



Master Deed

Horizontal or Condominium
Property Law of Kentucky



The Commodore

2140 Bonnycastle Avenue
Louisville, Kentucky 40205

C O N T E N T S

| | | |
|--------|--|----|
| | IDENTIFICATION OF UNITS AND BOUNDARIES..... | 1 |
| I. | LEGAL INTEREST..... | 3 |
| II. | ADMINISTRATION..... | 4 |
| III. | USE AND OWNERSHIP OF GENERAL AND LIMITED COMMON ELEMENTS..... | 4 |
| IV. | GOVERNING DOCUMENTS..... | 4 |
| V. | TELEVISION..... | 4 |
| VI. | LIABILITY FOR ASSESSMENTS..... | 5 |
| VII. | INSURANCE..... | 5 |
| VIII. | EASEMENTS..... | 6 |
| IX. | REPAIRS..... | 7 |
| X. | RIGHTS OF MORTGAGEES AND TRUSTEES..... | 7 |
| XI. | REVOCATION, TERMINATION AND AMENDMENT OF HORIZONTAL PROPERTY REGIME..... | 9 |
| XII. | TAKING BY EMINENT DOMAIN..... | 9 |
| XIII. | CONSTRUCTION AND ENFORCEMENT..... | 11 |
| XIV. | SEVERABILITY..... | 11 |
| XV. | ASSOCIATION'S OPTION AND RIGHT OF FIRST REFUSAL..... | 11 |
| XVI. | ASSOCIATION (COUNCIL OF CO-OWNERS) BYLAWS <i>[removed to separate ByLaws document in 1996]</i> | |
| XVII. | USE AND OCCUPANCY OF UNITS AND COMMON AREAS AND FACILITIES <i>[removed to separate ByLaws document in 1996]</i> | |
| XVIII. | VIOLATION OF DECLARATION..... | 13 |
| IX. | ENTRY BY BOARD..... | 13 |
| XX. | GRANTEES..... | 14 |
| XXI. | INCORPORATION..... | 14 |
| XXII. | FAILURE TO ENFORCE..... | 14 |
| XXIII. | NOTICES..... | 14 |
| XXIV. | CAPTIONS..... | 14 |
| | EXHIBIT A..... | A |
| | EXHIBIT B..... | B |

Master Deed

THIS MASTER DEED Made in Jefferson County, Commonwealth of Kentucky, on the 29th day of April, 1981, by ACRE REALITY, INC., an Illinois Corporation, (hereinafter referred to as the “Developer”), made pursuant to the provisions of the Horizontal Property Law of the Commonwealth of Kentucky.

WITNESSETH THAT:

WHEREAS, Section 381.910 et seq., of the Kentucky Revised Statutes as amended (hereinafter referred to as the “Act”), provides for the creation of horizontal property or condominium in the Commonwealth of Kentucky.

WHEREAS, the Developer is the owner in fee of a parcel of land situated in Louisville, Jefferson County, Kentucky, more particularly described in Exhibit A, which is attached hereto, and made a part hereof by reference as “THE COMMODORE”, which is recorded on Apartment Ownership Book 24, Pages 2 through 8, in the office of the Clerk of the County Court of Jefferson County, Kentucky, which plans are incorporated herein by reference.

NOW THEREFORE,

First: The Developer hereby establishes a horizontal property regime in accordance with Section 381.815 et seq., of the Act, upon the LAND shown on Exhibit A, and more particularly described on “THE COMMODORE” on plat recorded in Apartment Ownership Book 24, Pages 2 through 8, in said Clerk’s office. It is the purpose of the Developer by this Master Deed to so divide and to impose covenants and restrictions upon the LAND, all of which shall run with LAND, and the LAND together with the improvements erected thereon, shall constitute a Condominium Project as defined in Section 381.810 of the Act known as “THE COMMODORE”. The submission of the LAND to the horizontal property regime as aforesaid is subject to all covenants, conditions and restrictions now recorded or hereafter to be placed on the record.

SECOND: Developer hereby establishes the aforesaid LAND into a horizontal property regime as follows:

I. IDENTIFICATION OF UNITS AND BOUNDARIES.

The Condominium Project consists of an eleven story brick and tile building and a one story brick and tile garage, consisting of fifty-eight (58) residential Condominium units and one commercial condominium unit. For the purpose of identification, the condominium units in the eleven story building are given numbers and are shown graphically, delineated and so numbered, in “THE COMMODORE” which is made a part hereof, incorporated herein by reference, and is composed of 7 sheets, recorded in Apartment Ownership Book 24, Pages 2 through 8, in said Clerk’s office. Every condominium unit bears an identifying number and no condominium unit bears the same identifying number as does any other condominium unit. The aforesaid identifying number as to the condominium unit is also the identifying number as to the real estate constituting such condominium unit. The boundary dimensions of each type of condominium unit and the Limited Common Element appurtenant thereto are shown graphically in “THE COMMODORE” as aforesaid. All portions of the Condominium Project not designated as a part of the condominium unit or the Limited Condominium Elements are part of the General Common Elements. The plats contain a survey of the LAND in which the condominium units are located, and a graphic description of the improvements thereon. Together with this Master Deed, plat of “THE COMMODORE” recorded in Apartment Ownership Book as aforesaid, are in sufficient detail to identify the location of dimensions and size of the General Common Elements, Limited Common Elements and of each condominium unit, as evidenced by the Certificate of the Registered Land Surveyor. The legend and notes

contained within the said Exhibits are incorporated herein and made part hereof by reference. Where the designations “Condominium unit” or “unit” are used, such terms are to be considered synonymous with the designation as defined in Section 381.810, et seq., of the Act. For percentage of common interest, see Exhibit B attached hereto and made a part hereof. Said Condominium Project is further described as follows:

A. CONDOMINIUM PROJECT

The buildings in which the condominium units are located.

B. CONDOMINIUM UNIT BOUNDARIES

Each condominium unit shall include that part of the Condominium Project which lies within the following boundaries:

1. UPPER AND LOWER BOUNDARIES

The upper and lower boundaries of the condominium unit shall be the following boundaries extended to an intersection with the perimetrical boundaries.

