Unit and accrues to the Owner thereof.

(v) "Person" means an individual, firm, corporation, or partnership, association, trust or other legal entity, or any combination thereof.

(w) "Plans" means (i) the floor and building plans and elevations of the initial Building and Condominium Units located on the Tract prepared and certified by James E. Dankert, a licensed professional engineer, under date of September 25, 1984, and (ii) a site plan of the Tract and Buildings prepared by Paul I. Cripe, Inc. and certified by James E. Dankert, a registered land surveyor,

under date of September 25, 1984, all of which are incorporated herein by reference, as the same may be supplemented and amended to reflect the addition of Buildings and Condominium Units as contemplated by Paragraph 16.

(x) "Property" means the Tract and appurtenant easements, the Condominium Units, the Buildings, and all other improvements, and property of every kind and nature whatsoever, real, personal or mixed, located upon the Tract and used in connection with the operation, use and enjoyment of The Holcomb Estate, excluding the personal property of Owners.

(y) "Regime" means The Holcomb Estate Horizontal Property Regime created by this Declaration pursuant to the Act.

(z) "Restoration" means (re)construction or (re) building of the Buildings, the Condominium Units, the Common Areas and the Limited Areas to not less than the same condition as they existed immediately prior to any loss, damage or destruction with the same type of architecture and using, where appropriate, new materials of like kind and quality.

(aa) "Supplemental Declaration" means any supplement or amendment to this Declaration that may be recorded by Declarant and that extends the provisions of this Declaration to any part of the Real Estate and contains such complementary or supplementary provisions for such part of the Real Estate as re required or permitted by the Act or this Declaration.

(bb) "The Holcomb Estate" means the name by which the Property and Regime shall be known.

(cc) "Tract" means the real estate described in Exhibit B and such other portions of the Real Estate as have, as of any given time, been subjected to the Act and this Declaration either by this Declaration or by 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 provision of the Act.

**3. Description of Buildings.** There is one (1) Building containing five (5) Condominium Units on the Tract as of the date hereof, as shown on the Plans. Such Building is identified on the Plans as Building A. A description of the Building and the Condominium Units contained therein is set forth in Exhibit C, attached hereto and hereby made a part hereof by this reference.

**4. Legal Description.** Each Condominium Unit is identified on the Plans by a letter which identifies the Building in which the Condominium Unit is located followed by a single digit Arabic number. The legal description for each Condominium Unit shall consist of the identifying number for such Condominium Unit as shown on the Plans, and shall be

stated as “Condominium Unit (with identifying number) in The Holcomb Estate Horizontal Property Regime”.

**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, appliance, and structural components designed and intended solely and exclusively for the enjoyment, use and benefit of the Condominium Unit wherein the same are located, or to which they are attached, but excluding therefrom that designed or intended for the use, benefit, support, safety or enjoyment of any other Condominium Unit or which may be necessary for the safety, support, maintenance, use, and operation of any of the Buildings or which are normally designed for common use; provided, however, that all fixtures, equipment and appliances designed or intended for the exclusive enjoyment, use and benefit of a Condominium Unit shall constitute a part of such Condominium Unit, whether or not the same are located within or partly within the boundaries of such Condominium Unit. The space within the basement, if any, under any Condominium Unit and the space within the garage connected to the Condominium Unit is considered a part of and for the exclusive use of the Condominium Unit. 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 (except load-bearing walls) and all 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. The vertical boundaries shall run from the upper surfaces of the interior, unfinished surfaces of the lowest floors or sub-floors to the interior unfinished surfaces of the highest ceilings and the horizontal boundaries shall be the interior, unfinished drywall surfaces of the common exterior and interior load-bearing walls (including the dry-wall, windows and doors) of each Condominium Unit. In the event any horizontal, vertical or other boundary line as shown on the Plans does not coincide with the actual location of the respective wall, floor or ceiling surface of the Condominium unit because of the inexactness of construction, settling after construction, Restoration, or for any other reason, the boundary lines of each Condominium Unit shall be deemed to be and treated for purposes of ownership, occupancy, possession, maintenance, decoration, use and enjoyment, as in accordance with the actual existing construction. In such case, permanent appurtenant easements for exclusive use shall exist in favor of the Owner of each Condominium Unit in and to such space lying outside of the actual boundary lines of the Condominium Unit, but within the appropriate wall, floor or ceiling surfaces of the Condominium Unit.

