

DEMING GARDEN APARTMENTS BYLAWS

ARTICLE I

Section 1. Name. The name of this Association of Apartment Owners and the property submitted thereby to the Horizontal Property Regime, pursuant to the Declaration to which these bylaws are annexed shall be DEMING GARDEN APARTMENTS.

Section 2. Autonomy. The Association of Apartment Owners shall include as members thereof all of the co-owners of the apartments in the building, and the Association of Apartment Owners and all of the co-owners as such may act, both at law and in equity, pursuant to said Declaration and these Bylaws as an entity in the name and style of DEMING GARDEN APARTMENTS.

Section 3. Definitions. Those terms used in these bylaws which are defined in Chapter 349 of the Acts of the Indiana General Assembly of 1963 at Page 178, same being I.C. 32-1-6-1 of the Acts of 1971, and Section 56-1201, Burns Indiana Statutes, Volume 11, Part I Pocket Parts known as the Horizontal Property Act, hereinafter referred to as the "Act" are hereby defined in these Bylaws by the same meaning as they are defined in the Act.

ARTICLE II

Section 1. Members. The Association of Apartment Owners shall consist of the co-owners of DEMING GARDEN APARTMENTS who shall become co-owners pursuant to approval by the Board of Directors and in accordance with the provisions of the Declarations.

Section 2. Rights and Duties of Membership. Every member of the Association by No. 94

becoming a co-owner agrees to obey and conform with the Declaration, these Bylaws, and the Rules and Regulations adopted pursuant thereto, and the decision of the general membership or of the Board of Directors. Each member also agrees in good faith to do his utmost to promote the aims and purposes of the Association, the success of its operations, and the welfare of its members in utilizing the facilities provided in the property. The books of account and the record books of the Association shall be available for inspection all reasonable hours by any member of the Association who has been a member for at least six months prior to his demand for inspection.

Section 3. Withdrawal or Expulsion from Membership. Any member desiring to terminate his membership (and his status as co-owner) shall make written application to the Board of Directors in which he shall advise the Board of the name and address of the prospective purchaser of his apartment, and provide such other information pertaining to such prospective purchaser as the Board of Directors may reasonably require upon such application, and the Board of Directors may hereupon, under such Rules and Regulations as may be adopted pursuant to these bylaws and Declaration, either approve or disapprove and exercise the purchase rights for the Association as the Board of Directors may determine to be in the best interests of the Association and equitable to the withdrawing member. In addition to any other remedies that may be available to the Association at law or in equity and without prejudice to the right to exercise such other remedies, the Board of Directors may at any

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time prefer charges against any member if the Board is of the opinion that such member has violated any of the provisions of the Declaration or these bylaws, or that he has been guilty of conduct detrimental to the welfare of the Association and its members. In the event the Board determines that such member should be expelled and that he should cease to be a co-owner, then in such event the member shall, within thirty (30) days, offer his apartment for sale subject to the sale provisions provided for in the Declaration; provided, however, that in the event that such member notifies the Board that he elects to appeal to the general membership, the question of expulsion shall be submitted to all co-owners and shall be confirmed only upon the affirmative vote of at least 75% of all co-owners' votes.

Section 4. Annual Meetings. The regular annual meetings of the members of the Association, unless the notice of waiver of notice for such meeting shall provide otherwise, shall be held in the apartment of the President, or at such other place as may be designated by the President on the 3rd Saturday in MARCH in each year, provided that the Board of Directors may cause the meeting to be held at such other time thereafter as conveniently may be set, upon ten days notice of such postponement. Any subsequent or postponed annual meeting shall be called in the same manner as provided for special meetings of the members. The time of holding, or the holding, of the regular annual meeting of the members or of the directors as herein provided for shall not be construed to determine the fiscal

policies of the association and the fiscal policies, including the determination of an appropriate fiscal year for accounting purposes, shall be within the sole discretion of the Board of Directors.

Section 5. Special Meetings. Special meetings of the members entitled to vote may be called by the President or by the Board of Directors, or by the members representing a majority of the members' votes by filing with the Secretary a written call for such meeting stating the time, place and purpose thereof.

Section 6. Notice of Meetings. The notice or call of any members' meeting may specify the place as any convenient location within the State of Indiana, and the Secretary shall mail or deliver to each of the members entitled to vote at such apartment, written or printed notice of the time and place of holding of every annual or special members meeting. Such notice shall be mailed postage prepaid, delivered by hand at the election of the Secretary, at least ten (10) days before the time at which the meeting is to be held; provided, however, that the failure to give such notice shall not affect the validity of the annual meeting of the members, or of any of the proceedings at any other meeting when all the members shall have been present or all have waived such notice. Any member present at any such meeting shall be presumed to have waived notice of such meeting and consented to the holding of such meeting and the transaction of any business transacted at the meeting which could be lawfully transacted at any meeting of the members regularly called.

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of the Act. Any change, modification or rescission of any of the provisions of this Declaration shall be effective only upon recording of such instrument of change in the office of the Recorder of Vigo County, Indiana.

13. Termination of Horizontal Property Regime.

(a) All of the Co-owners constituting the Association of Apartment Owners may remove the property from the provisions of the Act and from the provisions of the Declaration; and the Bylaws annexed hereto; and the Horizontal Property Regime instituted thereby, by an instrument in writing to that effect duly recorded, provided that the holders of all liens affecting any of the apartments consent thereto or agree in either case, by executing said instrument of removal, or by separate instrument in writing duly recorded, that their liens be transferred to the percentage of the undivided interest of the Apartment Owner to which they apply in the property as herein-after provided:

(b) Upon removal of the property from the provisions of the Act, this Declaration and the Bylaws annexed hereto, and the Horizontal Property Regime established thereby, the property shall be deemed to be owned in common by the Apartment Owners. The undivided interest in the property owned in common which shall appertain to each apartment owner shall be the percentage of undivided interest previously owned by said owner in the common area and facilities as is provided for in Paragraph 6 of this Declaration.

