

**MASTER DEED  
Establishing  
THE HARBISON CONDOMINIUMS**

HARBISON PARTNERSHIP ("Declarant"), a Kentucky limited partnership whose address is 730 West Main Street, Louisville, Ky 40202 has caused this Master Deed to be prepared and recorded in the Suite 200 Jefferson County Clerk's Office.

**R E C I T A L S:**

Declarant is the fee simple owner of the land (the "land") described on attached exhibit A, the improvements and the related easements, rights, and appurtenances (the land, improvements, and related easements, rights, and appurtenances hereinafter the "property") ;

Declarant wishes to create a condominium project by submitting the property to the provisions of the Horizontal Property Law of the Commonwealth of Kentucky, KRS 381.805 to KRS 381.910 (the "Horizontal Property Law");

Declarant therefore submits the property to the provisions of the Horizontal Property Law and declares that the property shall be a condominium project (the "condominium project") pursuant to the Horizontal Property Law, and the following provisions:

**ARTICLE I  
Definitions**

The words defined in this article shall have the meanings in this Master Deed as set forth in this article:

(A) "Articles of incorporation" means the articles of incorporation of the council.

(B) "Board of directors" means the board of directors of the council.

(C) "Building" means the building constructed on the land, containing all of the units in the condominium project. The location of the building on the land, and the area of the building is set forth on the plans.

(D) "Bylaws" means the bylaws of the council, approved and adopted by the council.

(E) "Condominium unit" means a unit and its undivided percentage interest in the general common elements associated with the unit.

(F) "Condominium documents" means, collectively, this master deed, articles of incorporation, bylaws, and rules and regulations.

(G) "Co-owner" means any person having record title to a condominium unit.

(H) "Council" means The Harbison Condominium Association, Inc., a Kentucky nonstock, nonprofit corporation, the members of which shall be the co-owners of the condominium units in the condominium project and which shall take action through its board of directors.

(I) "General common elements" means the undivided interest in the condominium project which is all of the property, except the units, including without limitation the land; foundation; main walls; roof; halls; lobbies; stairways; entrances; basement; compartments or installations of central services such as power, light, gas, water, heating, ventilation, air conditioning and the like; elevators, installations for common use; and all other elements of the property rationally of common use or necessary to the property's existence, upkeep and safety.

(J) "Limited common elements" means those general common elements reserved by this master deed for the use of a particular unit or a certain number of units to the exclusion of the other units as more fully described in article IV below.

(K) "Majority" of co-owners means the co-owners of 51% of the undivided interests in the general common elements.

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

(M) "Plans" means the floor plans of the building and as built survey of the land showing the layout, location, unit numbers and dimension of the units, and recorded in plat book 46, pages 46- through 48, in the office of the Jefferson County Clerk, Kentucky, simultaneously with the recording of this master deed.

(N) "Rules and regulations" means the rules and regulations promulgated by the board of directors and governing, the use and occupancy of the units.

(O) "The Harbison Condominiums" means the name by which the condominium project shall be known.

(P) "Unit" means an inclosed space within the building intended for residential or commercial use measured from interior unfinished surfaces of walls, ceilings, and floors, and having a direct exit to a general common element leading to a thoroughfare. Each unit shall include the interior unfinished surface of any

doors, windows, vents, and other structural elements as ordinarily are regarded as enclosures of space, and any wallpaper, paint, carpets, tile, and all other decorating or finishing materials affixed or installed as part of the physical structure of the unit, and all closets, cabinets, storage areas, and visible fixtures, mechanical systems, and equipment installed in and for the sole and exclusive use of the unit; provided however, that neither pipes, wires, conduits, or other public utility lines or installations constituting part of the overall systems designed for the general service of the building, nor property of any kind which is not removable without jeopardizing the soundness and safety of the remainder of the building shall be deemed to be included within any unit.

## ARTICLE II Units

### (A) Number, location, designation, and plans for units

There shall be 18 residential units and one commercial unit within the condominium project. For purposes of identification, each unit has been assigned a letter and designated as unit A through H, Unit J through N and Unit P through T or a double letter and designate Unit AA. The square footage for each unit and its respective percentage interest in the general common elements are set forth on attached exhibit B. The plans set forth the layout, location within the building, unit letter designation, and dimensions of each unit.

### (B) Ownership of condominium units

Each co-owner shall receive fee simple ownership of the condominium unit acquired. Each co-owner shall be a member of the council. Deeds for each condominium unit shall describe it by reference to this master deed, the plans, the name of this condominium project, and the identifying letter(s) of the unit followed by the words "a condominium unit." Any conveyance of a condominium unit shall be deemed also to convey the undivided percentage interest of the co-owner in the general common elements.

### (C) Taxation of condominium units

The co-owner of each condominium unit shall be responsible for ad valorem or real estate taxes and special assessments assessed against the condominium unit by any governmental authority with jurisdiction over the condominium project.

### (D) Use of units

Unless otherwise permitted by the board of directors (who shall take into consideration the interests of all co-owners), units A through T (except for one or more unsold units which

declarant may use as a sales office or model) shall be occupied as a residence by one family only. Unit AA may also be used for commercial purposes so long as such commercial use is in compliance with the zoning ordinances governing Louisville and Jefferson County. The units shall be used for no other purpose. The word "family," as used in this subsection shall mean (a) one or more natural persons related by blood, adoption, or marriage, living together as a single housekeeping unit, or (b) no more than two persons (plus any natural children of either of them) living together as a single housekeeping unit though not related by blood, adoption, or marriage.

(E) Maintenance and repair of units and general common elements

It shall be the responsibility of the council to maintain, repair, or replace:

(1) The property (except to the extent of the units).

(2) All portions of any unit which contribute to the support of the building, including main bearing walls (but excluding painting, wallpapering, decorating, or other work on the interior surfaces of walls, ceilings, and floors within the unit, which shall be the co-owner's responsibility).

(3) All general common elements.

(4) All incidental damage caused by work done at its direction.

