

EXHIBIT "E"

CODE OF BY-LAWS
OF
WATERFRONT II

ARTICLE I

Identification and Applicability

Section 1.01. Identification and Adoption. These By-Laws are adopted simultaneously with the execution of a certain Declaration creating Waterfront II Horizontal Property Regime of which these By-Laws are attached and made a part hereof. The Declaration is incorporated herein by reference, and all of the covenants, rights, restrictions and liabilities therein contained shall apply to and govern the interpretation of these By-Laws. The definitions and terms as defined and used in the Declaration shall have the same meaning in these By-Laws and reference is specifically made to paragraph 1 of the Declaration containing definitions of terms. The provisions of these By-Laws shall apply to the Condominium and the administration and conduct of the affairs of the Association.

Section 1.02. Individual Application. All of the Co-owners, future owners, tenants, future tenants, or their guests and invitees, or any other person who might use or occupy a Unit or any part of the Property, shall be subject to the rules, restrictions, terms and conditions set forth in the Declaration, these By-Laws and the Act.

ARTICLE II

Meeting of Association

Section 2.01. Purpose of Meetings. At least annually and at such other times as may be necessary, the meetings of the Co-owners shall be held for the purpose of electing their representatives to the Board of Managers, approving the annual budget, providing for the collection of Common Expenses, and for such other purposes as may be required by the Declaration, these By-Laws, or the Act.

Section 2.02. Annual Meetings. The annual meeting of the members of the Association shall be held on the first Monday of October in each

calendar year. At the annual meeting the Co-owners shall elect two (2) members of the Board of Managers and Declarant shall appoint three (3) members to the Board of Managers of the Association in accordance with the provisions of the Declaration and the By-Laws, and transact such other business as may properly come before the meeting.

Section 2.03. Special Meetings. A special meeting of the members of the Association may be called by resolution of the Board of Managers or upon a written petition of the Co-owners who have not less than a majority of the Percentage Vote. The resolution or petition shall be presented to the President or Secretary of the Association and shall state the purpose for which the meeting is to be called. No business shall be transacted at a special meeting except as stated in the petition or resolution.

Section 2.04. Notice and Place of Meetings. All meetings of the members of the Association shall be held at any suitable place in Hamilton County, Indiana, as may be designated by the Board of Managers. Written notice stating the date, time and place of any meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, shall be delivered or mailed by the Secretary of the Association to each Co-owner and, if applicable, to any Mortgagee, not less than fourteen (14) days prior to the date of such meeting. The notice shall be mailed or delivered to the Co-owners at their address as it appears upon the records of the Association and to each respective Mortgagee at the address as it appears on the records of the Association. Attendance at any meeting in person or by proxy shall constitute a waiver of notice of such meeting.

Section 2.05. Voting.

A. Number of Votes. To avoid fractional votes and to facilitate the orderly conduct of the meeting, each Owner shall be entitled to cast that number of votes on each matter coming before the meeting which is equal to the Percentage Vote to which the Owner is entitled on the date of the meeting, multiplied by one hundred (100) and the product rounded up to the next whole number. Thus an Owner with a Percentage Interest or Percentage Vote of 5.555% shall be entitled to cast six (6) votes.

B. Multiple Owner. Where the Owner of a Unit constitutes more than one person, or is a partnership, there shall be only one voting representation entitled to all the Percentage Vote allocable to that Unit. At the time of acquisition to a Unit by a multiple Owner or a partnership, those persons constituting such Owner or the partners shall file with the Secretary of the Association a proxy appointing one of such persons or partners as the voting representative for such Unit, which shall remain in effect until such appointed representative relinquishes such appointment in writing, becomes incompetent, dies or such appointment is otherwise rescinded by order of a Court of competent jurisdiction. Such appointed voting representative may grant a proxy to another to vote in his place at a particular meeting or meetings pursuant to paragraph D of this Section 2.05, which shall not constitute a permanent relinquishment of his right to act as voting representative for the Unit.

C. Voting by Corporation or Trust. Where a corporation or trust is an Owner or is otherwise entitled to vote, the Trustee may cast the Percentage Vote on behalf of the trust and the agent or other representative of the corporation duly empowered by the Board of Directors or Managers of such corporation shall cast the Percentage Votes to which the corporation is entitled.

D. Proxy. An Owner may vote either in person or by his duly authorized and designated attorney-in-fact. Where voting is by proxy, the Owner shall duly designate his attorney-in-fact in writing, delivered to the Secretary of the Association prior to the commencement of the meeting.

E. Quorum. Except where otherwise expressly provided in the Declaration, these By-Laws, or the Act, the Owners representing fifty-one percent (51%) of the Percentage Vote shall constitute a quorum at all meetings. The term majority of Owners or majority of Percentage Vote, as used in these By-Laws, shall mean the Owners entitled to not less than fifty-one percent (51%) of the Percentage Vote in accordance with the applicable percentage set forth in the Declaration and any Amended or Supplemental Declarations.

Section 2.06. Conduct of Annual Meeting. The Chairman of the meeting shall be the President of the Association. He shall call the meeting to order at the duly designated time and business will be conducted in the following order:

A. Reading of the Minutes. The Secretary shall read the minutes of the last annual meeting and the minutes of any special meeting held subsequent thereto.

B. Treasurer's Report. The Treasurer shall report to the Co-owners concerning the financial condition of the Association and discuss relevant questions of the Owners concerning the Common Expenses and financial report of the prior year, if any, and the proposed budget for the current year.

C. Budget. The proposed budget for the current calendar year shall be presented to the Association for approval or amendment.

D. Election of Co-owners' Representatives on Board of Managers. Nominations for the Co-owners' representatives on the Board of Managers may be made by any Owner from those persons eligible to serve. Such nominations must be in writing and presented to the Secretary of the Association at least ten (10) days prior to the date of the annual meeting. Voting for the Co-owners' representatives on the Board of Managers will be by paper ballot. The ballot shall contain the name of each person nominated to serve as a Board member. Each Owner may cast the total number of votes to which he is entitled for as many nominees as are to be elected; however, he shall not be entitled to cumulate his votes. Those persons receiving the highest number of votes shall be elected. Each voting Owner shall sign his ballot.

E. Appointment and Removal of Declarant's Representatives. The Declarant may appoint or remove anyone it desires at any time from its representatives, serving on the Board of Managers.

F. Other Business. Other business may be brought before the meeting only upon a written request submitted to the Secretary of the Association at least ten (10) days prior to the date of the meeting; provided, however, that such written request may be waived at the meeting if agreed by a majority of the Percentage Vote.

G. Adjournment.

ARTICLE III

Board of Managers

Section 3.01. The affairs of the Association and the Condominiums shall be governed and managed by the Board of Managers (herein collectively called "Board" or "Managers" and individually called "Manager"). The Board of Managers shall be composed of five (5) persons. No person shall be eligible to serve as a Manager unless he is an Owner or an appointee of Declarant.

Section 3.02. Initial Board of Managers. The initial Board of Managers shall be H. Eric Smith, C. A. Wulf, Jr., Mary O'Brien, John B. Shank and Eugene Fishman, all of whom are appointees of Declarant. The initial Board shall hold their office until the first annual meeting of the Co-owners to be held on the first Saturday of April, 1984.

Section 3.03. Additional Qualifications. Where an Owner consists of more than one (1) person or is a partnership, corporation, trust or other legal entity, then one of the persons constituting the multiple Owner, or a partner or an officer or trustee shall be eligible to serve on the Board of Managers, except that no single Unit may be represented on the Board of Managers by more than one person at a time.

Section 3.04. Term of Office and Vacancy. Except for the initial Board, the Co-owners' representatives on the Board of Managers shall be elected at the annual meeting of Co-owners and shall hold office for a term of one (1) year or until their successors have been duly elected, and qualified. Declarant's appointees to the Board of Managers shall have office for a term of one (1) year or until their successors have been duly appointed and qualified.

Any vacancy or vacancies occurring in the Board, except from those appointed by the Declarant, shall be filled by a vote of a majority of the remaining Managers or, if a Manager is removed in accordance with Section 3.05 of this ARTICLE III, by the vote of the Co-owners.

Section 3.05. Removal of Managers on Board of Managers. A Manager or Managers elected by the Co-owners may be removed with or without cause by vote of a majority of the Percentage Vote at a special meeting of the Co-owners duly called and constituted. In such case, his successor shall be elected at the same meeting from eligible Owners nominated at the meeting. A Manager so elected shall serve until the term he was elected to fill has expired and until his successor is duly elected and qualified.

A Manager or Managers appointed by Declarant may be removed with or without cause by Declarant at any time. In such case, his successor shall be appointed immediately. A Manager so appointed shall serve out the term he was appointed to fulfill and until his successor is duly appointed.