14. Association of Apartment Owners' Status.

which affect his apartment independently, action may be brought by the Association of Apartment Owners in the names of McPeaks, as may be authorized by the Board of Directors on behalf of or with respect to all of the Co-owners and the property, as their respective interests may appear, with respect to any cause of action relating to the common areas and facilities, or to more than one apartment. Service of process upon any two or more Co-owners in any action relating to the common areas and facilities, or relating to more than one apartment, and upon the Association of Apartment Owners selected, qualified and acting, pursuant to the Bylaws annexed hereto.

(b) Any and all agreements, decisions and determinations made by the Association of Apartment Owners acting under the names of McPeaks, in accordance with the voting percentages provided for in Paragraph 6 of this Declaration and in accordance with this Declaration and the Bylaws annexed hereto, shall be deemed to be binding upon all Co-owners and the Association of Apartment Owners.

(c) The apartment owners, tenants or licensees of such Co-owners, employees or agents of such Co-owners, tenants or licensees, or any other person that may in any manner use the property or any part thereof, shall be subject to the act, this Declaration and the Bylaws annexed hereto, and the rules and regulations that may be adopted pursuant thereto, by the Association of Apartment Owners.

15. Bylaws. (a) Bylaws governing the administration of the property are annexed to this Declaration, and such Bylaws

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may be adopted and amended as provided for therein, provided, however, that any such modification or amendment is also effected as an amendment to this Declaration pursuant to the Act.

16. The floor plans of the building designated Deming Garden Apartments and affected by this Declaration were on the 14th day of July, 1975, duly filed in the office of the Recorder of Vigo County, Indiana, in Horizontal Property Regime Floor Plan File Book 1 at page 9 as Document No. 5101.

Executed this 14 day of July, 1975.
Robert J. McPeak
ROBERT J. McPEAK
Mary V. McPeak
MARY V. McPEAK

STATE OF INDIANA
COUNTY OF VIGO, SS:
Personally appeared before the undersigned Notary Public in and for said County and State Robert J. McPeak and Mary V. McPeak, husband and wife, and duly acknowledged the execution of said Declaration this 14 day of July, 1975.
WITNESS MY HAND AND NOTARIAL SEAL.
Mary E. Deal
Mary E. Deal, NOTARY PUBLIC
(Notary Seal)
My commission expires March 26, 1979.

This instrument prepared by Robert J. McPeak, Attorney, 632 Cherry Street, Terre Haute, Indiana.

Received for record July 22, 1975.

Owners through the management agent, if any, or the President of the Board of Directors in the event there is no management agent, of the name and address of his mortgagee, and the Association of Apartment Owners shall maintain such information in a record book entitled "Mortgagees of Apartments."

(g) Notice of Unpaid Assessments. The Association of Apartment Owners shall, at the request of any Mortgagee of an apartment, in writing, report to such mortgagee any unpaid assessments past due from the owner of such Apartment.

ii. Breach of Covenants. (a) The violation of any restriction or condition or regulation adopted by the Association of Apartment Owners, or the breach of any covenants or provisions contained in this Declaration or the Bylaws annexed hereto, shall give the Association of Apartment Owners the rights or any one of the rights as follows: (i) to enter upon the apartment and the interest therein upon which or as to which such violation or breach exists, and to summarily abate and remove at the expense of the defaulting Co-owner or occupant, any structure in or condition that may exist thereon, or thereunder, contrary to the intent and meaning of the provisions hereof, and the Association or its agents or representatives shall not thereby be deemed guilty in any manner of trespass; or, (ii) to enjoin, or remedy by appropriate legal proceedings, either at law or in equity the continuance of any such breach; or, (iii) if any Co-owner (either by his own conduct or by the conduct of any other occupant of his apartment) shall violate any of the covenants or restrictions or

Bylaws annexed hereto, or the rules and regulations adopted by the Association pursuant thereto, and such violation shall continue for thirty (30) days after notice in writing from the Association, or shall occur repeatedly during any thirty (30) day period after written notice, or request to cure such violation, from the Association, then the Association shall have the power by action of a majority of the Board of Directors to issue to the defaulting Co-owner a ten (10) day notice in writing to terminate the rights of said defaulting owner to continue as a Co-owner and to continue to occupy, use or control his apartment and thereupon an action in equity may be filed by the Association of Apartment Owners against the defaulting Co-owner for a decree of mandatory injunction against the Co-owner or occupant, or a decree declaring the termination of the defaulting Co-owner's right to occupy, use or control the apartment owned by him on account of the breach of covenant and ordering that all the right, title, and interest of the Co-owner in the property shall be sold (subject to the lien of any existing mortgage) at a judicial sale upon such terms and notice as the court shall establish, except that the Court shall enjoin and restrain the defaulting Co-owner or occupant from re-acquiring his interest at such judicial sale. The proceeds of any judicial sale shall first be paid to discharge court costs, reasonable attorney fees, and all other expenses of the proceedings and all such items shall be taxed against the defaulting Co-owner in said decree. Any balance of proceeds

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ter satisfaction of such charges and any unpaid assessments hereunder, or any liens on said apartment may be paid to the Co-owner. Upon confirmation of such sale the purchaser there at shall thereon be entitled to a deed to the apartment ownership and to the immediate possession of the apartment sold (subject to the option of the Association hereabove provided for to purchase any property sold by Judicial sale) and may apply to the court for Writ of Assistance for the purpose of acquiring such possession, and it shall be a condition of any such sale and the decree shall so provide, that the purchaser shall take the interest in the property sold and subject to this Declaration and the purchaser shall become a Co-owner of the Association in the place and stead of the defaulting Co-owner.

(b) No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived for reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur, and the grantee of any apartment or the purchaser by acceptance of a deed of conveyance and each occupant of any apartment accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges and the jurisdictional rights and powers created and reserved by this Declaration and by the Bylaws annexed hereto, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed

land, and shall bind any person at any time any interest or estate in land, and shall inure to the benefit of such owner in like manner as to the provisions of this Declaration. Bylaws annexed hereto were recited at length in each and every deed of conveyance or lease.