It shall be the responsibility of each co-owner with respect to the unit owned by the co-owner:

(1) To maintain, repair, and replace the unit at the co-owner's expense (except the portions to be maintained, repaired, and replaced by the council), including all decorating and redecorating, painting, tiling, carpeting, waxing, papering, plastering, or varnishing which may be necessary to maintain the good appearance and condition of the unit. Where the limited common elements appurtenant to a particular unit include a balcony, the co-owner who has the right to exclusive use of the balcony shall be responsible for the maintenance, preservation, and care of the balcony (except the portions to be maintained, repaired and replaced by the council), the doors opening on the balcony, and the replacement of any light bulbs, wiring, electrical outlets, or any other fixtures thereon. Such maintenance, repair, and replacement shall be done without disturbing the rights of other co-owners, and such maintenance, repair, and replacement shall not change the appearance of any portion of the exterior of the building without prior approval of the board of directors or as otherwise set forth in the bylaws.

(2) To maintain, repair, and replace at the expense of the co-owner the appliances and fixtures located in the unit, or located in the general common elements but benefiting the unit to the exclusion of any other unit, including, but not limited to, any plumbing fixtures, water heaters, air conditioning equipment, lighting fixtures, refrigerators, dishwashers, disposals, ranges, range hoods and fans, sinks, lamps, doors, windows, telephones, or any electric, gas, or water pipes or lines or wires or conduits or ducts serving any such appliances and fixtures.

(3) To report promptly to the council any defect or need for repairs for which the council is responsible.

(4) To maintain, repair, or replace at the expense of the co-owner all portions of the unit which may cause injury or damage to the other units or to the common elements.

(5) To perform the responsibilities of the co-owner in a manner and at reasonable hours so as not to unreasonably disturb other co-owners in the building.

(F) Liability of co-owner for certain repairs

A co-owner shall be liable for the entire expense of any maintenance, repair, or replacement of any part of the condominium project, whether part of a unit or part of the general common elements, if the maintenance, repair, or replacement is rendered necessary by any negligent act or omission of the co-owner, or any member of the family, or guests, employees, agents, or lessees of the co-owner. If any co-owner fails to undertake the maintenance, repair, or replacement within ten days after the board of directors notifies the co-owner in writing that the board of directors has determined that such maintenance, repair or replacement is the responsibility of the co-owner under this section, the board of directors may undertake such maintenance, repair, or replacement, and the cost thereof shall be a lien on the condominium unit owned by the co-owner until paid by the co-owner, and the lien shall be subject to the same remedies as are provided in this master deed for nonpayment by a co-owner of assessments.

(G) Alteration or improvement of units

No alteration or improvement to a unit which would alter or affect the general common elements or any other unit may be made by any co-owner other than the declarant without the prior written consent of the board of directors. No application shall be filed by any co-owner other than declarant with any governmental authority for a permit covering an addition, alteration, or improvement to be made in a unit which alters or affect the general common elements or any other unit, unless it is first approved and executed by the board of directors. Such approval and execution shall not evidence any consent to any liability on the part of the council or any co-owner other than the co-owner

filing the application to any contractor, subcontractor, materialman, architect, or engineer by reason of such addition, alteration, or improvement or to any person having any claim for injury to person or damage to property arising therefrom. Consent shall be requested in writing through the person appointed by the board of directors to manage the condominium project, if any, or through an officer of the council if no manager is employed. The board of directors shall have the obligation to answer within 30 days. The board of directors may require that the co-owner making such improvement, alteration, or addition obtain such insurance coverages and in such amounts as the board of directors deems proper. Declarant anticipates that the co-owners of units located on the second, third, fourth and fifth floors may desire to enclose the balconies or portions thereof. So long as Declarant owns a unit in the condominium project, Declarant's approval in addition to that of the board shall be required.

**ARTICLE III  
General Common Elements**

**(A) Interest in general common elements**

Each unit shall have appurtenant to it that percentage interest in the general common elements which the floor area of the unit bears to the sum of the floor area for all units (which percentage interest is set forth on exhibit B attached and made a part of this master deed).

The undivided interest in the common elements shall not be separated from the condominium unit to which it appertains and shall be deemed conveyed or encumbered with the condominium unit even though such interest is not expressly mentioned or described in the instrument of such conveyance.

**(B) General Common elements to remain undivided**

The general common elements shall remain undivided and no co-owner shall bring any action for partition or division. Any covenant to the contrary shall be void.

**(C) Adjustments in percentage of ownership**

Except as provided in this master deed, the percentages of ownership in the general common elements set forth in exhibit B shall remain constant regardless of the purchase price paid for any condominium unit at any time. Except as provided, no adjustment in percentages of ownership shall be made without the prior written approval of all co-owners, and all holders of record of first mortgages on all units in the condominium project for which the percentages of ownership are being adjusted.

## (D) Use of general common elements

The general common elements shall be used for the benefit of the co-owners. Each co-owner may use the general common elements in accordance with the purposes for which they are intended so long as such use does not hinder the exercise of or encroach upon the rights of other co-owners. The board of directors shall, if any question arises, determine the purpose for which a general common element is intended to be used. The board of directors shall have the right to promulgate rules and regulations which may limit the use of the general common elements.

## (E) Maintenance of general common elements

The maintenance and operation, including landscaping, snow removal, cleaning, painting and all other repair, of the general common elements shall be the responsibility and expense of the council, unless and except as otherwise expressly provided in the condominium documents.

## (F) Alteration and improvement of the general common elements

The board of directors shall have the right to make or cause to be made such alterations and improvements to the general common elements as it determines may be beneficial and necessary. The cost of any such alterations and improvements to the general common elements shall constitute a part of the common expenses. If the board of directors determines that the costs therefor is substantially for the benefit of unit owner(s) that requested the alteration or improvement, the cost may be assessed against such unit owner(s) in such proportion as the board of directors, reasonably determines.

#### ARTICLE IV Limited Common Elements

The limited common elements of the condominium project are general common elements reserved for the use of co-owners of a certain unit or units to the exclusion of the co-owners and occupants of other units. The limited common elements of the condominium project include any balconies adjacent to or associated with a particular unit and intended for use exclusively by occupants of that particular unit, and shall also include air conditioning units and storage areas designated as being intended for the exclusive use of a unit or units pursuant to the plans.