Section 3.06. Duties of the Board of Managers. The Board of Managers shall provide for the administration of Waterfront II, the maintenance, upkeep and replacement of the Common Areas and facilities, and the collection and disbursement of the Common Expenses. These duties include, but are not limited to:

- A. Protection and replacement of the Common Areas and facilities;
- B. Procuring of any utilities used in connection with the Condominium and Condominium Units. The utilities used in the Condominium and Condominium Units shall constitute a Common Expense which shall be allocated among the Co-owners based on their Percentage Interest in the common elements; except that the Board of Managers may provide for individual utility meters for each Unit as a Common Expense and thereafter declare that utilities for Condominium Units shall be the sole and exclusive obligation of the Owner of each Unit. If the Board of Managers provides individual utility meters for Condominium Units, all other utilities used in connection with Waterfront II shall remain a Common Expense;
- C. Landscaping, painting, decorating and furnishing of the Common Areas, the exterior of the Buildings, garages and walls;
- D. Surfacing, paving and maintaining street, parking areas, garages and sidewalks;

- E. Maintenance of any recreational area and beach;
 - F. Washing and cleaning of exterior window surfaces of the Units;
 - G. Assessment and collection from the Owners of the Owner's pro rata share of the Common Expenses;
 - H. Preparation of an annual budget, a copy of which will be mailed or delivered to each Owner;
 - I. Preparing and delivering annually to the Co-owners a full accounting of all income and expenses incurred in the prior year; such accounting shall be delivered to each Owner simultaneously with delivery of the annual budget;
 - J. Keeping a current, accurate and detailed record of receipts and expenditures affecting the Property specifying and itemizing the Common Expenses; all records and vouchers shall be available for examination by an Owner at any time during normal business hours;
 - K. Removal of garbage and waste, and snow removal from the Common Areas;
 - L. Employing and discharging on such terms and conditions as the Board deems best, personnel necessary and beneficial for the proper maintenance, repair and replacement of the Common Areas and facilities.
- Section 3.07. Powers of the Board of Managers. The Board of Managers shall have such powers as are reasonable and necessary to accomplish the performance of their duties. These powers include, but are not limited to, the power:
- A. To employ a managing agent or a real estate management company (either being hereinafter referred to as "Managing Agent") to assist the Board in performing its duties;
 - B. To purchase for the benefit of the Co-owners such equipment, materials, labor and services as may be necessary in the judgment of the Board of Managers;
 - C. To procure for the benefit of the Owners and the Association insurance as set out in the Declaration and such other insurance as the Board in its sole discretion determines to purchase;
 - D. To employ legal counsel, architects, contractors, accountants, and others who in the judgment of the Board of Managers may be

necessary or desirable in connection with the business and affairs of the Condominium;

E. To include the costs of all of the above and foregoing as Common Expenses and to pay all of such costs therefrom;

F. To open and maintain a bank account or accounts in the name of the Association;

G. To adopt, revise, amend and alter from time to time reasonable rules and regulations with respect to use, occupancy, operation and enjoyment of the Property.

Section 3.08. Compensation. No Manager shall receive any compensation for his services as such, except to such extent as may be expressly authorized by the Board of Managers.

Section 3.09. Meetings. Regular meetings of the Board of Managers may be held at such time and place as shall be determined from time to time by a majority of Managers. The Secretary shall give notice of regular meetings of the Board to each Manager personally or by United States Mail at least five (5) days prior to the date of such meeting.

Special meetings of the Board may be called by the President of the Board. The person calling such meeting shall give written notice thereof to the Secretary who shall, either personally or by mail and at least five (5) days prior to the date of such special meeting, give notice to the Board members. The notice of such meeting shall contain a statement of the purpose for which the meeting is called. Such meeting shall be held in such place and at such time within Hamilton County, Indiana, as shall be designated in the notice.

Section 3.10. Quorum. At all meetings of the Board, three (3) Managers shall constitute a quorum for the transaction of business and the votes of three (3) of the Managers present at a meeting at which a quorum is present shall be the decision of the Board.

Section 3.11. Non-Liability of Managers. The Managers shall not be liable to the Co-owners for any error or mistake of judgment exercised in carrying out their duties and responsibilities as Managers, except for their own individual willful misconduct, bad faith or gross

negligence. The Co-owners shall indemnify and hold harmless each of the Managers against any and all liability to any person, firm or corporation arising out of contracts made by the Board on behalf of the Association, unless any such contract shall have been made in bad faith or contrary to the provisions of the Declaration or By-Laws. It is intended that the Managers shall have no personal liability with respect to any contract made by them on behalf of the Condominium or the Association and that in all matters the Board is acting for and on behalf of the Co-owners and as their agent. The liability of any Owner arising out of any contract made by the Board or out of the aforesaid indemnity in favor of the Managers shall be limited to such percentage of the total liability or obligation thereunder as is equal to his Percentage Interest. Every contract made by the Board or the Managing Agent on behalf of the Condominium shall provide that the Board of Managers and the Managing Agent, as the case may be, are acting as agent for the Co-owners and shall have no personal liability thereunder, except in their capacity as Owners and then only to the extent of their Percentage Interest.

Section 3.12. Additional Indemnity of Managers. The Co-owners shall indemnify any person, his heirs, assigns and legal representatives, made a party to any action, suit or proceeding by reason of the fact that he is or was a Manager of the Association, against the reasonable expenses, including attorney's fees, actually and necessarily incurred by him in connection with the defense of such action, suit or proceeding, or in connection with any appeal therein, except as otherwise specifically provided herein in relation to matters as to which it shall be adjudged in such action, suit or proceeding that said person was guilty of gross negligence or misconduct in the performance of his duties. The Co-owners shall also reimburse to any such Manager the reasonable costs of settlement of or judgment rendered in any action, suit or proceeding, if such Manager was not guilty of gross negligence or misconduct. In making such findings and notwithstanding the adjudication in any action, suit or proceeding against a Manager, no Manager shall be considered or deemed to be guilty of or

liable for negligence or misconduct in the performance of his duties where, acting in good faith, such Manager relied on the books and records of the Association or statements or advice made by or prepared by the Managing Agent of the Condominium or any officer, employee thereof, or any accountant, attorney or other person, firm or corporation employed by the Association to render advice or service unless such Manager had actual knowledge of the falsity or incorrectness thereof; nor shall a Manager be deemed guilty of or liable for negligence or misconduct by virtue of the fact that he failed or neglected to attend a meeting or meetings of the Board of Managers.

ARTICLE IV

Officers

Section 4.01. Officers of the Association. The principal officers of the Association shall be the President, Vice President, Secretary and Treasurer, all of whom shall be elected by the Board. The Managers may appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary. Any two or more offices may be held by the same person, except the duties of the President and Secretary shall not be performed by the same person.

Section 4.02. Election of Officers. The officers of the Association shall be elected annually by the Board at the initial meeting of each new Board. Upon an affirmative vote of a majority of all members of the Board, any officer may be removed either with or without cause and his successor elected at any regular meeting of the Board or at any special meeting of the Board called for such purpose.

Section 4.03. The President. The President shall be elected from among the Managers and shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board, and shall have and discharge all the general powers and duties usually vested in the office of president or chief executive officer of an association or a stock corporation organized under the laws of Indiana, including but not limited to the power to appoint

committees from among the Co-owners as he may deem necessary to assist in the affairs of the Association and to perform such other duties as the Board may from time to time prescribe.

Section 4.04. The Vice President. The Vice President shall be elected from among the Managers and shall perform all duties incumbent upon the President during the absence or disability of the President. The Vice President shall also perform such other duties as these By-Laws may prescribe or as shall, from time to time, be imposed upon him by the Board or the President.

Section 4.05. The Secretary. The Secretary shall be elected from among the Managers. The Secretary shall attend all meetings of the Association and of the Board and shall keep or cause to be kept a true and complete record of the proceedings of such meetings, shall perform all other duties incident to the office of the Secretary, and such other duties as from time to time may be prescribed by the Board. The Secretary shall specifically see that all notices of the Association or the Board are duly given, mailed or delivered, in accordance with the provisions of these By-Laws.

Section 4.06. The Treasurer. The Board shall elect a Treasurer who shall maintain a correct and complete record of accounts showing accurately at all times the financial condition of the Association and such other duties incident to the office of Treasurer. He shall be the legal custodian of all monies, notes, securities and other valuables which may from time to time come into possession of the Association.

Section 4.07. Assistant Officers. The Board of Managers may, from time to time, designate and elect from among the Co-owners an Assistant Secretary and Assistant Treasurer who shall have such powers and duties as the officers whom they are elected to assist shall delegate to them and such other powers and duties as these By-Laws or the Board of Managers may prescribe.

ARTICLE V

Assessments

Section 5.01. Annual Accounting. Annually, after the close of each calendar year and prior to the date of the annual meeting of the

Association, the Board shall cause to be prepared and furnished to each Owner a financial statement prepared by a public accounting firm then serving the Association, which statement shall show all receipts received and expenses incurred during the preceding calendar year.

Section 5.02. Proposed Annual Budget. Annually, on or before the date of the annual meeting of the Association, the Board of Managers shall cause to be prepared a proposed annual budget for the ensuing calendar year estimating the total amount of the Common Expenses for the ensuing year and furnish a copy of such proposed budget to each Owner prior to the annual meeting. The proposed budget shall be submitted to the Co-owners at the annual meeting of the Association for adoption and, if so adopted, shall be the basis for the monthly common expenses for the ensuing calendar year. At the annual meeting of the Co-owners, the budget may be approved in whole or in part or may be amended in whole or in part by a majority on the Percentage Vote; provided, however, that in no event shall the annual meeting of the co-owners be adjourned until an annual budget is approved at such meeting, approving the proposed annual budget or the proposed annual budget as amended.

Section 5.03. Common Expenses. The annual budget as adopted shall be based on the estimated cash requirement for the Common Expenses in the ensuing year as set forth in said budget and containing a proposed expense against each Unit based on the Percentage Interest of each Unit. The Common Expenses against each Unit shall be paid in monthly installments, commencing on the first day of January of such calendar year and on the first day of each calendar month thereafter through and including the following December. Payment of the monthly common expenses shall be made to the Board of Managers or the Managing Agent, as directed by the Board of Managers. The expenses for the year shall become a lien on each separate Unit as of January 1, of each calendar year.

Section 5.04. Special Common Expense Fees. From time to time Common Expenses of an unusual or extraordinary nature or not otherwise anticipated may arise. At such time and without the approval of the

Co-owners, unless otherwise provided in these By-Laws, the Declaration, or the Act, the Board of Managers shall have the full right, power and authority to make special common expenses which, upon resolution of the Board, shall become a lien on each Unit, pro-rated in accordance with the Percentage Interest of each Unit (herein called "Special Common Expense Fees").

Section 5.05. Failure of Owner to Pay Common Expense Fees. Each Owner shall be personally liable for the payment of all expenses and Special Common Expense Fees. Where the Owner constitutes more than one (1) person, the liability of such persons shall be joint and several. If any Owner shall fail, refuse or neglect to make any payment of any common expenses or Special Common Expense Fees when due, the lien for such expenses on the Owner's Unit may be filed and foreclosed by the Board for and on behalf of the Association as provided by law. The Board may, at its option, bring a suit to recover a money judgment for any unpaid expenses without foreclosing or waiving the lien securing the same. In any action to recover the expenses whether by foreclosure or otherwise, the Board, for and on behalf of the Association, shall be entitled to recover costs and expenses of such action incurred, including but not limited to reasonable attorneys' fees from the Owner of the respective Unit.

