

applicable), debris removal, and water damage endorsements, insuring the entire Property (including all of the units and the bathroom and kitchen fixtures initially installed therein by the Declarant and the replacements thereto installed by the Declarant but not including furniture, wall coverings, furnishings or other personal property supplied or installed by unit owners), together with all air-conditioning and heating equipment and other service machinery contained therein and covering the interests of the Corporation, the Board of Directors and all unit owners and their Mortgagees, as their interests may appear, (subject, however, to the loss payment and adjustment provisions in favor of the insurance trustee contained in Section 6.6 hereof), in an amount equal to one hundred percent of the then current replacement cost of the Property (exclusive of the land, excavations, foundations, and other items normally excluded from such coverage), without deduction for depreciation (such amount to be redetermined annually by the Board with the assistance of the insurance company affording such coverage). The Board of Directors shall also obtain and maintain such coverage on all real and personal property owned by the Corporation.

(b) Such policy shall also provide:

(1) A waiver of any right of the insurer to repair, rebuild, or replace any damage or destruction, if a decision is made pursuant to these Bylaws not to do so;

(2) The following endorsements (or equivalent):  
 (i) "no control" (to the effect that coverage shall not be prejudiced by any act or neglect of any occupant or unit owner or their agents when such act or neglect is not within the control of the insured, or the unit owners collectively; nor by any failure of the insured, or the unit owners collectively, to comply with any warranty or condition with regard to any portion of the Condominium over which the insured, or the unit owners collectively, have no control); (ii) "cost of demolition"; (iii) "contingent liability from operation of building laws or codes"; (iv) "increased cost of construction"; (v) "condominium replacement cost"; and (vi) "agreed amount" or elimination of co-insurance clause; and

(3) That any "no other insurance" clause expressly exclude individual unit owners' policies from its operation so that the physical damage policy purchased by the Board of Directors shall be deemed primary coverage and any individual unit owners' policies shall be deemed excess coverage, and in no event shall the insurance coverage obtained and maintained by the Board of Directors hereunder provide for or be brought into contribution with insurance purchased by individual unit owners or their Mortgagees unless otherwise required by law.

(c) A duplicate original of the policy of physical damage insurance, all renewals thereof, and any subpolicies or certificates and endorsements issued thereunder, together with

proof of payment of premiums, shall be delivered by the insurer to any Mortgagee requesting the same, at least thirty days prior to expiration of the then current policy. Prior to obtaining any policy of physical damage insurance or any renewal thereof the Board of Directors shall obtain an appraisal from an insurance company, or such other source as the Board may determine, of the then current replacement cost of the Property (exclusive of the Land, excavations, foundations, and other items normally excluded from such coverage), without deduction for depreciation, for the purpose of determining the amount of physical damage insurance to be secured pursuant to this section. All Mortgagees shall be notified promptly of an event giving rise to a claim under such policy arising from damage to the common elements in excess of one percent of the then current replacement cost of the Property. The Mortgagee of a unit shall be notified promptly of any event giving rise to a claim under such policy arising from damage to such unit.

Section 6.3. Liability Insurance. The Board of Directors shall obtain and maintain comprehensive general liability (including libel, slander, false arrest, and invasion of privacy coverage) and property damage liability insurance in such limits as the Board may from time to time determine, insuring each director, the managing agent, and each unit owner against any liability to the public or to the unit owners (and their invitees, agents, and employees) arising out of, or incident to the ownership or use of the common elements. Such insurance shall be issued on a comprehensive liability basis and shall contain: (i) a cross liability endorsement under which the rights of a named insured under the policy shall not be prejudiced with respect to an action against another named insured; (ii) hired and non-owned vehicle coverage; (iii) host liquor liability coverage with respect to events sponsored by the Corporation; (iv) deletion of the normal products exclusion with respect to events sponsored by the Corporation; and (v) a "severability of interest" endorsement which shall preclude the insurer from denying liability coverage to a unit owner because of negligent acts of the Unit Owners Association or of another unit owner. The Board of Directors shall review such limits once each year, but in no event shall such insurance be less than one million dollars covering all claims for bodily injury or property damage arising out of one occurrence. Reasonable amounts of "umbrella" liability insurance in excess of the primary limits shall also be obtained in an amount not less than one million dollars.