12. Amendments. The provisions of Paragraphs 2, 4, 6, 7, 8, 10 (a), 10 (b), 13, 14 and this Paragraph 12 of this Declaration may be changed, modified or rescinded by instrument in writing setting forth such change, modification or rescission signed and acknowledged by the Association of Apartment Owners by action thereof by all of the Co-owners and all mortgagees having bona fide liens of record against any apartment and duly recorded pursuant to the provisions of this Declaration. Any provisions of this Declaration specifically identified in the immediately preceding sentence shall be changed, modified, or rescinded by an instrument in writing setting forth such change, modification or rescission signed and acknowledged by the Association of Apartment Owners by execution thereof by the Co-owners having at least three-fourths (3/4) of the total vote of the Association of Apartment Owners, containing an affidavit by an officer of the Association of Apartment Owners certifying that a copy of the change, modification or rescission has been mailed by certified mail to all mortgagees having bona fide liens of record against any apartment, not less than ten (10) days prior to the date of such affidavit, which such instrument and affidavit shall be recorded pursuant to the provisions

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partment conveyed be subject to a lien for any unpaid assessments against the landlord in excess of the amount therein set forth.

All sums assessed by the Association of Apartment Owners but unpaid for the share of the common expenses chargeable to any apartment, shall constitute a lien from time of assessment on such apartment prior to all other liens, except only (1) tax liens on the apartment in favor of any assessment units, and (2) all sums unpaid on a first mortgage of record. Such lien may be filed and foreclosed by suit by the manager or Board of Directors acting in behalf of the Association of Apartment Owners under the laws of this State governing mechanics' and materialmen's liens. In any such foreclosure the apartment owner shall be required to pay a reasonable rental for the apartment as is provided in the Bylaws annexed hereto, and the plaintiff in such foreclosure shall be entitled to the appointment of a receiver to collect the same.

The manager or Board of Directors acting in behalf of the Association of Apartment Owners, shall have the power to bid the apartment at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. Suit to recover a money judgment may be prosecuted for unpaid common expenses without foreclosing or giving the lien securing the same.

(d) Administration. The affairs of the Association of Apartment Owners shall be managed and controlled by a Board of Directors consisting of four directors who shall be elected from among the Co-owners and shall have such powers and

aws annexed to this Declaration.
e) Sale or Lease. Any Co-owner (other than McPeaks), who wishes to sell or lease his apartment (or any lessee or apartment who wishes to assign or lease such apartment) to any person related by blood or marriage to the owner, or assignor or sublessor, shall give to the Association of Apartment Owners not less than thirty (30) days prior written notice of the terms of any contemplated sale or lease, together with the name and address of the proposed purchaser or lessee, and such other information as may be required by the Board of Directors. The Board of Directors shall approve or disapprove the contemplated sale or lease within thirty (30) days from the date of such notice, and notify the Co-owner, sublessor or assignor, of its decision and decision shall be final and conclusive except that in case the Board disapproves, the Co-owner, sublessor or assignor, shall have the right to appeal to all Co-owners who may vote thereon, as provided in the Bylaws annexed hereto and the action of such Co-owners shall be final and conclusive. In the event that the Association of Apartment Owners disapprove of such proposed sale or lease, then unless the Association of Apartment Owners shall purchase or lease such apartment itself within a period of thirty (30) days following the date of such disapproval on the same terms and conditions proposed, and the Association of Apartment Owners shall have the privilege of purchasing so, then the Co-owner, sublessor or assignor may at any time at the expiration

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of said thirty (30) day period within sixty (60) days after the expiration of said period; contract to sell or lease (or sublease or assign) such apartment to the proposed purchaser or lessee named in such written notice upon the terms specified therein; provided, however, that should a different proposed purchaser or lessee be then contemplated, a new written notice must be provided by the Co-owner, sub-lessor or assignor, to the Association of Apartment Owners. Any gift or devise of any apartment unto any donee or devisee not related by blood or marriage to the Co-owner shall be deemed to be a sale or lease governed by the foregoing restrictions, except that the purchase price shall be the fair market value as determined by appraisers to be selected by the parties. In the event of any involuntary sale or transfer of any apartment by judicial or execution sale, the person acquiring the title through such sale, shall before taking possession of the apartment sold give thirty (30) days written notice to the Association of Apartment Owners of his intention so to do, whereupon the Association of Apartment Owners shall have an irrevocable option to purchase such apartment or interest therein at the same price for which it was sold at such judicial or execution sale. If said option is not exercised by the Association of Apartment Owners within said thirty (30) days after receipt of such notice, it shall thereupon expire and said purchaser may thereafter take possession of said apartment. The Association of Apartment Owners shall be deemed to have exercised its option if it tenders the

within said thirty (30) day period. Assessments may be made by the Association of Apartment Owners in order to provide funds to exercise such options in accordance with the procedure provided in the Bylaws annexed hereto. Apartments or interests therein acquired pursuant to the terms of this Declaration by the Association of Apartment Owners shall be held of record in the name of the Association of Apartment Owners, or such nominee as it shall designate, for the benefit of all Co-owners and said ownership may be sold or leased by the Association and all proceeds of such sale or lease shall be deposited in the maintenance funds of the Association, and thereafter be disbursed at such times and in such manner as the Board of Directors may determine. A certificate executed and acknowledged by the acting Secretary of the Association stating that the rights and privileges of the Co-owners and the Association of Apartment Owners with respect to the existence of waiver or exercise of any options provided for in this Declaration shall be conclusive upon the Association and all Co-owners in favor of all persons who rely thereon in good faith, and such certificates shall be furnished to any Co-owner who has, in fact, complied with the provisions of this Declaration, or with respect to whom the provisions of this Declaration may have been waived upon request in the manner as is provided in the Bylaws annexed hereto.

(f) Notice to Association. Any Co-owner who mortgages his apartment shall notify the Association of Apartment

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(f) Nothing shall be done in any apartment or in, on, or to, the common areas and facilities which will impair the structural integrity of the building or which would structurally change the building, except as otherwise provided herein.