**6. Common Area and Facilities.** “Common Areas” means (1) the land portion of the Tract except as otherwise provided herein, (2) the foundations, roofs and exterior wall

surfaces of the Buildings, (3) the yards, gardens, open spaces, landscaping, parks, woodland areas, sidewalks, driveways, and parking areas, except to the extent the same are otherwise classified and defined herein as Limited Areas, (4) central electricity, telephone, gas, water, and sanitary sewer lines or mains serving the Condominium Units, (5) exterior lighting fixtures and electrical service lighting the exterior of the Buildings and certain of the other Common Areas unless separately metered to a particular Condominium Unit, (6) master television antenna or other telecommunication system with connecting wiring and outlets to each Condominium Unit, if any, (7) pipes, ducts, insulation, electrical wiring and conduits and public utilities lines that serve more than one Condominium Unit, (8) the recreational facilities, if any, located on the /tract, (9) sub-floors, ceilings and interiors of all structural walls, including all exterior perimeter and other load-bearing walls, walls between attached Condominium Units and walls between the garage and remainder of each Condominium Unit, except to the extent the same are otherwise classified and defined herein as part of the Condominium Unit or Limited Areas, and (10) all structures, structural components, 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 entranceways through which access to a Condominium Unit is obtained shall be limited to the use of the Condominium Unit served by such entranceway.

(b) Balconies, patios, decks and porches, if any, together with any area around such patio, deck or porch specifically shown and designated on the Plans and any fences and gates therein enclosing or surrounding the same, and the driveways and sidewalks serving a particular Condominium Unit shall be limited to the exclusive use of the Condominium Unit to which there is direct access.

(c) Air conditioning compressors, if any, attached to, or located in, a Building are limited to the use of the Condominium Units to which they are connected.

(d) 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.

(e) Structural separations between Condominium Units or the space that would be occupied by such structural separations may become Limited Areas for the exclusive use of the Owner or Owners of the Condominium Units on either side thereof as provided in paragraph 21.



(f) 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 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 Exhibit D attached hereto and made a part hereof. The Percentage Interest of each Condominium Unit shall be equal for all purposes and shall be a percentage equal to the number one (1) divided by the total number of Condominium Units that, from time to time, have been submitted and subjected to the Act and this Declaration as herein provided and that constitute a part of the Holcomb Estate. 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 a permanent nature and shall not be altered except 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 The Holcomb Estate and the Condominium Association upon with the co-owners are entitled to vote.

**9. Encroachments and Easements for Common Areas.** If, by reason of the location, construction, Restoration, 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 any run to the Co-owners and the Condominium Association for the maintenance, use and enjoyment of such Common Areas or Limited Areas.

Each Owner shall have an easement in common with each other Owner to use all pipes, wires, ducts, cables, conduits, utility lines and other common facilities located in any of the other Condominium Units and serving his Condominium Unit.

Each Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to his Condominium Unit and any Limited Area designated for use in connection therewith, and shall have the right to the horizontal and lateral support of his Condominium Unit. Such rights shall be appurtenant to and pass with the title to each Condominium Unit.

**10. Casualty and Restoration.** In the event of damage or destruction of the Property by fire or other cause, the following provisions shall be applicable:

(a) Partial Destruction. In the event that less than all of the Buildings are completely destroyed by the occurrence of fire or by other cause, then the Association shall cause the Property to be promptly repaired and restored in accordance with this Declaration and the original plans and specifications unless the approval of a Majority of Mortgagee is obtained. The proceeds of the insurance carried by the Association shall be applied to the cost of such Restoration. If the insurance proceeds are not adequate to cover

the cost of Restoration, or in the event there are not proceeds, the cost for restoring the damage shall be paid by all of the Owners of the Condominium Units directly affected by the damage in the proportion that the gross area of each affected Condominium Unit bears to the gross area of all affected Condominium Units. Condominium Units shall be deemed to be directly affected if, and only if, such Condominium Unit is located within the Building in which the fire or other damage occurs. If any Owner, or Owners, refuses or fails to make the required payments, the other Owners shall (or the Association, if such other Owners fail to do so) complete the Restoration and pay the cost thereof, and the costs attributable to the Owner or Owners who refuse or fail to make such payments at the time required by the Board of Directors shall become a lien on such defaulting Owner's Condominium Unit and may be foreclosed in the same manner as provided for the lien for Common Expenses.

(b) Restoration in the Event of Complete Destruction. In the event of complete loss or destruction of all the Buildings, this Horizontal Property Regime shall terminate, the Property shall be deemed owned in common by the Co-owners and the provisions of Section 21 of the Act shall apply.

(c) Determination of Complete Destruction. It shall be conclusively presumed that complete destruction of all Buildings did not occur unless it is determined by a Constitutional Majority and a Majority of the Mortgagees at a special meeting of the Association held within one hundred twenty (120) days following the date of damage or destruction that all Buildings have been completely destroyed.

**11. Condemnation.** If at any time or times during the continuance of this Regime, all or a part of the Property shall be taken or condemned by any Person with the power of eminent domain or sold or otherwise disposed of in lieu of or in avoidance thereof, the following provisions shall be applicable:

(a) Representation. The Association, or the Insurance Trustee, if so appointed by the Association shall represent the Co-owners in the condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Areas, or part thereof, by the condemning authority. Each Co-owner hereby appoints the Association or its designee as attorney-in-fact for the purpose described in this subparagraph.