Section 6.4. Other Insurance. The Board of Directors shall obtain and maintain:

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(a) adequate fidelity coverage to protect against dishonest acts on the part of Officers, directors, trustees, and employees of the Corporation and all others who handle, or are responsible for handling, funds of the Corporation, including the managing agent. Such fidelity bonds shall: (i) name the Corporation as an obligee; (ii) be written in an amount not less than one-half the total annual condominium assessments for the year or the amount required by the Mortgagees, the Federal National Mortgage Association or the Federal Home Mortgage

Corporation, whichever is greatest; and (iii) contain waivers of any defense based upon the exclusion of persons who serve without compensation from any definition of "employee" or similar expression;

(b) if required by any governmental or quasigovernmental agency, including without limitation the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation, flood insurance in accordance with the then applicable regulations of such agency;

(c) workmen's compensation insurance if and to the extent necessary to meet the requirements of law (including a voluntary employees endorsement and an "all states" endorsement);

(d) broad form machinery and pressure vessel explosion insurance (if applicable) in an amount not less than five hundred thousand dollars per accident per location;

(e) directors and officers liability insurance in an amount not less than reasonably necessary; and

(f) such other insurance as the Board of Directors may determine or as may be requested from time to time by a Majority Vote.

Section 6.5. Separate Insurance. Each unit owner shall have the right to obtain insurance for such unit owner's benefit, at such unit owner's expense, covering the unit and such unit owner's personal property and personal liability, as well as any improvements made to the unit by such unit owner (under coverage normally called "improvements and betterments coverage"); provided, however, that no unit owner shall be entitled to exercise this right to acquire or maintain such insurance coverage so as to decrease the amount which the Board of Directors, on behalf of all unit owners, may realize under any insurance policy maintained by the Board or to cause any insurance coverage maintained by the Board to be brought into contribution with insurance coverage obtained by a unit owner. No unit owner shall obtain separate insurance policies on the Condominium except as provided in this section.

Section 6.6. Insurance Trustee.

(a) All physical damage insurance policies purchased by the Board of Directors shall be for the benefit of the Corporation, the unit owners, their Mortgagees, and the Declarant, as their interests may appear, and shall provide that all proceeds of such policies shall be paid in trust to the Board as "insurance trustee" to be applied pursuant to the terms of the Declaration.

(b) The sole duty of the insurance trustee shall be to receive such proceeds as are paid to it and to hold the same in trust for the purposes elsewhere stated in these Bylaws or the Declaration for the benefit of the insureds and their beneficiaries thereunder.

## ARTICLE 7

### Mortgages

Section 7.1. Notice to Board of Directors. A unit owner who mortgages the unit shall notify the Board of Directors of the name and address of the Mortgagee and shall file a conformed copy of the note and mortgage with the Board.

Section 7.2. Notice of Default, Casualty, or Condemnation. The Board of Directors, when giving notice to any unit owner of a default in paying an assessment for common expenses (which remains uncured for sixty days) or any other default, shall simultaneously send a copy of such notice to the Mortgagee of such unit. Each Mortgagee shall also be promptly notified of any casualty when required by Section 6.3(c) hereof, of all actions taken under Article 6 and of any taking in condemnation or by eminent domain.

Section 7.3. Notice of Amendment of Condominium Instruments. The Board of Directors shall give notice to all Mortgagees at least seven days prior to the date on which the unit owners, in accordance with the provisions of these Bylaws, materially amend the condominium instruments.

Section 7.4. Notice of Change in Managing Agent. The Board of Directors shall give notice to all Mortgagees requesting such notice at least thirty days prior to changing the managing agent.

### Section 7.5. Mortgagees' Approvals.

(a) Two-Thirds Vote. Unless at least sixty-seven percent of the Mortgagees and at least sixty-seven percent of the unit owners have given their prior written approval, the Corporation shall not: (i) (except following destruction or condemnation) change any unit's Common Element Interest; (ii) (except following destruction or condemnation) partition, subdivide, abandon, encumber, sell, or transfer the common elements of the Condominium; (iii) (except following destruction or condemnation) by act or omission withdraw the submission of the Property to the Horizontal Property Law; (iv) modify the method of determining and collecting assessments or allocating distributions of casualty insurance proceeds or condemnation awards; or (v) use hazard insurance proceeds for losses to the Condominium for any purpose other than repair, replacement, or restoration except as provided in Section 6.4 hereof. This Section is superseded by Declarant's right of expansion as outlined in the Deed of Declaration and the rights and privileges associated with said right of expansion.