(g) No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the common areas (either limited or unlimited) and facilities, nor shall baby carriages, bicycles and other personal property or waste be stored or disposed of in such common areas and facilities, nor shall there be any playing, lounging, parking of baby carriages, playpens, bicycles, wagons, vehicles, benches, umbrellas, ovens, grills; chairs or other like personal property except in accordance with the rules and regulations promulgated pursuant to the Bylaws annexed to this Declaration as they may be amended from time to time, and the common areas and facilities shall be kept free and clear of rubbish, debris and other unsightly materials.

(h) No industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise, designed for profit, altruism, exploration, or otherwise shall be conducted, maintained or permitted on any part of the property, nor shall any "For Sale" or "For Rent" signs or other window displays or advertising be maintained or permitted on any part of the property, or in any apartment therein. The right is reserved by McPeaks until all of the Apartments No. 1 through No. 4, both inclusive, have been conveyed to Co-

such right shall be vested in the Association of Apartment Owners, or their agents, to place "For Sale" or "For Rent" signs on any unsold or unoccupied apartments.

(i) Nothing shall be altered or constructed in, or removed from, the common areas and facilities except upon the written consent of the Association of Apartment Owners.

10. General Provisions. (a) No Severance of Ownership. No Co-owner shall execute any deed, mortgage, lease or other instrument affecting title to his apartment without including therein both his interest in the apartment and his corresponding percentage of ownership in the common areas and facilities, and any such deed, mortgage or lease or other instrument affecting title to any apartment shall be deemed to include the interest of the Co-owner thereof making such instrument in the common areas and facilities, and his corresponding percentage or ownership therein.

(b) Easement. Easements are hereby declared and established for the benefit of each apartment and its owner consisting of the right to use and occupy any of the common areas and facilities in common with all Co-owners and an exclusive easement is granted with respect to the limited common areas and facilities allocated to each respective apartment, and all easements and rights referred to herein are and shall be considered to be easements appurtenant running with the land perpetually in full force and effect and at all times shall inure

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the benefit of and be binding upon the effective Co-owners and their successors assigns, and reference in the respective deeds of conveyance or any mortgage or lease, or other conveyance of reference to this Declaration shall be sufficient to create and reserve such easements and rights to the respective Co-owners as fully and completely as though the easements and rights were recited and set forth in their entirety in the documents.

In the event that by reason of the construction, settlement or shifting of the building, any part of the common areas or facilities encroach or shall hereafter encroach upon any part of any apartment, or any part of any apartment encroaches or shall hereafter encroach upon any part of the common areas and facilities, or if by reason the design or construction of any apartment it shall be necessary or advantageous to an apartment owner to use or occupy for non-residential uses and purposes (subject to such rules and regulations as may be promulgated by the Board of Directors) any portion of the common areas and facilities consisting of unoccupied space within the building or adjoining his apartment, valid easements for the maintenance of such encroachment and for the use of such adjoining space are hereby established and shall exist for the benefit of such apartment and the common areas and facilities as the case may be. As long as all or any part of the building containing such apartment shall remain standing, provided, however, that in the event shall a valid easement for any encroachment be created in favor of the

owners of the common areas and facilities if such encroachment incurred to the willful conduct of said owner or co-owner.

(c) Expenses. The Co-owners of the apartments are and shall be bound to contribute prorata in the percentage computed in accordance with Paragraph of this Declaration above, toward the expenses of administration and of maintenance and repair of the general common areas and facilities and in the proportionate case, of the limited common areas and facilities of the building, and toward any other expenses as may be provided in the Bylaws annexed thereto, or they may be agreed upon. No Co-owner may exempt himself from contributing toward such expenses by waiver of the use or enjoyment of the common areas and facilities or by abandonment of the apartment or by encroachment of the apartment not belonging to him.

Preparation of budget for the appropriation of expenses and assessments to the Co-owners therefor, shall be made and administered as is provided in the Bylaws annexed hereto.

In a voluntary conveyance the grantor of an apartment shall be jointly and severally liable with the grantor for any unpaid assessments against the latter for his share of the common expenses to the time of the grant or conveyance without prejudice to the grantee's right to recover from the grantor the amount paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the manager or Board of Directors, as the case may be, setting forth the amounts of unpaid assessments against the grantor, and such grantee shall not be liable for, nor shall the

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residence for a single family and for no other purpose, and no part of the property shall be used for other than housing and the common recreational purposes for which the property is designed.

8. Destruction and Restoration of Building.

(a) In case of fire or other casualty or disaster wherein damage or destruction to all or any part of the property results; and,

(1) If the damage or destruction comprises less than two-thirds of the building (measured by the cost of reconstruction of the entire building as compared with the cost of reconstruction or repair required by the damage), the property shall be repaired, reconstructed and restored, unless seventy-five percent (75%) percentage interest of the co-owners determine not to do so within thirty (30) days of such damage or destruction; or if,

(2) The damage or destruction comprises two-thirds (2/3) or more of the building, then in this event the property shall not be repaired or restored unless unanimously agreed upon by the co-owners within thirty (30) days of such destruction or damage.

(b) The Board of Directors of the Association of Apartment Owners shall select an Insurance Trustee. Insurance on all the common property and each apartment shall be written in one package policy in a company to be selected by the Insurance Trustee in a policy naming as insureds, all persons and organizations having an ownership interest in the Horizontal Property Regime. Cost of the insurance shall be prorated to the individ-

interest of the apartment owned by them in the Horizontal Property Regime compares to the total of percentage interests. Procurement of tenant homeowner's policies covering apartment owner's personal belongings and personal liability shall be the sole responsibility of apartment owners.

(c) Wherein the building is not insured by the Association of Apartment Owners, wherein available insurance indemnity is insufficient to cover the cost of construction and reconstruction is to be effective, the new building costs not provided by insurance shall be paid by all Co-owners in proportion to the percentage interest of such Co-owners respective apartments or as may be provided in the Bylaws; and if any one or more of those composing a minority of the Co-owners shall refuse to make such payment, the majority of all Co-owners may proceed with the reconstruction at the expense of all of the Co-owners including the dissenting minority.

