

**Courtyard  
at  
Water's Edge II**

DECLARATION OF EXPANDABLE CONDOMINIUM

For

COURTYARD AT WATER'S EDGE II

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COURTYARD AT WATER'S EDGE II

DECLARATION OF EXPANDABLE CONDOMINIUM  
HORIZONTAL PROPERTY REGIME

THIS DECLARATION, and the exhibits which are attached hereto and made a part hereof, are made and executed this \_\_\_\_\_ day of \_\_\_\_\_, 1995, by Courtyard Development, Inc. (hereafter "Declarant"), for itself, its successors, grantees and assigns, pursuant to the provisions of the Indiana Horizontal Property Act.

WITNESSETH:

WHEREAS, Declarant is the owner of certain real property in Monroe County, State of Indiana, more particularly described and defined in Exhibit A attached hereto and made a part hereof which shall constitute the Courtyard at Water's Edge II condominium development; and

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

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

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

successors, heirs executors, administrators, devisees and assigns.

1. Definitions.

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

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

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

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

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

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

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

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

(i) all sums assessed against the Unit Owners by the Homeowners Association:

(ii) expenses of administration, maintenance, repair or replacement of the Common Areas and Facilities;

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

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

(h) "Common Expense Fund" shall mean the separate accounts to be kept in accordance with the provisions of Article VII, Section 2 of the By-Laws.

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

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

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

Exhibit A -- Legal Description of the Property;

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

Exhibit C -- Master Site Plan;

Exhibit D -- Plans and Specifications;

Exhibit E -- Unit Designations;

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

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

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

(o) "Mortgagee" shall mean a beneficiary under or a holder of a deed of trust as well as a mortgage.

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

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

synonymous with the term "Apartment" as used in the Act.

2. Declaration.

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

3. Name of the Condominium.

The name by which the Condominium Property shall be known is "Courtyard at Water's Edge II".

4. General Description of the Property.

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

5. Description of Buildings.

The Courtyard at Water's Edge II will consist of one (1) multi-unit residential building. The Building is designated on the Master Site Plan, a copy of which is attached hereto and made a part hereof as Exhibit C, which such Master Site Plan further shows the location of the Building on the real property described in Exhibit A. The Building contains a total of six (6) separate Units consisting of basic floor plan types including:

3CWE-U = 1007 sq. ft. 2 bedroom flat  
3CWE-L = 1007 sq. ft. 2 bedroom flat

The number of stories in the Building, the number of Units and the types of units and basements are as follows:

<u>Building Designation</u>	<u>Number of Units of Type</u>	<u>Total Units in Project</u>	<u>Basement</u>	<u>Stories</u>
1	3 - 2CWE-U 3 - 2CWE-L	6	No	2

Said multi-unit Building is more particularly described and defined in the Plans and Specifications of said Building, a copy of which Plans and Specifications are attached hereto and made a part hereof as Exhibit D, showing all particulars of the Building, including the layout, number of stories, the location, ceiling and floor elevations, Building designations, Unit numbers and dimensions of the Units. Such Plans bear the verified statement of \_\_\_\_\_, certifying that said Plans are

actual copies of portions of the Plans of the buildings, as filed with and approved by the municipal or other governmental subdivision having jurisdiction over the issuance of permits for the construction of buildings. For a more particular description of the Building, reference is hereby made to the Plans and Specifications filed herewith as Exhibit D.

6. Description of Units.

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

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

7. Encroachments.

If any portion of the Common Areas and Facilities encroaches upon any Unit, or if any Unit now encroaches upon any other Unit, or upon any portion of the Common Areas and Facilities, as a result of the construction of the Building, or if any such encroachment shall occur hereafter as a result of settling or shifting of the Building, there shall be a valid easement for the encroachment and for the maintenance of same so long as the Building shall exist. In the event the Building, the Unit, any adjoining Unit, or any adjoining Common Area or Facility shall be partially or totally destroyed as a result of fire or other casualty or as a result of Condemnation or eminent domain proceedings, and then rebuilt, encroachment of parts of the Common Areas and Facilities upon any Unit or of any Unit upon any other Unit or upon any portion of the Common Areas and Facilities due to such rebuilding shall be permitted, and valid easements for such encroachments and the maintenance thereof shall exist so long as the Building shall stand.



## 8. Common Areas and Facilities.

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

(a) The land on which the Building is erected and all land surrounding the Building as more fully described in paragraph 4 above.