(b) Proceeds. All compensation, damages, or other proceeds therefrom, the sum of which is hereinafter called the "Condemnation Award", shall be payable to the Insurance Trustee as trustee for all Owners according to their respective interests therein.

(c) Total taking. In the event that the entire Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, this Horizontal Property Regime shall terminate. The Condemnation Award shall be apportioned among the Co-owners in accordance with their respective Percentage Interests and paid into separate accounts, each such account representing one Condominium Unit. Each such account shall remain in the name of the Insurance

Trustee and shall be further identified by the legal description of the Condominium Unit and the name of the Owner. From each separate account the Insurance Trustee shall use and disburse the total amount of such accounts, without contribution from one account to the other, first to the payment of valid tax and special assessment liens on the Condominium Unit in favor of any governmental taxing or assessing authority, next to payment of any assessments made pursuant to this Declaration or the By-Laws, next to other holders of liens or encumbrances on the Condominium Unit in the order of priority of their liens, and the balance remaining, if any, to each respective Owner.

(d) Partial Taking. In the event that less than the entire Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, this Horizontal Property Regime shall not terminate. Each Owner shall be entitled to a share of the Condemnation Award to be determined in the following manner: As soon as practicable the Insurance Trustee shall, reasonably and in good faith, allocate the Condemnation Award among compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the Owners as follows:

(i) the total amount allocated to the taking of or injury to the Common Areas and Limited Areas shall be apportioned among the Owners in proportion to their respective Percentage Interests:

(ii) the total amount allocated to the severance damages shall be apportioned to the Owners of those Condominium Units that were not taken or condemned;

(iii) the respective amounts allocated to the taking of or injury to a particular Condominium Unit and/or improvements an Owner has made within his own Condominium Unit shall be apportioned to the Owner of the particular Condominium Unit involved; and

(iv) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Insurance Trustee determines to be equitable in the circumstances.

If an allocation of the Condemnation Award is already established in negotiation, judicial decree, or otherwise, then in allocating the Condemnation Award the Insurance Trustee shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made by the Insurance Trustee by checks payable jointly to the respective Owners and their respective Mortgagees, provided that, with respect to an Owner whose Condominium Unit was taken or condemned, there shall first be deducted therefrom and paid or applied by the Insurance Trustee as appropriate such Owner's pro-rata share of the expenses of the Insurance Trustee, the amounts of any valid tax or special assessment lien in favor of any governmental taxing or assessing authority and any assessments made pursuant to this Declaration or the By-Laws.

(e) Reorganization. In the event a partial taking results in the taking of a complete Condominium Unit, the Owner thereof shall automatically cease to be an Owner and a member of the Association. Thereafter, the Board of Directors shall reallocate to the remaining Owners, pro-rata, the Percentage Interest and Percentage Vote of such Owner. Such reallocation shall be submitted by the Board of Directors to the Owners of the remaining Condominium Units for approval by a Constitutional Majority thereof and appropriate amendment of this Declaration, but any such amendment to be effective must be approved by a Majority of Mortgagees.

(f) Restoration and Repair. Anything to the contrary in this Paragraph notwithstanding, in the event that less than the entire Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof and any Condominium Unit, Common Area or Limited Area may reasonably be restored or repaired, as determined by an independent licensed architect or engineer employed by the Board of Directors for making such determination or by a majority of the Mortgagees, the amount, if any, of the Condemnation Award allocable to the taking of or injury to the Common Areas and Limited Areas and to severance damages shall be applied to the cost of Restoration or repair of such Common Area and/or Limited Area, and the amount, if any, allocable to the taking of or injury to a particular Condominium Unit that may be restored or repaired shall be applied to the cost of such Restoration or repair. If any amount of the Condemnation Award then remains, such amount shall be allocated and disbursed in accordance with the provisions of subparagraph (d) above. If the amount of the Condemnation Award is insufficient to cover the cost of any such Restoration or repair, the provisions of Paragraph 10(a) shall apply.

(g) Alternative Valuation in Event of Total Taking. In the event the amount of the Condemnation Award is determined in negotiation, judicial decree or otherwise according to the value of individual Condominium Units separately determined, the Condemnation Award shall be apportioned, with respect to such Condominium Units, according to the values so determined and not in accordance with the respective Percentage Interests of the Owners; but if the value of the Common Areas and/or Limited Areas is determined separately, the amount of the Condemnation Award attributable thereto shall be allocated among the Owners in accordance with their respective Percentage Interests.

**12. Association of Owners.** Subject to the rights of Declarant reserved in Paragraph 19 hereof, the maintenance, repair, upkeep, replacement, administration, management and operation of the Property shall be by the Association. Each Owner shall, automatically upon becoming an owner of a Condominium Unit, be and become a member of the Association and shall remain a member until such time as his ownership ceases, but membership shall terminate when such Person ceases to be an Owner, and will be transferred to the new Owner.