(i) UPPER BOUNDARY

The horizontal plane which includes the bottom side of the the ceiling.

(ii) LOWER BOUNDARY

The horizontal plane which includes the top surface of the floor.

2. PERIMETRICAL BOUNDARIES

The perimetrical boundaries of the condominium unit shall be the vertical plane which includes the innermost surface of all walls bounding the condominium unit extended to intersections with each other and with the upper and lower boundaries. The Co-Owners of the condominium shall be deemed to own the walls and partitions which are contained in said Co-Owner’s respective condominium unit, and also shall be deemed to own the windows, the entrance doors and balcony doors to his unit.

3. EXCLUSIONS FROM THE EXTENSIONS OF OWNERSHIP

Said condominium unit Co-Owners shall be deemed not to own the paint and other exterior finishes on the outermost side to the entrance doors, and on all windows and not to own any pipe, wire, conduits or other public utility lines, ventilation or other ducts, bearing walls or structural portions of the building running through said respective condominium unit, which are utilized for or serve more than one condominium unit, which items are by these presents hereby made a part of the General Common Elements. Where there are pipes, wires, conduits or other public utility lines, ventilation or other ducts which serve only one condominium unit, such items shall be deemed to be owned by the Co-Owner of said condominium unit and the boundaries of such condominium unit shall be extended to include such structures.

4. AIR CONDITIONING UNITS

Each condominium unit has, as an appurtenance, a separate air conditioning unit. The ownership of these air conditioning units shall be in the name of the owner of the applicable condominium unit. This ownership shall include the ducts, pipes and wiring pertaining to each and provided no action of the Council of Co-Owners may prevent an owner from being properly and comfortably serviced by any commonly owned ducts and pipes.

C. LIMITED COMMON ELEMENTS

The garage area shown and graphically described as such in “THE COMMODORE” record Apartment Ownership Book 24, Pages 2 through 8, aforesaid, is Limited Common Elements. Any expenses of maintenance, repair or replacement relating to such Limited Common Elements and all structural maintenance, repair or replacement thereof shall be treated as and paid for as a part of the Common Expenses of the Council of Co-

Owners, unless the same shall be caused by negligence or deliberate act of the individual condominium Co-Owner's, actual or implied, consent or permission in which case expenses of maintenance, repair or replacement relating to such Limited Common Elements referred to in this Paragraph shall be borne by and assessed against the individual condominium unit Co-Owner.

There are 2 efficiency units, 18 one-bedroom units, 21 two bedrooms units, 12 three bedroom units, 5 four-bedroom units, 1 passenger elevator and 1 freight elevator. There is a basement in the building. There are storage spaces in the basement and laundry room on the first floor. The basement is part of the Common Area. Developer shall have the right to designate storage spaces as limited common elements for the use of designated units. Storage spaces shall bear the same number as the unit to which assigned.

Parking spaces shall not be exclusively reserved but shall be part of the Limited Common Elements. The words "Parking Area" whenever used herein mean the area provided for the parking of automobiles as shown on condominium plans.

D. GENERAL COMMON ELEMENTS

All portions of the Condominium Project not described above as a part of a condominium unit or part of a Limited Common Element are hereby declared to be General Common Elements. Any expense of maintenance, repair or replacement relating to such General Common Elements and all structural maintenance, repair or replacement thereof shall be treated as and paid for as a part of the Common Expense of the Council of Co-Owners, unless the same shall be caused by the negligence or deliberate act of the individual condominium unit Co-Owner or other person having access to such General Common Elements with said Co-Owner's actual or implied consent or permission in which case expenses of maintenance, repair or replacement relating to such General Common Elements referred to in this Paragraph shall be borne by and assessed against the individual condominium unit Co-Owner.

1. Each Co-Owner of a condominium unit shall have undivided interest in the General Common Elements and Limited Common Elements and shall share in the expense of operating and maintaining the same in accordance with the ratio of percentages as set forth in Exhibit B, Schedule of Percentages, attached hereto and incorporated herein by reference, and made a part hereof.
2. Except as provided herein the aforesaid ratio of sharing the percentages of Common Expenses and assessments as shown in Exhibit B, shall remain unchanged without regard to the purchase price of the Condominium units, their locations or the Condominium Project square footage included in such condominium unit. Any common excess funds of the Council of Co-Owners shall be owned by each of the condominium unit Co-Owners in the same proportion as their respective ownership percentage interest in the General Common Elements.

II. LEGAL INTEREST

"THE COMMODORE" shall consist of fifty-eight (58) residential condominium units and one commercial condominium unit, together with General Common Elements and Limited Common Elements as defined herein. Each condominium unit may be individually conveyed and encumbered and may be the subject of ownership, possession or sale, and of all types of juridic acts *inter vivo* or *mortis causa*, as if it were the sole and entirely independent real property of the purchasing Co-Owner and of all his successors in title.

A. JOINDER OF UNITS

The owners are hereby granted the right to join together any two or more units provided same can be joined without impairing the structural integrity of the building and further providing that said joinder will not transverse any hall or common area other than the distance between the two walls of the units so joined. Easements are hereby granted for that purpose across the common area between the walls of various units.

III. ADMINISTRATION

The Administration of "THE COMMODORE" shall be conducted in accordance with the Provisions of this Master Deed and the ByLaws of the Council of Co-Owners, as defined in Section 381.860 of the Act, hereinafter referred to as ByLaws. Every Co-Owner, or Co-Owners, of a condominium unit shall automatically become a member of the Council of Co-Owners of this Condominium Project and shall remain a member of said Council until such time as his ownership ceases, for any reason, at which time his membership in said Council shall automatically cease. Other than as an incident to a lawful transfer of the title to a condominium unit, membership in the Council of Co-Owners shall be non-transferable and any attempt to transfer the same shall be null and void.

