

Boone County, Missouri Unofficial Document

Draft Date: December 29, 1992

549

ATTACHMENTS:

- Exhibit A - Plan of Development (3 pages)
- Exhibit B - Bylaws
- Exhibit C - "Muirfield Plaza Condominiums Block I, a Condominium Plat"

MUIRFIELD PLAZA CONDOMINIUMS

DECLARATION OF CONDOMINIUM, BYLAWS AND INDENTURE OF MUIRFIELD PLAZA CONDOMINIUMS, A CONDOMINIUM.

This Declaration is hereby made, executed and entered into by MUIRFIELD PARTNERSHIP, a Missouri general partnership in which Kersten K. Carlson and Rhonda D. Carlson, husband and wife and Walter A. Beasley (full name Walter Andrew Beasley), a single person, all individuals of Columbia, Boone County, Missouri [mailing address of such partnership: c/o C & C Construction, P. O. Box 1233, Columbia, Missouri 65205] are the sole partners, on behalf of itself and its successors in interest and its assignee(s) of its rights as Declarant hereunder (the said partnership and its successors and assignee(s) as Declarant hereunder being hereinafter referred to, jointly and severally, as "Declarant" or "the Declarant").

WITNESSETH:

BACKGROUND MATERIAL

Declarant is the owner in fee simple of real estate ("the Property") situated in Columbia, Boone County, Missouri, and described as follows:

Parcel A

A tract of land located in the NW 1/4 of Section 36, Township 48 North, Range 13 West, Columbia, Boone County, Missouri, said tract being part of Lot 22, Rockbridge Subdivision, Block 10, as recorded in Plat Book 24, Page 45, records of Boone County, and being more particularly described as follows:

Beginning at the NW corner of said Lot 22; Thence N 88° 26' 00" E, 187.97 feet; Thence along a 47.00-foot radius non-tangent curve to the left, 20.00 feet, said curve having a chord S 13° 45' 25" E, 19.85 feet; Thence S 64° 03' 10" W, 72.09 feet; Thence S 3° 15' 00" E, 98.14 feet; Thence S 86° 45' 00" W, 125.00 feet; Thence N 3° 15' 00" W, 151.00 feet to the Point of Beginning and containing 0.48 acres (20,877 sq. ft.);

Subject, however, to easements, restrictions, covenants, liens, charges and assessments provided for by Declaration of Protective Covenants recorded in Book 935 at Page 447 of the Records of Boone County, Missouri ("the Declaration of Protective Covenants").

[The above-described Property being shown as "PARCEL A" on that Plan of Development, which is annexed hereto as Exhibit A and is hereby incorporated herein by reference. The above-described Property is also shown as "Muirfield Plaza Condominiums Block I" by the Plat attached hereto as Exhibit C.]

Declarant intends that the Property, and the Building now located thereon or to be located thereon or currently under construction thereon, and all improvements and appurtenances of whatsoever kind now or hereafter located thereon, and all rights accruing thereto, including the Units hereinafter described and the

Filed for record on April 2, 1993 at 2:37:41 P.M. in Boone Co. Mo.
Document No. 3992 recorded in Book 935, page 549. Beula Johnson, Recorder of Deeds

Boone County, Missouri Unofficial Document

Common Elements hereinafter described, shall be submitted to the provisions of the Uniform Condominium Property Act of the State of Missouri, as contained in Chapter 448 of the Revised Statutes of Missouri ("the Act"). Declarant, therefore, executes this Declaration of Condominium.

Declarant is also the owner of real estate, which contains the Property hereinabove described. The real estate owned by Declarant, which includes the Property hereinabove first described, is legally described as follows:

Lot Twenty-two (22), Block Ten (10), of ROCKBRIDGE SUBDIVISION, as shown by Plat recorded in Plat Book 24 at Page 45 of the Real Estate Records of Boone County, Missouri.

All of that real estate hereinabove last described, excluding therefrom the Property hereinabove first described (which is hereby committed to the condominium form of ownership by this Declaration), may hereinafter be referred to as "the Annexation Property" or "the Annexation Parcel". DECLARANT MAY (OR MAY NOT) AS DECLARANT, IN DECLARANT'S SOLE, ABSOLUTE, UNLIMITED AND UNMITIGATED DISCRETION, FINDS TO BE APPROPRIATE, ANNEX TO THE CONDOMINIUM PROVIDED FOR HEREBY (AND SUBJECT TO THIS DECLARATION AND THE ACT) ALL OR ANY PORTIONS OF THE ANNEXATION PROPERTY, AND THE BUILDINGS TO BE LOCATED THEREON AND ALL IMPROVEMENTS OR APPURTENANCES OF WHATSOEVER KIND NOW OR HEREAFTER LOCATED THEREON, THEREBY COMMITTING SAME TO THE ACT AND TO THE CONDOMINIUM PROVIDED FOR HEREBY, AND SUBJECTING SAME TO THIS DECLARATION, AND CAUSING THE UNITS LOCATED THEREIN AND THE COMMON ELEMENTS LOCATED THEREIN TO BECOME A PART OF THE CONDOMINIUM PROVIDED FOR HEREBY.

[The Annexation Property as hereinabove described is shown on the Plan attached hereto as Exhibit A as "PARCEL B". Parcel B will contain up to three (3) buildings, which NEED NOT BE BUILT. Portions of Parcel B may or may not be annexed to the Condominium provided for hereby, from time to time, but if they are annexed to the Condominium provided for hereby then they must be developed in accordance with the Plan. Furthermore, if parts of Parcel B are not annexed to the Condominium provided for hereby, the driveway and parking areas, entranceways and exitways, for the entire Parcel, known as Lot 22 of Rockbridge Subdivision, Block 10, as shown by Plat recorded in Plat Book 24 at Page 45 of the Real Estate Records of Boone County, Missouri will be treated as a common area for and Property Used in Common of the entire Development to be placed on the said Lot 22.]

Declarant, therefore, desires and intends that the several owners, mortgagees, occupants and other persons hereafter acquiring any interest in the Property and any part of the Annexation Property which Declarant hereafter annexes to the Condominium provided for hereby, and every part thereof, shall at all times enjoy the benefits of, and shall hold their interests subject to the rights, options, easements, privileges and restrictions as set forth in the Act, and as set forth in this Declaration ("the Declaration"). Declarant does, therefore, hereby establish a plan for ownership in fee simple of real property estates, consisting of the area or space contained in each of the airspace units (hereinafter defined and referred to as "Unit" or "Units") and the improvements on the Property [and any of the Annexation Property hereafter annexed to the Condominium], and a plan for the co-ownership by the individual and separate owners thereof ("the Unit Owners") as tenants in common, of all of the remaining property within the Property [and any of the Annexation Property hereafter annexed to the Condominium by the Declarant], which remaining property is hereinafter defined and referred to as the "Common Elements".

All of the Property and the Annexation Property are subject to a Declaration of Protective Covenants for Muirfield Plaza recorded in Book 935 at Page 447 of the Real Estate Records of Boone County, Missouri ("the Declaration of Protective Covenants"). As stated therein, no assurance whatsoever is given that the Annexation Property or the Annexation Parcel will be annexed to the Condominium provided for hereby or will be developed as a part of the Condominium provided for hereby. However, all Common Elements located on the Property (on the exterior of the Building) and all similar exterior improvements located elsewhere throughout the Annexation Parcel (irrespective of whether the Annexation Parcel is annexed to the Condominium) shall be Property Use in Common as described in such Declaration of Protective Covenants. Therefore, even though portions of the Annexation Property are not annexed to the Condominium, such portions of such Annexation Property (and the Tenants and occupants thereof) and of the Property (and the Tenants and occupants of the Units located within the Building placed on the Property) will have the shared use of, and the mutual use of, the parking lots, parking areas, driveways, entranceways and exitways, and other Property Used in Common, as described in the said Declaration of Protective Covenants. The real estate constituting the Property subjected to the Condominium hereby is, therefore, subjected to certain easements and cross easements in favor of the Annexation Property. These matters are more fully described in Article XXXI below and in the Declaration of Protective Covenants.

A Building has been placed upon the Property hereinabove described ("Parcel A"). Portions of such Building, on the lower level and upper level have been subdivided into two Units, Units 11-A and 12-E. Such existing Units are shown by the Plat attached hereto as Exhibit C. Such Units shall be and they are hereby constituted as Units of the Condominium. The remaining portion of the Building containing such Units is shown by such Plat as Units 11 and 12. Such Units 11 and 12 are actually shall Units or unimproved/uncompleted Units which may hereafter be completed and subdivided into smaller Units. Such Units 11 and 12 may hereafter, be subdivided into one or more additional Units of the Condominium and Common Elements by amendments of this Declaration and of the Plat. All or portions of the areas shown on the Plat as Units 11 and 12, shall, therefore, hereafter be subdivided into smaller Units of the Condominium provided for hereby. All portions of the Building other than Units 11-A and 12-E, and 11 and 12 shall be Common Elements as hereinafter described.

NOW, THEREFORE, Declarant, as the fee simple owner of the Property, and for the purposes hereinabove described, does hereby publish and declare as follows:

ARTICLE I

DEFINITION AND MISCELLANEOUS TERMS AND CONDITIONS

This instrument shall hereafter, for convenience and for purposes of brevity and clarity, be defined and referred to as the "Declaration." For purposes of brevity, certain words, phrases and terms used in this Declaration are defined as follows, and the following terms and conditions shall apply:

Section 1. "Act" means the Uniform Condominium Act, as set forth in Chapter 448 of the Revised Statutes of Missouri, 1983.

Section 2. "Allocated Interest" shall mean the undivided percentage or fractional ownership interest in the Common Elements of each Unit Owner, and the percentage liability of each Unit Owner for the Common Expenses,

Boone County, Missouri

Unofficial Document

552

and the number of votes which the Unit Owner of each Unit is eligible to cast at each meeting of the Unit Owners or Members of the Association. Each Unit shall have attributed thereto an Allocated Interest (an undivided percentage ownership interest) in the Common Elements. There shall be allocated and attributed to the ownership of each Unit within the Condominium at any time, an undivided percentage ownership interest in the Common Elements then contained within the Condominium, and in the Common Expense Liability. The percentage interest (i.e. the Allocated Interest) attributed to each Unit within the Condominium at any time shall be determined on the basis of the ratio of the square footage of the Enclosed Floor Area (as hereinafter defined in this Section 2) allocated to each Unit as compared to the total square footage of the Enclosed Floor Area allocated to all Units then contained within the Condominium. In other words, the Allocated Interest in the Common Elements and Common Expense Liability of the Condominium for a Unit shall be determined by dividing the total square footage of Enclosed Floor Area allocated to that Unit by the total square footage of the Enclosed Floor Area of all Units then contained within the Condominium. The percentage so assigned will, therefore, be changed as a result of an increase or decrease in the number of Units, or as a result of changes in the size of Units, or as a result of the combination or subdivision of Units [for example, subdivision of Unit 11 or Unit 12].

Each Unit, as a part of its Allocated Interest, shall have allocated thereto a number of votes at all meetings of the members of the Association and at all meetings of the Unit Owners. The number of votes allocated to each Unit at any meeting of the Unit Owners or meeting of the members of the Association shall be that number determined by multiplying the number one thousand (1,000) by the percentage Allocated Interest of the Unit in the Common Elements as determined in accordance with the above provisions of this Section 2; provided that the number of votes attributable to each Unit shall be rounded up or down, to the nearest whole number. In other words, there shall always be 1,000 total votes eligible to be cast at any meeting of the members or meeting of the Unit Owners. Each Unit shall have allocated thereto that number of votes determined by multiplying the number 1,000 by the percentage ownership interest in the Common Elements attributable to the Unit, as determined in accordance with the above provisions of this Section 2. The number of votes for a Unit shall be rounded up or down, to the nearest whole number.

"Enclosed Floor Area" (i.e. the areas mentioned in this Section 2), shall be deemed to mean and shall mean and include the square footage of that part of the shell of the Building (based on outside Building measurements) which contains the Unit, [i.e. that portion of the Building containing the Unit] computed on a basis as follows: (i) the Exterior Building walls surrounding a Unit shall be measured from the outside wall surfaces and the area of the Exterior Building Walls will be included in Enclosed Floor Area; and (ii) the Interior walls (common party walls between Units) shall be measured to the center lines of such walls [i.e., one-half the area in such walls shall be included in Enclosed Floor Area]. "Enclosed Floor Area" shall, therefore, be generally based on outside Building measurements (the outside surfaces of Exterior Building walls), with measurements being to the outside surfaces of Exterior Building Walls and to the center of Interior, common party walls; even though the boundaries of the Units are as described in Section 5 of Article III below. "Exterior Walls" and "Interior Walls" are as defined in such Section 5 of Article III. Enclosed Floor Area shall be determined by Declarant's engineer and shall be based upon the outside measurements of the area of that part of the Building containing the Unit itself, and shall not include any parking spaces, porches, patios, attics, unfinished basement space, exterior hallways, or

Boone County, Missouri

Unofficial Document

553

exterior stairways for the Unit. All references in this Declaration to the size or "square footage", or Area or Enclosed Floor Area of a Unit, or of Units, and all references to Area or size of a Unit or the Units, or to "Net Square Feet", shall be deemed to mean "Enclosed Floor Area" as hereinabove defined in this Section 2.

If the Condominium is fully developed, and all of its Buildings are built, and all of the Annexation Property is annexed to the Condominium by the Declarant, then it is anticipated that the Condominium will be developed substantially in accordance with that Plan ("the Plan") which is annexed hereto as Exhibit A and is hereby incorporated herein by reference. Such Plan consists of three (3) pages and shows:

- a. A plot plan for the Property and the Annexation Property (in other words the entire Condominium if it is completed);
- b. A general rendering of the appearance of the front of each of the said Buildings ("the Buildings"); and
- c. A rough diagram of a sample floor plan for one of the Buildings.

If the Condominium is fully completed (which is to say if all Buildings are built and all of the Annexation Property is annexed to the Condominium), then the Condominium will consist of four (4) Buildings, containing approximately 40,000 square feet, of which approximately 38,400 square feet (or roughly 96% per Building) will consist of Enclosed Floor Area allocated to the Units. If only the initial Building on the Property is built, then such Building will contain a total of 10,000 square feet, of which roughly 9,600 square feet would be Enclosed Floor Area allocated to the Units. If only one Building is within the Condominium a Unit containing 2,000 square feet would, therefore, have an allocated interest of $2,000/9,600$ or 0.20833 or 20.833%. As Buildings and Units are added to the Condominium, such percentage allocated interest will be reduced. If the Condominium is fully developed, then it will contain approximately 38,400 square feet of Enclosed Floor Area, and the Allocated Interest of such Unit containing 2,000 square feet would be reduced to $2,000/38,400$ or 0.0520833 or 0.0520833%. The Condominium at the outset consists of four (4) Units, Units 11-A, 12-E, 11 and 12. The Enclosed Floor Areas attributable to each of such Units is set forth on the Plat, and the Allocated Interest of each such Units is set forth on the Plat. As portions of the areas of Units 11 and 12 [which are incomplete shell Units] are completed and subdivided into smaller Units, or Units and Common Elements, they will have an Allocated Interest attached thereto.

NOTICE: The Enclosed Floor Area of a Unit will exceed the actual square footage of the useable space within the Unit as Enclosed Floor Area is based on outside Building measurements, and includes, in addition to useable floor area, the area within Exterior Building Walls and one-half the area within Interior Walls.

Section 3. "Association" shall mean "Muirfield Plaza Condominium Association", an unincorporated association of the Unit Owners, as provided for by Sections 448.3-101, et seq., of the Act, and such other entity as may be subsequently authorized by the Unit Owners as provided in Section 448.3-101 of the Act.

Boone County, Missouri Unofficial Document

554

Section 4. "Association Facilities" shall mean all items or things, whether real or personal, that are now or are hereafter owned in fee simple or leased by the Association.

Section 5. "Building" shall mean that Building now located or to be located or currently being constructed or to be constructed upon the Property, and all additions thereto, and shall also mean each Building containing Units hereafter placed on any portion of the Annexation Property which is annexed to the Condominium by the Declarant, if the Declarant elects to both:

- a. Erect a Building on any portion of the Annexation Property;
- and
- b. Annex such portion of the Annexation Property to the Condominium provided for by this Declaration.

Section 6. "Bylaws" shall mean those Bylaws of the Association, a copy of which is annexed hereto as Exhibit B and is incorporated herein by this reference the same as though fully set forth herein.

Section 7. "Common Elements" shall mean all portions of the Property except the Units. The Common Elements are more fully described in ARTICLES III and IV below.

Section 8. "Common Expenses" shall mean expenditures made by, and the financial liabilities of the Association, together with any allocations to reserves, including, but not limited to:

- A. Expenses of administration and management, maintenance, repair, replacement, servicing and upkeep of the Common Elements and of the Association;
- B. All sums lawfully assessed against the Common Elements by the Executive Board or the Managing Agent, or any governmental authority, including, but not limited to, real estate taxes;
- C. Expenses agreed upon as Common Expenses by the Unit Owners;
- D. Expenses declared to be Common Expenses by the provisions of this Declaration, its amendments, and the Bylaws of the Association.

Section 9. "Common Expense Liability" shall mean that portion of the Common Expenses which is to be paid by each Unit Owner. Each Unit Owner's Common Expense Liability shall be determined by multiplying the sum of the Common Expenses by the Allocated Interest attributed to the Unit owned by the Unit Owner. In other words, the Unit Owners shall share all Common Expenses on the basis of their Allocated Interests as determined in accordance with Section 2 of this Article I.

Section 10. "Condominium" shall mean the Property [and any of the Annexation Property hereafter annexed to the Condominium] and all Buildings, Units, Common Elements and improvements thereon, and all property and space thereon, and all improvements and structures now or hereafter erected, constructed or contained therein or thereon, including the Buildings, and all additions thereto, and including the Units and the Common Elements, and all

easements, rights and appurtenances belonging thereto, and all fixtures and equipment intended for the mutual use, benefit or enjoyment of the Unit Owners, all of which are submitted hereby to the provisions of the Act. The Condominium shall, therefore, mean the Development ("the Development") or the Project ("the Project") established hereby and to be governed hereby.

Section 11. "Declarant" shall mean Muirfield Partnership, a Missouri general partnership in which Kersten K. Carlson, and Rhonda D. Carlson, husband and wife, and Walter A. Beasley (full name Walter Andrew Beasley), a single person, all individuals of Columbia, Boone County, Missouri, are the partners, and its successors and assigns.

Section 12. "Declaration" shall mean this instrument by which the Property is submitted to the provisions of the Act.

Section 13. "Declarant Control Period" shall mean that period commencing on the date of this Declaration and continuing until the earlier of (i) the fourth (4th) annual anniversary date of the date the Declarant has ceased to offer any Units within the Condominium for sale, or (ii) the date upon which Declarant surrenders control of the Condominium, by recording a written instrument to such effect in the real estate records of Boone County, Missouri, or (iii) four (4) years after any Development Right of the Declarant to add new Units to the Condominium, or to create new Units within the Condominium, was last exercised, or (iv) the date sixty (60) days after the Declarant has conveyed to Unit Owners other than the Declarant Units containing seventy-five percent (75%) of the maximum anticipated Enclosed Floor Area which may be allocated to all Units of the Condominium if the Condominium is fully developed and completed, which such maximum Enclosed Floor Area shall be approximately (although there might be slight variations) of 38,400 square feet [75% of 38,400 square feet is 28,800 square feet]. Within sixty (60) days after the conveyance of Units having allocated thereto 9,600 square feet [25% of the anticipated square footage of the maximum Enclosed Floor Area, if the Condominium is fully developed], not less than one member of the Executive Board shall be a Unit Owner (or Owner of an interest in a Unit or a partner or executive officer of a Unit Owner) elected by the Unit Owners other than the Declarant. Upon the conveyance to Unit Owners other than Declarant of Units having allocated thereto 19,200 square feet of Enclosed Floor Area (50% of the anticipated maximum Enclosed Floor Area), not less than one-third of the Executive Board shall be Unit Owners (or Owners of such an interest or partners or executive officers of Unit Owners) elected by the Unit Owners other than the Declarant.

Section 14. "Development Rights" shall mean the right or combination of rights reserved by the Declarant as described in ARTICLE XIV below, together with the following:

A. The right to annex all or any portion of the Annexation Property to the Condominium in accordance with the following provisions of this Declaration; and

B. The right to complete the Building to be located upon the Property hereinabove first described in this Declaration, in accordance with the Plans and Specifications therefore; and

C. The right to build a Building or Buildings and other improvements on the various portions of the Annexation Property hereafter annexed to the Condominium and to subdivide such Buildings and the Annexation

Boone County, Missouri
Unofficial Document 556

Property into Units (which will become Units of the Condominium) and Common Elements; and

D. The right to subdivide Units 11 and 12 as shown by the Plat into Units and Common Elements by a Plat; and

E. The right to annex or to not annex various portions of the Annexation Property to the Condominium, and to subdivide same and the Building thereon into Units and Common Elements of this Condominium; and

F. The right to develop any portion of the Annexation Property other than as a part of this Condominium; and

G. The right to develop any portion of the Annexation Parcel/Annexation Property which is not annexed to the Condominium in such manner as Declarant in Declarant's sole and absolute discretion finds to be appropriate (which may or may not be in accordance with the Plan - and the Buildings placed thereon may or may not be similar in type and quality to the Buildings previously located in the Condominium); and

H. If any portion of the Annexation Parcel is developed other than as a part of the Condominium and is not annexed to the Condominium, then, in such event, the right to provide all maintenance, repairs, replacements, servicing and upkeep as provided for by the Declaration of Protective Covenants, and to receive payment and reimbursement for all costs and expenses incurred in such respects in the manner provided for by such Declaration of Protective Covenants.

NO OBLIGATION ON THE PART OF THE DECLARANT TO ANNEX ANY PORTION OF THE ANNEXATION PROPERTY TO THE CONDOMINIUM SHALL BE DEEMED TO BE EXPRESSED OR IMPLIED. DECLARANT RESERVES THE RIGHT, IN DECLARANT'S SOLE AND ABSOLUTE DISCRETION, TO ANNEX OR TO NOT ANNEX ALL OR ANY PORTION OF THE ANNEXATION PROPERTY TO THE CONDOMINIUM PROVIDED FOR HEREBY. IF, HOWEVER, ANY PORTION OF THE ANNEXATION PROPERTY IS ANNEXED TO THE CONDOMINIUM PROVIDED FOR HEREBY THEN IT SHALL BE DEVELOPED IN SUBSTANTIAL CONFORMITY WITH THE PLAN AND THE BUILDINGS TO BE PLACED THEREON SHALL HAVE SUBSTANTIALLY THE SAME APPEARANCE AS DOES THE BUILDING PLACED ON THE PROPERTY, AND SHALL BE BUILT WITH SUBSTANTIALLY THE SAME QUALITY OF CONSTRUCTION (AND THE SAME QUALITY OF MATERIALS AND WORKMANSHIP) AS USED IN THE CONSTRUCTION OF THE BUILDING.

DECLARANT MAY DEVELOP PORTIONS OF THE ANNEXATION PROPERTY OTHER THAN AS A PART OF THE CONDOMINIUM (AND SUCH PORTIONS MAY OR MAY NOT BE DEVELOPED IN A MANNER SIMILAR TO THE CONDOMINIUM). IF ANY PORTION OF THE ANNEXATION PARCEL IS DEVELOPED BUT IS NOT ANNEXED TO THE DEVELOPMENT PARCEL, THEN, IN SUCH EVENT, ALL PROVISIONS OF THE DECLARATION OF PROTECTIVE COVENANTS SHALL BE APPLICABLE THERETO AND TO THE PROPERTY, AND ALL COSTS AND EXPENSES OF MAINTAINING, REPAIRING AND REPLACING THE PROPERTY USED IN COMMON SHALL BE SHARED AND PAID IN ACCORDANCE WITH THE TERMS OF SUCH DECLARATION OF PROTECTIVE COVENANTS.

The various portions of the Building and other Buildings will be subdivided into Units as Units are sold, rented or leased by the Declarant. Declarant, therefore, reserves the right to subdivide the Building and each Building into Units and Common Elements.

Section 15. "Executive Board" shall mean the Board of Directors of the Association, which is authorized to act on behalf of the Association in all

Boone County, Missouri

Unofficial Document

557

respects, and which shall manage and govern the Association in accordance with the provisions of this Declaration and the Bylaws.

Section 16. "Limited Common Elements" shall mean those parts of the Common Elements reserved for the exclusive use of one or more, but fewer than all of the Units, and shall include, but not be limited to, those areas designated on the Plat as "Limited Common Elements", and shall further include the Limited Common Elements described in Section 5 of ARTICLE III below and in ARTICLE XXIII below, and the following (if not included within a Unit as a part of a Unit by Section 5 of ARTICLE III below):

- A. Any window boxes for windows for any Unit;
- B. Doorsteps for each Unit;
- C. Awnings serving windows attached to the Units;
- D. Stoops serving a single Unit;
- E. Porches and entrances serving any single Unit;
- F. Balconies, patios, and decks serving any single Unit, or attached to or accessed from a single Unit;
- G. Storage areas for the individual Units, if any;
- H. Shutters serving windows for any single Unit;
- I. Hallways, stairways, entrances, exits and other areas which might normally be considered to be a Common Area or Common Element, but which serve only a single Unit;
- J. If any chute, flue, duct, wire, conduit, bearing wall, bearing column, or any other fixture lies partially within and partially outside the designated boundaries of a Unit, any portion thereof located within the Common Elements and serving only that Unit is a limited Common Element allocated solely to that Unit, and any portion thereof located within a Unit or the Common Elements, and serving more than one Unit or any portion of the Common Elements is a part of the Common Elements;
- K. Any fixtures designed to serve a single Unit, but located outside the Unit's boundaries are Limited Common Elements;
- L. If Declarant elects to provide or to require uniform draperies, blinds or other window coverings for the windows in the Buildings then all of same (such draperies, blinds or other window coverings) shall, even though located within the boundaries of the Units, be and become Common Elements and shall be Limited Common Elements of each of the Units within which same are located.

Limited Common Elements are more fully described in ARTICLES III and XXIII.

Section 17. "Majority" or "Majority of the Unit Owners", except as otherwise defined and used in the Bylaws of the Association, shall mean those Unit Owners, without regard to their number, who own more than fifty percent (50%) in the aggregate of the Allocated Interests of the Condominium. Except as

Boone County, Missouri Unofficial Document

otherwise defined and used in the Bylaws of the Association, any specified percentage of the Unit Owners shall mean those Owners who, in the aggregate, own such specified percentage of the Allocated Interests of the Condominium.

Section 18. "Managing Agent" shall mean any person, corporation or entity who or which may be engaged by the Executive Board to see to the day to day operation and maintenance of the Condominium, in accordance with the policies set from time to time by the Executive Board.

Section 19. "Members" means the members of the Association, and means all Unit Owners (i.e. all persons owning ownership interests in Units, but not including holders of mortgages, deeds of trust, liens, encumbrances or other security interests). The Declarant shall be a member so long as it owns any Units.

Section 20. "Parcel" means the Property which is, at the outset, to be the only Property subject to this Declaration, and which is described as follows:

Parcel A

A tract of land located in the NW 1/4 of Section 36, Township 48 North, Range 13 West, Columbia, Boone County, Missouri, said tract being part of Lot 22, Rockbridge Subdivision, Block 10, as recorded in Plat Book 24, Page 45, records of Boone County, and being more particularly described as follows:

Beginning at the NW corner of said Lot 22; Thence N 88° 26' 00" E, 187.97 feet; Thence along a 47.00-foot radius non-tangent curve to the left, 20.00 feet, said curve having a chord S 13° 45' 25" E, 19.85 feet; Thence S 64° 03' 10" W, 72.09 feet; Thence S 3° 15' 00" E, 98.14 feet; Thence S 86° 45' 00" W, 125.00 feet; Thence N 3° 15' 00" W, 151.00 feet to the Point of Beginning and containing 0.48 acres (20,877 sq. ft.);

The title to which is, however, subject to the reservations, covenants, liens, charges, easements and assessments imposed by the Declaration of Protective Covenants.

[The said Parcel being shown and described as "PARCEL A" on the Plan and is annexed hereto as Exhibit A - it being understood that Parcel B, as shown on Exhibit A hereto, which contains the balance of Lot 22 of Rockbridge Subdivision Block 10 as recorded in Plat Book 24 at Page 45 of the Records of Boone County, Missouri, shall constitute the Annexation Property], and

which, together with the Building to be located or to be located thereon and the improvements located or to be located thereon, is hereby submitted to the provisions of the Act, subject however, to the Declaration of Protective Covenants. In the event all or any portion of the Annexation Property is annexed to the Condominium provided for by this Declaration, then the "Parcel", shall further include all of the Annexation Property, or any part thereof so annexed to the Condominium provided for hereby, together with the Buildings and improvements at any time located thereon, all of which, by such annexation, shall be submitted hereby to the provisions of the Act and this Declaration.

Boone County, Missouri

Unofficial Document

559

Section 21. "Person" means a natural person, corporation, business trust, estate, trust, trustee, partnership, limited partnership, association, joint venture, government, governmental association or agency, or other legal or commercial entity, which is capable of holding title to real estate.

Section 22. "Plan", shall mean that general plan for the development of the Condominium, consisting of three (3) pages, annexed hereto as Exhibit A (Exhibit A-1 through A-3, both inclusive). AS INDICATED HEREIN NO ASSURANCE IS GIVEN THAT ANY PORTION OF THE ANNEXATION PARCEL NOT INCLUDED IN THIS CONDOMINIUM BY ANNEXATION WILL BE DEVELOPED IN ACCORDANCE WITH THE PLAN. DECLARANT RESERVES AS TO ALL REAL ESTATE SHOWN BY THE PLAN AS "SUBJECT TO DEVELOPMENT RIGHTS" THOSE DEVELOPMENT RIGHTS DESCRIBED IN SECTION 14 ABOVE AND IN ARTICLE XIV BELOW.

Section 23. "Plat" shall mean that "Condominium Plat", which is annexed hereto as Exhibit C, and is hereby incorporated herein by reference the same as though fully set forth herein, and any amendments to such Plat hereafter recorded, and any Plat for the Annexation Property, or any part thereof, which is hereafter annexed to the Condominium provided for hereby. That Plat attached hereto as Exhibit C subdivides portions of the Building into Units and Common Elements. The Declarant reserves "Development Rights", as described in ARTICLE XIV below, as to any portions of the Property shown on the Plat as being "Subject to Development Rights", if any, and as to any portions of the Building shown on the Plat as "Subject to Development Rights," if any. In addition, the Declarant reserves the right to complete the Building upon the Property in accordance with the Plan and the Plans and Specifications for the Building, and to thereafter subdivide the Building and any Units within the Building into Units or smaller Units.

The Plat hereinabove referenced in this Section 23 shows four (4) Units, Units 11-A, 12-E, 11 and 12. Units 11 and 12 are incomplete, unfinished areas of the Building. As such areas are finished out they might be subdivided into smaller Units. The Declarant shall have the right (as a part of the Declarant's Development Rights), to, hereafter, at any time or times:

A. Subdivide Units 11 and 12 and any other Units owned by the Declarant (as shown by any Plat) into further and additional and smaller Units or Units and Common Elements;

B. File additional or amended plats which subdivide portions of such Units into smaller Units and/or Common Elements.

It is anticipated that those portions of any Plat which show a Building (or a floor of a Building) will, from time to time, be modified and amended so as to subdivide such Building or floor (including any Units shown by the Plat which are owned by the Declarant) into Units and Common Elements or smaller Units. The Declarant, therefore, reserves the right to amend any Plat, so as to subdivide portions of any Building owned by the Declarant into Units and Common Elements, and/or to subdivide Units owned by the Declarant into smaller Units or Units and Common Elements.

If any portion of the Annexation Property is hereby annexed to the Condominium, then a "Plat" of the type hereinabove described shall be recorded, which subdivides the Annexation Property or such portions thereof, and the Building(s) located thereon, into Units and Common Elements; provided, however, that the Declarant shall, as to such Plat and such Building(s) and such portions

-11-

Boone County, Missouri Unofficial Document 500

of the Annexation Property continue to reserve the right to subdivide Units within the Building(s) owned by the Declarant into smaller Units or Units and Common Elements, and to subdivide various undivided portions of the Building into Units and Common Elements.

