

DECLARATION OF THE HARBOURS

HORIZONTAL PROPERTY REGIME

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DECLARATION OF THE HARBOURS
HORIZONTAL PROPERTY REGIME

THIS DECLARATION OF THE HARBOURS HORIZONTAL PROPERTY REGIME ("Declaration"), is made this 24 day of MAY, 2000, by The Harbours at RiverPointe, L.P., a Delaware limited partnership ("Declarant").

RECITALS:

A. Declarant is the sole owner of the fee simple title to certain real estate, located in Clark County, Indiana, more particularly described in Exhibit A attached hereto and incorporated herein by this reference (hereinafter called the "Real Estate").

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

NOW, THEREFORE, Declarant hereby makes this Declaration and declares that the Real Estate shall be a "Horizontal Property Regime" as provided in the Act, subject to and in accordance with the following terms and conditions:

Section 1. Definitions. The following terms whenever used in this Declaration shall have the following assigned meanings:

- (a) "Act" means the Horizontal Property Law of the State of Indiana, I.C. 32-1-6-1 et seq., as amended.
- (b) "Assessments" means Regular Assessments and Special Assessments.
- (c) "Association" means The Harbours Condominium Association, Inc., an Indiana nonprofit corporation.
- (d) "Board of Directors" means the governing body of the Association elected by the Co-Owners in accordance with the By-Laws, and shall be synonymous with the term "Board of Directors" as used in the Act.
- (e) "Building" means an eleven (11) story structure on the Real Estate in which one hundred eighty-seven (187) Units are located. The Building is more particularly described and identified on the Plans and in Section 2 of this Declaration.

- (f) "By-Laws" means the Code of By-Laws of the Association, providing for the administration and management of the Association, a true copy of which is attached as ***Exhibit B*** to this Declaration and incorporated herein by this reference.
- (g) "Common Areas" means the General Common Areas and the Limited Areas.
- (h) "Common Expenses" means expenses of administration of the Association, expenses for the upkeep, maintenance, repair and replacement of the Common Areas and all other costs and expenses incurred by the Association for the benefit of the Common Areas or for the common benefit of all Owners.
- (i) "Co-Owners" means all of the Owners of all the Units in the Regime.
- (j) "Declarant" means The Harbours at RiverPointe, L.P., a Delaware limited partnership, and any successor or assignee (whether by foreclosure of security interest or otherwise) of its interest in this Declaration under an instrument or instruments which expressly state that the successor or assignee thereunder shall become the Declarant for purposes of this Declaration.
- (k) "Formula" means the method set forth in Section 6 of this Declaration for computing the Percentage Interest applicable to each Unit.
- (l) "General Common Areas" means those Common Areas the use and enjoyment of which is not limited to certain Units, as further described and defined in Section 4 of this Declaration.
- (m) "Limited Areas" means those Common Areas, the use and enjoyment of which is limited to a certain Unit or Units, as defined in Section 5 of this Declaration.
- (n) "Managing Agent" means any person or entity to which the management responsibilities of the Association are delegated under Section 12 of this Declaration.
- (o) "Mortgagee" means the holder, insurer, or guarantor of any first mortgage on any Unit.
- (p) "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; provided, that persons or entities owning a single Unit as tenants in common, joint tenants, tenants by the entireties, or any form of joint or divided ownership, shall be deemed one Owner for purposes of this Declaration.

