

MADISON PARK HOMEOWNERS' ASSOCIATION, INC.  
BLOOMINGTON, IN 47403

RULES GOVERNING THE ASSOCIATION

THE RULES THAT FOLLOW ARE BASED ON PROVISIONS OF THE BYLAWS OR DECLARATION OF HORIZONTAL PROPERTY OWNERSHIP, ON ACTIONS OF THE ASSOCIATION, OR ON THE DICTATES OF COMMUNITY HARMONY.

1. LATE FEES. ASSOCIATION DUES ARE DUE ON THE FIRST DAY OF THE MONTH. A LATE FEE OF \$10.00 PER MONTH WILL AUTOMATICALLY BE ADDED WHEN EACH OWNER REACHES A 60 DAY DELINQUENCY. THIS WILL CONTINUE TO ACCUMULATE UNTIL BOTH DUES AND LATE FEE CHARGES ARE PAID IN FULL.

2. PARKING. NO UNLICENSED VEHICLE OR UNCONVENTIONAL VEHICLE MAY BE STORED ON ANY COMMON PROPERTY WITHOUT THE WRITTEN PERMISSION OF THE BOARD. THIS APPLIES TO CAMPERS, BOATS, MOTOR HOMES, TRAILERS, & TRUCKS.

3. GARAGE DOORS. GARAGE DOORS SHOULD NORMALLY BE KEPT CLOSED.

4. NOISE. ANY EXCESSIVE SOUNDS OR NOISE ARISING FROM TV, RADIO, PETS, ETC. ARE NOT PERMITTED.

5. WINDOWS. ALL WINDOWS SHOULD HAVE CURTAINS OR DRAPERY LININGS IN A NEUTRAL COLOR SO THAT THE EXTERIOR OF THE WINDOWS PRESENTS A UNIFORM EFFECT. VENETIAN BLINDS MAY BE USED. AWNINGS & SHADES MAY NOT BE ATTACHED TO THE EXTERIOR OF ANY CONDOMINIUM UNIT.

6. PATIOS & DECKS. LAUNDRY, CLOTHING OR OTHER APPAREL SHOULD NOT BE HUNG OR DRAPED ON PATIOS & DECKS.

7. DOGS. DOGS ARE TO BE ON LEASH WHEN IN COMMON AREAS OF THE PROPERTY. PET OWNERS ARE RESPONSIBLE FOR SCOOPING UP AFTER THEIR DOGS.

8. UNIT OWNERS MAY NOT KENNEL PETS ON DECKS OR ON COMMON AREAS.

9. PLANTING. ANY INDIVIDUAL PLANS FOR PLANTING OR LANDSCAPING MUST BE PRESENTED IN WRITING TO THE BOARD OF DIRECTORS AND APPROVED BEFORE ANY WORK IS UNDERTAKEN.

10. EXTERNAL ADDITIONS. THERE SHALL BE NO ALTERATIONS, OR ADDITIONS, LARGE OR SMALL, TO THE OUTSIDE OF THE BUILDINGS, INCLUDING ANTENNAS WITHOUT THE PERMISSION OF THE BOARD.

11. RENTAL OF PROPERTY. RENTALS ARE ALLOWED, SO LONG AS THE RESTRICTION OF NO MORE THAN TWO UNRELATED ADULTS IS OBSERVED. THE LEASE AGREEMENT SHALL ALSO REQUIRE THE TENANTS TO COMPLY WITH ALL RULES AND REGULATIONS OF THE COMMUNITY AND ASSOCIATION, INCLUDING ALL DECLARATIONS AND BY LAWS, AND AMENDMENTS THERETO.

12. SALE OF PROPERTY. BEFORE ANY PROPERTY IS PLACED FOR SALE, THE BOARD OF DIRECTORS MUST BE NOTIFIED IN WRITING.

13. SAFETY. WHEN ABSENT FOR A EXTENDED PERIOD OF TIME, INFORM A BOARD OFFICER OR THE PROPERTY MANAGER WHERE YOU COULD BE REACHED IN THE EVENT OF AN EMERGENCY AND ASK A NEIGHBOR TO LOOK AFTER YOUR UNIT. STOP DELIVERIES OF PAPERS AND HAVE YOUR MAIL COLLECTED BY YOUR NEIGHBOR.

14. SIGNS. NO SIGN, ADVERTISEMENT, NOTICE OR OTHER LETTERING SHALL BE EXHIBITED, INSCRIBED, PAINTED OR AFFIXED BY ANY UNIT OWNER ON ANY OUTSIDE PROPERTY WITHOUT PRIOR APPROVAL OF THE BOARD OF DIRECTORS.

15. RESIDENTS OF UNITS IN BUILDING FACING MADISON STREET MUST USE REAR ENTRANCES IN MOVING PERSONAL PROPERTY TO PREVENT DAMAGE TO COMMON HALLWAYS.

**EXHIBIT 'A'**

**LEGAL DESCRIPTION OF THE PROPERTY**

106900

CORPORATE WARRANTY DEED

MAY 30 1991

*Quilley*  
RECORDER MONROE CO., IN

THIS INDENTURE WITNESSETH that CFC, Inc., an Indiana Corporation of Monroe County, Indiana, conveys and warrants to CFC, Inc., an Indiana Corporation of Monroe County, Indiana, for and in consideration of One Dollar (\$1.00) and other good and valuable consideration not expressed herein, the receipt of which is hereby acknowledged, the following described real estate in Monroe County, Indiana, to-wit:

Lots 3 and 4 and part of Lots 1 and 2 of Howe's Addition to the City of Bloomington, Monroe County, Indiana, and the alley vacated by Ordinance 90-14 to Vacate a Public Parcel, dated April 5, 1990 and recorded April 19, 1990 in Miscellaneous Record 19 Page 01 in the office of the Recorder of Monroe County, Indiana, and part of Smith Avenue right-of-way located between Lots 1, 2 and 3 of Howe's Addition and Seminary Lot 32 in the City of Bloomington vacated by Ordinance 91-19 to Vacate a Public Parcel dated April 17, 1991 and recorded April 25, 1991 in Miscellaneous Record 207 Page 295-295A in the office of the Recorder of Monroe County, Indiana, bounded and described as follows: Beginning at an iron pin found in place at the Southwest corner of Lot 4 in said Subdivision; thence North along the East right-of-way of Madison Street (right-of-way line being the basis of bearings for this description), 63.04 feet to an iron pin found in place; thence North along the East right-of-way line of Madison Street, 63.03 feet to the South right-of-way line of Smith Street; thence North 89 degrees 43 minutes 31 seconds East, 86.83 feet; thence North 78 degrees 25 minutes 33.7 seconds East 20.42 feet; thence South 89 degrees 45 minutes 38.09 seconds East, 108.00 feet; thence South 68 degrees 03 minutes 9.82 seconds East, 8.01 feet; thence South 89 degrees 43 minutes 31 seconds West, 3.79 feet; thence South 00 degrees 30 minutes 21 seconds East, 62.92 feet to a point; thence North 89 degrees 44 minutes 36 seconds West, 86.77 feet; thence South 00 degrees 08 minutes 59 seconds West, 62.91 feet; thence South 89 degrees 16 minutes 19 seconds West, 132.11 feet to the point of beginning and containing 0.533 acres, more or less.

208 517

The undersigned hereby represents that this real estate is not "property" as defined in Indiana Code 13-7-22.5-6, and is not, and has not been used as a landfill or dump, and contains no underground storage tanks or toxic or hazardous waste or materials, and that no disclosure statement under Indiana Code 13-7-22.5-1, et. seq. (Indiana Responsible Transfer Law), is required for this transaction.

Subject to the second installment of the real estate taxes for the year 1990 due and payable in November, 1991, and all subsequent taxes.

Subject to the covenants, conditions and restrictions contained in the plat of Howe's Addition as per plat thereof recorded in Plat Cabinet B Envelope 7.

The undersigned persons executing this deed on behalf of Grantor represent and certify that they are duly elected officers of Grantor and have been fully empowered to execute and deliver this deed; that Grantor has full corporate capacity to convey the real estate described herein, and that all necessary corporate action for the making of such conveyance has been taken and done, and that there is no Gross Income Tax due on this transaction.

IN WITNESS WHEREOF, the said Grantor, CFC, Inc., an Indiana Corporation has hereunto set its hand and seal this 28th day of May, 1991.



BYLAWS  
OF  
MADISON PARK HOMEOWNERS ASSOCIATION, INC.  
AN INDIANA NOT-FOR-PROFIT CORPORATION

ARTICLE I - PLAN OF UNIT OWNERSHIP

Section 1.--Unit Ownership.

The Property located in Monroe County, State of Indiana, and more particularly described in the Declaration to which these By-Laws are attached has been submitted to the provisions of Chapter 349 of the Acts of the Indiana General Assembly of 1963 entitled "Horizontal Property Act" by Declaration recorded in the Office of the Recorder for Monroe County, State of Indiana, simultaneously herewith, and shall hereinafter be known as "Madison Park Homeowners Association, Inc." (hereinafter called the "Condominium").

Section 1.2.--Applicability of By-Laws.

The provisions of these By-Laws are applicable to the Property of the Condominium and to the use and occupancy thereof. These By-Laws are adopted simultaneously with the execution of that certain Declaration creating the Madison Park Condominiums to which these By-Laws are attached and made a part thereof. The Declaration is incorporated herein by reference and all of the covenants, rights, definitions, restrictions and liabilities therein contained shall apply to and govern the interpretation of these By-Laws.

Section 1.3.--Application.

All present and future owners, mortgagees, lessees and occupants of Units and their employees; and any other persons who may use the facilities of the Property in any manner are subject to the Declaration, these By-Laws and rules and regulations made pursuant hereto and any amendment to these By-Laws upon the same being passed and duly set forth in an amendment to the Declaration, duly recorded.

The acceptance of a deed of conveyance or the entering into of a lease or the act of occupancy of a Unit shall constitute an agreement that these By-Laws (and any rules and regulations made pursuant hereto) and the provisions of the Declaration, as they may be amended from time to time, are accepted, ratified and will be complied with.

## ARTICLE II - BOARD OF DIRECTORS

## Section 2.1--Number and Qualification--Termination of Declarant Control.

(a) The affairs of the Corporation shall be governed by a Board of Directors which shall consist of five persons, the majority of whom shall be Unit Owners. If any Unit is owned by a partnership or corporation, any officer, partner or employee of that Unit Owner shall be eligible to serve as a Director and shall be deemed to be a Unit Owner for the purposes of the preceding sentence. Directors shall be elected by the Unit Owners, except for the original five Directors. At any meeting at which Directors are to be elected, the Unit Owners may, by resolution, adopt specific procedures which are not inconsistent with these Bylaws or the Corporation Laws of the State of Indiana for conducting the elections.

(b) The terms of the Directors shall be two years and at the first annual meeting three directors shall be elected for a two year term and two directors will be elected for a one year term.

(c) The Board of Directors shall elect the officers. The Board of Directors and officers shall take office upon election.

(d) At any time after July 1, 1991, the Corporation shall call a meeting and give not less than 10 nor more than 60 days' notice to the Unit Owners for this purpose. This meeting may be called and the notice given by any Unit Owner if the Corporation fails to do so.

Section 2.2--Powers and Duties. The Board of Directors may act in all instances on behalf of the Corporation, except as provided in the Declaration, these Bylaws or the Act. The Board of Directors shall have, subject to the limitations contained in the Declaration and the Act, the powers and duties necessary for the administration of the affairs of the Corporation, which shall include, but not be limited to, the following:

- (a) Adopt and amend Bylaws and Rules and regulations;
- (b) Adopt and amend budgets for revenues, expenditures and reserves;
- (c) Collect assessments for Common Expenses from Unit Owners;
- (d) Hire and discharge managing agents;
- (e) Hire and discharge employees, independent contractors and agents other than managing agents;
- (f) Institute, defend or intervene in litigation or administrative proceedings or seek injunctive relief for violations of the Corporation's Declaration, Bylaws or Rules in the Corporation's name, on behalf of the Corporation or two or more Unit Owners on matters affecting the common area;



- (g) Make contracts and incur liabilities;
- (h) Regulate the use, maintenance, repair, replacement and modification of Common Elements;
- (i) Cause additional improvements to be made as a part of the Common Elements;
- (j) Acquire, hold, encumber and convey, in the Corporation's name, any right, title or interest to real estate or personal property.
- (k) Grant easements for any period of time, including permanent easements, and grant leases, licenses and concessions for no more than one year, through or over the Common Elements;
- (l) Impose and receive a payment, fee or charge for services provided to Unit Owners and for the use, rental or operation of the Common Elements.
- (m) Impose a reasonable charge for late payment of assessments and, after Notice and Hearing, levy a reasonable fine for a violation of the Declaration, Bylaws, Rules and regulations of the Corporation;
- (n) Impose a reasonable charge for the preparation and recording of amendments to the Declaration, or statements of unpaid assessments;
- (o) Provide for the indemnification of the Corporation's officers and Board and maintain Directors' and officers' liability insurance;
- (p) Assign the Corporation's right to future income, including the right to receive Common Expense assessments;
- (q) Exercise any other powers conferred by the Declaration or Bylaws;
- (r) Exercise any other power that may be exercised in the state by a legal entity of the same type as the Corporation;
- (s) Exercise any other power necessary and proper for the governance and operation of the Corporation; and

Section 2.3--Standard of Care. In the performance of their duties, the officers and members of the Board of Directors are required to exercise the care required of Directors of For-Profit Corporations in the State of Indiana.

Section 2.4--Manager. The Board of Directors may employ a manager for the Common Interest Community, at a compensation established by the Board of Directors, to perform duties and services authorized by the Board of Directors. The Board of

Directors may delegate to the manager only the powers granted to the Board of Directors by these Bylaws under Section 2.2, Subdivisions (c), (e), (g) and (h). Licenses, concessions and contracts may be executed by the manager pursuant to specific resolutions of the Board of Directors and to fulfill the requirements of the budget.

Section 2.5--Removal of Directors. The Unit Owners, by a two-thirds vote of all persons present and entitled to vote, at any meeting of the Unit Owners at which a quorum is present, may remove any member of the Board of Directors, with or without cause.

Section 2.6--Vacancies. Vacancies in the Board of Directors, caused by any reason other than the removal of a Director by a vote of the Unit Owners, may be filled at a special meeting of the Board of Directors held for that purpose at any time after the occurrence of the vacancy, even though the Directors present at that meeting may constitute less than a quorum. These appointments shall be made in the following manner:

(a) As to vacancies of Directors whom Unit Owners elected, by a majority of the remaining elected Directors constituting the Board of Directors; and

(b) As to vacancies of Directors whom the Declarant has the right to appoint, by the Declarant.

Each person so elected or appointed shall be a Director for the remainder of the term of the Director so replaced.