The Association shall elect a Board of Directors annually (except for the Initial Board as 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 the Initial Board who shall serve for the period provided in the By-Laws. Each Person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a member of the Association and an owner solely for the purpose of the Statute (as defined in the By-Laws) and 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 shall be deemed or considered a member of the Association nor an Owner for any other purpose (unless he is actually an Owner and hereby a member of the Association).

An individual designated by an Owner that is not a natural Person shall be deemed a member of the Association for the purpose of qualifying for membership on the Board of Directors.

The Board of Directors shall be the governing body of the Association, representing all of the Owners in providing for the management, administration, operation, maintenance, repair, replacement and upkeep of the Property (exclusive of the Condominium Units except to the extent herein or in the By-laws otherwise provided).

**13. Covenants and Restrictions.** The covenants and restrictions applicable to the use and enjoyment of the Condominium Units, 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 Association. Present or future Owners and the Association shall be entitled to injunctive relief against any violation or attempted violation of these provisions and shall be entitled to damages for any injuries resulting from any violations thereof, but there shall be no right of reversion or forfeiture of title resulting from such violation.

Notwithstanding anything to the contrary contained herein or in the By-Laws, including by not limited to any covenants and restrictions set forth in the By-Laws, Declarant shall have until the date described in Paragraph 16 hereof as the date upon which Declarant's right to expand the Property and The Holcomb Estate terminates, the right to use and maintain any Condominium Units owned by Declarant, such other portions of the Property (other than individual Condominium Units owned by persons other than Declarant) and any portions of the Real Estate not then part of the Tract, 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 renovation and sale of Condominium Units, or to promote or effect sales of Condominium Units or for the conduct 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.

**14. 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. Except as otherwise provided herein, any proposed amendment to this Declaration must be approved by a Majority of Owners.

(e) Restrictions on Amendments.

(i) The consent of a Constitutional Majority and the Approval of Mortgagee holding first mortgages on Condominium Units to which at least sixty-seven (67%) of the Percentage Vote of Mortgaged Units appertain, shall be required to terminate the Regime.

(ii) The consent of a Constitutional Majority and the Approval of a Majority of Mortgagees shall be required to amend materially any provisions of the Declaration, By-Laws or equivalent organizational documents of the Regime or to add any material provisions thereto which establish, provide for, govern or regulate any of the following:

(i) voting;

(ii) assessments, assessment liens or subordination of such liens;

(iii) reserves for maintenance, repair and replacement of the Common Areas;

(iv) insurance or fidelity bonds;

(v) rights to use of the Common Areas;

(vi) responsibility for maintenance and repair of the several portions of the Property;

(vii) expansion or contraction of the Regime of the addition, annexation or withdrawal of property to or from the Regime except as provided for in paragraph 16;

(viii) boundaries of any Condominium Unit;

(ix) the interest in the Common Areas or Limited Areas;

(x) convertibility of Condominium Units into Common Areas or Common Areas into Condominium Units;

(xi) leasing of Condominium Units;

(xii) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer or otherwise convey his or her Condominium Unit.

(iii) The consent of the Constitutional Majority and the approval of the majority of Mortgagees shall be required to amend any provisions included in the Declaration, By-Laws or the equivalent organizational documents of the Regime that are for the express benefit of the Mortgagees.

(f) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Association provided that any amendment requiring the consent of Declarant shall contain Declarant's signed consent. All amendments shall be recorded in the office of the Recorder of Marion 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 Association, the Board of Directors, any Mortgagees or any other Person 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, (ii) such amendment or supplement is made to implement expansion of the Property and The Holcomb Estate pursuant to Declarant's reserved rights to so expand the same as set forth in Paragraph 16 hereof, or (iii) such amendment or supplement is made to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the

Veterans Administration or any other governmental agency or any other public, quasi public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (iv) to induce any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages, or (v) if such amendment or supplement is made to correct clerical or typographical errors. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Paragraph 14 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage or other instrument affecting a Condominium Unit and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute and record any such amendment, but the right of the Declarant to act pursuant to rights reserved or granted under this Paragraph 14 shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Real Estate.

**15. Acceptance and Ratification.** All present and future Owners, Mortgagees, tenants and occupants of the Condominium Units shall be subject to and shall comply with the provisions of this Declaration, the Act, the By-Laws appended hereto, and the rules and regulations as adopted by the Board of 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 the 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 an person having at any time any interest or estate in a Condominium Unit or the Property as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All Persons 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.