- (q) "Percentage Interest" means the percentage of undivided interest in the fee simple title to the Common Areas and Limited Areas appertaining to each Unit, as determined in accordance with Section 6 of this Declaration.
- (r) "Percentage Vote" means that percentage of the total vote accruing to all of the Units which is applicable to each particular Unit and exercisable by the Owner thereof, as described in Section 7 of this Declaration, and in the By-Laws.
- (s) "Plans" means the floor plans of the Building and Units on the Real Estate, duly certified by a registered architect or licensed professional engineer that they are copies of portions of the plans of the Building as filed with and approved by the municipal or other governmental subdivision having jurisdiction over the issuance of permits for the construction of the Building. The Plans are filed in Condo Plat Book 1, Page ____ of the Clark County, Indiana records.
- (t) "Property" means those portions of the Real Estate which have been included in the Regime and appurtenant easements, the Units, the Buildings, and all other improvements of every kind and nature whatsoever, now or hereafter located upon those portions of the Real Estate which have been included in the Regime, and used in connection with the operation, use and enjoyment of the Regime.
- (u) "Regime" means the Horizontal Property Regime created by this Declaration, including any subsequent amendment thereto.
- (v) "Regular Assessment" shall have the meaning given in the By-Laws.
- (w) "Rules and Regulations" shall mean the rules and regulations adopted by the Board of Directors from time to time.
- (x) "Special Assessment" shall have the meaning given in the By-Laws.
- (y) "Unit" means any individual residential unit including any balconies that are appurtenant to the unit within the Regime, each individual unit being more particularly described and identified on the Plans and in Sections 2 and 3 of this Declaration.

Section 2. Description Of Units. The Real Estate contains 188 Units, as shown on the Plans. Said Units are identified and referred to in the Plans and in this Declaration as Units numbered Third Floor 305 - 321; Fourth Floor 401 - 421; Fifth Floor 501-521; Sixth Floor 601 -621; Seventh Floor 701-721; Eighth Floor 801-821; Ninth Floor 901-921; Tenth Floor 1001-1021; Penthouse 1101-1114; and Units 600TH, 602TH, 604TH, 606TH, 608TH, 610TH, 612TH, 614TH, 616TH and 618TH located on West Riverside Drive inclusive. The legal description for each Unit shall consist

EXHIBIT B

CODE OF BY-LAWS OF

THE HARBOURS CONDOMINIUM ASSOCIATION, INC.

A NON-FOR-PROFIT CORPORATION

ARTICLE I

Identification and Applicability

Section 1.01. Identification and Adoption. These By-Laws are adopted simultaneously with the execution of a certain Declaration of The Harbours Horizontal Property Regime (hereinafter referred to as the "Declaration"), to which these By-Laws are attached and of which they are made a part. The Declaration is incorporated herein by reference and all of the covenants, conditions, rights, restrictions, and liabilities therein contained shall apply to and govern the interpretation of these By-Laws. The definitions and terms as defined and used in the Declaration shall have the same meanings in these By-Laws, and reference is hereby made to the definitions in Section 1 of the Declaration. The provisions of these By-Laws shall apply to the Property and to the administration and conduct of the affairs of the Association.

Section 1.02. Individual Application. All of the Owners, tenants, their guests and invitees, or any other person who might now or hereafter use or occupy a Unit or any part of the Property shall be subject to the rules, restrictions, terms and conditions set forth in the Declaration, these By-Laws, the Articles and the Act, as the same may be amended from time to time.

ARTICLE II

Meetings of Association

Section 2.01. Purpose of Meetings. At least annually and at such other times as may be necessary or appropriate, a meeting of the Co-Owners shall be held for the purpose of electing the Board of Directors, approving the annual budget, providing for the collection of Common Expenses, and for such other purposes as may be required by the Declaration, these By-Laws, or the Act.

Section 2.02. Annual Meetings. The first annual meeting shall not be held until the time of ~~turnover of control~~ of the Regime by Declarant ~~or at such~~ earlier time or times as may be determined by the Declarant. All subsequent annual meetings shall be held on any date selected by the Board of Directors. At each annual meeting, the Co-Owners shall elect the Board of Directors of the

Association in accordance with the provisions of these By-Laws and transact such other business as may properly come before the meeting.