IV. USE AND OWNERSHIP OF GENERAL AND LIMITED COMMON ELEMENTS

- A. The use of the General Common Elements shall be limited to Co-Owners of condominium units in residence, to their tenants in residence and to their guests, invitees, and licensees. The use of Limited Common Elements shall be restricted to the Co-Owner of the condominium unit to which it is appurtenant, to the tenants in residence and to their guests, invitees and licenses.
- B. The General Common Elements and Limited Common Elements shall remain undivided and no Co-Owner may bring any action for partition or division of these common elements.
- C. The undivided interest in the General Common Elements and Limited Common Elements shall not be separate from the condominium unit and shall be deemed to be conveyed or encumbered with the condominium unit even though such interest is not expressly mentioned or described in the document of conveyance or encumbrance.
- D. The use of the General Common Elements and Limited Common Elements shall be governed by the ByLaws, and as they may hereafter be amended, and by house rules and regulations adopted by the Council of Co-Owners.
- E. The Council of Co-Owners may suspend or limit the right of any Co-Owner or other person to use any part of the General Common Elements or Limited Common Elements upon failure of such Co-Owner or other person to observe all ByLaws, house rules and regulations promulgated by the Council of Co-Owners governing the use of such General Common Elements or Limited Common Elements.

V. GOVERNING DOCUMENTS

- A. Each Co-Owner and each tenant of a Co-Owner shall comply with all of the provisions of the Master Deed and with the ByLaws, decisions and resolutions of the Council of Co-Owners, as each may be properly amended from time to time. Failure to comply with such provisions, ByLaws, decisions and resolutions shall be grounds for an action to recover damages or for injunctive relief as provided hereinafter in Section XIV hereof.
- B. All Co-Owners and tenants, present and future, or any other person who may be in or use the facilities of the Condominium Project in any manner, are subject to the provisions of this Master Deed and any ByLaws, rules or regulations established by the Council of Co-Owners, and the mere acquisition or rental of any of the condominium apartment units of the Condominium Project or the mere act of occupancy of any of said condominium units or the General Common Elements or Limited Common Elements appurtenant thereto, shall signify that the provisions of this Paragraph of the Master Deed are accepted and ratified.

VI. TELEVISION

The Developer or the Council of Co-Owners may from time to time authorize the installation of one or more master television or radio antenna distribution systems, which shall remain part of the General Common Elements. Any such installation shall be at expense of the Co-Owners.

VII. LIABILITY FOR ASSESSMENTS:

- A. No Co-Owner of a condominium unit may exempt himself from liability for assessments to his condominium unit for the cost of the maintenance and operation of the General Common Elements and Limited Common Elements, by waiver of the use of enjoyment of any of the General Common Elements or Limited Common Elements or by the abandonment of his condominium unit.
- B. The assessments imposed by the Council of Co-Owners in accordance with the provisions of its ByLaws for the maintenance and operation of the General Common Elements shall constitute a lien upon each of the condominium units superior to all other liens, other than liens for real estate taxes and liens for first trust or first mortgage financing. In addition, each Co-Owner shall be personally liable for all such assessments imposed by the Council of Co-Owners which may be due and payable during any time which he owns a condominium unit. This lien shall be a lien on the real estate subordinate to the above mentioned real estate taxes and first mortgages, but will be fully assessed against the real estate and will be enforceable in a Court of competent jurisdiction and if the condominium unit is sold this lien must be satisfied or it will be a burden upon the subsequent Grantees taking title to the condominium unit in "THE COMMODORE". Provided, however, any Mortgagee taking title to a unit by foreclosure or by deed in lieu of foreclosure, or otherwise, will take title free of any unpaid past due assessments. Such Mortgagee's liability for assessments shall commence upon the date it takes title. A Mortgagee who obtains title by foreclosure, deed in lieu of foreclosure, or otherwise, can sell and convey said unit to anyone for any price without permission or approval by the Council of Co-Owners, and free of any assessment liens prior to date of taking title.
- C. In the case of any conveyance of any condominium unit, the conveyee of the condominium unit shall be jointly and severally liable with the conveyor for all unpaid assessments by the Council of Co-Owners against the latter for his share of the Common Expenses up to the time of the grant or conveyance, without prejudice to the conveyee's right to recover from the conveyor the amounts paid by the conveyee therefor. However, upon payment or a fee (not to exceed \$15) therefor any such conveyor shall be entitled to a statement from the management agent or the Board of Directors of the Council of Co-Owners, as the case may be, setting forth the amount of the unpaid assessments against the conveyor of such condominium unit due the Council of Co-Owners and such conveyee shall not be liable for, nor shall the condominium unit conveyed by subject to a lien for any assessments made by the Council of Co-Owners against the conveyor of the condominium unit in excess of the amount therein set forth. Provided, however, any Mortgagee or otherwise taking title to a unit by foreclosure or by deed in lieu or foreclosure, or otherwise will take title free of any unpaid past due assessments. Such Mortgagee's liability for assessments shall commence upon the date it takes title. A Mortgagee who obtains title by foreclosure, deed in lieu of foreclosure, or otherwise, can sell and convey said unit to any one for any price without permission or approval by the Council of Co-Owners and free of any assessment liens prior to date of taking title.

VIII. INSURANCE.

- A. The Council of Co-Owners shall obtain and maintain at all times, to the extent available at least, the following insurance (hereinafter referred to as Condominium Project Insurance):
1. Insurance on the Condominium Project in an amount equal to the full replacement value (i.e. 100% of "replacement cost") of the Condominium Project (as determined annually by the Council of Co-Owners) and with a replacement cost endorsement which provides for the payment of all losses without deduction or allowance for depreciation. Such coverage shall afford protection against at least the following:
 - (i) Loss or damage by fire or other hazards covered by the standard extended coverage endorsement and additional extended coverage endorsement;

(ii) Such other risks as shall customarily be covered with respect to projects similar in construction, location and use, including, but not limited to vandalism, malicious mischief, boiler and machinery explosion or damage and such other insurance as the Board of Directors may from time to time determine; and,

2. Public liability insurance in such amounts and in such forms as may be considered appropriate by the Council of Co-Owners including, but not limited to, water damage level liability, hired automobile, non-owned automobile and any and all other liability incident to the ownership and/or use of the Condominium Project or any portion thereof; and,

3. Workmen's compensation insurance to the extent necessary to comply with any applicable law; and,

4. Such other policies of insurance, including insurance for other risks of a similar or dissimilar nature, as are or shall hereafter be considered appropriate by the Council of Co-Owners.