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

(a) The real estate described and defined herein as the Tract and described in Exhibit B is the real estate being subjected to the 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 is the area into which expansion of The Holcomb Estate may be made by Declarant. The maximum number of Condominium Units that may be developed on the Real Estate, including Condominium Units on the Tract as defined in this original Declaration, shall be one hundred (100). Subject to said limit as to the maximum number of Condominium Units to be developed on the Real Estate, The Holcomb Estate 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 (i) or more Supplemental Declarations; but no single exercise of such right and option of expansion as to any part or parts of the Real Estate shall preclude Declarant from thereafter from time to time further expanding The Holcomb Estate to include other portions of the 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 so long as such expansion is done on or before December 31<sup>st</sup>, 1991. Such expansion is entirely at the discretion of Declarant and nothing contained in this original Declaration or otherwise shall require Declarant to expand the Holcomb Estate beyond the Tract (as described in Exhibit B to this Declaration) or any other portions of the Real Estate that Declarant may voluntarily and in its sole discretion from time to time subject to this Declaration by Supplemental declarations as provided above.

(b) The Percentage Interest that will appertain to each Condominium Unit in The Holcomb Estate as The Holcomb Estate may be expanded from time to time by Declarant in accordance with the terms hereof (including the Percentage Interest that appertains to each of the Condominium Units included in this original Declaration) shall be equal and shall be a percentage equal to the number one (1) divided by the total number of Condominium Units that, from time to time have been subjected and submitted to this Declaration and then constitute a part of The Holcomb Estate.

(c) Simultaneously with the recording of Supplemental Declarations expanding The Holcomb Estate, Declarant shall record new Plans as required by the Act. Such Supplemental Declarations 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 and Limited Areas on the same basis as the Condominium Units depicted in the prior Plans. Such reallocation of Percentage Interests shall vest when the Supplemental Declarations Incorporating those changes has been recorded.

(d) When the Supplemental Declaration incorporating the addition of Condominium Units or expansion of Common Areas and Limited Areas, or both, is recorded, all liens including, but not limited to, mortgage liens shall be released as to the Percentages Interests in the Common Areas and Limited Areas described in this Declaration and shall attach to the reallocated Percentage Interests in the Common Areas and Limited Areas as though the liens had attached to those Percentage Interests on the date of the recordation of the mortgage or other lien. The Percentage Interests appertaining to additional Condominium Units being added by the Supplemental Declaration are subject to mortgage and liens upon the recordation of the Supplemental Declaration.

(e) In furtherance of the foregoing, a power coupled with an interest is hereby granted to the Declarant, as attorney-in-fact, to shift the Percentage Interest in

the Common Areas and Limited Areas appurtenant to each Condominium Unit to the percentages set forth in each Supplemental Declaration recorded pursuant to this Paragraph 16. Each deed, mortgage or other instrument with respect to a Condominium Unit and the acceptance thereof shall be deemed a consent to and acknowledgement of, and grant of, (i) such power to said attorney-in-fact and (ii) the right pursuant to such power to shift and reallocate from time to time the percentages of ownership in the Common Areas and Limited Areas appurtenant to each Condominium Unit to the percentages set forth in each such recorded Supplemental Declaration.

(f) Each Owner of a Condominium Unit by acceptance of a deed thereto, further acknowledges, consents and agrees, as to each re-corded Supplemental declaration, as follows:

(i) The portion of the Real Estate described in each such Supplemental Declaration shall be governed in all respects by the provisions of this Declaration.

(ii) The Percentage Interest in the Common Areas and Limited Areas appurtenant to each Condominium Unit shall automatically be shifted and reallocated to the extent set forth in each Supplemental Declaration and upon the recording thereof such Percentage Interests shall thereby be and be deemed to be released and divested from such Owner and reconveyed and reallocated among the other Owners as set forth in each recorded Supplemental Declaration.

(iii) Each deed, mortgage or other instrument affecting a Condominium Unit shall be deemed given subject to the conditional limitation that the Percentage Interest in the Common Areas and Limited Areas appurtenant to each Condominium Unit shall, upon the recording of each Supplemental declaration, be divested pro tanto to the reduced percentage set forth in such Supplemental Declaration and vested among the other Owners, mortgagees and others owning an interest in the other Condominium Units in accordance with the terms and percentages of each such recorded Supplemental Declaration.

(iv) A right of revocation is hereby reserved by the grantor in each deed, mortgage or other instrument affecting a Condominium Unit to so amend and reallocate the Percentage Interest in the Common Areas and Limited Areas appurtenant to each Condominium Unit.

(v) The Percentage Interest in the Common Areas and Limited Areas appurtenant to each Condominium Unit shall include and be deemed to include any additional Common Areas and Limited Areas included in land to which The Holcomb Estate is expanded by a recorded Supplemental Declaration and each deed, mortgage or other instrument

affecting a Condominium Unit shall be deemed to include such additional Common Area and Limited Areas and the ownership of any such Condominium Unit and lien or any such mortgage shall automatically include and attach to such additional Common Areas and Limited Areas as such Supplemental Declarations are recorded.