#### ARTICLE V Assessments

The making and collection of assessments against co-owners for expenses of the condominium project, including but not limited

to maintenance and repair of, and insurance charges and utility expenses related to, the general common elements, shall be pursuant to the bylaws and subject to the following provisions:

(A) Share of common expense

Each unit owners shall contribute in accordance with the condominium unit's percentage interest in the general common elements toward the expenses of administration and of maintenance, repairs and replacement reserves of the general common elements and toward any other expenses assessed by the council. However, the council may adjust contributions based upon a consideration of a combination of floor area, the number of occupants, demand on public utilities and accessibility to limited common elements. Declarant has provided in the initial budget for the provision of valet parking and security services for the residential co-owners. Declarant intends that the expense of such services shall not be borne by the owner of the commercial unit (Unit AA). No co-owner shall be exempt from contributing toward expenses by waiver of the use or enjoyment of the general common elements or by abandonment of the unit owned by the co-owner or by claiming that the quantity or quality of services does not warrant the payment or is not as contemplated by the co-owner as of the time of purchase; provided, however, the board of directors may, but is not required to, abate or reduce a co-owner's contribution for a reasonable period of time during which the unit owned by the co-owner is uninhabitable as the result of damage or destruction.

(B) Interest; application of payments

Assessments and installments on assessments paid on or before the day when due shall not bear interest, but all sums not paid on or before the date when due, including any sums due as a result of acceleration of unpaid assessments as may be provided in the bylaws, shall bear interest from the date when due until paid at the rate of interest per annum provided in the bylaws. All payments upon account shall be first applied to interest and then to the assessment payment first due.

(C) Lien for assessments

Any unpaid assessment shall constitute a lien against the condominium unit owned by the co-owner prior to all other liens except only liens for taxes and assessments lawfully imposed by governmental authority against the condominium unit and all sums unpaid on first mortgages of record.

The lien for unpaid assessments shall also secure interest and reasonable attorney fees incurred in the collection of the assessment or enforcement of the lien. In addition to any other remedies or liens provided by law, if any co-owner is in default in the payment of any assessments for 30 days, including any sums due as a result of acceleration of unpaid assessments as may be provided in any of the condominium documents, the board of



directors or managing agent may bring suit on behalf of all co-owners to enforce collection of the assessment and all costs of collection, including reasonable attorney fees, and to foreclose the lien in accordance with the laws of the Commonwealth of Kentucky, in like manner as a mortgage on real property.

The council may maintain a suit to recover a money judgment for unpaid common expenses without lien enforcement or waiving the lien.

(D) Transfer of condominium units

A co-owner shall not be liable for any assessments accruing after the sale of the condominium unit and the recording of the deed to the purchaser. The purchaser of a condominium unit subject to a lien arising under this master deed prior to the date of purchase and the recording of the deed shall take title to the unit subject to the lien; provided, however, that at the request of the selling co-owner or a prospective purchaser of the condominium unit, the board of directors shall provide a statement disclosing whether the co-owner is then in default and, if so, in what amount a lien exists against the condominium unit which statement shall be conclusive as to the facts stated therein as against the council and may be relied upon by a prospective purchaser or mortgagee.

(E) Rental pending foreclosure

In any enforcement action of a lien for assessments, the co-owner of the condominium unit shall be required to pay a reasonable rental for the unit to the council, and the council shall be entitled to the appointment of a receiver to collect the rental.

ARTICLE VI  
Council of Co-owners

(A) Council manages condominium project

The management and operation of the condominium project shall be the responsibility of the council, acting through the board of directors and the elected officers, and the council shall fulfill its functions pursuant to the provisions of the condominium documents.

(B) Bylaws

The bylaws adopted by the council from time to time shall be the bylaws of the condominium project.

## (C) Rules and regulations

Ownership and use of all of the condominium units shall be subject to rules and regulations promulgated by the board of directors from time to time. The board of directors shall furnish copies of the current rules and regulations to co-owners and residents of the condominium project upon request.

## (D) Limitation upon liability of council

Notwithstanding the duty of the council to manage, operate, maintain, and repair the condominium project, subject to and in accordance with the provisions of the condominium documents, the council shall not be liable to co-owners for injury or damage, (other than the cost of maintenance and repair), caused by any latent condition of the condominium project required to be maintained and repaired by the council, or by the weather or other elements, or by other co-owners or persons, including, but not limited to, defects which are the result of characteristics common to the materials used, damage due to ordinary wear and tear and normal use, and damage due to wind, rain, snow, hail, and condensation on or expansion or contraction of materials due to weather.

## (E) Board of directors

The members of the board of directors shall be elected and serve and shall have the duties and powers as provided in the articles of incorporation and bylaws. The board of directors shall have the right to delegate its duties to a managing agent or manager. The board of directors shall be the final arbiter of any dispute concerning the operation of the condominium project and the interpretation and effect of the condominium documents.

## (F) Declarant's written consent necessary for certain actions

Anything to the contrary contained in any of the condominium documents notwithstanding, during the interval (the "declarant's marketing interval") from the date of recordation of this master deed until the earlier of such time as (1) declarant or its designee(s) shall cease to own any units in the condominium project, or (2) two years from the date of recording this master deed, the board of directors may not, without the declarant's prior written consent (1) amend any of the condominium documents; (2) make any addition, alteration, or improvement to the common elements or to any unit; (3) assess any common charges for the creation of, addition to, or replacement of all or part of a reserve, contingency, or surplus fund if the effect of such assessment would be to increase the amount of such reserve, contingency, or surplus fund in excess of an amount equal to that proportion of the then existing budget which the amount of reserves in the initial budget of estimated expenses of the condominium project bears to the total amount of such initial

budget of estimated expenses; (4) hire any employee in addition to the employees, if any, provided for in the initial budget; (5) enter into any service or maintenance contract for work not covered by contracts in existence on the date of the first closing of title to a condominium unit; (6) borrow money on behalf of the condominium project; or (7) reduce the quantity or quality of services to or maintenance of the condominium project. During the declarant's marketing interval, in addition, declarant may unilaterally amend any condominium document so long as any such amendment does not (1) alter the undivided interest in the common elements appurtenant to any unit not owned by declarant or its nominee at the time of such amendment, (2) increase the share of common expense which are the obligation of co-owners other than declarant at the time of such amendment, or (3) materially alter the responsibilities and obligations of declarant as developer of the condominium project to other co-owners under the condominium documents.