Section 5.06. Maintenance and Repairs. The Association shall promptly perform all maintenance and repair within any Unit, which, if neglected, would affect the value of the Property and is the responsibility of the Association. This will be billed to the Association as Common Expenses. Such maintenance and repairs include, but are not limited to, internal water lines, plumbing, electric lines, gas lines, and air conditioning.

ARTICLE VI

Restrictions on Use

Section 6.01. The following restrictions on the use and enjoyment of the Units, Common Areas, and the Property shall be applicable to the Waterfront II and are in addition to those set forth in the Declaration. These are as follows:

A. All Units shall be used exclusively for residential purposes and the occupancy by a single family;

B. No additional buildings containing condominium units shall be erected or located on the Real Estate other than the Buildings designated in the Declaration or any Supplemental Declaration;

C. Nothing shall be done or kept in any Unit or in the Common Areas which will cause an increase in the rate of insurance or any Building or contents thereof, or which would be in violation of any law or ordinance;

D. No waste shall be committed in the Unit or Common Areas;

E. No Owner shall cause or permit anything to be hung or displayed on the outside of the windows, patios and balconies, or placed on the outside walls of a Building, and no sign, awning, canopy, shutter or radio or television antenna or other attachment or thing shall be affixed to or placed upon the exterior walls or roof or any other parts of any Building without the prior consent of the Board;

F. No animals, livestock, poultry or household pets of any kind shall be raised, bred or kept in any Unit or in the Common Areas; except that the Board of Managers may adopt rules and regulations for special exceptions relating to household pets;

G. Nothing shall be done or permitted in any Unit which will impair the structural integrity of any Building or which would structurally change any Building, except as otherwise provided in the Declaration or these By-Laws;

H. No "for sale", "for rent", or "for lease" signs or other window or advertising display shall be maintained or permitted on any Unit without the prior consent of the Board; provided, however, the right is reserved by the Declarant and the Board to place or allow to be placed "for sale" or "for lease" signs on any unsold or unoccupied Units;

I. All Owners and members of their families, their guests, or invitees, and all occupants of any Unit or other persons entitled to use the same and to use and enjoy the Common Areas or any part thereof, shall observe and be governed by such rules and regulations as may from

time to time be promulgated and issued by the Board governing the operation, use and enjoyment of the Common Areas;

J. No boats, campers, trailers of any kind, buses, mobile homes, trucks or any other unconventional vehicles of any description, shall be permitted, parked or stored anywhere within the Real Estate; provided, however, that nothing hereby shall prevent the Board of Managers from adopting rules and regulations for the temporary parking or storage of such vehicles by an Owner or occupant of a Unit;

K. No Owner shall be allowed to plant trees, landscape or do any gardening in any of the Common Areas, except with express permission of the Board;

Section 6.02. Right of Entry. An Owner or occupant of a Unit shall grant the right of entry to the Board, the Managing Agent, maintenance employees, or any other person authorized by the Board for the maintenance and operation of the Condominium, and in case of any emergency originating in or threatening his Unit or the Building in which it is located, whether the Owner is present at the time or not. Any Owner shall permit such persons, or their representatives when so required, to enter his Unit for the purpose of performing installations, alterations or repairs to the mechanical or electrical services, or to make structural repairs, provided that requests for entry are made in advance and that such entry is at a time convenient to the Owner. In case of emergency, such right of entry shall be immediate.

Section 6.03. Right of Board to Adopt Rules and Regulations. The Board may promulgate such additional rules and regulations regarding the operation of the Condominium as it may deem necessary from time to time and such rules as are adopted may be amended by a vote of a majority of the Board, and the Board shall cause copies of such rules to be delivered or mailed promptly to all Owners.

ARTICLE VII

Amendment to By-Laws

Section 7.01. These By-Laws may be amended in the same manner as the Declaration in a duly constituted meeting called for such purpose. An amendment to these By-Laws shall be duly recorded.

DECLARATION OF HORIZONTAL PROPERTY OWNERSHIP

THIS DECLARATION, made this 8th day of June, 1983, by S & NC Corporation, hereinafter called the "Declarant" for itself, its successors, grantees and assigns, WITNESSETH:

WHEREAS, the following facts are true:

- A. Declarant is the owner of or has an option to purchase the fee simple title to the following described real estate, located in Hamilton County, Indiana, to-wit:
- See Exhibit "A" attached hereto and made a part ^{13.5" flow} hereof, hereinafter designated as the "Real Estate".
- B. Declarant is the sole owner of the fee simple title or owns an easement to that portion of the Real Estate more particularly described in Exhibit "B" ^{2.4 + 6.1} attached hereto and made a part hereof, hereinafter referred to as "Phase I" or the "Tract".
- C. Declarant, by execution of this Declaration, hereby creates a Horizontal Property Regime upon the Tract, hereinafter called "Phase I", subject to the provisions of the Horizontal Property Law of the State of Indiana and the terms and conditions of this Declaration.

NOW, THEREFORE, Declarant hereby makes this Declaration as follows:

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

(a) "Act" means the Horizontal Property Law of the State of Indiana, Acts 1963, Chapter 349, Sections 1 through 31 as amended. The Act is incorporated herein by reference.

(b) "Condominium Unit" or "Unit" means one of the living units constituting the Condominium, each individual unit more particularly described and identified on the Floor Plans referred to in paragraphs 4 and 5 of this Declaration and attached hereto as Exhibit "D", and each additional living unit which may be submitted and subjected to the Act and this Declaration by Supplemental Declaration as herein provided. "Condominium Unit"

includes the undivided interest in the common areas and limited common areas appertaining to said unit.

(c) "Association" means the unincorporated association of Co-owners of the Waterfront II.

(d) "Building" means one of the structures on the Real Estate in which Condominium Units are located. The Buildings are more particularly described and identified in the Floor Plans (Exhibit "D") and in Paragraph 5 of this Declaration. "Building" also includes any additional structures containing Condominium Units which may be submitted or subjected to the Act and this Declaration as herein provided, and will be identified in Supplemental Declarations and on plans that will be filed therewith.

(e) "Board of Managers" means the governing body of the Association elected by the Co-owners and Declarant in accordance with the By-Laws. The term "Board of Managers", as used herein and in the By-Laws, shall be synonymous with the term "Board of Directors" as used in the Act.

(f) "By-Laws" means the By-Laws of the Association providing for the administration and management of the Property as required by and in conformity with the provisions of the Act. A true copy of the By-Laws is attached to this Declaration and incorporated herein by reference, and identified as Exhibit "E".

(g) "Common Areas" means the common areas and facilities appurtenant to the Property as defined in Paragraph 8 of this Declaration.

(h) "Limited Common Areas" means the limited common areas and facilities as defined in Paragraph 9 of this Declaration.

(i) "Common Expenses" means the expenses of administration of the Association and expenses for the upkeep, maintenance, repair and replacement of the Common Areas and Limited Common Areas; management and operation of the facility, including but not limited to utilities, insurance, managers, etc., as well as all sums lawfully assessed against the Owners by the Association or as declared by the Act, this Declaration or the By-Laws.

(j) "Co-owners" means the Owners of all the Condominium Units.

(k) "Floor Plans" means the floor and building plans of the Buildings and the Condominium Units referred to in paragraph 4. of this Declaration and prepared by Paul I. Cripe, Inc. and certified by James E. Dankert, PE #6701 on the date of June 7, 1983, all of which are incorporated herein by reference and which are included as Exhibit "D" to this Declaration. "Floor Plans" also include floor and building plans of Buildings and Condominium Units which may be submitted or subjected to the Act and this Declaration by supplemental declarations as herein provided, and will be identified in supplemental declarations and on plans that will be filed therewith.

(l) "Mortgagee" means the holder of a first mortgage lien on a Condominium Unit.

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

(n) "Percentage Interest" means the percentage of undivided interest in the fee simple title to the Common Areas and Limited Common Areas appertaining to each Condominium Unit as specifically expressed in paragraphs 6 and 13 of this Declaration.

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

(p) "Property" means the Real Estate and appurtenant easements, the Condominium Units, the Buildings, improvements, and property of every kind and nature whatsoever, real, personal or mixed, located upon the tract and used in connection with the operation, use and enjoyment of the Condominium. "Property" also

includes any property which may be submitted or subjected to this Act and Declaration by Supplemental Declarations as herein provided.

(q) "Declarant" shall mean and refer to S & NC Corporation and any successors and assigns whom it designates in one or more written recorded instruments to have the rights of Declarant hereunder, including but not limited to any Mortgagee acquiring title to any portion of the Property pursuant to the exercise of rights under foreclosure of a mortgage executed by Declarant.

(r) "Supplemental Real Estate" shall be that real estate described in Exhibit "A" upon which additional Condominium Units may be constructed and which may hereafter be submitted and subjected to this Declaration under the terms of paragraph 19.

(s) "Additional Real Estate" shall be any real estate within one (1) mile of the nearest boundary to the Real Estate described in Exhibit "A" which may hereafter become part of the Common Areas or Limited Common Areas of Waterfront II; provided however, no additional Condominium Units may be constructed on Additional Real Estate.

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

3. Name. The name by which this regime is to be identified is Waterfront II Horizontal Property Regime.

4. Floor Plans. A set of floor plans of the Phase I Condominium are being filed under even date herewith, and the same may be found in Plat Book _____, Pages _____ through _____ in the office of the Recorder of Hamilton County, Indiana.

5. Description of Buildings. There is one (1) three story Building containing 18 Condominium Units of 756 square feet each on the Tract, as shown on the Floor Plans. The Building is identified and referred to in the Floor Plans and in this Declaration as Building I. Declarant at its sole option and discretion may expand Waterfront II as follows: Phase I may include as many as two (2) additional buildings

which if added would be located approximately as shown on Exhibit "C". Additional buildings may be added in additional phases in the area described as "Expansion Area" in Exhibit "A", up to a maximum of one hundred ninety-seven (197) units in the whole of Waterfront II.