(d) If within thirty (30) days of the date of the damage or destruction to all or any part of the properties it is not determined by the Association of Apartment Owners to repair, reconstruct or rebuild; then and in that event:

- 1) The property shall be deemed to be owned in common by the co-owners;
- 2) The undivided interest in the property owned in common which shall appertain to each Co-owner shall be the percentage of undivided interest previously held by such co-owner in the common areas and facilities.
- 3) Any liens affecting any of the apartments shall be deemed to be transferred.

ferred in accordance with the existing priorities thereof to the percentage of the undivided interest of the Co-owner in the property as provided herein; and

(4) The properties shall be subject to an action for partition at the suit of any Co-owner, in which event the net proceeds of all insurance on the property and any apartment thereof, if any, shall be considered as one fund and shall be divided among all of the Co-owners in a percentage equal to the percentage of undivided interest owned by each Co-owner in the property after first paying out of the respective shares of the Co-owners to the extent sufficient for the purpose, all liens on the undivided interest in the property owned by each Co-owner.

9. Apartment and Common Area User Restrictions.

(a) The apartments and common areas and facilities shall be occupied and used by the Co-owners as follows:

(a) There shall be no obstructions of the common areas and facilities nor shall anything be stored in the common areas without the prior consent of the Association of Apartment Owners, except as hereinafter expressly provided. Each Co-owner shall be obligated to maintain and keep in good order and repair his own apartment.

(b) Nothing shall be done to or kept in any apartment or in the common area and facilities which will increase the rate of insurance of the building or contents thereof, applicable for residential use without the prior written consent of the Association of Apartment Owners. No Co-owner shall permit anything to be done

in the cancellation of insurance on buildings or contents thereof, or would be in violation of any law. Waste will be committed in the common areas and facilities.

(c) Co-owners shall not cause or anything to be hung or displayed outside of windows or placed on the side of walls of the building, and sign, awning, canopy, shutter, radio television antenna shall be affixed or placed upon the exterior walls or roof, or any part thereof of the building without the prior consent of the Association of Apartment Owners.

(d) No animals, rabbits, live stock, fowl, or poultry, of any kind shall be raised, bred or kept in any apartment or in the common areas and facilities except that small dogs or cats may be kept in apartments, subject to the rules and regulations adopted by the Association of Apartment Owners, pursuant to the Bylaws thereof, provided that they are not kept, bred or maintained for commercial purpose, and provided further that any such pets causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the property, subject, however, to this restriction, upon three (3) days written notice from the Association of Apartment Owners.

(e) No noxious or offensive activities shall be carried on in any apartment or in the common areas and facilities, nor shall anything be done therein, either willfully or negligently which may become an annoyance or nuisance to the other Co-owners or occupants of the property.

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and held.

Section 7. Voting. At all meetings of the members; such members as co-owners shall be entitled to vote as provided in the Declaration.

Section 8. Quorum. At all meetings of the members a majority of votes shall constitute a quorum for the transaction of any business except that which may require greater vote, as provided in the Declaration, but the members entitled to vote who may be present at any meeting with less than a quorum may adjourn the meeting to such other time and place as shall be agreed upon by them, and notice of such adjourned meeting shall be mailed or delivered to each member entitled to vote at least three (3) days before such adjourned meeting. If a quorum be present, a members' meeting may be adjourned from day to day, as the members present may see fit, and no notice of such adjourned meeting need be given. At any such adjourned meeting at which a quorum shall be present, any business may be transacted which might have been transacted at the meeting as originally notified. Waivers of notice or consents pertaining to any members' meeting may be signed either before or after the holding of any such meeting.

Section 9. Rights and Limitations of Members' Meetings. The members at Members' meetings have both the right and the responsibility of electing a Board of Directors and of removing them from office if and when such removal may be considered in the best interests of the Association, and to hear and pass upon the reports of officers or directors or any committees which may be responsible

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in arbitration of any disputes or arguments which may arise among the Board of Directors, or any committee or any individual members other than as may have been delegated by the members to the Board of Directors and to determine what amendments, if any, shall be made in the Bylaws and the Declaration and to exercise final authority in all other matters which may vitally affect the Association as a cooperative association of the members and as a business organization existing and operating pursuant to the terms and provisions of the Act and the Declaration.

ARTICLE III
DIRECTORS

Section 1. Election. The affairs of the Association shall be managed and controlled by a Board of Four (4) directors who shall be elected from among the members by members at the regular annual meeting and who shall hold office for one (1) year and until their successors are elected and qualified.

Section 2. Powers and Duties. Subject only to such express limitations that may be provided for in the Act, the Declaration or these Bylaws, or by action of the members, all of the power of the Association shall be vested in the Board of Directors who shall administer all of the business carried on by or on account of the Association and who, in the management and control of the business of the Association, may employ the services of a manager or managing agent and such other agents and servants and employees of the Association as the Board of Directors may deem advisable, and may fix the rate of compensation for all

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and use by the members and their licensees of the common areas and facilities of the property, and incorporating such restrictions and requirements respecting the use and maintenance of apartments in order to prevent unreasonable interference with the use of their respective apartments and of the common areas and facilities by the several co-owners; subject, however, to the approval by the members at their next annual meeting following the promulgation of such house rules and regulations. Until disapproval of such course by the members of any such house or administrative rules and regulations, however, any and all such house or administrative rules and regulations promulgated by the Board shall remain in full force and effect. The Board of Directors shall require that each of the Co-owners file with the Secretary certificates of insurance disclosing that such Co-owner has procured all insurance required by the terms and provisions of the Declaration, and in event that any Co-owner fails to file such certificates of insurance within the time prescribed by the Board of Directors, the Board of Directors shall procure in behalf of such Co-owner, at his expense, the insurance required by the Declaration to have been acquired by such Co-owner, and shall assess the cost thereof to the Co-owner. The Board of Directors shall require any officer of the Association in whose custody or control any of the monies of the Association may be vested or who may have the authority to draw upon the funds of the Association that such officer procure and file with the Secretary fidelity bond in such amount as may be prescribed by the Board

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nts, employees, servants and officers of the Association. The Board may employ, discharge all employees and appoint officers or it may authorize any more of the officers to do so. The Board of Directors shall elect and remove for cause or without cause, an officer of the Association by an affirmative vote of the majority of the members of the Board then in office, and the Board may determine what officers are to be elected and what, if any, assistant officers may be elected; provided, however, there shall be elected from among the Board of Directors a President, there shall be elected a Secretary and a Treasurer, neither of the latter whom need be members of the Board.