(b) All foundations, columns, girders, beams, supports and other structural members.

(c) The yards, landscaping, fences, roads, driveways, sidewalks and exterior parking areas.

(d) All roofs, exterior walls and interior walls except those partitioned walls wholly within a Unit, attics and crawl spaces.

(e) All central and appurtenant installations for services such as power, lights, water, sewer, gas and television; and all tanks, pumps, motors, sewage grinders, fans, cables, antennas, conduits, compressors, flues and ducts (except as described in paragraph 10 below), mechanical systems, storm drains, and all other items used in connection therewith, whether located in Common Areas or in Units.

(f) All exterior walkways.

(g) Maintenance areas and recreational areas to the extent located now or subsequently within the Property.

(h) All other parts of the Property and all apparatus and installations including all items of personal property existing in the Building or upon the Property for common use or which are necessary or convenient to the existence, maintenance or safety of the Property.

Subject to the provisions of paragraph 30 hereof, the percentage of undivided interest in the Common Areas and Facilities as pertaining to each Unit and its Owner for all purposes is as set forth in exhibit E attached hereto and made a part hereof as if herein set forth in full. Such percentage interest appertaining to each Unit shall be subject to change as is provided in paragraph 30 hereof should Declarant file an amended declaration adding additional Units and real estate to the Expandable Condominium.

9. Use of Common Areas and Facilities.

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

10. Description of Limited Common Areas and Facilities.

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

11. Statement of Purposes, Use and Restrictions.

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

(a) The condominium property shall be used for single family residential purposes and common recreational purposes auxiliary thereto and for no other purposes. This restriction does not apply to any Unit owned by the Declarant, and it is permissible for the Declarant to maintain a sales model and/or development office in a Unit until such time as all Units are sold.

(b) There shall be no obstruction of the Common Areas and Facilities. Nothing may be stored in the Common Areas and Facilities, excluding the Limited Common Areas and Facilities

located within the bounds of a Unit or pertaining to a Unit, without the prior written consent of the Board of Administrators.

(c) Nothing shall be done or kept in any Unit or in the Common Areas and Facilities which will increase the rate of insurance on the Common Areas and Facilities without the prior written consent of the Board of Administrators. No Owner shall permit anything to be done or kept in his Unit or in the common Areas and Facilities which would result in the cancellation of insurance on any Unit or any part of the Common Areas and Facilities, or which would be in violation of any law. No waste will be committed of the Common Areas and Facilities.

(d) No sign of any kind shall be displayed to the public view from any Unit or from the Common Areas and Facilities view from any Unit or from the Common Areas and Facilities without the prior written consent of the Board of Administrators, unless it is a sales or advertising related sign placed by the Declarant and pertaining to an unsold Unit(s) of the Declarant's.

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

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

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

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

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

part.

(j) The area designated on the master site plan as Open Area will remain undisturbed except for the removal of dead or diseased trees and vegetation in accordance with proper land management practices. No structure, recreation facilities, pathways, nature trails, or other improvements will be permitted in the Open Area.

## 12. Easements.

(a) General. Each Unit Owner shall have an easement in common with the other Owners of all other Units to use all pipes, wires, ducts, cables, conduits, public utility lines and other Common Facilities located in any of the other Units and serving his Unit. Each Unit shall be subject to an easement in favor of the Owner of all other Units to use the pipes, ducts, cables, wires, conduits, public utility lines and other Common Facilities serving such other Units and located in such Unit. The Board of Administrators or its agents shall have the right of access to each Unit to inspect the same, to remove violations therefrom and to maintain, repair or replace the Common Facilities contained therein or elsewhere in the Building.

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

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

## 13. Partitioning.

Neither the Common Areas and Facilities nor any individual Unit shall be divided nor shall any right to partition any thereof exist. Nothing herein contained, however, shall be deemed to prevent ownership of a Condominium Unit by more than

one person, either as tenants-by-the-entirety or tenants-in-common or in any other form permitted by law.

