

DECLARATION OF HORIZONTAL

PROPERTY OWNERSHIP

FOR

BARRINGTON PLACE

HORIZONTAL PROPERTY REGIME

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PROPERTY REGIME

Barrington Place  
Horizontal Property Regime

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DECLARATION OF HORIZONTAL PROPERTY OWNERSHIP

Barrington Place  
Horizontal Property Regime

This Declaration ("Declaration") is made this \_\_\_\_ day of \_\_\_\_\_, 1996, by TAMARRON CONDOMINIUM DEVELOPMENT CORPORATION, an Indiana corporation (the "Declarant").

Be It Declared That:

A. WHEREAS, Declarant is the sole owner of the fee simple title to the real estate located in Monroe County, Indiana, more particularly described in Exhibit "A-1" attached hereto and incorporated by reference herein ("Parcel A-1") and has contracted to purchase the real estate adjacent thereto and more particularly described in Exhibit "A-2" attached hereto and incorporated by reference herein ("Parcel A-2") (Parcel A-1 and Parcel A-2 shall collectively be referred to herein as the "Real Estate"); and

B. WHEREAS, Declarant is the sole owner of the fee simple title to that portion of the Real Estate more particularly described in Exhibit "B" attached hereto and incorporated by reference herein (the "Tract"); and

C. WHEREAS, Declarant, by execution of this Declaration, hereby creates a Horizontal Property Regime upon the Tract, subject to the provisions of the Horizontal Property Law of the State of Indiana and the terms and conditions of this Declaration.

NOW, THEREFORE, Declarant hereby makes this Declaration:

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

"Act" means the Horizontal Property Law of the State of Indiana, I.C. 32-1-6-1 et.seq. as amended by Acts of 1977. The Act is incorporated herein by reference.

"Applicable Date" means the earliest of (i) five (5) years from the date that the first Condominium Unit has been conveyed to a purchaser; or (ii) four (4) months after seventy-five percent (75%) of the Condominium Units that may be developed on the Real Estate have been conveyed to purchasers, or (iii) the date Declarant files of record in the office of the Recorder of Monroe County, Indiana, an instrument waiving and releasing its reserved rights as set forth in Paragraph 16 of this Declaration to expand or further expand Barrington Place.

"Articles" means the Articles of Incorporation of the Association.

"Association" means Barrington Place Homeowners Association, Inc., an Indiana not-for-profit corporation, being the association of Co-owners of Barrington Place, more particularly described in Paragraph 12 hereof.

"Board of Directors" means the governing body of the Association, being the initial Board of Directors referred to in the By-Laws or subsequent Board of Directors elected by the Co-Owners in accordance with the By-Laws.

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

"By-Laws" means the By-Laws of the Association providing for the administration and management of the Property and restrictions on its use as required by and in conformity with the provisions of the Act. A true copy of the By-Laws is attached to this Declaration and incorporated herein by reference.

"Common Areas" means the common areas and facilities as defined in Paragraph 6 of this Declaration.

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

"Condemnation Award" means all compensation, damages, or other proceeds payable to the Insurance Trustee from the taking or condemnation of all or any part of the Property as defined and in accordance with Paragraph 11 herein.

"Condominium Unit" or "Unit" means each one of the living units constituting Barrington Place, each individual living unit being more particularly described and identified on the Plans and in Paragraphs 4 and 5 of this Declaration, and each additional living unit which may be submitted and subjected to the Act and this Declaration by Supplemental Declarations as herein provided. "Condominium Unit" includes the undivided interest in the Common Areas and Limited Areas appertaining to such unit.

"Co-Owner" or "Co-Owners" means the Owners of all the Condominium Units.

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

"Declarant" shall mean and refer to Tamarron Condominium Development Corporation, an Indiana corporation, and any successors and assigns of it whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including, but not limited to, any mortgagee acquiring title to any portion of the property pursuant to the exercise of rights under, or foreclosure of, a mortgage executed by Declarant.

"Declaration" means this Declaration made this \_\_\_ day of \_\_\_\_\_, 19\_\_\_, by Tamarron Condominium Development Corporation.

"Expansion Parcel" means that portion of the Real Estate added to the Tract pursuant to and in accordance with Paragraph 16 hereof.

"Garage" means each one of the car garages designated and identified as Limited Area for each Condominium Unit as described in Paragraph 7 of this Declaration.

"Garage Building" means a building of Garages on the Tract.

"General Plan" means the general plan of development of the Real Estate being subjected to the Regime and areas into which expansion may be made pursuant to and in accordance with this Declaration and any Supplemental Declarations and as specifically provided in Paragraph 16 hereof, all as set forth in Exhibit "E" attached hereto and incorporated by reference herein.

"Initial Board" means the initial Board of Directors set forth and defined in the By-Laws.

"Initial Building" means Building C as depicted in the Plans.

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

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

"Majority of Mortgagees" means those Mortgagees who hold first mortgages on Condominium Units to which are allocated at least seventy-five percent (75%) of the Percentage Vote allocated to Mortgaged Units.

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

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

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

"Nonowner-Occupied Unit" means a Condominium Unit that is not occupied by an Owner for residential purposes.

"Owner" means a person, firm, corporation, partnership, association, trust, limited liability company, or other legal entity, or any combination thereof, who or which owns the fee simple title to a Condominium Unit.

"Percentage Interest" means the percentage of undivided interest in the fee simple title to the Common Areas and Limited Areas appertaining to each Condominium Unit as specifically expressed in Paragraphs 3 and 8 of this Declaration.

"Percentage Vote" means that percentage of the total vote accruing to all of the Condominium Units which is appurtenant to each particular Condominium Unit and accrues to the Owner thereof; the Percentage Vote to which each Owner shall be entitled on any matter upon which the Co-Owners are entitled to vote shall be the same percentage as the Percentage Interest appurtenant to such Owner's Condominium Unit.