It is intended that:

a. A Plat for each Building, including the Building to be placed on the Property, will from time to time be prepared and recorded;

b. Such Plat for each such Building may show various unsubdivided portions of the Building or large Units, which will be owned by the Declarant;

c. The Declarant may as to such unsubdivided portions of a Building, or as to such large Units owned by the Declarant, amend the Plat and this Declaration, from time to time, so as to divide the unsubdivided portions of the Building into Units and/or Common Elements and/or so as to divide larger Units into smaller Units and/or Common Elements, which shall become Units and/or Common Elements of this Condominium;

d. As Units are from time to time sold and rented, amendments of the Plat will from time to time be prepared and recorded so as to identify, as Units of this Condominium, the various Units which are sold and rented.

The Declarant shall, therefore, have the absolute right, at any time or times, to subdivide Units owned by the Declarant into smaller Units, until such Units are sold to persons other than the Declarant, and to cause any part of a Unit owned by the Declarant to become a Common Element.

In accordance with the reservation by the Declarant of the Development Rights hereafter described in ARTICLE XIV, the Declarant further reserves the following rights to amend the Declaration and the Plat as follows:

A. To combine one or more Units into a single Unit;

B. To subdivide a Unit into smaller Units and/or Common Elements;

C. To annex all or any portions of the Annexation Property to the Condominium, and to subdivide the Building(s) located thereon and such portions of the Annexation Property into additional Units of the Condominium and Common Elements, and to thereafter again cause such Units within the Annexation Property to be further subdivided into smaller Units (until the Units are sold by the Declarant) and/or Common Elements.

The Plat shall be amended by the recording by the Declarant of amendments to this Declaration, which will be made and signed solely by the Declarant.

Section 24. "Record" shall mean to record in the office of the Recorder of Deeds of Boone County, Missouri, wherein the Property is located.

Section 25. "Rental Agent" shall mean a person or persons who may be engaged or approved by the Executive Board to see to the day to day rental of Units in accordance with policies set from time to time by the Executive Board and by this Declaration.

Boone County, Missouri

Unofficial Document

561

Section 26. "Office/Retail Purposes" shall mean the use for ordinary and customary office purposes, or retailing and merchandising purposes, and shall exclude use for dwelling purposes or residential purposes.

Section 27. "Special Declarant Rights" means those rights reserved for the benefit of the Declarant to complete improvements indicated on the Plat; to exercise any Development Rights; to maintain sales offices, management offices, and model Units, within the Property and within any Unit; to maintain signs advertising the Condominium, and the Units for sale; to maintain model Units within the Condominium; to use easements through the Common Elements for the purposes of making improvements within the Condominium or within the Property; to use easements through the Common Elements for the purposes of exercising Development Rights hereinafter described; and, during the Declarant Control Period, to appoint or remove any Officer of the Association or any member of the Executive Board, and to create additional Units, and to annex the Annexation Property to the Condominium provided for hereby, as hereinabove described in Section 23, and to create Units of the Condominium on the Annexation Property.

Section 28. "Singular, Plural or Gender". Whenever the context so requires the use of the plural shall include the singular and the singular the plural, and the use of any gender shall be deemed to include all genders.

Section 29. "Unit" means a portion of the Condominium consisting of one Unit. Each Unit is, or shall be designated and delineated on the Plat. Each Unit is designated by this Declaration and the Plat for separate ownership by a separate Unit Owner. The boundaries of each Unit, both as to vertical and horizontal planes, are, or will be as shown on the Plat. Each Unit shall be made up of (and only of) and shall include (and only include) that part of the Building which lies within the boundaries of the Unit as shown by the Plat, which boundaries (regardless of how described on the Plat) shall be deemed to be as described in Section 5 of ARTICLE III below, even though Enclosed Floor Area is based on outside Building measurements.

Section 30. "Unit Owner" means the person or persons, individually or collectively, who have taken fee simple ownership of a Unit. All persons owning ownership interests in any one or more of the Units [but not including mortgagees, beneficial holders under or trustees under Deeds of Trust, or holders of liens or encumbrances or holders of security interests only] shall be "Unit Owners" and members of the Association.

Section 31. "The Plans and Specifications", shall mean the Plans and Specifications for the construction of the Building, which have been prepared or will be prepared by John Simon, an architect of Columbia, Missouri. The Building shall be constructed in substantial conformity with the Plans and Specifications, and in accordance with the applicable building codes and ordinances of the City of Columbia, Missouri. Each of the Buildings shall be constructed in accordance with Plans and Specifications which will provide for construction of a Building of comparable appearance and quality to the Building placed on the Property, which, as hereinabove stated in this Section 31, shall be built in conformity with the Plans and Specifications.

Section 32. "Declaration of Protective Covenants". All references herein to the "Declaration of Protective Covenants" shall mean that Declaration of Protective Covenants, dated the 15th day of October, 1992, executed by Declarant as the Declarant, and recorded in Book 935 at Page 447 of the Real

Boone County, Missouri

Unofficial Document

562

Estate Records of Boone County, Missouri, which such Declaration of Protective Covenants is applicable to the Property and the Annexation Property, from the outset. The land (the Parcel) committed to the Condominium hereby is, therefore, subject to the easements, restrictions, reservations and covenants provided for by the Declaration of Protective Covenants, as is all of the Annexation Parcel. The Parcel (the Property), and the Annexation Parcel and Annexation Property, are collectively referred to in the Declaration of Protective Covenants as the "Development Parcel"; the Development Parcel consisting of Lot 22 of Rockbridge Subdivision, Block 10, as shown by Plat recorded in Plat Book 24, Page 45 of the Records of Boone County, Missouri. The Declaration of Protective Covenants provides that all entrances and exits (including but not limited to those from Peach Way), driveways, walkways, vehicular passageways, parking lots and parking areas, exterior lighting, exterior signs and signage, exterior monuments, exterior improvements (other than the Buildings) of all kinds and types, lawns, trees, shrubs and landscaping, and all other improvements located throughout the Development Parcel (other than the Buildings) shall be Property Used in Common. If all of the Annexation Parcel which is at any time developed is annexed to the Condominium, then the Association shall provide for all maintenance, repairs, replacements, servicing and upkeep of all such Property Used in Common, which shall be and become Common Elements of the Condominium. If any portion of the Annexation Parcel is developed but is not annexed to the Condominium then all Property Used in Common (including any of the Property Used in Common which constitute Common Elements of this Condominium) shall be maintained, repaired, replaced and serviced by (and upkeep for same shall be provided for by) the Declarant or the Declarant's designee, as described in the Declaration of Protective Covenants, and the costs of all such maintenance, repairs, replacements, servicing and upkeep shall be shared in the manner described in the Declaration of Protective Covenants, in which event the Association shall be the Lot Owner as to each Lot (as referred to in the Declaration of Protective Covenants) which has been committed to this Condominium.

ARTICLE II

SUBMISSION OF THE PROPERTY TO THE ACT - ANNEXATION

The Declarant hereby submits the Property, the present and future Units, the Common Elements, and all improvements on the Property, to the Act and this Declaration, subject, however, to the Declaration of Protective Covenants. The Property shall hereafter be known as "Muirfield Plaza Condominiums." As indicated elsewhere in this Declaration, the Declarant reserves the right to annex to this Condominium (or to not annex, as the Declarant, in the Declarant's sole and absolute discretion sees fit), all or any portion of the Annexation Property. Any portion of the Annexation Property hereafter annexed to the Condominium, and the present and future Units thereon, and the Common Elements and all improvements thereon, shall by such Annexation, be submitted to the Act and this Declaration; provided, however, that such submission shall not occur as to any portion of the Annexation Property until such portion is annexed to the Condominium. Any portion of the Annexation Property hereafter annexed to the Condominium shall also be known as, and be included within that Condominium known as "Muirfield Plaza Condominiums." Any Units now or hereafter placed within the portions of the Annexation Property hereafter annexed to the Condominium, shall be "Units" of the Condominium, and all Common Elements located within such portions of the Annexation Property which are hereafter annexed to the Condominium shall be "Common Elements" of the Condominium. If any portion of the Annexation Property is hereafter annexed to the Condominium,

-14-

Boone County, Missouri

Unofficial Document

563

then such portion of the Annexation Property shall, for all purposes under this Declaration, be deemed to be included within the term "Property", and to be a part of the Property. This Declaration shall not have any effect upon, or restrict the use of, any portion of the Annexation Property not annexed to the Condominium.

ARTICLE III

UNITS AND ALLOCATED INTEREST AND COMMON ELEMENTS

Section 1. Division of Property into Separately Owned Units. The Declarant, pursuant to the Act and to establish a plan of condominium ownership for the Units, does hereby divide the Condominium and the Property into those Units now shown on the Plat (and any smaller Units which result from a subdivision of any of such Units), and any additional Units (and any smaller Units resulting from any subdivision of such additional Units) hereafter shown by an amendments to the Plat, and does hereby designate such Units for separate ownership. As indicated above, the Declarant reserves the right to subdivide any Units owned by the Declarant, and shown by the Plat, into Units of a smaller size, which shall become "Units", and/or Common Elements. The Declarant further reserves the right to subdivide any Building on the Property or the Annexation Property into Units and Common Elements by amendments of the Plat and this Declaration, and reserves the right to subdivide existing Units within the Building, and existing portions of the Building, into Units and Common Elements. As hereinabove indicated, the Declarant further reserves the right to annex all or any portion of the Annexation Property to the Condominium, and to place Buildings thereon, and to subdivide such Buildings into Units and Common Elements, by amendments of the Plat. Each Unit shown by the Plat, and any amendment thereto, [including any Units located on any portions of the Annexation Property hereafter annexed to the Condominium] shall constitute a Unit of the Condominium, and is designated hereby for separate ownership.

Section 2. Identification of Units. The Units (including any storage rooms, if any, allocated to such Units) shall be legally described as shown on the Plat. Every deed, lease, mortgage or other instrument may legally describe a Unit by its identifying number, letter or other designation as shown on the Plat, and every such description shall be deemed to be good and sufficient for all purposes, and shall be deemed to convey, transfer, encumber or otherwise affect the Unit Owner's corresponding percentage of ownership ("Allocated Interest") in the Common Elements, and all membership rights in the Association and all voting rights at meetings of the members of the Association and meetings of the Unit Owners, even though the same are not expressly mentioned or described therein. Except as specifically provided in this Declaration to the contrary with respect to the Declarant, no Unit Owner shall by deed, plat, court decree or otherwise subdivide or attempt to subdivide a Unit, or in any other manner separate a Unit into tracts, parcels or Units smaller than the whole Unit as shown on the Plat; provided, however, that the Declarant reserves the right to combine into one or more Units, any Units now owned or hereafter acquired by the Declarant, and to subdivide any Units now or hereafter owned by the Declarant into smaller Units, or Units and Common Elements. The Declarant is entitled to combine Units owned by the Declarant into larger Units, and to so subdivide Units into small Units and/or Common Elements (such combined Units and such small Units shall become "Units" and Common Elements), without the consent of any Unit Owners or the Association, or the Executive Board, or anyone else, and to make and record amendments to this Declaration and the Plat to such effect, but no other Unit Owner shall have such rights.

-15-

Boone County, Missouri

Unofficial Document

564

Section 3. Allocated Interest. Each Unit Owner shall be entitled to the percentage of ownership ("the Allocated Interest") in the Common Elements attributed to his Unit by this Declaration [which such Allocated Interest shall be subject to the Declaration of Protective Covenants], even though the same is not expressly mentioned or described in any deed, lease, mortgage or other instrument by which the Unit Owner acquires ownership of such Unit Owner's Unit. Each Unit Owner shall be entitled to (and shall automatically receive) such Unit Owner's Allocated Interest in the Common Elements appertaining to such Unit, and ownership of a Unit and the Unit Owner's corresponding Allocated Interest of the Common Elements shall not be separated. Each of the Units shall have appertaining thereto an Allocated Interest in the Common Elements. The Allocated Interest for each Unit shall, at any time, be subject to the Declaration of Protective Covenants and shall be determined as follows:

A. A sum equal to the total number of square feet of Enclosed Floor Area [as defined in Section 2 of Article I] allocated to the applicable Unit, as determined from the Plat, and all then effective amendments thereto, shall be determined;

B. A sum equal to the total square footage of Enclosed Floor Area then allocated to all then existing Units of the Condominium, as determined from the Plat and all amendments thereto, shall be determined;

C. That sum determined in accordance with subparagraph A above shall be divided by the sum determined in accordance with subparagraph B above, thereby determining the applicable "Allocated Interest" [i.e. percentage of ownership in the Common Elements] of the applicable Unit.

Therefore, as Units are added to the Condominium by the Declarant, the Allocated Interest attributable to each Unit will be changed. If Units are subdivided, or are combined into a single Unit, the Allocated Interest attributable to such Units will be changed. The Allocated Interest assigned to each Unit will be changed as the result of any increases or decreases in the number of Units, or as the result of a subdivision of Units, or as the result of a combination of Units into a single Unit.

Where the size of any Unit is spoken of in this Declaration, or where the "number of square feet" within the Unit is spoken of in this Declaration, or where "square footage of" a Unit or of all Units is mentioned, all such references shall be deemed to mean and to refer to Enclosed Floor Area, as hereinabove defined and described in Section 2 of ARTICLE I of this Declaration.

All disputes as to Enclosed Floor Area where the amounts or sizes thereof shall be conclusively resolved from the Plat. All determinations of the engineer or surveyor who prepares the Plat as to the number of square feet of Enclosed Floor Area shall be binding upon all Unit Owners.

Section 4. Included Within Units. The description of each Unit shall, in addition to the Unit and the Allocated Interest hereinabove described, further include all rights and privileges of said Unit, along with the assigned storage space and parking spaces, if any, for the Unit. The description of each Unit shall further include all voting rights attributed to the Unit in accordance with this Declaration.

Section 5. Boundaries of Units. Each Unit shall be made up of (and only of) and shall include (and only include) that part of the Building that lies

Boone County, Missouri

Unofficial Document

565

within the boundaries of the Unit as described on the Plat, which boundaries (regardless of how described on the Plat, shall be deemed to be as follows (and the following provisions shall apply):

A. Upper and Lower Boundaries. The upper and lower boundaries of the Units shall be the following boundaries extended to an intersection with the perimetrical boundaries:

(1) Upper Boundary -- The planes of the interior ceilings, which shall include therein, as a part of the Unit, all lath, furring, wallboard, plasterboard, drywall plaster, paneling, sheetrock, paint and other interior ceiling coverings or sheatings [The above provisions notwithstanding, any part of the ceiling structure which does not support, service or serve another Unit or the floor thereof, or the roof for a Building, shall be a part of the Unit];

(2) Lower Boundary -- The horizontal planes of the upper surface of the interior floors, which such planes shall be immediately adjacent to, and shall include (within the boundaries of the Unit), the interior finished floor and all floor coverings. The above provisions of this subpart (2) notwithstanding, all finished floors and finished floor surfaces, and finished floor coverings, including tiles, floor board and finished flooring, and any other materials constituting a part of the finished floor surfaces, shall be included within the boundaries of the Unit, and shall be a part of the Unit, and any parts of the flooring structure which does not serve, service or support another Unit or the ceiling therefor shall be a part of the Unit.

B. Perimetrical Boundaries. The perimetrical boundaries of the Units shall be the following boundaries, extended to an intersection with the lower and upper boundaries:

(1) Exterior Building Walls -- The intersecting, vertical planes, adjacent to and which include (within the Unit) the interiors of the exterior walls of the Building (including sheetrock, dry wall, wallboard, lath, plaster, furring, plasterboard, paneling, wallpaper, paint and any other materials constituting any part of the finished surfaces) bounding a Unit and the fixtures thereon.

(2) Interior Building Walls -- The vertical planes adjacent to, and which include (within the Unit), the interior finished surfaces of the interior walls (including sheetrock, dry wall, wallboard, lath, plaster, furring, plasterboard, paneling, wallpaper, paint and any other materials constituting any part of the finished surfaces) bounding a Unit, extended to the intersections with other perimetrical boundaries, with the following exceptions:

(i) When walls between the Units are of varying thickness, or about a column or shaft, the plane of the interior surface line of a bounding wall shall be extended to an intersection with the connecting bounding plane coincident with the plane of the interior surface line of an interior column or shaft.

(ii) The plane of Interior dividing walls shall be deemed to abut with the plane of Exterior Walls such that the point of intersection is on their respective interior surfaces.

Boone County, Missouri Unofficial Document

566

[For purposes of this subpart B. of this Section 5 the term "Exterior Building Walls" shall mean those walls enclosing a Unit which do not separate such Unit from another Unit or interior Common Element (i.e. walls other than party walls common to more than one Unit or common to a Unit and an interior Common Element, such as a hallway, stairwell, elevator shaft or other common or public area.) For purposes of such subpart B. the term "Interior Building Walls" shall mean walls separating Units from each other (i.e. party walls common to more than one Unit) or walls separating a Unit from such an interior Common Element.]

[NOTE: The Unit as defined herein will contain net usable area less than the Enclosed Floor Area, which is based on outside Building measurements.]

C. Intention. The above provisions of this Section 5 to the contrary notwithstanding, and any provisions of the Plat notwithstanding, it is intended that a Unit consist of an airspace, bounded on the top by the planes which are located immediately adjacent to, and which include, the ceiling surfaces (including lath, furring, wallboard, dry wall, plasterboard, sheetrock, paneling, paint and other finished ceiling materials and surfaces) of the uppermost ceilings, and on the bottom by horizontal planes located immediately adjacent to (and which include) the lowermost floors of the Unit, and on the sides by planes located immediately adjacent to, and which include within the Unit, the interior finished wall surfaces and all components thereof (whether on Interior Party Walls or Exterior Building Walls, and including all lath, furring, wallboard, sheetrock, dry wall, plasterboard, plaster, paneling, wallpaper, paint and other finished wall materials), and that, where there are set offs or deviations in planes of walls or ceilings or floors there shall be similar set offs, offsets or deviations in the boundaries of the Units. However, no part of the foundation, Exterior Building Wall surfaces or Exterior siding or Exterior Wall structural elements, roof decking, roof, roof structure, roof sheeting or decking, or any structural elements contributing to the support of another Unit or the roof or exterior walls of the Building, shall be included as part of a Unit, as all of same shall be Common Elements, regardless of how defined or described.

D. Not Included Within Unit-Included within Common Elements. Any sewer lines, electrical lines, plumbing lines, furnaces, heaters, air conditioners, cooling units, air handling units, or other utility lines, fixtures, installations, systems or equipment, otherwise contained within the boundaries of a Unit, which serve more than such Unit or the Common Elements, shall be deemed to be a part of the Common Elements and the Unit Owner of the Unit within the boundary lines of which same are located shall be required to afford access, at all reasonable times, to the Executive Board, the Managing Agent, the Association, or their designees or employees, for purposes of performing necessary maintenance or repairs upon or replacements of same. Regardless of how defined in this Declaration or the Plat, and regardless of where located, the structural, load bearing elements of all load bearing walls (whether Interior or Exterior), which serve more than one Unit, and all foundations of all Units and the Building, and all Exterior Wall surfaces of the Building, and all Exterior siding and brick and exterior materials of the Building, and all foundations, footings, beams, columns, girders, supports, trusses, joints and other structural members, elements and components which serve more than one Unit or which support more than one Unit or the Building or the roof or Exterior Walls of the Building or the Common Elements, and all structural members which serve more than one Unit or the Common Elements, and all structural elements of any kind or nature whatsoever which support or

Boone County, Missouri

Unofficial Document

567

service more than one Unit or the Common Elements, and all roofs and components thereof, including roof structures, roof decking, gutters and downspouts, shall constitute a part of the Common Elements and not the Units. In addition, all installations consisting of utilities, sewers, and equipment making up central services, such as power, light, telephone, cable television, hot and cold water, central heating and air conditioning, and storm and sanitary sewers, which serve more than one Unit, several Units or all Units or the Common Elements, shall be Common Elements, as shall all land, streets, drives, driveways, parking areas, sidewalks, walkways, lawns, landscaping and Association facilities and all parts of the Property and the Buildings, other than the Units.

E. Included Within Unit. Any sewer lines, electrical lines, water lines, or other utility lines, fixtures, installations or equipment, water heaters, furnaces, heating and cooling equipment, air conditioners, compressors, cooling towers and heat pumps contained within the Property (whether within the boundary lines of a Unit or the Common Elements), which service only a single Unit, shall, the above provisions to the contrary notwithstanding, be deemed to be a part of such Unit, and not a part of the Common Elements, and shall be maintained, repaired and replaced by the Unit Owner of the Unit at such Unit Owner's sole expense.

F. Included Within Unit. Any of the provisions of this Declaration or the Plat to the contrary notwithstanding, all doors and windows in and for the Unit (both interior and exterior, and including all glass and surfaces thereof and hardware and controls therefor) and all lath, furring, wallboard, dry wall, sheetrock, plasterboard, plaster, paneling, tiles, wallpaper, paint, finished flooring, and any other materials constituting any part of the finished surfaces for the Unit, and any fixtures located outside of a Unit, but controlled by switches inside the Unit, shall be deemed to be a part of the Unit, and shall be maintained by the Unit Owner, at his sole expense.

G. Limited Common Elements. Any portions of any chute, flue, duct, wire or conduit which serves only a Unit, located within the Common Elements, outside the designated boundaries of that Unit, shall be a Limited Common Element allocated solely to that Unit, which shall be maintained, repaired and replaced solely by the Unit Owner of such Unit. Any portion of any such chute, flue, duct, wire or conduit located within a Unit, which serves other Units or the Common Elements, shall be a Common Element.

H. Interior. All spaces, interior partitions and other fixtures and improvements within the boundaries of a Unit are a part of that Unit, and any fixtures within the Common Elements which are controlled by switches within the Unit are a part of the Unit and shall be maintained, repaired and replaced (including light bulbs) by the Unit Owner.

I. Other Limited Common Elements. Any shutters, awnings, window boxes, doorsteps, stoops, porches, balconies, decks, patios, or other fixtures designed to serve a single Unit, but located outside the Unit's boundaries, are Limited Common Elements allocated exclusively to that Unit.

J. Structural Elements Serving Only Single Unit. Any beams, columns, bearing structures, walls and structural members within the boundaries of a Unit which service only that Unit and do not service, serve, or support the roof or any part of the roof for the Building or any part or component of the roof, or the exterior wall or walls for the Building or any part or component of such exterior walls, or another Unit or any part thereof, or the Common

Boone County, Missouri Unofficial Document

568

Elements, shall be a part of that Unit, but if same service or serve more than Unit or support more than one Unit or any components thereof, or the Common Elements or any component of same, same shall be a Common Element.

K. Flues, Chases and Vents and Utility Lines. If any chute, flue, duct, wire, conduit or chase is located outside the boundaries of a Unit, and serves only that Unit, then same shall be a Limited Common Element, allocated solely to such Unit, and (any provisions of this Declaration notwithstanding) shall be maintained, repaired and replaced, solely at the expense of the Unit Owner of such Unit and shall, therefore, for all intents and purposes, be deemed to be a part of the Unit. If there are any chases, flues, vents, wires or conduit within the Condominium, which serve more than one Unit or the Common Elements, and which are located wholly or partially within the boundary lines of a Unit or Units, all of same shall be deemed to be Common Elements. An easement for the location, maintenance and use of any chute, flue, duct, wire, conduit or chase located within the boundary lines of a Unit, which serves other Units or the Common Elements, shall exist, and the Owner of such Unit through which same passes shall afford access at reasonable times for the maintenance, repair and replacement of same to the Executive Board, the Managing Agent, or their employees, or designees and the Owners of all other Units served thereby, and their designees. The Unit Owners of each Unit shall be responsible for all maintenance, repair, servicing, upkeep and replacement of all chases, chutes, flues, ducts, wires, conduit, vents, electrical lines, sewage lines and utility lines which serve only their Unit, any of the provisions of this Declaration to the contrary notwithstanding.

Section 6. Limited Common Elements. The Limited Common Elements, if any, serving or designed to serve, or designated for, each respective Unit, are hereby allocated solely and exclusively to such Unit, and shall be used solely by such Unit and the Unit Owner thereof, and the occupants of such Unit, and the guests, designees and invitees of the Owners or occupants of such Unit, to the exclusion of all other Units and the Unit Owners thereof, and their tenants guests, invitees and designees.

Section 7. Covenants Against Partition. The Common Elements are not subject to partition. Any purported conveyance, encumbrance, judicial sale or other voluntary or involuntary transfer of an undivided interest in the Common Elements made without the Unit to which that interest is allocated is void. Nothing contained herein shall prevent partition of a Unit between co-owners, if a co-owner has a legal right thereto, except that any such partition shall not be in kind. No Unit Owner shall by deed, plat, court decree or otherwise subdivide or attempt to subdivide a Unit, or in any other manner separate a Unit into tracts or parcels or Units smaller than the whole Unit, as shown on the Plat.

Section 8. Condominium Ordinances. The Condominium is not subject to any ordinance of the City of Columbia, Missouri which is not also imposed upon physically similar developments under different forms of ownership. This statement is made pursuant to Section 448.1-106 of the Act for the purposes of providing marketable title to the Units of the Condominium.

Section 9. Maximum Number of Units. There shall not be a maximum number of Units. There shall, however, be a maximum number of square feet of Enclosed Floor Area which shall be allocated to the Units. Such Enclosed Floor Area shall be approximately 38,400 square feet of Enclosed Floor Area, plus or minus. As stated above, it is anticipated that the Condominium, if completed, will

Boone County, Missouri Unofficial Document

569

contain four (4) Buildings, each of which will contain a total interior area of 10,000 square feet (5,000 square feet on two separate floors); roughly 96% of which would be Enclosed Floor Area allocated to Units.

Of such 10,000 square feet approximately 96% (give or take for hallways, etc.) will be usable or rentable area, or Enclosed Floor Area. The total Enclosed Floor Area allocated to Units within each Building shall, therefore, consist of approximately [roughly] (give or take) 9,600 square feet, and if all four (4) Buildings are built and are included within the Condominium the total Enclosed Floor Area of Units within the Condominium shall be approximately 38,400 square feet. Such Enclosed Floor Area will be subdivided into Units, as the needs of the purchasers and renters of those Units dictate, and the sizes of the Units may, therefore, vary substantially, from one Unit to the next.

Section 10. Window Treatments. If the Declarant, in the Declarant's sole and absolute discretion elects to do so, the Declarant may require that all draperies, blinds, or other window treatments or window coverings on the exterior windows be of a uniform type and color and quality (or kind) of drapery, blind, or window covering or window treatment, and if the Declarant elects to make a requirement for such a common window treatment, then, the provisions of this Article III notwithstanding, all such blinds, draperies, window coverings or window treatments (those uniform to all Units) shall be considered to be a part of the Common Elements but shall nevertheless be maintained, repaired and replaced by the Unit Owners of the respective Units.

ARTICLE IV

COMMON ELEMENTS

Section 1. Included Within Common Elements. As indicated above, the Common Elements shall be subject to the easements, restrictions, reservations and covenants of the Declaration of Protective Covenants, and shall include all of the Property except the Units, and shall include those items allocated to Common Elements by subsection D of Section 5 of ARTICLE III, and shall also include, without limitation, the following:

- A. All portions of the Buildings not contained within or deemed [in accordance with ARTICLE III, to be a part of] the Units;
- B. All land, and improvements on the Property, other than the Units (with the exception of any storage areas or storage units or parking spaces allocated to the Units, if any);
- C. All driveways, drives, roads, gardens, lawns, sidewalks, parking lots, parking areas;
- D. All electrical wiring throughout the Property, except that which serves only a single Unit;
- E. All pipes, wires, cables and conduits throughout the Property, except those which serve only a single Unit;
- F. All utility installations, sanitary sewer facilities, laundry facilities and connections for gas, sanitary sewer, electricity, light, water and plumbing, except those which serve only a single Unit. [Any such installation or components of the type described in subparagraphs D, E and F,

Boone County, Missouri Unofficial Document

exclusively serving only one Unit, whether such installation is located wholly or partially within or outside said Unit, shall be considered as being "within" and being a part of said Unit, which is exclusively served by such installation, and shall be maintained, repaired and replaced by the Owner of such Unit];

G. Any Association Facility and all auxiliary buildings, if any, and any other structures and facilities which may at any time be situated on the Property, outside of the Units, including any service road, parking area, lawn, garden or other improvement;

H. All exterior lighting and light fixtures, including those which light parking areas and walkways, and those on the exteriors of the Buildings;

I. Any interior light fixtures which are designed, solely, to light the windows and which are common to all Units (if any);

J. All lawns, trees, shrubs and other landscaping;

K. All improvements on the Property other than the Units;

L. All interior lobbies, entranceways, public restrooms, elevators, stairs and other Common Areas, except those which serve only a single Unit (which shall be Limited Common Elements) and all fixtures and equipment within and serving same.

Section 2. Allocated Interest. Each Unit Owner shall be entitled to the percentage of ownership ("Allocated Interest") in the Common Elements attributed to his Unit by Section 2 of ARTICLE I and Section 3 of ARTICLE III of this Declaration.

Section 3. Limitation on Common Elements. The above provisions of Section 1 of this ARTICLE IV to the contrary notwithstanding, the Common Elements shall not include those items which are to be deemed to be "included within" the Units, in accordance with Sections 4 and 5 of ARTICLE III of this Declaration.

Section 4. Reduction of Allocated Interest or Change in Allocated Interest. As hereinabove indicated in the Declaration, the Declarant reserves the right to place additional Units within the Condominium, and to record amendments to the Plat and this Declaration to such extent. The Allocated Interest of each Unit Owner in the Common Elements may, therefore, be changed by the addition of additional Units to the Condominium by the Declarant.

Section 5. No Partition of Common Elements. The Common Elements shall remain undivided, and no Unit Owner shall bring any action for partition or division of the Common Elements. Any covenant or agreement to the contrary shall be null and void.

Section 6. No Severance of Ownership. No Unit Owner shall execute any deed, mortgage, lease or other instrument affecting title to his Unit ownership without including therein both his interest in the Unit and his corresponding Allocated Interest in the Common Elements, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, lease or other instrument purporting to affect the one without including also the other shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein, or is expressly excluded therefrom.

Boone County, Missouri

Unofficial Document

ARTICLE V

571

GRANTS AND RESERVATIONS OF EASEMENTS

Section 1. Easements for Encroachments. Each Owner of a Unit covenants that if any portion of any improvement (whether same be a portion of a Unit or of the Common Elements) encroaches upon his Unit, a valid easement for such encroachment and for the maintenance of same, so long as it stands, and for repair and reconstruction thereof, in the event of damage or destruction, shall and does exist. In the event an improvement is partially or totally destroyed and then reconstructed, each Owner of each Unit further covenants that encroachment of any portion of any improvement, whether attributable to a Unit or to the Common Elements, upon his Unit due to construction or reconstruction shall be permitted, and that a valid easement for such encroachment and the maintenance thereof shall exist. Each Unit, and all utility lines and other improvements as originally constructed on or within each Unit, shall have an easement to encroach on any other Unit, and upon the Common Areas and Common Elements as originally constructed and laid out; and the Common Elements and Common Areas and all utility lines and other improvements as originally constructed within the Property, shall have a reciprocal easement for encroachment upon each Unit and any portions of the Property. Such encroachments may occur (and it is anticipated that such encroachments will occur and have occurred because of overhanging eaves, balconies, decks and footings and foundations and offsets, set offs and deviations in planes of walls, roofs and ceilings), as a result of overhangs in the design, or deviations in construction from the Development Plans or the Plat or location of the Buildings, Units, Common Elements, utility lines and other improvements across boundary lines and between and among Units, and Common Elements.

Section 2. Easement for Support. Every portion of a Unit and of a Building, and of the Common Elements, and any portion of the Property or any Building or Unit contributing to the support of another Building, Unit, Common Element or portion thereof, shall be burdened with an easement of support for the benefit of all other such Buildings, Units, Common Elements, improvements and other portions of the Properties.

Section 3. Additional Easements for Encroachments. Through construction, settlement or shifting of any Building, should any part of the Common Elements encroach upon any part of a Unit, or should any part of a Unit encroach upon a part of the Common Elements, or upon any other Unit, perpetual easements for the maintenance of any such encroachments and for the use of the space required thereby are hereby established and shall exist for the benefit of the Unit Owner or the Common Elements, as the case may be; provided, however, that no easement shall be created in the event the encroachment is due to the willful conduct of any Unit Owners.