Section 2.7--Regular Meetings. The first regular meeting of the Board of Directors following each annual meeting of the Unit Owners shall be held within 10 days after the annual meeting at a time and place to be set by the Unit Owners at the meeting at which the Board of Directors shall have been elected. No notice shall be necessary to the newly elected Directors in order to legally constitute such meeting, provided a majority of the Directors are present. The Board of Directors may set a schedule of additional regular meetings by resolution, and no further notice is necessary to constitute regular meetings.

Section 2.8--Special Meetings. Special meetings of the Board of Directors may be called by the President or by a majority of the Directors on at least three business days' notice to each Director. The notice shall be hand-delivered or mailed and shall state the time, place and purpose of the meeting.

Section 2.9--Location of Meetings. All meetings of the Board of Directors shall be held within the City of Bloomington, unless all Directors consent in writing to another location.

**Section 2.10--Waiver of Notice.** Any Director may waive notice of any meeting in writing. Attendance by a Director at any meeting of the Board of Directors shall constitute a waiver of notice. If all the Directors are present at any meeting, no notice shall be required, and any business may be transacted at such meeting.

**Section 2.11--Quorum of Directors.** At all meetings of the Board of Directors, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute a decision of the Board. If, at any meeting, there shall be less than a quorum present, a majority of those present may adjourn the meeting. At any adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

**Section 2.12--Compensation.** A Director may receive a fee from the Corporation for acting as a director, as may be set by resolution of the Unit Owners, and may also receive reimbursement for necessary expenses actually incurred in connection with the Director's duties. Directors acting as officers or employees may also be compensated for those duties.

**Section 2.13--Consent to Corporate Action.** If all the Directors or all Directors of a committee established, for such purposes, as the case may be, severally or collectively consent in writing to any action taken or to be taken by the Corporation, and the number of the Directors constitutes a quorum, that action shall be a valid corporate action as though it had been authorized at a meeting of the Board of Directors or the committee, as the case may be. The Secretary shall file these consents with the minutes of the meetings of the Board of Directors.

**Section 2.14--Telephone Communication in Lieu of Attendance.** A Director may attend a meeting of the Board of Directors by using an electronic or telephonic communication method whereby the director may be heard by the other members and may hear the deliberations of the other members on any matter properly brought before the Board of Directors. The Director's vote shall be counted and the presence noted as if that Director were present in person on that particular matter.

### ARTICLE III - UNIT OWNERS

**Section 3.1--Annual Meeting.** Annual meetings of Unit Owners shall be held in July at such date set forth in the notice. At these meetings, the Directors shall be elected by ballot of the Unit Owners, in accordance with the provisions of Article II of the Bylaws. The Unit Owners may transact other business as may properly come before them at these meetings.

**Section 3.2--Budget Meeting.** Meetings of Unit Owners to consider proposed budgets shall be called. The budget may be considered at Annual or Special Meetings called for other purposes as well.

Section 3.3--Special Meetings. Special meetings of the Corporation may be called by the president, by a majority of the members of the Board of Directors or by Unit Owners comprising 20 percent of the votes in the Corporation.

Section 3.4--Place of Meetings. Meetings of the Unit Owners shall be held at Fountain Square or at a suitable place convenient to the Unit Owners, as may be designated by the Board of Directors or the president.

Section 3.5--Notice of Meetings. Except for budget meetings, which will be noticed not less than 14 nor more than 30 days after the mailing of the notice, the secretary or other officer specified in the Bylaws shall cause notice to be hand-delivered or sent prepaid by United States mail to the mailing address of each Unit or to the mailing address designated in writing by the Unit Owner not less than 10 nor more than 30 days in advance of a meeting.

Section 3.6--Waiver of Notice. Any Unit Owner may, at any time, waive notice of any meeting of the Unit Owners in writing, and the waiver shall be deemed equivalent to the receipt of notice.

Section 3.7--Adjournment of Meeting. At any meeting of Unit Owners, a majority of the Unit Owners who are present at that meeting, either in person or by proxy, may adjourn the meeting to another time.

Section 3.8--Order of Business. The order of business at all meetings of the Unit Owners shall be as follows:

- (a) Roll call (or check-in procedure);
- (b) Proof of notice of meeting;
- (c) Reading of minutes of preceding meeting;
- (d) Reports;
- (e) Report on number and term of memberships of the Board of Directors (if required and noticed);
- (f) Election of inspectors of election (when required);
- (g) Election of Directors of the Board of Directors (when required);
- (h) Ratification of Budget (if required and noticed);
- (i) Unfinished business; and
- (j) New business.

**Section 3.9--Voting.**

(a) If only one of several owners of a Unit is present at a meeting of the Corporation, the owner present is entitled to cast all the votes allocated to the Unit. If more than one of the owners are present, the votes allocated to the Unit may be cast only in accordance with the agreement of a majority in interest of the owners. There is majority agreement if any one of the owners casts the votes allocated to the Unit without protest being made promptly to the person presiding over the meeting by another owner of the Unit.

(b) Votes allocated to a Unit may be cast under a proxy duly executed by a Unit Owner. If a Unit is owned by more than one person, each owner of the Unit may vote or register protest to the casting of votes by the other owners of the Unit through a duly executed proxy. A Unit Owner may revoke a proxy given under this section only by actual notice of revocation to the person presiding over a meeting of the Corporation. A proxy is void if it is not dated or purports to be revocable without notice. A proxy terminates one year after its date, unless it specifies a shorter term.

(c) The vote of a corporation or business trust may be cast by any officer of that corporation or business trust in the absence of express notice of the designation of a specific person by the board of directors or bylaws of the owning corporation or business trust. The vote of a partnership may be cast by any general partner of the owning partnership in the absence of express notice of the designation of a specific person by the owning partnership. The moderator of the meeting may require reasonable evidence that a person voting on behalf of a corporation, partnership or business trust owner is qualified to vote.

(d) Votes allocated to a Unit owned by the Corporation may not be cast.

**Section 3.10--Quorum.** Except as otherwise provided in these Bylaws, the Unit Owners present in person or by proxy at any meeting of Unit Owners {but no less than 30 percent of the members}, shall constitute a quorum at that meeting.

**Section 3.11--Majority Vote.** The Vote of a majority of the Unit Owners present in person or by proxy at a meeting at which a quorum shall be present shall be binding upon all Unit Owners for all purposes except where a higher percentage Vote is required in the Declaration, these Bylaws or by law.

**ARTICLE IV - OFFICERS**

**Section 4.1--Designation.** The principal officers of the Corporation shall be the president, the vice president, the secretary and the treasurer, all of whom shall be elected by the Board of Directors. The Board of Directors may appoint an assistant treasurer, an assistant secretary and other officers as it finds necessary. The president and vice president, but no other officers, need to be Directors. Any two offices may be held by the same person, except the offices of president and secretary. The office of vice president may be vacant.

**Section 4.2--Election of Officers.** The officers of the Corporation shall be elected annually by the Board of Directors at the organizational meeting of each new Board of Directors. They shall hold office at the pleasure of the Board of Directors.

**Section 4.3--Removal of Officers.** Upon the affirmative vote of a majority of the Directors, any officer may be removed, either with or without cause. A successor may be elected at any regular meeting of the Board of Directors or at any special meeting of the Board of Directors called for that purpose.

**Section 4.4--President.** The President shall be the Chief Executive Officer of the Corporation. The president shall preside at all meetings of the Unit Owners and of the Board of Directors. The president shall have all of the general powers and duties which are incident to the office of president of a not-for-profit corporation organized under the laws of the State of Indiana, including but not limited to the power to appoint committees from among the Unit Owners from time to time as the President may decide is appropriate to assist in the conduct of the affairs of the Corporation. The president may fulfill the role of treasurer in the absence of the treasurer. The president may cause to be prepared and may execute amendments, attested by the secretary, to the Declaration and these Bylaws on behalf of the Corporation, following authorization or approval of the particular amendment as applicable.

**Section 4.5--Vice President.** The Vice President shall take the place of the President and perform the President's duties whenever the President is absent or unable to act. If neither the president nor the Vice President is able to act, the Board of Directors shall appoint some other Director to act in the place of the president on an interim basis. The Vice President shall also perform other duties imposed by the Board of Directors or by the President.

**Section 4.6--Secretary.** The secretary shall keep the minutes of all meetings of the Unit Owners and the Board of Directors. The secretary shall have charge of the Corporation's books and papers as the Board of Directors may direct and shall perform all the duties incident to the office of secretary of a not-for-profit corporation organized under the laws of the State of Indiana. The secretary may cause to be prepared and may attest to execution by the President of amendments to the Declaration and the Bylaws on behalf of the Corporation, following authorization or approval of the particular amendment as applicable.

**Section 4.7--Treasurer.** The treasurer shall be responsible for Corporation funds and securities, for keeping full and accurate financial records and books of account showing all receipts and disbursements and for the preparation of all required financial data. This officer shall be responsible for the deposit of all monies and other valuable effects in depositories designated by the Board of Directors and shall perform all the duties incident to the office of treasurer of a not-for-profit corporation organized under the laws of the State of Indiana. The treasurer may endorse on behalf of the Corporation, for collection only, checks, notes and other obligations and shall deposit the same and all monies in the name of and to the credit of the Corporation in banks designated by the Board of Directors. Except for reserve funds described below, the

treasurer may have custody of and shall have the power to endorse for transfer, on behalf of the Corporation, stock, securities or other investment instruments owned or controlled by the Corporation or as fiduciary for others. Reserve funds of the Corporation shall be deposited in segregated accounts or in prudent investments, as the Board of Directors decides. Funds may be withdrawn from these reserves for the purposes for which they were deposited, by check or order, authorized by the treasurer, and executed by two directors, one of whom may be the treasurer if the treasurer is also a director.

Section 4.8--Agreements, Contracts, Deeds, Checks, etc. Except as provided in these Bylaws, all agreements, contracts, deeds, leases, checks and other instruments of the Corporation shall be executed by any officer of the Corporation or by any other person or persons designated by the Board of Directors.

Section 4.9--Compensation. An officer may receive a fee from the Corporation, in an amount set by resolution of the Unit Owners, for acting as an officer. An officer may also receive reimbursement for necessary expenses actually incurred in connection with Corporation duties.

Section 4.10--Statements of Unpaid Assessments. The treasurer, assistant treasurer, a manager employed by the Corporation or, in their absence, any officer having access to the books and records of the Corporation may prepare, certify, and execute statements of unpaid assessments, in accordance with the Act.

The Corporation may charge a reasonable fee for preparing statements of unpaid assessments. The amount of this fee and the time of payment shall be established by resolution of the Board of Directors. The Corporation may refuse to furnish statements of unpaid assessments until the fee is paid. Any unpaid fees may be assessed as a Common Expense against the Unit for which the certificate or statement is furnished.

## ARTICLE V - ENFORCEMENT

Section 5.1--Abatement and Enjoinment of Violations by Unit Owners. The violation of any of the Rules and regulations adopted by the Board of Directors or the breach of any provision of the Documents shall give the Board of Directors the right, after Notice and Hearing, except in case of an emergency, in addition to any other rights set forth in these Bylaws:

(a) To enter the Unit in which, or as to which, the violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition (except for additions or alterations of a permanent nature that may exist in that unit) that is existing and creating a danger to the Common Elements contrary to the intent and meaning of the provisions of the Documents. The Board of Directors shall not be deemed liable for any manner of trespass by this action;  
or

(b) To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

Section 5.2—Fine for Violation. By resolution, following Notice and Hearing, the Board of Directors may levy a fine of up to \$25 per day for each day that a violation of the Documents or Rules persists after Notice and Hearing, but this amount shall not exceed that amount necessary to insure compliance with the rule or order of the Board of Directors.

#### ARTICLE VI - INDEMNIFICATION

The Directors and officers of the Corporation shall have limited liabilities, and be entitled to indemnification, as provided in the laws of the State of Indiana, the provisions of which are incorporated by reference and made a part of this document.

#### ARTICLE VII - RECORDS

Section 7.1—Records and Audits. The Corporation shall maintain financial records. The financial records shall be maintained in accordance with the Declaration. The cost of the accounting shall be a Common Expense.

Section 7.2—Examination. All records maintained by the Corporation or the manager shall be available for examination and copying by any Unit Owner, any holder of a Security Interest in a Unit or its insurer or guarantor, or by any of their duly authorized agents or attorneys, at the expense of the person examining the records, during normal business hours and after reasonable notice.

Section 7.3—Records. The Corporation shall keep the following records:

(a) An account for each Unit, which shall designate the name and address of each Unit Owner, the name and address of each mortgagee who has given notice to the Corporation that it holds a mortgage on the Unit, the amount of each Common Expense assessment, the dates on which each assessment comes due, the amounts paid on the account and the balance due;

(b) An account for each Unit Owner showing any other fees payable by the Unit Owner;

(c) A record of any capital expenditures in excess of \$3,000 approved by the Board of Directors for the current and next two succeeding fiscal years;

(d) A record of the amount, and an accurate account of, the current balance of any reserves for capital expenditures, replacement and emergency repairs, together with the amount of those portions of reserves designated by the Corporation for a specific project;



(e) The most recent regularly prepared balance sheet and income and expense statement, if any, of the Corporation;

(f) The current operating budget adopted pursuant to the Act and ratified pursuant to the procedures of the Act;

(g) A record of any unsatisfied judgments against the Corporation and the existence of any pending suits in which the Corporation is a defendant;

(h) A record of insurance coverage provided for the benefit of Unit Owners and the Corporation;

(i) A record of any alterations or improvements to Units or Limited Common Elements which violate any provisions of the Declarations of which the Board of Directors has knowledge;

(j) A record of any violations, with respect to any portion of the Common Interest Community, of health, safety, fire or building codes or laws, ordinances, or regulations of which the Board of Directors has knowledge;

(k) A record of the actual cost, irrespective of discounts and allowances, of the maintenance of the Common Elements;

(l) Balance sheets and other records required by local corporate law;

(m) Tax returns for state and federal income taxation;

(n) Minutes of proceedings of incorporators, Unit Owners, Directors, committees of Directors and waivers of notice; and

(o) A copy of the most current versions of the Declaration, Bylaws, Rules, and resolutions of the Board of Directors, along with their exhibits and schedules.

## ARTICLE VIII - MISCELLANEOUS

Section 8.1--Notices. All notices to the Corporation or the Board of Directors shall be delivered to the office of the manager, or, if there is no manager, to the office of the Corporation, or to such other address as the Board of Directors may designate by written notice to all Unit Owners and to all holders of Security Interests in the Units who have notified the Corporation that they hold a Security Interest in a Unit. Except as otherwise provided, all notices to any Unit Owner shall be sent to the Owner's address as it appears in the records of the Corporation. All notices to holders of Security Interests in the Units shall be sent, except where a different manner of notice is specified elsewhere in the Documents, by registered or certified mail to their respective addresses, as designated by them in writing to the Corporation. All notices shall be

deemed to have been given when mailed, except notices of changes of address, which shall be deemed to have been given when received.