B. The premium for the insurance coverage shall be a Common Expense to be paid by monthly assessments levied by the Council of Co-Owners against each of the Co-Owners. The premium attributable to coverage on the condominium units and the General Common Elements shall be apportioned among the Co-Owners in accordance with their respective percentages of interest as set forth in Exhibit B attached hereto.

C. The Council of Co-Owners, or its designee, shall have the exclusive authority to adjust losses under the said insurance policies.

D. In no event shall the insurance coverage obtained and maintained by the Council of Co-Owners be brought into contribution with insurance purchased by individual Co-Owners, or their mortgagees.

IX. EASEMENTS.

A. If any portion of a condominium unit, General Common Element or Limited Common Element encroaches upon another, a valid easement for the encroachment and the maintenance of same, so long as it stands, shall and does exist. In the event the multi-family structure is partially or totally destroyed, and then rebuilt, encroachments on parts of the condominium units shall be permitted, and a valid easement for said encroachment and the maintenance thereto shall exist. An easement is reserved for any encroachment within the above described areas due to variances in construction or settling or the building causing changes in the as-built structure of this Condominium Project.

B. There are reserved easements through each of the condominium units for the benefit of any adjoining or other condominium unit contained in the Condominium Project as may be required for the installation, existence, repair and maintenance of all structural elements of the building in which the condominium unit is located, for any television and radio antenna distribution system, for electrical lines and conduits, heating, air conditioning and ventilating ducts, water lines, drain pipes and other appurtenances to all other utility systems in order to adequately serve each of such condominium units. Such easements through a condominium unit shall be according to the plans and specifications for the Condominium Project, or as the Condominium Project was constructed, unless a variance for same is approved in writing by the Co-Owners subject to such easement. The aforesaid easement shall be in addition to all other easements contained herein.

C. Every condominium unit Co-Owner shall have a perpetual easement for support and a perpetual easement in, upon, through and over any portion of the Condominium Project, to keep, maintain, use, repair and replace his condominium unit, in its original position and in every subsequent position to which it changes, by reason of the gradual forces of nature and the elements, whether such subsequent position be, in whole or in part, adjacent,

subjacent, or superjacent to said original position and every condominium unit Co-Owner shall have a perpetual easement in every portion or the Condominium Project for the installation, maintenance and repair of any pipe, cable, wire, other conduits of liquids or energy, supplying water, sewage, telephone, radio, television, electricity, heat, air conditioning, steam or other similar service to the condominium unit owned by him, subject, however, to the provisions that the work of installation or repair shall be performed by the Council of Co-Owners or the agent of said Council or other person whom the Council has delegated such authority and further subject to the provisions set forth in the ByLaws.

- D.** In interpreting any or all of the provisions of this Master Deed or the Schedules or Exhibits attached hereto, subsequent deeds and mortgages to individual condominium units, et cetera, the actual location of the condominium unit shall be deemed conclusively to be the property intended to be conveyed, reserved or encumbered, notwithstanding the fact that any minor variation in location do now or shall exist and a valid easement for such variations and for the maintenance thereof does and shall exist.

X. REPAIRS

The Developer, its agents, its successors, or assigns, or the Council of Co-Owners or its agents, when it takes over operation and maintenance of "THE COMMODORE" shall have the right to enter any condominium unit when necessary to carry out any repair, maintenance or construction for which the Council of Co-Owners is responsible or for which any Co-Owner is responsible and has not completed after appropriate notice from the Council of Co-Owners. Except in emergencies, the entry by the Grantor or Council of Co-Owners shall be made with as little inconvenience to the Co-Owner as practicable. Any damage caused during any entry shall be repaired at the expense of the Council of Co-Owners unless the entry is made to perform any obligation for which the Co-Owner is responsible, in which event the entry and all work done shall be done at the risk and expense of the Co-Owner.

XI. RIGHTS OF MORTGAGEES AND TRUSTEES

Bona Fide first mortgagees holding first mortgages secured by an individual condominium unit within the Condominium Project or upon any other portion of the Condominium Project shall be entitled to the following rights provided that such mortgagees shall have notified the Council of Co-Owners of the fact that they hold such a first mortgage.

- A.** Each Co-Owner may obtain additional insurance at his own expense upon his condominium unit provided that no Co-Owner shall maintain insurance coverage which will tend to decrease the amount which the Council of Co-Owners may realize under any insurance policy which it may have in force on "THE COMMODORE".
- B.** All policies shall provide that such policies may not be cancelled or substantially modified without at least thirty (30) days prior written notice to any and all insureds named thereon, including any and all mortgagees of the condominium apartment units.

C. DAMAGE OR DESTRUCTION

Except as hereinafter provided, the Council of Co-Owners shall receive and hold the amount payable under said Condominium Project Insurance and apply the same to the cost of reconstruction or repair of a damaged or destroyed condominium unit. The Co-Owner of a damaged or destroyed condominium unit shall be obligated to commence the work of repairing or reconstruction of the condominium unit within thirty (30) working days from the date of the damage or destruction. The work shall be accomplished in accordance with the plans and specifications by which the condominium unit was originally constructed, subject, however, to the prior written approval of the Council of Co-Owners. The Council of Co-Owners shall make available and pay to the Co-Owner the amount of insurance proceeds received by said Council for the reconstruction and repair of the condominium unit.

The payment of the proceeds of insurance shall be made as the work progresses at such time and upon compliance by the Co-Owner with such conditions as the Council shall impose, in order to assure full restoration or repair of the damaged portions of the condominium unit in a workmanlike manner, free and clear of any mechanic's and materialmen's liens and any encumbrances, liens, claims or charges. If the insurance proceeds exceed the amount necessary for repair or replacement costs, then any such excess shall be paid to the unit owner and the mortgagee of said unit owner as their interest may appear. If the cost of the reconstruction or repair exceeds the amount paid to the Council of Co-Owners, the excess shall be paid by the Co-Owner.