14. Liens.

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

15. Nature of Interest in Units.

Every Unit, together with its undivided interest in the Common Areas and Facilities, shall for all purposes be, and it is hereby declared to be and to constitute a separate parcel of real property and the Owner thereof shall be entitled to the exclusive ownership and possession of his Unit subject only to the covenants, restrictions, easements, by-laws, rules, regulations, resolutions and decisions adopted pursuant hereto and as may be contained herein and in the accompanying By-Laws and in the minutes of the Board of Administrators and the Homeowners Association. The percentage of undivided interest in the Common Areas and Facilities of each Unit shall not be separated (subject to the provisions of paragraph 29) from the Unit to which it appertains and shall be deemed to be conveyed or encumbered or released from liens with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

16. Taxes.

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

17. Homeowners Association.

(a) In order to provide for the maintenance, repair, replacement, administration and operation of the Property there

is hereby created an unincorporated association to be known as "Courtyard at Water's Edge II Homeowners Association". Membership therein shall be composed of all of the Owners of the Units at Courtyard at Water's Edge II condominium development. Each Owner of a Unit shall be a member of the unincorporated association, but membership shall automatically terminate when such person ceases to be an Owner and will be transferred to the new Owner.

(b) The Courtyard at Water's Edge II Homeowners Association shall be governed in accordance with and as prescribed by the By-Laws attached hereto.

(c) Declarant, by this Declaration, and all Unit Owners, by the acceptance of their deeds, covenants and agree to be bound by the conditions, restrictions and obligations contained in the By-Laws of Courtyard at Water's Edge II Homeowners Association and the provisions of this Declaration.

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

(e) While the Courtyard at Water's Edge II Homeowners Association is initially organized as an unincorporated association the Declarant reserves the right, so long as Declarant is the Owner of one or more Units in Courtyard at Water's Edge condominium development, to incorporate the Courtyard at Water's Edge II Homeowners Association as an Indiana not-for-profit corporation. In addition, the Homeowners Association, upon affirmative vote of 66% in Common Interest of the Owners, shall have the right to incorporate the Courtyard at Water's Edge II Homeowners Association as an Indiana not-for-profit corporation provided, however, that should the Homeowners Association so elect, the Declarant reserves the right to approve the form and content of the articles of incorporation of said not-for-profit corporation.

(f) Declarant shall appoint the members of the initial Board of Administrators of the Association which shall control during the period of its incumbency all matters which would be within the authority of either the Association or the Board of Directors under this Declaration, the By-laws, or the Act, except that certain powers including the power of assessment shall be limited as provided in the By-laws. By taking title to a dwelling Unit, each Owner shall confer and shall be deemed to have conferred upon Declarant an irrevocable proxy to vote in such Owner's name, place and stead on any and all matters on which the Owners or any of them are entitled to vote under this Declaration, the By-laws, or the Articles of Incorporation of the Association. Said initial Board of Administrators shall serve

until the time when Declarant turns over control of the regime to the Association, which shall take place no later than the earliest to occur of the following events:

- (i) 30 days after a all 6 Units (100% Sold Out) have been sold by Declarant;
- (ii) the fifth anniversary of the date of this Declaration.

The irrevocable proxy conferred upon Declarant shall terminate as of the date of such transfer. Upon such transfer of control, Declarant shall make available to the Association all books, records, plans, and other information in its possession regarding the activities of said initial Board of Administrators and the operation of the property prior to such turnover. Thereafter the Association shall elect a Board of Administrators annually in accordance with and as prescribed by the By-laws, and may take any other action with respect to control of the property provided for by this Declaration, the By-laws, or the Act. The Board of Administrators shall be the governing body of the Association representing all the Owners and providing for the management, maintenance, repair, replacement and upkeep of the property.

#### 18. Common Expenses.

(a) Each Unit Owner shall contribute pro rata, in proportion to is undivided interest as set forth in Exhibit E hereto, as the same may be amended from time to time pursuant to paragraph 30 hereof, toward the expenses of administration and of maintenance and repair of the Common Areas and Facilities and any other expense lawfully agreed upon; and shall pay any special assessment duly assessed by the Board of Administrators, all in accordance with the By-Laws of the Homeowners Association, this Declaration and the provisions of the Act.

(b) The property is located within the development known as "The Pointe" and as such may be liable for its pro rata portion of assessments and charges which may be levied from time to time by the Pointe Service Association, Inc. All such assessments and expenses to the extent levied by the Pointe Service Association, Inc. shall be treated as a common expense for purposes of this Declaration, if not separately billed to Owners. Declarant, until such time as control of the property is transferred to the Association, reserves the right to direct the Pointe Service Association, Inc. to bill each Owner separately for such assessments.