**Section 8.2--Fiscal Year.** The Board of Directors shall establish the fiscal year of the Corporation.

**Section 8.3--Waiver.** No restriction, condition, obligation or provision contained in these Bylaws shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

**Section 8.4--Office.** The principal office of the Corporation shall be at such place as the Board of Directors may from time to time designate.

**Section 8.5--Working Capital.** A working capital fund is to be established in the amount of two months' regularly budgeted initial Common Expense assessments, measured as of the date of the first assessment on the first phase, for all Units as they are created in proportion to their respective Allocated Interests in Common Expenses. Any amounts paid into this fund shall not be considered as advance payment of assessments. Each Unit's share of the working capital fund may be collected and then contributed to the Corporation by the Declarant at the time the sale of the Unit is closed. The working capital shall be deposited without interest in a segregated fund. The Declarant cannot use any of the working capital funds to defray its expenses, reserve contributions or construction costs or to make up budget deficits.

**Section 8.6--Reserves.** As a part of the adoption of the regular budget pursuant to the Declaration, the Board of Directors shall include an amount which, in its reasonable business judgment, will establish and maintain an adequate reserve fund for the replacement of improvements to the Common Elements and those Limited Common Elements that it is obligated to maintain, based upon the project's age, remaining life and the quantity and replacement cost of major common element improvements.

ARTICLE IX - AMENDMENTS TO BYLAWS

The Bylaws may be amended by majority vote of the Unit owners.

*Bob Doty*

Bob Doty, Secretary  
Madison Park Homeowners  
Association, Inc.

STATE OF INDIANA )  
COUNTY OF MONROE ) SS:

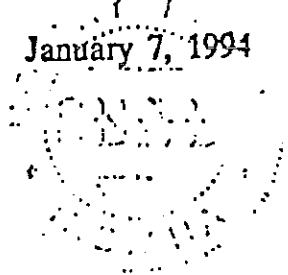
Before me the undersigned, a Notary Public, personally appeared Bob Doty, secretary of Madison Park Homeowners Association, Inc. and acknowledged the certification of the Bylaws, as Secretary of the Corporation, for and on behalf of the Madison Park Homeowners Association, Inc.

My Commission Expires:

January 7, 1994

*Patricia Ann Mitchell*

Patricia Ann Mitchell, Notary Public  
Residing in Monroe County, Indiana



205 533

**EXHIBIT "C"**  
**MASTER SITE PLAN**

EXH. 205-534

**EXHIBIT 'C'**  
**MASTER SITE PLAN**

SEE PLAT CABINET "H B" ENVELOPE 105  
IN THE OFFICE OF THE RECORDER OF  
MONROE COUNTY, INDIANA





205 536

**EXHIBIT "D"**  
**PLANS AND SPECIFICATIONS**

**SEE PLAT CABINET "H B" ENVELOPE 105**  
**IN THE OFFICE OF THE RECORDER OF**  
**MONROE COUNTY, INDIANA.**



SEP 205 537

**EXHIBIT 'E'**  
**UNIT DESIGNATIONS**

BUILDING	UNIT	FLOOR	LEVEL	DESIGN	SQUARE FOOTAGE	SQUARE FOOTAGE	TOTAL SQUARE FOOTAGE	ADDRESS
ONE	401	1ST & BASEMENT	776.3	2 BR & STORAGE	1451	1729	401 S. MADISON	
	406	BASEMENT	767.3	GARAGE	278			
ONE	403	1ST & BASEMENT	776.3	2 BR & STORAGE	1451	1729	403 S. MADISON	
	403G	BASEMENT	767.3	GARAGE	278			
ONE	405	2ND	786.3	2 BR & LOFT	1277	1616	405 S. MADISON	
	405G	BASEMENT	767.3	GARAGE	339			
ONE	407	2ND	786.3	2 BR & LOFT	1277	1616	407 S. MADISON	
	407G	BASEMENT	767.3	GARAGE	339			
ONE	409	1ST & BASEMENT	776.3	2 BR & STORAGE	1451	1729	409 S. MADISON	
	409G	BASEMENT	767.3	GARAGE	278			
ONE	411	1ST & BASEMENT	776.3	2BR & STORAGE	1451	1729	411 S. MADISON	
	411G	BASEMENT	767.3	GARAGE	278			
ONE	413	2ND	786.3	2 BR & LOFT	1277	1616	413 S. MADISON	
	413G	BASEMENT	767.3	GARAGE	339			
ONE	415	2ND	786.3	2 BR & LOFT	1277	1616	415 S. MADISON	
	415G	BASEMENT	767.3	GARAGE	339			
TWO	417	1ST	769.2	2 BR		1089	417 S. MADISON	
TWO	419	1ST	769.2	2 BR		1089	419 S. MADISON	
TWO	421	2ND	779.2	2 BR & LOFT		1286	421 S. MADISON	
TWO	423	2ND	779.2	2 BR & LOFT		1286	423 S. MADISON	
TWO	425	1ST	767.2	2BR		1089	425 S. MADISON	
TWO	427	1ST	767.2	2BR		1089	427 S. MADISON	
TWO	429	2ND	777.2	2 BR & LOFT		1286	429 S. MADISON	
TWO	431	2ND	777.2	2 BR & LOFT		1286	431 S. MADISON	

RADLSON PARK CONDOPHTIUMS

BUILDING	UNIT	FLOOR	LEVEL	DESIGN	SQUARE FOOTAGE	TOTAL SQUARE FEET	CEILING HEIGHT	CEILING ELEVATION
ONE	401	1ST & BASEMENT	776.30	2 BR & STORAGE	1451		1ST FLOOR 9.09	785.39
	401G	BASEMENT	767.30	GARAGE	278	1729	GARAGE 8.09	775.39
ONE	403	1ST & BASEMENT	776.30	2 BR & STORAGE	1451		1ST FLOOR 9.09	785.39
	403G	BASEMENT	767.30	GARAGE	278	1729	GARAGE 8.09	775.39
ONE	405	2ND	786.30	2 BR + LOFT	1277		2ND 9.94 TO 18.98 LOFT 8.98	796.24 TO 805.21 805.28
	405G	BASEMENT	767.30	GARAGE	339	1616	GARAGE 8.09	775.39
ONE	407	2ND	786.30	2 BR + LOFT	1277		2ND 9.94 TO 18.98 LOFT 8.98	796.24 TO 805.21 775.39
	407G	BASEMENT	767.30	GARAGE	339	1616	GARAGE 8.09	775.39
ONE	409	1ST & BASEMENT	776.30	2 BR & STORAGE	1451		1ST 9.09	785.39
	409G	BASEMENT	767.30	GARAGE	278	1729	GARAGE 8.09	775.39
ONE	411	1ST & BASEMENT	776.30	2 BR & STORAGE	1451		1ST 9.09	785.39
	411G	BASEMENT	767.30	GARAGE	278	1729	GARAGE 8.09	775.39
ONE	413	2ND	786.30	2 BR + LOFT	1277		2ND 9.94 TO 18.98 LOFT 8.98	796.24 TO 805.21 775.39
	413G	BASEMENT	767.30	GARAGE	339	1616	GARAGE 8.09	775.39
ONE	415	2ND	786.30	2 BR + LOFT	1277		2ND 9.94 TO 18.98 LOFT 8.98	796.24 TO 805.21 805.28
	415G	BASEMENT	767.30	GARAGE	339	1616	GARAGE 8.09	775.39

205 540

**EXHIBIT 'F'**  
**LEGAL DESCRIPTION OF EXPANSION AREA**



• architects  
• engineers  
• surveyors

317 Main Street • Suite 300  
P.O. Box 722 • Vincennes, Indiana 47591  
Telephone 812/882-6555

EXHIBIT "F"

LEGAL DESCRIPTION  
FOR  
MADISON PARK PHASE II

Part of seminary Lot No. Thirty-two (32) in the City of Bloomington, Monroe County, Indiana, bounded and described as follows: Beginning at the Southwest corner of said Lot at the intersection of the North Line of Smith Street and the East Line of Madison Street; thence North, 126.93 feet; thence North 89 degrees 32 minutes 53 seconds East, 131.64 feet; thence North 00 degrees 23 minutes 17 seconds West, 31.00 feet; thence North 89 degrees 32 minutes 53 seconds East, 141.91 feet; thence South 00 degrees 44 minutes 03 seconds East, 88.97 feet; thence South 89 degrees 43 minutes 31 seconds West, 54.47 feet; thence South, 14.89 feet; thence West, 20.00 feet; thence South 51.00 feet; thence South 89 degrees 43 minutes 31 seconds West, 93.18 feet; thence South 78 degrees 24 minutes 56 seconds West, 20.39 feet; thence South 89 degrees 43 minutes 31 seconds West, 86.83 feet to the point of beginning and containing 0.781 acres more or less.

810613

RECORDED  
A.M. 9:06 P.M.

JUN 0 5 1998

*Jim Shields*  
RECORDER MONROE CO., IN

SECOND AMENDED DECLARATION  
OF  
HORIZONTAL PROPERTY OWNERSHIP  
OF  
MADISON PARK CONDOMINIUMS

Recorded in the Office of the Recorder  
of Monroe County, Indiana

Consisting of Pages 1 through 7  
and Exhibits A, C, D, and E

Prepared By:

Theodore J. Ferguson  
Cynthia A. Williams  
FERGUSON & FERGUSON  
Attorneys at Law  
403 East Sixth Street  
Bloomington, IN 47408  
(812) 330-2030

SECOND AMENDED DECLARATION  
OF  
HORIZONTAL PROPERTY OWNERSHIP  
OF  
MADISON PARK CONDOMINIUMS

THIS SECOND AMENDED DECLARATION, and the attached exhibits, are made and executed this 2<sup>nd</sup> day of May, 1998, by CFC, Inc. ("Declarant"), pursuant to the provisions of the Indiana Horizontal Property Act and in accordance with the terms and provisions of Articles 26 and 30 of the Declaration of Horizontal Property Ownership, Horizontal Property Regime for Madison Park Condominiums, duly filed for record on June 27, 1991, as Instrument No. 108527, in the Office of the Recorder of Monroe County, Indiana ("Declaration"), and as amended in the First Amended Declaration of Madison Park Condominiums, duly filed for record on September 3, 1992, as Instrument No. 215088, in the Office of the Recorder of Monroe County, Indiana ("First Amended Declaration").

Statement of Purposes

WHEREAS, by the Declaration, the Declarant submitted certain real property to the provisions of the Indiana Horizontal Property Act, and created the condominium form of ownership with respect to an initial two (2) non-contiguous multi-unit residential buildings located on the real property described therein, containing an aggregate of sixteen (16) separate units, all as more particularly described in Article 5 of the Declaration.

WHEREAS, by the Declaration, the Declarant also reserved the right to annex certain real estate designated as the Development Area whose approximate boundary was described in Exhibit F of the Declaration, and thereby to add additional or new units to the Condominium.

WHEREAS, by the First Amended Declaration, the Declarant annexed a portion of the real estate in the Development Area and added eight (8) New Units in one multi-unit residential building and New Common Areas and Facilities to the Existing Units and Common Areas and Facilities created by the Declaration.

WHEREAS, in this Second Amended Declaration, the Declarant desires to annex additional real estate in the Development Area and to add eight (8) New Units in one multi-unit residential building and New Common Areas and Facilities to the Existing Units and Common Areas and Facilities created by the Declaration and the First Amended Declaration.

NOW THEREFORE, the Declarant, for the purposes set forth, pursuant to the provisions in Articles 26 and 30 of the Declaration, and in accordance with and by means of the powers reserved or conferred upon it, hereby amends said Declaration as follows:

Paragraph A. Definitions. The definitions used and set forth in the Declaration shall be applicable to this Second Amended Declaration. The terms defined in the Declaration shall be deemed to include the real property (as described in the attached Exhibit A), the New Units, and the New Common Areas and Facilities added by this Second Amended Declaration.

Article 1 of the Declaration shall be amended to read as follows:

1. Definitions.

*Certain terms as used in this Declaration and Exhibits and any amended Declarations and Exhibits shall be defined as follows, unless the context clearly indicates a different meaning. The terms Buildings, Common Areas and Facilities, Condominium, Limited Areas and Facilities, Property or Condominium Property, and Unit shall include the new Buildings, Common Areas and Facilities, Condominium, Limited Areas and Facilities, Property or Condominium Property, and Units that have been added by the First Amended Declaration and the Second Amended Declaration.*

\* \* \* \*

(k) *"Condominium Documents" shall mean this Declaration and the attached Exhibits, the First Amended Declaration, and the Second Amended Declaration, subject to amendment from time to time. The Exhibits are as follows:*

*Exhibit A -- Legal Descriptions*

*Exhibit B -- By-Laws of the Homeowners Association*

*Exhibit C -- Master Site Plan/Floor Plans*

*Exhibit D -- Plans and Specifications*

*Exhibit E -- Unit Designations*

*Exhibit F -- Legal Description of Expansion Area*

\* \* \* \*



**Paragraph B. General Description of the Property.** Article 4 of the Declaration is hereby amended, so that henceforth the Condominium Property shall consist of the property described in the Declaration, the property annexed in the First Amended Declaration, and the property annexed in this Second Amended Declaration, all described in the amended and attached Exhibit A. The real property described in and identified on Exhibit A, the Building and other improvements erected and to be erected thereon, and all articles of personal property intended for common use in connection therewith, shall be and hereby are annexed to and become a part of the Madison Park Condominiums, as if such had originally been included in the Declaration.

Such real property, Building and other improvements shall hereafter be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions and provisions of the Declaration, the First Amended Declaration, this Second Amended Declaration, the Act, the Articles of Incorporation, the Amended Articles of Incorporation, the By-Laws, and Rules and Regulations, adopted from time to time in connection with the Condominium Property, all as may be amended from time to time, said Declarations and the attached Exhibits being incorporated by reference and made a part as though fully set out.

**Article 4 of the Declaration shall be amended to read as follows:**

4. *General Description of the Property.*

*The Condominium Property consists of the real property described in Exhibit A of the Declaration, annexed by Exhibit A of the First Amended Declaration, and annexed by Exhibit A of the Second Amended Declaration, all of which property is described in the attached Exhibit A, and the Buildings and other improvements erected and to be erected and all articles of personal property intended for common use in connection therewith.*

**Paragraph C. Description of Buildings.** Article 5 of the Declaration is hereby amended to reflect the addition of a Building and Units by this Second Amended Declaration. Madison Park Condominiums, Phase Two (B) will consist of one multi-unit residential building, containing a total of eight (8) New Units. The Building is designated as Building 4 as shown on the Floor Plan for Phase Two (B), amended and attached as Exhibit C, which Floor Plan further shows the location of the Building on the real property, described in attached Exhibit A, and the Building's location with respect to other Buildings.