"Person" means an individual, firm, corporation, partnership, association, trust, limited liability company, or other legal entity, or any combination thereof.

"Plans" means (i) the floor and building plans and elevations of the Initial Building and Condominium Units located on the Tract prepared and certified by \_\_\_\_\_, a licensed professional engineer, under date of \_\_\_\_\_, 19\_\_\_\_, and (ii) the General Plan of Barrington Place, all of which are incorporated herein by reference, as may be supplemented and amended to reflect the addition of Buildings and Condominium Units as contemplated by Paragraph 16 in this Declaration.

"Property" means the Tract and appurtenant easements, the Condominium Units, the Buildings, all other improvements, easements, rights and property of every kind and nature whatsoever, real, personal or mixed, located upon or appurtenant to the Tract and used in connection with the operation, use and enjoyment of Barrington Place, excluding the personal property of the Owners.

"Real Estate" means the real estate described in Paragraph A of the recitals above and more particularly described in Exhibit "A-1 and A-2" attached hereto and incorporated by reference herein.

"Regime" means Barrington Place Horizontal Property Regime created by this Declaration pursuant to the Act.

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

"Statute" means the Indiana Nonprofit Corporation Act of 1991, as amended.

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

"Barrington Place" means the name by which the Property and Regime shall be known.

"Tract" means the real estate described in Paragraph B of the recitals above and such other portions of the Real Estate which have, as of any given time, been subjected to the Act and this Declaration either by this Declaration or a Supplemental Declaration as herein provided.

2. Declaration. Declarant hereby expressly declares that the Property shall be a Horizontal Property Regime in accordance with the provisions of the Act.

3. Description of Buildings. There is one (1) Building containing thirteen (13) Condominium Units on the Tract as of the date hereof as shown on the Plans. Such Initial Building is identified and referred to in the Plans as Building C. A description of the Initial Building and the Condominium Units contained therein is set forth in Exhibit "C", attached hereto and incorporated by reference herein.

4. Legal Description. Each Condominium Unit is identified on the Plans by a Unit letter, Building number, and Phase number. Each Garage is identified on the Plans as Garage number. The legal description for each Condominium Unit shall consist of the Unit letter, Building number, and Phase number and the Garage designated and assigned thereto as a Limited Area by the Garage number as shown on the Plans and shall be stated as "Unit \_\_\_\_

in Building \_\_\_\_ in Section \_\_\_\_ of Barrington Place Horizontal Property Regime and Garage \_\_\_\_ therein."

5. Description of Condominium Units.

(a) Appurtenances. Each Condominium Unit shall consist of all space within the boundaries thereof, as hereinafter defined, and all portions of the Building situated within such boundaries, including, but not limited to, all fixtures, facilities, utilities, equipment, appliances, and structural components designed and intended solely and exclusively for the enjoyment, use, and benefit of the Condominium Unit wherein the same are located or to which they are attached, but excluding therefrom that designed or intended for the use, benefit, support, safety, or enjoyment of any other Condominium Unit or which may be necessary for the safety, support, maintenance, use, and operation of any of the Buildings or which are normally designed for common use; provided however, that all fixtures, equipment, and appliances designed or intended for the exclusive enjoyment, use, and benefit of a Condominium Unit shall constitute a part of such Condominium Unit, whether or not the same are located within or partly within the boundaries of such Condominium Unit. The space within the basement or crawl space, if any, under Condominium Unit is considered a part of and for the exclusive use of such Condominium Unit. The space within the attic, if any, above Condominium Unit is considered a part of and for the exclusive use of such Condominium Unit. The space within the Garage designated and identified as Limited Area for each of the Condominium Units is considered a part of and for the exclusive use of the Condominium Unit to which it is assigned. Also, the interior sides and surfaces of all doors and windows in the perimeter walls of a Condominium Unit, whether or not located within or partly within the boundaries of a Condominium Unit, and all interior walls (except load-bearing walls) and all of the floors and ceilings within the boundaries of a Condominium Unit are considered part of the Condominium Unit.

(b) Boundaries. The boundaries of each Condominium Unit shall be as shown on the Plans without regard to the existing construction. The vertical boundaries shall run from the upper surfaces of the interim, unfinished surfaces of the lowest floors to the interim unfinished surfaces of the highest ceilings, and the horizontal boundaries shall be the interior, unfinished surfaces of the common exterior and interior load bearing walls (including windows and doors). In the event any horizontal, vertical, or other boundary line as shown on the Plans does not coincide with the actual location of the respective wall, floor, or roof surface of the Condominium Unit because of inexactness of construction, settling after construction, or for any other reasons, the boundary lines of each Condominium Unit shall be deemed to be and treated for purposes of ownership, occupancy, possession, maintenance, decoration, use, and enjoyment, as in accordance with the actual existing construction. In such case, permanent appurtenant easements for exclusive use shall exist in favor of the Owner of each Condominium Unit in and to such

space lying outside of the actual boundary lines of the Condominium Unit, but within the appropriate wall, floor, or roof surfaces of the Condominium Unit.