(b) Majority Vote. Unless at least fifty-one percent of the Mortgagees and at least sixty-seven percent of the unit owners have given their prior written approval, the Corporation shall not: (i) following destruction or condemnation, change any unit's Common Element Interest; and (ii) add or amend any material provisions of the condominium instruments which establish, provide for, govern or regulate any of the following: (1) voting; (2) assessments, assessment liens or subordination of such liens; (3) reserves for maintenance, repair and replacement of the common elements (or units if applicable); (4) insurance or fidelity bonds; (5) rights to use of the common elements; (6) maintenance responsibility; (7) expansion or contraction of the Condominium or conversion of Convertible Land; (8) boundaries of any unit; (9) the interests in the common elements or limited common elements; (10) convertibility of units into common elements or of common elements into units; (11) leasing of units; (12) imposition of any right of first refusal or similar restriction on the right of a unit owner to sell, transfer, or otherwise convey the unit; or (13) any provisions which are for the express benefit of Mortgagees.

(c) Non-Material Amendments; Presumptive Approval. Any addition or amendment to the condominium instruments shall not be considered material if it is for the purpose of correcting technical errors, or for clarification only. A Mortgagee who is notified of additions or amendments and who does not deliver or post to the requesting party a negative response within thirty days shall be deemed to have approved such request.

Section 7.6. Other Rights of Mortgagees. All Mortgagees or their representatives shall have the right to attend and to speak at meetings of the Membership. All such Mortgagees shall have the right to examine the condominium instruments, Rules and Regulations, and books and records of the Condominium, to receive the annual report filed by Declarant and to require the submission of annual financial reports and other budgetary information.

## ARTICLE 8

### Compliance and Default

Section 8.1. Relief. Each unit owner shall be governed by and shall comply with all of the terms of the condominium instruments and the Horizontal Property Law as any of the same may be amended from time to time. In addition to the remedies provided in the Horizontal Property Law, a default by a unit owner shall entitle the Corporation, acting through its Board of Directors or through the managing agent, to the following relief:

(a) Additional Liability. Each unit owner shall be liable for the expense of all maintenance, repair, or replacement rendered necessary by such unit owner's act, neglect, or carelessness or the act, neglect, or carelessness of any member of such unit owner's family or such unit owner's employees, agents, or licensees, but only to the extent that such expense is not covered by the proceeds of insurance carried by the Board of Directors. Such liability shall include any increase in casualty insurance rates occasioned by use, misuse, occupancy, or abandonment of any unit or its appurtenances. Nothing contained herein, however, shall be construed as modifying any waiver by any insurance company of its rights of subrogation.

(b) Costs and Attorney's Fees. In any proceedings arising out of any alleged default by a unit owner, the prevailing party shall be entitled to recover the costs of such proceeding and such reasonable attorney's fees as may be determined by the court.

(c) No Waiver of Rights. The failure of the Corporation, the Board of Directors, or of a unit owner to enforce any right, provision, covenant, or condition which may be granted by the condominium instruments or the Horizontal Property Law shall not constitute a waiver of the right of the Corporation, the Board, or the unit owner to enforce such right, provision, covenant, or condition in the future. All rights, remedies, and privileges granted to the Corporation, the Board of Directors, or any unit owner pursuant to any term, provision, covenant, or condition of the condominium instruments or the Horizontal Property Law shall be deemed to be cumulative, and the exercise of any one or more thereof shall not be deemed to constitute an election of remedies, nor shall it preclude the party exercising the same from exercising such other privileges as may be granted to such party by the condominium instruments or at law or in equity.

(d) Interest. In the event of a default by any unit owner in paying any sum assessed against the condominium unit other than for common expenses which continues for a period in excess of fifteen days, interest at a rate not to exceed the lower of the maximum permissible interest rate which may be charged by a Mortgagee under a Mortgage at such time or eighteen percent per annum may be imposed in the discretion of the Board of Directors on the principal amount unpaid from the date due until paid.