(vi) Each Owner shall have a perpetual easement appurtenant to his Condominium Unit for the use of any additional Common Areas described in any recorded Supplemental Declaration, for the purposes therein set forth, except as to any portion the use of which is limited by exclusive easements granted to the Owners (Limited Areas) of specific Condominium Units as may be provided in such Supplemental Declaration, and each Owner of a Condominium Unit described in any recorded Supplemental Declaration shall have a perpetual easement appurtenant to his Condominium Unit for the use of all Common Areas (except Limited Areas) described in this Declaration as supplemented or amended prior to the date of such recorded Supplemental Declaration.

(vii) The recording of any Supplemental Declaration shall not alter the amount of the lien for expenses assessed to or against a Condominium Unit prior to such recording.

(viii) Each Owner, by acceptance of the deed conveying his Condominium Unit, agrees for himself and all those claiming under him, including mortgagees, that this Declaration and each Supplemental Declaration are and shall be deemed to be in accordance with the Act and, for the purposes of this Declaration and the Act, any change in the respective Percentage Interests in the Common Areas and Limited Areas as set forth in each Supplemental Declaration shall be deemed to be made by agreement of all Owners.

(ix) Each Owner agrees to execute and deliver such documents necessary or desirable to cause the provisions of this Paragraph 16 to comply with the Act as it may be amended from time to time.

(g) In the event Declarant elects to expand the Property and The Holcomb Estate, all improvements constructed on that portion of the Real Estate added to the Tract (the "Expansion Parcel") shall be consistent with the improvements then located on the Tract in terms of the quality of construction and all such improvements shall be substantially completed before the expansion Parcel is added to the Tract. No lien arising in connection with Declarant's ownership of, and construction of, improvements on, the Expansion Parcel shall adversely affect the rights of existing Owners or the priority of first mortgages on Condominium Units in the existing Property. All taxes and other assessments relating to the Expansion Parcel covering any period prior to the additions of the Expansion Parcel shall be paid by or otherwise satisfactorily provided for by Declarant.

**17. Granting of Easements.** The Board of Directors is granted the authority to grant such easements upon such terms and conditions and for such consideration as they deem appropriate.

**18. Reservation of Rights to the Use of the Common Areas.**

(a) If, at any time, and from time to time, any portion of the Real Estate has not been subjected and submitted to this Declaration or to the Act by a Supplemental Declaration and such portion or portions of the Real Estate not so subjected to this Declaration or to the Act is/are developed with single or multi-family dwelling units (whether for rent or otherwise), then the owner or owners of such portion of the Real Estate shall have the benefit of the Common Areas or portions thereof, to include the use of all driveways and other roads and the recreational facilities, for the use of the persons occupying such dwelling units upon the same terms and conditions as the use of such Common Areas by the owners of the Condominium Units, their families, tenants and guests. The owner or owners of such portions of the Real Estate shall then pay for the use of such facilities based on the cost of operation and maintenance of such facilities for the year of such usage and based on the number of dwelling units so entitled to use such facilities in the proportion that the number of dwelling units on the Real Estate exclusive of the Tract bears to the sum of (i) such number of dwelling units plus (ii) the number of Condominium Units. The owner or owners of such dwelling units shall make payments for the usage provided herein to the Association at the same time as the Owners of Condominium Units pay their assessments to the Association.

(b) Declarant shall have, and hereby reserves, an easement over, across, upon, along, in, through and under the Common Areas, including, to the extent necessary, the Limited Areas, for the purposes of installing, maintaining repairing, replacing, relocating and other-wise servicing utility and telecommunication equipment, facilities and installations to serve the Property and any portions of the Real Estate that are not part of the Property, to provide access to and ingress and egress to and from the Property and to any such portions of the Real Estate that are not part of the Property, to make improvements to and within the Property and any such portions of the Real Estate that are not 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 that are not part of the Property. The following easement shall be a transferable easement and Declarant may at any time and from time to time grant similar easements, rights of privileges to other persons for the same purposes. By way of example, but not in limitation of the generality of the foregoing, Declarant, and others to whom Declarant may grant such similar easements, rights or privileges, may so use the Common Areas and, to the extent necessary, the Limited Areas, to supply utility and telecommunication services to the Property and any portions of the Real Estate that are not part of the Property and to permit public and quasi-public vehicles, including but not limited to police, fire, and other emergency vehicles, trash and garbage collection, post office vehicles and privately owned delivery vehicles,

and their personnel to enter upon and use the drives and streets, the Common Areas and, to the extent necessary, the Limited Areas of The Holcomb Estate in the performance of their duties.

**19. Initial Management.** As set forth in the By-Laws, the initial Board of Directors consists and will consist of Persons selected by Declarant. The Board of Directors has entered, or may hereafter enter, into a management agreement with Declarant (or a corporation or other entity affiliated with Declarant) for a term which will expire not later than December 31, 1989, under which Declarant (or such affiliate of Declarant, as appropriate) will provide supervision, fiscal and general management and maintenance of the Common Areas and, to the extent the same is not otherwise the responsibility of Owners of individual Condominium Units, the Limited Areas, and, in general, perform all of the duties and obligations of the Association. Such management agreement is or will be subject to termination by Declarant (or its affiliate, as appropriate) at any time prior to the expiration of its term, in which event the Association shall thereupon and thereafter resume performance of all of its duties and obligations and functions. Notwithstanding anything to the contrary contained herein, so long as such management agreement remains in effect, Declarant (or its affiliate, a appropriate) shall have, and Declarant hereby reserve to and for its benefit (or to its affiliate, as appropriate), the exclusive right to manage the Property and to perform all the functions of the Association.