6. Common Area and Facilities. "Common Areas" means (1) the land portion of the Tract, except as otherwise provided herein, (2) the foundations, roofs and exterior wall surfaces of the Buildings, (3) the yards, gardens, ponds, waterscapes, open spaces, landscaping, woodland areas, sidewalks, walkways, paths, driveways, parking areas and any permanent apparent easements granting use and enjoyment to the same, except to the extent the same are otherwise classified and defined herein as Limited Areas, (4) central electricity, gas, water, air conditioning, drainage areas, and sanitary sewer mains serving the Buildings, if any, (5) exterior lighting fixtures and electrical service lighting the exterior of the Buildings and certain of the other common areas unless separately metered to a particular Condominium Unit, (6) pipes, ducts, electrical wiring and conduits, and public utilities lines or mains which serve more than one Condominium Unit, (7) master television cable lines, master television antenna, or other telecommunication systems with wiring and outlets which serve more than one Condominium Unit, (8) all streets that are not dedicated, (9) subfloors, ceilings, and interiors of all structural walls, including all exterior perimeter and other load-bearing walls, walls between attached Condominium Units, walls and floors between the Garages and the Condominium Units except to the extent the same are otherwise classified and defined herein as part of the Condominium Unit or Limited Areas, (10) all recreational facilities, if any, located on the Tract, except to the extent the same are otherwise classified and defined herein as Limited Areas and (11) all structures, structural components, facilities, and appurtenances located outside of the boundary lines of the Condominium Units, except those areas and facilities expressly classified and defined herein as Limited Areas, or as part of the Condominium Unit.

7. Limited Areas and Facilities. Limited Areas and those Condominium Units to which use thereof is limited are as follows:

(a) The halls, corridors, lobbies, stairs, stairways, entrances, and exits of each Building, if any, (except those located within the interior of Condominium Units) shall be limited to the use of the Condominium Units of such Building;

(b) Balconies, patios and porches, storage areas, if any, together with any area around such patios, decks, or porches specifically shown and designated on the Plans, and any fences and gates therein enclosing or surrounding the same, and the driveways and sidewalks serving a particular Condominium Unit shall be limited to the exclusive use of the Condominium Unit to which they are directly accessible, attached, or appertain;

(c) Air conditioning compressors or other heating and air conditioning systems, if any, attached to or located in a Building are limited to the use of the Condominium Unit to which they are connected;

(d) The exterior sides and surfaces of doors, windows, and frames surrounding the same in the perimeter walls in each Condominium Unit shall be limited to the exclusive use of the Condominium Unit to which they appertain;

(e) Structural separations between Condominium Units or the space that would be occupied by such structural separations may become Limited Areas for the exclusive use of the Owners, or Owners of the Condominium Units on either side thereof, as provided in Paragraph 23;

(f) The Garage designated and assigned to a Condominium Unit shall be limited to the exclusive use of the Condominium Unit to which such Garage is designated and assigned; and

(g) Any other areas designated and shown on the Plans as Limited Areas shall be limited to the Condominium Unit or Condominium Units to which they appertain as shown on the Plans.

8. Ownership of Common Areas and Percentage Interest. Each Owner shall have an undivided interest in the Common Areas and Limited Areas equal to his Condominium Unit's Percentage Interest. The Percentage Interest in the Common Areas and Limited Areas appertaining to each Condominium Unit is set forth in Exhibit "D" attached hereto and incorporated by reference herein. The Percentage Interest of each Condominium Unit shall be equal for all purposes and shall be a percentage equal to the number one (1) divided by the total number of Condominium Units that from time to time have been submitted and subjected to the Act and this Declaration as herein provided and that constitute a part of Barrington Place. Except as otherwise provided or permitted herein, the Percentage Interest appertaining to each separate Condominium Unit in the Common Areas and Limited Areas shall be of a permanent nature and shall not be altered, except in compliance with all requirements of the Act. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an Owner's interest in the Common Areas or Limited Areas will be void unless the Condominium Unit to which that interest is allocated is also transferred.

The Percentage Interest appertaining to each Condominium Unit shall also be the Percentage Vote allocable to the Owner thereof in all matters with respect to Barrington Place and the Association upon which the Co-Owners are entitled to vote.

9. Encroachments and Easements for Common Areas. If, by reason of the location, construction, Restoration, settling, or shifting of a Building, any Common Area, or Limited Area now encroaches or shall hereafter encroach upon any Condominium Unit, then in such event an easement shall be deemed to exist and run to the Co-Owners and the Association for the maintenance, use, and enjoyment of such Common Area or Limited Area.

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

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

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

(a) Partial Destruction of Buildings. In the event that less than all of the Buildings and Garage Buildings are completely destroyed by the occurrence of fire or by other cause, then the Association shall cause the Property to be promptly repaired and restored in accordance with this Declaration and the original Plans and specifications. The proceeds of the insurance carried by the Association shall be applied to the cost of such Restoration. If the insurance proceeds are not adequate to cover the cost of Restoration, or in the event there are no proceeds, the cost of Restoration of the Buildings or Garage Buildings shall be shared and paid by all of the Owners of the Condominium Units and Garages so damaged or destroyed in proportion to the ratio that the percentages of each Condominium Unit bears to the total Percentage Interest of all Condominium Units so damaged or destroyed. If any Owner or Owners refuses or fails to make the required payments, the other Owners shall (or the Association if such other Owners fail to do so) complete the Restoration and pay the cost thereof, and the cost attributable to the Owner or Owners who refuse or fail to make such payments at the time required by the Board of Directors shall become a lien on such defaulting Owner's Condominium Unit and may be foreclosed in the same manner as provided for the lien for Common Expenses.

(b) In the Event of Complete Destruction of the Buildings. In the event of complete loss or destruction of all the Buildings and Garage Buildings (i) this Regime shall terminate, (ii) the proceeds of the insurance carried by the Association shall be divided among the Co-Owners proportionately according to the fair market value of all the Condominium Units immediately before the damage as compared with all other Condominium Units, and (iii) the Property shall be deemed owned in common by the Co-Owners and the provisions of Section 19, Section 21, and Section 28 of the Act shall apply. In the event it is determined under Paragraph 10(c) below that there is not a complete destruction of all Buildings and Garage Buildings shall be repaired and restored and the proceeds of the insurance shall be applied in accordance with Paragraph 10(a) above.