Section 4. Easements to Unit Owners. Perpetual, irrevocable easements are hereby established appurtenant to each Unit, for use by the Owners thereof, their families, tenants, guests, invitees and servants, in and to all Common Elements, other than those Limited Common Elements which are reserved for the sole and exclusive use of the Owners of other Units. In addition thereto, Unit Owners of each of those Units exclusively accessed from (or to which access is obtained exclusively from or which are attached to, or are intended to serve only such Units) walkways, entranceways, entrance halls, balconies, sundecks, porches, patios, terraces and stairways, are hereby granted an exclusive, perpetual, irrevocable easement appurtenant to such Unit or Units for the use of

Boone County, Missouri Unofficial Document

572

same, to the complete exclusion of all other Units and Unit Owners and their tenants, guests and invitees; provided, however, that no such Unit Owner shall enclose, decorate, alter in any manner, or landscape any such walkway, entranceway, entrance walk, balcony, sundeck, porch, patio, terrace or stairway without the consent of the Executive Board. If the dimensions shown on the Plat include any basement, garage, crawl space or storage area, within a Unit, without specific label or identification as such on the Plat, such basement, crawl space, garage or storage area shall nevertheless be deemed to be part of the Unit defined by such dimensions. Notwithstanding the fact that a balcony or sundeck may overlie any part of a Unit, such balcony or sundeck, as the case may be, shall be a Limited Common Element (whether or not so identified on the Plat), subject to the aforesaid exclusive perpetual easement of the Unit Owner having sole access thereto to use same. Each Unit Owner is hereby granted a perpetual easement appurtenant to the Unit of such Owner to maintain on the Common Elements and exterior to the Unit, air conditioning equipment, cooling equipment, heating equipment, or a heat pump serving the Unit and all parts of same, and all sewer lines and utility lines serving such Unit, provided that such equipment and installations shall be located at places where such equipment or similar equipment, or installations are now found, or at a place designated by the Unit Owner with the prior consent of the Executive Board. It is the intention that any stairways, walkways, hallways, entranceways, porches, porticos, decks, patios and similar improvements, which furnish access to (or which are accessed from), or are designated for only one (1) Unit, or only several Units, or are obviously intended to serve only one or several Units (as opposed to all Units), shall, the provisions of this Declaration to the contrary notwithstanding, be Limited Common Elements, for the sole and exclusive use and benefit of the Owners of those Units accessed therefrom, or from which access thereto is obtained, or to which same are designated, or which are intended to be served thereby. Such Owners shall have a perpetual, irrevocable, exclusive easement appurtenant to their Unit for the use of such improvements, to the complete exclusion of the Owners of all other Units.

Section 5. Easements in Gross. The Property, and the Units shall be subject to a perpetual easement in gross to the Executive Board and the Association, and the Managing Agent, and its, his or their designees, successors and assigns for ingress and egress to perform obligations and duties as required by this Declaration. Should it be necessary to enter a Unit in order to repair a Common Element, or to perform any maintenance or repairs which the Executive Board, the Association or the Managing Agent is authorized to perform, all employees, agents and workmen shall be entitled to entrance by exhibiting to the Unit Owner an order from the Executive Board or any Officer, or the Association or the Managing Agent. If the Unit Owner is not available to provide admission in cases of emergency, the Executive Board or any Officer thereof, or the Managing Agent, may authorize entry by whatever means is reasonably required, and shall have no liability for damages arising out of such entry.

Section 6. Utility Easements. Each of the Unit Owners shall have an easement for the location, maintenance, repair and replacement of all sewers and utilities serving his or their Unit at the locations where such sewers and utilities are now or hereafter located, over the Common Elements and the adjacent Units, if any such sewers and utilities are now located within the Common Elements or within the adjacent Units.

Section 7. Easements Provided for by Declaration of Protective Covenants. All Property Used in Common as described in the Declaration of Protective Covenants is hereby imposed with all easements, restrictions, reservations and

Boone County, Missouri

Unofficial Document

573

covenants set forth in the Declaration of Protective Covenants. All Property Used in Common located within the Property (as the term "Property Used in Common" is defined in the Declaration of Protective Covenants) shall be subject to easements, such that same shall be and shall be considered to be Property Used in Common of the Development Parcel (as the "Development Parcel" is defined in the Declaration of Protective Covenants), and shall be available for the common use and benefit of the Unit Owners and tenants located throughout the Development Parcel, and their employees, customers, clients, patients and business invitees.

Section 8. Effect of Easements. All easements and rights herein described shall run with the land and inure to the benefit of, and be binding on the Declarant and its successors and assigns, and any Unit Owner, purchaser, mortgagee or other person having an interest in any portion of the Property herein described, whether or not such easements are mentioned or described in any deed or conveyance.

ARTICLE VI

USE RESTRICTIONS

The Units, and the Common Elements and Common Areas are restricted as provided for by the Declaration of Protective Covenants and are further and additionally restricted as follows, and the Property and Units and Common Elements shall be subject to the easements, restrictions, reservations, covenants, liens, charges and assessments provided for by the Declaration of Protective Covenants and shall be further subject to the following additional provisions and restrictions:

Section 1. Office/Retail Purposes. No Unit shall be used for residential or dwelling purposes or shall be used for any purpose other than an Office/Retail purpose, which is one of (or a combination of) the following:

a. Normal administrative or clerical or executive or professional office uses and other usual and customary office uses [including, but not limited to, insurance offices, insurance agencies, real estate offices, corporate offices, business offices, dental offices, lawyers offices, medical offices, doctors or physicians offices, chiropractic offices, podiatrist's offices, other professional offices, offices for associations, charities, churches and organizations and all other office uses of every kind, nature or description whatsoever]; or

b. Barber shops, hair styling salons and similar establishments; or

c. Such other commercial or retail or service uses as are both: (i) permitted within the zoning district within which the Condominium is located and (ii) approved, in advance of such use, by the Declarant during the Declarant Control Period and thereafter by the Executive Board, it being understood that the Declarant and such Executive Board may withhold such approval of such an other use if it is reasonably found that the proposed use would adversely affect another Unit, another Unit Owner or the value, use or enjoyment of any other Unit or any other part of the Condominium, the Project or the Development. Approval of a use as described in a. or b. above is not required. Approval of another use, as described in this Section c. shall not be arbitrarily, unreasonably or capriciously withheld.

Boone County, Missouri Unofficial Document

574

Each Unit is specifically excluded from being used for Residential Purposes or for uses as a dwelling. No Unit shall, under any circumstances whatsoever, be used for Residential Purposes or be used as a dwelling. No restriction on renting or leasing of Units shall be deemed to be expressed or implied. Units may be rented or leased.

Section 2. Additional Structures. No additional and/or accessory structures or improvements of any kind or nature whatsoever, or walls, fences or buildings of any nature whatsoever, or sheds, posts, poles, storage sheds, storage boxes or similar items of any kind or nature whatsoever, shall be erected upon or within those portions of the Unit which are on the exterior of the Building, or the Common Elements, in addition to the basic Building, patio, walks, decks, porches and other improvements erected by the Declarant or with Declarant's consent, or any reasonably similar replacement thereof or addition thereto, without the consent of the Declarant during the Declarant Control Period and thereafter without the prior consent of the Executive Board.

Section 3. Parking. All parking lots and parking areas shall be subject to the restrictions imposed by the Declaration of Protective Covenants and shall further be subject to the restrictions set forth in this Section 3. No Unit Owner or occupant shall use, for his, her, its or their employees, or other persons employed within the Unit, more than one (1) parking space per three hundred (300) square feet of Enclosed Floor Area contained within the Unit. In other words, the number of parking spaces available for use by employees of a Unit Owner or Unit occupant shall be limited to one (1) space per three hundred (300) square feet of Enclosed Floor Area within the Unit. The Executive Board shall have the power to designate certain areas for employee parking, in which event all employees must park their vehicles in such designated areas. The Executive Board may also designate (reserve) parking spaces for use by the occupants of one or more Units and same shall be treated as Limited Common Elements of the said Units; provided that the number so reserved shall be reasonable and shall not unreasonably affect other Unit Owners, nor shall it exceed the number of spaces determined under the above provisions of this Section 3. The foregoing provisions of this Section 3 to the contrary notwithstanding, however, customers, clients, patients or other business invitees of the Unit Owners or Unit occupants shall be permitted to use the unreserved parking spaces upon the Property when consulting with and transacting business with the Unit Owner or occupant. No parking space on the Property, or within the Common Elements (and none of the Common Elements) shall be used other than for normal, periodic, daily parking, of automobiles, vans, pickup trucks and similar utility vehicles. No parking space shall be used for storage of any automobile, or storage of any other vehicle or motor vehicle of any kind, nature or description. Any vehicle at any time parked within any parking space on the Property must be a vehicle which is then in regular use as a regular means of conveyance, and which is in reasonably good operating order. No such vehicle shall be parked within any parking space for a continuous period of time exceeding 24 hours. No parking space shall be used for the parking of any vehicle other than an automobile, van, pickup truck or similar utility vehicle regularly used as a passenger vehicle. No parking space shall be used for the parking or storage of a trailer, truck, boat, canoe, camper, mobile home or motor home. The word "trailer" shall include trailer, coach, house trailer, mobile home, motor home, recreational vehicle, campcar, camper or any other vehicle, whether or not self-propelled, constructed or existing in such a manner as would permit the use and occupancy thereof for human habitation, for storage, or for the conveyance of machinery, tools or equipment, whether resting on wheels, jacks, tires or other foundations, and used or so constructed that it is

Boone County, Missouri

Unofficial Document

575

or may be mounted on wheels or other similar transporting devices and used as a conveyance on streets and highways. No vehicle shall be placed within any parking space so as to obstruct access to or egress from any other parking space, and no vehicle shall be placed on the Property other than within designated parking spaces or so as to block access to other parking spaces, or so as to block the use of, or interfere with the use of, entrances and/or exits and/or drives within or from the parking area and parking spaces upon the Property.

Section 4. Nuisances. No illegal, noxious, noisy or offensive activities shall be carried on upon or within any Unit or upon the Common Elements nor shall anything be done therein or thereon which may be or may become an annoyance or nuisance to the neighborhood or the owners or occupants of other Units. No Unit Owner shall make or permit any disturbing noises in the Unit or Common Elements or Common Facilities, nor permit any disagreeable odors to escape from such unit, nor permit any excessive or disagreeable emissions of fumes, odors, glare, vibration, gasses, radiation, dust, liquid waste, smoke or noise to escape the Unit, nor generate disagreeable solid waste, trash or mixed refuse, nor do or permit anything to be done that would reasonably be found to interfere with the rights, comfort, enjoyment, convenience or reasonable business pursuits of other Unit Owners or with their enjoyment of their Units. Neither the Unit Owner nor any occupant of a Unit shall do or permit anything to be done in or within the Unit in a manner which will in any way violate any certificate of occupancy or zoning ordinance affecting the Unit or the Building, or which will cause or be likely to cause structural damage to the Building or any part thereof, or which will constitute a public or private nuisance, or an annoyance to other occupants of the Building or other Unit Owners. No Unit shall be used or occupied for any unlawful, disreputable or ultra-hazardous business purpose, nor shall any Unit Owner or occupant of a Unit conduct his, her, its or their business in a manner constituting a nuisance of any kind. No business or activity shall be carried on within a Unit which could reasonably be deemed, by reasonable persons, to be such as would diminish the reputation of the Condominium, the Building, or other Units, or which would reflect poorly upon the reputation of the Building, the Condominium, or other Units, or which would reasonably be found by reasonable persons to have a detrimental effect on the business of other Unit Owners or upon the value of the Property, the Condominium, the Building or any part thereof, or any other Unit. No business or activity shall be conducted within any Unit which would reasonably be found by reasonable persons to be incompatible with the types of businesses conducted by other Unit Owners within their Units. It is the intention of the Declarant and all Unit Owners that the uses of all Units be compatible, and that no use of any Unit shall have any detrimental or adverse effect on the use of any other Unit or upon the business conducted therein.

Section 5. Electrical Capacity. No Unit Owner nor occupant of any Unit shall install, operate or maintain any mechanical or electrical equipment which will exceed the capacity of the wiring leading to the Unit or within the Unit, for proper and safe operation.

Section 6. Insurance. No Unit Owner nor occupant of any Unit shall use or occupy the Unit, or do or permit anything to be done therein, in any manner which will make it impossible or more costly for the Executive Board to carry the insurance required or desired to be carried on the Unit or the Building.

Section 7. Violation of Law. No Unit Owner nor occupant of a Unit will use the Unit, or permit the use of the Unit, in any manner which will constitute

Boone County, Missouri Unofficial Document

576

a violation of any present or future law, regulation, ordinance or requirement of the federal, state or local governments having jurisdiction, or of any department, subdivision, bureau or office thereof.

Section 8. No Manufacturing. No manufacturing or assembly shall be conducted within any Unit.

Section 9. Disturbances. No disturbances of any kind or nature whatsoever, and no odor, fumes or vapors or dust or airborne particles, of any kind or nature whatsoever, shall be generated within any Unit, so as to interfere with the rights, comfort, enjoyment, convenience or business pursuits of other Unit Owners or the occupants of other Units, or so as to constitute an annoyance to other Unit Owners or the occupants of other Units.

Section 10. Signs. No signs shall be displayed to public view on the Property or any Building other than as permitted by the Declaration of Protective Covenants and, furthermore, no signs of any kind shall be displayed to the public view on the Property or any Building except subject to the following additional restrictions:

(a) There may be located upon the Property and/or within or upon each Building, one or more master signs or master panels, which will identify the occupants of the Condominium and/or of the Units within a Building. Each Unit Owner shall be permitted to place on such sign or panel the name of such Unit Owner's business. Such name shall be placed on such sign or panel using letters of the same size, type, color and style as are then currently in use for the identification of other businesses within the Condominium or the Building;

(b) Each Unit Owner shall be permitted to place one, tastefully done sign on the entrance door for the Unit Owner's Unit, which states the name of Unit Owner or occupant, or his, her, its or their business, and which identifies the entrance to such Unit. Any such sign must be tastefully and reasonably prepared and must be professionally done, and shall be subject to the reasonable approval of the Executive Board;

(c) Any other signs approved in advance by the Declarant during the Declarant Control Period and thereafter by the Executive Board.

All other signs shall be expressly prohibited, other than those erected on the Property by the Declarant or the Executive Board in order to identify the Condominium. All of those signs hereinabove described in this Section 10 shall be subject to the reasonable approval of the Executive Board in each event.

Section 11. Exterior Wiring, Antennas or Installations/Air Conditioners. No exterior wiring or antennas (including, but not limited to so-called "dishes", television dishes, satellite receiver antennas, satellite receiver dishes, and similar antennas or receivers) shall be permitted on the exterior portion of the Buildings or improvements located upon the Property except as erected by the Declarant or the Declarant's assignees, or with the Declarant's consent during the Declarant Control Period, and thereafter with the consent of the Executive Board. No air conditioning or other types of installation shall be installed or permitted which appear on the exterior of the Building or which protrude through the walls, roof or window areas of the Building, or the Units, except as may be installed or erected by the Declarant, or as may be installed with the consent of the Declarant during the Declarant Control Period, or, except as may thereafter be installed with the approval of the Executive Board.

Boone County, Missouri

Unofficial Document

577

Section 12. Livestock, Poultry and Pets. No animals, livestock, poultry, swine, reptiles or pets of any kind or nature whatsoever shall be raised, kept, maintained, or located upon or in any portion of a Unit, any portion of the Common Elements, or within the Property.

Section 13. Trash, Storage, Disposal. All trash, rubbish, garbage and other materials being thrown away or disposed of by Unit Owners or occupants on the premises must be placed or contained in one or more trash cans or containers purchased by the respective Unit Owners or occupants, which cans or containers shall be flytight, rodent proof, non-flammable, reasonably waterproof and which shall be covered, or shall be placed in trash receptacles provided within the Property therefor, and shall be kept within the Unit and not on any balcony, deck, porch, or patio, or in any common hallway, stairwell or other Common Element. All trash, rubble, garbage and other materials must be placed, at reasonable times, so as to permit the pick-up thereof in the ordinary course of business by the applicable mixed refuse service, within any dumpster areas or other collection areas provided therefor on the Property.

Section 14. Storage. No baby carriages, velocipedes, tricycles or bicycles, motorcycles, or other equipment or items of tangible personal property of any kind, nature or description whatsoever, shall be allowed to stand in the halls or passage ways or Common Elements of any Building, nor shall any such item nor any boat or other item of equipment of any kind or nature whatsoever be stored or allowed to stand in any driveway, parking area or Common Element, except as specifically permitted with respect to the parking of vehicles by Section 3 above. The outdoor placement of or storage of any carriages, tricycles, bicycles, equipment, boats, canoes, or other items of tangible personal property within the Property (except as permitted in Section 3 above) shall be prohibited. Because of the hazards of fire, storage of highly flammable or explosive matter is not permitted on any portion of the Property or within any Unit.

Section 15. Temporary Structures. No structure of a temporary character, shack, shed, tent, dog house, locker or other out building shall be used within the Property, other than as may be used by the Association with the approval of the Executive Board.

Section 16. Open Fires. No open fires shall be permitted within the Property or within the individual Unit premises.

Section 17. Planting and Gardening Prohibited. No planting or gardening shall be done at any location other than by the Declarant, the Association, the Executive Board or their designees. No fences, hedges or walls shall be erected within the Property except as are installed during the construction of the Building or the finishing of any Unit, or as may thereafter be installed or planted within the consent of the Declarant during the Declarant Control Period, and thereafter with the consent of the Executive Board.

Section 18. Automotive Repair Prohibited. No automotive, motor vehicle or vehicular repair, rebuilding, or remanufacture, or any form of automotive manufacture, maintenance or repair, whether for hire or otherwise, shall occur in any Unit or within the Common Elements or within the Property.

Section 19. Awnings and Storm Doors and Screens Prohibited. No awnings, storm doors, storm windows, screens, or other outside fixtures, or appliances,

Boone County, Missouri Unofficial Document

578

not installed within the Condominium or a Unit by the Declarant shall be erected or installed, without the prior written consent of the Declarant during the Declarant Control Period and thereafter, except as may be constructed or installed with the consent of the Executive Board.

Section 20. Obstructions. There shall be no obstructions of any portion of the Common Elements nor any storage in the Common Elements without the prior written consent of the Declarant during the Declarant Control Period, and thereafter without the prior written consent of the Executive Board.

Section 21. Maintenance of Unit. Each Unit Owner shall maintain and keep his Unit in good order and repair, and in keeping with the maintenance standards hereinafter set forth in the Declaration, and shall do nothing which will prejudice the structural integrity of, or will increase the rates of insurance on the Building in which his Unit is situated. All glass, interior and exterior, (including patio doors, windows and other glass comprising a part of the Unit or serving the Unit) shall be at the risk of the Unit Owner and shall be maintained at the expense of such Owner. Each Unit Owner shall perform all of those duties and obligations imposed upon him with respect to maintenance by this Declaration.

Section 22. Insurance Rates. Nothing shall be done or kept in any Unit or in the Common Elements which will increase the insurance rates on the Property, a Building or the contents thereof, without the consent of the Executive Board. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Elements which will result in the cancellation of insurance on any part of the Property, or any Unit or Building, or the contents thereof, or which would be in violation of any law. No waste shall be committed as to the Common Elements or any of the Common Facilities.

Section 23. Activity Standard. No use or activity shall be permitted or maintained in any Unit which would be inconsistent with or detract from the high standard and character of the Property.

Section 24. Outside Attachments. Unit Owners shall not cause or permit anything to be placed on the outside walls or surfaces of the Building, and no signs, awnings, canopies, shutters or the like shall be affixed to or placed upon the exterior walls or windows without prior written consent of the Declarant during the Declarant Control Period and thereafter without the prior written consent of the Executive Board.

Section 25. Non-Owner Occupied Units. If so required by the Executive Board, Units, which are not occupied by the Unit Owner, and which are held or used by a Unit Owner (other than the Declarant) for rental or lease purposes, must be managed by a Rental Agent or Agents duly designated and appointed by, or approved for such purposes by, the Executive Board. Such Rental Agent may be the Declarant, or may be (but need not be) an Affiliate of the Declarant, or a firm or company in which the Declarant has an ownership interest, or a firm or company in which the Declarant has an interest; provided, however, that any contract or agreement which provides that the Declarant or any such affiliate, firm or company in which the Declarant has an ownership interest, or in which the Declarant is interested, shall be the Rental Agent shall provide for

Boone County, Missouri

Unofficial Document

579

automatic termination thereof upon the termination of the Declarant Control Period.

Section 26. Noise Abatement. No noise shall be permitted to be transmitted to another Unit. In the event the Executive Board determines that any noise is being transmitted to another Unit, and that such noise is unreasonable (regardless of whether that Unit is below or wherever situated in relation to the offending Unit), then the Owner of such offending Unit shall, at his own expense, take such reasonable steps as shall be necessary to abate such noise to the satisfaction of the Executive Board.

Section 27. Storage. There shall be no outside storage of any equipment or items or materials, and same shall not be kept or stored in any porches, entranceways, balconies, decks or patios on the exterior of the Building or the exterior of a Unit, except in any specifically designated storage areas.

Section 28. Rules and Regulations. In addition to the foregoing restrictions, conditions and covenants concerning the use of the Condominium, the Common Elements and the Units, reasonable rules and regulations, not in conflict therewith, and supplementary thereto may be promulgated and amended from time to time by the Executive Board or the Association, as more fully provided in the Bylaws.

Section 29. Exterior Window Treatments. The Declarant, in the Declarant's sole and absolute discretion, during the Declarant Control Period, and the Executive Board thereafter, may (but need not) elect to require that all blinds, draperies or other window coverings or window treatments for the exterior windows for the Building (including those within any Unit) be of a uniform type, color, make and manufacture. If such a requirement is made then the Unit Owner shall be required to install such uniform window treatment within such Unit Owner's Unit, at the Unit Owner's expense. If such a requirement is made then all Units and Unit Owners are required to utilize (without exception) the specified window treatment, all of which shall be treated as and shall be Common Elements; provided that same shall be cleaned, maintained, repaired and replaced by the respective Unit Owners of the Units containing same.

Section 30. Enforcement. In addition to any rights and remedies provided to the Association, or the Unit Owners, or the Executive Board by this Declaration or by law for the enforcement of the use restrictions established by this ARTICLE VI, and in addition to any other rights and remedies provided for in this ARTICLE VI, or elsewhere, the Executive Board shall, in the event of a violation of any of the use restrictions hereinabove established by this ARTICLE VI, in its sole, absolute and unmitigated discretion, have the following additional rights, powers and authorities (which may be used singly or in any combination), to-wit:

A. To deny to any Unit Owner who is in violation of the use restrictions, or whose Unit is in violation of such use restrictions, and to deny to the Unit of such Unit Owner, any maintenance or other services which the Association might otherwise be required to provide;

B. To impose upon such Unit (and the Unit Owner thereof) a special assessment (by way of a fine), in such amount as the Executive Board, in its

Boone County, Missouri Unofficial Document

580

sole, absolute and unlimited discretion shall deem appropriate, not to exceed Five Hundred Dollars (\$500.00) per week during the continuance of the violation and such fine shall constitute a Unit assessment upon the Unit (and the Owners thereof) subjected to the assessment. Such assessment shall be payable to the Executive Board, upon demand, and shall be added to (and become a part of), the other assessments and sums for which the Unit (and the Unit Owner thereof) is subject, and shall be enforceable in the same manner as is provided for the enforcement of other assessments by this Declaration or by law;

C. To deny to the applicable Unit, and the Owners, occupants, guests and invitees thereof, access to the Unit, and to any parking spaces designated for the exclusive use of the Unit, until the breach of the use restrictions has been remedied.

D. To enter the Unit and to abate the violation.

With the exception of those situations involving a legitimate emergency, posing a danger to the safety of the Property or any portion thereof, or any of the residents thereof, or any guests or invitees therein, the Executive Board shall not, in the event of a violation or apparent violation of the use restrictions hereinabove set forth in this ARTICLE VI, seek to utilize any of those powers or remedies conferred upon it by subsections A through D of this Section 30, without first giving written notice of intention to do so to the Owners or occupants (in the event the occupants are different than the Owners) of the applicable violations. Such written notice shall specify the violation or apparent violation of the use restrictions hereinabove set forth in this ARTICLE VI, and shall notify the said Owners or occupants of the intention of the Executive Board to resort to one or more of the powers, authorities and remedies conferred upon it by such subsections A through D. Such notice shall further give such Owners or occupants notice of the time and place at which such Owners or occupants may appear before a meeting of the Executive Board. At such meeting such Owners or occupants, and any other interested persons, shall be permitted to present such evidence and/or arguments, both for and against the violation or apparent violation of the use restrictions hereinabove set forth in this ARTICLE VI, as shall appear to be reasonably relevant to the issue as to whether the apparent violation exists or has occurred. Evidence presented to the Executive Board may be taken under oath, or not under oath, as the Executive Board, in its discretion, sees fit. Parties (including the Owners) appearing before the Executive Board, shall be entitled to have an attorney represent them, should they desire to do so; provided that all costs and expenses incurred in connection with such attorney's representation shall be paid by the party utilizing the attorney's services. Formal rules of evidence shall not apply, but the Executive Board shall utilize its best efforts to hear only such evidence, as would appear to be reasonably competent, and as would appear to be reasonably relevant to the issue as to whether the violation or apparent violation of the use restrictions hereinabove set forth has occurred, or is occurring. At the conclusion of the presentation of evidence to the Executive Board, the Owners or occupants of the applicable Unit, and all other interested parties shall be permitted to present such arguments, statements or briefs to the Executive Board as they shall deem proper and appropriate. Following the presentation of the evidence, and such statements, arguments and briefs, the Executive Board shall make a determination as to whether the violation or

Boone County, Missouri

Unofficial Document

581

apparent violation exists, or has occurred, and shall determine the fines to be imposed, or the other remedies to be utilized by the Executive Board in attempting to terminate or remedy the violation or apparent violation. All decisions of the Executive Board, in this regard, shall be by majority vote of those members of the Executive Board who are present and voting. Presence of a majority of the Executive Board shall constitute a quorum for all purposes under this Section 30. As soon as practicable following the decision by the Executive Board, the Executive Board shall notify the Owners or occupants of the applicable Unit of its decision, in writing and (in the event, the decision is that the breach or violation of the use restrictions has occurred, or is occurring), such writing shall further state the sum of the fine or fines to be imposed, and/or a description of the other remedies or powers to be exercised by the Executive Board in an attempt to eliminate the breach or violation. The occupants or owners of the applicable Unit shall have five (5) business days, from the date of delivery of such written notice to the Unit, to remedy or eliminate the breach or violation. In the event the breach or violation is not remedied during such period, then the action of the Executive Board shall immediately be in full force and effect, and the fines or other remedies described in the written notice from the Executive Board of its decision (or other remedies described in such decision) shall be in full force and effect, and shall be applied or imposed, beginning with the day which next follows such five (5) day period. Where a Unit is occupied by a person or persons other than the Owners thereof, the Executive Board, where it is reasonably practicable to do so, shall notify both the occupants thereof, and the Owners thereof of a hearing before the Executive Board, of the type hereinabove described, and of the Executive Board's decision and intentions, as hereinabove described.

The Declarant for each Unit located within the Property, hereby covenants, on behalf of the Declarant and the Declarant's successors, and each Owner of any Unit by acceptance of a deed therefor, whether or not it shall be so expressed in any deed or other conveyance, is deemed to covenant and agree to the provisions of this Section 30, and to the rights, powers, remedies and authorities imposed within the Executive Board by this Section 30, and to waive any right to recourse against, or damages from, or claims or complaints against, the Executive Board, or the Association, or any members of such Executive Board or such Association, which may arise out of any exercise by the Executive Board of the rights, remedies, powers and authorities provided by this Section 30. In addition, should the Association, or its Executive Board, by reason of a violation of any restrictions set forth in this ARTICLE VI, seek from any Court any temporary restraining order, restraining order, injunction, temporary injunction, preliminary injunction or similar relief, all requirements, of any kind or nature whatsoever, that the Association, or the Executive Board post an injunction bond, or a bond, or a surety bond, or any type of bond of any kind or nature whatsoever, shall be and the same are hereby waived by each Unit Owner, and the Declarant (on behalf of themselves and on behalf of their successors, and each and all successors in ownership of each Unit). The Declarant, for each Unit now or hereafter located within the Property hereby covenants, on behalf of the Declarant and the Declarant's successors, and each Owner of each Unit by acceptance of a deed therefor shall be deemed to covenant and agree, that the Association shall, upon presentation to a Court having appropriate jurisdiction of a petition seeking a temporary restraining order against a violation or threatened violation of the use restrictions hereinabove set forth, be fully

Boone County, Missouri

Unofficial Document

582

entitled to receive such temporary restraining order, ex parte, without the necessity for the posting of any bond, injunction bond, surety bond or other type of bond of any kind or nature whatsoever. The Declarant, on behalf of the Declarant and the Declarant's successors in ownership of any portion of the Property, and each Owner of any Unit by acceptance of a deed therefor, recognize that strict compliance with the use restrictions hereinabove set forth in this ARTICLE VI is of the utmost importance to the protection of the Property and the Condominium, and the Units and the value thereof, and that a breach or threatened breach of said use restrictions would cause substantial damage to the Property, the Condominium, the Units and each of the Units, and the values thereof, and would constitute a substantial threat to proper enjoyment of the Units and the Condominium. Strict observance of and observation of, and compliance with the use restrictions hereinabove set forth in this ARTICLE VI is, therefore, of the essence.

Section 31. Enforcement. The Declarant, until the conclusion of the period of Declarant's Control, and the Executive Board at any time, and the Association, and any Officer of the Executive Board or the Association (and any one, more or all of them, at any time), and any Unit Owner at any time, shall have the right (in addition to the powers imposed in the Executive Board by Section 30 and those remedies provided by ARTICLE XII) to enforce, by any proceedings at law or in equity, any of the covenants or restrictions hereinabove set forth in this ARTICLE VI. Failure by the Declarant, the Association, the Executive Board, any Officer thereof, or any Unit Owner, at any time, to enforce any such covenant or restriction hereinabove set forth in this ARTICLE VI shall in no event whatsoever be deemed to be a waiver of the right to do so thereafter at any time as to the existing violation, or any continuations thereof, or any future similar violations. No violations, continuing or otherwise, shall be deemed to be waived under any circumstances whatsoever. If any party shall seek to enforce any of the provisions of this ARTICLE VI against any other party, by legal or equitable proceedings, then the prevailing party in such legal or equitable proceedings (whether such prevailing party prevails in whole or in part as to the relief sought by such prevailing party) shall, in addition to all other sums, remedies and judgments to which such prevailing party would otherwise be entitled, be entitled to recover such prevailing party's reasonable costs, court costs, expenses of litigation and attorney's fees incurred in such proceedings, and in connection with such proceedings, and in the preparation for such proceedings, and shall have judgment therefore, in addition to judgments for all other sums, and remedies to which such prevailing party would otherwise be entitled.

Section 32. No Interference with Declarant's Development Rights or Special Declarant Rights. Nothing in this ARTICLE VI shall be construed so as to affect, mitigate, reduce or interfere with Declarant's Development Rights or Special Declarant Rights reserved in this Declaration or Declarant's right or ability to use normal construction methods in completing the Project or the Condominium or any Buildings or improvements therein, even though some inconvenience or annoyance may be caused thereby.

Section 33. Declaration of Protective Covenants. The Property, the Building, and the Units and Common Elements shall be subject to any additional restrictions set forth in the Declaration of Protective Covenants.

Boone County, Missouri

Unofficial Document

ARTICLE VII

583

VOTING RIGHTS

Each meeting of the Unit Owners shall also be a meeting of the members of the Association. Each meeting of the members of the Association shall also be a meeting of the Unit Owners. Therefore, votes cast by Unit Owners shall be deemed to be, and shall be, votes cast by members of the Association. Votes cast by members of the Association shall be, and shall be deemed to be, votes cast by Unit Owners. Therefore, all rules and regulations contained in the Bylaws which deal with meetings of the members, shall similarly apply to, and govern, meetings of the Unit Owners.