#### ARTICLE VII Easements

##### (A) Existing easements

Easements are hereby declared and granted by each co-owner in favor of each other co-owner, and reserved by declarant, for all utility purposes as they exist on the date of the recording of this master deed. Each co-owner shall have an easement in common with all other co-owners to use all pipes, wires, ducts, cables, conduits, public utility lines, and other common elements located in any of the other units and serving the units of co-owner. Each unit shall be subject to an easement in favor of all other co-owners to use the pipes, ducts, cables, wires, conduits, public utility lines, and other common elements serving such other units and located in such unit. Easements are further declared and granted and reserved for ingress and egress for pedestrian traffic over, through, and across the common elements. All easements and rights described in this master deed are easements appurtenant, running with the land, and shall inure to the benefit of and be binding upon the declarant, co-owners, and any other person having any interest in the condominium project, but shall be subject to and limited by the provisions of the condominium documents. The deed of conveyance of any condominium unit, or any mortgage or trust deed or other evidence of obligation, shall be subject to the easements and rights described in this master deed, and reference to this master deed shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees, and trustees of the condominium units as fully and completely as if such easements and rights had been recited fully and set forth in their entirety in such documents.

## (B) Future easements

The board of directors on behalf of the council may grant further easements for utility purposes for the benefit of the condominium project, including the right to install, lay, maintain, repair, and replace water mains and pipes, sewer lines, gas mains, telephone wires and equipment, cable television wires and equipment, and electrical conduits and wires over, under, along, and on any portion of the condominium project, and each co-owner hereby grants the board of directors (acting through the president) an irrevocable power of attorney to execute, acknowledge, and record, for and on behalf of each co-owner, such instruments or documents as may be necessary to effectuate the easements; provided, however, that any easement through a unit shall be only according to the plans and specifications of the building. The power of attorney granted by this section shall survive any disability or death of the co-owner and shall be binding on each successive co-owner.

## (C) Access to units by the council

The council shall have a right of access to each unit upon reasonable prior notice and at reasonable hours: (1) to inspect the same for compliance with the provisions of the condominium documents; (2) for the maintenance, repair, replacement, or improvement of any portion of the common elements (or any portion of the unit which is the responsibility of the council) including any pipes, wires, ducts, cables, conduits, and public utility lines located in or adjacent to any unit; (3) to prevent damage to the general common elements or any other unit; (4) to abate any violation of laws, order, rules, or regulations of any governmental authority having jurisdiction thereof; (5) to abate any violation of any provision of any of the condominium documents. The council shall have such other right of access to each unit as may be provided under any other provisions of the condominium documents. The council shall be obligated to repair any damage to a unit incurred by reasons of exercise of this right of access.

## (D) Declarant's easement for marketing purposes

Declarant reserves the right with respect to its marketing of condominium units to use the common elements for the ingress and egress of itself and for prospective purchasers and lessees of condominium units.

## (E) Declarant's easement for completion of units

Declarant reserves the right for the purpose of completing the development of the condominium project, to have access to the common elements and (but only to the extent reasonably necessary and only upon reasonable prior notice to the applicable co-owner and at reasonable hours) to any units, for the ingress and egress of itself and its subcontractors, materialmen, and suppliers for

the purpose of constructing, installing, maintaining, and repairing equipment and fixtures pursuant to such development, and for other activities reasonably necessary in connection with such development. Declarant agrees to repair any damage which may be caused to the building or to any unit resulting from the actions of declarant permitted by this section promptly after declarant is notified that such damage has occurred.

(F) Easements for encroachments

An easement shall exist for any portion of a unit or the common elements which encroaches upon any other unit or the common elements as a result of (1) the original or future construction or settling or shifting of any part of a building, or (2) any repair or restoration undertaken by the board of directors, or (3) any construction after a partial or total destruction as a result of a fire or other casualty or as a result of condemnation or eminent domain proceedings. Such easements as provided in this section shall exist so long as the building (or any replacement thereof permitted under any condominium document) shall stand.

(G) Additional easements

The board of directors shall have the right to grant such additional easements burdening the common elements as are reasonably determined by it to be compatible with the intended uses of the condominium project, including, without limitation, additional easements for ingress and egress to and from and over the land.

ARTICLE VIII

Insurance

(A) Authority to Purchase; Notice.

(1) Except as otherwise provided in (E) hereof, all insurance policies relating to the property shall be purchased by the board of directors. The board of directors, the managing agent and the Declarant shall not be liable for failure to obtain any coverages required by this Article VIII or for any loss or damage resulting from such failure: (i) if such failure is due to the unavailability of such coverages from reputable insurance companies; (ii) if such coverages are so available only at demonstrably unreasonable cost; or (iii) if the council's insurance professionals advise that the coverages required by paragraph (2) are not necessary. The board of directors shall promptly furnish to each co-owner written notice of the procurement of, subsequent changes in, or termination of, insurance coverages obtained on behalf of the council.

(2) Each such policy shall provide that:

(a) The insurer waives any right to claim by way of subrogation against the Declarant, the council, the board of directors, the managing agent or the co-owners, and their respective guests, invitees, tenants, agents and employees and, in the case of the co-owners, the members of their households;

(b) Such policy shall not be cancelled, invalidated or suspended due to the conduct of any co-owner (including the members of such co-owner's household and such co-owner's guests, invitees, tenants, agents and employees) or of any member, officer or employee of the board of directors or the managing agent without a prior demand in writing that the board or the managing agent cure the defect and neither shall have so cured such defect within sixty days after such demand; and

(c) Such policy may not be cancelled or substantially modified (including cancellation for nonpayment of premium) without at least thirty days prior written notice to the board of directors, the managing agent and all institutional mortgagees.

(3) The Declarant, so long as Declarant shall own any unit, shall be protected by all such policies as a co-owner. The coverage provided to the Declarant under the insurance policies obtained in compliance with this Article shall not be deemed to protect or be for the benefit of any general contractor engaged by the Declarant.