The Board shall make a report to the members concerning the conduct of the business of the Association at each annual meeting thereof, and shall prepare and submit the budget or an approximate estimate of the proposed expenses for each of the ensuing years upon which the rating assessments provided for in these Bylaws shall be based. The Board shall, by resolution from time to time, describe the manner and amount in which operating assessments shall be levied upon the members, and the manner in which all obligations of the Association shall be issued and signed and the Board shall have the power to incur obligations or authorize the officers to do in the name of and in behalf of the Association.

The Board of Directors shall prescribe and promulgate such house rules and administrative rules and regulations governing the details of the operation

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DEMING GARDEN APARTMENTS DECLARATION

THIS DECLARATION MADE AND ENTERED INTO BY Robert J. McPeak and Mary V. McPeak, husband and wife, of Vigo County, Indiana, hereinafter called McPeaks, under and pursuant to Chapter 349 of the Acts of the Indiana General Assembly of 1963 at Page 178, same being I.C. 32-1-6-1 of the Acts of 1971, and Section 56-1201, Burns Indiana Statutes, Volume II, Part Pocket Part, known as the Horizontal Property Act, hereinafter called the "ACT", for the purpose of creating a Deming Garden Apartments, WITNESSETH THAT

WHEREAS the McPeaks are the sole owners of the land situated in Lost Creek Township, Vigo County, Indiana, hereinafter described and called the "LAND"; and, WHEREAS, McPeaks as the sole owners hereof desire to submit the land to the provisions of the Act; and to create a Deming Garden Apartments thereon pursuant to the Act;

NOW THEREFORE, McPeaks as the sole owners of the land to be submitted to the provisions of the Indiana Horizontal Property Act pursuant to the Act, declare as follows:

- 1. Definitions. Those terms used in this Declaration which are defined in the Act are hereby defined in the Act.
2. Description of the Land. McPeaks hereby submit the Land to the provisions of the Act which the building and improvements located to the provisions of the Act under the terms and conditions of this

plans filed herewith, hereto, annexed hereto, administrative rules and regulations adopted pursuant thereto, which land is located in Lost Creek Township, Vigo County, Indiana, more particularly described as follows: Commencing 1980.0 feet South and 230 feet East of the Northwest corner of the Southwest quarter of Section 19, Township 12 North, Range 8 West; thence East and parallel with the North line of said Southwest quarter a distance of 98.16 feet; thence South 0 degrees 12 minutes East 268.9 feet to a point which is 9 feet West of a point 342.63 feet North of the center line of the Old Bloomington Road (now State Road 42); thence West and parallel with the North line of the said Southwest quarter a distance of 99.1 feet; thence North a distance of 268.9 feet to the place of beginning.

SUBJECT to the rights granted to American Telephone and Telegraph Company of Indiana by that certain instrument dated June 10, 1927, and recorded in Miscellaneous Record 54, page 120, records of Vigo County Recorder's Office.

ALSO SUBJECT to the provisions of a certain deed dated October 1, 1938 to Charles Hunter and Jessie Hunter, and recorded in Deed Record 213 page 156 of the records of the Recorder of Vigo County, Indiana.

ALSO SUBJECT to Easements and reservations as shown in deed dated June 7, 1965, and recorded June 11, 1965 in Deed Record 336, page 822 of the records of the Recorder's Office of Vigo County, Indiana.

- 3. Description of the Building. The

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one story building situated on the land herein described is approximately 100 feet in length north and south and 46 feet width east and west, excluding attached garages, and is veneered with brick and aluminum. The building contains four apartments with an attached 2-car garage each 24 feet by 24 feet at the north and south ends of said building. The building has no basement and the roof structure consists of wooden trusses sheathed with plywood and covered with bestos roofing shingles.

4. Description of the Apartments and Common Areas and Facilities.

The apartments shall consist of the area and space encompassed by and extending to the surface (and including each surface insofar as maintenance and decorating are concerned) of the walls, doors, and ceilings of the rooms constituting the respective apartments designed as such and the particular garage space assigned thereto and designated such on the floor plans referred to in paragraph 16 of this Declaration. All parts of the property other than the apartments shall constitute the common areas and facilities which shall include, by way of illustration and not limitation, the land, walks, pipes, stairs, flues, chutes, conduits, wires and other utility installations to the meters and such component parts of walls, doors and ceilings as are not located within the apartment, as well as driveways, recreation areas, etc.

- 5. Description of Limited Common Areas and Facilities. Those common areas and facilities that may be assigned to the exclusive use of a particular Co-owner

as limited common areas such as storage areas, etc., by McPeaks. 6. Property Value and Co-owner's Percentage Interest. Each apartment constituting the Horizontal Property shall have one vote in all matters to be determined by vote of the owners. The percentage interest of each Co-owner and the contribution of each Co-owner to cost of maintenance of areas and facilities and water and sewerage costs is fixed as follows: Apartment 1 25%, Apartment 2 25%, Apartment 3 25%, Apartment 4 25%. Regardless of the fact that apartments 1 and 4 are larger in number of square feet contained therein than apartments 2 and 3.

Until all units are sold to owners other than McPeaks, McPeaks shall be entitled to one vote for each apartment still owned by them in matters which co-owners are entitled to vote. All units shall be subject to cost of maintenance of common areas and facilities attached to units still owned by them.