Building 4 and the New Units located therein are more particularly described and defined in the Plans and Specifications for Phase Two (B), amended and attached as Exhibit D. Included as a part of Exhibit D is the Verified Statement of George S. Ridgway, certifying that the Floor Plan is an actual copy of portions of the Plans and

Specifications for the Building as filed with and approved by the municipal or other governmental subdivision having jurisdiction over the issuance of permits for the construction of buildings.

Article 5 of the Declaration shall be amended to read as follows:

5. Description of Buildings.

*Madison Park Condominiums (Phases I, Two and Two (B)) consists of thirty-two (32) Units located in four multi-unit residential buildings. The Buildings are designated as 1, 2, 3, and 4, as shown on the Floor Plans in the attached Exhibit C. The Floor Plans show the locations of the Buildings on the real property and their locations with respect to the other Buildings, the layout, elevation, Unit numbers, and Unit dimensions.*

*The Buildings are more particularly described and defined in the Plans and Specifications of the Buildings, a copy of which Plans and Specifications are attached as Exhibit D, showing all particulars of the Buildings.*

*The Plans and Specifications for Phase I bear the verified statement of Odle McGuire & Shook Corporation, Inc. The Verified Statement of Odle McGuire Shook Corporation, Inc. for Phase Two has been recorded. The Verified Statement of George S. Ridgway for Phase Two (B) is attached as part of Exhibit D. The verified statements certify that the Master Site Plan/Floor Plans are actual copies of portions of the Plans and Specifications for the Buildings as filed with and approved by the City of Bloomington, the municipal or other governmental subdivision having jurisdiction over the issuance of permits for the construction of buildings.*

Article 28 of the Declaration shall be amended to read as follows:

28. Floor Plans.

*The Floor Plans setting forth the layout, location, identification number, Building designation and dimensions for all Units and the Property are incorporated into this Declaration by reference. The Floor Plans, attached as Exhibit C, have been filed in the Office of the Recorder of Monroe County, Indiana.*

**Paragraph D. Description of Units.** Exhibit E of the Declaration is hereby amended to reflect the addition of New Units and New Common Areas and Facilities, by this Second Amended Declaration. The Unit designation of each Condominium Unit,

both Existing Units and New Units, the approximate area, number of rooms and other data concerning its proper identification are set forth in the amended and attached Exhibit E.

**Paragraph E. Percentage Interest in Common Areas and Facilities.** The percentage interest of each Unit, both Existing Units and New Units, in the Common Areas and Facilities (both Existing Common Areas and Facilities and New Common Areas and Facilities) is based upon the adjusted square footage of each Condominium Unit (both Existing Units and New Units) in relationship to the total adjusted square footage of all Units. The percentage interest appurtenant to each Unit, based upon the Aggregate Units and the Aggregate Common Areas and Facilities, is specified on attached Exhibit E.

The percentage interests in the Aggregate Common Areas and Facilities are calculated on the basis as set forth in Article 6(a) of the Declaration, and this reallocation is accomplished as follows:

(a) Declarant, to the extent necessary, exercises all rights of revocation conferred upon it by the Declaration by all Unit Owners of Existing Units, and divests such Existing Unit Owners of that portion of that Unit's share in the Existing Common Areas and Facilities which must be allocated to the New Units to attain the percentage interest in the Aggregate Common Areas and Facilities in each New Unit as shown on Exhibit E.

(b) Declarant, exercising rights conferred upon it by the Declaration, vests undivided interests in the Aggregate Common Areas and Facilities to the Owners of all Units (both Existing Units and New Units) as tenants in common, in accordance with their respective percentages of ownership. Such interests shall not be separated from the Units to which they appertain and shall be deemed to be conveyed or encumbered with the Units even though such interests are not expressly mentioned or described in the conveyance.

The New Units shall be designated for purposes of identification in connection with all conveyances of the same as being part of Madison Park Condominiums.

**Paragraph F. Exhibits.** Exhibits A, C, D, and E of the Declaration are hereby amended and shall read as attached to this Second Amended Declaration.

Except as set forth herein, the Declaration and Exhibits shall remain in full force



EXHIBIT A  
LEGAL DESCRIPTIONS

PHASE I

Lots 3 and 4 and part of Lots 1 and 2 of Howe's Addition to the City of Bloomington, Monroe County, Indiana, and the alley vacated by Ordinance 90-14 to Vacate a Public Parcel, dated April 5, 1990 and recorded April 19, 1990 in Miscellaneous Record 19 Page 01 in the office of the Recorder of Monroe County, Indiana, and part of Smith Avenue right-of-way located between Lots 1, 2 and 3 of Howe's Addition and Seminary Lot 32 in the City of Bloomington vacated by Ordinance 91-19 to Vacate a Public Parcel dated April 17, 1991 and recorded April 25, 1991 in Miscellaneous Record 207 Page 295-295A in the office of the Recorder of Monroe County, Indiana, bounded and described as follows: Beginning at an iron pin found in place at the Southwest corner of Lot 4 in said Subdivision; thence North along the East right-of-way of Madison Street (right-of-way line being the basis of bearings for this description), 63.04 feet to an iron pin found in place; thence North along the East right-of-way line of Madison Street, 63.03 feet to the South right-of-way line of Smith Street; thence North 89 degrees 43 minutes 31 seconds East, 86.83 feet; thence North 78 degrees 25 minutes 33.7 seconds East 20.42 feet; thence South 89 degrees 45 minutes 38.09 seconds East, 108.00 feet; thence South 68 degrees 03 minutes 9.82 seconds East, 8.01 feet; thence South 89 degrees 43 minutes 31 seconds West, 3.79 feet; thence South 00 degrees 30 minutes 21 seconds East, 62.92 feet to a point; thence North 89 degrees 44 minutes 36 seconds West, 86.77 feet; thence South 00 degrees 08 minutes 59 seconds West, 62.91 feet; thence South 89 degrees 16 minutes 19 seconds West, 132.11 feet to the point of beginning and containing 0.533 acres, more or less.

PHASE TWO

A part of Seminary Lot Number Thirty-Two (32) in the City of Bloomington, Monroe County, State of Indiana, bounded and described as follows: Beginning at the southwest corner of said Seminary Lot Number Thirty-Two (32) at the intersection of the east line of Madison Street with the north line of Smith Street; thence north along the east line of Madison Street (basis of bearings), 126.90 feet; thence north 89 degrees 32 minutes 53 seconds east, 106.07 feet; thence south, 22.79 feet; thence west, 5.47 feet; thence south, 70.80; thence east, 16.21 feet; thence south, 25.10 feet; thence west, 9.99 feet; thence south, 4.54 feet to the north line of Smith Street; thence south 78 degrees 24 minutes 56 seconds west, 20.39 feet along the north line of Smith Street; thence south 89 degrees 43 minutes 31 seconds west, 86.83 feet to the point of beginning and containing 0.306 acres more or less.

EXHIBIT A  
LEGAL DESCRIPTIONS  
(CONTINUED)

PHASE TWO (B)

PART OF SEMINARY LOT 32 IN THE CITY OF BLOOMINGTON, MONROE COUNTY, STATE OF INDIANA, BOUNDED AND DESCRIBED AS FOLLOWS: BEGINNING AT A POINT WHICH IS 79.00 FEET NORTH 00 DEGREES 44 MINUTES 03 SECONDS WEST OF THE SOUTHEAST CORNER OF SAID SEMINARY LOT 32; THENCE NORTH 00 DEGREES 44 MINUTES 03 SECONDS WEST, 79.75 FEET TO A POINT; THENCE SOUTH 89 DEGREES 32 MINUTES 53 SECONDS WEST, 141.91 FEET TO A POINT; THENCE SOUTH 00 DEGREES 23 MINUTES 17 SECONDS WEST, 25.57 FEET TO A POINT; THENCE SOUTH 89 DEGREES 32 MINUTES 53 SECONDS WEST, 25.57 FEET TO A POINT; THENCE SOUTH, 22.79 FEET TO A POINT; THENCE WEST, 5.47 FEET TO A POINT; THENCE SOUTH, 70.80 FEET TO A POINT; THENCE EAST, 16.21 FEET TO A POINT; THENCE SOUTH, 25.10 FEET TO A POINT; THENCE WEST, 9.99 FEET TO A POINT; THENCE SOUTH, 4.54 FEET TO A POINT; THENCE NORTH 89 DEGREES 43 MINUTES 31 SECONDS EAST, 52.04 FEET TO A POINT; THENCE NORTH 00 DEGREES 23 MINUTES 17 SECONDS WEST, 75.00 FEET TO A POINT; THENCE NORTH 89 DEGREES 43 MINUTES 31 SECONDS EAST, 116.00 FEET TO THE POINT OF BEGINNING.

EXHIBIT C  
FLOOR PLANS

PHASE I

See Plat Cabinet "HB", Envelope 105  
In the Office of the Recorder of  
Monroe County, Indiana

PHASE TWO

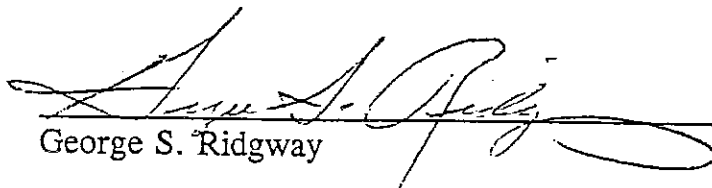
See Plat Cabinet "B" Envelope 114  
In the Office of the Recorder of  
Monroe County, Indiana

PHASE TWO (B)

Recorded in the Office of the Recorder of  
Monroe County, Indiana

VERIFIED STATEMENT

I, the architect/engineer for Madison Park Condominiums Phase 2(B), Building Four, hereby certify to the best of my knowledge that the floor plans of Madison Park Condominiums, Phase Two (B), dated March of 1998, reasonably and accurately copy portions of the plans of the building as filed with the City of Bloomington, the municipal authority having jurisdiction over the issue of permits for construction and as filed with and approved by the State of Indiana, the governmental subdivision having jurisdiction over the construction design release, and also show particulars of the building including the general layout, number of stories, building elevation, building designation, unit numbers, and dimensions of units. Such floor plans fully and accurately depict the layout, location, unit numbers and dimensions of the condominium units as built.


  
George S. Ridgway

State of Indiana     )  
                                  ) SS:  
County of Monroe    )

Subscribed and sworn to before me, a Notary Public in and for said County and State, the 21<sup>st</sup> day of April, 1998.

My Commission Expires:

June 2, 1998

  
\_\_\_\_\_  
Notary Public  
Printed Name: Theodore J. Ferguson  
County of Residence: MONROE



**EXHIBIT D**  
**PLANS and SPECIFICATIONS**

**PHASE I**

See Plat Cabinet "HB", Envelope 105  
In the Office of the Recorder of  
Monroe County, Indiana

**PHASE TWO**

See Plat Cabinet B, Envelope 114  
In the Office of the Recorder of  
Monroe County, Indiana

**PHASE TWO (B)**

See Plans and Specifications  
Filed with the City of Bloomington

**EXHIBIT E**  
**UNIT DESIGNATIONS**

SECOND AMENDED  
EXHIBIT 'E'  
UNIT DESIGNATIONS

BUILDING	UNIT	FLOOR	LEVEL	DESIGN	SQUARE FOOTAGE	TOTAL SQUARE FOOTAGE	% OF COMMON AREA	ADDRESS
ONE	401	1ST & BASEMENT	778.3	2 BR & STORAGE	1,451			401 S. MADISON
	401G	BASEMENT	787.3	GARAGE	278	1729	3.75%	
ONE	403	1ST & BASEMENT	778.3	2 BR & STORAGE	1,451			403 S. MADISON
	403G	BASEMENT	787.3	GARAGE	278	1729	3.75%	
ONE	405	2ND & BASEMENT	788.3	2 BR & LOFT	1,277			405 S. MADISON
	405G	BASEMENT	787.3	GARAGE	339	1818	3.51%	
ONE	407	2ND & BASEMENT	788.3	2 BR & LOFT	1,277			407 S. MADISON
	407G	BASEMENT	787.3	GARAGE	339	1818	3.51%	
ONE	409	1ST & BASEMENT	778.3	2 BR & STORAGE	1,451			409 S. MADISON
	409G	BASEMENT	787.3	GARAGE	278	1729	3.75%	
ONE	411	1ST & BASEMENT	778.3	2 BR & STORAGE	1,451			411 S. MADISON
	411G	BASEMENT	787.3	GARAGE	278	1729	3.75%	
ONE	413	2ND & BASEMENT	788.3	2 BR & LOFT	1,277			413 S. MADISON
	413G	BASEMENT	787.3	GARAGE	339	1818	3.51%	
ONE	415	2ND & BASEMENT	788.3	2 BR & LOFT	1,277			415 S. MADISON
	415G	BASEMENT	787.3	GARAGE	339	1818	3.51%	
TWO	417	1ST	769.2	2BR		1089	2.37%	417 S. MADISON
TWO	419	1ST	769.2	2BR		1089	2.37%	419 S. MADISON
TWO	421	2ND	779.2	2BR & LOFT		1288	2.79%	421 S. MADISON
TWO	423	2ND	779.2	2BR & LOFT		1288	2.79%	423 S. MADISON
TWO	425	1ST	767.2	2BR		1089	2.37%	425 S. MADISON
TWO	427	1ST	767.2	2BR		1089	2.37%	427 S. MADISON
TWO	429	2ND	777.2	2BR & LOFT		1288	2.79%	429 S. MADISON
TWO	431	2ND	772.2	2BR & LOFT		1288	2.79%	431 S. MADISON
THREE	351	1ST & BASEMENT	778.97	2 BR & STORAGE	1,451			351 S. MADISON
	351G	BASEMENT	787.77	GARAGE	278	1729	3.75%	
THREE	353	1ST & BASEMENT	778.97	2 BR & STORAGE	1,451			353 S. MADISON
	353G	BASEMENT	787.77	GARAGE	278	1729	3.75%	
THREE	355	BASEMENT	788.97	2 BR & LOFT	1,277			355 S. MADISON
	355G	2ND	787.77	GARAGE	339	1818	3.51%	
THREE	357	BASEMENT	788.97	2 BR & LOFT	1,277			357 S. MADISON
	357G	2ND	787.77	GARAGE	339	1818	3.51%	
THREE	359	1ST & BASEMENT	778.97	2 BR & STORAGE	1,451			359 S. MADISON
	359G	BASEMENT	787.77	GARAGE	278	1729	3.75%	
THREE	361	1ST & BASEMENT	778.97	2 BR & STORAGE	1,451			361 S. MADISON
	361G	BASEMENT	787.77	GARAGE	278	1729	3.75%	
THREE	363	2ND	788.97	2 BR & LOFT	1,277			363 S. MADISON
	363G	BASEMENT	787.77	GARAGE	339	1818	3.51%	
THREE	365	2ND	788.97	2 BR & LOFT	1,277			365 S. MADISON
	365G	BASEMENT	787.77	GARAGE	339	1818	3.51%	
FOUR	332	1ST	787.5	2 BR		1224	2.66%	332 S. MORTON
FOUR	334	1ST	787.5	2 BR		1224	2.66%	334 S. MORTON
FOUR	336	2ND	777.5	2 BR		1224	2.66%	336 S. MORTON
FOUR	338	2ND	777.5	2 BR		1224	2.66%	338 S. MORTON
FOUR	340	1ST	787.5	2 BR		1224	2.66%	340 S. MORTON
FOUR	342	1ST	787.5	2 BR		1224	2.66%	342 S. MORTON
FOUR	344	2ND	777.5	2 BR		1224	2.66%	344 S. MORTON
FOUR	346	2ND	777.5	2 BR		1224	2.66%	346 S. MORTON
						48,052	100.00%	

Date: 05/13/98

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208 480

DECLARATION OF HORIZONTAL PROPERTY OWNERSHIP  
HORIZONTAL PROPERTY REGIME  
FOR  
MADISON PARK CONDOMINIUMS

Filed for Record May 30,, 1991  
Recorded in Misc. Book 208,  
Pages 480 through 541  
In the Office of the Recorder  
of Monroe County, Indiana

Consisting of 33 Pages,  
Numbered 1 through 33  
and Exhibits A through F.