(c) Determination of Complete Destruction of the Buildings. It shall be conclusively presumed that complete destruction of all Buildings and Garage Buildings did not occur unless it is determined by a Constitutional Majority at a special meeting of the Association held within one hundred twenty (120) days following the date of damage or destruction that all Buildings have been completely destroyed, together with written consents of a seventy-five percent (75%) Majority of Mortgagees.

(d) Building Restoration Encroachments. Encroachments upon or in favor of Condominium Units which may be created as a result of Restoration shall not constitute a claim or basis of a proceeding or action by the Owner upon whose property such encroachment exists, provided that such Restoration was either substantially in accordance with the Plans and specifications or as the Buildings were originally constructed. Such encroachments shall be allowed to continue in existence for so long as the Buildings stand.

(e) Maximize Insurance Recovery Provision. If any insurance proceeds which could otherwise be recoverable by the Association or any Owners would not be recoverable because of any provision(s) of this Declaration or the By-Laws, such provision(s) shall be inoperative to the extent necessary to maximize the recovery of insurance proceeds.

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

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

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

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

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

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

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

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

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

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

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

tax or special assessment lien in favor of any governmental taxing or assessing authority, and any assessments made pursuant to this Declaration or the By-Laws.

(e) Reorganization. In the event a partial taking results in the taking of a complete Condominium Unit, the Owner thereof shall automatically cease to be an Owner and a member of the Association. Thereafter, the Board of Directors shall reallocate to the remaining Owners, pro-rata, the Percentage Interest and Percentage Vote of such Owner. Such reallocation shall be submitted by the Board of Directors to the Owners of the remaining Condominium Units for approval by a Constitutional Majority thereof and appropriate amendment of this Declaration, but any such amendment to be effective must be approved by a seventy-five percent (75%) Majority of Mortgagees.

(f) Restoration and Repair. Anything to the contrary in this Paragraph 11 notwithstanding, in the event that less than the entire Property is taken or condemned, or sold, or otherwise disposed of in lieu of or in avoidance thereof, and any Condominium Unit, Common Area, or Limited Area may reasonably be restored or repaired, as determined by an independent licensed architect or engineer employed by the Board of Directors for making such determination or by a seventy-five percent (75%) Majority of Mortgagees, the amount, if any, of the Condemnation Award allocable to the taking of or injury to the Common Areas and the Limited Areas and to severance damages shall be applied to the cost of Restoration or repair of such Common Area and/or Limited Area, and the amount, if any, allocable to the taking of or injury to a particular Condominium Unit that may be restored or repaired shall be applied to the cost of such Restoration or repair. If any amount of the Condemnation Award then remains, such amount shall be allocated and disbursed in accordance with the provisions of subparagraph (d) above. If the amount of the Condemnation Award is insufficient to cover the cost of any such Restoration or repair, the provisions of Paragraph 10(a) shall apply.

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

12. Association of Owners. Subject to the rights of Declarant reserved in Paragraph 16 hereof, the maintenance, repair, upkeep, replacement, administration, management, and operation of the Property shall be by the Association. Each Owner shall automatically, upon becoming an Owner of a Condominium Unit, be and become a member of the Association and

shall remain a member until such time as his ownership ceases, but membership shall terminate when such Person ceases to be an Owner and will be transferred to the new Owner.

The Association shall elect a Board of Directors annually (except for the Initial Board) in accordance with and as prescribed by the By-Laws. Each Owner shall be entitled to cast his Percentage Vote for the election of the Board of Directors, except for the Initial Board who shall serve for the period provided in the By-Laws. Each Person serving on the Initial Board, whether as an original member thereof or as a member thereof appointed by Declarant to fill a vacancy, shall be deemed a member of the Association and an Owner solely for the purposes of the Statute and qualifying to act as a member of the Board of Directors and for no other purpose. No such Person serving on the Initial Board shall be deemed or considered a member of the Association nor an Owner for any other purpose (unless he is actually an Owner and thereby a member of the Association).

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

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

13. Covenants and Restrictions. The covenants and restrictions applicable to the use and enjoyment of the Condominium Units, the Common Areas, and Limited Areas are set forth in the By-Laws and the Common Area Easement and Maintenance Agreement attached hereto and incorporated by reference herein as Exhibit "F", including the limitation that each of the Condominium Units shall be limited to residential use. These covenants and restrictions are for the mutual benefit and protection of the present and future Owners and shall run with the land and inure to the benefit of and be enforceable by any Owner or by the Association. Present or future Owners or the Association shall be entitled to injunctive relief against any violation or attempted violation of these provisions and shall be entitled to damages for any injuries resulting from any violations thereof, but there shall be no right of reversion or forfeiture of title resulting from such violation.

Notwithstanding anything to the contrary contained herein or in the By-Laws, including, but not limited to, any covenants and restrictions set forth in the By-Laws, Declarant shall have, until the date described in Paragraph 16 hereof as the date upon which Declarant's right to expand the Property and Barrington Place terminates, the right to use and maintain any Condominium Units and Garages owned and retained by Declarant, such other portions of the Property (other than individual Condominium Units owned by Persons other than Declarant) and any portions of the Real Estate not then part of the Property, all of such number and size and at such locations as Declarant in its sole discretion may determine, as Declarant may deem

advisable or necessary in its sole discretion to aid in the construction and sale of Condominium Units, or to promote or effect sales of Condominium Units or for the conducting of any business or activity attendant thereto, including, but not limited to, model Condominium Units, storage areas, construction yards, signs, construction offices, sales offices, management offices and business offices. Declarant shall have the right to relocate any or all of the same from time to time as it desires. At no time shall any of such facilities so used or maintained by Declarant be or become part of the Common Areas, unless so designated by Declarant, and Declarant shall have the right to remove the same from the Property at any time.

14. Amendment of Declaration. Except as otherwise provided in this Declaration, amendments to this Declaration shall be proposed and adopted in the following manner:

(a) Notice. Notice of the subject matter of the proposed amendment shall be included in the notice of any meeting at which the proposed amendment is considered.