#### 19. Insurance.

The Board of Administrators shall obtain and maintain at all times insurance of the type and kind in not less than the amounts

provided in this Declaration and the By-Laws and including insurance for such other risks, of a similar or dissimilar nature, as are or shall hereafter customarily be covered with respect to other condominium properties similar in construction, design and use. Such insurance shall be governed by the following provisions:

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

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

(i) Fire. The Building and all other improvements upon the land and all personal property included in the Common Areas and Facilities shall be insured in an amount equal to the maximum insurable replacement value as determined annually by the Board of Administrators with the assistance of the insurance company providing coverage. The policies evidencing such coverage shall contain clauses providing for waiver of subrogation, the standard SMP Condominium Endorsement (Form MLB-29A, Ed. 12-72) (excepting the Waiver of Subrogation provision contained therein) and shall provide that such policies may not be canceled or substantially modified without at least thirty (30) days prior written notice to all the insureds, including all Mortgagees or Units. Such coverage shall provide protection against:

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

(B) Such other risks as from time to time shall be customarily covered with respect to buildings similar to construction, location and use as the



Building, including but not limited to vandalism and malicious mischief. All such policies shall provide that adjustment of loss shall be made by the Board of Administrators as insurance trustees.

(ii) Public Liability. The Board of Administrators shall also be required to obtain and maintain to the extent obtainable, public liability insurance in such limits as the Board of Administrators may, from time to time, determine, covering each member of the Board of Administrators, the managing agent, if any, and each Unit Owner with respect to his liability arising out of the ownership, maintenance, or repair of the Common Areas and Facilities. Such insurance shall include endorsements covering cross liability claims of one insured against another, including the liability of the Unit Owners as a group in a single Unit Owner. The Board of Administrators shall review such limits annually. Until the first meeting of the Board of Administrators following the initial meeting of the Unit Owners, such public liability insurance shall be in amounts not less than \$100,000 for each occurrence.

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

(c) Premiums upon insurance policies purchased by the Board of Administrators shall be paid by the Board of Administrators and charged as a Common Expense.

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

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

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

(iii) That any "no other insurance" clause in the master policy on the Property exclude individual Owner's policies from consideration.

(e) All insurance policies purchased by the Board of Administrators shall be for the benefit of the Board of Administrators and the Unit Owners and other Mortgagees as their

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

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

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

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

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

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

## 20. Distribution of Insurance Proceeds.

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

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

(b) If it is determined, as provided in paragraph 22 hereof, that the damaged Property, with respect to which the proceeds are paid shall not be reconstructed or repaired, the remaining proceeds shall be distributed to the beneficial Owners thereof.

## 21. Duty to Repair.

In the event of damage to or destruction of the Building(s) and/or the Common Areas and Facilities as a result of fire or other casualty to the extent of less than two-thirds in value of the Building(s), and the Condominium Property is not partitioned as provided in paragraph 22, the Board of Administrators shall arrange for the prompt repair and restoration of the Building(s) and/or the Common Areas and Facilities (including any damaged Unit, but not including any decoration or coverings for walls, ceiling, or floors, or other furniture, furnishings, fixtures or equipment in the Unit, unless the subject insurance policy covers a portion or all of such loss to the Unit, in which event the Board shall repair or replace such damaged property), and the Board of Administrators shall disburse the proceeds of all insurance policies to the contractors engaged for repair and restoration in appropriate progress payments. Any cost for such repair and restoration in excess of the insurance proceeds shall be paid by all Owners of Units directly affected by the damage in the same proportion that their respective percentage interest bears to the percentage interest of all such affected Owners. A Unit shall be deemed to be affected if and only if such Unit is located within said Building in which the fire or other casualty occurs. If any Owner or Owners refuse or fail to make then required payments, the other Owners shall (or the Association, if such other Owners fail) complete the restoration and pay the costs thereof and the costs attributable to the Owner who refuse to make such payment at the time required by the Board of Administrators shall become a lien on such defaulting Owner's Unit and may be foreclosed in the same manner as provided for the lien for Common Expenses.