**20. Limitation on Declarant's Liability for Assessments.** So long as the management agreement between the Association and Declarant or its affiliate referred to in Paragraph 19 remains in effect, Declarant shall be responsible for only the amount of any deficit in the annual budget adopted by the Initial Board as may arise from time to time during the effectiveness of such management agreement and not for any Assessment based on Declarant's pro-rata share of Common Expenses, the responsibility of Declarant for Common Expenses during the period such management agreement remains in effect being limited to such sum which, in addition to Assessments paid by other Owners, may be required to maintain and operate the Common Areas and, to the extent the same are not the responsibility of Owners of individual Condominium Units, the Limited Areas. The amount for which Declarant shall be liable during such period shall not include major physical alterations and other unusual expenditures not ordinarily anticipated in normal maintenance operations not amounts to be contributed to the reserve for replacements and the general operating reserves to be established pursuant to Sections 6.04 and 6.05 of the By-Laws. Prior to the Applicable date, Declarant shall bear all expenses incurred with respect to the Tract arising out of construction or other activities on any portion of the Real Estate not included in the Tract, including but not limited to road damage and clean-up of debris caused by construction traffic, connection to any utility lines or mains located on the Tract and damage to, or deterioration of, grass, trees, fences or other portions of the Property due to construction off site or the state of areas under development.

**21. Sale, Lease or other Transfer of Condominium Unit by Owners.**

(a) Lease. It is in the best interests of all the Owners that those persons residing in The Holcomb Estate have similar proprietary interests in Their

Condominium Units and be Owners. For the purpose of maintaining the congenial and residential character of The Holcomb Estate, no Owner other than Declarant shall lease his Condominium Unit or enter into any other rental or letting arrangement for His Condominium Unit unless such lease is in writing and is for an initial period of at least six (6) months. Any such lease shall be made explicitly subject to the terms of this Declaration and the By-Laws.

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

**22. Right to Combine Units.** Two or more adjoining Condominium Units may be utilized the Owners thereof as if they were on Condominium Unit and any walls, floors or other structural separations between any two such Condominium Units, or any space that would be occupied by such structural separations but for the utilization of the two Condominium Units as one Condominium Units are utilized as one, be utilized by the Owner or Owners of the adjoining Condominium Units as Limited Areas except to the extent that any such structural separations are necessary or contain facilities necessary for the support, use or enjoyment of other parts of the Building of which they are a part. At any time, upon request of the Owner of one of such adjoining Condominium Units, any opening between the two Condominium Units that, but for joint utilization of the two Condominium Units, would have been occupied by a structural separation, shall be closed, at the equal expense of the Owners of each of the two Condominium Units, and the structural separations between the two Condominium units shall thereupon become Common Areas.

**23. Right of Action.** Subject to the provisions of Paragraph 29, the Association and any aggrieved Owner shall have a right of action against any Owner or Owners for failure to comply with the provisions of the Declaration, By-Laws or any decision of the Association or its Board of Directors which are made pursuant to authority granted to the Association or its Board of Directors in such documents. Owners shall have a similar right against the Association.

**24. Costs and Attorneys' Fees.** In any proceeding arising because of failure of an Owner to make any payments required by this Declaration, the By-Laws or the Act, or to comply with any provision of the Declaration, the Act, the B-Laws, or the rules and regulations adopted pursuant thereto as each may be amended from time to time, the Association shall be entitled to recover its costs and reasonable attorneys' fees incurred in connection with such default or failure.

**25. Waiver.** No Owner may exempt himself from liability for his contribution toward the Common Expenses by waive of the use or enjoyment of any of the Common Areas or limited Areas or by abandonment of his Condominium Unit.

**26. Severability Clause.** The invalidity of any covenant, restriction, condition, limitation or other provisions of this Declaration or the By-Laws filed herewith shall not

impair or affect in any manner the validity, enforceability or effect of the rest of this declaration or the attached By-Laws.

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

**28. Floor Plans** The Plans setting forth the layout, location, identification numbers, and dimensions of the Condominium Units and the Property are incorporated into this Declaration by reference, and have been filed in the office of the Recorder of Marion County, Indiana, in Horizontal Property Plan file \_\_\_\_\_, as of \_\_\_\_\_ 20 , as Instrument Number 84-79773 .