There shall be 1,000 votes, which are eligible to be cast at each meeting of the Unit Owners and at each meeting of the members. Each Unit shall have allocated thereto, of such 1,000 votes, that number of votes determined by multiplying the number 1,000 by a decimal figure equal to the percentage Allocated Interest in the Common Elements attributable to the Unit. [Example: If a Unit has an Allocated Interest in the Common Elements attributable thereto of 20%, then such Unit shall have allocated thereto 200 votes.] The above provisions notwithstanding, the number of votes allocated to each Unit shall be rounded, up or down, to the nearest whole number. [Example: If an Unit has an Allocated Interest of 20.64%, then it shall have 206 votes attributable thereto. If it has an Allocated Interest of 20.46%, then it shall have allocated thereto 205 votes.]

If a Unit has multiple Owners, and only one of those multiple Owners of the Unit is present at a meeting of the members of the Association, or the Unit Owners, he is entitled to cast all the votes allocated to that Unit. If more than one of the multiple Owners are present, the votes allocated to that Unit may be cast only in accordance with the agreement of a majority in interest of the multiple Owners. Votes allocated to a Unit may not be divided or split. There shall be deemed to be a majority agreement of the multiple Owners of a Unit if any one of the multiple Owners casts the votes allocated to that Unit without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Unit. Votes allocated to a Unit may be cast pursuant to a proxy duly executed by all Unit Owners of such Unit. 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. No Unit Owner may revoke a proxy given pursuant to this Article except by actual notice of revocation to the person presiding over a meeting of the Association or the members. 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. No votes allocated to a Unit owned by the Association may be cast. The Declarant shall be deemed to be a Unit Owner, and a member of the Association, for all purposes as to each Unit owned by the Declarant, and shall, therefore, have those votes allocated to such Units at any meeting of the members or the Unit Owners. If a Unit is owned by a corporation, partnership, trust, estate or other entity, an officer, employee or agent thereof shall cast all votes attributable to that Unit.

The votes attributable to a Unit may not be divided amongst the Owners of such Unit. In other words, all votes attributable to the Unit must be cast, in

Boone County, Missouri

Unofficial Document

584

one single block, in the same manner, as to each issue presented to the Unit Owners or the members for decision.

ARTICLE VIII

COMMON EXPENSE AND COMMON SURPLUS

The expenses for the maintenance, upkeep, servicing, repair and replacement of the Common Elements and the Common Expenses of this Condominium and the Association and of the Executive Board, shall, except as otherwise provided in this Declaration, be shared by the Unit Owners of all Units now or hereafter located within the Condominium, in accordance with their Allocated Interests in the Common Elements and in the Common Expense Liability, as provided for by Sections 2 and 9 of ARTICLE I of this Declaration, and Section 3 of ARTICLE III of this Declaration. Such sharing of expenses, and of the Assessments provided for hereby, shall remain in full force and effect, regardless of the purchase prices of the Units, or their location, or the type of Unit or the value of the Unit. Any Common Surplus ("Common Surplus") shall be owned by all Unit Owners in the same proportions. The Common Surplus is any surplus of funds of the Association remaining after payment of or provision for Common Expenses, and any prepayment of reserves. The Common Surplus shall be paid to the Unit Owners in proportion to their Common Expense Liability, or shall be credited to them to reduce their future Common Expense Assessments.

ARTICLE IX

COMMON EXPENSE ASSESSMENTS AND MAINTENANCE FUND

Section 1. Creation of a Lien and Obligation for Assessments. The Declarant, for each Unit now or hereafter within the Condominium, hereby covenants, and each Unit Owner of each Unit by acceptance of a deed therefor, whether or not it shall be so expressed in any deed or other conveyance, is deemed to covenant and agree to contribute and/or pay to the Executive Board and the Association, or the duly authorized representatives of the Executive Board and the Association: (1) Annual Assessments or charges and their prorata share of any deficiency thereof; and (2) Special Assessments for replacements or non-periodic maintenance as hereinafter described; and (3) portions of insurance premiums hereinafter described; and (4) all other assessments, charges and fines provided for in this Declaration, and interest thereon, and all costs of collection therefor, all such sums, Assessments, charges and fines to be fixed, established and collected from time to time as provided in this ARTICLE IX or elsewhere in this Declaration. All such Annual and Special Assessments, and other sums, fines, charges and Assessments provided for in this Declaration, together with interest thereon and costs of collection thereof, as may be herein provided for, shall be a charge on the Unit, and shall be a continuing lien upon the Unit against which each such Assessment, fine or charge is made. Such liens and charges, and any other fines and Assessments assessed in accordance with the provisions of this Declaration, shall constitute a lien against each of the Units, and shall be enforceable in that manner provided for by Section 448.3-116 of the Act. Each such Assessment, fine or charge shall also be the joint and several personal obligation of the person or persons who were the Owners of the Unit at the time when the Assessment, fine or charge fell due. Except as

Boone County, Missouri

Unofficial Document

585

provided by the Act, personal obligations shall not pass to such Owner's successors in title unless expressly assumed by them.

Section 2. Delivery of Assessments to Executive Board - and Purposes of Assessments. All Assessments shall be collected by the Executive Board or the Managing Agent, as determined by the Executive Board, in accordance with this Declaration, and all such assessments shall be used by the Executive Board, on behalf of the Association, to discharge the Association's duties and obligations as provided for by this Declaration, and particularly for the purposes of providing for maintenance, repair, upkeep, servicing and management of the Common Elements and the Association as required of the Executive Board and the Association by this Declaration. Such funds shall, therefore, be used for the payment of expenses attributable to and associated with the caring for the lawns, grounds, garden areas and landscaping; the maintenance, repair and replacement of all Common Elements; the creation of a reasonable contingency or reserve for the replacement of Common Elements (Example: Reserves for replacements of roofs, gutters, downspouts, exteriors, drives and driveways, etc.); and for the payment of all other expenses which would, under the terms of this Declaration be Common Expenses of the Unit Owners, or expenses of the Association or the Executive Board.

Section 3. Maintenance Fund. The Annual Assessments or charges and special assessments established and collected under the terms of this ARTICLE IX, and all other sums collected pursuant to this Declaration, shall constitute a fund to be known as the "Maintenance Fund."

Section 4. Amount and Setting of Annual Assessments. All Annual Assessments for all Units within the Condominium shall be apportioned among the Units upon the basis of the Allocated Interests of such Units. Such Annual Assessment shall, therefore, be apportioned among the Units upon the basis of the number of square feet of Enclosed Floor Area allocated to each Unit. No Unit shall be subject to any Annual Assessment until the first Unit within the Condominium is sold and conveyed by deed to a person other than the Declarant. From and after the conveyance of the first Unit to an Owner other than the Declarant, and until January 1 of the calendar year which next begins following such conveyance, the Initial Annual Assessment for each of the Units shall be One Dollar and Twenty-five Cents (\$1.25) per square foot of Enclosed Floor Area allocated to the Unit. The Initial Annual Assessment for each Unit shall, therefore, be determined by multiplying such sum by the number of square feet of Enclosed Floor Area allocated to the Unit. Such Initial Annual Assessment is hereby approved, adopted, made and imposed by the Association, and the Executive Board in accordance with Section 448.3-115 of the Act and shall be deemed to have been so established and imposed. By accepting a deed for a Unit each Unit Owner ratifies, covenants to and agrees to pay such Initial Annual Assessment if it is applicable to the year of purchase of his Unit. No Annual Assessment shall be levied upon, or be charged upon, or be due from the Units or the Owners thereof, until the date of the conveyance of the first Unit to an Owner other than the Declarant. The Initial Annual Assessments for the first calendar year shall be prorated as of the date of the conveyance by the Declarant of the first Unit contained within the Condominium to a Unit Owner other than the Declarant. Annual Assessments for each Unit, for the year which includes its conveyance to a person other than the Declarant, shall be pro rated as of the date of such conveyance. Beginning January 1 of that calendar year which begins immediately

Boone County, Missouri
Unofficial Document 580

following the date of conveyance of the first Unit within the Condominium to a Unit Owner other than the Declarant, and as of January 1 of each subsequent calendar year, the Annual Assessments for all Units within the Condominium as of the first day of the calendar year (and all Units added to the Condominium during such year) shall be established (for the coming calendar) as follows:

A. Each year, before November 1, the Executive Board shall meet and shall estimate the total amount necessary to pay the cost of wages, materials, insurance, services and supplies required by the Association and the Executive Board for performing their duties under this Declaration, and required for performing and providing any work and items which will be required during the ensuing calendar year for the rendering of all services and the performance of all of the powers and duties of the Executive Board and the Association, together with reasonable amounts considered by the Executive Board to be necessary for reserves for contingencies and replacements, and shall establish a Recommended Budget for the coming calendar year. The expenses to be paid by the Association shall include any assessments, charges and expenses to be paid by the Association as a Lot Owner under the Declaration of Protective Covenants, all of which shall be included within the Board's Estimated Annual Cash Requirement.

B. The estimated total amount to be required by the Executive Board and the Association for purposes of satisfying and fulfilling the Recommended Budget, as determined by the Executive Board in accordance with subparagraph A above, shall be referred to herein as "the Estimated Annual Cash Requirement."

C. The Executive Board shall include, within the "Estimated Annual Cash Requirement", reasonable amounts required, in the discretion of the Executive Board, to establish reasonable reserves for contingencies and replacements, and may or may not include the cost of insurance described in Section 5 of Article X below.

D. The "Estimated Annual Cash Requirement", as determined in accordance with the above provisions of this Section 4, shall be divided by a number equal to the total number of square footage of Enclosed Floor Area allocated to all Units, as of the date of determination of such Estimated Annual Cash Requirement, and the resulting sum [i.e. the sum derived by dividing the Estimated Annual Cash Requirement by the total number of square footage of Enclosed Floor Area of all Units], shall be an amount referred to herein as the "Recommended Annual Square Footage Assessment."

E. The "Recommended Annual Assessment", for each Unit located within or added to the Condominium at any time during the coming calendar year, shall be an amount equal to the sum of the "Recommended Annual Square Footage Assessment", as determined in accordance with the above subparagraphs of this Section 4, multiplied by the number of square feet of Enclosed Floor Area allocated to the Condominium Unit. That is to say, that the "Recommended Annual Assessment" for each Unit within the Condominium, as of the first day of the coming calendar year, shall be an amount determined by multiplying the sum of

Boone County, Missouri

Unofficial Document

587

the "Recommended Annual Square Footage Assessment" by the number of square feet of Enclosed Floor Area of the Unit.

F. If Units are added to the Condominium (or become subject to Assessment) during a calendar year, then the sum of the Annual Assessments for each such Unit added to the Condominium during a calendar year, shall be the same sum as was in effect for a Unit of similar size at the beginning of the calendar year; provided, however, that such assessment shall be prorated as of the date of the addition of the Unit to the Condominium, or as of the date the Unit becomes subject to Assessment, whichever shall last occur. The addition of a Unit to the Assessment rolls shall not cause any change in Assessment for the year of such addition for other Units, and such Unit shall simply be assessed for the balance of such year at the same rate as was in effect for such year for those Units of similar size which were a part of the Condominium at the beginning of the year.

G. At the time of establishment of the assessments, the Executive Board shall also establish a rate of interest, not to be less than nine percent (9%) per annum, or more than eighteen percent (18%) per annum, to be charged upon delinquent Assessments for the coming calendar year.

H. Within thirty (30) days after the determination of the sum of the "Recommended Annual Square Footage Assessment", and of the sum of the "Recommended Annual Assessments" for each Unit within the Condominium [such sums to be determined in accordance with the above provisions of this Section 4] the Executive Board shall provide, to all Unit Owners, a summary of the Recommended Budget used to arrive at the Estimated Annual Cash Requirement, and of the sums of the Estimated Cash Requirement, Recommended Annual Square Footage Assessment, and Recommended Annual Assessments for each Unit, and of the rates of interest to be in effect upon delinquent Assessments for the coming calendar year.

I. The Executive Board shall set a date for a meeting of all Unit Owners to consider ratification of the Recommended Budget established by the Executive Board, and the Estimated Annual Cash Requirement established by the Executive Board, and the Recommended Annual Square Footage Assessment, and Recommended Annual Unit Assessments, and interest rates, as established in accordance with the above provisions of this Section 4. The Executive Board shall call such meeting of the Unit Owners, upon written notice given to all Unit Owners. Where reasonably practicable, such meeting shall be combined with, and held as a part of the annual meeting of the Members of the Association. Such notice shall be served upon the Unit Owners in the manner provided for service of notice upon Members of the Association by the Bylaws. The meeting shall be held at the location specified in the Bylaws for annual meetings of the Members of the Association. At such meeting the Unit Owners shall cast votes in accordance with their Allocated Interest as hereinabove defined. Unless, at that meeting, the Recommended Budget, the Estimated Annual Cash Requirement, the Recommended Annual Square Footage Assessment, and the Recommended Annual Assessments for all Units, and the suggested interest rates, are rejected by Unit Owners who own more than sixty percent (60%) in the aggregate of the Allocated Interests of the Condominium [as determined as of the date of the meeting], then, in such event, the Recommended Budget, the Estimated Annual Cash

Boone County, Missouri

Unofficial Document

588

Requirement, the Recommended Square Footage Assessment, and the Recommended Annual Assessments, and the interest rates, for all Units shall be ratified, whether or not a quorum of Unit Owners is present. If the Recommended Budget, the suggested interest rates, the Estimated Annual Cash Requirement, the Recommended Annual Square Footage Assessment, and the Recommended Annual Assessments for all Units are rejected, the Annual Assessment for each Unit of the Condominium as last ratified by the Unit Owners or as established as the Initial Annual Assessment pursuant to Section 4 above if none was so ratified, shall be continued until such time as the Unit Owners ratify a subsequent budget proposed by the Executive Board, and Units added to the Condominium since the last ratified budget shall be subject to the Annual Assessment provided for by such last ratified budget. The date for the meeting of the Unit Owners shall be not less than fourteen (14) or more than thirty (30) days after the Executive Board mails to the Unit Owners the written summary of the Recommended Budget and other information described above.

J. If Budgets and Assessments for a year are not ratified or approved until after the beginning of a year, they shall be retroactive in effect to the beginning of such year.

Section 5. Contingencies and Shortages. The Executive Board shall build up and maintain such reasonable reserves for contingencies and replacements as the Executive Board shall from time to time deem appropriate, and as shall be permitted by the budgets and Annual Assessments established in accordance with the provisions of Section 4. Extraordinary expenditures and replacements, not included in the Annual Assessments hereinabove described in Section 4, which may be necessary during a year, shall be charged first against such reserves. If the Annual Assessment established pursuant to Section 4 proves inadequate for any reason, then the sum of any deficiency (i.e. the sum by which the total of the Annual Assessments for all Units is inadequate) shall be shared by the Unit Owners of all Units then located within the Condominium, in accordance with their Allocated Interests [i.e. their allocated Common Expense Liability], and each Unit Owner's share of such deficiency shall constitute a Special Assessment against such Unit Owner's Unit.

Section 6. Payment of Annual Assessment. The Annual Assessments established in accordance with this ARTICLE IX shall be paid by the Unit Owners, in one lump sum, on an annual basis, or in quarterly installments [upon such dates as the Executive Board shall determine], or in monthly installments, as the Executive Board, in its discretion, shall designate. If the Executive Board elects to collect the Annual Assessments in monthly installments (or fails to specify or require other payments), then each Unit Owner shall be obligated to pay to the Executive Board and the Association one-twelfth (1/12) of the Annual Assessment for each calendar year on the first day of each and every month during such calendar year, beginning January 1 of such calendar year, and continuing through December 31 of such calendar year.

Section 7. Obviously Deficient Budget. If, during any calendar year, it becomes obvious that the total of the Annual Assessments for all Units for such calendar year, as established in accordance with the above provisions of this ARTICLE IX, is going to be inadequate, for any reason, then the Executive Board may establish a Revised Budget, a revised Estimated Annual Cash Requirement, and

Boone County, Missouri

Unofficial Document

589

Revised Assessments for each Unit, and may notify the Unit Owners of the Revised Budget, the Revised Estimated Annual Cash Requirement, and the Revised Annual Assessments for each Unit, and may seek ratification by the Unit owners of the Revised Budget and Revised Estimated Annual Cash Requirement, and Revised Assessments, in that manner provided for by Section 4 of this ARTICLE IX. If the Revised Budget, Revised Estimated Annual Cash Requirement, and Revised Annual Assessments for the Units are ratified by the Unit Owners (or are not rejected) in accordance with the provisions of such Section 4, at a special meeting of the Unit Owners called for such purposes, then same shall become effective commencing with that installment payment which is next due following the delivering or mailing of the notice of the further Revised Annual Assessment. Each Unit Owner shall be obligated to pay the adjusted Annual Assessment, which shall, like all other Assessments, constitute a lien upon the Units, and be enforceable in that manner provided for in this ARTICLE IX.

Section 8. Shortages. In the event the Annual Assessments, or the sums made available by virtue of the Annual Assessments, shall prove inadequate for any reason whatsoever, then the sum of any deficiency shall be shared by the Unit Owners of all Units then contained within the Condominium in accordance with their then existing Allocated Interests [i.e. Common Expense Liabilities], and each Unit Owner's share of the deficiency shall constitute a Special Assessment against such Unit Owner and such Unit Owner's Unit, to be immediately due and payable upon demand by the Executive Board.

Section 9. Special Assessments for Replacement or Non-Periodic Maintenance. In the event the necessity for a replacement of or for any capital improvement making up a portion of the Common Elements should occur in any calendar year, or in the event of the need for non-periodic maintenance, repair, replacement or upkeep for any Common Elements should occur in any year (including, by way of example only, the need for roof replacement, gutter or downspout replacement, painting, tuckpointing or other substantial exterior maintenance, replacement or resurfacing of the drives or driveways, substantial structural repairs or replacements, replacements of dead or dying lawns, trees, shrubs or landscaping), and in the further event the Annual Assessment for the Units shall not have established a sufficient reserve for such maintenance, repair or replacement, then the entire sum of the cost of such maintenance, repair or replacement shall be apportioned among all Units then located within the Condominium, in accordance with their Allocated Interests [i.e. their Allocated Common Expense Liabilities], and that portion of such costs apportioned to each Unit shall constitute a Special Assessment against such Unit. Such Special Assessment shall be used by the Executive Board to pay the cost of such maintenance, repair, replacement or upkeep, and shall be due and owing by each Unit Owner on demand by the Executive Board, in time to permit timely payment of the cost of such maintenance, repair, replacement or upkeep. Special Assessments provided for in this Section 9 shall be enforceable in that manner provided for all Assessments by this ARTICLE IX, and shall constitute the joint and several personal obligations of the Unit Owners obligated therefor, and shall constitute charges against and liens upon their Units and the real estate and improvements making up same, and shall bear interest as provided in this ARTICLE IX, and shall be enforceable in that manner provided for in this ARTICLE IX. All such Special Assessments must be approved by Unit Owners holding, in the aggregate, fifty-five percent (55%) of the votes of the Unit Owners entitled to vote upon such issue. [i.e. Unit Owners holding, in the aggregate fifty-five percent (55%) of the Allocated Interest.]

Boone County, Missouri

Unofficial Document

590

Section 10. Assessment for a Portion of Insurance Premiums. ARTICLE X of this Declaration, which appears below, requires that the Executive Board obtain and maintain insurance on the Units, and the Condominium and the Property, as described in such ARTICLE X. In addition to the Assessments provided for above, each Unit Owner of each Unit covenants to pay to the Executive Board and the Association his prorata share of the total insurance premium for insurance on the Buildings and Units, as provided for by ARTICLE X of this Declaration, which may or may not be included within the Annual Assessments, as the Board sees fit. In the event a Unit Owner fails or refuses to pay the aforesaid prorated amount of the premium for that insurance upon the Buildings and the Units described by such ARTICLE X of this Declaration, then such prorated amount of such premium shall be added to and become a part of the Annual Assessment to which the Unit is subject under this Declaration, and as a part of such Annual Assessment or charge, shall be an obligation of the Unit Owner, and shall be a lien and charge upon the Unit Owner's Unit, as are all other assessments provided for by this ARTICLE IX, and shall become due and payable, and be collectible, in all respects as provided for the Annual Assessments by this ARTICLE IX. The Unit Owners' prorated portion of the premium for that insurance upon the Buildings and Units required by this Declaration shall, at the option of the Executive Board (or the insurers selected by it), be paid to the Executive Board, or the insurance carrier for the insurance to be obtained and maintained under ARTICLE X of this Declaration, in such annual, quarterly or monthly installments as shall be determined by the Executive Board or the insurance carrier. The Executive Board may, in its discretion, include in the sum of the Annual Assessments the insurance premiums hereinabove described, or may cause such insurance premiums to be charged to the Unit Owners as a separate assessment; provided that, in any event, each Unit Owner shall be obligated to pay his share of the insurance premiums as determined in accordance with the provisions of this Declaration. If the Unit Owner's prorated share of the insurance premium is not included within the Unit Owner's Annual Assessment, and if the Unit Owner fails to pay his prorated portion of the premium for insurance then such prorated portion of the premium shall be added to and shall become a part of the Annual Assessment to which the Unit is subject under this Declaration, and, as a part of such Annual Assessment or charge, shall be an obligation of the Unit Owner, and shall be a lien, charge and assessment upon the Unit Owner's Unit, and shall become due and payable, and be collectible and enforceable in all manner and respects provided for assessments by this ARTICLE IX. So long as the Executive Board, in its reasonable discretion, determines that the cost of replacement of the Unit is approximately the same, on a per square foot basis, and that the risks attributable to each of the Units is approximately the same, insurance premiums may be apportioned among the Units in the same manner in which Annual Assessments are apportioned among the Units (i.e. on a per square foot of Enclosed Floor Area basis). If the Executive Board determines that the cost of replacement, per square foot, of the Units is substantially different, or that the risks attributable to the Units are substantially different, then the Executive Board shall have the right, acting in its sole and absolute discretion (but not the obligation), to cause the insurance premiums to be apportioned among the Units on the basis of their relative replacement costs and relative risks.

Section 11. Rate of Sharing Assessments. Except with respect to insurance premiums, which may be prorated by the Executive Board or its insurance carrier (as the Executive Board deems appropriate), in its sole and absolute discretion, on the basis of the relative costs of replacement for, and relative risks related to, each of the Units, the entire sum of all Common Expenses shall be assessed to the Unit Owners (and their respective Units) in

Boone County, Missouri

Unofficial Document

591

accordance with their then existing Allocated Interests in the Common Elements. In the event the Assessments established by this Declaration, or hereafter established in accordance with the above provisions of this ARTICLE IX, shall be insufficient for purposes of permitting the Association or the Executive Board to reasonably discharge their duties and obligations as hereinabove provided for in this Declaration, then the sum of each and every such deficiency shall be shared by the Unit Owners of all Units then located within the Condominium in accordance with their then existing Allocated Interests. The Executive Board, if it, in its sole, absolute, unlimited and unmitigated discretion deems it necessary in the interest of fairness to do so, may elect to require that insurance premiums be prorated by the Executive Board or its insurance carrier (as the Executive Board deems appropriate) on the basis of the relative costs of replacement for, and relative risks related to, each of the Units. Otherwise, the costs of insurance premiums shall, like all other costs, be allocated among the Units on the basis of their Allocated Interests. The right in the Executive Board to prorate insurance premiums on the basis of relative costs of replacement and relative risks shall be purely discretionary in the Executive Board.

Section 12. Date of Commencement of Annual Assessments: Due Dates and Certificates. The Assessments hereinabove provided for shall have no application to any Unit until the Declarant has conveyed one of the Units to a person, other than the Declarant. Such Assessments hereinabove provided for shall be applicable to each of the Units (and all of the Units), beginning with that date when the Declarant first conveys one of the Units to an Owner other than the Declarant. No such Assessments shall be levied upon, or be charged upon, or be due from the Units, or any of the Units, or the Owners thereof, until the date of the conveyance of the first Unit to an Owner other than the Declarant. From and after the conveyance of the first Unit to an Owner other than the Declarant the Annual Assessments for each of the Units shall be in those sums established as hereinabove set forth in Section 4 of this ARTICLE IX; provided, however, that Annual Assessments for each such Unit for the calendar year, which includes the date of conveyance of such Unit to a Unit Owner other than Declarant, shall be prorated as of the date of the conveyance by the Declarant of the Unit to a Unit Owner other than the Declarant. The first Annual Assessment for each Unit which hereafter becomes subject to Annual Assessments, shall be adjusted according to the number of months remaining in the calendar year, as of the date such Unit is conveyed, rented or leased by the Declarant to a person other than Declarant or the date the Unit otherwise became subject to Annual Assessments, whichever shall first occur. The Executive Board shall upon demand at any time furnish a certificate in writing signed by a member of the Executive Board, setting forth whether the Assessments on a specified Unit have been paid. A reasonable charge may be made by the Executive Board for the issuance of such certificates. Such certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid. Units owned by the Declarant shall be exempt from Assessments to the extent, but only to the extent, hereinafter specified in Section 12 of ARTICLE XIV of this Declaration. Once the Declarant has conveyed, by deed, a Unit in the Condominium to a person other than the Declarant, all Units which are then occupied for office purposes shall then become subject to all assessments provided for by this ARTICLE IX; provided that the Annual Assessment for all such Units for such year shall be prorated as of the date of the conveyance by the Declarant of the first Unit within the Condominium to a person other than the Declarant. In other words, all Units within the Condominium which are then occupied and used for office purposes, shall become subject to Annual Assessments and all other assessments, as of the date the Declarant first

Boone County, Missouri Unofficial Document

592

conveys a Unit within the Condominium to a person other than the Declarant, but none of such Units shall be previously subject to such assessments. Annual Assessments for all Units subject to Assessment shall be prorated as of the date of the first conveyance by the Declarant of the first Unit within the Condominium to a person other than the Declarant. All Units owned by the Declarant, which are not occupied and used for office purposes, shall be exempt from assessment to the extent specified in Section 12 of ARTICLE XIV of this Declaration. Such Units, if not previously subject to assessment, shall become subject to assessment upon the earliest to occur of the following events:

A. When the Unit otherwise becomes subject to assessment pursuant to Section 12 of ARTICLE XIV;

B. When the Unit is conveyed, rented or leased by the Declarant;

C. When the Unit first becomes used by an occupant as an office or for retail or commercial purposes.

The Annual Assessment shall be prorated as of the date the Unit first becomes subject to assessment.

Even though Units owned by the Declarant may be exempt from Annual Assessments the Declarant shall nevertheless, for such Units, pay, when and as same are due and payable:

- Insurance premiums for all insurance allocated to such Units;
- The Units' Allocated Interest of all Common Expenses.

For these purposes, all unsubdivided rentable, saleable or leaseable areas of any Building held by the Declarant shall be considered to be and shall be treated as a Unit.

Section 13. Effect of Non-payment of Assessments: Remedies of Executive Board. Any Assessments provided for in this ARTICLE IX, which are not paid when due, shall be delinquent. If an Assessment or installment thereon is not paid within ten (10) days of the date when due, it shall be deemed to be "late", and the Unit Owner shall be charged a "late charge" of fifteen dollars (\$15.00) to be paid with the same. In addition to such late charge, if an Assessment or installment therein is not paid within twenty (20) days after the due date, the sum of such assessment or installment shall bear interest from the date when due until paid at those rates established from time to time by the Association acting through its Executive Board in the manner described in Section 4 of this ARTICLE IX. The rate of interest upon delinquent Assessments shall vary, while the Assessment is delinquent, from the date when due until the date when paid, with each adjustment by the Executive Board of its rate of interest upon delinquent Assessments. The Executive Board, in the name of the Association, may bring an action at law or in equity, against the Unit Owner personally obligated to pay the Assessment, or foreclose the lien against the Unit Owner's Unit, and interest, costs of collection and litigation, and reasonable attorney's fees of any such action shall be added to the amount of the Assessment. No Owner may waive or otherwise escape liability for the Assessments provided for herein by nonuse of the Common Elements, or abandonment of such Unit Owner's Unit. The lien to secure payment of any Assessment or

Boone County, Missouri

Unofficial Document

593

charge shall be in favor of the Association, and shall be for the benefit of the Association and all Unit Owners, and may be foreclosed in the name of the Association by the Executive Board, in that manner provided for by Section 448.3-116 of the Act, in like manner as a mortgage on real estate or a power of sale under Chapter 443 of the Missouri Statutes. Suits for unpaid Assessments or charges may be brought in the name of the Association by the Executive Board without foreclosing or waiving the lien securing same.

Section 14. Deposit of Funds. All Annual Assessments, Special Assessments and other Assessments and charges established and collected under the terms of this Declaration shall constitute a fund to be known as the "Maintenance Fund", and shall be paid over to the Executive Board acting on behalf of the Association. All such funds shall be deposited by the Executive Board, on behalf of the Association and in the name of the Association, in such account or accounts as the Executive Board shall from time to time, in its discretion deem appropriate. Funds deposited in such accounts shall be subject to withdrawals upon the signatures of such of the Officers of the Executive Board, or such other designees of the Executive Board, or the Managing Agent, as the Executive Board shall, in its discretion, from time to time deem appropriate. All funds constituting the Maintenance Fund shall be used solely for the purposes designated in this Declaration or the Bylaws.

Section 15. Liens Established According to Act. The liens for assessments are established, and are to exist, by virtue of the provisions of Section 448.3-116 of the Act.

Section 16. Expense Caused by Misconduct. If any Common Expense is caused by the misconduct of any Unit Owner, the Association, acting through its Executive Board, shall assess that expense exclusively against such Unit Owner's Unit, as an additional, Special Unit Assessment against such Unit.

Section 17. Exemption from Assessment. THOSE UNITS FROM TIME TO TIME OWNED BY THE DECLARANT SHALL BE EXEMPT FROM ALL ANNUAL ASSESSMENTS, SPECIAL ASSESSMENTS AND OTHER ASSESSMENTS, AS HERINAFTER PROVIDED FOR BY SECTION 12 OF ARTICLE XIV OF THIS DECLARATION, BUT ONLY TO THE EXTENT SPECIFIED IN SUCH SECTION 12. THE DECLARANT, THEREFORE, RESERVES A SPECIAL DECLARANT RIGHT AND DEVELOPMENT RIGHT TO HAVE THOSE UNITS OWNED BY THE DECLARANT BE EXEMPT FROM ASSESSMENTS TO THE EXTENT SET FORTH IN SUCH SECTION 12 OF ARTICLE XIV. HOWEVER, AS STATED IN SECTION 13 ABOVE THE DECLARANT SHALL PAY ALL INSURANCE PREMIUMS ATTRIBUTABLE TO SUCH UNITS AND ALL ALLOCATED INTERESTS IN ALL COMMON EXPENSES FOR SUCH UNITS.

ARTICLE X

INSURANCE AND DESTRUCTIONS

The Executive Board shall procure from the proceeds of the Maintenance Fund hereinabove described (and from any additional Assessments for insurance premiums hereinabove described in ARTICLE IX), insurance as follows:

Section 1. Liability Insurance. The Executive Board shall obtain public liability and property damage insurance applicable to the Common Elements, including medical payments insurance, insuring the Executive Board, the Association and the Unit Owners, and each of them, as their respective interests

Boone County, Missouri Unofficial Document

594

may appear, against liability for injuries, death and property damages, in such amounts, and providing such coverage as the Executive Board may determine from time to time; provided, however, that the insurance shall provide minimum limits of coverage of not less than Two Million Dollars (\$2,000,000.00), single limit coverage, for injury to or death of any one person, or for injuries or deaths arising out of any one occurrence, and not less than Two Million Dollars (\$2,000,000.00) for property damage arising out of any one occurrence, unless such limits cannot be practicably obtained. The Association shall be an insured person under such policies of insurance. In addition, each Unit Owner shall be an insured person under the policies of insurance providing the liability insurance coverage required by this Section 1 with respect to liability arising out of such Unit Owner's interest in the Common Elements or membership in the Association. The insurer issuing the liability insurance coverage required by this Section 1, shall waive its rights to subrogation under the policy against any Unit Owner or tenants or lessees, and against the Executive Board and the Association and the Managing Agent. No act or omission by any Unit Owner, unless acting within the scope of such Unit Owner's authority on behalf of the Association, will void the policy or be a condition to recovery under the policy. If, at the time of any insured incident, there is other insurance in the name of a Unit Owner covering the same risks covered by the policy, the Association's policy provides the primary insurance.