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

## 22. Partition.

If the Building shall in the aggregate be more than two-thirds (2/3) destroyed by fire or other casualty then restoration thereof must be approved within 120 days from the date of damage or destruction by not less than Unit Owners owing 75% in Common Interest of the Common Areas and Facilities. If such approval is not obtained then in such event:

(a) The entire Condominium Property shall be deemed to be owned as tenants in common by the Unit Owners;

(b) The undivided interest in the Condominium Property owned by each Unit Owner shall be his percentage interest in the Common Areas and Facilities previously appurtenant to his Unit or Units.

(c) Any liens or encumbrances affecting any Unit shall be deemed transferred in accordance with the existing priorities to the percentage of undivided interest of the subject Unit Owner of the Condominium Property hereinabove provided; and

(d) The Condominium Property shall be subject to an action for sale in lieu of partition at the suit of any Unit Owner, in which event the net proceeds of insurance policies, if any, shall be considered as one fund and shall be divided among the Unit Owners in the proportion of their percentage interests in the Common Areas and Facilities previously appurtenant to their Units, after the respective shares of the Unit Owners, to the extent sufficient for that purpose, have first been applied to the payment of all liens on the Unit of each Unit Owner.

The determination of whether the Building is "more than two-thirds (2/3) destroyed" for the purpose herein stated shall be determined as follows: An appraisal of the value of all of the Building (excluding the land) as of the day immediately preceding the damage shall be obtained from any M.A.I. appraiser by the Board of Administrators. The cost of repairs and restoration shall then be determined by the Board of Administrators by securing not less than three independent bids, in writing, from three reputable building contractors in the community of their proposed charges for making said repairs or restoration, the lowest of which shall be deemed to be the said cost. If the said cost exceeds two-thirds (2/3) of said appraised value, the building shall be deemed more than two-thirds (2/3) destroyed.

### 23. Power of Attorney to Board of Administrators.

Each Unit Owner shall be deemed to have granted to the persons who shall from time to time constitute the Board of administrators and irrevocable power of attorney, coupled with an interest, to acquire title to or lease any Unit whose Owner desires to sell or lease the same to the Board of Administrators, or with respect to which said Board has exercised the option to purchase or lease as provided in paragraph 24 hereof, or which may be the subject of a foreclosure or other judicial sale, in the name of the Board of Administrators or its designee, corporate or otherwise, as trustees on behalf of all or less than all Unit Owners, and to hold, convey, sell, lease, mortgage, vote the votes appurtenant thereof or otherwise deal with any such Unit so acquired or to sublease any Unit so leased to the Board of Administrators.

24. Ownership or Lease of Units by Board of Administrators.

Declarant may designate and convey to the Board of Administrators any unsold Unit, and the Board of Administrators may purchase and/or hold such a Unit to be provided as a residence for a managing agent. The cost thereof, if any, and the Common Expenses thereto shall be shared by the remaining Unit Owners in the same proportions as Common Expenses, adjusted, however, to reflect the exclusion of the unit purchased; and any profit or loss realized upon the sale by the Association of such Unit shall likewise be shared by the remaining Unit Owners.

In addition, the Board of Administrators may purchase or lease other Units pursuant to the provisions of the By-Laws and this Declaration. In the event that the Board of Administrators shall purchase and/or hold a Unit as provided hereunder, title to any such Unit, together with all interests appurtenant thereto, shall be held by the Board of Administrators or its designee, corporate or otherwise, as trustees on behalf of all Unit Owners, in proportion to their respective Common Interests or in the event such Unit shall have been acquired on behalf of one or more, but less than all Unit Owners, title shall be held in the proportions as designated by such Unit Owner(s). The lease covering any Unit leased to the Board of Administrators, or its designee, corporate or otherwise, shall be held by the Board of Administrators, or its designee, as trustee on behalf of all Unit Owners, in proportion to their respective Common Interest or, in the event that such Unit shall have been leased on behalf of one or more, but less than all Unit Owners, such lease shall be held in the proportions as designated by such Unit Owner(s).

25. Rights of Declarant.

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

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

(b) Notwithstanding anything contained in this Declaration, or in the By-Laws or any rules and regulations as may be adopted from time to time by the Board of Administrators, Declarant, until such time as all Units have been deeded to Owners, reserves the right to amend this Declaration to accommodate the reasonable requirements of mortgagees, to include, but not limited to the veterans Administration, Federal Home Loan Mortgage Corporation, Federal Housing Administration, and Federal National Mortgage Association.