6. Identification of Condominium Units and Percentage Interest.

Each Condominium Unit is identified on the Floor Plans by a Roman Numeral and number. The Roman Numeral refers to the Building in which the Condominium Unit is located and the number refers to the individual Condominium Unit within the Building. The legal description of each Condominium Unit shall consist of the Unit Number and Building Number as shown on the Floor Plans and shall be stated as Unit ___ in Building ___ in Waterfront II Horizontal Property Regime. The Percentage Interest of each owner in the Common Areas and Limited Common Areas shall be that Percentage Interest based on the size of the unit in relation to the size of all units in the Waterfront II and calculated as follows:

$$\frac{\text{Size of Unit (in square feet)}}{\text{Total size of all units in Waterfront II (in square feet)}} = \frac{\text{Percentage interest}}{\text{in Common Areas and Limited Common Areas}}$$

The schedule of undivided interest in common areas and limited common areas allocated to each unit in Building I is as follows:

<u>Unit</u>	<u>% Interest</u>	<u>Unit</u>	<u>% Interest</u>	<u>Unit</u>	<u>% Interest</u>
I-301	5.5555	I-307	5.5555	I-313	5.5555
I-302	5.5555	I-308	5.5555	I-314	5.5555
I-303	5.5555	I-309	5.5555	I-315	5.5555
I-304	5.5555	I-310	5.5555	I-316	5.5555
I-305	5.5555	I-311	5.5555	I-317	5.5555
I-306	5.5555	I-312	5.5555	I-318	5.5555

7. Description of Condominium Units. Each Condominium Unit

shall consist of all space within the boundaries thereof and all portions of the Building situated within such boundaries, including but not limited to all fixtures, facilities, utilities, equipment, appliances and structural components designed and intended solely and exclusively for the enjoyment, use and benefit of the Condominium Unit wherein the same are located, or to which they are attached, but excluding therefrom that designed or intended for the use, benefit, support, safety or enjoyment of any other Condominium Unit or which may be necessary for the safety, support, maintenance, use, and operation

of any of the Buildings or which are normally designed for common use; provided however, that all fixtures, equipment and appliances designed or intended for the exclusive enjoyment, use and benefit of a Condominium Unit shall constitute a part of such Condominium Unit, whether or not the same are located within or partly within the boundaries of such Condominium Unit. The interior side and surfaces of all doors and windows in the perimeter walls of a Condominium Unit, whether or not located within or partly within the boundaries of a Condominium Unit, and all interior walls and ceilings within the boundaries of a Condominium Unit are considered the Condominium Unit.

Horizontally, each Unit consists of the area measured horizontally from the unfinished surface of the wall to the unfinished surface of the wall opposite the wall from which the measurement is taken. Vertically, each Unit consists of the space between the top of the sub-floor and the unfinished surface of the ceiling.

8. Common Areas and Facilities. The Common Areas and facilities consist of the Tract and entire Condominium Property, including all parts of the Building other than the Condominium Units, and including without limitation, the following:

- (a) the land on which the Buildings are erected;
- (b) all foundations, columns, girders, beams, supports and all exterior walls, roofs and surfaces of the buildings;
- (c) all walls and partitions separating Condominium Units from corridors or stairs, other than the portions thereof between the Unit side of such walls and partitions and the frame-work of such walls and partitions; the frame-work of all walls and partitions separating Condominium Units and containing frame-work; the portions of the plaster or wallboard partitions separating Condominium Units between the centerlines of the plaster or wallboard on each side of such partition; and all sub-floors and support structures above the top side of the ceiling and below the sub-floors immediately above;
- (d) halls, lobbies, stairs, stairways and entrances to and exits from the Buildings;

(e) all space devoted to the use of management and other persons and employees in connection with the operation of the Condominium Property;

(f) all central and appurtenant installations for services such as power, light, telephone, gas, hot and cold water, heat, refrigeration, air conditioning and incinerating (including all pipes, ducts, wires, cables, and conduits used in connection therewith, whether located in common areas or in Condominium Units, and all other mechanical equipment spaces;

(g) all tanks, pumps, motors, fans, compressors, and control equipment;

(h) all sewer pipes;

(i) all storage space and laundry rooms;

(j) all streets that are not dedicated;

(k) all other parts of the Condominium Property and all apparatus and installations existing in the Buildings or on the Property for common use or necessary or convenient to the existence, maintenance or safety of the Condominium except those herein expressly described and defined as Limited Common Areas, or as part of a Condominium Unit.

9. Limited Common Areas and Facilities. Limited Common Areas and facilities and the Condominium Units to which use thereof is limited are as follows:

(a) Balconies, patios and porches, together with an area, if any, around such patio or porch specifically shown and designated on the Floor Plans shall be limited to the exclusive use of the Condominium Unit to which they are attached or appertained.

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

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

10. Encroachments. If any portion of the Common Areas or Limited Common Areas and facilities now or hereafter shall encroach upon any Condominium Unit, or if any Condominium Unit now or hereafter shall encroach upon any other Condominium Unit or upon any portion of the Common Areas or Limited Common Areas and facilities as a result of the construction of the Buildings or as result of settling or shifting of the Buildings, a valid easement for the encroachment and for its maintenance shall exist so long as the Buildings stand. In the event the Buildings, a Condominium Unit, any adjoining Condominium Unit, or any adjoining Common Areas or Limited Common Areas and facilities, 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, any resulting encroachment of a part of the Common Areas or Limited Common Areas and facilities upon any Condominium Unit or of any Condominium Unit upon any other Condominium Unit or upon any part of the Common Areas or Limited Common Areas and facilities shall be permitted and a valid easement for such encroachments and for its maintenance shall exist so long as the Building stands.

11. Common Areas and Facilities Inside Condominium Units. The Board of Managers, their agents and employees, shall have a right of access to each Condominium Unit to inspect all pipes, wiring, ducts, cables, conduits, public utility lines, and other common areas and facilities located within any of the Condominium Units or to which access can best be made from inside any of the Condominium Units and to maintain, repair or replace such Common Areas and facilities located in the Condominium Units or Buildings.

12. Use of Condominium Units. Each of the Condominium Units shall be used for residential purposes only; provided, however, that this provision shall not be interpreted so as to prevent the Owners from renting their Condominium Units so long as the use to which said rented Condominium Unit is devoted conforms to the use which the Owners themselves are permitted.

13. Ownership of Common Areas and Percentage Interest. Each Owner shall have an undivided interest in the Common Areas and Limited Common Areas with all other Owners, equal to his Condominium Unit's

Percentage Interest. The Percentage Interest appertaining to each Condominium Unit is set forth in paragraph 6 of this Declaration. This percentage shall for all purposes be deemed to be the percentage of the size of each Condominium Unit in relation to the size of all Condominium Units in the Condominium. Except as otherwise provided or permitted herein by means of future submission and subjection to the Act and this Declaration of future tracts or phases containing Condominium Units which constitute a part of Waterfront II, the Percentage Interest appertaining to each separate Condominium Unit in the Common Areas and Limited Common Areas shall be of a permanent nature and shall not be altered without the unanimous consent of all the Owners and Mortgagees in compliance with all requirements of the Act.

The Percentage Interest appertaining to each Condominium Unit shall also be the Percentage Vote allocable to the Owner thereof in all matters with respect to the Condominium and the Association upon which the Co-owners are entitled to vote, including but not limited to the election of the Board of Managers.

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

(a) In the event of less than complete destruction of the Condominium Units by the occurrence of fire or other casualty, then the Association shall cause the Property to be promptly repaired and restored and the proceeds of the insurance carried by the Association shall be applied to the cost of such restoration. If the insurance proceeds are not adequate to cover the costs of reconstruction, or in the event there are no proceeds, the cost for restoring the damage shall be paid by all the Owners of the Condominium Units in the percentage by which the Condominium Owners own an undivided interest in the Common Area and facilities as expressed in the Declaration. If any Owner, or Owners, refuses or fails to make the required payments, the other Owners shall (or the Association, if such other Owners fail) complete the restoration and pay the cost thereof, and the costs attributable to the

Owner or Owners who refuse or fail to make such payments at the time required by the Board of Managers shall become a lien on such defaulting Owner's Condominium Unit and may be foreclosed in the same manner as provided for the lien for Common Expenses.

(b) In the event of complete destruction of all of the Buildings containing Condominium Units by fire or other casualty, then the Buildings shall not be reconstructed, except as otherwise hereinafter provided, and the insurance proceeds, if any, shall be divided among the Co-owners in the percentage in which each owns an undivided interest in the Common Areas and the Property shall be considered removed from the provisions of the Act in accordance with procedures established therein. By a vote of two-thirds (2/3rds) of all of the Co-owners, a decision may be made to rebuild after complete destruction of all of the Buildings containing Condominium Units, in which case the insurance proceeds shall be applied to reconstruction only and any excess of construction costs over insurance proceeds shall be contributed by the Co-owners as provided herein in the event of less than total destruction of the Buildings. A determination of total destruction of the Buildings containing Condominium Units shall be determined by a vote of two-thirds (2/3rds) of all Co-owners at a special meeting of the Association of Co-owners called for that purpose.

(c) The restoration for either complete or partial destruction shall mean construction or rebuilding of the Condominium Units to the same condition as they existed immediately prior to the destruction and to the same type of architecture. Any reconstruction or repair must be substantially in accordance with the plans and specifications for the original buildings prepared by the original designers.

15. Right of First Refusal and Restriction on Sale. Each ~~shall~~ Condominium Unit Owner shall grant, and by the acceptance of a warranty deed for a Condominium Unit, ~~shall be irrevocably deemed to have granted Declarant a right of first refusal to repurchase a Condominium~~

Unit, if a Condominium Unit Owner desires to sell. Within twenty (20) days after receipt by Declarant of a written notice of such desire to sell along with a copy of any bona fide written offer to purchase such Condominium Unit to Declarant and upon acceptance of such by Declarant within twenty (20) days, such Condominium Unit Owner shall sell such Condominium Unit to Declarant. If Declarant has not agreed to meet the terms of such bona fide purchase offer within twenty (20) days after the notice and a copy of the bona fide written offer has been received by Declarant, then such Condominium Unit Owner shall be permitted to sell such Condominium to the offerer upon such terms. But if such offer is withdrawn, or for any other reason such sale is not consummated, then Declarant shall again have the same right of first refusal to meet any subsequent offer; provided, however, that in no event shall the right of first refusal granted Declarant hereunder be interpreted to, or in any way act to, impair a Mortgagee's right to accept a deed in lieu of foreclosure from an Owner, or apply to the right to have such Condominium Unit sold at Sheriff's sale pursuant to an order of sale contained in a judgment of record in any court of competent jurisdiction or affect conveyance by means of dissolution of marriage, descent or inheritance.