- 7. Purpose and Building Use Intention. (a) Residence facilities shall be provided for one family in each apartment of the building. (b) The building shall be a residence building and each of the apartments in is intended to provide residence facilities for one family governed by the terms and provisions of the Act, this Declaration, the By-laws annexed hereto and the rules and regulations promulgated pursuant thereto, all as may be amended from time to time as provided therein. (c) Each apartment shall be used a

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(b) In an amount, if any, in the aggregate equal to such net savings in excess of the amount in each year allocated to such general reserve account, the Board of Directors as of the end of each year in which there are such excess net savings shall refund all of such excess net savings, if any, unto the members each pro-rata and in accordance with their respective percentage interests in the property as provided for in Paragraph the Declaration. No refund of any cash shall be made for any period in which there is an operating deficit in the general reserve account, nor as long as the Association has a general deficit. Section 6. It shall be the duty of each apartment owner to maintain his apartment in a condition in keeping with the character of the rest of the building at his own expense, and he shall attend to all decorating and cleaning of his apartment and all other expenses incident to the maintenance thereof, including the maintenance and repair of his own interior plumbing from the outside building line into and throughout his apartment and the interior electric, gas, water, or other utility service lines, from their respective meters into and throughout the apartment. Except for the obligations of the apartment owner in this section provided, the Association shall at its own expense, maintain and keep, or cause to be kept, the building, the common areas and facilities, (both limited and unlimited) and outside plumbing and utility service facilities maintained and repair.

The apartment owner shall be liable for any damage done or committed upon any

all of the building or common areas and facilities outside of his apartment or to his apartment, which affects the building and property in general; either by such apartment owner, or by any occupant of the apartment under lease from such co-owner, or any person under him, or done by any licensee of any such person. No co-owner shall make any structural alterations in, or additions to, his apartment or the building, except with the prior written consent in each case of the Board of Directors, and the apartment owner shall at his own expense keep his own apartment in good condition and repair, and in keeping with the rest of the building except insofar as undertaken by the Association as hereinabove provided for.

ARTICLE VI MISCELLANEOUS AND AMENDMENTS

Section 1. The Board of Directors may from time to time establish such house rules and regulations for the general management and control of the building and the property, and change the same from time to time. All apartment owners and occupants shall be in all respects bound at all times subject to such reasonable house rules and regulations as may be established by the Board of Directors not inconsistent with the Declaration and the Bylaws; provided, however, that all such rules and regulations shall affect all co-owners uniformly, and shall be at all times subject to approval by vote of the members.

Section 2. These Bylaws may be amended at any regular or special meeting of the members called for that purpose at which a quorum shall be present, upon at least ten (10) days written notice, which

notice shall contain the text of the proposed amendment. The amendment must be adopted by a vote of a majority or more of all members of the Association then existing.

IN WITNESS WHEREOF, Robert J. McPeak and Mary V. McPeak, as the owners of all of the property prior to conveyance of any apartments involved, have caused these Bylaws to be adopted as the original Bylaws pertaining to said Horizontal Property Regime, as of this 14 day of July, 1975.

Robert J. McPeak
ROBERT J. McPEAK
Mary V. McPeak
MARY V. McPEAK

STATE OF INDIANA
COUNTY OF VIGO, SS:

Before me, a Notary Public in and for said County and State, personally appeared Robert J. McPeak and Mary V. McPeak and acknowledged the execution of the above and foregoing Bylaws, this 14 day of July, 1975.

Witness my hand and Official Seal.
Mary E. Deal
Mary E. Deal-NOTARY PUBLIC
(Notary Seal)
My commission expires March 26, 1979.

This instrument prepared by Robert J. McPeak, Attorney-at-Law, 632 Cherry Street, Terre Haute, Indiana 47807.

Received for record July 22, 1975.

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termination of such member's right to continue as a co-owner, for default as above provided, shall not be construed to relieve such co-owner from any and all liability to the Association for damages, together with expenses of collecting the same, including reasonable attorney fees as may be occasioned by the breach of the covenants and agreements contained in the Declaration and these Bylaws resulting in such forfeiture, termination and cancellation.

Section 5. The Board of Directors shall, at the end of each fiscal year, provide for distribution of the net savings, if any, remaining from the assessments made pursuant to the budget as hereinabove provided for, after all expenses have been paid as follows:

(a) From the net savings or excess assessments over expenses shall be allocated to the general reserve account, such amounts as will maintain such reserve accounts in an amount considered reasonably necessary by the Board of Directors. This general surplus reserve account shall consist of moneys especially allotted to it from net savings, or earnings from the acquisition and resale by the Association of apartments from the members pursuant to the Declaration and these Bylaws from time to time, and any other funds appropriated to it by action of the Board of Directors or the members. This general surplus reserve may include subordinate reserve accounts and shall be used to absorb operating deficits for unsuccessful years, losses caused by fire, theft, or other casualty, until such deficits or losses can be replaced by current assessments thereafter.

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written notice thereof, then, in any of such cases, the Association may immediately or at any time thereafter, without further notice, or demand, enter into and upon the apartment of such co-owner, or any part thereof, in the name of the Association and take possession of the same fully and absolutely without such entry working a forfeiture of the assessments and assessments to be paid by such co-owner, and the covenants to be performed by such co-owner and without the Association being deemed in any wise to be a trespasser, and the Association may, at its own election, lease or sublet the said apartment, or any part thereof, on such terms and conditions, and for such time as the Association may elect, and after crediting thereto actually collected by the Association from such re-letting on the assessments to be paid by such co-owner, and charging such reasonable expenses as the Association may expend in putting the apartment in tenable condition and such expenses as may be incurred by the Association in enforcing the terms and provisions of these Bylaws, either pay such co-owner any balance remaining collect from him any further amounts.

The Association may also at its option, upon the occurrence and continuance of any such failure or neglect as provided above and without further notice or demand, declare such co-owner's right to continue as a member of the Association forfeited, and require him to proceed to sell or dispose of his apartment pursuant to the terms and provisions of Paragraph 10 of the Declaration. Forfeiture, cancellation and

with the name and address of the prospective lessee, accompanied by suitable references, and said application shall be acted upon by the Board of Directors within thirty (30) days. In case the application to lease is declined, there shall be no appeal from the decision of the Board of Directors unless there shall have been a previous application to lease to another prospective lessee declined within ninety (90) days preceding. If such previous application has been denied by the Board, the members shall have the right to appeal to the vote of all co-owners and proceed in conformity with Paragraph 10 (a) of the Declaration. It is understood, however, that approval of any lease and without regard to the terms and provisions of the lease itself, shall not operate to relieve the member from the obligation for the payment of assessments or for any other obligations of such co-owner as a member under these Bylaws or the Declaration.