1. In the event of damage or destruction of less than two-thirds (2/3) of any building of the regime, the insurance proceeds, if sufficient to reconstruct the building, shall be applied to such reconstruction. If the insurance proceeds are not sufficient to cover the costs of reconstruction, then the provisions of Chapter 381, Kentucky Revised Statutes shall be applicable.
2. In the event of destruction of all or more than two-thirds (2/3) of any building, the provisions of KRS 2)¹ shall be applicable.
3. In the event the unanimous agreement of the Co-Owner to reconstruct required by KRS 381.890(2)² is not evidenced by an agreement in writing executed by the Co-Owners of the building destroyed within one month following the catastrophe, the decision not to reconstruct shall be presumed to have been made.
4. In the event the unanimous agreement of the Co-Owner to reconstruct required by KRS, 381.890(2)² is not obtained and the insurance proceeds are delivered to the owners in the destroyed building, the acceptance of the insurance proceeds ratably payable to such Co-Owner by such Co-Owner or his duly authorized agent, executor, administrator, guardian or committee, or the payment of such insurance proceeds to mortgagees and other lien holders entitled thereto under loss-payable clauses, the real estate then remaining shall be sold and the net proceeds divided according to the percentage interest of each Co-Owner.
5. Any new building shall not exceed the total number of units in the destroyed building, and shall be built according to the general plan and scheme and in architectural conformity to the remaining buildings in the project, and such purchaser shall not withdraw property from the terms and provisions of this Master Deed.
 - (a) The holder of any first mortgage as aforesaid is entitled to a written notification from the Council of Co-Owners at least (30) days prior to the effective date of any change in the Condominium Project documents and any change of the management agent (not including change in employees of any corporation manager) at the Condominium Project.
 - (b) The holder of any mortgage as aforesaid is further entitled to written notification from the Council of Co-Owners of any default by the mortgagor of such condominium unit in the performance of such mortgagor's obligations under the Condominium Project documents which is not cured within thirty (30) days.
 - (c) Unless all holders of first mortgage liens on individual condominium units shall have given their prior written approval, the Council of Co-Owners of the Condominium Project shall not:
 - (i) Change the pro rata interest or obligations of any condominium unit as shown on Exhibit B hereto for purpose of levying assessments and charges and determining shares of the common elements and proceeds of the Condominium Project except in case of taking by eminent domain provided for in Section XIII hereof.

¹ As of 1995 the Revised Kentucky Statutes #KRS 381.890 (2) updated this reference to paragraph (3).

² Updated Kentucky State KRS 381.890 (3) no longer requires a unanimous vote.

(ii) Partition or subdivide any condominium apartment unit or the common elements of the Condominium Project.

(iii) By act or omission seek to abandon the condominium status of the Condominium Project except as provided herein in case of substantial loss to the Condominium apartment units and common elements of the Condominium Project.

XII. REVOCATION, TERMINATION AND AMENDMENT OF HORIZONTAL PROPERTY REGIME

- A. The Condominium Project established by this Master Deed shall not be revoked nor any of the LAND or improvements removed from "THE COMMODORE" nor any of the provisions of the Master Deed amended unless all the Co-Owners or the sole owner of the LAND covered hereby, if any there be, shall by deed make such amendment or waive this regime and regroup or merge the records of the filial estate with the principal property, provided that the filial estates are unencumbered, or if encumbered, that the creditors in whose behalf the encumbrances are recorded accept as security the undivided portions of the property owned by the debtor, or otherwise agree to such revocation, amendment or removal by appropriate documentation. Provided, however, the provisions set out in this paragraph are subject to the provisions set out in Section III above.
- B. In the event "THE COMMODORE" is terminated for any cause or reason other than revocation as aforesaid, then the entire "THE COMMODORE" shall be deemed to be owned by all of the Co-Owners as tenants in common in the same proportions as their percentages of interest in the General Common Elements expressed in Exhibit B of this Master Deed. Any liens affecting any of the condominium units shall be transferred in accordance with existing priorities to the percentage of the undivided interest of the Co-Owner of the condominium unit upon which the lien was originally imposed. Subsequent to termination the entire "THE COMMODORE" shall be subject to an action for partition at the suit of any Co-Owner, in which event the net proceeds of sale shall be considered as one fund and shall be divided among all of the Co-Owners in proportion to their percentages of interest as set forth in Exhibit B attached hereto; provided, however, that before any proceeds of sale are distributed to any Co-Owner, all mortgages and liens imposed upon the condominium unit previously owned by the Co-Owner shall be first paid and thereafter all assessments imposed upon the condominium unit by the Council of Co-Owners shall be satisfied in full, out of the share otherwise payable to said Co-Owner.
- C. Notwithstanding any other provision contained herein concerning termination, the first mortgage liens on damaged or destroyed condominium units shall be satisfied out of the insurance or other proceeds to the extent sufficient for this purpose, prior to a partition suit being instituted and thereafter, the interest in the property owned, or in the distribution of the proceeds derived from a partition suit, or all such condominium unit Co-Owners whose first mortgages have been so satisfied shall be proportionately adjusted.

XIII. TAKING BY EMINENT DOMAIN:

Payment for the taking of a portion of a condominium unit or of the common elements by eminent domain or the conveyance under threat shall be deemed to be proceeds from insurance on account of casualty and shall be deposited with the Council of Co-Owners. Even though the awards may be payable to a Co-Owner, every such condominium unit Co-Owner shall deposit the award with the Council of Co-Owners. And, in the event of failure to do so, in the discretion of the Council of Co-Owner, a special assessment shall be made against a defaulting Co-Owner in the amount of his award, and the amount of such award shall set off against the sums hereinafter made payable to such Co-Owner. The proceeds of the award shall be distributed or used in a manner heretofore provided for insurance proceeds except that when the horizontal property regime is not to be terminated, and one or more condominium units are taken in part, the taking shall have the following effects:

A. IF THE CONDOMINIUM UNIT IS REDUCED BUT TENABLE

If the condominium unit taking reduces the size of the condominium unit, and the remaining portion of the condominium unit can be made tenable, the award for the taking of a portion of the condominium unit shall be used for the following purposes in order stated, and the following changes shall be effected in the horizontal property regime:

1. The condominium unit shall be made tenable. If the cost of such work exceeds the amount of the award, the additional funds required shall be assessed against the Co-Owner of the condominium unit.
2. The balance of the award, if any, shall be distributed to the Co-Owner of the condominium unit and to each mortgagee of the condominium unit included in the mortgagee records list, the remittance being payable jointly to the Co-Owner and the mortgagees.
3. If the taking reduces a two bedroom condominium unit to a one bedroom condominium unit, the percentage assessment against the Co-Owner of the condominium unit for the Common Expense and share in the common elements shown in Exhibit B attached hereto shall be reduced to be the same as the percentage shown for the other Co-Owners of similar condominium units and the shares of all condominium units Co-Owners and the liability for Common Expenses shall be recomputed and adjusted.