RECORDED  
A.M. 10:21 P.M. \_\_\_\_\_

JUN 27 1991

*[Signature]*  
RECORDER MONROE CO., IN

This Instrument Prepared by  
James H. Ferguson  
Attorney at Law  
403 East Sixth Street  
Bloomington, Indiana 47408-4098

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HORIZONTAL PROPERTY REGIME  
FOR  
MADISON PARK CONDOMINIUMS**

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**DECLARATION OF HORIZONTAL PROPERTY OWNERSHIP  
HORIZONTAL PROPERTY REGIME  
FOR  
MADISON PARK CONDOMINIUMS**

THIS DECLARATION, and the exhibits which are attached hereto and made a part hereof, are made and executed this 29th day of May, 1991 by C.F.C. INC., hereinafter called the "Declarant", for itself, its successors, grantees and assigns, pursuant to the provisions of the Indiana Horizontal Property Act.

**WITNESSETH:**

WHEREAS, the Declarant is the owner of certain real property in Monroe County, State of Indiana, more particularly described and defined in Exhibit A attached hereto and made a part hereof which shall constitute the Madison Park Condominiums; and

WHEREAS, the Declarant is the owner of additional real property described in Exhibit F, attached hereto, which shall, at the election of Declarant and upon annexation of such additional real property, constitute a part of Madison Park Condominium Development; and

WHEREAS, the Declarant is in the process of constructing certain condominium type multi-unit buildings and certain other improvements hereafter to be constructed upon the aforesaid property and it is the desire and the intention of the Declarant to divide the project into "Condominium Units" or "Condominiums" as those terms are defined under the provisions of the Indiana Horizontal Property Act, and to sell and convey the same to various purchasers subject to the covenants, conditions and restrictions herein reserved to be kept and observed; and

WHEREAS, Declarant desires and intends, by the filing of this Declaration, to submit the Property described in Exhibit A and the multi-unit buildings located thereon and all other improvements constructed or to be constructed thereon, together with all appurtenances thereto, to the provisions of the Indiana Horizontal Property Act; and

WHEREAS, the Declarant reserves the right to annex all or any part of the additional real property described in Exhibit F, attached hereto, upon execution and recordation of an amended declaration by Declarant which, upon execution and recordation shall automatically include the land described therein within this Declaration and such action shall require no approvals or other action by either the unit owners or the Board of Directors or the members of the Madison Park Homeowners Association, Inc. or by any other person or entity, as hereinafter more particularly provided;

NOW, THEREFORE, the Declarant by execution of this Declaration

does hereby create an Expandable Horizontal Property Regime subject to the provisions of the Indiana Horizontal Property Act and the terms and conditions hereof, and does hereby publish and declare that all of the Property described in Exhibit A (and as described in paragraph 4 below) is held and shall be held, conveyed, hypothecated, encumbered, used, occupied, and improved subject to the following covenants, conditions, restrictions, uses, limitations and obligations, all of which are declared and agreed to be in furtherance of a plan for the improvement of the Property and the division thereof into Condominium Units and shall be deemed to run with the land and shall be a burden and benefit to Declarant, its successors and assigns, and any person, firm, corporation or other entity acquiring and owning an interest in the Property and improvements, their grantees, successors, heirs, executors, administrators, devisees and assigns.

1. Definitions.

Certain terms as used in this Declaration and Exhibits attached hereto and made a part hereof shall be defined as follows, unless the context clearly indicates a meaning different therefor:

(a) "Act" shall mean the Horizontal Property Act of the State of Indiana, Act of 1963, Chapter 349, Sections 1 through 41, as amended. The Act is incorporated herein by reference.

(b) "Homeowners Association" is as defined in the Indiana Horizontal Property Act and shall mean all of the Unit Owners acting as a group in accordance with the Declaration and By-Laws.

(c) "Board of Directors" shall mean the governing body of the Homeowners Association, elected pursuant to the By-Laws and shall be synonymous with "Board of Directors" as used in the Act.

(d) "Buildings" shall mean all structures erected or to be erected upon the Property.

(e) "By-Laws" shall mean the by-laws for the administration of the Property and the Homeowners Association contained in Exhibit B attached hereto and made a part hereof.

(f) "Common Areas and Facilities" shall have the meaning as set forth in the Indiana Horizontal Property Act and as more fully described in paragraph 8 hereof.

(g) "Common Expenses" shall mean and include:

- (i) all sums assessed against the Unit Owners by the Homeowners Association;
- (ii) expenses of administration, maintenance, repair or

replacement of the Common Areas and Facilities;

(iii) expenses agreed upon as Common Expenses by the Homeowners Association; and

(iv) expenses declared to be Common Expenses by the provisions of the Indiana Horizontal Property Act, or by this Declaration or the By-Laws.

(b) "Common Expense Fund" shall mean the separate accounts to be kept in accordance with the provisions of the By-Laws.

(i) "Common Interest" shall mean the aggregate of the undivided interest of the Unit Owners in the Common Areas and Facilities.

(j) "Condominium" shall mean the entire estate in the Property owned by the Owner, including an undivided interest in the Common Areas and Facilities and ownership of a separate interest in a Unit.

(k) "Condominium Documents" shall mean this Declaration and all of the Exhibits hereto as the same shall from time to time be amended. The Exhibits are as follows:

Exhibit A -- Legal Description of the Property;

Exhibit B -- By-Laws of the Homeowners Association;

Exhibit C -- Master Site Plan;

Exhibit D -- Plans and Specifications;

Exhibit E -- Unit Designations;

Exhibit F -- Legal Description of Expansion Area

(l) "Owner" or "Unit Owner" shall mean a person, firm, corporation, partnership, association, trust or other legal entity, or any combination thereof, having an ownership of record for a Unit within the Property.

(m) "Limited Common Areas and Facilities" shall mean those parts of the Common Areas and Facilities reserved for the use of a certain Unit or Units to the exclusion of all other Units and more specifically described in paragraph 10 hereof.

(n) "Mortgage" shall mean a deed of trust as well as a mortgage.

(o) "Mortgagee" shall mean a beneficiary under or a holder of a deed



of trust as well as a mortgage.

(p) "Property" or "Condominium Property" shall mean the entire parcel of real property referred to in this Declaration to be divided into Condominiums (and more fully described in Exhibit A) including the land, the Buildings, all improvements and structures thereon, all owned in fee simple absolute, all easements, rights and appurtenances belonging thereto, and all articles of personal property intended for common use in connection therewith.

(q) "Unit" shall mean "Apartment" as defined in the Act and shall mean those parts of the Condominium Property described in paragraph 6 hereof which are the subject of individual ownership. The term "Unit" as used herein and in the By-Laws shall be synonymous with the term "Apartment" as used in the Act.

2. Declaration.

Declarant hereby expressly declares that the Property described herein shall be an Expandable Horizontal Property Regime in accordance with the provisions of the Act and this Declaration.

3. Name of the Condominium.

The name by which the Condominium Property shall be known is "Madison Park Condominiums".

4. General Description of the Property.

The Condominium Property consists of the real property described and identified on Exhibit A attached hereto and made a part hereof and the Buildings and other improvements erected and to be erected thereon and all articles of personal property intended for common use in connection therewith.

5. Description of Buildings.

Madison Park Condominiums Phase I will consist of Sixteen (16) units located as shown on Exhibit C in two multi-unit residential buildings. The Buildings are designated alphabetically A and B as shown on the Master Site Plan, a copy of which is attached hereto and made a part hereof as Exhibit C, which such Master Site Plan further shows the location of each Building on the real property described in Exhibit A and its location with respect to every other Building thereon. The two (2) Buildings contain a total of Sixteen (16) separate Units.

The two multi-unit Buildings are more particularly described and defined in the Plans and Specifications of the Buildings, a copy of which Plans and specifications are attached hereto and made a part hereof as Exhibit D,

showing all particulars of the Buildings, including the layout, number of stories, the location, ceiling and floor elevations, Building designations, Unit numbers and dimensions of the Units. Such Plans bear the verified statement of Odle, McGuire & Shook Corporation, Inc., certifying that the Plans are actual copies of portions of the Plans of the Buildings as filed with and approved by the City of Bloomington, the municipal authority, and the State of Indiana, the governmental subdivision having jurisdiction over the issuance of permits for the construction of buildings. For a more particular description of the Buildings reference is hereby made to the Plans and Specifications filed herewith as Exhibit D.

## 6. Description of Units.

(a) The Unit designation of each Condominium Unit, approximate area, number of rooms and other data concerning its proper identification are set forth in Exhibit E attached hereto and made a part hereof. The percentage interests of each Unit in the Common Areas and Facilities owned as tenant-in-common with other Unit Owners shall be based upon the square footage of each Condominium Unit as shown on Exhibit E attached hereto in relationship to the total square footage of all Units as shown on said Exhibit E. The percentage interest appurtenant to each Unit are as specified on said Exhibit E attached hereto.

(b) Each\* Unit shall constitute a single freehold estate and shall consist of all of the space bounded by the undecorated and/or unfinished interior surfaces of its perimeter walls, load bearing walls, lowermost floors, uppermost ceilings, windows and window frames, door and door frames. Each Unit includes both portions of the Building within such boundaries and the space so encompassed, including, without limitation, the decorated surfaces, including paint, lacquer, varnish, wallpaper, paneling, tile, carpeting and any other finishing materials applied to interior walls, doors, floors and ceiling and interior surfaces of permanent walls, interior surfaces of interior walls, and interior doors.

## 7. Encroachments.

If any portion of the Common Areas and Facilities encroaches upon any Unit, or if any Unit now encroaches upon any other Unit, or upon any portion of the Common Areas and Facilities, as a result of the construction of the Buildings, or if any such encroachment shall occur hereafter as a result of settling or shifting of the Buildings, a valid easement for the encroachment and for the maintenance of same so long as the Buildings stand shall exist. In the event the Buildings, the Unit, any adjoining Unit, or any adjoining Common Area or Facility shall be partially or totally destroyed as a result of fire or other casualty or as a result of condemnation or eminent domain proceedings,

and then rebuilt, encroachment of parts of the Common Areas and Facilities upon any Unit or any Unit upon any other Unit or upon any portion of the Common Areas and Facilities due to such rebuilding shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the Building shall stand.

#### 8. Common Areas and Facilities.

The Common Areas and Facilities consist of all the Property other than the Units as described in paragraph 6 above, including, without limitation, the following (except such portions of the following, as may be included within an individual Unit):

- (a) The land on which the Buildings are erected and all land surrounding the Buildings as more fully described in paragraph 4 above.
- (b) All foundations, columns, girders, beams, supports and other structural members.
- (c) The yards, landscaping, fences, roads, driveways and exterior parking areas.
- (d) All roofs, attics and crawl spaces, exterior walls and interior walls including those partitioned walls wholly within a Unit.
- (e) All central and appurtenant installations for services such as power, lights, water, sewer, gas and television; and all tanks, pumps, motors, sewage grinders, fans, cables, antennas, conduits, compressors, flues and ducts, mechanical systems, storm drains, and all other items used in connection therewith, whether located in Common Areas or in Units, including gas lines, electric lines and water lines.
- (f) All exterior walkways not within units.
- (g) Maintenance areas and recreational areas to the extent located now or subsequently within the Property.
- (h) All other parts of the Property and all apparatus and installations including all items of personal property existing in the Buildings or upon the Property for common use or which are necessary or convenient to the existence, maintenance or safety of the Property.

The percentage of undivided interests in the Common Areas and Facilities as pertaining to each Unit and its Owner for all purposes is as set forth in Exhibit E attached hereto and made a part hereof as if herein set forth in full. Such percentage interest appertaining to each Unit shall be subject to change as is provided should Declarant file an amended declaration adding additional Units and real estate to the Expandable Condominium.

9. Use of Common Areas and Facilities.

Each Unit Owner shall have the right to use the Common Areas and Facilities in accordance with the purposes for which they are intended and for all purposes incident to the use and occupancy of each owner's Unit, and such right shall be appurtenant to and run with each owner's Unit; provided, however, that no person shall use the Common Areas and Facilities or any part thereof in such manner as to interfere with or restrict or impede the use thereof by others entitled to the use thereof or in any manner contrary to or not in accordance with this Declaration, the By-Laws, and such rules and regulations as may be established from time to time by the Board of Directors. Such rules and regulations may impose reasonable restrictions on the use of such Common Areas and Facilities including, without limitation, assignment of parking spaces to individual Units for their exclusive use.

10. Description of Limited Common Areas and Facilities.

Limited Common Areas and Facilities shall mean and include those Common Areas and Facilities reserved for use by a certain Unit or Units to the exclusion of other Units and shall mean all patios, balconies, chimneys (including duct work and flues), and storage rooms. While parking spaces shall not constitute Limited Common Areas and Facilities the Board of Directors may, in their discretion, from time to time, assign parking spaces to specific Units for their exclusive use. The Limited Common Areas and Facilities are more fully designated as Exhibit D attached hereto and made a part hereof. References in this Declaration and the By-Laws to Common Areas and Facilities shall include Limited Common Areas and Facilities unless the context clearly indicates otherwise. Each Unit Owner is hereby granted an exclusive and irrevocable license to use and occupy the Limited Common Areas and Facilities associated with and/or assigned to such Owner's Unit.

11. Statement of Purposes, Use and Restrictions.

The Units, Common Areas and Facilities, and Limited Common Areas and Facilities shall be occupied and used as follows:

(a) The Condominium Unit shall be used for single family residential purposes by a family or by not more than two unrelated persons.

(b) There shall be no obstruction of the Common Areas and Facilities. Nothing may be stored in the Common Areas and Facilities, excluding the Limited Common Areas and Facilities located within the bounds of a Unit or pertaining to a Unit, without the prior written consent of the Board of Directors.