Section 3. It shall be the duty of the Board of Directors at the beginning of each fiscal year to cause to be prepared a budget covering the itemized estimated income of the Association from all sources and the estimated cost of maintaining and operating the property insofar as such obligation is undertaken by the Association during the ensuing fiscal year, including all expenses for taxes, interest on any indebtedness and other maintenance and operating expenses for such ensuing fiscal year plus reasonable reserves for such purposes, together with principal payments on indebtedness incurred in accordance with the terms and provisions specified in said budget,

other data as it may deem proper, the Board of Directors shall levy an assessment against each co-owner for his proportionate share of such estimated net cost of maintaining and operating said properties and paying such charges and underwriting said reserves for such ensuing fiscal year. Each co-owner shall be assessed with that proportion of such total estimated net cost as is represented by his percentage interest in the property provided for in Paragraph 6 of the Declaration. Such total estimated net cost for any year and the assessments payable by the co-owners on account thereof may be adjusted by the Board of Directors from time to time, and such cost for any year shall never include more for principal payments upon any indebtedness incurred by the Association as such, than was specified in connection with the incurring of such indebtedness with the approval of the members.

Section 4. All regular monthly assessments shall be due and payable in advance on the first day of each and every month after the same are levied, without notice and shall be paid to the Treasurer. If any co-owner shall default in the payment of any of such assessments properly made by the Board of Directors for a period of sixty (60) days, or if such co-owners shall fail or neglect to keep observe and perform any of the covenants, agreements and restrictions pertaining to his apartment contained in the Act, the Declaration, these Bylaws or the rules and Regulations promulgated pursuant thereto, and such neglect or failure shall continue for thirty (30) days after

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of Directors at the expense, however, of the Association.

Section 3. Vacancies. Any vacancy occurring on the Board of Directors because of death, resignations, incapacity or increase in the Board of Directors, or otherwise, shall be filled by a majority of the remaining members of the Board until the next annual meeting of the members.

Section 4. Quorum. A majority of the whole Board of Directors shall be necessary to constitute a quorum for the transaction of any business except the filling of vacancies, and the act of the majority of the Directors present at a meeting at which a quorum is present, or by consent to any such action without a meeting, shall constitute the act of the Board of Directors, but a smaller number than a quorum may adjourn a meeting to another time.

Section 5. Meetings. The Board of Directors shall hold an annual meeting each year immediately following the annual meeting of the members, at the place where such meetings of the members has been held, for the purpose of organization, election of officers and consideration of any other business that may be brought before the meeting. No notice shall be necessary for the holding of this annual meeting.

Special meetings of the Board shall be held whenever called by the President or a majority of the Board by mailing to each director or delivering to him at least three (3) days before the time of such meeting, or by telephoning such director at least three (3) days before the time of such meeting, a notice

meeting; provided, however, that any meeting of the Board may be held at the place when all of the directors present and consent to the holding of the meeting, and the Board of Directors may act uniformly without holding a meeting by written consent to the taking of such action.

ARTICLE IV OFFICERS

Section 1. Election. At its annual meeting the Board of Directors shall elect a President, a Secretary and a Treasurer, such assistant officers, if any, as they may decide upon for the term of one year, or until their successors are elected and qualified.

Section 2. Vacancies. Whenever any vacancy shall occur in any office by death, resignation, disqualification, or otherwise, the same shall be filled by the Board of Directors and the officer so elected shall hold office until his successor is elected and qualified. Any officer may be removed at any time for cause or without cause, by a majority vote of the Board of Directors qualified to act.

Section 3. President. The President shall be the executive officer of the Association and he shall be elected from among the members of the Board of Directors. He shall preside at all meetings of the members and directors and shall have general superintendence and direction over the other officers of the Association, and shall see that the orders and resolutions of the Board are carried into effect. He shall execute any and all mortgages, contracts, agreements,

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notes and obligations or other documents of the Association authorized by or required by the Board of Directors in the name of and in behalf of the Association. He shall from time to time and whenever requested, report to the Board upon all matters within his knowledge which the interests of the Association may require to be brought to the attention of the Board, and shall perform such other duties as may be required of him by law or by the Declaration, these Bylaws or by the Board, and in general shall have the powers and duties usually vested in the office of president of an association.

Section 4. Secretary. The Secretary shall be elected from among the members but need not be a director. He shall keep a record of the minutes and proceedings of the meetings of members and the directors and shall give such notices as are required in these By-laws to be given. The Secretary shall have custody of all books, records and papers of the Association, except such as shall be in charge of some other person or officer authorized to have custody or possession thereof, by the Board of Directors, and he shall, with the President, execute any and all documents in the name of the Association that may require certification and attestation thereof by the secretary of the Association.

Section 5. Treasurer. The Treasurer shall be elected from among the members of the Association but need not be a director, and he shall have custody of and shall keep account of all moneys and valuables of the Association and shall deposit the moneys and valuables in the name of the Association and to its credit in

such terms and conditions as the Board of Directors may designate. He shall countersign all vouchers for the payment of moneys by the Association and shall levy all assessments authorized by the Board of Directors, and he shall perform all duties customarily ascribed to the office of Treasurer. At the expense of the Association the Treasurer shall procure and file with the Secretary, Fidelity Bond for the benefit of the Association in an amount prescribed by the Board of Directors.

ARTICLE V ASSESSMENTS

Section 1. It is the object and purpose of this Association to maintain and create the common areas and facilities, building and the property on a mutual co-operative basis for the sole use and benefit of the co-owners and their licensees without attempting to make any profit or other gain for the Association; such, it being understood that all expenses for maintenance and operation of the building and properties undertaken by the Association during any year plus reasonable reservations for such purpose and for principal payments upon indebtedness incurred by the Association as amortized throughout the term thereof on a basis determined to be reasonable by the Board of Directors shall be paid by the co-owners in proportion to their respective percentage interest in the property as is provided for in Paragraph 6 of the Declaration.

Section 2. Any member of the Association who desires to lease his apartment, either furnished or unfurnished, shall submit in writing an application so to do to the Board of Directors, together

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