(b) Resolution. A resolution to adopt a proposed amendment may be proposed by the Board of Directors or Owners having in the aggregate at least a majority of the Percentage Vote.

(c) Meeting. The resolution concerning a proposed amendment must be adopted by the designated vote at a meeting duly called and held in accordance with the provisions of the By-Laws.

(d) Adoption. Except as otherwise provided herein, any proposed amendment to this Declaration must be approved by a Majority of Owners.

(e) Restrictions on Amendments.

(i) The consent of a Constitutional Majority and the approval of a seventy-five percent (75%) Majority of Mortgagees shall be required to terminate the Regime.

(ii) The consent of a Constitutional Majority and the approval of a seventy-five percent (75%) Majority of Mortgagees shall be required to amend materially any provisions of the Declaration, By-Laws, or equivalent organizational documents of the Regime or to add any material provisions thereto which establish, provide for, govern, or regulate any of the following:

(A) voting;

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

- (C) reserves for maintenance, repair, and replacement of the Common Areas;
- (D) insurance or fidelity bonds;
- (E) rights of use of the Common Areas;
- (F) responsibility for maintenance and repair of the several portions of the Property;
- (G) expansion or contraction of the Regime or the addition, annexation, or withdrawal of property to or from the Regime except as provided for in Paragraph 16;
- (H) boundaries for any Condominium Unit;
- (I) the interest in the Common Areas or Limited Areas;
- (J) convertibility of Condominium Units into Common Areas, or Common Areas into Condominium Units;
- (K) leasing of Condominium Units;
- (L) imposition of any right of first refusal or similar restriction on the right of an Owner to sell, transfer, or otherwise convey his or her Condominium Unit; or
- (M) restoration or repair of the Property after damage or partial condemnation in a manner other than as specified herein or in the By-Laws.

(iii) The consent of a Constitutional Majority and the approval of a seventy-five percent (75%) Majority of Mortgagees shall be required to amend any provisions included in the Declaration, By-Laws, or the equivalent organizational documents of the Regime that are for the express benefit of such Mortgagees or any insurer or guarantor.

(f) Recording. Each amendment to the Declaration shall be executed by the President and Secretary of the Association, provided that any amendment requiring the consent of Declarant shall contain Declarant's signed consent. All amendments shall be recorded in the office of the Recorder of Monroe County, Indiana, and such amendment shall not become effective until so recorded.

(g) Amendments by Declarant Only. Notwithstanding the foregoing or anything elsewhere contained herein, the Declarant shall have the right, acting alone and without the consent or approval of the Co-Owners, the Association, the Board of Directors, any mortgagees, or any other person, to amend or supplement this Declaration from time to time if (i) such amendment or supplement is necessary to conform this Declaration to the Act, as amended from time to time, or (ii) such amendment or supplement is made to implement expansion of the Property and Barrington Place pursuant to Declarant's reserved rights to expand the same as set forth in Paragraph 16 hereof, or (iii) such amendment is necessary to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing & Urban Development, the Federal Housing Administration, the Veteran's Administration, or any other governmental agency or any other public, quasi-public, or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages, (iv) such Amendment to the Plans are set forth in Paragraph 29, or (v) if such amendment or supplement is made to correct clerical or typographical errors. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to the Declarant to vote in favor of, make, or consent to any amendments described in this Paragraph 14 on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, or other instrument affecting a Condominium Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of, the power to the Declarant to vote in favor of, make, execute, and record any such amendment, but the right of the Declarant to act pursuant to rights reserved or granted under this Paragraph 14 shall terminate at such time as the Declarant no longer holds or controls title to any part or portion of the Real Estate.

15. Acceptance and Ratification. All present and future Owners, mortgagees, tenants, and occupants of the Condominium Units shall be subject to and shall comply with the provisions, the Declaration, the Act, the By-Laws, and the rules and regulations as adopted by the Board of Directors as each may be amended or supplemented from time to time. The acceptance of a deed of conveyance or the act of occupancy of any Condominium Unit shall constitute an agreement that the provisions of this Declaration, the Act, the By-Laws, and rules and regulations as each may be amended or supplemented from time to time are accepted and ratified by such Owner, tenant, or occupant, and all such provisions shall be covenants running with the land and shall bind any person having at any time any interest or estate in a Condominium Unit or the Property as though such provisions were recited and stipulated at length in each and every deed, conveyance, mortgage or lease thereof. All persons, corporations, partnerships, trusts, associations, limited liability companies, or other legal entities who may occupy, use, enjoy, or control a Condominium Unit or Condominium Units or any part of the Property in any manner shall be subject to the Declaration, the Act, the Statute, the

By-Laws, and the rules and regulations applicable thereto as each may be amended or supplemented from time to time.

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

(a) The real estate described and defined herein as the Tract (as described in Exhibit "B") is the real estate being subjected to the Regime by this Declaration and constitutes the first phase of the General Plan of development of the Real Estate attached hereto and incorporated by reference herein as Exhibit "E". The balance of the Real Estate is the area into which expansion of Barrington Place may be made by Declarant. The maximum number of Condominium Units which may be developed on the Real Estate, including the thirteen (13) Condominium Units on the Tract as defined in this original Declaration, shall be one hundred forty-one (141). Subject to said limit as to the maximum number of Condominium Units to be developed on the Real Estate and applicable zoning ordinances, Barrington Place may be expanded by Declarant to include additional portions of the Real Estate (as described in Exhibit "A-1 and A-2") in one (1) or more additional sections by the execution and recording of one (1) or more Supplemental Declarations; provided, however, that no single exercise of such right and option of expansion as to any part or parts of the Real Estate shall preclude Declarant from thereafter from time to time further expanding Barrington Place to include other portions of the Real Estate, and such right and option of expansion may be exercised by Declarant from time to time as to all or any portions of the Real Estate so long as such first expansion is made on or before five (5) years from date of recording hereof, and a time limit of not exceeding seven (7) years in which all phases may be added to the Regime from date of recording hereof. Such expansion is entirely at the discretion of Declarant and nothing contained in this original Declaration or otherwise shall require Declarant to expand Barrington Place beyond the Tract (as described in Exhibit "B") or any other portions of the Real Estate which Declarant may voluntarily and in its sole discretion from time to time subject to this Declaration by Supplemental Declarations as provided above.