Section 2. Worker's Compensation Insurance. The Executive Board shall also procure such worker's compensation insurance as the Executive Board shall deem reasonably necessary for the protection of the Executive Board and the Association.

Section 3. Common Facilities. The Executive Board, in the name of the Association, shall obtain and maintain insurance on any of the Common Facilities [i.e. Association Facilities] making up portions of the Common Elements, other than the Building which contain the Units, and which are insurable, insuring against all risks of direct physical loss commonly insured against under broad form, all risk insurance coverage, including, if practicable, loss or damage by fire, lightning, wind storm, hail, explosion, vandalism, malicious mischief, freezing, and all other hazards generally insured against in this area under standard "all risk" insurance coverage provisions, for one hundred percent (100%) of the actual cash value of the insured property or 100% of the insurable replacement cost of the improvements insured from time to time, whichever is the greater amount, exclusive of land, excavations, foundations and other items normally excluded from property policies. The amount of insurance shall be determined, in accordance with the above requirements of this Section 3, at each renewal date. All such insurance coverages procured in accordance with this Section 3, shall be procured in the name of the Executive Board and/or the Association, as the Executive Board, in its discretion, shall determine.

Section 4. Sharing of Costs of Insurance Coverages Described in Sections 1, 2 and 3. The Unit Owners within the Condominium shall share the cost of all of the insurance hereinabove described in Sections 1, 2 and 3 as a Common Expense, in accordance with their Allocated Interests. The cost of such insurance shall be included within the Budget, the Estimated Annual Cash Requirements, and the Annual Assessments, as established in accordance with ARTICLE IX of this Declaration.

Boone County, Missouri Unofficial Document

595

Section 5. Fire and Casualty Insurance on Buildings Containing Units. The Association, through the Executive Board, shall obtain and maintain insurance on the Buildings and the Units therein, and the other improvements located therein and thereon, and all Common Elements making up portions of such Buildings, and all facilities located therein and thereon, against loss or damage by fire and other such casualties or risks of loss as are commonly insured against in this area under broad form extended coverage and "all risk" insurance coverage, including, if practicable, fire, lightning, wind storm, hail, explosion, vandalism, malicious mischief, and all other hazards generally insured against in this area under broad form, all risk insurance coverage. Such insurance shall provide coverage in an amount equal to one hundred percent (100%) of the cash value of the insured property, or 100% of the full insurable replacement value of the improvements insured, from to time, whichever is the greater amount, as of the date the insurance is purchased and at each renewal date, exclusive of land, excavations, foundations and other items normally excluded from property policies. Such insurance shall provide protection for the Buildings, each Unit, and the attached, built-in and installed fixtures and equipment contained therein, and the following, whether installed by the Declarant, or the Unit Owner:

- A. All attached, built-in and installed fixtures, equipment and appliances;
- B. Wallpaper and wallcoverings;
- C. Tile, carpet, floor coverings and finished flooring;
- D. Paneling;
- E. All other elements making up the finished floor, finished ceiling and finished walls;
- F. All items which would normally be considered to be a "fixture", because of the manner in which they are attached to the Building or the Unit.

All such insurance coverages shall be written in the name of and the proceeds shall be payable to, the Association, as Trustee for the Association and each of the Unit Owners, and their mortgagees, and the holders under all applicable Deeds of Trust. The Association [acting through the Executive Board] as Trustee shall have full power to adjust all insurance losses by suit or otherwise and payment accepted by such Trustee hereunder shall constitute a discharge of the insurer. Such Trustee shall be the true and lawful attorney in fact to receive the proceeds of all fire and extended coverage losses. Such Trustee shall be considered to be the "Insurance Trustee", which shall act in accordance with Section 448.3-113 of the Act. The Insurance Trustee (i.e. the Association acting through the Executive Board) shall hold any insurance proceeds in trust for the Unit Owners and lien holders as their interests may appear. The proceeds of such insurance shall be disbursed first for the repair or restoration of the damaged property (to the condition which existed before the damage, if practicable), and the Unit Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of the proceeds after the Property has been completely repaired or

Boone County, Missouri Unofficial Document

596

restored (to such condition, to the extent practicable), or the Condominium is terminated in accordance with the provisions of the Act. The Insurance Trustee shall have full power and authority to adjust and collect all losses and to reimburse itself for reasonable expenses for such adjustment or collection. The Insurance Trustee shall have full power and authority to execute all documents necessary on its behalf and on behalf of the insureds and the beneficiaries of the insurance to endorse all checks and drafts. The Insurance Trustee shall disburse the funds pursuant to this ARTICLE X (in the event the proceeds are sufficient for the repair or restoration of the damaged property), and in the manner provided for by Section 448.3-113 of the Act, and Sections 7 and 12 below.

Section 6. Insurance Companies. All insurance shall be placed with companies licensed to write insurance in the State of Missouri, which the Executive Board or its agent determine to be capable and solvent and responsible insurance companies.

Section 7. Damage, Destruction and Reconstruction. In the case of fire or any other disaster, the insurance proceeds, if sufficient to repair or restore the damaged property, shall be applied to such repair or restoration, and the Unit Owners and lien holders are not entitled to receive payment of any portion of the proceeds unless there is a surplus of the proceeds after the property has been completely repaired or restored, or the Condominium has been terminated in accordance with the Act. Subsection 12 below, and subsection 8 of Section 448.3-113 shall govern the use of the insurance proceeds.

Section 8. Insurance Premiums for Insurance Required Under Section 5 of this ARTICLE X. In addition to the Annual Assessment and other assessments provided for above, each Owner of each Unit covenants to pay to the Association, acting through its Executive Board, or its insurer, as determined by the Executive Board, for that insurance hereinabove described in Section 5 of this ARTICLE X, at such times and in such installments as shall be determined by the Executive Board or such insurer, commencing on the date the Owner takes title to a Unit, such Unit Owner's prorated share of the total insurance charged by the insurance carrier for that insurance to be obtained and maintained under such section of this ARTICLE X. Premiums for such insurance may, in the discretion of the Executive Board, be apportioned among the Units as follows:

A. If the Executive Board, acting in its reasonable discretion, determines that the replacement cost attributable to each of the Units is approximately the same, on a per square foot of Enclosed Floor Area basis, and that the risks attributable to the Units are approximately the same, then such insurance premiums shall be apportioned among the Units upon the basis of the square footage of Enclosed Floor Area contained within each of the Units (i.e. on the basis of Allocated Interests), and, in such event, the insurance premiums may, or may not be included in the regular Annual Assessments, as the Executive Board in its discretion shall determine appropriate. (If not included in the Annual Assessments, then there shall be a separate assessment for the prorated portion of the insurance premium, which, if not paid when due, shall constitute a part of the Annual Assessment, and shall be enforceable as such).

Boone County, Missouri

Unofficial Document

597

B. If the Executive Board, in the exercise of its reasonable discretion, determines that the replacement costs of the Units are substantially different, on a per square foot of Enclosed Floor Area basis, or that the risks of replacement of the Units are substantially different, then, in such event, the Executive Board, in its discretion, may cause the insurance premium to be allocated by it or its insurer among the Units on the basis of the relative costs of replacement and relative risks attributable to each of the Units. In such event the prorated portion of the insurance premium attributable to each Unit may or may not be included in the Annual Assessment for such Unit as the Executive Board, in its discretion, shall determine appropriate. If the prorated portion of the insurance premium is not included within the Annual Assessment for a Unit, then it shall constitute a special assessment, and shall be due and payable at such times as the Executive Board, in its discretion, shall determine appropriate. If not timely paid, such additional assessment shall constitute a part of the Annual Assessment and shall be enforceable as such.

In the event a Unit Owner fails or refuses to pay the aforesaid prorated portion of the insurance premium allocated to his Unit, then such prorated amount of such premium shall be added to and shall become a part of the Annual Assessment or other charges to which such Unit is subject under the foregoing provisions of this Declaration, and as a part of such assessment or charge, it shall be an obligation of the Unit Owner, and shall be a lien and charge against such Unit Owner's Unit, and shall become due and payable and be collectible and enforceable, in all respects, as provided for other assessments by ARTICLE IX of this Declaration and by the Act.

Section 9. Other Insurance. Nothing herein shall preclude a Unit Owner from procuring whatever additional insurance such Unit Owner may desire, and it shall be the individual responsibility of each Unit Owner to provide tenant's theft, liability and other insurance covering personal property within such Unit Owner's Unit, or damage thereto or loss thereof.

Section 10. Waiver of Subrogation. Each insurance company issuing all policies required to be provided by the Association pursuant to Sections 1 and 5 of this ARTICLE X, waives its rights to subrogation under the policy against any Unit Owner or his tenants or lessees and the Executive Board or the Association or the Managing Agent. No act or omission by any Unit Owner, unless acting within the scope of his authority on behalf of the Association, will void any policy or be a condition to recovery under any policy. To the maximum extent permitted by law, and, in any event, to the extent provided by the Act, the Unit Owners and the Executive Board and each of them, and each of the Unit Owners and their respective tenants and lessees, do hereby mutually release each other, and their respective agents, employees and invitees and family members from all claims for damage to or destruction of their respective physical properties, if such damage or destruction results from one or more of the perils covered by fire and extended coverage insurance. Any policies of insurance must obtain similar waivers.

Section 11. Damage Caused by Unit Owner, Not Covered by Insurance. If, due to the act or neglect of a Unit Owner, or any occupant of a Unit, or of a guest, or other authorized occupant or visitor of such Unit Owner, damage shall

Boone County, Missouri Unofficial Document

598

be caused to the Common Elements or to a Unit or Units owned by others, or maintenance, repairs or replacements shall be required which would otherwise be at the Common Expense, then such Unit Owner shall pay for such damage and such maintenance, repairs and replacements, as may be determined by the Executive Board, to the extent not covered by insurance, and such cost shall constitute a Special Unit Assessment against such Unit Owner and his Unit.

Section 12. Use of Insurance Proceeds - Damage or Destruction. Any portion of the Condominium for which insurance is required under this ARTICLE X, which is damaged or destroyed, shall be repaired or replaced promptly unless (1) the Condominium is terminated in accordance with ARTICLE XXV below, or (2) the repair or replacement would be illegal under any state or local health or safety statute or ordinance, or (3) eighty percent (80%) of the Unit Owners, including every Owner of a Unit or assigned Limited Common Element which will not be rebuilt, vote not to rebuild. The cost of repair or replacement in excess of insurance proceeds and reserves is a Common Expense. If the entire Condominium is not repaired or replaced, (1) the insurance proceeds attributable to the damaged Common Elements shall be used to restore the damaged area to a condition compatible with the remainder of the Condominium, (2) the insurance proceeds attributable to Units and Limited Common Elements which are not rebuilt shall be distributed to the Owners of those Units and the Owners of the Units to which those Limited Common Elements were allocated, and (3) the remainder of the proceeds shall be distributed to all Unit Owners or lienholders, as their interests may appear, in proportion to the Allocated Interests in the Common Elements of all Units. If the Unit Owners vote not to rebuild any Unit, that Unit's Allocated Interest is automatically reallocated upon the vote as if the Unit had been condemned under the Act, and the Association shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocations. Notwithstanding the provisions of this Section 12, the provisions of ARTICLE XXV dealing with termination of the Condominium govern the distribution of insurance proceeds if the Condominium is terminated.

ARTICLE XI

MAINTENANCE AND UPKEEP

Section 1. Maintenance to be Performed by Association. The Association, acting through its Executive Board or its Managing Agent, shall, from the Maintenance Fund and other charges and Assessments established in accordance with the foregoing Articles of this Declaration, provide for all liability, fire and casualty insurance, and other insurance required for the Buildings, the Units and the Common Elements in accordance with the foregoing provisions of this Declaration (WITH THE EXCEPTION OF INDIVIDUAL LIABILITY INSURANCE FOR THE INDIVIDUAL UNITS, AND INSURANCE FOR THE FURNITURE, FURNISHINGS AND CONTENTS WITHIN EACH UNIT, WHICH SHALL BE PROVIDED BY EACH UNIT OWNER), and for all utilities for, and all sewer services for, and all maintenance, repairs, replacements, upkeep and administration for all Common Elements of the Building, including, but not limited to, hallways, entranceways, common and public areas of the Building, elevators, elevator shafts, stairwells and other common and public areas of the Building (and all equipment serving same and all fixtures within and serving same and all components of same or serving same). So long as all portions of the Development Parcel (as described in the Declaration of

Boone County, Missouri

Unofficial Document

599

Protective Covenants), which have been developed and are occupied, are a part of the Condominium, then the Association shall also provide for all utilities for and all sewer services for and all maintenance, repairs, replacements, upkeep and administration for (including, but not limited to, the mowing, fertilization; gardening and irrigation of all lawns, trees, shrubbery and like, providing snow removal for, providing painting, cleaning, tuckpointing and staining for, and all maintenance, repair, servicing, upkeep, bulb replacements for, and replacements for) and all insurance for all of the Common Elements located on the Property outside of the Building (whether or not Limited Common Elements), and all improvements, elements and portions thereof. If any portion of the Development Parcel as described in the Declaration of Protective Covenants, which is developed and is occupied, is not annexed to the Condominium but is separately owned (without becoming a part of the Condominium) then, in such event, all maintenance, repairs, replacements, servicing and upkeep for all Property Used in Common (as defined in the Declaration of Protective Covenants) within this Condominium and located throughout the Development Parcel, then and in the future, shall be maintained, repaired and replaced and insured (and upkeep and servicing therefor shall be) as provided in the Declaration of Protective Covenants and the Association shall become the "Lot Owner" referred to in the Declaration of Protective Covenants and shall contribute its share of the costs of such maintenance, repair, replacements, servicing and upkeep of the Property Used in Common in accordance with the terms of the Declaration of Protective Covenants.

Section 2. Maintenance to be Performed by Unit Owners. All maintenance, repairs, replacements, servicing and upkeep for all portions of the premises owned by the Unit Owners, not imposed upon the Executive Board or the Association by this Declaration, shall be the individual responsibility of the Unit Owners, including, but not limited to (and together with), maintenance, repair and replacement of the following:

A. All interior surfaces (including interior furring, lath, plaster, sheetrock, drywall plasterboard, wallboard, paint, wallpaper, interior finished walls, and interior ceilings, floors, floor coverings, tile, wallcoverings, and ceiling coverings); and

B. All of those portions of interior partitions which do not contribute to the support of another Unit or the Common Elements, or the roof or roof structure, or the exterior walls or an exterior wall, or some other structural component of any Building, or some components of another Unit or the Common Elements; and

C. All portions of Interior and Exterior Walls contained within the boundaries of the Units, or constituting the boundaries of the Unit, as defined herein (including interior furring, lath, plaster, sheetrock, dry wall, wallboard, plasterboard, paneling, wallpaper, paint and other portions of the finished walls and fixtures thereon); and

D. All water lines, sewer lines, electrical lines, gas lines and other utility lines and utility installations and equipment, within or without the Unit, which serve only such Unit; and

Boone County, Missouri Unofficial Document

600

E. All heating, cooling and air conditioning ducts, duct work, pipes, compressors, condensers, cooling towers, heat pumps and other equipment and installations of any kind or nature whatsoever which serve only the Unit, whether located within the boundaries of such Unit or the Common Elements; and

F. All hot water heaters serving only the Unit; and

G. All plumbing fixtures and equipment which serve only such Unit; and

H. All appliances within the Unit; and

I. All equipment which serves only the Unit; and

J. Any columns, beams and other structural elements located within the boundaries of the Unit which serve only such Unit, and do not support, serve or service another Unit or the Common Elements or a component of another Unit or the Common Elements, or the roof or Exterior Walls for the Buildings; and

K. All doors and door hardware (whether for interior or exterior doors) for the Unit, and all surfaces therefor; and

L. All windows, glass surfaces and window hardware (whether interior or exterior) for the Unit; and

M. The interior and exterior surfaces of the Unit; and

N. All fixtures located outside of the Unit which are controlled by switches or controls within the Unit; and

O. All flues, ducts, chutes and conduits which serve only the Unit, whether located inside or outside of that Unit.

Section 3. Standards of Maintenance, Repair and Upkeep. The Owners of each of the Units shall be obligated to each other and the Executive Board and the Association, and the Association and the Executive Board shall be obligated to the Unit Owners and each of the Unit Owners, and each of the Unit Owners and the Executive Board and the Association shall be jointly and severally obligated to each other, to cause the maintenance, repairs, replacements, servicing and upkeep to be respectively performed by each of them in accordance with the foregoing provisions of this ARTICLE XI and other provisions of this Declaration to be performed, at all times, so as to cause each of the Units, and the Property, and the Buildings, and the Common Elements, and all components thereof, to be maintained in a clean, safe, neat, attractive and structurally sound condition, according to maximum reasonable standards of cleanliness, safety, neatness, attractiveness, aesthetics, beauty, and structural soundness, so as to maintain this Condominium, and all parts and portions thereof, and all of the Property, and the Units and the Common Elements, and the Buildings, and all components therefor, in as clean, safe, neat, attractive, aesthetically pleasing, structurally sound (and, where applicable, water tight and habitable and energy efficient) condition as is reasonably practicable, so that same shall be free of any conditions of unsightliness or unsoundness, including (by way of

Boone County, Missouri

Unofficial Document

601

example only, but not by way of limitation) the following: leaking roofs, walks, windows, doors, sewers or plumbing; chipped, flaking or discolored paint; dead or dying lawns, trees, shrubs, vegetation or the like; discolored roofs or roofs requiring patching or maintenance; loose, rusted or discolored gutters or downspouts; walkways, driveways, sidewalks or parking areas requiring patching or resurfacing; brick surfaces in need of cleaning or tuckpointing; other conditions of any kind or nature whatsoever, without limitation, which would be reasonably construed as not in keeping with maximum standards of cleanliness, safety, structural soundness, energy efficiency, habitability, neatness, beauty, attractiveness and aesthetics. The standards shall be strongly applied and enforced.

Section 4. Alterations of Common Elements and Exteriors. There shall be no alterations in, or additions to, or changes in the exterior color of, or changes in the exterior materials for, or changes in, or additions to, or modifications of the exterior surfaces of the Units, or the Common Elements, or the Building, by any Unit Owner, without the written consent first obtained of the Declarant during the Period of Declarant Control, and thereafter of the Executive Board. There shall be no planting or gardening within the Common Elements by an Unit Owner without the written consent of the Executive Board first obtained.

Section 5. Alterations of Units and Common Elements. A Unit Owner shall not make or cause to be made any structural addition to or alteration of his Unit which would adversely effect any other Unit or any part of the Building or of any Limited Common Elements serving such Unit, or the Common Elements, without the written consent of the Executive Board first obtained.

Section 6. Providing for Maintenance and Repairs. The Executive Board, in the name of the Association, or the Managing Agent in the name of the Association, may enter into a Contract with any firm, person or corporation, or may join with other Condominium associations and entities in contracting for the maintenance and repair of the Common Elements, and may delegate to any Managing Agent, all the powers and duties of the Executive Board and the Association with respect to such maintenance, repairs and replacements; provided that any such contract or delegation entered into during the Declarant Control Period shall expire, automatically, at the conclusion of the Declarant Control Period.

Section 7. Access. The Executive Board and the Association, and the Managing Agent, and their respective agents, employees and designees, shall, at all reasonable times, have access to all parts of the Common Elements, and where reasonably required for maintenance, repair or replacement of the Common Elements or for the performance of any maintenance, repair and replacement to any Unit which the Executive Board may perform, to the Units, for purposes of performing the maintenance, repairs, replacements, servicing and upkeep required of the Executive Board or the Association by this Declaration.

Section 8. Special Assessment. In the event an Owner of a Unit fails to perform any repair, replacement, maintenance, servicing or upkeep imposed upon such Unit Owner by this Declaration, and in the further event the Executive Board, in its sole, absolute and unmitigated discretion, determines that the condition requires maintenance, repair, replacement or servicing or upkeep for

Boone County, Missouri Unofficial Document

602

the purposes of protecting the interests of any other Unit Owner, or any other Unit, or the public's safety, or the safety of residents in or visitors to the Property or to prevent or avoid damage to or destruction of any part, portion or aspect of the value of the Condominium, or of any Unit or Units, the Executive Board shall have the right, but not the obligation, after approval of a majority of such Executive Board, to enter without permission upon or within said Unit, and any portion of such Unit, and to maintain, repair, replace or service the same or perform any upkeep upon same. The cost of such maintenance, repair, replacement, servicing or upkeep shall constitute a special Unit assessment against such Unit, and the Owner thereof, and shall become a part of the assessment to which such Unit and Owner are subject, and shall constitute a lien, and be collectible and enforceable in that manner provided for other assessments by ARTICLE IX of this Declaration. All such assessments shall be due on demand by the Executive Board.

Section 9. Cleaning of Certain Limited Common Elements. Each Unit Owner shall, at such Unit Owner's expense, keep in a clean, neat and debris free condition, any porches, porticos, decks, balconies, or garages attached to such Unit Owner's Unit, or accessed from such Unit, or designated for such Unit [same being a Limited Common Element for the Unit]. Same shall be maintained in a clean, neat and debris free condition.

ARTICLE XII

REMEDIES FOR BREACH OF COVENANTS, RESTRICTIONS AND REGULATIONS

Section 1. Abatement and Enjoining. The violation of a restriction, condition or regulation imposed hereby, or the breach of any covenant or provision herein contained, shall give the Executive Board or the Association, in addition to the rights provided for by law, or elsewhere set forth in this Declaration, the following rights:

A. To enter upon the land or Unit upon which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist thereon, contrary to the intent and meaning of the provisions hereof, and the Executive Board, or the Association, or its agents so doing, shall not thereby be deemed guilty in any manner of trespass;

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

Section 2. Termination of Rights as Unit Owner - Judicial Enforcement. If any Unit Owner (either by his own conduct or by the conduct of any occupant of his Unit) shall violate any of the covenants or restrictions or provisions of this Declaration, and such violation shall continue for thirty (30) days after notice in writing from the Executive Board, or shall occur repeatedly after any thirty-day (30-day) period after written notice or request to cure such violation from the Executive Board, then the Executive Board or the Association shall have the power to issue to the defaulting Unit Owner a ten-day (10-day) notice in writing to terminate the rights of said defaulting Unit Owner to continue as a Unit Owner and to continue to use, occupy or control his Unit, and

Boone County, Missouri

Unofficial Document

603

thereupon an action in equity may be filed by the Executive Board or the Association against the defaulting Unit Owner, subject to the prior written consent of any mortgagee or holder under any Deed of Trust having a security interest in the Unit ownership of the defaulting Owner, for a decree of mandatory injunction, or, in the alternative, for a decree declaring the termination of the defaulting Unit Owner's right to occupy, use or control the Unit owned by him on account of the breach of covenant, and ordering that all right, title and interest of the Unit Owner in the Unit and the Property shall be sold (subject to the lien of any existing mortgage or deed of trust) at a judicial sale, upon such notice and terms as the Court shall establish, except that the Court shall enjoin and restrain the defaulting Unit Owner from reacquiring his interest at such judicial sale. The proceeds of any such judicial sale shall be paid first to discharge Court costs, master's or commissioner's fees, Court reporter charges, reasonable attorney's fees and all other expenses of the proceeding, and all such items shall be taxed against the defaulting Unit Owner in such decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder or any liens, shall be paid to the Unit Owner. Upon confirmation of such sale, the purchaser thereof shall thereupon be entitled and may apply to the Court for a writ of execution for the purpose of acquiring such possession, and it shall be a condition of any such sale and the decree shall so provide, that the purchaser shall take the interest in the Property sold subject to this Declaration, and the purchaser shall become a Unit Owner in the place and stead of the defaulting Unit Owner.

Section 3. Attorney's Fees. In the event the Executive Board, or the Association, or any Unit Owner, shall seek to enforce any of the rights, covenants, duties, provisions or assessments provided for by this Declaration, then the prevailing party in such legal proceedings shall, in addition to the rights and remedies to which such prevailing parties shall be entitled in such proceedings, be entitled to recover from the other party all reasonable costs and expenses incurred in connection with such proceedings, including reasonable attorney's fees.

ARTICLE XIII

CONDEMNATION

Section 1. General.

In the event it shall become necessary for any public agency to acquire all or any part of the Units or the Common Elements of the Condominium for any public purposes, the Executive Board is hereby appointed as attorney in fact and is hereby authorized to negotiate with such public agency for such acquisition and to execute such instruments as may be necessary for conveyance to any such public agency. Should acquisitions by eminent domain become necessary, only the Executive Board need be made party, and monies, damage payments or condemnation awards shall be held by the Executive Board for the benefit of the Unit Owners of the Units subject hereto.

Section 2. Condemnation of a Unit.

If a Unit is acquired by eminent domain, or a part of a Unit is acquired by eminent domain leaving the Unit Owner with a remnant which may not practically

Boone County, Missouri

Unofficial Document

604

or lawfully be used for any purpose permitted by this Declaration, the award shall compensate the Unit Owner for his Unit and Allocated Interest, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides, that Unit's Allocated Interest is automatically reallocated to the remaining Units in proportion to the respective Allocated Interests of those Units before the taking, and the Executive Board shall promptly prepare, execute and record an amendment to the Declaration reflecting the reallocations. Any remnant of a Unit remaining after part of a Unit is taken under this Section 2 is thereafter a Common Element.

Section 3. Partial Taking.

Except as provided in Section 2 of this ARTICLE XIII, if part of a Unit is acquired by eminent domain, the award shall compensate the Unit Owner for the reduction in value of the Unit, and its Allocated Interest, whether or not any Common Elements are acquired. Upon acquisition, unless the decree otherwise provides, (i) that Unit's Allocated Interest is reduced in proportion to the reduction in the size of the Unit, or any other basis specified in this Declaration, and (ii) the portion of the Allocated Interest divested from the partially acquired Unit is automatically reallocated to that Unit and the remaining Units in proportion to the respective Allocated Interests of those Units before the taking, with the partially acquired Unit participating in the reallocation on the basis of its reduced Allocated Interest.

ARTICLE XIV

DEVELOPMENT RIGHTS

Section 1. Reservation. The Declarant hereby reserves to itself all of those Development Rights hereinabove described in Sections 14 and 23 of ARTICLE I of this Declaration, and all additional Development Rights hereinafter provided for by this ARTICLE XIV.

Section 2. General Description of Development Rights. The Declarant hereby reserves to itself the following "Development Rights" [the term "Development Rights" shall mean the right or combination of rights reserved by the Declarant pursuant to this ARTICLE XIV]:

A. To have its Units exempt from assessment to the extent specified in Section 12 below;

B. To build, construct and complete (or to not build, construct or complete), as determined by the Declarant in the Declarant's sole discretion, any of the Buildings to be located within the Property and/or the Annexation Property and the driveways, parking areas, parking lots and other Common Elements which will serve the said Building(s), and to enter upon all Common Elements and Common Areas at reasonable times for the purposes of starting, building, constructing and completing such Building(s) and such Common Elements;

C. To enter upon all portions of the Property, other than the Units, at any time or times of the Declarant's choosing, for purposes of completing any portions of a Building which are not completed; provided that same shall be completed in substantial accordance with the Plan;

Boone County, Missouri

Unofficial Document

605

D. To amend this Declaration and the Plat by combining any existing Units into one or more Units or by subdividing any Units into two or more additional Units and/or Units and Common Elements;

E. To subdivide any portions of the Building or any Building into Units and Common Elements;

F. To amend this Declaration and the Plat in order to subdivide the Building or any Buildings hereafter added to the Condominium, or any portions of such Building or Buildings not now subdivided into Units, in order to subdivide same into Units or into Units and Common Elements;

G. To create Units within any portions of any Building;

H. To subdivide any Units into smaller Units or into smaller Units and Common Elements;

I. To combine two or more Units into a single Unit;

J. To convert any Unit or Units, or any portions thereof, into Common Elements;

K. To add all or any portion of the Annexation Property to the Condominium provided for hereby, to build a Building or Buildings thereon (provided that same shall be of the same general type, quality, architect and appearance as the existing Building), and to subdivide such portions of the Annexation Property, and such Building or Buildings, into Units and Common Elements, which such Units shall become Units of the Condominium, and which such Common Elements shall become Common Elements of the Condominium;

L. To add Units to the Condominium, within the Property or the Annexation Property; provided that the maximum number of square feet of Enclosed Floor Area shall be restricted to approximately 38,400 square feet, plus or minus, as hereinabove described in this Declaration;

M. To amend this Declaration and the Plat in order to exercise all or any of its Development Rights provided for by this Section 2;

N. To develop portions of the Annexation Property other than in accordance with the Plan; provided that same shall not thereafter be annexed to the Condominium;

O. To develop portions of the Annexation Property in such manner as it, in its discretion, finds to be appropriate, provided, however, that any portions of the Annexation Property developed other than in conformity with the Plan shall not be annexed to the Condominium;

P. To place on various portions of the Annexation Property Buildings and Improvements;

Q. To cause all Property Used in Common as described in the Declaration of Protective Covenants, including the Property Used in Common within this Condominium, to become Property Used in Common of Muirfield Plaza,

Boone County, Missouri Unofficial Document

606

to be utilized, maintained, repaired and replaced in the manner described in the Declaration of Protective Covenants.

Section 3. Additional Units. As hereinabove indicated, certain portions of the Annexation Property containing one or more Buildings may hereafter be annexed to the Condominium provided for hereby. The Declarant reserves the right to build, or not build (as the Declarant sees fit) Buildings within the Annexation Property. If the Declarant elects to build all or any portions of such Buildings then:

A. Same shall nevertheless be constructed in substantial conformity with the Plan; and

B. Same shall, nevertheless, be constructed with an appearance and shall be of a quality comparable to the appearance and quality of the Building located on the Property first described in this Declaration.

If the Declarant elects to build any of the Buildings within the Annexation Property and to add such Buildings and any portion of the Annexation Property to this Condominium then the Declarant may cause such additional Building or Buildings to be subdivided into Units and Common Elements, all of which shall become Units and Common Elements of this Condominium. Declarant may also, at any time, subdivide any existing Units within any existing Building into additional Units, or into additional Units and Common Elements. The Declarant may also add or any portion of the Annexation Property to the Condominium, and may subdivide such portions of the Annexation Property into Units and Common Elements, and may, therefore, add additional Units within the Annexation Property to the Condominium. The addition of Units within the Building, or the Property, or the Annexation Property, will cause the Allocated Interests of existing Units to be reduced.

Section 4. Amendment of Declaration and Plat. In exercising the Development Rights conferred upon the Declarant by the above provisions of this ARTICLE XIV, the Declarant reserves the right to record amendments to this Declaration and the Plat subdividing the various portions of the existing Building, and additions thereto, and the real estate, and existing Units, into Units, Common Elements and Limited Common Elements, or combining existing Units into one or more Units, and annexing the Annexation Property or portions thereof to the Condominium, and subdividing such various portions of the Annexation Property, and the Buildings thereon, into Units and Common Elements and limited Common Elements.

Section 5. Subdivision of Units and Combinations of Units. The Declarant reserves the right to subdivide Units into Units and Common Elements, and to combine one or more Units into a single Unit by recording amendments to such effect of this Declaration and the Plat.

Section 6. Conversion into Common Elements. The Declarant reserves the right to convert any existing Units owned by the Declarant, or portions thereof, or any Units, or any portions of the Property or Annexation Property owned by the Declarant into Common Elements, by recording amendments to such effect of this Declaration and the Plat.

Boone County, Missouri Unofficial Document

607

Section 7. No Assurances. No assurances are made or given by the Declarant of any of the following:

A. That all or any portions of the Annexation Property will hereafter be annexed to the Condominiums;

B. That any of the three (3) Buildings other than the first Building, will be built;

C. That any Enclosed Floor Area not contained within the first Building which is to be located upon that Property hereinabove first described in this Declaration will be added to the Condominium;

D. That any Units will be added to the Condominium;

E. That any portion of the Annexation Property not previously annexed to the Condominium will be developed in accordance with the Plan or will contain buildings similar in appearance to the Building.