Prior to the year 1993, no Condominium Unit in Waterfront II shall be conveyed by Declarant or any subsequent owner to a person who is not a bona fide resident of the State of Indiana, except with the prior written agreement and consent of Declarant or by operation of law. Each Deed for a Condominium Unit shall have this restriction noted on the face thereof.

16. Condominium Units Subject to Declaration, By-Laws, Rules and Regulations. All present and future Owners, tenants and occupants of Condominium Units shall be subject to, and shall comply with the provisions of this Declaration, the By-Laws, and the Rules and Regulations adopted pursuant thereto, and as those instruments may be amended from time to time. The acceptance of a deed of conveyance, or the entering into occupancy of any Condominium Unit shall constitute an acceptance of the provisions of such instruments as they may be amended from time to time by such Owner, tenant, or occupant. Compliance with

the Declaration, By-Laws and the Rules and Regulations adopted pursuant thereto may be enforced by the security personnel employed by the Declarant or the Board of Managers. The provisions contained in such instrument shall bind any person having at any time any interest or estate in such Condominium Unit as though such provisions were recited in full in each deed, conveyance or lease thereof.

17. Insurance. The Co-owners, through the Association, shall purchase a master casualty policy affording fire and extended coverage in an amount consonant with the full replacement value of the improvements that in whole or in part compromise the Condominium Units, Common Areas and facilities, paid as part of the Common Expenses. The Co-owners, through the Association, shall also purchase a master liability policy in an amount determined from time to time by decision of the Board of Managers, which policy shall cover the Association of Co-owners, the Board of Managers, the Managing Agent, if any, all persons acting or who may come to act as agents or employees of any of the foregoing with respect to the Condominium, all Condominium Unit Owners and all other persons entitled to occupy any Unit or other portions of the Condominium. Such other policies as may be determined to be appropriate by the Board of Managers may be obtained including, without limitation, Workmen's Compensation insurance, Liability insurance on motor vehicles owned by the Association, and specialized policies covering lands or improvements on which the Association has or shares ownership or other rights, and officers' and directors' liability policies.

When any policy of insurance has been obtained by or on behalf of the Association, written notice of the obtainment thereof and of any subsequent changes therein or termination thereof shall be promptly furnished to each Co-owner or Mortgagee whose interest may be affected thereby, by the officer required to send notices of meetings of the Association of Co-owners.

All proceeds payable as a result of casualty losses sustained which are covered by insurance purchased by the Association as hereinabove set forth shall be paid to it or to the Board of Managers

who shall act as the insurance trustees and hold such proceeds for the benefit of the individual Owners and Mortgagees. The proceeds shall be used or disbursed by the Association or Board of Managers as appropriate only in accordance with the provisions of this Declaration; and any surety bond or bonds obtained by the Board of Managers concerning the officers of the Association, as provided by the By-Laws, shall specifically include protection for any insurance proceeds received.

The interest of each damaged Owner in the trust fund or insurance proceeds shall be the ratio of the direct damage of each damaged Owner to the damage of all Owners directly damaged by any event insured under this said master casualty insurance policy. Such master casualty insurance policy shall (to the extent obtainable) contain provisions that the insurer (a) waives its right to subrogation as to any claim against the Association, the Board of Managers, its agents and employees, Owners, their respective agents and guests, and (b) waives any defense of invalidity arising from the acts of the insured, and (c) contains an endorsement that such policy will not be terminated for non-payment of premiums without at least ten (10) days prior written notice to mortgagees, and (d) providing further, if the Board of Managers is able to obtain such insurance upon reasonable terms, (i) that the insurer shall not be entitled to contribution against casualty insurance which may be purchased by individual Owners, and (ii) that notwithstanding any provision thereof giving the insurer an election to restore damage in lieu of a cash amount, such option shall not be exerciseable in the event the Owners do not elect to restore pursuant to paragraph 14 of this Declaration.

The premiums for all such insurance hereinabove described constitutes a common expense and shall be paid by the Association as part of the Common Expenses or the Board of Directors may provide for individual billings of the Common Expenses for insurance premiums directly to the Owners based upon their Percentage Interest. If any Owner fails to pay an insurance premium directly billed, then the Association shall pay the premium and add it to the regular assessment for Common Expenses assessed against the Unit for which payment was not

made by the Owner. Each Owner shall have the right to purchase such additional insurance at his own expense as he may deem necessary.

18. Association of Owners. Subject to rights of Declarant reserved hereunder, the maintenance, repair, upkeep, replacement, administration, management and operation of the property shall be by the Waterfront II Property Owners' Association which is hereby created. Each Owner of a Condominium Unit shall automatically become a member of the Association and shall remain a member until such time as his ownership ceases, but membership shall terminate when such person ceases to be an Owner and will be transferred to the new Owner.

The Association shall elect members to the Board of Managers annually in accordance with and as prescribed by the By-Laws. The Declarant shall have the power of appointment of the members of the Board of Managers in accordance with and as prescribed by the By-Laws. Each person serving on the Board of Managers by reason of appointment by Declarant shall be deemed a member of the Association and an Owner solely for the purpose of qualifying to act as a member of the Board of Managers and for no other purpose. No such person serving on the Board of Managers by reason of appointment by Declarant shall be deemed or considered a member of the Association or an Owner of a Condominium Unit for any other purpose (unless he is actually an Owner of a Condominium Unit and thereby a member of the Association).

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

(a) The Real Estate described and defined herein as the Tract is the Real Estate being subject to the Waterfront II Horizontal Property Regime by this Declaration and constitutes Phase I of the general plan of the Real Estate. The balance of the Real Estate is the area in which expansion of Waterfront II may be made by Declarant and upon which Condominium Units may be located. The maximum number of Condominium Units which may be

developed on the Real Estate, including Condominium Units on the Tract as defined in this original Declaration shall be one hundred ninety-seven (197). Subject to said limit as to the maximum number of Condominium Units to be developed on the Real Estate, Waterfront II may be expanded by Declarant to include additional portions of the Real Estate in one (1) or more additional phases by the execution of the recording of one (1) or more Amendments or Supplements to this Declaration; provided however, that no single exercise of such right and option of expansion as to any part or parts of the Real Estate shall preclude Declarant from thereafter from time to time further expanding Waterfront II to include other portions of the Real Estate and such right and option of expansion may be exercised by Declarant from time to time as to all or any portions of the Real Estate so long as such expansion is made within ten (10) years of the date of the recording of this Declaration. Such expansion is entirely at the discretion of Declarant and nothing in this original Declaration or otherwise shall require Declarant to expand Waterfront II beyond the Tract or any other portions of the Real Estate which Declarant may voluntarily and in its sole discretion from time to time subject to this Declaration by Amendments or Supplements to this Declaration as provided above.

(b) The Percentage Interest which will appertain to each Condominium Unit in Waterfront II as it may be expanded from time to time by Declarant in accordance with the terms hereof (including the Percentage Interest which appertains to each of the Condominium Units included in this original Declaration) shall be in accordance with the provisions of paragraph 6 of this Declaration.

(c) Simultaneously with the recording of Amendments or Supplements to this Declaration expanding Waterfront II, Declarant shall record new Floor Plans as required by the Act. Such Amendments or Supplements to this Declaration shall also include provisions allocating Percentage Interest so that the Condominium Units depicted on such new plans shall be allocated Percentage

Interest in the Common Areas on the same basis as the Condominium Units depicted on the prior plans. Such reallocation of Percentage Interest shall vest when the Amendment or Supplement to the Declaration incorporating those changes has been recorded.

(d) Declarant may further expand the Common Areas of Waterfront II upon any portion of the Additional Real Estate as heretofore defined.

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

(f) In furtherance to the foregoing, a power coupled with an interest is hereby granted to the Declarant as attorney-in-fact to shift the Percentage Interest in the Common Areas appurtenant to each Condominium Area to the percentages as set forth in each such Amendment or Supplement to the Declaration recorded pursuant to this paragraph. Each deed, mortgage or other instrument with respect to a Condominium Unit and the acceptance thereof shall be deemed a grant and acknowledgement of and consent to such power to said attorney-in-fact and shall be deemed to reserve to said attorney-in-fact the power to shift and reallocate from time to time the percentages of ownership in the Common Areas appurtenant to each Condominium Unit to the percentages set forth in each such recorded Amendment or Supplement to this Declaration and in accordance with paragraph 6 of this Declaration.

(g) Each owner of a Condominium Unit by acceptance of a deed thereto further acknowledges, consents and agrees, as to each such Amendment or Supplement to this Declaration that is recorded as follows:

(i) The portion of the Real Estate described in each such Amendment or Supplement to this Declaration shall be governed in all respects by the provisions of this Declaration.

(ii) The Percentage Interest in the Common Areas appurtenant to each Condominium Unit shall automatically be shifted and reallocated to the extent set forth in each such recorded Amendment or Supplement to this Declaration and upon the recordation of each such Amendment or Supplement to this Declaration, shall thereby be deemed to be released and divested from such Owner and reconveyed and reallocated among the Owners as set forth in each such recorded Amendment or Supplement to this Declaration.

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

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

(v) The Percentage Interest in the Common Areas appurtenant to each Condominium Unit shall include and be deemed to include any additional Common Areas included in land to which Waterfront II is expanded by Amendment or Supplement to this Declaration and each deed, mortgage or other instrument affecting the Condominium Unit shall be deemed to include such additional Common Areas and the ownership of any such Condominium Units and lien of any such mortgage shall automatically include and attach to said additional Common Areas when such Amendment or Supplement to this Declaration is recorded.

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

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

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

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

(h) The Declarant need not add all or any portion of the additional or supplemental land to the Condominium; however the Declarant may add portions of the additional or supplemental land to the condominium and may do so at different times.