Section 2.03. Special Meetings. After the turnover of control by Declarant, a special meeting of the members of the Association may be called by resolution of the Board of Directors or upon a written petition of the Co-Owners who have not less than ten percent (10%) of the Percentage Vote. The resolution or petition shall be presented to the President or Secretary of the Association and shall state the purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

Section 2.04. Notice and Place of Meetings. All meetings of the members of the Association shall be held at such location within the State of Indiana as may be designated by the Board of Directors. Written notice stating the date, time, place of any meeting, and in the case of a special meeting the purpose or purposes for which the meeting is called, shall be delivered or mailed by the Secretary of the Association to each Co-Owner and, if applicable, to any Mortgagee of which the Association has been notified as required in Article VIII, not less than fourteen (14) days prior to the date of such meeting. If at any meeting an amendment to the Declaration or these By-Laws is to be considered, the notice of such meeting shall describe the nature of such proposed amendment. The notice shall be mailed by first-class U.S. Mail, postage prepaid, or delivered to the Co-Owners at their respective addresses as the same shall appear upon the records of the Association, and by U.S. Certified Mail, Return Receipt Requested to the Mortgagees at their respective addresses as they shall appear on the records of the Association, by such means as provided in Section 31 of the Declaration. Attendance at any meeting in person or by proxy shall constitute a waiver of notice of such meeting.

Section 2.05. Voting.

(a) **Number of Votes.** Each Owner shall be entitled to cast its Percentage Vote on each matter coming before the meeting. The total number of votes for or against any matter shall then be divided by the number of Unites then in the Regime to determine the respective proportions of Co-Owners supporting or opposing such matter.

(b) **Multiple Owners.** When the Owner of a Unit constitutes more than one person or entity, or is a partnership, there shall be only one voting representative entitled to cast the Percentage Vote allocable to that Unit. At the time of acquisition of title to a Unit by a multiple Owner or a partnership, those persons constituting such Owner or the partners shall file with the Secretary of the Association an irrevocable proxy appointing one of such persons or partners as the voting representatives for such Unit, which shall remain in effect until such appointed representative relinquishes such appointment in writing, becomes incompetent, dies, or such appointment is otherwise rescinded by order of a court of competent jurisdiction. Such appointed voting representative may grant a proxy to another to vote in his place at a particular meeting or meetings pursuant to paragraph (d) of this Section 2.05, which shall

constitute relinquishment of his right to act as voting representative for the Unit as such meeting or meetings.

(c) Voting by Corporation or Trust. Where a corporation or trust is an Owner or is otherwise entitled to vote, the trustees may cast the vote on behalf of the trust, and the agent or other representative of the corporation duly empowered by the board of directors of such corporation shall cast the vote to which the corporation is entitled.

(d) Proxy. An Owner may vote either in person or by his duly authorized and designated attorney-in-fact. Where voting is by proxy, the Owner shall duly designate his attorney-in-fact in writing, delivered to an officer of the Association prior to the commencement of the meeting; provided, however, no written proxy from any owner shall be required for Declarant to vote for any owner by proxy pursuant to Section 8 of the Declaration.

(e) Quorum. Except where otherwise expressly provided in the Declaration, these By-Laws, or the Act, the presence of Owners or their duly authorized representatives holding ten percent (10%) of the total Percentage Vote shall constitute a quorum at all meetings. The terms "majority of Owners" and "majority of the vote", as used in these By-Laws, shall mean, unless otherwise expressly indicated, not less than fifty-one (51%) of the total Percentage Vote as determined by the applicable provisions set forth in the Declaration, and shall not mean a majority of the persons or votes present or represented at such meeting.

(f) Conduct of Annual Meeting. The Chairman of the meeting shall be the President of the Association. He shall call the meeting to order at the duly designated time, and business will be conducted in the following order:

(1) Reading of Minutes. The Secretary or an Assistant Secretary shall read the minutes of the last annual meeting and the minutes of any special meeting held subsequent thereto.

(2) Treasurer's Report. The Treasurer or an Assistant Treasurer shall report to the Co-Owners concerning the financial condition of the Association and answer relevant questions of the Owners concerning the Common Expenses and financial report for the prior year and the proposed budget for the current year.

(3) Budget. The proposed budget for the current calendar year shall be presented to the Co-Owners for approval or amendment.