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

(c) Simultaneously with the recording of Supplemental Declarations expanding Barrington Place, Declarant shall record new Plans as required by the Act. Such Supplemental Declarations shall also include provisions reallocating Percentage Interests so that the Condominium Units depicted on such new Plans shall be allocated Percentage Interests in the Common Areas on the same basis as the Condominium Units depicted in the prior Plans. Such reallocation of Percentage Interests shall vest when the Supplemental Declaration incorporating those changes has been recorded.

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

(e) In furtherance of the foregoing, a power coupled with an interest is hereby granted to the Declarant, as attorney-in-fact, to shift the Percentage Interest in the Common Areas and Limited Areas appurtenant to each Condominium Unit to the percentages set forth in each Supplemental Declaration recorded pursuant to this Paragraph 16. Each deed, mortgage, or other instrument with respect to a Condominium Unit, and the acceptance thereof, shall be deemed a consent to and an acknowledgment and grant of (i) such power to said attorney-in-fact and (ii) the right pursuant to such power to shift and reallocate from time to time the percentages of ownership in the Common Areas and Limited Areas appurtenant to each Condominium Unit to the percentages set forth in such recorded Supplemental Declaration.

(f) Each Owner of a Condominium Unit, by acceptance of a deed thereto, further acknowledges, consents, and agrees, as to each such recorded Supplemental Declaration as follows:

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

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

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

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

(v) The Percentage Interest in the Common Areas and Limited Areas appurtenant to each Condominium Unit shall include and be deemed to include any additional Common Areas included in the Real Estate to which Barrington Place is expanded by a recorded Supplemental Declaration, and each deed, mortgage, or other instrument affecting a Condominium Unit shall be deemed to include such additional Common Areas and Limited Areas and the ownership of any such Condominium Unit and lien of any such mortgage shall automatically include and attach to such additional Common Areas as such Supplemental Declarations are recorded.

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

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

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

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

(x) Assessments, method of payment, and enforcement thereof on Condominium Units built as an expandable Condominium Unit pursuant to any Supplemental Declaration shall be governed by the same provisions pertaining to assessments as set forth in the By-Laws.

(xi) Voting rights of an Owner in an expandable Condominium Unit created by Supplemental Declaration shall vest upon becoming a member of the Association as prescribed by the By-Laws.

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

17. Granting of Permits, Licenses, and Easements. The Association is granted the authority to grant permits, licenses, and easements over the Common Areas for utilities, roads, access, use, and other purposes necessary for the proper operation of the Property, upon such terms and conditions and for such consideration as it deems appropriate.

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

(a) Common Areas. In addition to the rights to the use of the Common Areas set forth in Exhibit "F" if, at any time and from time to time, any portion of the Real Estate has not been subjected and submitted to this Declaration or to the Act by a Supplemental Declaration, and such portion or portions of the Real Estate not so subjected to the Declaration or to the Act is/are developed with single or multi-family dwelling units (whether for rent or otherwise), then the owner or owners of such portions of the Real Estate shall have the benefit of the Common Areas or portions thereof, to include the yards, gardens, ponds, waterscapes, open spaces, landscaping, waterscaped ponds, sidewalks, walkways, paths, driveways, parking areas and any permanent easements granting use and enjoyment to the same, and utilities for the use of the Persons occupying such dwelling units upon the same terms and conditions as the use of such Common

Areas by the Owners of the Condominium Units, their families, tenants, and guests. The owners of such portions of the Real Estate shall pay their proportionate share for the use of such facilities based on the cost of operation and maintenance of such facilities for the year of such usage, such proportionate share being equal to the number of such dwelling units so entitled to utilize such facilities divided by the total number of such dwelling units and Condominium Units on the Real Estate. The owners of such dwelling units shall make payments for the usage provided herein to the Association at the same time and the same manner as the Owners of the Condominium Units pay their assessments to the Association.

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

19. Easement for Utilities and Public and Quasi Public Vehicles. All public and quasi public vehicles, including, but not limited to, police, fire, and other emergency vehicles, trash and garbage collection, post office vehicles, and privately-owned delivery vehicles, shall have the right to enter upon the streets, Common Areas, and Limited Areas of Barrington Place in the performance of their duties. An easement is also granted to all utilities and their agents for installation, replacement, repairing, and ingress, egress, installation, replacement, repairing, and maintaining of such utilities, including, but not limited to, water, sewers, gas, telephones, cable television, and electricity on the Property; provided, however, nothing herein shall permit the installation of sewers, electric lines, water lines, telephone lines, cable television lines, or other utilities, except as initially designed and approved by Declarant or as thereafter may be

approved by the Board of Directors. By virtue of this easement the cable television, electric, and telephone utilities are expressly permitted to erect and maintain the necessary equipment on the Property and to affix and maintain cable television, electric, and telephone wires, cables, circuits, and conduits on, above, across, and under the roofs and exterior walls of the Buildings.

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

The Initial Board may extend the management agreement beyond the Applicable Date providing the contract includes a right of termination without cause that the Association can exercise at any time after the Applicable Date. Such right of termination shall not require the payment of any penalty or an advance notice of more than ninety (90) days. Both the term and termination provisions apply only to professional management contracts and not to any other types of service contracts.