(4) All policies of insurance shall be written by reputable companies licensed or qualified to do business in the Commonwealth of Kentucky. Physical damage policies shall be in form and substance and with carriers acceptable to a majority of the institutional mortgagees.

(5) The deductible, if any, on any insurance policy purchased by the board of directors shall be a common expense; provided, however, that the council may assess any deductible amount necessitated by the negligence, misuse or neglect for which a co-owner is responsible against such co-owner.

(B) Physical Damage Insurance.

(1) The board of directors shall obtain and maintain a blanket, "all-risk" form policy of fire insurance with extended coverage, vandalism, malicious mischief, sprinkler leakage (if applicable), debris removal and water damage endorsements, insuring the property together with all airconditioning and heating equipment and other service machinery contained therein and covering the interests of the council, the board of directors and all co-owners and their mortgagees, as their interests may appear, (subject, however, to the loss payment and adjustment provisions in favor of the insurance trustee), in an amount equal

to one hundred percent of the then current replacement cost of the Property (exclusive of the land, excavations, foundations and other items normally excluded from such coverage), without deduction for depreciation (such amount to be redetermined annually by the board with the assistance of the insurance company affording such coverage). The board of directors shall also obtain and maintain such coverage on all real and personal property owned by the council.

(2) Such policy shall also provide:

(a) A waiver of any right of the insurer to repair, rebuild or replace any damage or destruction, if a decision is made not to do so;

(b) The following endorsements (or equivalent):  
 (i) "no control" (to the effect that coverage shall not be prejudiced by any act or neglect of any occupant or co-owner or their agents when such act or neglect is not within the control of the insured, or the co-owners collectively; nor by any failure of the insured, or the co-owners collectively, to comply with any warranty or condition with regard to any portion of the condominium over which the insured, or the co-owners collectively, have no control); (ii) "cost of demolition"; (iii) "contingent liability from operation of building laws or codes"; (iv) "increased cost of construction"; (v) "condominium replacement cost"; and (vi) "agreed amount" or elimination of coinsurance clause; and

(c) That any "no other insurance" clause expressly exclude individual co-owners' policies from its operation so that the physical damage policy purchased by the board of directors shall be deemed primary coverage and any individual co-owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the board of directors hereunder provide for or be brought into contribution with insurance purchased by individual co-owners or their mortgagees, unless otherwise required by law.

(3) A duplicate original of the policy of physical damage insurance, all renewals thereof, and any subpolicies or certificates and endorsements issued thereunder, together with proof of payment of premiums, shall be delivered by the insurer to any institutional mortgagee requesting the same, at least thirty days prior to expiration of the then current policy. Prior to obtaining any policy of physical damage insurance or any renewal thereof the board of directors shall obtain an appraisal from an insurance company, or such other source as the board may determine, of the then current replacement cost of the property (exclusive of the land, excavations, foundations and other items normally excluded from such coverage), without reduction for depreciation, for the purpose of determining the amount of physical damage insurance to be secured pursuant to this section. All institutional mortgagees shall be notified promptly of any

event giving rise to a claim under such policy arising from damage to the common elements in excess of one percent of the then current replacement cost of the property. The mortgagee of a unit shall be notified promptly of any event giving rise to a claim under such policy arising from damage to such unit.

(C) Liability Insurance

The board of directors shall obtain and maintain comprehensive general liability (including libel, slander, false arrest and invasion of privacy coverage) and property damage liability insurance in such limits as the board may from time to time determine, insuring each director, the managing agent, each co-owner and the employees of the council against any liability to the public or to the co-owners (and their guests, invitees, tenants, agents and employees) arising out of, or incident to the ownership or use of the common elements. Such insurance shall be issued on a comprehensive liability basis and shall contain: (i) a cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to an action against another named insured; (ii) hired and non-owned vehicle coverage; (iii) host liquor liability coverage with respect to events sponsored by the council; (iv) deletion of the normal products exclusion with respect to events sponsored by the council; and (v) a "severability of interest" endorsement which shall preclude the insurer from denying liability coverage to a co-owner because of negligent acts of the council or of another co-owner. The board of directors shall review such limits once each year, but in no event shall such insurance be less than one million dollars covering all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits shall also be obtained so that the total of the primary and excess limits are in an amount not less than four million dollars.

(D) Other Insurance

The board of directors shall obtain and maintain:

(1) adequate fidelity coverage to protect against dishonest acts on the part of Officers, directors, trustees and employees of the council and all others who handle, or are responsible for handling, funds of the council, including the managing agent. Such fidelity bonds shall: (i) name the council as an obligee; (ii) be written in an amount not less than one-half the total annual condominium assessments for the year, the Federal National Mortgage Council or the Federal Home Loan Mortgage Corporation, whichever is greatest; and (iii) contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression;

(2) if required by any governmental or quasi governmental agency, including without limitation the Federal



National Mortgage Association or the Federal Home Loan Mortgage Corporation, flood insurance in accordance with the then applicable regulations of such agency;

(3) workers' compensation insurance if and to the extent necessary to meet the requirements of law (including a voluntary employees endorsement and an "all states" endorsement);

(4) if applicable, pressure, mechanical and electrical equipment including air conditioning equipment coverage on a comprehensive form in an amount not less than five hundred thousand dollars per accident per location;

(5) directors and officers liability insurance in an amount not less than one million dollars; and

(6) such other insurance as the board of directors may determine or as may be requested from time to time by a majority of the co-owners.

(E) Separate Insurance

Each co-owner shall have the right to obtain insurance for such co-owner's benefit, at such co-owner's expense, covering the unit and such co-owner's personal property and personal liability, as well as any improvements made to the unit by such co-owner (under coverage normally called "improvements and betterments coverage"); provided, however, that no co-owner shall be entitled to exercise this right to acquire or maintain such insurance coverage so as to decrease the amount which the board of directors, on behalf of all co-owners, may realize under any insurance policy maintained by the board or to cause any insurance coverage maintained by the board to be brought into contribution with insurance coverage obtained by a co-owner. No co-owner shall obtain separate insurance policies on the condominiums except as provided in this section.

(F) Insurance Trustee.