(c) Nothing shall be done or kept in any Unit or in the Common Areas and Facilities which will increase the rate of insurance on the Common Areas

and Facilities without the prior written consent of the Board of Directors. No Owner shall permit anything to be done or kept in each owner's Unit or in the Common Areas and Facilities which would result in the cancellation of insurance on any Unit or any part of the Common Areas and Facilities, or which would be in violation of any law. No waste will be committed of the Common Areas and Facilities.

(d) No sign of any kind shall be displayed to the public view from any Unit or from the Common Areas and Facilities without the prior written consent of the Board of Directors.

(e) No animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit or in the Common Areas and Facilities, except that dogs, cats or other usual household pets may be kept in Units, subject to rules and regulations adopted by the Board of Directors.

(f) No noxious or offensive activity shall be carried on in any Unit, or in the Common Areas and Facilities, nor shall anything be done therein which will be an annoyance or nuisance to other Owners.

(g) Nothing shall be altered or constructed in or removed from the Common Areas and Facilities except upon the written consent of the Board of Directors and Declarant.

(h) The Board of Directors of the Homeowners Association is authorized to adopt rules for the use of the Common Areas and Facilities, said rules to be furnished in writing to the Owners. There shall be no violation of the rules so adopted.

(i) Notwithstanding anything herein to the contrary, Declarant, and such persons it may select, shall have the right of ingress and egress over, upon and across the Common Areas and Facilities, the right to utilize one or more Condominium Units as a model or office, the right to erect signs upon the Property for the purpose of advertising availability of Units and similar uses, and the right to store materials on the Common Areas and Facilities and make such other use thereof as may reasonably necessary incident to construction, development and sale of the Condominiums and operation of the Units and Common Areas and Facilities and of other subsequent Phases of Development of which the Property is a part.

## 12. Easements.

(a) General. Each Unit Owner shall have an easement in common with the other Owners of all other Units to use all pipes, wires, ducts, cables, conduits, public utility lines and other Common Facilities located in any of the other Units and serving each owner's Unit. Each Unit shall be subject to an easement in favor of the Owners of all other Units to use the pipes, ducts,

cables, wires, conduits, public utility lines and other Common Facilities serving such other Units and located in such Unit. The Board of Directors or its agents shall have the right of access to each Unit to inspect the same, to remove violations therefrom and to maintain, repair or replace the Common facilities contained therein or elsewhere in the Buildings.

The Board of Directors may hereafter grant easements (and shall grant such easements as permitted in this paragraph 12 or as the Declarant shall direct) for utility purposes for the benefit of the Property including the right to install, lay, maintain, repair and replace water lines, pipes, sewer lines, gas mains, telephone wires and equipment and electrical conduits, and wires over, under, along, and on any portion of the Common Areas; and each Unit Owner hereby grants the Board of Directors an irrevocable power of attorney to execute, acknowledge and record for and in the name of each Unit Owner such instruments as may be necessary to effectuate the foregoing.

(b) Cross Easement for Adjoining Property Owners. The Board of Directors may hereafter grant cross easements for recreational, utility and access purposes for the benefit of the Property, the Unit Owners, and the owners of condominium units located in adjoining or surrounding condominium regimes. All such cross recreational easements and related cross easements for roads, water and sewer shall be subject to approval by Declarant as to the location, form, beneficiary, content and all other particulars.

### 13. Partitioning.

Neither the Common Areas and Facilities nor any individual Unit shall be divided nor shall any right to partition any thereof exist. Nothing herein contained, however, shall be deemed to prevent ownership of a Condominium Unit by more than one person, either as tenants-by-the-entirety, tenants-in-common, partnerships, corporations, or in any other form by law permitted.

### 14. Liens.

While the Property remains subject to this Declaration and the provisions of the Act, no liens of any nature shall arise or be created against the Property as a whole or the Common Areas and Facilities except with the unanimous consent in writing of all of the Condominium Unit Owners and the holders of first liens thereon, except for (a) such liens as may arise or be created against the several Units and their respective Common Interest under or in accordance with the provisions of the Act, and (b) the lien of any mortgage given by Declarant to secure financing for the construction of the Buildings and other improvements on the Property. Every agreement for the performance of labor, or the furnishing of materials to the Common Areas and Facilities, whether oral or in writing, must provide that it is subject to the provisions of this Declaration.

### 15. Nature of Interest in Units.

Every Unit, together with its undivided interest in the Common Areas and Facilities, shall for all purposes be, and it is hereby declared to be and to constitute a separate parcel of real property and the Owner thereof shall be entitled to the exclusive ownership and possession of each owner's Unit subject only to the covenants, restrictions, easements, by-laws, rules, regulations, resolutions and decisions adopted pursuant hereto and as may be contained herein and in the accompanying By-Laws and in the minutes of the Board of Directors and the Homeowners Association. The percentage of undivided interest in the Common Areas and Facilities of each Unit shall not be separated from the Unit to which it appertains and shall be deemed to be conveyed or encumbered or released from liens with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

### 16. Taxes.

Every Condominium Unit, together with its undivided Common Interest in the Common Areas and Facilities, shall constitute a separate parcel of real property and shall be separately assessed and taxed by each assessing unit for all types of taxes authorized by law. Each Unit Owner shall be liable solely for the amount of taxes against each owner's individual Unit.

### 17. Homeowners Association.

(a) In order to provide for the maintenance, repair, replacement, administration and operation of the Property there is hereby created an incorporated association to be known as "Madison Park Homeowners Association, Inc." Membership therein shall be composed of all of the Owners of the Units at Madison Park development. Each Owner of a Unit shall be a member of the incorporated association, but membership shall automatically terminate when such person ceases to be an Owner and will be transferred to the new Owner.

(b) The Madison Park Homeowners Association, Inc. shall be governed in accordance with and as prescribed by the By-Laws attached hereto.

(c) Declarant, by this Declaration, and all Unit Owners, by the acceptance of their deeds, covenant and agree to be bound by the conditions, restrictions and obligations contained in the By-Laws of Madison Park Homeowners Association, Inc. and the provisions of this Declaration.

(d) The duties and powers of the Homeowners Association shall be those set forth in this Declaration and the By-Laws of the Homeowners Association including the power and authority to make assessments as provided for in the By-Laws.

18. Common Expenses.

Each Unit Owner shall contribute pro rata, in proportion to each owner's undivided interest as set forth in Exhibit E hereto, as the same may be amended from time to time toward the expenses of administration and of maintenance and repair of the Common Areas and Facilities and any other expense lawfully agreed upon; and shall pay any special assessment duly assessed by the Board of Directors, all in accordance with the By-Laws of the Homeowners Association, this Declaration and the provisions of the Act.

19. Insurance.

The Board of Directors shall obtain and maintain at all times insurance of the type and kind in not less than the amounts provided in this Declaration and the By-Laws and including insurance for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium properties similar in construction, design and use. Such insurance shall be governed by the following provisions:

(a) The Board of Directors shall have the authority to and shall obtain insurance policies upon the Condominium Property for the benefit of the Unit Owners and their Mortgagees as their interests may appear, and provision shall be made for the issuance of certificates of mortgagee endorsements to the Mortgagees of the Unit Owners and delivery of the certificates to Mortgagees within 10 days from their original issuance or the issuance of the renewals thereof. The originals of all such policies and the endorsements thereto shall be deposited with the Board of Directors, as insurance trustees, and certificates of insurance, together with proof of payment of premiums, shall be delivered to the Unit Owners at least 10 days prior to the expiration date with respect to the then current policies. Unit Owners may, at their option, obtain insurance coverage at their own expense upon their own personal property, leasehold improvements and for their living expenses and such other coverage as they may desire.

(b) The Board of Directors shall make every effort to secure insurance policies that will provide the following minimum coverages:

(i) Fire. The Buildings and all other improvements upon the land and all personal property included in the Common Areas and Facilities shall be insured in an amount equal to the maximum insurable replacement value as determined annually by the Board of Directors with the assistance of the insurance



company providing coverage. The policies evidencing such coverage shall contain clauses providing for waiver of subrogation, the standard SMP Condominium Endorsement (Form MLB-29A, Ed. 12-72) (excepting the Waiver of Subrogation provision contained therein) and shall provide that such policies may not be cancelled or substantially modified without at least thirty (30) days' prior written notice to all the insureds, including all Mortgagees of Units. Such coverage shall provide protection against:

(A) Loss or damage by fire or other hazards covered by a standard extended coverage endorsement, and

(B) Such other risks as from time to time shall be customarily covered with respect to buildings similar in construction, location and use as the Buildings, including but not limited to vandalism and malicious mischief. All such policies shall provide that adjustment of loss shall be made by the Board of Directors as insurance trustees.

(ii) Public Liability. The Board of Directors shall also be required to obtain and maintain to the extent obtainable, public liability insurance in such limits as the Board of Directors may, from time to time, determine, covering each member of the Board of Directors, the managing agent, if any, and each Unit Owner with respect to each owner's liability arising out of the ownership, maintenance, or repair of the Common Areas and facilities. Such insurance shall include endorsements covering cross liability claims of one insured against another, including the liability of the Unit Owners as a group to a single Unit Owner. The Board of Directors shall review such limits annually. Until the first meeting of the Board of Directors following the initial meeting of the Unit Owners, such public liability insurance shall be in amounts not less than \$1,000,000 for claims for bodily injury and \$50,000 for claims for property damage. Each Unit Owner, at each owner's own expense, shall keep in force comprehensive personal liability insurance in such amounts as the Board of Directors shall from time to time determine, but in no case less than \$300,000 for each occurrence.

(iii) Other. Such other insurance coverages including workmen's compensation as the Board of Directors shall determine from time to time to be desirable.

(c) Premiums upon insurance policies purchased by the Board of Directors shall be paid by the Board of Directors and charged to and collected from each unit owner as part of the common expense or collected from the

unit owner based on the percent of ownership as set forth in Exhibit E and shall be a lien, as provided for the common expense on the unit.

(d) The Board of Directors shall make every effort to secure insurance policies that will provide for the following:

(i) The master policy on the Property cannot be cancelled, invalidated or suspended on account of the conduct of any one or more individual Owner.

(ii) The master policy on the Property cannot be cancelled, invalidated or suspended on account of the conduct of any officer or employee of the Board of Directors, or manager, without prior demand in writing that the Board of Directors or manager cure the defect.

(iii) That any "no other insurance" clause in the master policy on the Property does not include individual Owners' policies from consideration.

(e) All insurance policies purchased by the Board of Directors shall be for the benefit of the Board of Directors and the Unit Owners and their Mortgagees as their interest may appear, and shall provide that all proceeds thereof shall be payable to the Board as insurance trustee. The sole duty of the Board of Directors as insurance trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein and for the benefit of the Unit Owners and their Mortgagees in the following shares:

(i) With respect to proceeds on account of damage to Common Areas and Facilities, an undivided share for each Unit Owner, such share being the same as each Unit Owner's undivided interest in the Common Areas and Facilities.

(ii) Proceeds on account of damage to Units shall be held in the following undivided shares;

(A) When the Building(s) is to be restored, for the Owners of damaged Units in proportion to the cost of repairing the damage suffered by each Unit Owner, which cost shall be determined by the Board of Directors.

(B) When the Building(s) is not to be restored, an undivided share for each Unit Owner, such share being the same as each owner's percentage interest in the Common Areas and Facilities.

(iii) In the event a mortgage endorsement has been issued to a Unit, the share of the Unit Owner shall be held in trust for the Mortgagee and the Unit Owner as their interests may appear; provided that no Mortgagee shall have the right to determine or participate in the determination as to whether or not any damaged Property shall be reconstructed or repaired.

## 20. Distribution of Insurance Proceeds.

Proceeds of insurance policies received by the Board of Directors as insurance trustee shall be distributed to or for the benefit of the beneficial Owners in the following manner:

(a) All expenses of the insurance trustee shall be first paid or provisions made therefor.

### (b) Duty to Repair.

In the event of damage to or destruction of the Building(s) and/or the Common Areas and Facilities as a result of fire or other casualty, the Board of Directors shall arrange for the prompt repair and restoration of the Building(s) and/or the Common Areas and Facilities (including any damaged Unit, but not including any decoration or coverings for walls, ceilings, or floors, or other furniture, furnishings, fixtures or equipment in the Unit, unless the subject insurance policy covers a portion or all of such loss to the Unit, in which event the Board shall repair or replace such damaged property), and the Board of Directors shall disburse the proceeds of all insurance policies to the contractors engaged in such repair and restoration in appropriate progress payments. Any cost for such repair and restoration in excess of the insurance proceeds shall be paid by all Owners of Units directly affected by the damage in the same proportion that their respective percentage interest bears to the percentage interest of all such affected owners. A Unit shall be deemed to be affected if and only if such Unit is located within the Building in which the fire or other casualty occurs. If any Owner or Owners refuse or fail to make the required payments, the other Owners shall (or the Association, if such other Owners fail) complete the restoration and pay the costs thereof and the costs attributable to the Owner or Owners who refuse to make such payment at the time required by the Board of Directors shall become a lien on such defaulting Owner's Unit and may be foreclosed in the same manner as provided for the lien for Common Expenses.

Any reconstruction or repair shall be in accordance with the Plans and Specifications of the original Building(s) and/or Common Areas and Facilities, portions of which are attached to this Declaration as exhibits, or if not, then according to Plans and Specifications approved by the Board of Directors and Declarant if Declarant is the Owner of one or more Units at such time.

21. Ownership, Mortgage or Transfer of Units.

(a) No person may own more than one Condominium Unit in any Phase. This shall not apply to transfers, sales or conveyances involving a foreclosure sale or other judicial sale or transfer to a mortgagee in lieu of foreclosure, or any transfer by a mortgagee following foreclosure or any proceeding or arrangement in lieu thereof. No purchaser or mortgagee shall be bound by this provision and they shall not be required to make this determination in order to secure a valid deed or mortgage for the Unit.

(b) Any Owner may mortgage his Unit or any interest therein and execute a mortgage lien to a bank, mortgage banker, life insurance company or savings and loan association, or to any person or corporation including the Government of the United States or any agency thereof or to the State of Indiana or any subdivision thereof.

22. Rights of Declarant.

Notwithstanding anything contained in this Declaration, or in the By-Laws of any rules and regulations as may be adopted from time to time by the Board of Directors, the Declarant is irrevocably empowered to sell, lease, rent and/or mortgage Units and portions thereof to any purchaser, lessee or mortgagee approved by it in its sole discretion and Declarant shall have the right to transact any business necessary to consummate sales or rentals of Units or portions thereof including, but not limited to, the right to maintain models, have signs, use the Common Areas and Facilities and show Units. The sales office, signs, and all items pertaining to sales shall not be considered Common Areas and Facilities, and shall remain the property of Declarant. Declarant retains the right to be the Owner of any unsold Units or parcels. Declarant, for such time as he continues to be a Unit Owner, shall only be required to contribute such sums to the Common Expenses of the Condominium, in addition to the total of the monthly Common Expenses assessment paid by all other Unit Owners, as may be required for the Association to maintain the Condominium, as provided in this Declaration and exhibits attached hereto;

provided, however, in no event shall Declarant be required to contribute to the Common Expenses as to Units owned by him in an amount exceeding the amounts which would have been duly assessed by the Board for similar Units had they been sold to bona fide purchasers other than Declarant.