(e) Abating and Enjoining Violations by Unit Owners. The violation of any of the Rules and Regulations adopted by the Board of Directors, the breach of any provision of the condominium instruments or the Horizontal Property Law shall give the Board of Directors the right, in addition to any other rights set forth in these Bylaws: (1) to enter the unit in which, or as to which, such violation or breach exists and summarily to abate

and remove, at the expense of the defaulting unit owner, any structure, thing, or condition that may exist therein contrary to the intent and meaning of the provisions hereof, and the Board of Directors shall not thereby be deemed guilty in any manner of trespass; or (ii) to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any such breach.

(f) Legal Proceedings. Failure to comply with any of the terms of the condominium instruments and the Rules and Regulations shall be grounds for relief, including without limitation, an action to recover any sums due for money damages, injunctive relief, foreclosure of the lien for payment of all assessments, any other relief provided for in these Bylaws or any combination thereof and any other relief afforded by a court of competent jurisdiction, all of which relief may be sought by the Corporation, the Board of Directors, the managing agent or, if appropriate, by any aggrieved unit owner and shall not constitute an election of remedies.

(g) Fines. The Board of Directors and the Covenants Committee may levy reasonable fines against unit owners for violations of the Rules and Regulations, the condominium instruments or the Horizontal Property Law. No fine may be levied for more than one percent of such unit owner's annual assessment for any one violation; but each day a violation continues, after notice is given to the unit owner, is a separate violation. If a unit owner requests in writing a hearing before the fine is imposed, the imposition of the fine shall be suspended until the hearing is held. Fines are special assessments and shall be collectable as such.

### Section 5.2. Lien for Assessments.

(a) Lien. The total annual assessment of each unit owner for common expenses or any special assessment, or any other sum duly levied (including without limitation fines, interest, late charges, etc.), made pursuant to these Bylaws, is hereby declared to be a lien levied against the condominium unit of such unit owner which lien shall, with respect to annual assessments, be effective on the first day of each fiscal year of the Condominium and, as to special assessments and other sums duly levied, on the first day of the next month which begins more than seven days after delivery to the unit owner of notice of such special assessment or levy. The Board of Directors or the managing agent may file or record such other or further notice of any such lien or such other or further document as may be required to confirm the establishment and priority of such lien.

(b) Acceleration. In any case where an assessment against a unit owner is payable in installments, upon a default by such unit owner in the timely payment of any two consecutive installments, the maturity of the remaining total of the unpaid

installments of such assessments may be accelerated at the option of the Board of Directors, and the entire balance of the annual assessment may be declared due and payable in full by the service of notice to such effect upon the defaulting unit owner and such unit owner's Mortgagee by the Board of Directors or the managing agent.

(c) Enforcement. The lien for assessments may be enforced and foreclosed in any manner permitted by the laws of the State of Indiana by power of sale pursuant to Section 8.3 hereof or action in the name of the Board of Directors, or the managing agent acting on behalf of the Corporation. During the pendency of such suit the unit owner shall be required to pay a reasonable rental for the unit for any period prior to sale pursuant to any judgment or order of any court having jurisdiction over such sale. The plaintiff in such proceeding shall have the right to the appointment of a receiver if available under the laws of the State of Indiana.

(d) Remedies Cumulative. A suit to recover a money judgment for unpaid assessments may be maintained without foreclosing or waiving the lien securing the same, and a foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

Section 8.3. Supplemental Enforcement of the Lien. In addition to the proceedings at law or in equity for the enforcement of the lien established by the condominium instruments, all of the unit owners may be required by the Declarant or the Board of Directors to execute bonds conditioned upon the faithful performance and payment of the installments of the lien established thereby and may likewise be required to secure the payment of such obligations by recording a declaration of trust in the land records where the condominium instruments are recorded granting unto one or more trustees appropriate powers to the end that, upon default in the performance of such bond such declaration of trust may be foreclosed by such trustees acting at the direction of the Board of Directors. If any such bonds have been executed and such declaration of trust is recorded, then any subsequent purchaser of a unit shall take title subject thereto and shall assume the obligations provided for therein.