(i) The approximate location of improvements which may be located on the land described in Exhibit "B" is shown on the attached plat designated Exhibit "C", however, Declarant reserves the right to change the location of such improvements if required to achieve the best development in the opinion of the Declarant. Nothing herein should be construed as a commitment on the part of Declarant to develop or expand Waterfront II in accordance with said plat.

(j) Upon the additional land and the supplemental land and portions thereof, Declarant may construct recreational and service amenities for the purpose of serving this Condominium and the Condominium as expanded by supplemental and additional lands.

(k) Other improvements that may be placed on the additional land shall be limited to parking, recreational, commercial and service facilities.

(l) Declarant reserves the right to change the size, design, and make-up of the Units in order to meet requirements of the market.

20. Grant of Easements. The Board of Managers of the Association is granted the authority to grant easements to any person upon such terms and conditions and for such consideration as they deem appropriate.

21. Additional Rights Reserved to Declarant. The following rights are hereby reserved to Declarant:

(a) Declarant and Declarant's duly authorized agents, representatives and employees shall have the right to maintain

model units, a management office and a sales office within Phase I and to use the model units, management office and the sales office during the period that units in the present or subsequent phases remain unsold. No more than 2 model units, 1 management office and 1 sales office will be constructed and maintained by Declarant in Phase I. Declarant and its agents further reserve the right to construct and maintain model units, a management office and a sales office in subsequent phases of the project with no more than 2 models, 1 management office and 1 sales office in each phase. Further, said model units may be sold by Declarant and the ownership thereof shall have all rights and responsibilities of any other Co-owner under this Declaration, the Act and the By-Laws. The location and size of models and offices shall be as shown on the plats and plans of Waterfront II.

(b) Declarant hereby reserves to itself the right to locate, determine and grant easements over any portion of the Property during any period during which construction is proceeding upon any portion of the Tract or any additional or supplemental real estate made subject to and submitted to this Declaration. Declarant further has the right to locate, or grant to other persons the right to locate temporary construction facilities, trailers and equipment on the Common Areas during the term of said construction.

(c) Declarant has the right to place, maintain and relocate signs in the Common Areas, Limited Common Areas, and Condominium Units advertising the availability of Condominium Units for purchase.

(d) Declarant reserves a non-exclusive easement for ingress and egress for the benefit of Declarant, its invitees, guests, agents, employees, successors and assigns over and across Common Areas of the tract and Common Areas of any real estate hereinafter submitted and subject to the Act and this Declaration by Supplemental Declaration as herein provided for access to any property owned, managed or occupied by Declarant, its successors or assigns.

The tract and any real estate hereinafter submitted and subjected to the Act and this Declaration by Supplemental

Declaration as herein provided are subject to a non-exclusive easement for ingress and egress for the benefit of, and reserved by Declarant, its invitees, guests, agents, employees, successors and assigns on and along that portion of the tract lying between the buildings shown in the Floor Plans recorded simultaneously herewith and being constructed on such tract and the shoreline of Morse Reservoir and that portion of any additional or supplemental real estate hereafter submitted and subjected to the Act and this Declaration by Supplemental Declaration as herein provided between any Buildings or structures placed on said real estate and the shoreline of Morse Reservoir, along with any boardwalk and boat docks now existing or which may hereafter be constructed there or adjoining thereto; such easement includes a full right to dock boats and to load and unload such invitees, guests, owners, agents and employees for access to any real estate owned, occupied or managed by Declarant, its successors or assigns.

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

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

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

(a) A resolution concerning a proposed Amendment must be adopted by the designated vote at a meeting of the Co-owners duly called and held in accordance with the provisions of the By-Laws. Any proposed Amendment to this Declaration must be approved by a

vote of not less than seventy-five percent (75%) of the aggregate of the Percentage Vote of the Co-owners and a majority of the Board of Managers. In the event any Condominium Unit is subject to a first mortgage, the Mortgagee shall be notified of the meeting and the proposed Amendment in the same manner as an Owner, if the mortgagee has given prior notice of its mortgage interest to the Board of Managers in accordance with the provisions of the By-Laws.

(b) Special Amendments. No Amendment to this Declaration shall be adopted which changes (i) the Percentage Interest with respect to any Condominium Unit or the applicable share of the Owner's liability to the Common Expenses, without the approval of one hundred percent (100%) of the Co-owners and all Mortgagees whose mortgages have been made known to the Board of Managers in accordance with the provisions of the By-Laws except for changes pursuant to paragraph 29⁴² herein, or (ii) the provisions of paragraph 14 of this Declaration with respect to reconstruction or repair in the event of fire or any other casualty or disaster, without the unanimous approval of all Co-owners and Mortgagees whose mortgage interests have been made known to the Board of Managers in accordance with the provisions of the By-Laws.

(c) Each amendment to the Declaration shall be executed by the President and Secretary of the Association and be recorded in the Office of the Recorder of Hamilton County, Indiana, and such amendment shall not become effective until so recorded.

(d) Amendments by Declarant only. Notwithstanding the foregoing or anything else contained herein, the Declarant shall have the right acting alone and without the consent or approval of the Co-owners, the Association, the Board of Managers, any Mortgagees or any other person to amend or supplement this Declaration from time to time if (i) such amendment or supplement is necessary to conform this Declaration to the Act as amended from time to time, or (ii) such amendment or supplement is made to implement expansion of Waterfront II pursuant to Declarant's

reserved rights to expand the same as set forth in paragraph 19 hereof.

26. Invalidity. The invalidity of any provision of this Declaration shall not affect in any manner the validity or enforceability of the remainder of this Declaration and the other provisions of this Declaration shall continue in effect as if such invalid provision had never been included herein.

IN WITNESS WHEREOF, S & NC Corporation has caused this DECLARATION to be executed by its President, its corporate seal affixed, and attested by its Secretary this 8th day of June, 1983.

S & NC CORPORATION

By H. Eric Smith
H. Eric Smith, President

(Corporate Seal)
Attest:

C. A. Wulf, Jr., Secretary

STATE OF INDIANA)
) SS:
COUNTY OF HAMILTON)

Before me, the undersigned, a Notary Public in and for said County and State, this 8th day of June, 1983, came H. Eric Smith and C. A. Wulf, Jr. personally known to me to be the President and Secretary, respectively of S & NC Corporation, a corporation, and acknowledged the execution of the foregoing instrument.

Witness my hand and Notarial Seal.

Mary C. O'Brien
Notary Public
Resident of Hamilton County

My commission expires:

May 26, 1987

This instrument prepared by Douglas B. Floyd, Attorney at Law, 198 South 9th Street, Post Office Box E, Noblesville, Indiana 46060.

EXHIBIT "A"

Part of the Southwest Quarter and part of the Southeast Quarter of Section 14, Township 19 North, Range 4 East in Hamilton County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of said Southwest Quarter Section; thence South 89 degrees 48 minutes 22 seconds East along the North line of said Southwest Quarter Section 1325.88 feet; thence North 00 degrees 11 minutes 38 seconds East 13.71 feet to a point on the center line of Carrigan Road, as located, said point being the beginning of a curve having a radius of 636.62 feet, the radius point of which bears South 00 degrees 08 minutes 08 seconds West (the next three courses are along the center line of the said Carrigan Road); thence Southeasterly along the said curve 827.78 feet to a point which bears North 74 degrees 38 minutes 08 seconds East from the said radius point; thence South 15 degrees 21 minutes 52 seconds East 224.33 feet to a curve having a radius of 954.93 feet, the radius point of which bears North 74 degrees 38 minutes 08 seconds East; thence Southeasterly along the said curve 827.26 feet to a point which bears South 25 degrees 00 minutes 00 seconds West from the said radius point, which is the Place of Beginning; thence South 25 degrees 00 minutes 00 seconds West 196.37 feet; thence South 00 degrees 00 minutes 00 seconds 554.12 feet; thence South 20 degrees 00 minutes 00 seconds East 407.61 feet; thence South 58 degrees 00 minutes 00 seconds West 265 feet, more or less, to the shore line of Morse Reservoir, as said shore line would have been established December 30, 1960, plus accretion and minus erosion (with the water level thereof at an elevation of 810.0 feet above mean sea level); thence to the left Easterly along the meandering shore line to a point which lies South 02 degrees 00 minutes 52 seconds East from a point on the center line of the said Carrigan Road, which point on the said center line lies 50 feet West of the West end of the Carrigan Road Bridge; thence from said shore line North 02 degrees 00 minutes 52 seconds West 51 feet, more or less to said point on the said center line of Carrigan Road (the next two courses are along the said center line of Carrigan Road); thence South 87 degrees 59 minutes 08 seconds West 283.00 feet to aforesaid curve having a radius of 954.93 feet, the radius point of which bears North 02 degrees 00 minutes 52 seconds West; thence Easterly along the said curve 450.24 feet to the Place of Beginning, containing 13.5 acres, more or less.

Subject to all legal highways, rights of way and easements.

For additional information and a plat of the above described real estate see Plat Book _____ page _____ in the Office of the Recorder of Hamilton County, Indiana.