No assurance is, therefore, given, and no statement is made, that if any Development Right is exercised as to any portion of the Property or the Annexation Property, Development Rights will be exercised as to the balance of the Property or the Annexation Property. The Declarant gives no assurance that all or any portion of the Annexation Property will be annexed to the Condominium. The Declarant reserves the right to add, or to not add, all or any portion of the Annexation Property to the Condominium. The Declarant reserves the right to build or not build Buildings on the Annexation Property or any portions thereof. The Declarant reserves the right to build or to not build any portions of the existing Building on the Property, as the Declarant sees fit.

Section 8. Amendments to Declaration, Plat and Exhibits. The Declarant may file amendments to this Declaration, the Plat and Exhibits hereto to reflect any changes in the locations, elevations, measurements or dimensions, and to correct any error in any recorded Plat or the Declaration, and to add, combine or subdivide Units. In addition, the Declarant reserves the right to prepare and file and record any amendments to this Declaration, and the Plat and Exhibits hereto, which are required in connection with the Declarant's exercise of its Development Rights as described herein.

Section 9. Reservation of Easement. The Declarant reserves an easement over all streets, roads, parking areas, parking lots and Common Elements contained within the Property, as reasonably required for the Declarant to exercise its Development Rights provided for herein. Such rights shall be exercised at reasonable times, and in a reasonable manner, so as not to unreasonably interfere with the use by the Unit Owners of the Common Elements, or with the enjoyment of their Units.

Section 10. Time Limits. All Development Rights, as specified in Sections 1 through 7 of this ARTICLE XIV, must be exercised by the Declarant by no later than the tenth (10th) annual anniversary date of the date of the recording of this Declaration or the date of the sale of the last of the Units to be located within the Property and the Annexation Property (if annexed to the Condominium).

Boone County, Missouri Unofficial Document

608

whichever date shall last occur. Such date is referred to herein as "the Expiration Date of Development Rights." Upon the occurrence of the Expiration Date of Development Rights, or on any earlier date selected by the Declarant by the recording of a statement to such effect in the Real Estate Records of Boone County, Missouri, all Development Rights shall expire and all Property not then contained within the boundary lines of then existing Units shall constitute Common Elements of the Condominium, and shall be Common Elements of the Condominium.

Section 11. Right of Declarant to Vote. The Declarant shall have the right to exercise the votes allocated to those Units which Declarant owns and which have not been conveyed to third parties.

Section 12. Partial Development - Exemption of Declarant's Units from Assessment. For purposes of allocating Common Expense Liability, and for no other purposes, the Declarant shall not be deemed to be a Unit Owner as to unconstructed, or partially completed, or completed but unsold or unoccupied Units. The Declarant shall, as to such Units, bear only that portion of the Common Expense Liability, if any, in fact incurred by or for the benefit of said Units, including, but not limited to, insurance and real estate taxes, and all other Common Expenses. Therefore, the provisions of ARTICLE IX of this Declaration to the contrary notwithstanding, Units owned by the Declarant, which have not been previously used or occupied for office purposes, and which have not been sold, rented or leased to a party other than the Declarant, shall not be subject to any of the assessments described in such ARTICLE IX, except to the extent that any Common Expenses are incurred by or for the benefit of the Units owned by the Declarant, before the earliest to occur of the following events:

- A. The Unit has been conveyed by the Declarant to a Unit Owner other than the Declarant;
- B. The Unit has been rented or leased by the Declarant;
- C. The Unit has been occupied or used for office purposes, retail purposes or other commercial purposes.

No Units shall be subject to any assessments of any kind, nature or description whatsoever, until the Declarant has first conveyed the first Unit within the Condominium to a Unit Owner other than the Declarant. In other words, all Units within the Condominium shall be exempt from assessments, until the Declarant has conveyed a Unit within the Condominium to a Unit Owner other than the Declarant. Once such a conveyance has occurred, the Units then owned or thereafter owned by the Declarant shall continue to be exempt from assessments in accordance with this Section 12, until the earliest to occur of those events hereinabove described in subparagraphs A through C of this Section 12. When a Unit becomes subject to assessment in accordance with the above provisions of this Section 12, the Annual Assessment for the year which includes the date when the Unit first becomes subject to assessment shall be prorated as of such date.

Section 13. Limitation Upon Number of Units and Type of Buildings. The above provisions of this ARTICLE XIV to the contrary notwithstanding, and any of

Boone County, Missouri

Unofficial Document

609

the provisions of this Declaration to the contrary notwithstanding, the number of Enclosed Square Feet of the Units to be contained within the Property [and any portion of the Annexation Property annexed to the Condominium], shall be limited to approximately 38,400 square feet, plus or minus. The number of Buildings to be located within the Condominium shall be limited to four (4). If any portion of the Annexation Property is annexed to the Condominium then same must be developed in substantial conformity with the Plan, and must contain:

a. One or more Buildings which are located, generally, at those locations shown by the Plan; and

b. Parking lots, parking spaces, driveways, and other exterior improvements, located at generally those locations shown on the Plan and which conform, generally, with the requirements of the Plan;

c. Buildings which are of comparable appearance and quality to the Building to be placed upon that Property which is hereinabove first described in this Declaration (the first Building).

If any portions of the Annexation Property are hereafter annexed to the Condominium, then such portions must be developed in a manner generally consistent in appearance and quality, and in quality of materials and workmanship, with the existing development upon the Property, and any buildings placed upon any portions of the Annexation Property annexed to the Development must be constructed in such a manner as to be generally consistent in appearance, quality and architect, and in quality of materials and workmanship, with the Building to be located upon that property first described in this Declaration, and must be built in a workmanlike manner, and in accordance with sound engineering practices.

ARTICLE XV

SPECIAL DECLARANT RIGHTS

Section 1. In General. The Declarant reserves to itself those "Special Declarant Rights" hereinabove described in Section 27 of ARTICLE I of this Declaration, and other Special Declarant Rights provided for by this ARTICLE XV.

Section 2. Declarant Rights and Exercise of Declarant Rights. Any provisions of this Declaration notwithstanding (including, but not limited to, restrictions as are set forth in ARTICLE VI), the Declarant (and its successors, assigns and mortgagees) shall have the right and privilege to do the following, until the expiration of the Development Rights described in ARTICLE XIV or the sale by the Declarant of all of the Units, to be located within the Condominium, whichever shall last occur:

A. To erect and maintain advertising signs (illuminated or non-illuminated), sales flags, other sales devices and banners, at any location upon the Property and the Common Elements, for the purpose of aiding the sale of Units in this Condominium; and

Boone County, Missouri Unofficial Document

610

B. To maintain Units as sales offices, models, management or business and construction offices, and to utilize same for such purposes, which may be located at any locations in the Condominium; and

C. To maintain and locate construction trailers, sheds, tools and equipment within the Property, as reasonably required for purposes of completing the development of the Condominium, and for purposes of erecting any structures, Buildings and improvements which the Declarant has the right to erect pursuant to the Declarant's reserved Development Rights herein; and

D. To utilize and to have [same being reserved hereby] an easement for ingress and egress within the Property and any Unit thereof for the purposes of exercising its Special Declarant Rights, and its Developments Rights;

E. To exercise its Development Rights described in ARTICLE XIV.

The completion of the construction of Buildings and improvements by Declarant within the Property pursuant to rights reserved to the Declarant by this Declaration shall not be considered a nuisance. The Declarant hereby reserves the rights and privileges for itself (and its successors, assigns and mortgagees) to conduct the activities enumerated in this Section 2 until all present and future Units of this Condominium have been completed and conveyed to third parties. All rights afforded Declarant under this ARTICLE XV shall inure to the benefit of any mortgage holder, or the beneficial holder under any Deed of Trust, who or which has acquired rights under a mortgage or Deed of Trust given to it by the Declarant, and which acquires title to any Unit hereunder.

Section 3. Control. During the Declarant Control Period the Declarant shall appoint each member of the Executive Board, and may appoint or remove any such member and any Officer of the Executive Board or the Association; provided that, within sixty (60) days after conveyance to Unit Owners other than Declarant of twenty-five percent (25%) of the total number of square feet of Enclosed Floor Area to be located within the Condominium (if it is entirely developed), or 9,600 square feet [0.25 x 38,400], not less than one member of the Executive Board shall be a Unit Owner (or an Owner of an interest in a Unit or a partner in or executive officer of a Unit Owner) other than Declarant elected by the Unit Owners other than the Declarant, and that, upon conveyance of Units containing 19,200 square feet of Enclosed Floor Area [50% of 38,400] to Unit owners other than the Declarant not less than one-third (1/3) of the members of the Executive Board shall be such persons other than the Declarant elected by the Unit Owners other than the Declarant.

ARTICLE XVI

RULES AND REGULATIONS AS TO PARKING

All parking spaces, parking areas, driveways, walkways and entranceways shall be subject to the restrictions provided for by and the rules and regulations imposed in accordance with the Declaration of Protective Covenants. The Executive Board may not, therefore, impose rules and regulations which are contrary to the Declaration of Protective Covenants. Subject to such restrictions, however, the Executive Board may make such reasonable rules and

Boone County, Missouri Unofficial Document

611

regulations (including rules and regulations designating the parking spaces for use by employees or occupants of Units), as the Executive Board may determine necessary pertaining to the use of parking areas and parking facilities. In addition, the Executive Board may make such reasonable rules and regulations concerning the use of the Common Elements as the Executive Board may reasonably determine necessary for the protection of all Unit Owners. The Executive Board may bring such legal actions as it may deem appropriate against persons violating its rules and regulations, and, if the Executive Board prevails, the costs and attorney's fees of such action shall be taxed against the violating party.

ARTICLE XVII

RIGHTS OF MORTGAGEES

Section 1. General. Notwithstanding any other provisions of the Declaration or the Bylaws no amendment or violation of the Declaration or the Bylaws shall operate to defeat or render invalid the rights of the mortgagee or beneficial holder under any mortgage or deed of trust on a Unit made in good faith and for value; provided that, after the foreclosure of any such mortgage or deed of trust, such Unit shall remain subject to this Declaration as amended from time to time. Notwithstanding any and all provisions of the Declaration and Bylaws to the contrary, the following provisions are added hereto, and to the extent these added provisions pertaining to the rights of mortgagees, or holders under any Deeds of Trust conflict with any other provision of this Declaration and the Bylaws, these added restrictions shall control:

Except as provided by the Act in case of condemnation or substantial loss to the Units and/or Common Elements and Common Facilities, unless at least two-thirds (2/3) of the first mortgagees (based on one vote for each first mortgage owned), and Unit Owners (other than the Declarant) have given their prior written approval, the Association or the Executive Board or the Unit Owners shall not be entitled to:

(i) by act or omission seek to abandon or terminate the Condominium project;

(ii) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements or the Common Facilities (the granting of easements for public utilities or for other public purposes consistent with the intended use of the Common Elements and Common Facilities shall not be deemed a transfer within the meaning of this clause);

(iii) use hazard insurance proceeds for losses to any Condominium Property (whether to Units or to Common Elements or Common Facilities) for other than the repair, replacement or reconstruction of such Condominium Property.

Section 2. Notice. The beneficial holder of a first mortgage or first mortgage deed of trust shall, if it files a written request with the Executive Board to such effect, be given written notice by the Association when the Owner of any Unit upon which such first mortgage holder or the holder of such first mortgage deed of trust holds a mortgage or deed of trust is in default upon any

Boone County, Missouri

Unofficial Document

612

duties owed to the Executive Board or Association under this Declaration and when the default has not been remedied within sixty (60) days. As indicated, before being entitled to such notice, the first mortgage holder or the holder of such first mortgage deed of trust must have filed with the Executive Board a written request to be so notified.

Section 3. Examination of Books and Records. The holder of a first mortgage deed of trust, or of a first mortgage shall be entitled to examine the books and records of the Managing Agent and Executive Board and the Association upon reasonable notice to the Managing Agent and the Executive Board and the Association of its intent to exercise its right under this Section 3; provided, however, that such examination shall be made only at reasonable times and at reasonable intervals.

Section 4. Insurance Proceeds. Any insurance proceeds or condemnation awards paid to the Executive Board or Association or the Insurance Trustee, over and above the amount necessary to replace, repair or reconstruct the damaged Building or Unit or damaged Common Elements shall be paid over to the holders of mortgages or deeds of trust of record covering any of the Buildings, Units or Property, if any, solely as their respective interests may appear.

Section 5. Other Changes. Neither the Association nor the Executive Board shall make any change in the method of determining Assessments, without the prior written approval of the holders of Seventy-five Percent (75%) of the first mortgages or the first mortgage deeds of trust upon the Units.

Section 6. Claims for Unpaid Assessments. Any first mortgagee or holder of a first mortgage deed of trust securing a purchase money loan made for the purchase of a Unit or Units, which comes into possession of the Building or Unit pursuant to the remedies provided in the mortgage or deed of trust, or by foreclosure of such mortgage or deed of trust, or by deed in lieu of foreclosure, shall take the Property free of any claims for unpaid assessments or charges against the Building or Unit which accrued prior to the time such mortgagee or deed of trust holder came into possession of such Building or Unit, with the exception of any assessments which were unpaid at the time of the recording of the deed of trust or mortgage.

Section 7. Approval of First Mortgagees. Without the written approval of at least Two-thirds ($\frac{2}{3}$'s) of the first mortgagees, or holders of first mortgage deeds of trusts upon the Buildings and Units (based upon one vote for each such mortgage or deed of trust upon each Unit), the Association or the Executive Board or the Unit Owners shall not be entitled to:

A. By act or omissions seek to abandon, partition, subdivide, encumber, sell or transfer real estate or improvements thereon which are owned, directly or indirectly, by the Association or the Executive Board; provided, however, that the granting of easements for public utilities or for other public purposes consistent with the intended use of the Property shall not be deemed a transfer within the meaning of the this clause;

B. By act or omission change, waive or abandon any scheme of regulation, or enforcement thereof, pertaining to the exterior appearance of the improvements or the maintenance, repairs or replacements of the Common Elements;

Boone County, Missouri Unofficial Document

613

C. Fail to maintain fire and extended coverage insurance on any insurable permanent structures or improvements in an amount not less than One Hundred Percent (100%) of the current replacement cost.

Section 8. Adequate Reserve. The Association and the Executive Board shall establish an adequate reserve funded by regular Assessments, rather than by Special Assessments or charges, for the replacement of any permanent improvement or structure which the Association or the Executive Board is required to replace under the terms of this Declaration. The amount of the contributions to the reserve fund shall be determined by the Executive Board, based upon the projected useful life of such improvements requiring replacement, and the estimated replacement costs. However, the Association shall be required to establish such reserve only to fund the replacement of items which the Executive Board or Association is required to replace by the terms and conditions of this Declaration.

Section 9. Additional Mortgagee's Rights. In addition to the above, and not in reduction or modification thereof, each holder of a first mortgage upon a Unit, and each beneficial holder of a first Deed of Trust upon a Unit in the Condominium, shall be entitled to the following rights:

A. Any restoration or repair of damage for destroyed Property, after a partial condemnation or damage due to an insurable hazard, shall be substantially in accordance with the provisions hereof and the original Plans and Specifications unless the approval of eligible holders of first mortgages or first Deeds of Trust on Units to which at least fifty-one percent (51%) of the votes of Units subject to mortgages or Deeds of Trust held by such eligible holders are allocated, is first obtained.

B. Any election to terminate the Condominium after substantial destruction or a substantial taking in condemnation of the Condominium Property must also require the approval of the eligible holders of first mortgages or first Deeds of Trust on Units to which at least fifty-one percent (51%) of the votes of Units subject to mortgages or Deeds of Trust held by such eligible holders are allocated.

C. No reallocation of interests in the Common Elements resulting from a partial condemnation or partial destruction of the Condominium Project may be effected without the approval of the eligible holders of first mortgages or Deeds of Trust on Units to which at least fifty-one percent (51%) of the votes of Units subject to mortgages or Deeds of Trust held by such eligible holders are allocated.

ARTICLE XVIII

PLAN/PLANS AND SPECIFICATIONS

The Building to be placed on that Property first described in this Declaration shall be developed in substantial accord with the Plans and Specifications therefor. In addition, such Property shall be developed in substantial accordance with the Plan. If portions of the Annexation Property are hereafter annexed to the Condominium, then such portions of the Annexation

Boone County, Missouri Unofficial Document

614

Property so annexed to the Condominium must be developed in substantial conformity with the Plan, and any Buildings or improvements thereon must be located at those general locations shown on the Plan and must be built so as to be generally consistent in appearance, quality and architecture, and in quality and materials and workmanship, with the Building initially placed upon the Property, and must be built in a workmanlike manner, in accordance with sound engineering practices.

ARTICLE XIX

PUBLIC EASEMENTS

All easements affecting the Property, in favor of the public or utility are shown on the Plat, which is attached hereto and is hereby incorporated herein by reference.

ARTICLE XX

LIMITED COMMON ELEMENTS

Section 1. General. Those portions of the Common Elements reserved for the use of certain Unit Owners, or a certain Unit Owner, to the exclusion of other Unit Owners, are deemed Limited Common Elements. Any expense of the maintenance, repair or replacement relating to the Limited Common Elements shall be treated as, and paid for by the Association through the Assessments made in the same manner as those made for the purposes of paying for the maintenance, repair and replacement of the general Common Elements, except that the Unit Owner shall be solely responsible for maintaining, repairing and replacing all items to be maintained, repaired and replaced by the Unit Owner in accordance with Section 5 of this Declaration, and except that the Unit Owner shall be required to clean, and maintain in a clean, neat and debris free condition any balcony, porch, deck, sundeck, portico or garage to which his Unit has exclusive access. Should any maintenance, repair, replacement, servicing or upkeep of any Limited Common Element be required by reason of the negligence or misuse by a Unit Owner, or the occupant of any Unit, or the guest, servants, or invitees of the Unit Owner or such occupant, such Unit Owner shall be responsible therefor, and the Executive Board shall have the obligation to levy an assessment (to defray the cost of repairs, replacement, restoration and upkeep as to damage arising out of any such negligence or misuse) against the Owner of said Unit, which such assessment shall constitute a Special Unit Assessment against the Unit and the Unit Owner and shall have the same force and effect as all other Assessments provided for by this Declaration.

Section 2. Areas Designated as Limited Common Elements. Those areas designated as such, on the Plat, shall be deemed to be Limited Common Elements, as shall those areas designated as Limited Common Elements by the above Articles of this Declaration. In addition, even though not so designated on the Plat, any areas described in Section 16 of ARTICLE I and subsections G and I of Section 5 of ARTICLE III, and any hallways, stairways, interior (i.e. inside the Building) walkways, and entranceways, and any porches, porticos, decks, sun decks, concrete pads or balconies furnishing access to and egress from a single Unit, or attached to or accessed from a single Unit, or accessed from a limited number of

Boone County, Missouri

Unofficial Document

615

Units (as opposed to all Units), or which are attached to and are accessed from a single Unit or a limited number of Units (as opposed to all Units), or which are obviously intended to serve only a single Unit or a limited number of Units, shall be, and shall be deemed to be, Limited Common Elements reserved for the sole and exclusive use of such Unit or Units, and the Unit Owners thereof, and their tenants, agents, invitees and family members.

Section 3. Window Treatments. As hereinabove indicated the Declarant or the Executive Board (after the expiration of the Declarant control period) may elect to require the use of uniform exterior window blinds, draperies, or other window coverings or window treatments. If such a requirement is imposed then all Unit Owners shall be required to use, and to install (at their expense) the required, uniform, window blinds, draperies or other window treatment. Same shall, nevertheless, be Common Elements but shall be deemed to be Limited Common Elements, but the Unit Owner of the Unit containing the windows shall be required, at such Unit Owner's sole expense, to provide for the maintenance, repair, replacement, servicing and upkeep of same.

ARTICLE XXI

PROPERTY RIGHTS FOR COMMON ELEMENTS

Section 1. Members Easement of Enjoyment. Every Unit Owner, and their guests, renters, customers, invitees and lessees shall have a right of ingress and egress and an easement of enjoyment in and to the Common Elements and any Facilities located thereon, and the improvements located thereon. Such easement shall be appurtenant to and shall pass with the title to every Unit; provided, however, that those areas designated as "Limited Common Elements" by this Declaration or by the Plat shall be reserved for the exclusive use of the applicable Unit or Units, and the Owners or occupants thereof. The rights of a Unit Owner, or the occupants of a Unit, or the guests, renters, invitees or customers of a Unit Owner or such occupant to use the Common Elements and Facilities shall be subject to the restrictions set forth in this Declaration, and by the reasonable rules and regulations of the Executive Board.

Section 2. Delegation of Use. Subject to the restrictions set forth in this Declaration or by any reasonable rules and regulations of the Executive Board any Unit Owner may delegate his right to enjoyment of the Common Elements and of the facilities located thereon to the occupants of the Unit, or his tenants or contract purchasers of the Units.

Section 3. Access, Ingress and Egress. Every Unit Owner shall have an easement for access to, ingress to and egress from his Unit, and the Common Facilities located on the Common Elements, and the parking areas and driveways thereon, over, across and upon all streets, drives, driveways, parking areas, walkways and sidewalks and the Common Elements as shown on the Plat or as constructed within the Property (whether or not shown by the Plat), and all real estate and portions of the Common Elements, as necessary to insure adequate means of access to, ingress to, and egress from the Unit Owner's Unit, and the parking areas and parking lots serving same, and the Common Facilities located on the Common Elements. Every Unit Owner shall have an exclusive easement over and upon any patio, balcony, deck, porch, portico, or similar improvement

Boone County, Missouri Unofficial Document

616

attached to, or adjacent to or abutting upon his Unit, or obviously intended for his exclusive use. All easements provided for in this Section 3 shall be appurtenant to and shall run with each Unit.

ARTICLE XXII

TERMINATION OF CONDOMINIUM

Section 1. General. Except in the case of taking of all of the Units by eminent domain, the Condominium may be terminated only by agreement of Unit Owners holding eighty percent (80%) of the Allocated Interests in the Common Elements located within the Condominium [i.e. by affirmative vote of Owners of eighty percent (80%) of the Allocated Interests].

Section 2. Agreement.

A. An agreement to terminate shall be evidenced by the execution of a Termination Agreement or ratification thereof, in the same manner as a deed, by the requisite number of Unit Owners. The Termination Agreement shall specify a date after which the Agreement will be void unless it is recorded before that date. The Termination Agreement and all ratifications thereof shall be recorded in Boone County, Missouri, and shall be effective only upon recordation in the Real Estate Records of the Boone County, Missouri.

B. The Termination Agreement may provide that all of the Common Elements and Units of the Condominium shall be sold following termination. If, pursuant to the Agreement, any real estate in the Condominium is to be sold following termination, the Termination Agreement shall set forth the minimum terms of the sale.

C. The Association, acting through its Executive Board, on behalf of the Unit Owners, may contract for the sale of real estate in the Condominium, but the contract is not binding on the Unit Owners until approved pursuant to subsections A and B of this Section 2. If any real estate in the Condominium is to be sold following termination, title to that real estate, upon termination, vests in the Association as Trustee for the holders of all interests in the Units. Thereafter, the Association has all powers necessary and appropriate the effect the sale. Until the sale has been concluded and the proceeds thereof distributed, the Association continues in existence with all powers that it had before termination. Proceeds of the sale shall be distributed to Unit Owners and lien holders as their interests may appear, in proportion to the respective interests of the Unit Owners. Unless otherwise specified in the Termination Agreement, as long as the Association holds title to the Property, each Unit Owner and his successors in interest have an exclusive right to occupancy of the portion of the Property which formerly constituted his Unit. During the period of that occupancy, each Unit Owner and his successors in interest remain liable for all Assessments and other obligations imposed on Unit Owners by the Act, this Declaration and the Bylaws.

D. If the Property constituting the Condominium is not to be sold following termination, title to the Common Elements and, if this Condominium contains only Units having horizontal boundaries described in the Declaration,

Boone County, Missouri Unofficial Document

617

title to all the Property in the Condominium, vests upon termination in the Unit Owners as tenants in common in proportion to their Allocated Interest as provided in subsection F of this Section 2, and liens on the Units shift accordingly. While the tenancy in common exists, each Unit Owner and his successors in interest have an exclusive right to occupancy of the portion of the Property which formerly constituted his Unit.

E. Following termination of this Condominium the proceeds from any sale of real estate, together with the assets of the Association, are held by the Association as Trustee for Unit Owners and holders of liens on the Units as their interests may appear. Following termination, creditors of the Association, holding liens on the Units, which were recorded prior to termination, may enforce such liens in such manner as any lienholder. All other creditors of the Association shall be treated as if they had perfected liens on the Units immediately prior to termination.

F. The respective interests of Unit Owners referred in subsections C and D of this Section 2 are as follows:

(i) Except as provided in subdivision (ii) of this subsection, the respective interests of the Unit Owners are the fair market values of their Units, Limited Common Elements and Common Element interests immediately before the termination, as determined by one or more independent appraisers selected by the Association. The decision of the independent appraiser shall be distributed to the Unit Owners and becomes final unless disapproved within thirty (30) days after distribution by Unit Owners of Units to which twenty-five percent (25%) of the Allocated Interests in the Condominium are allocated. The proportion of any Unit Owner's interest to that of all Unit Owners is determined by dividing the fair market value of that Unit Owner's Unit and Allocated Interest by the total fair market values of all the Units and Allocated Interests;

(ii) If any Unit or any Limited Common Element is destroyed to the extent that an appraisal of the fair market value thereof prior to destruction cannot be made, the interests of all Unit Owners are their respective Allocated Interests immediately before the termination.

ARTICLE XXIII

AMENDMENTS

With the consent of the Declarant during the Declarant control period, and thereafter without the consent of the Declarant, the Unit Owners may modify and amend this Declaration, or the Bylaws by the vote or agreement of Unit Owners to which fifty-five percent (55%) of the votes of the members of the Association are then allocated [i.e. the Owners of 55%, in the aggregate, of the Allocated Interests in the Common Elements]. Such amendments shall be made in accordance with Section 448.2-117 of the Act; provided, however, that the amendments shall require approval of holders of 55% of the votes of the members of the Association at the time of the making of the amendment. The president, treasurer, secretary or assistant secretary may prepare, execute, certify and record amendments to this Declaration on behalf of the Association. Each such modification and amendment must be duly recorded in the office of the Recorder

Boone County, Missouri Unofficial Document

618

of Deeds in Boone County, Missouri, provided that this Declaration and the Bylaws shall at all times contain the minimum requirements imposed by the Act. In the event the Statutes of Missouri subsequently provide a different method of amendment, then such Statute shall supercede this ARTICLE XXIII, provided the consent of the holders of first Deeds of Trust is first had and obtained. In exercising its Development Rights the Declarant may amend this Declaration and the Plat as described above.

ARTICLE XXIV

THE ASSOCIATION, EXECUTIVE BOARD AND BYLAWS

Section 1. General. The Property and this Condominium and the Common Elements shall be administered and maintained by the Association. Every Owner of any ownership interest in a Unit [not including a person holding a lien upon or security interest in, or mortgage or Deed of Trust against a Unit] including the Declarant, shall automatically be a Member of the Association. When a Unit Owner acquires an ownership interest in a Unit, such Unit Owner shall automatically become a Member of the Association. Every Owner of an ownership interest in a Unit shall be a Unit Owner and a Member of the Association.

Section 2. Bylaws. The Association shall have as its Bylaws, those Bylaws hereinabove described in this Declaration, a copy of which is annexed hereto as Exhibit B and is hereby incorporated herein by reference.

Section 3. Executive Board. The "Executive Board" of the Condominium and of the Association [the Executive Board of the Condominium shall also be the Executive Board of the Association], shall be one and the same Board. The Executive Board shall consist of that number of person provided for by the Bylaws, elected, designated or appointed in the manner provided for by the Bylaws.

Section 4. Administration and Operation. The Operations of the Condominium shall be by the Association, which shall act through its Executive Board. The Executive Board shall have all of the powers, privileges, rights, duties and discretions granted to, or imposed upon the Association by this Declaration and by the Act and by the Bylaws.

Section 5. Limitation Upon Liabilities of the Association. Notwithstanding the duty of the Association to maintain and repair parts of the Condominium and the Property, the Association and the Executive Board shall not be liable to Unit Owners for injury or damages (other than for the cost of the maintenance and repairs) caused by the condition of the Property to be repaired and maintained by the Association, caused by the elements, or caused by any condition of the Common Elements, or caused by any other Unit Owner or Unit Owners or persons, or caused by any failure to make any maintenance or repairs.

Section 6. All Unit Owners Subject to Declaration and to Bylaws and the Jurisdiction of the Association. Every Unit Owner, and every Owner of a Unit, whether he has acquired his ownership by purchase, by gift, conveyance, or transfer, or by operation of law, or otherwise, shall be subject to the jurisdiction of the Association, and shall be bound by the Bylaws of the

Boone County, Missouri

Unofficial Document

619

Condominium and the Association, and the provisions of this Declaration. All Unit Owners, by acceptance of a deed or conveyance for a Unit, or by acquiring any interest in a Unit, and all persons acquiring any interest in a Unit by the acquisition of such interest, shall be deemed to have consented to, and to have accepted all of the provisions of this Declaration and all of the provisions of the Bylaws.

Section 7. General Powers and Duties of the Association. The Association shall have those powers conferred upon it by Section 448.3-102 of the Act, and any amendment thereto, and any replacement therefor, and, in addition, acting through its Executive Board, shall have those powers conferred upon it and/or the Executive Board by this Declaration and the Bylaws.

Section 8. Entry Into Unit. The Association or its agents, and the Executive Board, or its officers, employees or designees, or the Managing Agent or its employees or designees, may enter into any Unit when necessary in connection with any maintenance, repairs, replacements, servicing or upkeep for which the Association or the Executive Board is responsible, or which it is authorized to perform in accordance with the provisions of this Declaration. The Association, the Executive Board, the Managing Agent, or their agents, servants, employees, directors, designees or officers may likewise enter into any Buildings and any balcony or deck contained in or constituting any part of a Unit, or any patio contained in or constituting a part of any Unit, and into any Limited Common Elements for maintenance, repairs, servicing or upkeep, if same is necessary in connection with any maintenance, repairs, servicing or upkeep for which the Executive Board or the Association is responsible, or for which the Executive Board or Association is authorized to perform by this Declaration. Such entry shall be made with as little inconvenience to the Unit Owners as practicable, and any damage caused thereby shall be repaired by the Association, at the expense of the Maintenance Fund established as hereinafter provided for. No notice shall be required in the event of emergency.

Section 9. Rules and Regulations. A majority of the Executive Board may adopt and amend administrative rules and regulations, and such reasonable rules and regulations, as it may deem advisable for the use, operation, maintenance, conservation and beautification of the Common Elements.

Section 10. Active Business. Nothing contained herein or in the Bylaws shall be construed to give the Association or the Executive Board authority to conduct an active business for profit on behalf of the Association or the Unit Owners or any of them, or the Executive Board.

ARTICLE XXV

GENERAL PROVISIONS

Section 1. Captions. The captions of the various Articles and Sections are for purposes of reference only, and are not deemed to have any substantive effect.

Section 2. Manner of Giving Notice. All notices required by this Declaration, or by the Act or by the Bylaws, shall be given in writing. All

Boone County, Missouri Unofficial Document

620

notices to Unit Owners shall be given either by personal delivery, or by placing same in the United States Mail, regular mail, postage prepaid, addressed to the Unit Owners. Notice given to any Unit Owner shall be deemed to be notice to all Unit Owners of the Unit. Notices to Unit Owners, shall be either hand delivered or shall be mailed to the Unit Owner at the Unit Owner's mailing address, designated in writing by the Unit Owner, or if no such address is known, shall be mailed to the Unit Owner at the mailing address of the Unit. Notices to Unit Owners shall be deemed to have been given as of the date of delivery, if delivered, or as of the date of the placement of same in the United States Mail, if mailed. Notices given by the Unit Owners to the Executive Board or the Association or the Declarant shall be given in writing, and must be mailed, certified mail, return receipt requested. Such notices shall be addressed to the Association or the Executive Board or the Declarant at the following address, or at any other address of which the Executive Board or the Declarant shall give the members notice in the manner provided for by this Section 2:

The Declarant:

Muirfield Partnership
Attn: Rhonda D. Carlson and Walter A. Beasley
c/o C & C Construction
P. O. Box 1233
Columbia, MO 65205

The Executive Board or the Association:

c/o Rhonda D. Carlson
c/o C & C Construction
P. O. Box 1233
Columbia, MO 65205.