(4) Election of Board of Directors. Nominations for the Board of Directors may be made by an Owner from those persons eligible to serve. Such nominations must be in writing and presented to the Secretary of the Association at least ten (10) days prior to the annual meeting. Voting for Board of Directors will be by paper ballot. The ballot shall contain the name of each person nominated to serve as a Board member. Each Owner may cast his Percentage Vote for each of as many nominees as are to be elected; however, he shall not be entitled to accumulate his votes. Those persons receiving the highest number of votes shall be elected.

(5) Other Business. Other business may be brought before the meeting only upon a written request submitted to the Secretary of the Association at least ten (10) days prior to the date of the meeting; provided, however, that such written request may be waived at the meeting if agreed by a majority of the vote.

(6) Committee Reports. Reports of committees designated to supervise and advise on the respective segments of maintenance and operations assigned by the Board of Directors shall be presented.

(7) Adjournment. Upon completion of all business before the Association, the President, upon the motion of any Owner, may adjourn the meeting; provided, however, that no annual meeting shall be adjourned until a budget is approved by the Co-Owners for the upcoming year.

(g) Action of Consent. Any action required or permitted to be taken at any Owner's meeting may be taken without a meeting if, prior to such action, a written consent to such action is signed by all the Owners and is filed with the minutes of the Association proceedings.

Section 2.06. Control During Development. Notwithstanding any other provision of the Declaration, the Act, the Articles, or these By-Laws, from and after the date of the Declaration until the date when Declarant turns over control of the Regime to the Co-Owners, as determined by Declarant within the limitations set forth in Section 8 of the Declaration, the Regime shall be governed by the initial Board of Directors appointed by Declarant. Said initial Board of Directors shall exclusively hold all rights and powers which a Board of Directors or the Association would have under the Declaration, the Act, the Articles, or these By-Laws, except as specifically limited in this Section 2.06. Said initial Board of Directors may appoint from time to time from among the Co-Owners committees to advise and assist it in the performance of its functions. The rights and powers of said initial Board of Directors shall be limited as follows:

(a) Said initial Board shall have no power to reallocate Percentage Interests or Percentage Votes in a manner not consistent with the Declaration.

(b) Said initial Board, as such, shall have no power to determine on behalf of the Co-Owners whether a complete destruction of the Buildings and other Property within the Regime has occurred, and the Co-Owners shall be entitled to vote on such matter in accordance with Section 19 of the Declaration; provided, however, that this shall not prohibit Declarant from voting on such matter according to the Percentage Vote attaching the Units owned by Declarant.

(c) Said initial Board of Directors shall not take any action requiring the vote or consent of any Mortgagee unless the vote or consent of such Mortgagee is obtained.

Declarant shall have the right to waive, on behalf of the Association, the annual meetings and annual accountings provided for in this Article II and in the Declaration, so long as Declarant retains control of the Association. At the time of turnover of control by Declarant, the first annual meeting of the Association will be called, if it has not already been held, at which time the rights and powers of the initial Board of Directors shall terminate and the Regime shall thereafter be governed in accordance with the provisions of the Declaration, the Act, the Articles, and these By-Laws other than this Section 2.06.

ARTICLE III

Board of Directors

Section 3.01. Board of Directors. The affairs of the Association shall be governed and managed by the Board of Directors (herein sometimes collectively called "Board" and individually called "Directors"). The initial Board of Directors shall be composed of three (3) persons appointed by Declarant. After the expiration of the term of the initial Board of Directors as provided in Section 2.06 herein above, the constituency of such Board may be increased to, but shall not exceed, nine (9) persons. The number of Directors shall be increased in accordance with this Section 3.01 only if the increase is properly brought before the Association at an annual meeting or special meeting called for such purpose and approved by a majority of the Percentage Vote present at such meeting. No person shall be eligible to serve as a Director unless he is an Owner or is an attorney, agent, or employee of Declarant.

*Amended
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Section 3.02. Additional Qualifications. Where an Owner consists of more than one person or is a partnership, corporation, trust or other legal entity, then the person entitled to cast the Percentage Vote on behalf of such multiple Owner shall be eligible to serve on the Board of Directors.