Exhibit "B"

Part of the Southwest Quarter and part of the Southeast Quarter of Section 14, Township 19 North, Range 4 East in Hamilton County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of said Southwest Quarter Section; thence South 89 degrees 48 minutes 22 seconds East along the North line of said Southwest Quarter Section 1325.88 feet; thence North 00 degrees 11 minutes 38 seconds East 13.71 feet to a point on the center line of Carrigan Road, as located, said point being the beginning of a curve having a radius of 636.62 feet, the radius point of which bears South 00 degrees 08 minutes 08 seconds West (the next three courses are along the center line of the said Carrigan Road); thence Southeasterly along the said curve 827.78 feet to a point which bears North 74 degrees 38 minutes 08 seconds East from the said radius point; thence South 15 degrees 21 minutes 52 seconds East 224.33 feet to a curve having a radius of 954.93 feet, the radius point of which bears North 74 degrees 38 minutes 08 seconds East; thence Southeasterly along the said curve 827.26 feet to a point which bears South 25 degrees 00 minutes 00 seconds West from the said radius point; thence South 25 degrees 00 minutes 00 seconds West 196.37 feet along the center line of Clarendon Drive per dedication of right of way recorded July 28, 1981 as Instrument #25557 in Book 166 on pages 158 and 159 in the Office of the Recorder of Hamilton County, Indiana; thence South 00 degrees 00 minutes 00 seconds 554.12 feet; thence South 20 degrees 00 minutes 00 seconds East 121.06 feet to the Point of Beginning; thence continue South 20 degrees 00 minutes 00 seconds East 286.55 feet; thence South 58 degrees 00 minutes 00 seconds West 265 feet, more or less, to the shore line of Morse Reservoir, as said shore line would have been established December 30, 1960, plus accretion and minus erosion (with the water level thereof at an elevation of 810.0 feet above mean sea level); thence to the left Easterly along the meandering shore line to a point which bears South 72 degrees 30 minutes 00 seconds East from a point which bears South 17 degrees 30 minutes 00 seconds West 222.50 feet from a point which bears South 72 degrees 30 minutes 00 seconds East 258.46 feet from the point of beginning; thence from said shore line bear North 72 degrees 30 minutes 00 seconds West 110 feet, more or less, to said point which bears South 17 degrees 30 minutes 00 seconds West 222.50 feet from a point which bears South 72 degrees 30 minutes 00 seconds East 258.46 feet from the point of beginning; thence North 17 degrees 30 minutes 00 seconds East 222.50 feet to said point which bears South 72 degrees 30 minutes 00 seconds East 258.46 feet from the point of beginning; thence North 72 degrees 30 minutes 00 seconds West 258.46 feet to the Point of Beginning, containing 2.4 acres, more or less.

Together with the following described access easements:

Commencing at the Northwest corner of said Southwest Quarter Section; thence South 89 degrees 48 minutes 22 seconds East along the North line of said Southwest Quarter Section 1325.88 feet; thence North 00 degrees 11 minutes 38 seconds East 13.71 feet to a point on the center line of Carrigan Road, as located, said point being the beginning of a curve having a radius of 636.62 feet, the radius point of which bears South 00 degrees 08 minutes 08 seconds West (the next three courses are along the center line of the said Carrigan Road); thence Southeasterly along the said curve 827.78 feet to a point which bears North 74 degrees 38 minutes 08 seconds East from said radius point; thence south 15 degrees 21 minutes 52 seconds East 224.33 feet to a curve having a radius of 954.93 feet, the radius point of which bears North 74 degrees 38 minutes 08 seconds East; thence Southeasterly along the said curve 827.26 feet to a point which bears South 25 degrees 00 minutes 00 seconds West from the said radius point; thence South 25 degrees 00 minutes 00 seconds West 196.37 feet along the center line of Clarendon Drive per dedication of right of way recorded July 28, 1981 as Instrument #25557 in Book 166 on pages 158 and 159 in the Office of the Recorder of Hamilton County, Indiana; thence South 00 degrees 00 minutes 00 seconds 58.96 feet to a point on the Southerly right of way.

line of said Clarendon Drive, which said point hereinafter referred to as Point "A" is the Point of Beginning; thence south 00 degrees 00 minutes 00 seconds 495.16 feet; thence South 20 degrees 00 minutes 00 seconds East 121.06 feet; thence South 72 degrees 30 minutes 00 seconds East 63.02 feet; thence North 20 degrees 00 minutes 00 seconds West 150.61 feet; thence North 00 degrees 00 minutes 00 seconds 406.34 feet; thence North 32 degrees 00 minutes 19 seconds West 94.34 feet to the Point of Beginning.

Also, begin at the above described Point "A"; thence South 00 degrees 00 minutes 00 seconds 136.04 feet; thence North 50 degrees 01 minutes 34 seconds West 82.61 feet to a point on the right of way line of said Clarendon Drive, which said point lies on a curve having a radius of 275.00 feet, the radius point of which bears North 41 degrees 42 minutes 58 seconds West; thence Northeasterly along said right of way an arc distance of 105.00 feet to a point which bears South 63 degrees 35 minutes 33 seconds East from said radius point, which is the Point of Beginning.

Together with the following described sewer easements:

A 15 foot wide sanitary sewer easement, the metes and bounds description of which is described as follows:

Part of the Southwest Quarter of Section 14, Township 19 North, Range 4 East in Hamilton County, Indiana, more particularly described as follows:

Commencing at the Northwest corner of said Southwest Quarter Section; thence South 89 degrees 48 minutes 22 seconds East along the North line of said Southwest Quarter Section 1325.88 feet; thence North 00 degrees 11 minutes 38 seconds East 13.71 feet to a point on the center line of Carrigan Road, as located, said point being the beginning of a curve having a radius of 636.62 feet, the radius point of which bears South 00 degrees 08 minutes 08 seconds West (the next three courses are along the center line of the said Carrigan Road); thence Southeasterly along the said curve 827.78 feet to a point which bears North 74 degrees 38 minutes 08 seconds East from the said radius point; thence South 15 degrees 21 minutes 52 seconds East 224.33 feet to a curve having a radius of 954.93 feet, the radius point of which bears North 74 degrees 38 minutes 08 seconds East; thence Southeasterly along the said curve 827.26 feet to a point which bears South 25 degrees 00 minutes 00 seconds West from the said radius point; thence South 25 degrees 00 minutes 00 seconds West 196.37 feet along the center line of Clarendon Drive per dedication of right of way recorded July 28, 1981 as Instrument #25557 in Book 166 on pages 158 and 159 in the Office of the Recorder of Hamilton County, Indiana; thence South 00 degrees 00 minutes 00 seconds 166.26 feet to the Point of Beginning; thence South 00 degrees 00 minutes 00 seconds 15.15 feet; thence South 81 degrees 51 minutes 05 seconds West 159.61 feet; thence North 00 degrees 00 minutes 00 seconds 6.95 feet to a point on the Southerly right of way line of said Clarendon Drive, which said point lies on a curve having a radius of 275.00 feet, the radius point of which bears North 18 degrees 43 minutes 48 seconds West; thence Easterly along said curve and right of way line 33.45 feet to a point which bears South 25 degrees 41 minutes 58 seconds East from said radius point; thence North 81 degrees 51 minutes 05 seconds West 128.35 feet to the Point of Beginning.

For additional information and a plat of the above described real estate see Plat Book _____ page _____ in the Office of the Recorder of Hamilton County, Indiana.

EXHIBIT "C"

For location of buildings and further information see Plat Book
page _____ in the Office of the Recorder of Hamilton County,
Indiana.



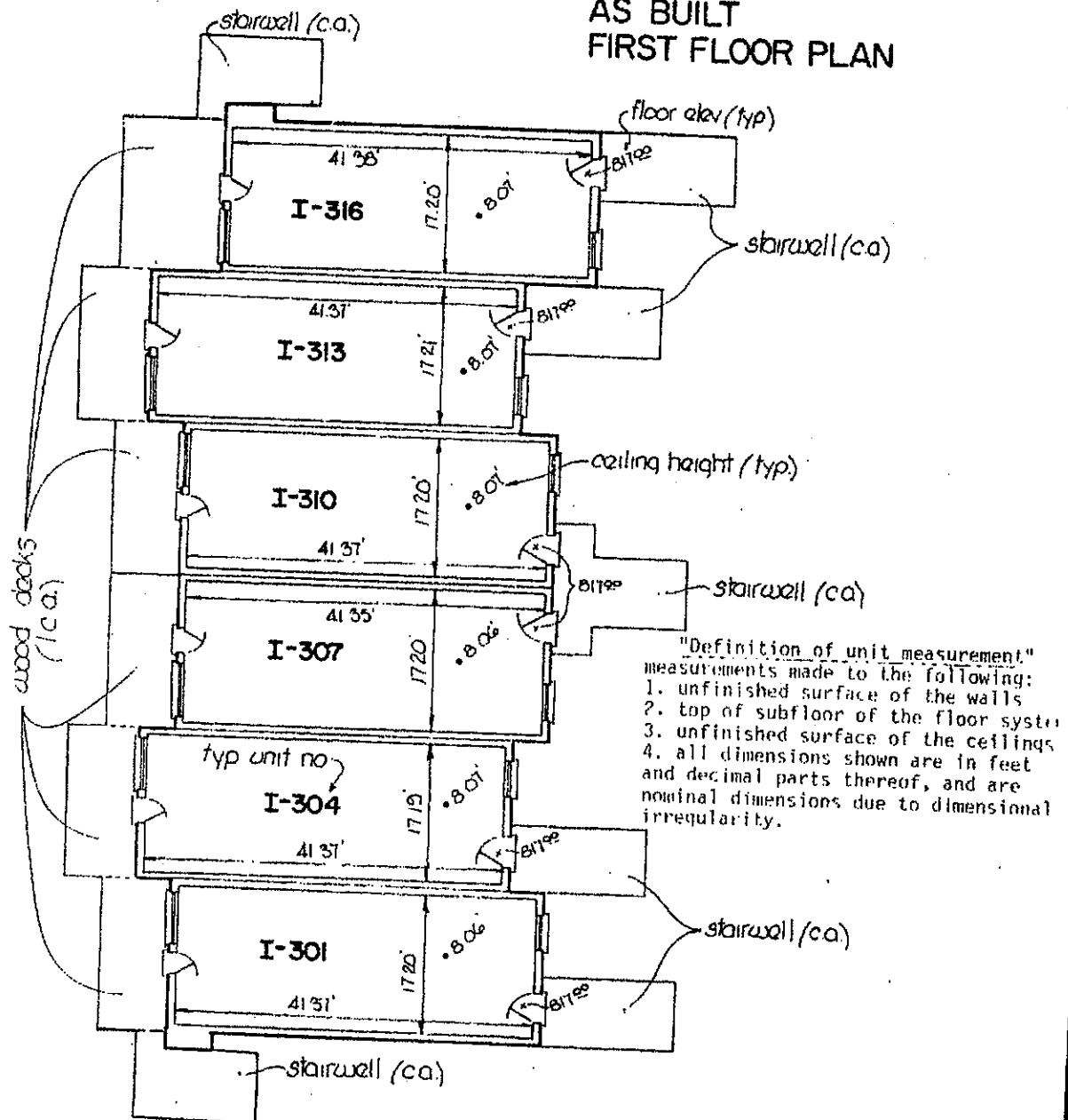
PAUL I. CRIFE, INC./7172 Graham Road/Indianapolis, Indiana 46250/(317) 842-6777

PIC Job #82219-20000
June 7, 1983

EXHIBIT "D"

BUILDING I

AS BUILT FIRST FLOOR PLAN



"Definition of unit measurement"
measurements made to the following:
1. unfinished surface of the walls
2. top of subfloor of the floor system
3. unfinished surface of the ceilings
4. all dimensions shown are in feet and decimal parts thereof, and are nominal dimensions due to dimensional irregularity.

l.c.a. - denotes limited common area
c.a. - denotes common area
ceiling height - vertical height measured from top of subfloor up to unfinished ceiling
floor elevation - vertical elevation of the unfinished surface of the subfloor, this elevation is based upon U.S.G.S. Datum elevation of the project bench mark as shown on Exhibit "C".