23. Units Subject to Declaration, By-Laws, Rules and Regulations.

All present and future Owners, tenants and occupants of Units shall be subject to and shall comply with the provisions of this Declaration, the By-Laws and any rules and regulations as may be adopted in accordance with the By-Laws, as the Declaration, By-Laws, rules and regulations may be amended from time to time. The acceptance of a deed of conveyance or the entering into of

a lease or the entering into occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, By-Laws and any rules and regulations which may be adopted are accepted and ratified by such Owner, tenant or occupant and all of such 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 such Unit as though such provisions were made a part of each and every deed of conveyance or lease.

#### 24. Personal Property.

The Board of Directors may acquire and hold, for the benefit of the Owners, tangible and intangible personal property and may dispose of the same by sale or otherwise, and the beneficial interest in such personal property shall be held by the Owners in the same proportion as their respective undivided interests in the Common Areas and Facilities and shall not be transferable except with a transfer of a Unit. A transfer of a Unit shall vest in the transferee ownership of the transferor's beneficial interest in such personal property. At the time when the first conveyance of a Unit is made by Declarant to Owner(s), Declarant shall execute and deliver a bill of sale to the Board of Directors, transferring title to all items of personal property located on the Property and furnished by Declarant, which personal property is intended for the common use and enjoyment of Owners.

#### 25. Interpretation.

The provisions of this Declaration and the By-Laws shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a condominium property.

#### 26. Amendment to Declaration.

(a) By Owners. This Declaration may be amended by the vote of at least 75% in Common Interest of owners of each unit, cast in person or by proxy at a meeting duly held in accordance with the provisions of the By-Laws, which such amendment shall become effective upon recordation of a written instrument duly executed and acknowledged by Unit Owners holding 75% in Common Interest of the Condominium in the Office of the Recorder of Monroe County, Indiana.

(b) Reserved Rights of Declarant. Notwithstanding anything herein to the contrary, until all Units subject to this Declaration have been sold by Declarant, no amendment to this Declaration shall be effective unless approved in writing by Declarant, and during the period, Declarant reserves the right to change the interior design and arrangement of any unsold Units, to alter the boundaries between unsold Units, and to add such additional Common Facilities or recreational facilities as he may deem desirable without amendment of this Declaration in the manner hereinbefore set forth.

If Declarant shall make any changes in Units, as provided in this subparagraph (b), such changes shall be reflected by an amendment of this Declaration with Plans attached, reflecting such authorized alteration of Units, and the amendment need only be executed and acknowledged by Declarant. The Plans shall be certified in the manner required by the Act. If more than one Unit is concerned, the Declarant shall reapportion between the Units the shares in the Common Areas and Facilities appurtenant to the Units concerned, together with reapportioning the Common Expenses and Common Profits of the Units concerned, and such share of the Common Areas and Facilities, Common Expenses and Common Profits shall be duly noted in the amendment of this Declaration.

(c) Addition of New Phases. Declarant intends that Madison Park Development will ultimately consist of up to a total of 36 Units including the 16 Units described in the within Declaration. The 16 Units will consist of the initial phase covered by the within Declaration and designated as Madison Park Condominiums Phase I and one or more additional Phases so that upon completion of the total Units contemplated Madison Park Condominiums will consist of not more than 36 Units. The additional Condominium Units will be contained in one or more Phases to be constructed on land, the approximate boundaries of which are described in Exhibit F attached hereto and made a part hereof. Accordingly, Declarant reserves the right to amend this Declaration at any time within seven years from the date of recordation hereof, without the consent of the Owners, to incorporate into the Property (i) all or a portion of the additional property described in Exhibit F attached hereto and (ii) the additional Units constructed or to be constructed thereon by Declarant provided, however, that the total number of Condominium Units to be constructed on the additional land described in Exhibit F shall not exceed 20 Units so that the maximum Units which will comprise Madison Park Condominiums shall not exceed 36. The expansion of the Condominium shall be governed by the following provisions:

(i) The area comprised within the present development and described in Exhibit A attached hereto is herein denominated the "Present Condominium Area." The Declarant reserves the right, to be exercised in its sole discretion, from time to time within a seven year period from the date of recordation of this Declaration, to annex to the Present Condominium Area all or a portion of the land described in Exhibit F attached hereto and made a part hereof which such land is herein denominated the "Development Area". Such annexation shall be by the recordation of an Amended Condominium Declaration (the "Amended Declaration"), and no rights of any type or character whatsoever of any Unit Owner in annexations within the Development Area shall attach until such Amended Declaration is recorded annexing part or all of the Development Area to the Condominium Regime

hereby created. Upon the recordation of such Amended Declaration, the land therein so described, and the Condominium Units and all other improvements located thereon, shall be deemed to be governed in all respects by the provisions of this Declaration. The Declarant further reserves the right, in the exercise of its sole discretion, to add land to the Development Area by a declaration stating such intention and describing the land so added.

(ii) Any Amended Declaration which is filed to accomplish annexation of land to the Present Condominium Area as aforesaid shall prescribe and adjust the percentage interest in the Common Areas and Facilities for all Units, if any, created by the Amended Declaration, and for all Units created by prior Amended Declaration, if any, and for all units created by the within Declaration, on the following basis:

(A) For the purpose of this Section, the following definitions shall be controlling:

At the time of recordation of each Amended Declaration,

(1) Existing Units and Existing Common Areas and Facilities shall mean, respectively, those Units and Common Areas and Facilities in existence prior to the creation of New Units and New Common Areas and Facilities by each aforesaid Amended Declaration, whether created by a prior Amended Declaration or this Declaration.

(2) New Units and New Common Areas and Facilities shall mean, respectively, those Units and Common Areas and Facilities which are created and added by each aforesaid Amended Declaration.

(3) Aggregated Units and Aggregated Common Areas and Facilities shall mean, respectively, the sum of all Existing Units and New Units, and the sum of all Existing Common Areas and Facilities and New Common Areas and Facilities.

(B) At the time of recordation of each Amended Declaration, the square footage of the Property as a whole shall be the sum of the square footage of all Existing Units and New Units. The percentage interest in the Aggregate Common Areas and Facilities which is appurtenant to each Unit shall be based upon the ratio of the square footage of each Unit, whether an Existing Unit or New Unit, to the total square footage of all Units.

The recording of an Amended Declaration pursuant to this section shall not alter or affect the amounts due from any Owners of Existing Units for Common Expenses or other assessments nor shall it alter or affect the lien securing such amounts.

(iii) Each deed to a Unit is given to the end that the percentage interest of the grantee in the Common Areas and Facilities shall be divested pro tanto and vest in the grantees of other Units in accordance with the terms of this Declaration and Amended Declarations which may be recorded pursuant hereto. In addition, the Declarant reserves the right of revocation which such right may be exercised to aid in accomplishing this purpose.

Each deed to a Unit shall be deemed to reserve to the Declarant the power to appoint to Unit Owners, from time to time, the percentage interest in the Common Areas and Facilities set forth in any Amended Declaration or Declarations, and the acceptance of such a deed by the grantee therein shall constitute the following on its part and on the part of all those claiming under him, including all mortgagees:

(A) A grant of an irrevocable power of attorney coupled with an interest to the Declarant acting by and through its authorized personnel, its successors, assigns or designees, and each of them singly as attorney-in-fact, to shift the percentages of undivided ownership interest in the Common Areas and Facilities in accordance with the provisions of this Declaration and of Amended Declarations recorded pursuant hereto; and

(B) An Agreement with and consent to the following:

(1) The percentage of undivided ownership interest in the Common Areas and Facilities of each Unit shall automatically be shifted and reallocated in the manner set forth in each recorded Amended Declaration;

(2) That upon the recording of each Amended Declaration, the amount by which the percentage of undivided interest in the Common Areas and Facilities of each Unit is reduced by the Amended Declaration shall thereby be released and divested by and from the Owner of the Unit so affected and reallocated among other Owners of Units as set forth in such Amended Declaration;

(3) The foregoing provisions of this section are designed to accomplish a valid shifting in the percentages of



ownership in the Common Areas and Facilities among the various Unit Owners as more Units are added. None of the provisions shall invalidate the other, but each shall be deemed supplementary to the other for accomplishing their respective goals; and

(4) That this Declaration is in accordance with the Act.

### 27. Enforcement.

Each Unit Owner shall comply strictly with the provisions of this Declaration, the By-Laws, and the rules, regulations and decisions issued pursuant thereto and as the same may be lawfully amended from time to time. Failure to do so shall be grounds for an action to recover sums due for damages, injunctive relief, or both, maintainable by the Board of Directors on behalf of the Homeowners Association or, in a proper case, by an aggrieved Owner.

### 28. Floor Plan.

The Plans setting forth the layout, location, identification number, Building designation and dimensions for all Units and the Property are incorporated into this Declaration by reference. Such Plans, which are attached hereto as Exhibit D, have been filed in the Office of the Recorder of Monroe County, Indiana, in Horizontal Property Plan File No. "H B" on JUNE 27, 1991 as Instrument Number 108,526. EMELDFE 105

### 29. Limitations on Development Rights.

The Development Rights reserved are limited as follows:

(a) The Development Rights may be exercised at any time, but not more than seven years after the recording of the initial Declaration;

(b) The quality of construction of any buildings and improvements to be created on the Property shall be consistent with the quality of those constructed pursuant to this Declaration as initially recorded;

(c) All Units and Common Elements created pursuant to the Development Rights will be restricted to residential use in the same manner and to the same extent as the Units created under this Declaration as initially recorded.

### 30. Special Declarant Rights.

The Declarant reserves the following Special Declarant Rights, to the maximum extent permitted by law, which may be exercised, where applicable,

anywhere within the Common Interest Community:

- (a) To complete improvements indicated on Plats and Plans filed with the Declaration;
- (b) To exercise a Development Right reserved in the Declaration
- (c) To maintain sales offices, management offices, signs advertising the Common Interest Community and models;
- (d) To use easements through the Common Elements for the purpose of making improvements within the Common Interest Community.

### 31. Amendments to Declaration - In General.

This Declaration, including the Plat and Plans, may be amended only by vote or agreement of Unit Owners of Units to which at least 67 percent of the votes in the Association are allocated.

### 32. Mortgagee Protection.

Introduction: This Article establishes certain standards and covenants which are for the benefit of the holders, insurers and guarantors of certain Security interests. This Article is supplemental to, not a substitution for, any other provisions of the Documents, but in the case of conflict, this Article shall control.

#### (A) RIGHTS OF MORTGAGEES.

(1) PRIOR APPROVAL REQUIRED. Notwithstanding anything in this Declaration to the contrary, the prior written approval of all Institutional Mortgagees must be obtained for the voluntary termination of the Condominium. In addition, except as specifically provided to the contrary in this Declaration, the prior written approval of an Institutional Mortgagee must be obtained as to the partition or subdivision of any unit on which it holds the mortgage, and also as to any change in the undivided share in the common elements appurtenant to any unit on which it holds the mortgage.

(2) LIEN SUBORDINATE. The lien for delinquent and unpaid assessments described in this Declaration shall be subordinate to the lien of any first mortgage made or guaranteed by the United States Government or any instrumentality thereof, including Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA), Federal Home Loan Mortgage Corporation, Department of Housing and Urban Development, Veterans Administration, or any Municipal Bonding Authority.

(3) **RIGHTS TO NOTICES.** If an institutional Mortgagee shall furnish the Association in writing with notice stating that it holds a mortgage on a unit in the Condominium, describing the mortgage by reference to its recording information, and giving an address to where any notice should be sent, the Association shall furnish notice to such institutional Mortgagee of:

(a) **Delinquent Assessments.** Any default in the payment of assessments by the unit owner not cured within 30 days.

(b) **Losses.** Any condemnation loss or casualty loss which affects a material portion of the Condominium.

(c) **Insurance.** Any lapse, cancellation or material alteration, other than an even substitution, in any insurance or fidelity bond required to be carried by the Association.

(d) **Proposed Action.** Any proposed action which would require the consent of a percentage of mortgage holders.

Until notice is given to the Association, however, the Institutional Mortgagee shall not be entitled to notice of default, nor to any right, distribution or notice pursuant to this Declaration.

(4) **RIGHT TO INSPECT.** Each Institutional Mortgagee shall have the right to inspect the books and records of the Association and to require reports necessary to ascertain the financial status of the Condominium and any unit upon which it holds a mortgage.

(5) **AMENDMENT OF ARTICLE.** The terms and provisions of this Article shall not be amended unless there is an affirmative approval of the amendment by all of the following:

(a) **Voting Members.** 75 percent of the voting members of the Association.

(b) **Institutional Mortgagees.** 67 percent of all institutional mortgagees holding a first mortgage on units in the Condominium.

(6) **Assessments.** Any First Mortgagee on a loan (made or guaranteed by the United States Government or any instrumentality thereof, including Federal National Mortgage Association (FNMA), Government National Mortgage Association (GNMA), Federal Home Loan Mortgage Corporation, Department of Housing and Urban Development, Veterans Administration, or any Municipal Bonding Authority who takes title of a unit in the Condominium by foreclosure or deed in lieu of foreclosure shall not be liable for assessments against the unit that accrue before title is so obtained, except as the assessments may be reallocated to all units as a common expense.

(7) The Association shall maintain an adequate reserve fund for the maintenance and repair of the common elements, which shall be funded from regular monthly assessments for common expenses.

(8) The Association shall purchase and maintain policies of insurance and fidelity bond coverage in accordance with requirements under the FNMA Lending Guide, Chapter Three, Part 5, Insurance Requirements.

**(B) SPECIAL PROVISIONS TO SATISFY THE REQUIREMENTS OF FEDERAL NATIONAL MORTGAGE ASSOCIATION.**

(1) The Association shall allow all unit owners, their lenders, insurers and guarantors of first mortgages to inspect, during normal business hours, all of the records of the Association.

(2) Upon written request, the Association shall furnish its most recent annual statement to any holder of a first mortgage of a unit in the Condominium.

(3) The Association may cancel, without penalty or cause, any contract or lease made by it before any Unit Owner other than the Developer assumes control of the Association, upon 90 days' written notice to the other party.

(4) Developer shall surrender control of the Association at the earlier of the time required or 120 days after 75 percent of the units in the Condominium, or its first phase, if no other phases are built, have been conveyed by the Developer, or three years after the conveyance of the first unit in the Condominium, if only one phase or five years after the conveyance of the first unit in the Condominium, if more than one phase is developed.

(5) The Association shall maintain an adequate reserve fund for the maintenance and repair of the common elements, which shall be funded from regularly monthly assessments for common expenses.