21. Assessments and Limitation on Declarant's Liability for Assessments. Co-Owners are obligated to contribute pro rata in the same percentages as their established Percentage Interest in Common Areas and Limited Areas set forth in Paragraph 8 of this Declaration to the respective, usual, and ordinary maintenance and replacement reserve funds to assure continuous and adequate maintenance of Barrington Place as prescribed by the Act, the assessment procedures and the method of collection and enforcement set forth under the By-Laws and the rules and regulations adopted pursuant thereto as each may be amended from time to time. Assessments on all Condominium Units shall commence no later than sixty (60) days after the closing of the sale of the first Condominium Unit occurs in the Buildings committed by this Declaration to the Regime; such provision shall also apply to assessments for Condominium Units in Buildings committed by Supplemental Declarations. Prior to the Applicable Date, Declarant shall bear all expenses incurred with respect to the Tract arising out of construction or other activities on any portion of the Real Estate not included in the Tract, including, but not limited to, road damage and clean-up of debris caused by construction traffic, connection to any

utility lines or mains located on the Tract, and damage to or deterioration of grass, trees, fences, or other portions of the Property due to construction off site or the state of areas under development. Declarant shall have the same rights and duties on all Condominium Units owned by it as any other Owner.

22. Sale, Lease, or Other Transfer of Condominium Unit by Owners.

(a) Lease. It is in the best interests of all the Owners that those persons residing in Barrington Place have similar proprietary interests in their Condominium Units. For the purpose of maintaining the congenial and permanent residential character of Barrington Place, no Condominium Unit shall be a Nonowner-Occupied Unit without the prior written approval of the Board. All leases shall be (i) in writing, and (ii) shall be entered into for a term of not less than seven (7) days, unless otherwise approved by the Board. No lease may be for less than one (1) entire Condominium Unit. In determining whether to allow an Owner to lease his Unit, the Board may consider:

- (i) the total number of (leased) Nonowner-Occupied Units;
- (ii) the total number of Nonowner-Occupied Units on which there are federally-insured mortgages;
- (iii) the number of federally-insured mortgages unit foreclosures within the most recent twelve (12) month period in Barrington Place;
- (iv) the number of conventional mortgage unit foreclosures within the most recent twelve (12) month period in Barrington Place;
- (v) the increase or decrease in fair market value of the Condominium Units within the most recent twelve (12) month period; and
- (vi) other factors affecting the fair market value and marketability relative to similar real estate in the area.

Any lease shall be made explicitly subject to the terms of this Declaration and the By-Laws and must be approved by the Board.

(b) Lease Limitations. Based on the sole judgment and discretion of the Board, if the fair market value of the Condominium Units is determined to be decreasing or if the appreciation of the Condominium Units are determined to be reduced or hindered relative to that of similar real estate in the area due to the number of (leased) Nonowner-Occupied Units or due to the length of short-term or long-term leases, the Board may:

- (i) limit the period of any Nonowner-Occupied Unit to a maximum of twelve (12) consecutive months;
- (ii) disapprove any lease; or
- (iii) take other appropriate action to preserve and enhance the value of the Condominium Units and the Property.

(c) Fannie Mae Compliance. Notwithstanding any other provision herein, the Board shall comply with the Selling Guidelines of the Federal National Mortgage Association, with respect to leasing restrictions.

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

23. Right to Combine Units. Two (2) or more adjoining Condominium Units may be utilized by the Owner or Owners thereof as if they were one Condominium Unit, or three (3) Condominium Units may be constructed or structurally altered into two (2) Condominium Units and any walls, floors, or other structural separations between any such Condominium Units, or any space that would be occupied by such structural separations but for the utilization of the Condominium Units as one Condominium Unit, may, for as long as the Condominium Units are utilized as one, be utilized by the Owner or Owners of the adjoining Condominium Units as Limited Areas, except to the extent that any structural separations are necessary or contain facilities necessary for the support, use, or enjoyment of other parts of the building of which they are a part. At any time, upon request of the Owner of one of such adjoining Condominium Units, any opening between the Condominium Units that, but for joint utilization of the two Condominium Units, would have been occupied by a structural separation, shall be closed, at the equal expense of the Owners of each of the Condominium Units, and the structural separations between the Condominium Units shall thereupon become Common Areas. To the extent that a Condominium Unit is enlarged as immediately above set forth, the percentage of assessment shall correspondingly be increased in the same manner as the percentage interest in Common Areas and the Percentage Vote allocable to the Owner thereof in all matters with respect to Barrington Place and the Association as the same are defined in this Declaration and the By-Laws.

24. Right of Action and Enforcement. Subject to the provisions of Paragraph 30, the Association and any aggrieved Owner shall have a right of action against any Owner or Owners for failure to comply with these provisions of the Declaration, By-Laws, or any rules, regulations, or decision of the Association or its Board of Directors which are made pursuant to authority granted to the Association or its Board of Directors in such documents. Owners shall have a similar right of action against the Association. The provisions of this Declaration, the By-laws, the Articles, the Act, the Statute, or the rules and regulations adopted pursuant

thereto as each may be amended from time to time may be enforced by the Association or by any aggrieved Owner through court proceedings for injunctive relief, for damages or for both.

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

26. Waiver. No Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or Limited Areas or by abandonment of the Condominium Unit.

27. Severability Clause. The invalidity of any covenant, restriction, condition, limitation, or other provisions of this Declaration or the By-Laws filed herewith shall not impair or affect in any manner the validity, enforceability, or effect of the rest of this Declaration or the attached By-Laws.