B. CONDOMINIUM UNIT MADE UNTENABLE

If the taking destroys or so reduces the size of the condominium unit that it cannot be made tenable, the award for the taking of the condominium unit shall be used for the following purposes in the order stated, and the following changes shall be effected in the horizontal property regime.

1. The market value of such condominium unit immediately prior to the taking shall be paid to the Co-Owner of the condominium unit and to each mortgagee of the condominium unit included in the mortgagee roster, the remittance being payable jointly to the Co-Owner and the mortgagees.
2. The remaining portion of such condominium unit, if any, shall become a part of the common elements and shall be placed in condition for use by all of the condominium unit Co-Owners in a manner approved by the Council of Co-Owners; provided, or the cost of such work shall exceed the balance of the fund from the award for the taking, such work shall be paid for by assessment as a Common Expense among all the remaining Co-Owners.
3. The shares in the common elements and liability for expenses appurtenant to the condominium units which continue as a part of the horizontal property regime shall be equitably adjusted to distribute the ownership of the common elements and liability for expenses among the reduced number of Co-Owners. This shall be done by recomputing the shares of such continuing Co-Owners in the common elements as pro rata percentages of the total of the shares of such Co-Owners as they existed prior to the adjustment.
4. If the amount of the award for the taking is not sufficient to pay the market value of the condemned condominium unit to the Co-Owner, and to condition the remaining portion of the condominium unit for use as part of the common elements, the additional funds required for such purpose shall be raised by assessments against all the condominium unit Co-Owners who will continue as Co-Owners of condominium units after the changes in the horizontal property regime affected by the taking. Such assessment shall be made in proportion to the shares of such Co-Owners in the common elements after the changes effected by the taking. In the event that the market price cannot be determined by negotiation, it shall be determined by binding arbitration in accordance with the rules of the American Arbitration Association.

- C. The Council of Co-Owners shall thereafter have the right to file among the land records a Deed of Correction to incorporate all necessary changes.

XIII. CONSTRUCTION AND ENFORCEMENT

The provisions hereof shall be liberally construed to effectuate the purpose of creating a uniform plan for the development and operation of a Condominium Project. Enforcement of these covenants and restrictions and of the ByLaws shall be any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant or restrictions either to restrain or enjoin violation or to recover damages, or both, against any condominium unit, to enforce any lien created thereby; and the failure or forbearance by the Council of Co-Owners or the Co-Owner of any condominium unit to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter. There shall be, and there is hereby created and declared to be, a conclusive presumption that any violation or breach of any attempted violation or breach of any of the within covenants or restrictions can be adequately remedied by action at law or exclusively by recovery of damages.

XIV. SEVERABILITY

Invalidation of any one of these covenants or restrictions or other provisions of this Master Deed by judgement, decree or other shall in no way affect any other provisions hereof, each of which shall remain in full force and effect. In the event that any provision, condition, covenant or restrictions hereof is, at the time of recording of this instrument, void, voidable or unenforceable as being contrary to any applicable Federal, State or local laws, the Developer, its successors or assigns, and all persons claiming by, through, or under the "THE COMMODORE" covenants and agrees that any future amendments or supplements to the said laws having the effect of removing such invalidity, voidability or unenforceability, shall be deemed to apply retrospectively to this instrument and the provision contained therein which otherwise might be invalid and it is covenanted and agreed that any such amendments and supplements to said laws shall have the effect herein declared as fully as if they had been in effect at the time of the execution of this instrument.

XV. ASSOCIATION'S OPTION AND RIGHT OF FIRST REFUSAL

- A. Any unit owner other than Developer or a mortgagee of a unit who has acquired title thereto in lieu of or through foreclosure who wishes to sell or lease his unit (or any lessee of any unit wishing to assign his lease or sublease such unit) to any person shall give to the Association no less than ten (10) days' prior written notice of any such sale, lease, assignment or sublease, setting forth in detail the terms of any contemplated sale, lease, assignment or sublease, which notice shall specify the name and address of the proposed purchaser, assignee or lessee. The Association shall have the first right and option to purchase or lease such unit upon the same terms, which option shall be exercisable for a period of ten (10) days after receipt of such notice. If said option is not exercised by the Association within said ten (10) days, the unit owner (or lessee) may, at the expiration of said ten-day period and at any time within sixty (60) days after the expiration of said ten-day period, contract to sell or lease (or sublease or assign) such unit to the proposed purchaser, assignee, or lessee named in such notice upon the terms specified therein.
- B. In the event any unit owner shall default in the payment of any monies required to be paid under the provisions of any mortgage or trust deed against his unit, the Association shall have the right to cure such default by paying the amount so owing to the party entitled thereto, and shall thereupon have a lien for unpaid common expenses as provided herein.