**29. Exculpation.** This instrument is executed and delivered on the express condition that anything herein to the contrary notwithstanding, each and all of the representations covenants, undertakings and agreements herein made on the part of Declarant (“Representations”), while in form purporting to be the representations of Declarant, are nevertheless each and every one of them, made and intended not as personal Representations by Declarant or for the purpose or with the intention of binding Declarant personally but are made and intended for the purpose of binding only the Tract; and no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against Declarant personally or any of its partners, on account of this instrument or on account of, in connection with or arising out of any Representations of Declarant in this instrument contained, either express or implied, all such personal liability, if any, being expressly waived and released by each Person who acquires any interest in a Condominium Unit as a condition to the acquisition thereof.

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

HOLCOMB PROPERTIES

By \_\_\_\_\_  
George P Sweet  
General Manager

STATE OF INDIANA )  
 ) ss:  
COUNTY OF MARION )

Before me, the undersigned, a Notary Public, in and for said County and State, personally appeared George P. Sweet, known to me and known by me to be the General Manager of Holcomb Properties, an Indiana general partnership who acknowledged the

execution of the foregoing Declaration of Horizontal Property ownership for an on behalf of said partnership.

WITNESS my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Notary Public Residing in \_\_\_\_\_

\_\_\_\_Marion County

My Commission Expires:  
\_\_\_\_\_, 19

\_\_\_\_\_  
(printed signature)

This instrument prepared by Tom Charles Huston, Attorney-at-Law, 1313 Merchants Bank Building, Indianapolis, Indiana 46204.

CONSENT OF MORTGAGEE

THE UNDERSIGNED, being the holder of n existing mortgage on the Tract, as defined in the above and foregoing declaration, which mortgage was dated the 29th day of June 1984k and recorded in the Office of the Recorder of Marion County, Indiana, on the 2nd day of July, 1984k as Instrument No. 84-49972k hereby consents to the recording of the above and foregoing Declaration and the submission of the Tract to the provisions of the Horizontal Property Act of the State of Indiana, and further agrees that its mortgage shall be subject to the provisions of the Act and the above and foregoing Declaration, and exhibits attached thereto, and the documents incorporated therein. This instrument shall in no way be construed or considered as a release of the mortgage as to the real estate described in said mortgage, but such mortgage shall remain in full force and effect as to said real estate therein described, and as further described in the Declaration of Horizontal Property Ownership.

EXECUTED this 27\_ day of \_September\_\_, 1984\_.

MERCHANTS NATIONAL BANK &  
TRUST COMPANY OF INDIANAPOLIS

By: \_\_\_\_\_  
James A. Buell  
Assistant Vice President



STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me a Notary Public in and for said County and State personally appeared James A Buell, the Assistant Vice President of Merchants National Bank & Trust Company of Indianapolis, who, having been duly sworn, acknowledged the execution of the foregoing Consent of Mortgagee for and on behalf of said bank and stated that the representations therein are true.

WITNESS my hand and Notarial Seal this 27 day of September , 1984.

\_\_\_\_\_  
Notary Public residing in  
Marion County

\_\_\_\_\_  
(Printed)

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

This instrument was prepared by Tom Charles Huston, Attorney-at-Law, 1313 Merchants Bank Building, Indianapolis, Indiana 46204

CONSENT OF MORTGAGEE

THE UNDERSIGNED, being the holder of an existing mortgage on the Tract as defined in the above and foregoing Declaration, which mortgage was dated the 29th day of June, 1984, and recorded in the Office of the Recorder of Marion County, Indiana, on the 2nd day of July, 1984, as Instrument No. 84-49973, hereby consents to the recording of the above and foregoing Declaration and the submission of the tract to the provisions of the Horizontal Property Act of the State of Indiana, and further agrees that it's mortgage shall be subject to the provisions of the Act and the above and foregoing Declaration, and exhibits attached thereto, and the documents incorporated therein. This instrument shall in no way be construed or considered as a release of the mortgage as to the real estate described in said

mortgage, but such mortgage shall remain in full force and effect as to said real estate therein described, and as further described in the Declaration of Horizontal Property Ownership.

EXECUTED this 8th day of October , 1984.

COMPUCOM DEVELOPMENT CORPORATION

By: \_\_\_\_\_  
Hayes T. O'Brien  
President

STATE OF INDIANA )  
 ) SS:  
COUNTY OF MARION )

Before me a Notary Public in and for said County and State personally appeared Hayes T. O'Brien, the President of Compucom Development Corporation, who, having been duly sworn, acknowledged the execution of the foregoing Consent of Mortgagee for and on behalf of said corporation and stated that the representations therein are true.

WITNESS my hand and Notarial Seal this 8 day of October , 1984.

\_\_\_\_\_  
Notary Public residing in  
Marion County

\_\_Susan K. Burford  
(Printed)

My Commission Expires:  
\_\_\_\_\_6/27/87\_\_\_\_\_

This instrument was prepared by Tom Charles Huston, Attorney-at-Law, 1313 Merchants Bank Building, Indianapolis, Indiana 46204