(1) All physical damage insurance policies purchased by the board of directors shall be for the benefit of the council, the co-owners, their mortgagees and the Declarant, as their interests may appear, and shall provide that all proceeds of such policies shall be paid in trust to the board as "insurance trustee" to be applied pursuant to the terms of this Article.

(2) The sole duty of the insurance trustee shall be to receive such proceeds as are paid to it and to hold the same in trust for the purposes elsewhere stated, for the benefit of the insureds and their beneficiaries thereunder.

ARTICLE IX

Repair and Reconstruction After Fire,  
Other Casualty or Taking by Eminent Domain

(A) When Repair and Reconstruction are Required

Except as otherwise provided in (d), if all or any part of the building is damaged or destroyed as a result of fire or other casualty, the board of directors shall arrange for and supervise the prompt repair and restoration thereof, but not including any furniture, furnishings, fixtures, equipment or other personal property of the co-owners in the units unless covered by insurance obtained by the council.

(B) Procedure for Reconstruction and Repair

(1) Cost Estimates

Immediately after a fire or other casualty causing damage to any portion of the building, the board of directors shall obtain reliable and detailed estimates of the cost of repairing and restoring such portion (including without limitation any damaged units, but not including any furniture, furnishings, fixtures or equipment of the co-owner in the unit unless covered by insurance obtained by the council) to a condition as good as that existing before such casualty. Such costs may also include professional fees and premiums for such bonds as the insurance trustee determines to be necessary.

(2) Assessments

If the proceeds of insurance are not sufficient to defray such estimated costs of reconstruction and repair, or if upon completion of reconstruction and repair the funds for the payment of the costs thereof are insufficient, the amount necessary to complete such reconstruction and repair may be obtained from the appropriate reserve for replacement funds and/or shall be deemed a common expense and a special assessment therefor shall be levied.

(3) Plans and Specifications

Any such reconstruction or repair shall be substantially in accordance with the original construction of the Property, subject to any modifications required by changes in applicable governmental regulations, and using contemporary building materials and technology to the extent feasible.

## (C) Disbursements of Construction Funds

## (1) Construction Fund and Disbursement

The proceeds of insurance collected on account of casualty, and the sums received by the insurance trustee from collections of assessments against co-owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

(a) If the estimated cost of reconstruction and repair is less than five percent of the total annual assessment for common expenses for that fiscal year, then the construction fund shall be disbursed in payment of such costs upon order of the Board of Directors; provided, however, that upon request of twenty percent of the institutional mortgagees, such fund shall be disbursed pursuant to paragraph 2.

(b) If the estimated cost of reconstruction and repair is five percent of the total annual assessment for common expenses for that fiscal year or more, then the construction fund shall be disbursed in payment of such costs upon approval of an architect qualified to practice in Kentucky and employed by the insurance trustee to supervise such work, payment to be made from time to time as the work progresses. The architect shall be required to furnish a certificate giving a brief description of the services and materials furnished by various contractors, sub-contractors, materialmen, the architect and other persons who have rendered services or furnished materials in connection with the work stating that: (i) the sums requested by them in payment are justly due and owing and that such sums do not exceed the value of the services and materials furnished; (ii) there is no other outstanding indebtedness known to such architect for the services and materials described; and (iii) the cost as estimated by such architect for the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining after payment of the sum so requested.

## (2) Surplus

The first monies disbursed in payment of the cost of reconstruction and repair shall be from insurance proceeds and, if there is a balance in the construction fund after the payment of all of the costs of the reconstruction and repair for which the fund is established, such balance shall be divided among all co-owners in proportion to their undivided percentage interests and shall be distributed in accordance with the priority of interests at law or in equity in each unit.

## (3) Common Elements

When the damage is to both common elements and units, the insurance proceeds shall be applied first to the cost of

repairing those portions of the common elements which enclose and service the units, then to the cost of repairing the other common elements and thereafter to the cost of repairing the units.

(D) When Reconstruction Is Not Required

If the board of directors elects not to repair insubstantial damage to the common elements, the board of directors shall remove all remains of the damaged improvements and restore the site thereof to an acceptable condition compatible with the remainder of the condominiums and the balance of any insurance proceeds received on account of such damage shall be distributed or credited, as the board of directors may decide, to all co-owners in proportion to their respective interests. If the condominiums shall be terminated pursuant to KRS 381.850 or 381.890(3), the net assets of the condominiums together with the net proceeds of insurance policies, if any, shall be divided by the insurance trustee among all co-owners in proportion to their respective interests, after first paying out of the share of each co-owner, to the extent sufficient therefor, the amount of any unpaid liens on the unit in the order of priority of such liens.

(E) Eminent domain

Appropriation, taking, injury to or destruction of, or condemnation by eminent domain by federal, state, or local government or any instrumentality thereof of any portion of the condominium project, shall be considered to be included in the term "damage and destruction" for purposes of this article, and the decision whether or not to restore, insofar as is possible, the building of which two-thirds or more is taken, and the proceeds of the eminent domain taking, shall be treated in the same manner as is provided in this master deed upon the occurrence of damage and destruction to the condominium project. The board of directors shall give to all holders of first mortgages on condominium units prompt notice of any eminent domain proceeding and the distribution of the proceeds of any eminent domain proceeding shall be subject to the provisions of section VIII(F) with respect to the rights of the holders of mortgages on condominium units.

ARTICLE X

Sale, Lease, and Mortgaging of Condominium Units

(A) Right to sell or lease condominium units

The co-owner of each unit shall have the right to sell or lease the condominium unit provided, with respect to any lease (or assignment thereof or sublease), that written notice of the fact of the lease, the identity of the lessee, and the term of the lease is disclosed to the board of directors or managing agent in writing prior to commencement of the term of the lease. Any tenancy or subtenancy of a condominium unit shall be subject and subordinate to all of the provisions of the condominium documents.

## (B) Mortgaging of units

No co-owner may mortgage any condominium unit or any interest therein without the approval of the board of directors and, if the declarant is a co-owner at the time such mortgage is granted, without the prior written approval of declarant, except as to a mortgage or mortgages granted to a bank, life insurance company, credit union, or savings and loan association, or to declarant or to the co-owner from whom the unit was purchased. The board of directors may, and is hereby authorized to, impose reasonable conditions upon which approval as to any other mortgage shall be given. Every mortgage which is not held by a bank, a life insurance company, a credit union, a savings and loan association, the unit owner from whom the unit was purchased, or declarant shall be invalid as a lien against the unit without the written approval of the board of directors and, if required under the terms hereof, declarant.