- C. The Association shall not exercise any option hereinabove set forth to purchase or lease any unit without the written consent of seventy-five (75%) per cent of the unit owners. The Association, through its duly authorized representatives may bid to purchase at any auction or sale of the unit or interest therein of any unit owner, deceased or living, which said sale is held pursuant to an order or direction of a court upon the prior written consent of seventy-five (75%) per cent of the unit owners, which said consent shall set forth a maximum price which the Association is authorized to bid and pay for said unit or interest therein.
- D. Upon the written consent of all of the members of the Board, any of the options contained in this Paragraph XVI may be released or waived and the unit or interest therein which is subject to an option set forth in this paragraph may be sold, conveyed, leased, given or devised free and clear of the provisions of this paragraph.
- E. A certificate executed and acknowledged by a majority of the Board stating that the provisions of this Paragraph XVI as herein set forth have been met by a unit owner or duly waived by the Board, and that the rights of the Board hereunder have terminated, shall be conclusive upon the Board and the unit owners in favor of all persons who rely in good faith, and such certificate shall be furnished to any unit owner who has in fact complied with the provisions of this paragraph and whose unit or interest therein has not been acquired as in this paragraph provided, upon request, at a reasonable fee not to exceed Fifteen (\$15.00) Dollars.
- F. The terms of this Paragraph XVI hereinabove contained shall not be applicable to the transfer by gift, sale, testate or intestate succession, operation of law, or otherwise, of any interest of Developer or of the interest of a Co-Owner of any unit to any other Co-Owner of the same unit, where such Co-Owners hold title to such unit as tenants in common or as joint tenants.
- G. Where title to any unit is held by a trust, the assignment, sale, conveyance or other transfer by a beneficiary of such trust of his or her beneficial interest in such trust (other than a security for a bona fide indebtedness) shall be deemed as assignment, sale, conveyance, or other transfer of the unit owned by such trust.
- H. Where title to any unit is held by a corporation, or a partnership, the transfer of fifty (50%) per cent more of the issued and outstanding shares of such corporation, or of (50%) per cent or more of the interest in such partnership, shall be deemed a transfer of the unit owned by such corporation or partnership.
- I. The terms of this Paragraph XVI hereinabove contained shall not be applicable to the sale, conveyance or leasing of a unit by any mortgagee or Developer if said Mortgagee shall acquire title to such unit by foreclosure of a mortgage or deed in lieu of foreclosure on the property, or any unit.
- J. Acquisition of units or interests therein under the provisions of this paragraph shall be made from the maintenance or common expense fund. If said fund is insufficient, the Board shall levy a special assessment against each unit owner in the ratio that his percentage of ownership in the common elements as set forth in Schedule B bears to the total of all such percentages applicable to units subject to said special assessment, which assessment shall become a lien upon each unit and may be foreclosed in like manner as a mortgage. The Association may borrow money to finance the acquisition of a unit or interest therein which said acquisition is authorized by this paragraph; provided, however, that no financing may be secured by an encumbrance or hypothecation of any portion of the property other than the unit or interest therein to be acquired.

K. Units or interests therein acquired pursuant to the terms of this paragraph shall be held of record in the name of the Board or such nominee or entity as it shall designate, for the use and benefit of all the unit owners in the same proportion that the Board could levy a special assessment under the terms of sub-paragraph (j) hereof. Said units or interest therein shall be sold or leased by the Board for the benefit of the unit owners upon such price and terms as the Board shall determine. All proceeds of such sale and/or leasing shall be deposited in the maintenance or common expense fund and may thereafter be disbursed at such time and in such manner as the Board shall determine.

XVI. **ASSOCIATION (COUNCIL OF CO-OWNERS) BYLAWS** [*removed to separate ByLaws document in 1996*]

XVII. **USE AND OCCUPANCY OF UNITS, COMMON AREAS AND FACILITIES** [*removed to separate ByLaws document in 1996*]

XVIII. **VIOLATION OF DECLARATION**

The violation of any restriction or condition or regulations adopted by the Board or the breach of any covenant or provisions herein contained or contained in the Condominium Property Law, as amended, shall give the Board the right, in addition to any other rights provided for in this Master Deed: (a) to enter upon the unit or any portion of the property upon which, or as to which such violation or breach exists, and to summarily abate and remove, at the expense of the defaulting unit owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and the Board, or its employees or agent, shall not thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

Furthermore, if any unit owner (either by his own conduct or by the conduct of any other occupant of his unit) shall violate any of the covenants of this Master Deed or the regulations adopted by the Board and such violation shall continue for thirty (30) days after notice in writing from the Board or shall reoccur more than once thereafter, then the Board shall have the power to issue to the defaulting unit owner a ten (10) day notice in writing to terminate the rights of the said defaulting owner to continue as a unit owner and to continue to occupy, use or control his unit, and thereupon an action in equity may be filed by the Association against the defaulting unit owner for a decree of mandatory injunction against the unit owner or occupants or, in the alternative, a decree declaring the termination of the defaulting unit owner's right to occupy, use or control the unit owned by him on account of the breach of covenant and ordering that all the right, title and interest of the unit owner in the property shall be sold subject to the lien of any existing mortgage at a judicial sale upon such notice and terms as the court shall establish, except that the Court shall enjoin and restrain the defaulting unit owner from reacquiring his interest at such judicial sale or by virtue of the exercise of any right of redemption which may be established. The proceeds of any such judicial sale shall first be paid to discharge court costs, court reported charges, reasonable attorney fees and all other expenses of the proceeding and sale, and all such items shall be taxed against the defaulting unit owner in said decree. Any balance of proceeds after satisfaction of such charges, and any unpaid assessments hereunder or any liens, shall be paid to the unit owner. Upon the confirmation of such sale, the purchaser thereof shall thereupon be entitled to a deed to the unit and immediate possession of the unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession, and it shall be a condition of any sale, and the decree shall so provide, that the purchaser take the interest in the property sold subject to the Master Deed.

XIX. **ENTRY BY BOARD**

The Board or its agents or employees may enter any unit when necessary in connection with any painting, maintenance or reconstruction for which the Board is responsible, or which the Board has the right or duty to do. Such entry shall be made with as little inconvenience to the unit owners as practicable, and any damage caused thereby shall be repaired by the Board at the expense of the maintenance fund.

XX. GRANTEES

Each grantee of Developer by the acceptance of a deed of conveyance accepts the same subject to all easements, restrictions, conditions, covenants, reservations, liens and charges and the jurisdiction, rights and powers created or reserved by this Master Deed, and the provisions of the Condominium Property Law, as at any time amended, and all easements, rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall insure to the benefit of such owner in like manner as though the provisions of this Master Deed were recited and stipulated at length in each and every deed of conveyance.

XXI. INCORPORATION

Developer has heretofore caused the formation of a Kentucky not-for-profit corporation known as COUNCIL OF CO-OWNERS OF COMMODORE CONDOMINIUMS, INC., to act as the governing body for all unit owners in administration and operation of the property.