Section 3. Acceptance by Grantee. Each Grantee of a Unit, by the acceptance of a deed of conveyance, and each subsequent purchaser of a Unit, accepts the same subject to all restrictions, conditions, covenants, reservations, options, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration or to which this Declaration is subject, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land and the Units, and shall bind any person having at any time any interest or estate in the Property, and shall inure to the benefit of each Unit Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed and conveyance.

Section 4. No Waiver. No covenants, restrictions, conditions, obligations or provisions contained in this 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.

Section 5. Saving Clause. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration, or of any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration.

Boone County, Missouri

Unofficial Document

621

Section 6. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purposes of creating a uniform plan for the development and operation of a first class condominium development. The use of personal pronouns shall be construed to apply to masculine, feminine or neuter gender as the context may require. If any provision is deemed to be invalid, then the elimination of such provisions shall not affect the remaining provisions. Any provision held to be partially invalid, shall be enforced to the extent of the remainder thereof.

Section 7. Bonds. Before any Unit Owner shall become a member of and serve on the Executive Board he shall be able to be bonded. The Executive Board shall procure a blanket fidelity bond on themselves individually and collectively for the benefit of all Unit Owners in an amount not less than the estimated maximum of Funds, including reserve funds, to be held in the Maintenance Fund at any given time during the term of each bond. The bond shall be written only by a capable and solvent bonding company. The cost of premiums for such blanket bond shall be paid out of the Common Funds of this Condominium as a general charge as a Common Expense, and shall not be borne by the individual members of the Executive Board. If practicable to obtain same, the bond shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation from the definition "employee" or similar terms or expressions. The bond shall provide that it may not be cancelled or substantially modified (including cancellation for nonpayment of premiums) without ten (10) days prior written notice to the Executive Board.

Section 8. Easements. The Property is subject to the easements and restrictions set forth on the Plat, and described on the Plat and those additional easements and restrictions provided for by this Declaration.

Section 9. Errors and Omissions Insurance. The Association and the Executive Board shall procure, if it is at all reasonably practicable to do so, Officers' and Directors' Liability Insurance coverage, and Officers' and Directors' Errors and Omissions Liability Insurance coverage, protecting the Officers and members of the Executive Board from liabilities arising out of their positions as such. Such insurance shall be provided by procuring a standard Officers' and Directors' Liability Insurance policy, or standard Officers' and Directors' Errors and Omissions Liability insurance policy. The premiums for such insurance shall constitute a Common Expense to be paid from the Maintenance Fund, and to be shared by the Unit Owners on the basis of their Allocated Interests.

ARTICLE XXVI

CROSS EASEMENTS

Cross easements are hereby established between the Property and the Annexation Property as provided for by the Declaration of Protective Covenants [whether or not the Annexation Property is annexed to the Condominium] and, if the Annexation Property is hereafter annexed to the Condominium additional such cross easements are hereby established, whereby the Declarant and the Unit Owners, and the occupants of the Units, and their tenants, lessees and invitees, and the Association and the Executive Board, shall be permitted to use the

Boone County, Missouri

Unofficial Document

622

streets, drives, driveways, unassigned parking spaces, lawn areas and facilities, sidewalks and Common Elements on the Property and the Annexation Property of this Condominium, to the extent that same are not caused to be Limited Common Elements by this Declaration or by the Plat.

ARTICLE XXVII

ANNEXATION

The Declarant may, or may not, as the Declarant, in the Declarant's sole and absolute discretion sees fit, annex all or any portion of the Annexation Property to the Condominium. If the Declarant annexes any portion of the Annexation Property to the Condominium, then such portion shall be included within the term "Property", as used in this Declaration, unless otherwise obviously intended to the contrary. The Declarant may subdivide any portion of the Annexation Property annexed to the Condominium into Units and Common Elements by an amendment of the Plat. The Declarant may, therefore, add to the Condominium Units hereafter placed within the Annexation Property. The Declarant may, therefore, change the number of Units by inclusion of portions of the Annexation Property in the Condominium, thereby reducing the Allocated Interest in the Common Elements allocated to each Unit. The annexation of the Annexation Property to the Condominium shall be made by way of an amendment of this Declaration. The Declarant reserves the right to amend this Declaration and the Plat in order to annex all or portions of the Annexation Property to the Condominium. If any portion of the Annexation Property is annexed to the Condominium, then the Units therein shall become Units of the Condominium, and the Common Elements therein shall become Common Elements of the Condominium, to be maintained, repaired and replaced as such. All Units within any portion of the Annexation Property shall become Units of the Condominium, and shall be subject to all of the terms, covenants, restrictions and prohibitions of this Declaration, and the Unit Owners thereof shall become Unit Owners of Units in the Condominium, and members of the Association, and shall be subject to all obligations of Unit Owners and members.

ARTICLE XXVIII

ARCHITECTURAL CONTROL

The Declarant retains architectural control over the Improvements ("the Office Improvements") to be placed within each Unit. Before any walls, floors, ceilings, interior or exterior doors, interior or exterior windows, structures, appliances, equipment, or finishes of any kind or nature whatsoever (other than normal office equipment and trade fixtures) are installed within any Unit or the Unit is completed, two (2) copies of detailed plans and specifications therefor shall be submitted to the Declarant, which must show:

- a. A detailed floor plan;
- b. A detailed explanation of the types, kinds, quality, colors, and textures of and for all finishes and finish materials, and the locations therefor;

Boone County, Missouri

Unofficial Document

623

c. A detailed explanation of all equipment to be placed within or to serve the Unit, including the types, kinds and manufacturers thereof and the locations for same;

d. Such other information as the Declarant shall reasonably request.

No Office Improvements of the type hereinabove described shall be made, changed or altered without the approval of the Declarant during the Declarant Control Period and thereafter by the Executive Board. No Office Improvements shall be altered, amended, added to, changed or modified in any manner or respects whatsoever, after their completion or installation, without the prior approval by the Declarant during the Declarant Control Period and thereafter by the Executive Board. The Declarant or the Executive Board, as the case may be, shall have ten (10) days from submission of the plans and specifications within which to review and approve same, and if approval is not denied within such ten (10) day time period, then such approval shall be deemed to have been given. The Declarant during the Declarant Control Period, and thereafter the Executive Board, reserves the right to require the use of uniform types of exterior finish materials, exterior colors, exterior finishes, and blinds, draperies or window treatments, in order that Units may have a uniform appearance and be of a uniform quality.

It is the intention of the Declarant that the Office Improvements to constitute each of the Units be of an equivalent type and quality.

ARTICLE XXIX

DECLARANT'S LIMITED WARRANTIES AS TO COMMON ELEMENTS

The Declarant makes to the Association the following LIMITED WARRANTIES (and only the following LIMITED WARRANTIES) as to the fitness and quality of the Common Elements, including:

- a. The roof, roof structure, exterior walls, and structural elements and components of each Building;
- b. All portions of the Building other than the Units;
- c. All appliances, equipment, systems (and their components) serving the Common Elements;
- d. All exterior improvements, including the parking lots, parking areas, driveways, walkways, landscaping and exterior lighting and other exterior improvements of every kind, nature and description whatsoever:

I. Coverage and Duration

A. Non-Consumer Products

1. The Declarant warrants as to "Non-Consumer Products" only that same shall be:

Boone County, Missouri Unofficial Document

624

(i) Free from defective materials; and

(ii) Shall be constructed in accordance with the Building Code of the City of Columbia, Missouri, according to sound engineering and construction standards, and in a workmanlike manner.

Subject to the provisions of this Article XXIX, those warranties hereinabove set forth are the only warranties, express or implied, of quality as to the Common Elements of Muirfield Plaza Condominiums ("the Condominium"), or any part of same or any components of same. All other warranties, express or implied, are hereby expressly waived and disclaimed. These warranties shall be in effect as to each Building and its related Common Elements only for a period of two (2) years after the date of recording of the first Deed to the first Unit to be conveyed in that Building, or completion of such Common Element, whichever is later. Any defect not brought to Declarant's attention in writing, within such time period is waived and is not covered by this Warranty.

2. In furtherance of (but not in addition to) the warranties hereinabove set forth in Paragraph 1, the Declarant will correct any structural defect that shall be a defect in a component constituting any Common Element that reduces the stability or safety of the Common Element below generally accepted standards or that restricts the normal intended use of all or any part of the structure and that requires repair, renovation, restoration or replacement, brought to the Declarant's attention in writing within two (2) years after the date of recordation of the Deed to the first Unit to be conveyed in that portion of the Condominium in which the Common Element is located, or completion of the Common Element, whichever is later.

3. In furtherance of, and not in addition to, the warranties hereinabove set forth in Paragraph 1, the Declarant will correct any structural defect in any Common Element plumbing system, electrical system, sewage system, or other utility system, except operating fittings, that causes the system not to be in proper working order and that is caused by defective workmanship or materials, or a failure to comply with those standards hereinabove set forth in Paragraph 1, which are brought to the Declarant's attention in writing within two (2) years after the date of recordation of the Deed to the first Unit to be conveyed in that portion of the Condominium served by such system, or completion of the system, whichever is later.

B. Consumer Products

1. The Declarant gives no warranty on appliances, fixtures, finishes or other Consumer Products that constitutes Common Elements except as may be deemed to be required by a court of appropriate jurisdiction by the statutory warranty posed by Section 448.4-114-2 of the Uniform Condominium Act as it is in effect in the State of Missouri, and as it appears in Chapter 448 of the Missouri Statutes ("the Act").

2. The Declarant's sole obligation with respect to any such items not warranted by the Declarant shall be to deliver to the Association any manufacturers' warranties covering those Common Element appliances, fixtures, finishes, equipment, and consumer products, except insofar as same may be a part

Boone County, Missouri Unofficial Document

625

of a Unit. Any manufacturers' warranties on items that are Common Elements shall be delivered or assigned, if assignable, to the Association before the expiration of the Declarant Control Period. The Declarant is not responsible for performance under manufacturers' warranties in any way.

C. Examples

1. The following are examples of non-consumer products: ducts, duct work, structural components, parking lots, sidewalks, driveways and landscaping.

2. The following appliances and other equipment are examples of Consumer Products: smoke detectors, exhaust fans, thermostats, individual heating and air conditioning systems and equipment and their parts and components, refrigerators, air handling units, trash compactors, light fixtures, paints and wall coverings, carpeting and floor coverings, ceiling coverings and other finishes of every kind, nature and description whatsoever.

II. The Declarant's Responsibility

A. If any defect in any item or component hereof covered by the Declarant's warranty exists, and is brought to Declarant's attention within the time limit imposed by Section I, the Declarant, at its option, will repair or replace the affected item or component at no cost to the Association. Replacement items or components will be substantially comparable to those replaced (although identical colors and other features may not necessarily be available).

B. The Declarant will correct the defect in such manner as to restore the component to the condition that would have existed had the defect not been present.

III. Exclusions

A. The Declarant's warranty does not include cracks, popping nails, bumps, chips, deteriorating plaster, sedimentary accumulation or clogs in plumbing elements, blemishes, chips or stains in porcelain finishes, dried caulking, or other effects of aging, settlement, or expansion, contraction, shrinkage or warping of materials that may occur in walls, floors, ceilings, doors or any of the components of the Common Elements, as long as the defect will not prevent the normal intended use of all or part of the Common Elements.

B. The Declarant's warranty does not include defects or smudges in painted surfaces, chipping and/or cracking of marble, formica, fiberglass or tiles, defective or broken glass, or similar defects readily visible to the human eye, that are not noted for correction at the time of initial inspection on the walk-through by affected Unit Owners.

C. The Declarant's warranty does not cover normal maintenance items or conditions resulting from wear and tear and/or misuse or negligence. The Declarant's warranty does not apply where use or maintenance was contrary to the Declaration or rules and regulations of the Association or where any defect results from damage for which a Unit Owner or the Association is responsible, or

Boone County, Missouri Unofficial Document

626

by negligence or unreasonable use (including failure to provide reasonable and necessary maintenance).

D. THE DECLARANT SPECIFICALLY DISCLAIMS ANY LIABILITY FOR INCIDENTAL OR CONSEQUENTIAL (SECONDARY) DAMAGE TO ANY PERSON, ANY UNIT, THE COMMON ELEMENTS, OTHER COMPONENTS OR ANY OTHER REAL OR PERSONAL PROPERTY, RESULTING FROM A DEFECT.

IV. Limitations on Disclaimer of Implied Warranties

A. ON CONSUMER PRODUCTS FINALLY DETERMINED BY A COURT TO BE WITHIN THE STATUTORY WARRANTY PROVIDED BY SECTION 448.4-114 OF THE ACT, ALL IMPLIED WARRANTIES ARE LIMITED IN DURATION TO THE PERIOD OF THIS WRITTEN WARRANTY, WHICH IS TWO (2) YEARS AS STATED IN SUBPARAGRAPH A OF ARTICLE I. This includes, without limitation, any implied warranties of merchantability and fitness created by Sections 400.2-313 through 400.2-315 RSMo, of the Uniform Commercial Code, as it is in effect in the State of Missouri, and the implied warranties created by Section 448.4-114 of the Act. To the maximum extent permitted by law, all implied warranties of merchantability and fitness created by Sections 400.2-313 through 400.2-315 of the Uniform Commercial Code, as it is in effect in the State of Missouri, are hereby disclaimed and waived, and shall be of no force or effect, as it is the intention of the parties that, to the maximum extent permitted by law, the Declarant makes no warranties as to any Consumer Products, and that, to the extent the Declarant is required by law to make warranties as to Consumer Products, the only warranties which are made are those provided for by subparagraph A of Section I of this Article XXIX, such being the warranties required by Section 448.4-114 of the Act. If a Court of competent jurisdiction finally determines that any Consumer Products are covered by the warranties required by Section 448.4-114 of the Act, then such Consumer Products shall be covered solely by the warranties required by Section 448.4-114 of the Act, and shall not, in addition, be covered by the warranties provided for by Sections 400.2-313 through 400.2-315 of the Revised Statutes of Missouri, or any other express or implied warranties of quality, fitness or merchantability.

B. On all other Consumer Products and on all non-consumer products, whether or not warranted by manufacturers, all implied warranties are expressly disclaimed and do not apply, including without limitation the implied warranties of merchantability and fitness created by Sections 400.2-313 through 400.2-315 of the Revised Statutes of Missouri, same being the Uniform Commercial Code as it is in effect in the State of Missouri, and the implied warranties created by Section 448.4-114 of the Act, and any other implied warranties created by law.

V. Warranty Procedures

A. The following procedures have been established to permit maximum efficiency in administering work under the Limited Warranties provided for by this Article XXIX. If any items requiring repair arise, the procedures to be used in correcting these items is as follows:

1. Upon receipt of the written statement, the Declarant's representative will meet with a representative of the Association, inspect the item and list all warranted defects on a "Warranty Inspection Form". Any notice

Boone County, Missouri Unofficial Document

627

of defects shall be sent to the Declarant at its address set forth in this Declaration.

2. Any defects that may be discovered subsequent to the completion of the "Warranty Inspection Form," during the period covered by the Limited Warranty of this Article XXIX, will be handled individually upon written notice from the Association to the Declarant sent to the address set forth in paragraph A(1).

B. If the Association's representative and the Declarant's representative fail to agree upon the defects to be noted on the Warranty Inspection Form or the workmanlike correction of those defects, the Declarant will, within ten (10) days after the date of the Association's request therefor, submit the disagreement to John Simon, an Architect of Columbia, Missouri, for decision, whose decision shall be final and binding on the Declarant and the Association. The said Architect must act in a good faith, even handed and unbiased manner. He shall make his decision based on the warranty requirements of this Limited Warranty, the applicable plans and specifications and the applicable provisions of the Building Code of the City of Columbia, Missouri, and the results of his inspection. The charge for the Architect for this service will be paid by the Declarant.

VI. Interpretation

Nothing contained herein shall be deemed to be in derogation of that warranty required by Section 448.4-114 of the Act, as amended, as of this date. No action taken to correct defects shall extend this warranty. The written warranty set forth herein and the implied warranties limited herein are in lieu of all other warranties that may otherwise be implied.

VII. Statute of Limitations for Warranties.

The provisions set forth above notwithstanding, any judicial proceeding for breach of any obligation arising under this Article XXIX, or any of the warranties provided for hereby, or any warranties of fitness or quality of any kind, nature or description whatsoever, or any breach of any obligation arising under Sections 448.4-113 or 448.4-114 of the Revised Statutes of the State of Missouri must be commenced within two (2) years after the cause of action accrues. Any judicial proceeding which is not brought within such period of two (2) years shall be barred and extinguished. Any cause of action which is not enforced by way of judicial proceeding brought within such period of two (2) years shall be forever extinguished and rendered null, void and of no further effect. Any such cause of action accrues as to each Common Element at the time the Common Element is completed or, if later (a) as to a Common Element which may be added to the Condominium, or any portion thereof, at the time the first Unit served by the Common Element is conveyed to a bona fide Purchaser or (b) as to a Common Element within any other portion of the Condominium, at the time the first Unit in the Condominium served by the Common Element is conveyed to a bona fide Purchaser. No warranty of quality explicitly extends to future performance or duration of any improvement or component of the Condominium, except to the extent otherwise stated in this Certificate of LIMITED WARRANTY.

Boone County, Missouri Unofficial Document

VIII. Attorney's Fees and Court Costs.

628

If the Association brings against the Declarant, or the Declarant brings against the Association, any legal or equitable proceedings, for purposes of enforcing this Article XXIX or any of the rights, duties or obligations provided for by this Article XXIX, or any of the warranties set forth herein, or any other warranties of quality, fitness or merchantability, of any kind or nature whatsoever, without exception, then the prevailing party in such legal or equitable proceedings shall recover from the other party to such legal or equitable proceedings, in addition to all other sums, remedies and judgments to which such prevailing party would otherwise be entitled, such prevailing party's reasonable costs, expenses, costs of litigation, court costs and attorney's fees incurred in such proceedings, and in connection with such proceedings.

IX. DISCLAIMER OF OTHER WARRANTIES.

All warranties of fitness, quality or any characteristic of any of the Common Elements of the Condominium, or any part, portion or component thereof, with the exception of those LIMITED WARRANTIES provided for by this Article XXIX, are hereby expressly waived and disclaimed, and shall be of no force or effect whatsoever, and, except to the extent otherwise provided for by this Article XXIX, the Association accepts the Common Elements and all parts and components thereof, in their "AS IS" condition, free and clear of any warranties.

ARTICLE XXX

DECLARANT'S LIMITED WARRANTIES AS TO UNITS COMPLETED BY DECLARANT (AND ONLY AS TO UNITS COMPLETED BY DECLARANT)

Declarant makes the following LIMITED WARRANTIES to Unit Owners as to:

a. All parts and components of the Unit which are completed by Declarant (Example: Declarant completes and "finishes out" the Unit for the Unit Owner); and

b. All parts and components of the Building, which directly serve the Unit, whether or not the Unit is "finished out" by Declarant (Example: The roof, roof structure, exterior walls and other components of the Building which directly serve the Unit),

{THE DECLARANT MAKES NO LIMITED WARRANTIES WHATSOEVER AS TO ANY PART, COMPONENT OR INSTALLATION OF OR SERVING A UNIT OR OF THE SYSTEMS WITHIN OR SERVING A UNIT WHICH ARE NOT COMPLETED OR INSTALLED BY DECLARANT, BUT RATHER ARE INSTALLED BY OTHERS RETAINED BY THE UNIT OWNER OR UNIT PURCHASER},

to the COMPLETE EXCLUSION of (Declarant hereby disclaiming same) all other warranties or guarantees, express or implied, of any kind or nature whatsoever, without limitation:

1. LIMITED WARRANTIES (and only warranties given) as to Non-Consumer Items. The Declarant warrants to the Unit Owner [the Purchaser] (and only

Boone County, Missouri

Unofficial Document

629

warranties to the Unit Owner [the Purchaser]), as to such Unit Owner's Unit and those Common Elements in the Condominium which are required for the reasonable use of such Unit, that the Unit and such Common Elements are suitable for the ordinary uses of real estate of its type and that any improvements for such Unit or such Common Elements made or contracted for by Declarant, or made by any person before the creation of the Condominium, shall be:

- (a) Free from defective materials; and
- (b) Constructed in accordance with the Building Code of the City of Columbia, Missouri, and according to sound engineering and construction standards, and in a good and workmanlike manner, using materials and workmanship which are of good quality and which are free from faults and defects; and
- (c) Constructed and completed in accordance with the provisions of any Contract entered into by the Declarant with the Purchaser, if any, and in fulfillment of any additional warranties or guarantees (other than those set forth in this Article XXX) appearing in such Contract, if any.

THOSE LIMITED WARRANTIES HEREINABOVE SET FORTH, which are to be subject to the following terms and conditions set forth in this Certificate, are the only guarantees and warranties provided by the Declarant to the Purchaser of any Condominium Unit within Muirfield Plaza Condominiums. Such guarantees and warranties are LIMITED GUARANTEES and LIMITED WARRANTIES. The Declarant makes no warranties nor representations as to the condition or quality of a completed Unit, or the Common Elements required for use of such Unit, or any component of the Unit or such Common Elements, or any system or component of the Unit, or pertaining thereto, other than those hereinabove set forth. All other warranties and representations as to condition or quality, including but not limited to implied warranties of merchantability and of fitness, and of fitness for a particular purpose, and of condition, and of habitability, are hereby waived and disclaimed, and shall be of no force or effect whatsoever. However, the following terms and conditions set forth in this Certificate of Limited Warranty are agreed to, and are the conditions of those LIMITED WARRANTIES specified above.

[Note: If a Unit Owner/Purchaser "finishes out" such Unit Owner's Unit personally, or through contractors, subcontractors or others retained by or contracted for by such Unit Owner/purchaser, then the Limited Warranties set forth herein in this Article XXX shall be of no force or effect, other than with respect to those components of the Building containing such Unit which are completed by Declarant and which directly serve the Unit.]

2. Statute of Limitations. The Uniform Condominium Act as it is in effect in the State of Missouri ("the Act") provides for a six (6) year statute of limitations for the filing of an action resulting from a breach of an express or implied warranty of quality. This period of six (6) years, however, may be modified to a lesser period, so long as the modified period is at least two (2) years. The Declarant seeks to modify such six (6) year statute of limitations to a period of two (2) years. The statute of limitations as provided for by the Act for the filing of a judicial or court action resulting from a breach of an express or implied warranty of quality, shall be and it is hereby reduced from

Boone County, Missouri Unofficial Document

630

six (6) years to two (2) years. Any action for breach of express or implied warranty of quality, which is not filed within two (2) years of the date the cause of action accrues, shall be forever barred and extinguished. It is understood that the causes of action accrue as hereinafter described in Paragraph 3.

3. Cause of Action Accrues. A cause of action for breach of warranty of quality, regardless of the Purchaser's lack of knowledge of the breach, accrues:

(a) As to a Unit, at the time the Purchaser to whom the warranty is first made enters into possession, if a possessory interest was conveyed, or at the time of acceptance of the instrument of conveyance if a non-possessory interest was conveyed; and

(b) As to each Common Element, at the time the Common Element is completed, or, if later, (i) as to a Common Element which may be added to the Condominium, or any portion thereof, at the time the first Unit served by the Common Element is conveyed to a bona fide Purchaser, or (ii) as to a Common Element within any other portion of the Condominium, at the time the first Unit in the Condominium served by the Common Element is conveyed to a bona fide Purchaser.

If, however, a warranty of quality explicitly extends to future performance or duration of any improvement or component of the Condominium, the cause of action accrues at the time the breach is discovered or at the end of the period for which the warranty explicitly extends, whichever is earlier. NO WARRANTIES OR REPRESENTATIONS OF ANY KIND, AS TO THE QUALITY OF ANY OF THE UNITS OR THE COMMON ELEMENTS, SHALL EXTEND, OR IS INTENDED TO EXTEND, TO FUTURE PERFORMANCE OR FOR ANY DURATION OF TIME.

4. Further Terms and Conditions of Warranties - Further Limitations of LIMITED WARRANTIES. With respect to the LIMITED WARRANTIES hereinabove set forth in Paragraph 1, which are the only warranties made by the Declarant, the Purchaser and the Declarant agree as follows, and shall be bound as follows:

(a) Checklist. The Declarant agrees that the Purchaser shall be entitled to inspect the Unit prior to the Closing, if desired by the Purchaser. The Purchaser is encouraged to make such an inspection. In the event, during such inspection, a reasonable determination is made that any portion of the Unit is not completed, or has not been built, in substantial accordance with the applicable plans and specifications, or has been completed in a defective or unworkmanlike manner, then the Purchaser and Declarant shall complete and prepare a "Unit Inspection Form", of a type provided by the Declarant, and shall sign such Form. The Declarant shall, before or after the Closing, proceed to complete and/or remedy the items and conditions shown on the Form, at the Declarant's expense. The Declarant shall proceed to complete and/or remedy such items in a diligent manner, and shall complete the work required to complete and/or remedy such items as soon as reasonably practicable. Such Form shall be binding upon the Purchaser and the Declarant as to items remaining to be completed or remedied. If the Declarant or the Purchaser reasonably cannot agree upon such the items to be set forth upon the Form, John Simon, an

Boone County, Missouri

Unofficial Document

631

Architect of Columbia, Missouri selected by the Declarant or his designee, who must act fairly and in the reasonable interests of both parties, and without bias or prejudice, shall resolve the dispute. Such Architect shall consider this Certificate and the applicable plans, specifications and Building Code requirements. The determination made by the Architect shall be binding upon the parties. The fees of the Architect will be paid by the Declarant.

(b) Closing Means "Acceptance". Closing of the purchase and sale of the Unit, and acceptance by the Purchaser of the Declarant's General Warranty Deed, shall constitute full acceptance of the Unit and the Common Elements serving the same, in the same condition in which same are then found, in their then presently existing "AS IS" condition, with the following exceptions:

(i) The provisions hereinabove set forth in Paragraph 1, with respect to the LIMITED WARRANTIES, made by the Declarant; and

(ii) The items and conditions shown on the Unit Inspection Form hereinabove described in subparagraph (a) of this Paragraph 4, which the Declarant shall, before or following the Closing, be obligated, in accordance with such subparagraph (a), to promptly remedy and complete, in a diligent and workmanlike manner, at the Declarant's expense.

With the exception of those items hereinabove stated in subparts (i) and (ii) of this subparagraph (b) Closing of the purchase and sale of the Unit, and acceptance by the Purchaser of the Declarant's General Warranty Deed, shall CONSTITUTE FULL ACCEPTANCE OF THE UNIT AND THE COMMON ELEMENTS SERVING SAME, IN THE SAME CONDITION IN WHICH SAME ARE THEN FOUND AT THE TIME OF CLOSING, AND OF ALL PARTS AND COMPONENTS THEREOF, AND OF THE PLUMBING, HEATING, AIR CONDITIONING, MECHANICAL AND ELECTRICAL FIXTURES, EQUIPMENT, APPLIANCES AND HOT WATER HEATER CONTAINED WITHIN OR SERVING THE UNIT, IN THEIR THEN "AS IS" CONDITION, AND SHALL EXTINGUISH ANY FURTHER OBLIGATIONS OF THE DECLARANT TO THE PURCHASER IN CONNECTION WITH THE CONDITION OF THE UNIT AND SUCH COMMON ELEMENTS, OR THE CONDITION OF ANY COMPONENTS THEREOF, OR THE CONDITION OF ANY EQUIPMENT, FIXTURES, APPLIANCES, SYSTEMS AND PROPERTY CONTAINED IN THE UNIT OR SERVING IT, OTHER THAN AS SPECIFICALLY STATED TO THE CONTRARY IN THE ABOVE PROVISIONS OF THIS PARAGRAPH 4. THE PURCHASER SHALL SPECIFICALLY BE DEEMED TO HAVE RELIEVED THE DECLARANT OF ANY FURTHER RESPONSIBILITY WITH RESPECT TO THE CONDITION OR WORKMANSHIP OR MATERIALS OF THOSE PARTS AND COMPONENTS OF THE UNIT AND COMMON ELEMENTS SERVING THE UNIT WHICH ARE READILY VISIBLE, OR WHICH SHOULD HAVE BEEN INSPECTED DURING A REASONABLY DILIGENT VISUAL INSPECTION, INCLUDING THE FOLLOWING: INTERIOR AND EXTERIOR SURFACES, INTERIOR SURFACE COVERINGS, INTERIOR AND EXTERIOR FINISH WORK OF ALL TYPES AND KINDS, WINDOWS AND THE OPERATION THEREOF, ALL WINDOW HARDWARE, DOORS AND THE OPERATION THEREOF AND DOOR HARDWARE, INTERIOR WALLS, CEILINGS AND FLOORS, AND WALL, CEILING AND FLOOR COVERINGS, CABINETS AND CABINET WORK, AND BLEMISHES, CHIPS OR STAINS, AND THE APPEARANCE AND OPERATION OF ALL PLUMBING FIXTURES, AND THE APPEARANCE OF THE UNIT AND COMMON ELEMENTS AND OF ALL PARTS AND COMPONENTS OF THE UNIT AND COMMON ELEMENTS SERVING THE UNIT WHICH ARE READILY VISIBLE.

(c) Structural Repairs. The above provisions of this Paragraph 4 to the contrary notwithstanding, in furtherance of, and not in addition to the

Boone County, Missouri

Unofficial Document

632

warranties set forth in Paragraph 1 above, the Declarant shall, at the Declarant's expense, promptly remedy, repair and replace, as required, any defects in, or problems with, the roof of the Unit, or the exterior walls serving the Unit, or any of the structural components of the Unit or of the Common Elements serving the Unit, or any portions of the plumbing system or electrical systems or flues of the Unit or serving the Unit, which are not readily visible upon the making of a diligent inspection, or any of the structural components of the Unit or of the Building containing the Unit which were not readily visible for the Purchaser's inspection during a diligent inspection; provided, however, that the defects or problems must result from a failure to complete the Unit or the Common Elements in accordance with those warranties hereinabove set forth in Paragraph 1 of this Article XXX; and provided further, however, that the Declarant's obligations to repair, replace or remedy defects, conditions or problems in accordance with this subparagraph (c) shall be in force only for a period of twenty-four (24) months from and after the date of the Closing, or the date the Purchaser enters into occupancy of the Unit, whichever shall first occur, and shall thereafter be of no force or effect of any kind or nature whatsoever.

(d) No WARRANTY of Appliances or Consumer Products. The Declarant makes no warranties nor representations (and Paragraph 1 of this Certificate should not be construed to include any of same) as to any appliance or equipment or consumer products contained within or serving the Unit whether or not guaranteed or warranted by the manufacturers thereof, including, without limitation, the appliances, the furnace or heating system, the air conditioning or cooling system, the water heater and plumbing fixtures, smoke detectors, exhaust fans, thermostats, garbage disposals, refrigerator/freezers, range/ovens and dishwashers, wallpaper, paint and other finishes. The Purchaser's rights as to the condition or operability of such appliances, equipment or other consumer products shall be limited solely to the rights against the manufacturers as provided for by any applicable guarantees or warranties. The Purchaser shall have no rights against the Declarant with respect to the condition or operability of such appliances, equipment and consumer products. To the extent the Declarant may do so, the Declarant shall assign to the Purchaser, at the time of Closing, any and all guarantees for such appliances, equipment and consumer products which are assignable. To the extent that such guarantees or warranties are not assignable, same shall be enforced by the Declarant on the Purchaser's behalf. It is specifically understood that the Declarant provides no additional warranties or guarantees as to such appliances, equipment or consumer products, of any kind or nature whatsoever, and that the Declarant shall have no responsibility for the condition of such appliances, equipment or consumer products after the Purchaser has accepted the Declarant's Deed. Examples of "consumer products", as to which the Declarant provides no warranties, are smoke detectors, exhaust fans, thermostats, individual heating and air conditioning systems, garbage disposals, trash compactors, refrigerators/freezers, ranges/ovens, dishwashers, other appliances, furnaces, air conditioners, heat pumps, similar cooling or heating equipment, light fixtures, paints, wallpaper and other finishes, carpeting, wood flooring, tile, and other floor surfaces and finishes of all types and kinds.