## (C) Grantee to be liable with grantor for unpaid common charges

In any conveyance of a condominium unit either by voluntary instrument, operation of law, or judicial proceeding in accordance with this master deed or the bylaws, the grantee of the unit shall be jointly and severally liable with the former unit owner for any unpaid common charges against the latter assessed and due up to the time of the grant or conveyance without prejudice to the grantee's right to recover from the former unit owner the amounts paid by the grantee therefor. "Grantee" as used in this section shall not include either the holder of an institutional mortgage of record or a purchaser of a unit at a foreclosure sale of an institutional mortgagee.

## (D) Unauthorized transfer is voidable

Any lease or mortgage which is not authorized by the terms of this master deed or for which authorization has not been obtained pursuant to the terms hereof is voidable and may be voided by the board of directors, or by the declarant if declarant at the time of such avoidance is a co-owner, by this master deed or any other instrument duly recorded in the office of the Jefferson County Clerk, Kentucky.

**ARTICLE XI**  
**Default and Foreclosure**  
**of Mortgages or Other Liens on Condominium Units**

## (A) Mortgagee to notify declarant of co-owner's default

Upon the happening of a default under the terms of any mortgage which would permit the holder to declare the entire principal sum due, and upon which such holder intends to rely in accelerating the indebtedness secured by the mortgage, notice of the intention of the holder to do so shall be given to the board

of directors and to declarant, if declarant is the record co-owner of a condominium unit at the time notice is given.

(B) Rights of declarant and board of directors with respect to mortgages in default

The declarant and the board of directors shall have the right at either of its option to exercise the following powers and privileges with respect to mortgages of condominium units which are in default:

(1) To remedy the defaults existing under the terms of the mortgage and to put the same in good standing. In the event the declarant shall make the advances necessary to remedy the defaults, the declarant shall be deemed to hold a lien position in the condominium unit to secure the amount so advanced, together with interest thereon (at the prime rate then in effect at major Louisville banks), costs, disbursements, counsel fees, insurance, taxes, or other charges so advanced, and with the right to foreclosure of such lien against the defaulting co-owner. The holder of the mortgage shall in no event be required, or have the obligation, to collect the lien position so created on behalf of the declarant. Acceptance of a deed to any condominium unit constitutes a present grant by the co-owner of such a lien in favor of declarant and the council.

(2) To acquire the mortgage by assignment from the holder of the mortgage in consideration of the payment by certified check from declarant or the council to the mortgagee of an amount equal to the unpaid balance plus accrued but unpaid interest on the indebtedness secured by the mortgage, plus collection costs (including reasonable attorney fees) expended by the mortgagee either before or after institution of foreclosure action; in the name of the declarant or in the name of its designated nominee, with all the powers and rights of the holder against the defaulting co-owner including the right to foreclosure.

(3) To require the defaulting co-owner to transfer the condominium unit to declarant or its nominee or the council, in exchange for the agreement of declarant or the council to remedy all defaults existing under the terms thereof, and to assume the indebtedness secured thereby.

(4) To continue any pending action or to institute an action to foreclose any mortgage taken by assignment under subdivision (2) of this section, or to take a deed in lieu of foreclosure of the mortgage. In no event shall a co-owner be relieved from liability already incurred for past due common expenses and charges, including reasonable expenses of legal counsel, nor be relieved from personal liability on the bond, note, or other obligation secured by the mortgage by reason of any conveyance made under subdivision (3) hereof or under this subdivision.

(5) All of the rights of the declarant under this section shall also be available at all times to the council, but such rights as vested in council at all times shall be junior and subordinate to those rights as vested in declarant as long as the declarant is a co-owner.

(C) Council and declarant necessary parties in all mortgage or other lien foreclosures

The declarant, at any time when declarant is a co-owner, and the council shall be necessary parties in every action brought to foreclose any mortgage or other lien encumbering a condominium unit, and shall be entitled to bid such amounts as they deem appropriate at any sale, whether the action be in their names or they be a defendant therein, and to purchase any condominium unit at such sale.

(D) Incorporation in instruments of encumbrance

The provisions of this article shall be deemed incorporated by reference in each mortgage or other lien encumbering a condominium unit as though fully set forth therein.

ARTICLE XII  
Obligations of Co-Owners  
and Remedies upon Default

(A) All co-owners and tenants subject to condominium documents which run with the land

All co-owners, tenants, occupants, or any other person using the condominium project in any manner are subject to the terms and provisions of the condominium documents, as they may be amended from time to time, and the decisions of the council acting through the board of directors acting, in turn, through its resolutions, the officers of the council, and the managing agent. The acceptance of a deed or conveyance or the entering into of a lease, or the entering into occupancy of any condominium unit shall signify that the provisions of the condominium documents, and the decisions of the board of directors, are accepted and ratified by the co-owner, tenant, or occupant, and all of these provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in the condominium unit, as though these provisions were recited and stipulated at length in each deed, other conveyance or lease of the condominium unit.

(B) Remedies upon default

Failure of a co-owner (or other person subject to the condominium documents) to comply with the provisions of the condominium documents shall entitle the council (and the declarant, in the proper case) to the following remedies for violation or breach in addition to all remedies provided by the

Horizontal Property Law and by any other provisions of the condominium documents:

(1) The right to enter any unit or any portion of the condominium project upon which, or as to which, violation or breach exists which requires emergency attention or emergency repairs, and on an emergency basis to abate and remove, at the expense of the defaulting co-owner, any structure or thing or condition that may exist in violation of the condominium documents; and the council, shall not thereby be deemed guilty of trespass.