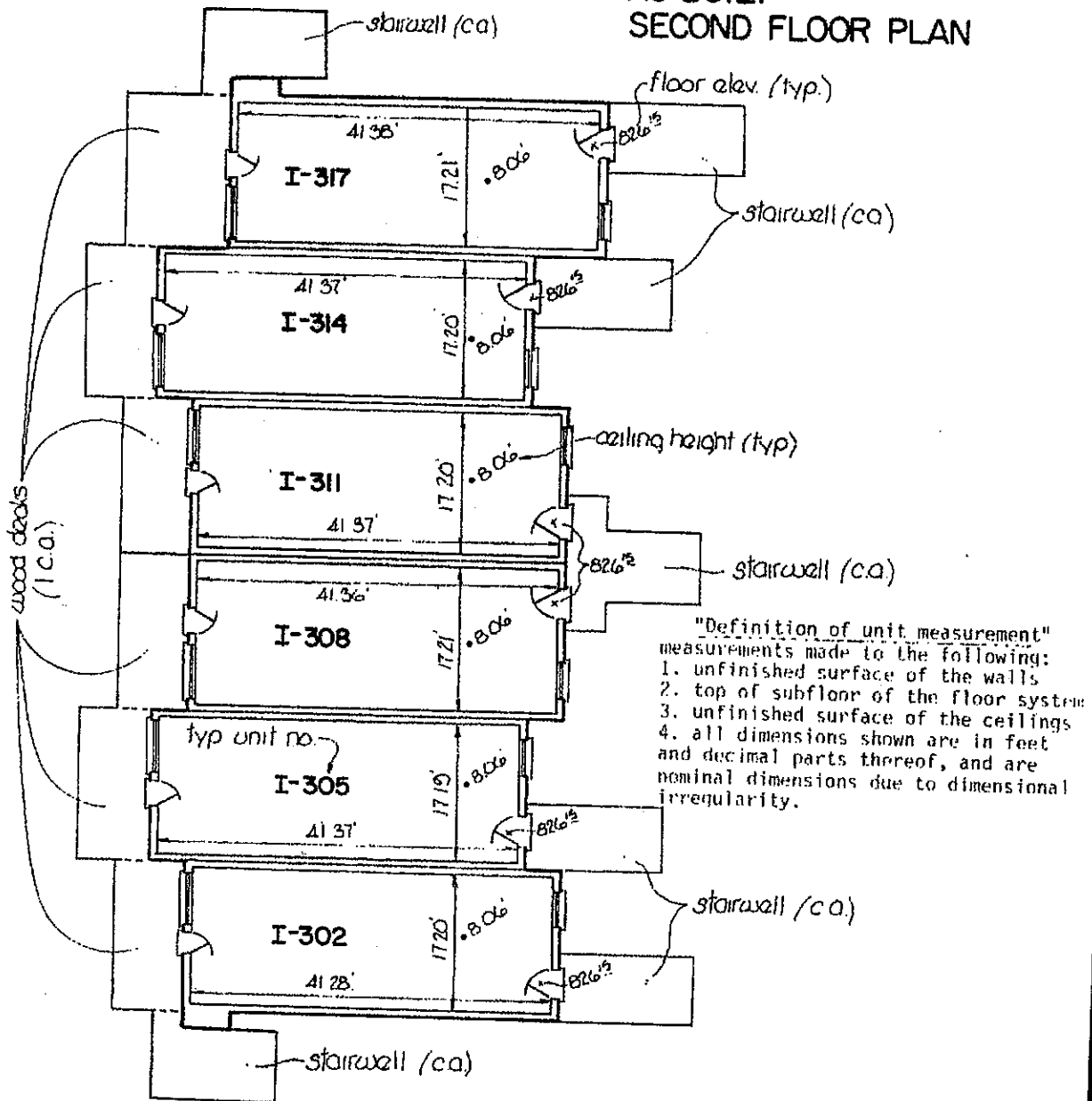
PAUL I. CRIFE, INC./ 7172 Graham Road/Indianapolis, Indiana 46250/(317) 842-6777

PIC Job #82219-20000
June 7, 1983

EXHIBIT "D"

BUILDING I

AS BUILT SECOND FLOOR PLAN



l.c.a. - denotes limited common area
 c.a. - denotes common area
 ceiling height - vertical height measured from top of subfloor up to unfinished ceiling
 floor elevation - vertical elevation of the unfinished surface of the subfloor, this elevation is based upon U.S.G.S. Datum elevation of the project bench mark as shown on Exhibit "C".



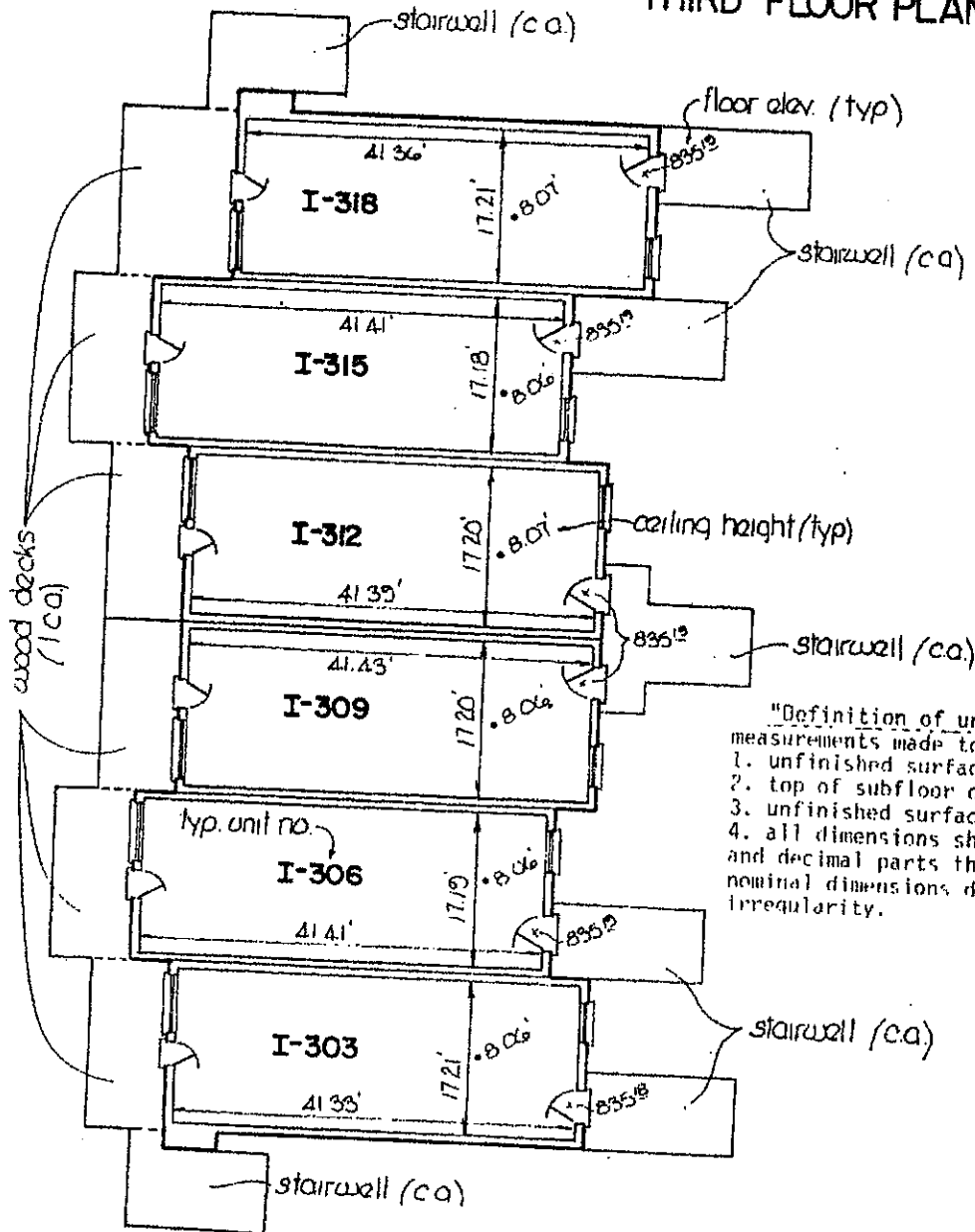
PAUL I. CRIFE, INC. / 7172 Graham Road / Indianapolis, Indiana 46250 / (317) 842-6777

PIC Job #82219-20000
June 7, 1983

EXHIBIT "D"

BUILDING I

AS BUILT THIRD FLOOR PLAN



"Definition of unit measurement"
measurements made to the following:
1. unfinished surface of the walls
2. top of subfloor of the floor system
3. unfinished surface of the ceilings
4. all dimensions shown are in feet
and decimal parts thereof, and are
nominal dimensions due to dimensional
irregularity.

l.c.a. - denotes limited common area

c.a. - denotes common area

ceiling height - vertical height measured from top of subfloor up to unfinished ceiling

floor elevation - vertical elevation of the unfinished surface of the subfloor, this elevation is based upon U.S.G.S. Datum elevation of the project bench mark as shown on Exhibit "C".