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

29. Floor Plans. Simultaneously (or before) the recording of this Declaration or subsequent Supplemental Declarations, the Plans setting forth with relation to lot lines, the layout, location, identification numbers, and dimensions of the Condominium Units, Buildings, and the Property shall be filed in the office of the Recorder of Monroe County, Indiana, in Horizontal Property Plan. The Plans shall bear the verified statement of a registered architect or licensed professional engineer certifying that the Plans are an accurate copy of portions of the Plans of the Buildings as filed with and approved by the municipal or other governmental subdivision having jurisdiction over the issuance of permits for construction of the Buildings ("Verified Statement"). If the Plans do not include a Verified Statement, the Declarant shall record, prior to the first conveyance of any Condominium Unit in such Buildings, an Amendment to this Declaration to which such Verified Statement that Plans theretofore filed or being filed simultaneously with such Amendment fully and accurately depict the layout, unit number, and dimensions of the Condominium Units as built.

30. Exculpation. This instrument is executed and delivered on the express condition that anything herein to the contrary notwithstanding, each and all of the representations, covenants, undertakings, and agreements herein made on the part of Declarant ("Representations"), while in form purporting to be the Representations of Declarant, are nevertheless each and every one of them made and intended not as personal Representations by

Declarant or for the purpose or with the intention of binding Declarant personally, but are made and intended for the purpose of binding only the Tract; and no personal liability or personal responsibility is assumed by nor shall at any time be asserted or enforceable against Declarant personally or its directors and officers, on account of this instrument or on account of, in connection with, or arising out of any Representations of Declarant in this instrument contained, either express or implied, all such personal liability, if any, being expressly waived and released by each Person who acquires any interest in a Condominium Unit as a condition to the acquisition thereof.

31. Mortgagees' Rights.

(a) Priority to Right of First Refusal. Any right of first refusal now or hereafter contained in this Declaration or the By-laws shall not impair the rights of any Mortgagee to:

(i) Foreclose or take title to a Unit pursuant to the remedies provided in the mortgage, or

(ii) Accept a deed or assignment in lieu of foreclosure in the event of default by the owner, or

(iii) Sell or lease a Unit acquired by such mortgagee.

(b) Other Priority Rights. Notwithstanding any other provisions in this Declaration to the contrary, unless a Constitutional Majority and a seventy-five percent (75%) Majority of Mortgagees have given their prior written approval, the Association shall not:

(i) By act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer the Tract, Common Areas, Limited Areas, or improvements located thereon which are owned or controlled directly or indirectly by the Association for the benefit of the Units. The granting of easements for public utilities or for other public purposes consistent with the intended use of the Tract by the Association shall not be deemed a transfer within the meaning of this clause.

(ii) By act or omission, change, waive, or abandon any scheme or regulation or enforcement thereof pertaining to the architectural design or exterior appearance of the Units, the exterior maintenance of the Units, the maintenance of party walls or common fences, driveways, or the upkeep of lawns and plantings on the Tract.



STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF MONROE     )

Before me, the undersigned Notary Public in and for said County and State, personally appeared \_\_\_\_\_, the President of Tamarron Condominium Development Corporation and acknowledged his execution of the foregoing Declaration of Horizontal Property Ownership.

WITNESS my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

Signature \_\_\_\_\_

Printed Frank A. Hoffman

My Commission Expires:

March 18, 1998

My County of Residence:

Hamilton

STATE OF INDIANA        )  
                                  ) SS:  
COUNTY OF MONROE     )

Before me, the undersigned Notary Public in and for said County and State, personally appeared Dennis Copenhaver, the Secretary of Tamarron Condominium Development Corporation and acknowledged her execution of the foregoing Declaration of Horizontal Property Ownership.

WITNESS my hand and Notarial Seal this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

Signature \_\_\_\_\_

Printed Frank A. Hoffman

My Commission Expires:

March 18, 1998

My County of Residence:

Hamilton

This document prepared by Frank A. Hoffman, Attorney at Law, Krieg DeVault Alexander & Capehart, One Indiana Square, Suite 2800, Indianapolis, Indiana 46204.

SS-18572-1

Exhibit "A-1"

BARRINGTON PLACE HORIZONTAL PROPERTY REGIME  
LEGAL DESCRIPTION

Exhibit "A-2"

BARRINGTON PLACE HORIZONTAL PROPERTY REGIME  
LEGAL DESCRIPTION

**Declaration**  
**Exhibit "B"**

**BARRINGTON PLACE HORIZONTAL PROPERTY REGIME**

**Section \_\_\_\_ - Land Description**  
**(Building C)**

**Declaration**  
**Exhibit "C"**

**DESCRIPTION OF BUILDING AND CONDOMINIUM UNITS**

The Building on the Tract as of the date of this Declaration is identified and referred to in the Plans as Building C. The Building is a two-story structure of vinyl and brick exterior siding with combination wood and concrete flooring and framing.

Building C contains a total of thirteen (13) Condominium Units as set forth in the Plans.

**Declaration**  
**Exhibit "D"**

**DESCRIPTION OF PERCENTAGE INTERESTS OF CONDOMINIUM UNITS**

The Percentage Interest appertaining to each of the respective Condominium Units is \_\_\_% as of the date of this Declaration. Such Percentage Interests are subject to adjustment and alteration upon expansion of Barrington Place as provided in this Declaration.

**Declaration**  
**Exhibit "E"**

**GENERAL PLAN**

	<u>Page</u>
Detailed Development Plan	E-1
Conditional Final Plat	E-2

**ADDENDUM TO  
DECLARATION OF HORIZONTAL PROPERTY OWNERSHIP  
FOR  
BARRINGTON PLACE  
HORIZONTAL PROPERTY REGIME**

Pursuant to Indiana Code 32-1-6-12 the reference to the instrument number, plat cabinet and date of record of the floor plans of the building affected by this Declaration is as follows:

Instrument number \_\_\_\_\_, in plat cabinet number \_\_\_\_, slide \_\_\_\_ in the Office of the Recorder of Monroe County, Indiana.