(2) The right to enjoin, abate, or remedy by appropriate legal proceedings, the continuance of any breach; and, pursuant to appropriate court action, the right, if any co-owner or occupant shall continue to violate the condominium documents for 30 days after notice in writing from the council, to issue to the breaching co-owner a 10-day notice in writing to terminate the rights of the co-owner to be a co-owner and to occupy, use, or control the unit and to file suit against the breaching defaulting co-owner for a mandatory injunction against the co-owner or occupants or, in the alternative, a decree declaring the termination of the breaching co-owner's right to occupy, use, or control the condominium unit and ordering that the condominium unit shall be sold at a judicial sale upon the notice and terms as the court shall establish, except that the breaching co-owner shall not be entitled to reacquire the condominium unit at the sale or by virtue of right of redemption.

(C) Costs and attorney fees

In any proceeding arising because of an alleged failure of a co-owner or the council to comply with the terms of the condominium documents, as they may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and such reasonable attorney fees as may be awarded by the court.

(D) No waiver of rights

The failure of the council or any co-owner to enforce any covenant, restriction, or other provision of the Horizontal Property Law or the condominium documents shall not constitute a waiver of the right to do so thereafter.

(E) Rights are cumulative

All rights, remedies, and privileges granted to the council, declarant, or a co-owner, pursuant to any terms, provisions, covenants, or conditions of the condominium documents shall be deemed to be cumulative, and the exercise of any one or more shall not be deemed to constitute an election of remedies nor shall it preclude the party thus exercising the same from exercising such other and additional rights, remedies, or privileges as may be



granted to the party hereunder, under the other condominium documents, or at law or in equity.

ARTICLE XIII  
Amendment to Declaration

This master deed may be modified, altered, amended, or added to by an instrument signed by each co-owner of record or by a vote of a majority of co-owners at any duly called meeting of the council provided that:

(1) A notice of the meeting containing a full statement of the proposed modification, alteration, amendment, or addition has been sent to all co-owners as listed on the books and records of the council and to all mortgagees of units who have requested same; and

(2) The board of directors approves the change; and

(3) An instrument evidencing the change and signed by the president or any vice president of the council is duly recorded in the office of the Jefferson County Clerk. Such instrument need not contain the written consent of any co-owners but shall contain the verified statement and certification by the secretary or other officer of the council not otherwise signing the instrument that the requirements of this subsection (3) have been satisfied.

ARTICLE XIV  
General

(A) Severability

The invalidity of any provision of this master deed shall not be deemed to affect the validity of the remainder of this master deed, and, in such event, all of the other provisions of this master deed shall continue in effect as if such invalid provision had never been included.

(B) Waiver

No provision contained in this master deed shall be deemed to have been waived by reason of any failure to enforce it, irrespective of the number of violations or breaches which may occur.

(C) Captions

The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of this master deed nor the intent of any provision hereof.

IN WITNESS WHEREOF, the declarant has caused this master deed to be executed on the date indicated in the notarial certificate affixed hereto but effective as of December 30, 1992.

Declarant

Harbison Partnership

By: Harbison Partnership David A. Lambertus, General Partner

STATE OF KENTUCKY )  
COUNTY OF JEFFERSON ) SS.

The foregoing instrument was acknowledged before me on this 29<sup>th</sup> day of December, 1992, by David Lambertus, General Partner of Harbison Partnership, a Kentucky partnership, on behalf of the partnership.

My Commission Expires: 1-11-95

Elizabeth C. Spiers  
NOTARY PUBLIC, STATE AT LARGE, KENTUCKY

THIS INSTRUMENT PREPARED BY:  
STITES & HARBISON  
2300 Lexington Financial Center  
250 West Main Street  
Lexington, Kentucky 40507

By Ann C. Render FOR,  
ANN C. RENDER

EXHIBIT A

BEGINNING on the North side of Main Street 53 feet West of Seventh Street; thence West along the North side of Main Street 94 feet; thence Northwardly, parallel with Seventh Street 132 feet; thence Eastwardly, parallel with Main Street 21 feet; thence Southwardly parallel with Seventh Street 27 feet; thence Eastwardly, parallel with Main Street 73 feet; thence Southwardly and parallel with Seventh Street 105 feet to the point of beginning.

EXCEPTING therefrom that portion of the above described property conveyed by Deed dated April 25, 1980, and recorded in Deed Book 5162, Page 965, and by Deed of Correction dated April 29, 1980, recorded in Deed Book 5163, Page 812, in the office of the Clerk aforesaid.

Being the same property conveyed to Harbison Parntership, a Kentucky limited partnership by deed dated May 24, 1985 of record in Deed Book 5501, Page 440 in the Jefferson County Clerk's office.

EXHIBIT B  
BOOK 6262 PAGE 342

HARBISON CONDOMINIUM PERCENTAGE OF OWNERSHIP

Net Square Footage = 34,658.12

UNIT	SQ. FT.	PERCENTAGE
UNIT AA	= 10,065.71	= 29.04%
UNIT A	= 568.00	= 1.64%
UNIT B	= 664.71	= 1.92%
UNIT C	= 1,056.05	= 3.05%
UNIT D	= 1,087.53	= 3.14%
UNIT E	= 1,206.26	= 3.48%
UNIT F	= 941.19	= 2.71%
UNIT G	= 568.00	= 1.64%
UNIT H	= 664.71	= 1.92%
UNIT J	= 1,056.05	= 3.05%
UNIT K	= 1,087.53	= 3.14%
UNIT L	= 1,206.26	= 3.48%
UNIT M	= 941.19	= 2.71%
UNIT N	= 1,147.59	= 3.31%
UNIT P	= 1,174.69	= 3.39%
UNIT Q	= 1,293.80	= 3.73%
UNIT R	= 1,349.38	= 3.89%
UNIT S	= 1,311.20	= 3.78%
UNIT T	= 2,449.16	= 7.07%
UNIT V	= 2,321.88	= 6.70%
UNIT U	= 2,497.23	= 7.21%
		<u>100.00%</u>

CONDOMINIUM  
OR  
APT. OWNERSHIP  
BOOK 46 PAGE 46-47 48  
FILE NO. 668

*164260*  
Document No: 1992164260  
Lodged By: STITES & HARBISON  
Recorded On: Dec 30, 1992 09:32:40 A.M.  
Total Fees: \$78.00  
Transfer Tax: \$ .00  
County Clerk: Rebecca Jackson  
Deputy Clerk: GLORIA

BOOK 6262 PAGE 342

END OF DOCUMENT

*Vand.*