- A. Each unit owner or owners shall be a member of such corporation until sale of such units at which time the new unit owner or owners shall automatically become a member therein.
- B. The Provisions of Paragraph XXI of this Master Deed shall be part of the ByLaws of such corporation.

XXII. FAILURE TO ENFORCE

No terms, obligations, covenants, conditions, restrictions or provisions imposed hereby or contained herein shall be abrogated or waived by any failure to enforce the same, no matter how many violations or breaches may occur.

XXIII. NOTICES

Notices required or permitted to be given to the Association, the Board or any unit owner may be delivered to any officer of the Association, member of the Board or such unit owner at his unit.

XXIV. CAPTIONS

The captions contained in this Master Deed are for convenience only and are not a part of this Master Deed and are not intended in any way to limit or enlarge the terms and provisions of this Master Deed.

IN WITNESS WHEREOF,

ACRE REALTY, INC., by duly authorized officer, has caused this Master Deed to be signed.

ACRE REALTY, INC.

BY:

STATE OF)
) as
COUNTY OF)

The foregoing Master Deed was acknowledged before me this 29th day of April, 1980, by Jack L. McDonald as President of ACRE REALTY, INC., as Illinois Corporation, on behalf of said corporation.

Prepared by Henry B. Mann
215 South 5th Street
Louisville, KY

Henry B. Mann

Notary Public,

Henry B Mann, Attorney
My commission expires May 7, 1982

EXHIBIT A

BEGINNING at the intersection of the Southeastwardly line of Bonnycastle Avenue with the Southwestwardly line of Cowling Avenue (formerly known as Everett Avenue); thence Southeastwardly with said Southwestwardly line of Cowling Avenue, 177 50 feet to a point; thence Southwestwardly and parallel with the said line of Bonnycastle Avenue, 146 00 feet to a point; thence Southeastwardly and parallel with the said Southwestwardly line of Cowling Avenue, 50 00 feet to a point; thence Southwestwardly and parallel with the said Southeastwardly line of Bonnycastle Avenue, 54 00 feet to a point in the Northeastwardly line of a dedicated public alley; thence Northwestwardly, along said line and parallel with the Southwestwardly line of Cowling Avenue, 227.50 feet to a point in the Southeastwardly line of Bonnycastle Avenue aforementioned; thence Northeastwardly along the last mentioned line, 200.00 feet to the point of beginning.

BEING all of Lot 23 and part of Lot 22, Block No. ? as shown on the plat of Bonnycastle Subdivision as recorded in Plat and Subdivision Book 1, Page 39, in the office of the Clerk of the County Court of Jefferson County Kentucky.

Developer having acquired title by deed date April 29th, 1981, recorded in Deed Book 5226, Page 225, in the office of the Clerk of the County Court of Jefferson County, Kentucky.

CORRECTION OF EXHIBIT B

ATTORNEY AT LAW
215 South Fifth Street
Louisville, Kentucky 40202
(502) 587-6544

August 7, 1986

Ms. Louise Chapman
The Commodore
2140 Bonnycastle Avenue
Louisville, Kentucky 40205

Dear Ms. Chapman:

As requested, enclosed is Correction of Exhibit B to Master Deed of the Commodore, which should be executed by an officer of the Council of Co-Owners of the Commodore Condominiums.

If you would return the same document to me I would be happy to have it recorded.

Yours truly,
Henry B. Mann, Attorney

EXHIBIT B

Corrections [to BOOK 5226 PAGE 855] of
 Exhibit To Master Deed
 The Commodore, A Condominium
 August 11, 1986

| UNIT | PERCENTAGE OF OWNERSHIP | SQUARE FOOTAGE |
|------|-------------------------|----------------|
| 1A | 2.46% | 1906 |
| 1B | 1.74% | 1350 |
| 1C | 1.33% | 1035 |
| 2A | 1.91% | 1480 |
| 2B | 1.90% | 1473 |
| 2C | 1.97% | 1527 |
| 2D | 1.17% | 909 |
| 2E | 1.66% | 1291 |
| 2G | .64% | 495 |
| 3A | 1.91% | 1482 |
| 3B | 1.04% | 805 |
| 3C | 1.97% | 1528 |
| 3D | 2.03% | 1576 |
| 3E | 1.67% | 1295 |
| 3F | .81% | 629 |
| 4A | 1.91% | 1483 |
| 4B | 1.90% | 1474 |
| 4C | 1.21% | 940 |
| 4D | 2.32% | 1804 |
| 4E | 1.38% | 1074 |
| 4H | .64% | 496 |
| 5A | 1.92% | 1487 |
| 5B | 1.91% | 1479 |
| 5C | 1.97% | 1527 |
| 5D | 2.35% | 1821 |
| 5E | 1.38% | 1067 |
| 6A | 1.92% | 1490 |
| 6B | 1.91% | 1479 |
| 6C | 1.97% | 1530 |
| 6D | 2.34% | 1813 |
| 6E | 1.38% | 1072 |
| 7A | 1.07% | 830 |
| 7AA | .82% | 637 |
| 7B | 1.90% | 1473 |
| 7C | 1.98% | 1533 |
| 7D | 2.03% | 1579 |
| 7E | 1.67% | 1298 |
| 8A | 1.91% | 1483 |
| 8B | 1.91% | 1481 |
| 8C | 1.97% | 1532 |
| 8D | 2.35% | 1822 |
| 8E | 1.37% | 1063 |
| 9A | 1.91% | 1484 |
| 9B | 1.91% | 1482 |
| 9C | 1.98% | 1533 |
| 9D | 1.30% | 1011 |
| 9E | 1.37% | 1062 |
| 9G | .99% | 765 |
| 10A | 1.91% | 1482 |
| 10B | 1.05% | 811 |
| 10C | 1.93% | 1496 |
| 10D | 2.03% | 1579 |
| 10E | 1.68% | 1301 |
| 10F | .81% | 631 |
| 11A | 1.91% | 1482 |
| 11B | 1.90% | 1477 |
| 11C | 1.98% | 1533 |
| 11D | 2.38% | 1845 |
| 11E | 1.39% | 1075 |
| 59 | 100.00% | 77,597 |

The Commodore

2140 Bonnycastle Avenue

Louisville, Kentucky 40205

502.451.7042

Reprint: April 2003