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

All present and future Owners, tenants and occupants of Unit shall be subject to and shall comply with the provisions of this Declaration, the By-Laws and any rules and regulations as may be adopted in accordance with the By-Laws, as said Declaration, By-Laws, rules and regulations may be amended from time to time. The acceptance of a deed of conveyance or the entering into of a lease or the entering into occupancy of any Unit shall constitute and agreement that the provisions of this Declaration, By-Laws and any rules and regulations which may be adopted are accepted and ratified by such Owner, tenant or occupant and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit as though such provisions were made a part of each and every deed of conveyance or lease.

27. Personal Property.

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

28. Interpretation.

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

29. Amendment to Declaration.

(a) By Owners. This Declaration may be amended by the vote of at least 66% in Common Interest of all Unit Owners, cast in person or by proxy at a meeting duly held in accordance with the provisions of the By-Laws, which such amendment shall become effective upon recordation of a written instrument duly executed and acknowledged by Unit Owners holding 66% in Common Interest of the Condominium in the Office of the Recorder of Monroe County, Indiana; provided, however, that any such amendment made pursuant to this paragraph 29(a) which amends or alters the percentage of undivided interest in the Common Areas and Facilities, or voting rights, shall require the approval of all Unit Owners and shall become effective only upon recordation in the appropriate registry of a written instrument executed and acknowledged by all Unit Owners.

(b) Reserved Rights of Declarant. Notwithstanding anything herein to the contrary, until all Units subject to this Declaration have been sold by Declarant and administration of the "Property" has been transferred to the Courtyard at Water's Edge II Homeowners Association, no amendment to this Declaration shall be effective unless approved in writing by Declarant, and during said period, Declarant reserves the right to change the interior design and arrangement of any unsold Units, to alter the boundaries between unsold Units, to change the number of Units, to add such additional Common Areas and Facilities or recreational facilities, to add additional land to the land described in Exhibits A and F attached hereto and to add additional Units and Common Areas and Facilities or recreational facilities to such additional land as it may deem desirable without amendment of this Declaration in the manner hereinbefore set forth.

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

Common Profits shall be duly noted in the amendment of this Declaration.

(c) Declarant reserves the right, in its discretion, to construct recreational facilities on a portion of the Property described in Exhibit F, and which Declarant intends, by Amended Declarations, to include by expansion within the Courtyard at Water's Edge II regime. Such facilities shall, if constructed, constitute Common Areas and Facilities.

30. Erosion and Storm Water Control.

(a) Erosion and storm water control measures are an integral part of the development plan for Courtyard at Water's Edge Condominium. The Courtyard at Water's Edge Homeowners Association or its successor shall maintain the erosion and storm water control measures in a reasonable manner to ensure their proper functioning and use in controlling erosion or surface drainage. The Homeowners Association shall include in its annual budget for the operation of Courtyard at Water's Edge II Condominium an account specifically designated for maintenance or replacement of the erosion and storm water control facilities. The budget shall include a capital reserve sufficient to replace the major components of the erosion and storm water control facilities as determined by the anticipated cost of replacement over the useful life of the facilities.

(b) In the event the Homeowners Association fails to maintain or repair the erosion and storm water control measures as required in order to ensure the proper functioning for their intended use, the Monroe County Plan Commission may cause such maintenance and repairs to be made at the expense of the Homeowners Association. The Association shall have thirty (30) days to cure the deficiency in repairs or maintenance after receipt of written demand. The cost of such repair or maintenance, if performed at the request of the Monroe County Plan Commission, shall be a lien on each unit in the Courtyard at Water's Edge II Condominium, which lien may be foreclosed in accordance with the law for foreclosure of mechanic's liens in the State of Indiana. The terms and conditions of this paragraph shall be a covenant by the Courtyard at Water's Edge II Homeowners Association and each unit owner in favor of Monroe County Plan Commission. This covenant is subject the enforcement by injunctive relief or suit for specific performance.

(c) In accordance with the requirements that the Monroe County Plan Commission for development plan approval for Courtyard at Water's Edge II Condominium, Declarant will post security in an amount and in a form acceptable to the Monroe County Plan Commission sufficient to insure the proper installation of the erosion and storm water control measures described herein. The amount of the surety shall be adjusted



from time to time as the parties may agree upon inspection and acceptance of the fully constructed erosion and storm water control measures. If not terminated sooner, the surety requirement will terminate two years after approval by the Monroe County Plan Commission of final construction of Courtyard at Water's Edge II Homeowners Association, the Association will provide the surety required herein for the balance of the time remaining as required by the Monroe County Plan Commission.