Section 8.4. Subordination and Mortgage Protection. Notwithstanding any other provisions hereof to the contrary, the lien of any assessment levied pursuant to these Bylaws upon any unit (and any penalties, interest on assessments, late charges, or the like) shall be subordinate to, and shall in no way affect the rights of the holder of a Mortgage made in good faith for value received; provided, however, that such subordination shall apply only to assessments which have become due and payable prior to a sale or transfer of such unit pursuant to foreclosure, or any proceeding in lieu of foreclosure. Such sale or transfer



shall not relieve the purchaser of the unit at such sale from liability for any assessments thereafter becoming due, nor from the lien of any such subsequent assessment, which lien shall have the same effect and be enforced in the same manner as provided herein.

## ARTICLE 9

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### Amendments to Bylaws

Section 9.1. Amendments. These Bylaws may be amended by the Corporation in a duly constituted meeting for such purpose upon approval of such amendments by two-thirds of the votes of the total unit owners entitled to vote. Notice of such meeting shall be by registered or certified mail stating the time, date, and place of such meeting and include the proposed change in verbatim and shall be held no sooner than twenty-one days following the mailing of such notice; provided, however, that until the expiration of the Declarant Control Period, Sections 2.2, 2.9, 3.5, and 9.1 may not be amended without the prior written consent of the Declarant. All amendments to the Bylaws shall be prepared and recorded by the Secretary.

Section 9.2. Approval of Mortgagees. These Bylaws contain provisions concerning various rights, priorities, remedies, and interests of Mortgagees. Such provisions in these Bylaws are to be construed as covenants for the protection of such Mortgagees on which they may rely in making loans secured by Mortgages. Accordingly, no amendment or modification of these Bylaws impairing or affecting such rights, priorities, remedies, or interests of a Mortgagee shall be adopted without the prior written consent of such Mortgagee.

## ARTICLE 10

### Miscellaneous

Section 10.1. Notices. All notices, demands, bills, statements or other communications under these Bylaws shall be in writing and shall be deemed to have been duly given if delivered personally or sent by United States mail, postage prepaid, or if notification is of a default or lien, sent by registered or certified United States mail, return receipt requested, postage prepaid, (i) if to a unit owner, at the address which the unit owner shall designate in writing and file with the Secretary or, if no such address is designated, at the address of the unit of such unit owner, or (ii) if to the Corporation, the Board of Directors or to the managing agent, at the principal office of the managing agent or at such other address as shall be designated by notice in writing to the unit owners pursuant to this section. If a unit is owned by more than one person, each such person who so designates an address in writing to the Secretary shall be entitled to receive all notices hereunder.

Section 10.2. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit, or describe the scope of these Bylaws or the intent of any provision thereof.

Section 10.3. Gender. The use of the masculine gender in these Bylaws shall be deemed to include the feminine and neuter genders and the use of the singular shall be deemed to include the plural, and vice versa, whenever the context so requires.

Section 10.4. Construction. These condominium instruments are intended to comply with all of the applicable provisions of the Condominium Act and shall be so interpreted and applied.

IN WITNESS WHEREOF, the Declarant has caused these Bylaws to be executed by the principal officer of the corporate general partner on behalf of the Corporation on this 15<sup>th</sup> day of

July, 1985.

COLLEGE PARK CONDOMINIUMS  
HOMEOWNERS ASSOCIATION, INC.  
*College Park Condominiums Ltd. by  
Pleynis Development Co, Inc.*  
By: John M. Blewins  
Title: President

STATE OF INDIANA )  
                          ) SS:  
COUNTY OF MADISON )

I, the undersigned, a Notary Public in and for the jurisdiction aforesaid, do hereby certify that COLLEGE PARK CONDOMINIUMS HOMEOWNERS ASSOCIATION, INC., by John M. Blewins, whose name is signed to the foregoing instrument, has acknowledged the same before me in the aforesaid jurisdiction as an officer of the corporation on behalf of the partnership.

GIVEN under my hand and seal this 15<sup>th</sup> day of July, 1985.

My Commission Expires:  
8-1-85

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John S. Bridgewater  
John S. Bridgewater  
Notary Public  
Resident of Madison County