(6) Upon written request, the Association shall furnish the following notices to the holder, insurer, or guarantor of any mortgage on any unit in the Condominium:

(a) Notice of any condemnation or casualty loss that affects a material portion of the Condominium Property or the applicable unit.

(b) Notice of any delinquency in the payment of assessments more than 60 days past due as to the applicable unit.

(c) Notice of any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association.

(d) Notice of any proposed action which would require the consent of a percentage of mortgage holders.

(7) The Association shall purchase and maintain policies of insurance and fidelity bond coverage in accordance with requirements under the FNMA Lending Guide, Chapter Three, Part 5, Insurance Requirements.

(8) As used herein, the terms "institutional mortgage" or "lender" shall be deemed to include the Federal National Mortgage Association, the Federal Housing Authority and the Veterans Administration, as applicable.

### (C) MORTGAGEE PROTECTION

(1) Percentage of Eligible Mortgagees: Wherever in this Declaration the approval or consent of a specified percentage of Eligible Mortgagees is required, it shall mean that the approval or consent of Eligible Mortgagees holding Security Interests in Units which in the aggregate have allocated to them that specified percentage of votes as compared to the total votes allocated to all Units in the Association then subject to Security Interests held by all Eligible Mortgagees.

(2) Notice of Actions: The Association shall give prompt written notice to each Eligible Mortgagee and Eligible Insurer of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Common Interest Community or any Unit in which there is a first Security Interest held, insured or guaranteed by that Eligible Mortgagee or Eligible Insurer, as applicable;

(b) Any delinquency in the payment of Common Expense assessments owed by a Unit Owner which remains uncured for a period of sixty (60) days and whose Unit is subject to a first Security Interest held, insured or guaranteed by that Eligible Mortgagee or Eligible Insurer, as applicable;

(c) Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;

(d) Any proposed action which would require the consent of a specified percentage of Eligible Mortgagees as specified in Section 18.4 of the Declaration; and

(e) Any judgment rendered against the Association.

(3) Consent and Notice Required:

(a) Document Changes. Notwithstanding any requirement permitted by

this Declaration or the Act, no amendment of any material provision of the Documents by the Association or Unit Owners described in this Section may be effective without notice to all Eligible Mortgagees and Eligible Insurers, as required by Section C.2. above, without the vote of at least 67 percent of the Unit Owners (or any greater Unit Owner vote required in this Declaration or the Act) and without approval by at least 67 percent of the Eligible Mortgagees (or any greater Eligible Mortgagee approval required by this Declaration). The foregoing approval requirements do not apply to amendments effected by the exercise of any Development Right. A change to any of the following would be considered material:

- (i) Voting rights;
- (ii) Assessments, assessment liens or priority of assessment  
liens;
- (iii) Reserves for maintenance, repair and replacement of  
Common Elements;
- (iv) Responsibility for maintenance and repairs;
- (v) Reallocation of interests in the Common Elements or  
Limited Common Elements, except that when Limited Common  
Elements are reallocated by agreement between Unit Owners,  
only those Unit Owners and only the Eligible Mortgagees holding  
Security Interests in those Units need approve the action;
- (vi) Redefinitions of boundaries of Units, except that when  
boundaries of only adjoining Units are involved, or a Unit is  
being subdivided, then only those Unit Owners and the Eligible  
Mortgagees holding Security Interests in the Unit or Units need  
approve the action;
- (vii) Convertability of Units into Common Elements or Common  
Elements into Units;
- (viii) Expansion or contraction of the Common Interest  
Community, or the addition, annexation or withdrawal of property  
to or from the Common Interest Community;
- (ix) Insurance or fidelity bonds;
- (x) Leasing of Units;
- (xi) Imposition of any restrictions on Unit Owners' right to sell  
or transfer their Units;

(xii) A decision by the Association to establish self-management when professional management had been required previously by the Documents or any Eligible Mortgagee;

(xiii) Restoration or repair of the project after hazard damage or partial condemnation in a manner other than that specified in the Documents;

(xiv) Termination of the Common Interest Community after occurrence of substantial destruction or condemnation; and

(xv) Any provision that expressly benefits mortgage holders, insurers or guarantors.

(b) Actions. Notwithstanding any lower requirement permitted by this Declaration or the Act, the Association may not take any of the following actions, other than rights reserved to the Declarant as Special Declarant Rights, without notice to all Eligible Mortgagees and Eligible Insurers, as required by Section C.2. above, and approval of at least 67 percent (or the indicated percentage, if higher) of the Eligible Mortgagees:

(i) Convey or encumber the Common Elements or any portion of the Common Elements, for which an 80 percent Eligible Mortgagee approval is required. (The granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements by the Common Interest Community will not be deemed a transfer within the meaning of this clause); and

(ii) The termination of the Common Interest Community for reasons other than substantial destruction or condemnation, for which 67 percent of the Votes of Eligible Mortgagees is required.

(iii) The alteration of any partition or creation of any aperture between adjoining Units (when Unit boundaries are not otherwise being affected), for which only the owners of Units affected and Eligible Mortgagees of those Units need approve the action;

(iv) The granting of any easements, leases, licenses or concessions through or over the Common Elements (excluding, however, any utility easements serving or to serve the Common Interest Community and also excluding any leases, licenses or concessions lasting for no more than one year).

(v) The restoration or repair of the Property after hazard damage or a partial condemnation in a manner other than specified in the Instruments.

(vi) The merger of the Common Interest Community with any other common interest community.

(vii) The assignment of the future income of the Association, including its right to receive Common Expense Assessments.

(viii) Any action taken not to repair or replace the Property in the event of substantial destruction of any part of a Unit or the Common Elements.

(c) The Association may not change the period for collection of regularly budgeted Common Expense assessments to other than monthly collection without the consent of all Eligible Mortgagees.

(d) The failure of an Eligible Mortgagee or Insurer to respond within 30 days to any written request for approval of an addition or amendment to the Document wherever Eligible Mortgagee or Insurer approval is required, when such request is delivered by certified or registered mail, return receipt requested, shall constitute an implied approval of the addition or amendment.

(4) Development Rights: No Development Rights may be exercised, voluntarily abandoned or terminated by the Declarant unless all persons holding Security Interests in the Development Rights consent to the exercise, abandonment or termination.

### 33. Assessment and Collection of Common Expenses.

(a) Apportionment of Common Expenses: Except as provided in the following Section, all Common Expenses shall be assessed against all Units in accordance with their percentage interest in the Common Expenses as shown in this Declaration.

(i) All units will be allocated full assessments, no later than 60 days after the first unit is conveyed.

(b) Common Expenses Attributable to Fewer than all Units:

(i) Any Common Expense associated with the maintenance, repair or replacement of components and elements attached to, planted on, or a part of yards, patios, decks, exterior surfaces, trim, siding, doors, windows and elevators shall be assessed against the Unit or Units to which the Limited Common Element is assigned. If any such Limited Common Element is assigned to more than one Unit, the Common Expenses attributable to the Limited Common Element shall be assessed equally among the Units to which it is assigned.



(ii) Any Common Expense for services provided by the Association to an individual Unit at the request of the Unit Owner shall be assessed against that Unit.

(iii) Any insurance premium increase attributable to a particular Unit by virtue of activities in or construction of the Unit shall be assessed against that Unit. \*

(iv) An assessment to pay a judgment against the Association may be made only against the Units in the Common Interest Community at the time the judgment was entered, in proportion to their Common Expense liabilities.

(v) If a Common Expense is caused by the misconduct of a Unit Owner, the Association may assess that expense exclusively against that Unit Owner's Unit. \*

(vi) Fees, charges, late charges, collection costs and interest charged against a Unit Owner pursuant to the Documents and the Act are enforceable as Common Expense assessments.

(c) Lien:

(i) The Association has a lien on a Unit for an assessment levied against the Unit or imposed against its Unit Owner from the time the assessment becomes due. Fees, charges, late charges, and interest charged pursuant to the Act and the Documents are enforceable as assessments under this Section. If an assessment is payable in installments, the full amount of the assessment is a lien from the time the first installment becomes due.

(ii) A lien under this Section is prior to all other liens and encumbrances on a Unit except: (1) a liens and encumbrances recorded before the recordation of the Declaration; (2) a first Security Interest on the Unit recorded before the date on which the assessment sought to be enforced became delinquent; and (3) liens for real estate taxes and other governmental assessments or charges against the Unit. A lien under this Section is also prior to all Security Interests described in Subdivision (2) of this Subsection to the extent that the Common Expense assessments are based on the periodic budget adopted by the Association pursuant to this Article and would have become due of in the absence of acceleration, during the six months immediately preceding institution of an action to enforce either the Association's lien or a Security Interest described in Subdivision (2) of this Subsection. This Subsection does not affect the

priority of mechanics' or materialmen's liens or the priority of a lien for other assessments made by the Association. A lien under this Section is not subject to the provision for exemptions under the laws of the State of Indiana.

"A lien for a common expense assessment is not affected by the sale or transfer of the unit estate unless a foreclosure of a first mortgage is involved. The foreclosure will extinguish the lien for any assessments that were payable before the foreclosure sale, but will not relieve any subsequent unit owner from paying further assessments."

(iii) Recording of the Declaration constitutes record notice and perfection of the lien. Further recording of a claim of lien for assessment under this Section is not required.

(iv) A lien for an unpaid assessment is extinguished unless proceedings to enforce the lien are instituted within three years after the full amount of the assessment becomes due, except that if an Owner of a Unit subject to a lien under this Section files a petition for relief under the United States Bankruptcy Code, the time period for instituting proceedings to enforce the Association's lien shall be tolled until thirty days after the automatic stay of proceedings under Section 362 of the Bankruptcy Code is lifted.

(v) This Section does not prohibit an action to recover sums for which Subsection (a) of this Section creates a lien or prohibit the Association from taking a deed in lieu of foreclosure.

(vi) A judgment or decree in any action brought under this Section shall include costs and reasonable attorney's fees for the prevailing party.

(vii) A judgment or decree in an action brought under this Section is enforceable by execution under state statute on judgment executions.

(viii) The Association's lien must be foreclosed by the same procedure by which a mortgage or deed of trust on real estate is foreclosed, or as a lien is foreclosed.

(ix) In any action by the Association to collect assessments or to foreclose a lien for unpaid assessments, the court may appoint a receiver for the Unit Owner to collect all sums alleged to be due from that Unit Owner prior to or during the pendency of the action. The court may order the receiver to pay any sums held by the receiver to the Association during the pendency of the

by the receiver to the Association during the pendency of the action to the extent of the Association's Common Expense assessments, based on a periodic budget adopted by the Association pursuant to this Declaration.

(x) If a holder of a first or second Security Interest in a Unit forecloses that Security Interest, the purchaser at the foreclosure sale is not liable for any unpaid assessments against that Unit which became due before the sale. Any unpaid assessments not satisfied from the proceeds of sale become Common Expenses collectible from all the Unit Owners, including the purchaser.

(xi) In the case of foreclosure, the Association shall give reasonable notice of its action to each lien holder of a Unit whose interest would be affected.

(xii) Any payments received by the Association in the discharge of a Unit Owner's obligation may be applied to the oldest balance due.

(d) Budget Adoption and Ratification: Within 30 days after adoption of a proposed budget for the Common Interest Community, the Board of Directors shall provide a summary of the budget to each Unit Owner and shall set a date for a meeting of the Unit Owners to consider ratification of the budget. The meeting shall be not less than 14 or more than 30 days after mailing of the notice of the meeting. Unless at that meeting a majority of all Unit Owners reject the budget, the budget is ratified, whether or not a quorum is present. If the proposed budget is rejected, the periodic budget last ratified by the Unit Owners continues until the Unit Owners ratify a new budget proposed by the Board of Directors.

(e) Ratification of Nonbudgeted Common Expense Assessments: If the Board of Directors votes to levy a Common Expense assessment not included in the current budget, in an amount greater than 15 percent of the current annual operating budget, the Board of Directors shall submit this Common Expense to the Unit Owners for ratification in the same manner as a budget.

(f) Certificate of Payment of Common Expense Assessments: The Association, upon written request, shall furnish a Unit Owner with a statement, in recordable form, setting out the amount of unpaid assessments against the Unit. The statement must be furnished within {10} business days after receipt of the request and is binding on the Association, the Board of Directors and each Unit Owner.

(g) Monthly Payment of Common Expenses: All Common Expenses assessed under this Declaration shall be due and payable monthly.

(h) **Acceleration of Common Expense Assessments:** In the event of default in which any Unit Owner does not make the payment of any Common Expense assessment levied against his Unit within 10 days of the date due, the Board of Directors shall have the right, after Notice and Hearing, to declare all unpaid assessments for the pertinent fiscal year immediately due and payable.

(i) **Commencement of Common Expense Assessments:** Common Expense assessments shall begin on the first day of the month in which conveyance of the first Unit to a Unit Owner other than the Declarant occurs.

(j) **No Waiver of Liability for Common Expenses:** No Unit Owner may become exempt from liability for payment of the Common Expenses by waiver of the use or enjoyment of the Common Elements or by abandonment of the Unit against which the assessments are made.

(k) **Personal Liability of Unit Owners:** The Unit Owner of a Unit, at the time a Common Expense assessment or portion of the assessment is due and payable, is personally liable for the assessment. Personal liability for the assessment shall not pass to a successor in title to the Unit unless the successor agrees to assume the obligation.

#### 34. Right to Assign Future Income.

The Association may assign its future income, including its right to receive Common Expense assessments, only by the affirmative vote of Unit Owners of Units to which at least 51 percent of the votes in the Association are allocated, at a meeting called for that purpose, and with the Eligible Mortgagee consent of 67% of the Mortgagees.

#### 35. Persons and Units Subject to Documents.

##### (a) **Compliance with Documents:**

All Unit Owners, tenants, mortgagees and occupants of Units shall comply with the Documents. The acceptance of a deed or the exercise of any incident of ownership or the entering into of a lease or the occupancy of a Unit constitutes agreement that the provisions of the Documents are accepted and ratified by that Unit Owner, tenant, mortgagee or occupant. All provisions recorded on the Land Records of Monroe County, Indiana are covenants running with the land and shall bind any Persons having at any time any interest or estate in any Unit.

(b) **Adoption of Rules:** The Board of Directors may adopt Rules regarding the use and occupancy of Units as it affects the Common Elements, the Limited Common Elements and the activities of occupants.

36. Invalidity.

The invalidity of any provisions of this Declaration shall not be deemed to impair or affect in any manner the validity and enforceability or effect of the remainder of this Declaration, and in such event, all the other provisions of this Declaration shall continue in full force and effect as if such invalid provision had never been included herein.

37. Waiver.

No provisions contained in the Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

38. 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 Declaration or the intent of any provisions hereof.

39. Law Controlling.

This Declaration and the By-Laws attached hereto shall be construed and controlled by and under the laws of the State of Indiana.