5. FURTHER EXCLUSIONS.

(a) The Declarant's warranties do not include cracks, popping, nails, bumps, chips, deteriorating plaster, sedimentary accumulation or clogs in

Boone County, Missouri Unofficial Document

633

plumbing elements, blemishes, chips or stains in porcelain finishes, dried caulking, or other effects of aging, settlement, or expansion, contraction, shrinkage or warpage of materials that may occur in walls, floors, ceilings, doors or any of the components of the Unit or the Common Elements, as long as the defect does not arise from a breach of the warranties hereinabove set forth in Paragraph 1 of this Article XXX of this Declaration.

(b) The Declarant's warranty does not include defects or smudges in painted surfaces, chipping and/or cracking of marble, formica, fiberglass or tiles, broken glass, or similar defects readily visible to the human eye that are not noted for correction on the Unit Inspection Form at the time of the final inspection by the Purchaser prior to Closing.

(c) The Declarant's warranty does not cover normal maintenance items or conditions resulting from wear and tear and/or misuse or maintenance. The Declarant's warranty does not apply where use or maintenance was contrary to the Condominium Declaration, or the rules and regulations of the Condominium or the Executive Board, or where any defect results from damage for which a Unit Owner or the Association is responsible, or by negligence or unreasonable use (including failure to provide reasonable and necessary maintenance).

(d) THE DECLARANT SPECIFICALLY DISCLAIMS ANY LIABILITY FOR (AND SHALL NOT BE RESPONSIBLE FOR) DAMAGE OR CONSEQUENTIAL (SECONDARY) DAMAGE TO ANY PERSON, ANY UNIT, THE COMMON ELEMENTS, OTHER COMPONENTS OR ANY OTHER REAL OR PERSONAL PROPERTY, RESULTING FROM A DEFECT.

6. LIMITED WARRANTY Procedures.

(a) The following procedures have been established to permit maximum efficiency in administering work under the LIMITED WARRANTIES, as provided by this Article XXX of this Declaration. As indicated above, the Purchaser will have the opportunity to make an inspection of the Unit and the Common Elements immediately prior to Closing. At that time, a list of items needing correction in accordance with the Declarant's warranty will be prepared on a Unit Inspection Form to be provided by the Declarant, in accordance with the procedures outlined therein. Certain additional items may arise from time to time, as is normal. If any additional items arise, the procedure to be used for correcting these items is as follows:

(i) If the Purchaser discovers defects that are covered by the LIMITED WARRANTIES provided by this Article XXX, to obtain performance of the Declarant's warranty obligations, a written statement of all warranty claims shall be upon a "Warranty Inspection Form" of the type supplied by Declarant, which shall be sent to Declarant at Declarant's address set forth in this Declaration.

(ii) Within a reasonable time after receipt of the written statement (except in the case of an emergency) the Declarant's representative will meet with the Purchaser, and inspect the item and list all warranted defects on the "Warranty Inspection Form", supplied by the Declarant and signed by a representative of the Declarant and the Purchaser.

Boone County, Missouri Unofficial Document

631

(b) If the Purchaser and the Declarant's representative fail to agree upon the defects to be noted on the Warranty Inspection Form or the workmanlike correction of these defects, the Declarant will, within ten (10) days after the date of the Declarant's request therefor, submit the disagreement to John Simon, an Architect selected by Declarant, for decision. The decision of such Architect shall be final and binding on the Declarant and the Purchaser. Such Architect will render his decision based on this Certificate, the walk through inspection report ("Unit Inspection Form"), the Plans and Specifications for the Project, and the Warranty Inspection Form. The fees of the Architect will be paid by the Declarant.

(c) Except in the case of an emergency, or in the case of items which have a significant effect on the habitability of the Unit, or the significant use and enjoyment of the Unit for its intended purposes, the Purchaser shall submit to the Declarant upon a "Warranty Inspection Form", claims for repairs required by this Limited Warranty Certificate, on only three lists to be provided as follows:

(i) On the sixth (6th) monthly anniversary date of the date of the Closing of the purchase and sale of the Unit, or at any time within thirty (30) days prior to or subsequent to such sixth (6th) monthly anniversary date; and

(ii) The first (1st) annual anniversary date of the date of such Closing, or at any time within thirty (30) days prior to or subsequent to such first (1st) annual anniversary date; and

(iii) Within thirty (30) days prior to the second (2nd) annual anniversary of the date of the Closing.

In other words, except in the case of emergency repairs (i.e. those repairs, which if not performed immediately, will result in further damage to the Unit, or to persons or property, or to the habitability or substantial enjoyment of the Unit), and except in the case of major repairs, which must be performed in order to preserve the habitability, or significant use and enjoyment of the Unit, claims for defects and/or for repairs shall be presented on only one of three (3) claim forms, as described above, which shall be presented only on the three (3) times hereinabove prescribed therefor. Minor repairs, therefore, will be claimed only on one of such three (3) Forms. Minor repairs need be performed by the Declarant only at those times provided for the presentation of such lists by the above provisions of this subparagraph (c). The Declarant, therefore, shall not be called on, repeatedly, to make minor repairs to the Unit or its components. The Declarant may, however, be called on at any time to make major repairs, or repairs which are required to prevent further damage, or to preserve the significant habitability and enjoyment of the Unit. In any event, as hereinabove provided in Paragraph 3, a judicial proceeding for breach of an obligation under those LIMITED WARRANTIES hereinabove set forth in Paragraph 1, or any warranties of fitness or quality as to a Unit or Common Element serving the Unit; must be commenced within the two (2) year period described in Paragraphs 2 and 3 above, and, therefore, must be commenced within two (2) years following the earliest to occur of the following dates:

Boone County, Missouri

Unofficial Document

635

(a) At the time the Purchaser to whom the warranty is first made enters into possession of the Unit if a possessory interest was conveyed; or

(b) At the time of acceptance of the Deed, if a non-possessory interest is conveyed.

Generally, therefore, such legal actions must be commenced not more than two (2) years following the Closing of the purchase and sale of the Unit. If not commenced within such period, such action shall be forever barred and extinguished.

LEGAL ACTION SHALL NOT BE COMMENCED BY AN PURCHASER, AND ACTIONS FOR JUDICIAL ENFORCEMENT OF ANY WARRANTY SHALL NOT BE SOUGHT BY ANY PURCHASER, UNTIL CLAIMS FOR DEFECTS OR REPAIRS HAVE BEEN MADE, IN WRITING, IN THAT MANNER PROVIDED THEREFORE BY THE ABOVE PROVISIONS OF THIS PARAGRAPH 6, AND THE DECLARANT HAS BEEN GIVEN A REASONABLE OPPORTUNITY TO CORRECT THE DEFECT OR MAKE THE REPAIR.

7. Interpretation. Nothing contained herein shall be in derogation of the LIMITED WARRANTIES hereinabove set forth in Paragraph 1 of this Article XXX, which warranties are required by Section 448.4-114 of the Act. However, as indicated above, those warranties set forth in Paragraph 1 are the only warranties given. This Article XXX, therefore, provides only for a LIMITED WARRANTY, and specifies the terms and conditions of such warranty. The written warranties set forth herein and the implied warranties limited herein are in lieu of all other warranties, express or implied, including, but not limited to, implied warranties of merchantability, fitness, for a particular purpose or otherwise.

8. Attorney's Fees and Costs of Litigation. If the Purchaser shall seek to enforce against the Declarant, or the Declarant shall seek to enforce against the Purchaser, by legal or equitable proceedings, any of the warranties provided for by this Article XXX, or any of the rights, duties or obligations provided for by this Article XXX, or any other warranties of fitness or quality, or any rights, duties, obligations or liabilities provided for by this Article XXX, or any of the warranties set forth in this Article XXX, or any of the terms or conditions set forth in this Article XXX, or any duties or obligations imposed by Sections 448.4-113 through 448.4-115 of the Act, then the prevailing party in such legal or equitable proceedings shall recover from the other party to such legal or equitable proceedings (whether such prevailing party prevails in whole or substantial part as to the relief sought by such party), such prevailing party's costs, expenses, attorney's fees, court costs and expenses of litigation incurred in such proceedings and in connection with such proceedings, and in the preparation for such proceedings, in addition to all other sums, remedies and judgments to which such prevailing party would otherwise be entitled.

9. STATUTE OF LIMITATIONS. As hereinabove indicated, the Declarant and the Purchaser have agreed, and hereby agree, that the statute of limitations for judicial proceedings for breach of any obligation arising under Sections 448.4-113 or 448.4-114 of the Act, or provided for by this Article XXX, or with respect to the enforcement of any of the warranties of quality or fitness

Boone County, Missouri Unofficial Document

provided for by this Article XXX or otherwise, must be commenced within two (2) years after the cause of actions accrues, or shall thereafter, forever, be completely barred and extinguished. The statute of limitations is, therefore, reduced hereby to two (2) years from the date the cause of action accrues. The cause of action shall be deemed to have accrued as of the earliest date provided for such accrual by the Act.

10. Limitations on Disclaimer of Implied Warranties. On any consumer products, of the type hereinabove described, which are finally determined by a Court to be included within any statutory warranties required by the Act, all implied warranties are limited in duration by the two (2) year statute of limitations hereinabove described in paragraph 2. This includes, without limitation, any implied warranties of merchantability and fitness created by Sections 400.2-313 through 400.2-315 of the Uniform Commercial Code as it is in effect in the State of Missouri, and the implied warranties created by Section 448.4-114 of the Act. On all other consumer products and on all non-consumer products, whether or not warranted by manufacturers, all implied warranties, except to the extent set forth herein, are expressly disclaimed, and to the extent not specifically agreed to hereby by Declarant and Buyer, do not apply, including, without limitation, the implied warranties of merchantability and fitness created by Sections 400.2-313 through 400.2-315 of the Revised Statutes of Missouri, same being the Uniform Commercial Code as it is in effect in the State of Missouri.

11. Warranties as to Common Elements. As to those Common Elements of the Condominium which do not directly serve the Unit acquired by the Purchaser, but which benefit such Condominium Unit [i.e. Common Elements, such as amenities which benefit the Purchaser's Unit, but do not directly serve the Unit and are not required for its reasonable use], the Declarant makes to the Purchaser of the Unit no warranties, express or implied, of any kind, nature or description, and all such warranties are hereby expressly waived and disclaimed. THE ONLY WARRANTIES MADE AS TO SUCH COMMON ELEMENTS [I.E. THOSE WHICH BENEFIT, BUT DO NOT DIRECTLY SERVE THE UNIT, INCLUDING, BUT NOT LIMITED TO, INTERIOR HALLWAYS, STAIRWAYS, STAIRWELLS, ENTRANCEWAYS, ELEVATORS, PUBLIC RESTROOMS AND OTHER COMMON AND PUBLIC AREAS OF THE BUILDING, THE EXTERIOR WALKWAYS, LANDSCAPING, PARKING LOTS, PARKING AREAS, DRIVEWAYS AND ENTRANCEWAYS, THE EXTERIOR LIGHTING, AND ALL OTHER EXTERIOR IMPROVEMENTS], ARE THOSE MADE TO THE ASSOCIATION BY ARTICLE XXIX OF THIS DECLARATION. SUCH WARRANTIES RUN SOLELY IN FAVOR OF THE ASSOCIATION. THE PURCHASER AGREES THAT NO WARRANTIES AS TO SUCH COMMON ELEMENTS ARE MADE TO THE PURCHASER.

12. No Other Warranties or Representations. The Purchaser acknowledges that, except to the extent of those LIMITED WARRANTIES provided for by this Article XXX of this Declaration, neither the Declarant, nor anyone acting on its behalf, nor its agents, nor any sales persons, nor anyone else, has made any statement, warranty or representation to the Purchaser as to the condition of the Purchaser's Unit, or any of the components of same, or any of the Common Elements serving same, or the fitness or quality of same.

13. Severability. If any of the provisions of this Article XXX of this Declaration are held by a Court of competent jurisdiction to be void, invalid or unenforceable, then such determination shall have no effect upon the

Boone County, Missouri

Unofficial Document

637

remaining provisions of this Article XXX of this Declaration, and all such provisions shall remain in full force and effect.

14. Agreement. These Limited Warranties as set forth in this Article constitute the sole and only agreement between the Declarant and the Purchaser with respect to the condition, quality or fitness of the Purchaser's Unit or the Common Elements directly serving the Unit. The Purchaser acknowledges that no agreements nor warranties have been made to the Purchaser with respect to those Common Elements of the Condominium which do not directly serve the Purchaser's Unit, as all such warranties as to such Common Elements run solely in favor of the Association, and are made by way of Article XXIX of this Declaration.

ARTICLE XXXI

NON-ANNEXATION

Declarant shall have no obligation whatsoever to annex to the Condominium provided for hereby all or any portion of the Annexation Parcel. Rather, Declarant may choose to develop all or portions of the Annexation Parcel, independently, and not as part of the Condominium provided for hereby. No assurance is given as to how the Annexation Parcel will be developed. However, all of the Property and the Annexation Property/Annexation Parcel, including the Property shall, nevertheless, be subject to that "Declaration of Protective Covenants", which is recorded in Book 935 at Page 447 of the Real Estate Records of Boone County, Missouri ("the Declaration of Protective Covenants"). It is, therefore, possible that portions of the Annexation Parcel (even though developed and with Buildings placed thereon) will not be made a part of the Condominium provided for hereby, but such portions (and the occupants of such portions) will, nevertheless, share (with this Condominium) the various parking lots, parking areas, driveways, walkways, entranceways and other improvements located on Lot 22 of Rockbridge Subdivision, Block 10, as shown by Plat recorded in Plat Book 24 at Page 45 of the Records of Boone County, Missouri, all as described in the Declaration of Protective Covenants.

IN WITNESS WHEREOF, the Declarant has executed this Declaration this 1st day of April, 1993, acting by and through its undersigned partners who are the sole and only partners of Declarant, a Missouri general partnership.

MUIRFIELD PARTNERSHIP, a general partnership of the State of Missouri

By: [Signature]
Kersten K. Carlson

and

By: [Signature]
Rhonda D. Carlson

and

By: [Signature]
Walter A. Beasley

-89-

Boone County, Missouri
Unofficial Document

638

STATE OF MISSOURI)
) ss.
COUNTY OF BOONE)

On this 1st day of April, 1993, before me, the undersigned, a Notary Public in and for the State of Missouri and County of Boone, at my office in Columbia, Boone County, Missouri, personally appeared each of Kersten K. Carlson, Rhonda D. Carlson and Walter A. Beasley, to me personally known, who being by me first duly sworn, did state and acknowledge that Muirfield Partnership is a general partnership of the State of Missouri; such individuals are now and have at all times been the sole partners in the said partnership; such partnership is now in full force and effect and such individuals are the sole partners in such partnership; each of said individuals had executed the foregoing document and had executed same as his or her free act and deed; each of said individuals had executed the foregoing document in the name of and on behalf of the said partnership, and the foregoing document represents the free act and deed of the said partnership.

IN TESTIMONY WHEREOF, I have hereunto affixed my hand and notarial seal at my office in Columbia, Missouri, on the day and year hereinabove first written.



Susan M. Fuller
Notary Public Susan M. Fuller

Commission expires: 8-16-93

Boone County, Missouri Unofficial Document

639

JOINDER OF MORTGAGEE

First National Bank and Trust Company, of Columbia, Missouri, the beneficial holder under a Deed of Trust upon that real estate hereinabove described, and the improvements located thereon, which such Deed of Trust is recorded in Book 929 at Page 2 of the Records of Boone County, Missouri (hereinafter referred to as "Mortgagee"), does hereby join in the making of the foregoing Declaration of Condominium, and said Mortgagee agrees that the lien of the Deed of Trust, as to the real estate hereinabove described, shall be subject to, and shall be subordinated to the foregoing Declaration of Condominium, Bylaws and indenture of MUIRFIELD PLAZA CONDOMINIUMS, as if said Declaration, and the attachments thereto, had been recorded prior to the recording of the Deed of Trust hereinabove described. The said Mortgagee further agrees that the said Deed of Trust shall, hereafter, automatically be deemed to be subordinated to, and shall automatically be subordinated to, said Declaration, and any amendments thereto, and any additional plats of any portions of the real estate hereinabove described which are hereafter recorded, in order to subdivide additional portions of the real estate into Units and Common Elements. As to all portions of the real estate, the lien of the above-described Deed of Trust shall continue in full force and effect. The intention of the said Mortgagee is that the lien of the Deed of Trust shall be subordinated to, and shall be subject to the Declaration and the Plat, including any amendments thereto hereafter recorded. As to all portions of the lien of the Deed of Trust shall be (and shall be deemed to be) upon the following described property in Boone County, Missouri, to-wit:

"All of the Units of MUIRFIELD PLAZA CONDOMINIUMS, a Condominium of Boone County, Missouri contained within that real estate described in and subject to Deed of Trust recorded in Book 929 at Page 2 of the Records of Boone County, Missouri, as shown by all present and future Plats of portions of such real estate, which divide such real estate into Units and Common Areas together with all of the appurtenances and privileges appertaining to the said Units, including, but not limited to, the Allocated Interest in the Common Elements, and all memberships in the Association appurtenant to such Unit."

IN WITNESS WHEREOF, the undersigned officers of the said corporation have executed this document in the name of and on behalf of said corporation.

Dated this 1 day of April, 1993.



Laura Ruttan
Secretary, Laura Ruttan

FIRST NATIONAL BANK AND TRUST COMPANY

By: Charles D. Menke
Its CVT
Charles D. Menke, Senior Vice
President

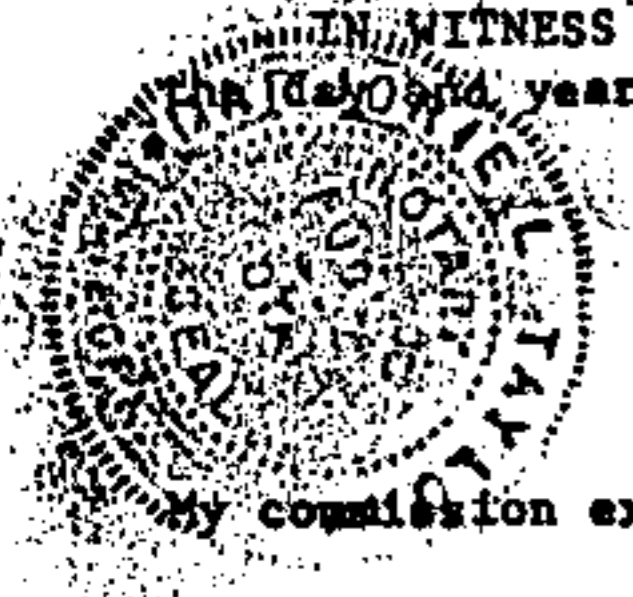
Boone County, Missouri
Unofficial Document

STATE OF MISSOURI)
) ss.
COUNTY OF BOONE)

640

On this 1st day of APRIL, 1993, at my office in said County and State, before me, the undersigned, a Notary Public, personally appeared CHARLES D. MENKE, to me personally known to me to be the person who executed the above and foregoing instrument on behalf of First National Bank and Trust Company, a corporation, who being by me first duly sworn, did state and acknowledge that he/she was SR. VICE PRESIDENT of First National Bank and Trust Company, that as such he/she had executed the foregoing instrument in the name of and on behalf of such corporation by authority granted to him/her by such corporation's Board of Directors, and that the seal affixed to the foregoing instrument is the corporate seal of said corporation, and he/she did duly acknowledge the execution of the foregoing instrument to be the free act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto affixed my hand and notarial seal on the 1st day of APRIL, 1993, year last above written.



Merjorie L. Taylor

Notary Public
Merjorie L. Taylor, Notary Public
Boone County, State of Missouri
My Commission Expires Aug. 25, 1998

My commission expires:
8-25-93

AGREEMENT OF MORTGAGOR TO INDUCE MORTGAGEE TO EXECUTE FOREGOING JOINDER

In order to induce the above-named Mortgagee to execute the foregoing Joinder, Muirfield Partnership, the owner of the Property described in the Deed of Trust set forth in the foregoing "Joinder", does hereby commit to the lien and encumbrance of the said Deed of Trust, and does hereby grant, convey, assign and set over unto the trustee named in the said Deed of Trust [as a part of the Real Estate and Property described in the said Deed of Trust], all of its rights as the Declarant and all of its Development Rights, special Declarant rights, Declarant rights and other rights as provided for in and as described in the foregoing Declaration of Condominium, so that (it being hereby understood and agreed that), in the event of default under the Deed of Trust, the purchaser at any foreclosure sale held under the said Deed of Trust (or the grantee under any Deed in lieu of foreclosure) shall automatically be deemed to have acquired and shall have acquired all of Declarant's rights, titles, interests, ownerships, privileges, duties and obligations as the Declarant [including, but not limited to, all Declarant Rights, special Declarant rights, and Development rights], as provided for by such Declaration.

Boone County, Missouri Unofficial Document

641

MUIRFIELD PARTNERSHIP

By: [Signature]
Kersten K. Carlson

and
By: [Signature]
Rhonda D. Carlson

and
By: [Signature]
Walter A. Beasley

STATE OF MISSOURI)
) ss.
COUNTY OF BOONE)

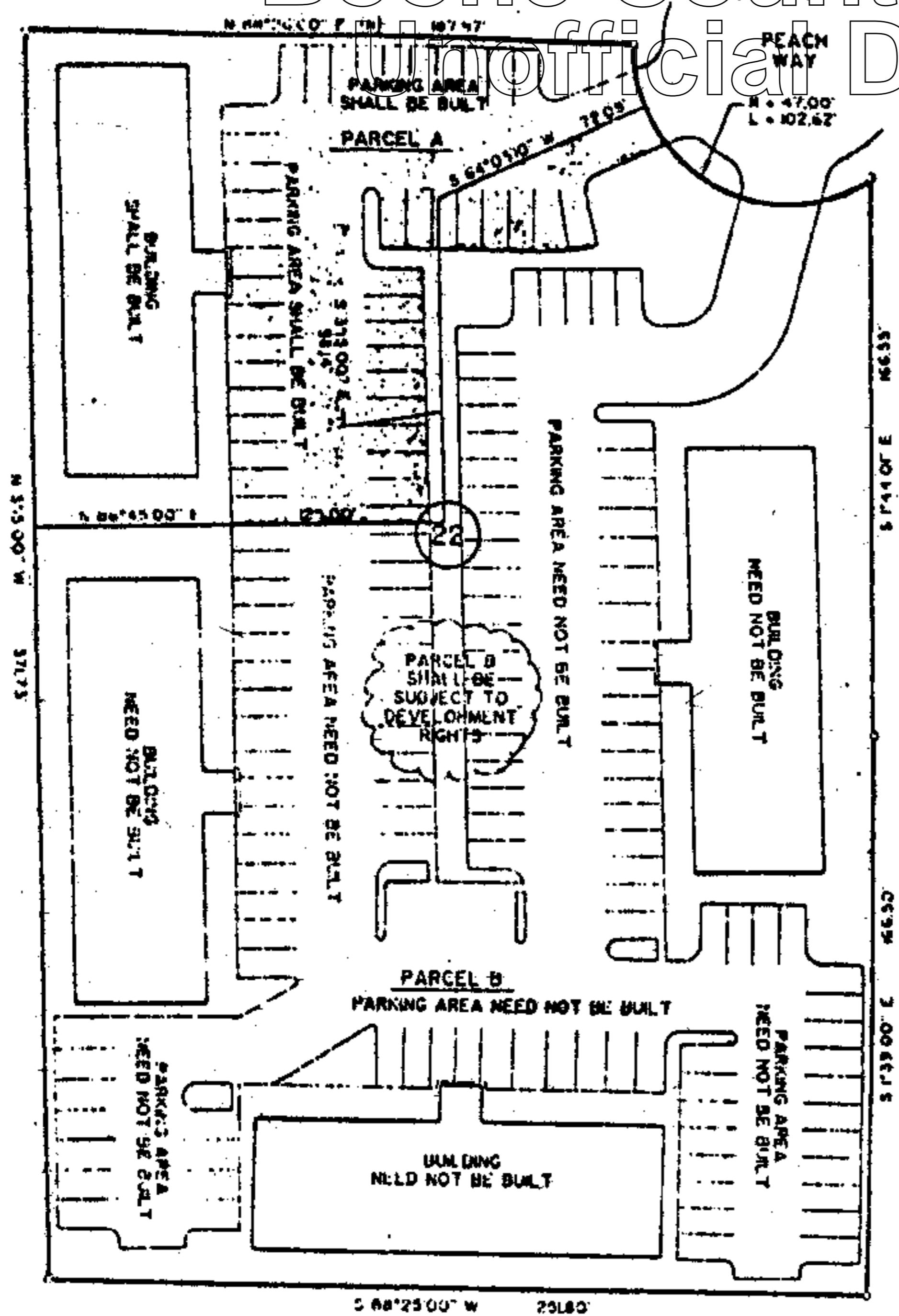
On this 1st day of April, 1993, before me, the undersigned, a Notary Public in and for the State of Missouri and County of Boone, at my office in Columbia, Boone County, Missouri, personally appeared each of Kersten K. Carlson, Rhonda D. Carlson and Walter A. Beasley, to me personally known, who being by me first duly sworn, did state and acknowledge that Muirfield Partnership is a general partnership of the State of Missouri; such individuals are now and have at all times been the sole partners in the said partnership; such partnership is now in full force and effect and such individuals are the sole partners in such partnership; each of said individuals had executed the foregoing document and had executed same as his or her free act and deed; each of said individuals had executed the foregoing document in the name of and on behalf of the said partnership, and the foregoing document represents the free act and deed of the said partnership.

IN TESTIMONY WHEREOF, I have hereunto affixed my hand and notarial seal at my office in Columbia, Missouri, on the day and year hereinabove first written.



Susan M. Fuller
Notary Public Susan M. Fuller

642



NOTE

- A. PARCEL A IS THE PROPERTY WHICH SHALL INITIALLY BE IN THE CONDOMINIUM.
- B. PARCEL B MAY OR MAY NOT BE ANNEXED INTO THE CONDOMINIUM, IN WHOLE OR IN PART.

LEGAL DESCRIPTION

LOT 22, HICKABRIDGE SUBDIVISION, BLOCK 10, COLUMBIA, BOONE COUNTY, MISSOURI

SCALE 1" = 40'

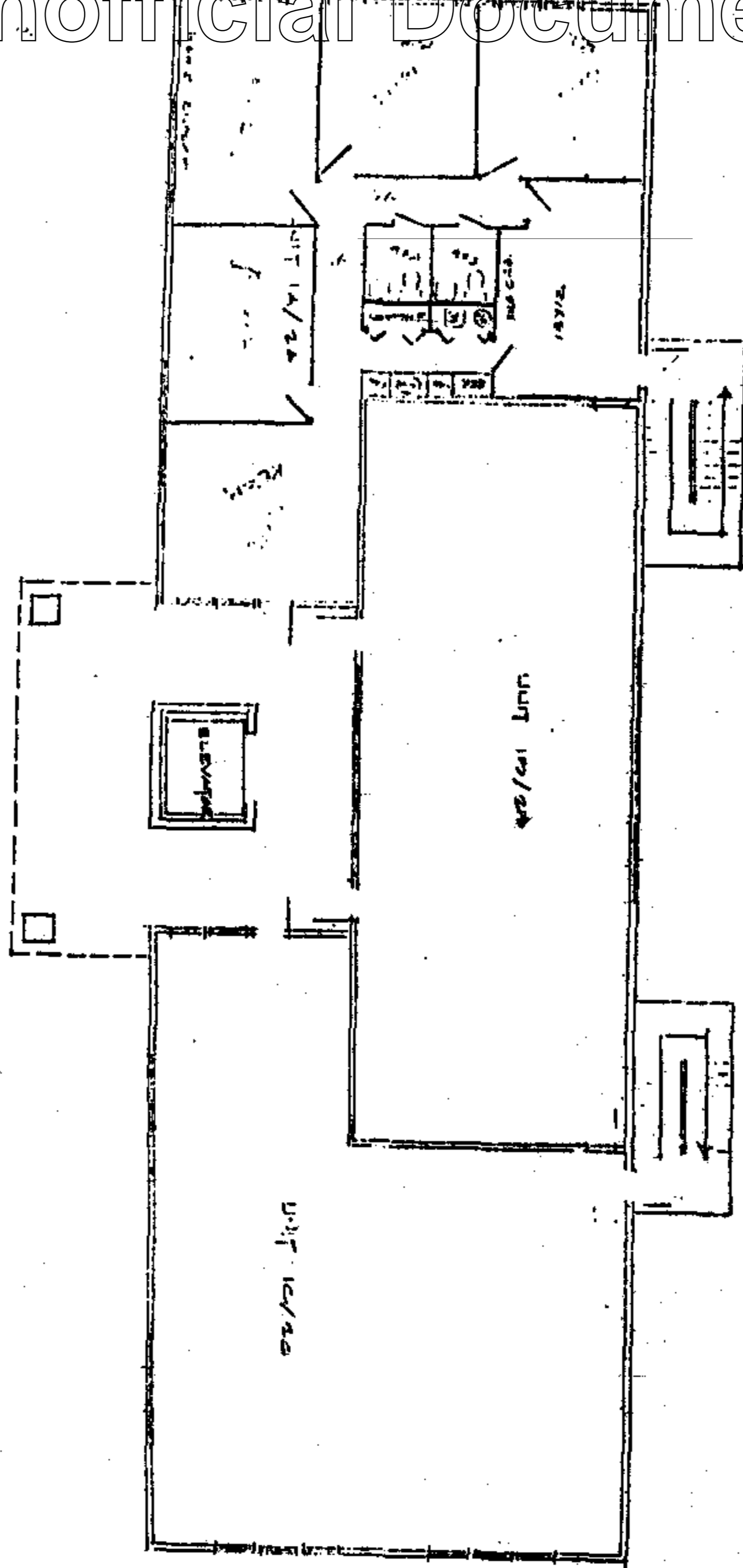
**MUIRFIELD PLAZA CONDOMINIUMS
GENERAL DEVELOPMENT PLAN**

16 JULY 1992

Boone County, Missouri
Unofficial Document

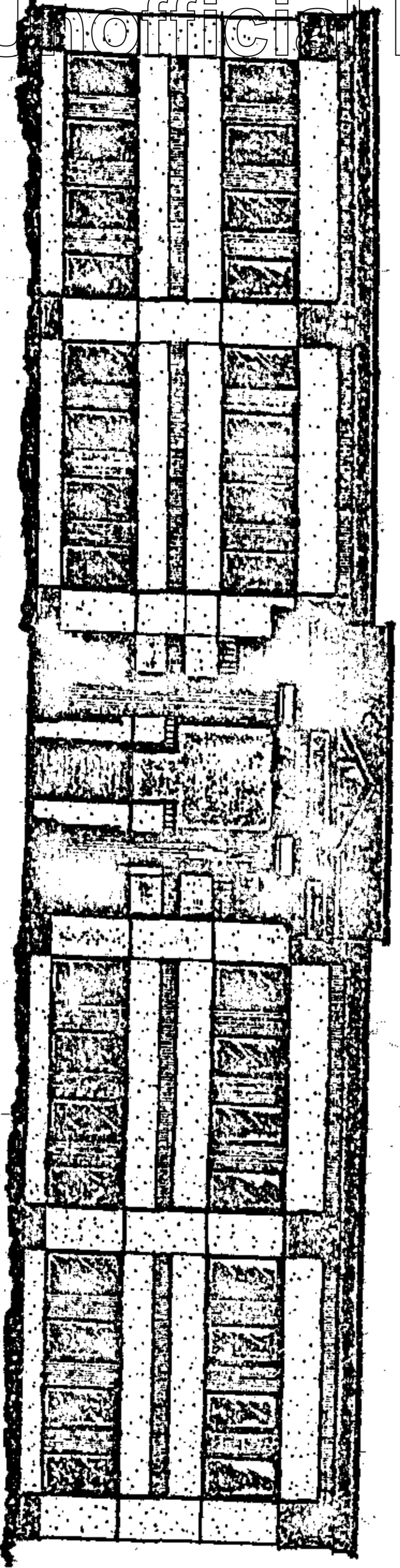
643

FLOOR PLAN



Boone County, Missouri
Unofficial Document

644



Page 3 of 3