31. Enforcement.

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

(b) Each Unit Owner failing to comply strictly with the provisions of this Declaration, the By-Laws, the rules, regulations, and decisions issued pursuant thereto shall be liable for the costs of enforcement incurred by the Board of Administrators or manager on behalf of the Association, to include court costs and reasonable attorney fees. Monroe County shall be the sole county of preferred venue as provided for in the Indiana Rules of Trial Procedure for purposes of any suit filed in order to enforce this Declaration, the By-Laws, and the Rules, regulations, and decisions issued pursuant thereto.

32. Floor Plan.

The Plans setting forth the layout, location, identification number, Building designation and dimensions for all Units and the Property are incorporated into this Declaration by reference. Such Plans, which are attached hereto as Exhibit D, have been filed in the Office of the Recorder of Monroe County, Indiana, in Horizontal Property Plan Cabinet No. 3, Envelope \_\_\_\_\_ as instrument Number \_\_\_\_\_.

33. Invalidity.

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

34. Waiver.

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

35. Captions.

The captions herein are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope of this Declaration or the intent of any provisions hereof.

36. Law Controlling.

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

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed the day and year first above written.

COURTYARD DEVELOPMENT, INC.

By \_\_\_\_\_  
Philip H. Chamberlain, President

ATTEST

By \_\_\_\_\_  
John H. McGeary, Vice President

STATE OF INDIANA )  
                  ) SS:  
COUNTY OF MONROE )

Before me, a Notary Public in and for said County and State, personally appeared Philip H. Chamberlain and John H. McGearry, known to me to be the president and vice president of Courtyard Development, Inc., and acknowledged the execution of the above and foregoing Declaration.

WITNESS my hand and Notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 1995.

(SEAL)

\_\_\_\_\_  
NOTARY PUBLIC  
A Resident of Monroe County, IN

My Commission Expires:  
\_\_\_\_\_

EXHIBIT A

TO

DECLARATION OF CONDOMINIUM FOR  
COURTYARD AT WATER'S EDGE II

383GDP

Part of Section 22, Township 7 North, Range 1 West, in Monroe County, Indiana, more particularly described as follows:  
COMMENCING at an existing stone marking the northeast corner of the southwest quarter of said section; thence NORTH 89 degrees 46 minutes 58 seconds WEST along the north line of said southwest quarter section 9.76 feet to an intersection with a non-tangent curve, said intersection being on the easterly boundary of Woodridge Phase IV (Instrument #127093, Horizontal Plat Book 2, page 65, Office of the Recorder of Monroe County, Indiana, the radius point of said curve being NORTH 76 degrees 32 minutes 47 seconds EAST 90.00 feet from said intersection; said curve has a central angle of 01 degree 22 minutes 51 seconds; thence southerly along said curve 2.17 feet to a tangent line; thence SOUTH 14 degrees 50 minutes 04 seconds EAST 37.88 feet; thence NORTH 75 degrees 09 minutes 56 seconds EAST 136.96 feet to the westerly line of Parcel VI of the Pointe Golf Course, (deed Record 292, pages 484-485, Office of the Recorder of Monroe County, Indiana; thence the next three (3) courses being along said westerly line: (1) SOUTH 15 degrees 58 minutes 27 seconds EAST 148.89 feet; (2) SOUTH 53 degrees 07 minutes 48 seconds WEST 45.00 feet to the point of beginning of the herein described tract; (3) SOUTH 08 degrees 21 minutes 16 seconds EAST 174.07 feet; thence SOUTH 89 degrees 25 minutes 05 seconds WEST 157.01 feet; thence NORTH 22 degrees 14 minutes 09 seconds EAST 172.16 feet; thence NORTH 14 degrees 50 minutes 04 seconds WEST 14.96 feet; thence NORTH 90 degrees 00 minutes 00 seconds EAST 70.39 feet to the point of beginning, containing 0.43 acres, more or less.

EXHIBIT B

BY-LAWS  
OF  
COURTYARD AT WATER'S EDGE II  
HOMEOWNERS ASSOCIATION

Consisting of 28 Pages,  
Numbered 1 through 28

INDEX TO  
 BY-LAWS OF COURTYARD AT WATER'S EDGE II  
 HOMEOWNERS ASSOCIATION

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