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DECLARATION OF EXPANDABLE CONDOMINIUM

For

3rd & Smith Office Park Condominiums
(West Building)

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Declaration

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Consisting of 24 Pages,
Numbered 1 through 24,
and
Exhibits A through F.

This Instrument Prepared By
MORRIE ERICKSON, Attorney at L
Sturbridge Center, 810 Auto Mall Rc
Bloomington, Indiana 47401
Telephone: (812) 335-1111

RECORDED
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DECLARATION OF EXPANDABLE CONDOMINIUM

3rd & Smith Office Park Condominiums (West Building)

DECLARATION OF EXPANDABLE CONDOMINIUM

AND HORIZONTAL PROPERTY REGIME

THIS DECLARATION, and the exhibits which are attached to and made a part of the Declaration, are made and executed this 23rd day of February, 1995, by Third & Smith Development Corporation, an Indiana corporation, ("Declarant"), for itself, its successors, grantees and assigns, pursuant to the provisions of the Indiana Horizontal Property Law.

BACKGROUND FACTS:

a. Declarant is the owner of certain real property in Monroe County, Indiana, more particularly described and defined in **Exhibit A** (the "Property") attached to and made a part of this Declaration which shall constitute the 3rd & Smith Office Park Condominium development.

b. Declarant is the owner of additional real property in Monroe County, Indiana, described in **Exhibit F** (the "Additional Property") which shall, at the election of Declarant and upon annexation of such Additional Property, constitute a part of 3rd & Smith Office Park Condominiums and upon which Declarant intends to construct a second condominium-type, multi-unit building and certain other improvements in addition to the initial such building referred to in paragraph c. below.

c. Declarant is the owner of one condominium-type, multi-unit building and certain other improvements previously constructed or subsequently to be constructed upon the Property and desires and intends to create "Condominium Units" or "Condominiums" as those terms are defined under the provisions of the Indiana Horizontal Property Law, and to sell and convey the same to various purchasers subject to the covenants, conditions, and restrictions in this Declaration.

d. Declarant desires and intends, by the filing of this Declaration, to submit the Property described in **Exhibit A** and the building erected on the Property and all other improvements constructed or to be constructed on the Property, together with all appurtenances, to the provisions of the Indiana Horizontal Property Law.

e. Declarant reserves the right to annex all or any part of the Additional Property upon execution and recordation of an amended declaration by Declarant which, upon execution and recordation, shall automatically include the Additional Property within this Declaration.

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

1. ***Definitions.***

Certain terms as used in this Declaration and the attached Exhibits which are made a part of this Declaration shall be defined as follows, unless the context clearly indicates a contrary meaning:

(a) "Act" shall mean the Horizontal Property Law of the State of Indiana, Indiana Code 32-1-6-1, *et seq.* as amended. The Act is incorporated in this Declaration by reference.

(b) "Association" means the "association of co-owners" as defined in the Act and shall mean all of the Unit Owners acting as a group in accordance with the articles of incorporation, Declaration, and By-laws.

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

(d) "Building" shall mean all structures erected or to be erected upon the Property.

(e) "By-laws" shall mean the by-laws for the administration of the Property and the Association contained in **Exhibit B** attached to this Declaration and made a part of this Declaration.

(f) "Common Areas and Facilities" shall have the meaning as set forth in the Act and as more fully described in paragraph 8 of this Declaration.

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

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

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

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

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

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

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

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

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

Exhibit A -- Legal Description of the Property;

Exhibit B -- By-laws of the Association;

Exhibit C -- Master Site Plan;

Exhibit D -- Plans and Specifications;

Exhibit E -- Unit Designations; and,

Exhibit F -- Legal Description of Expansion Area.

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

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

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

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

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

(q) "Unit" shall mean "condominium unit" as defined in the Act and shall mean those parts of the Condominium Property described in paragraph 6 of this Declaration which are the subject of individual ownership.

2. ***Declaration.***

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

3. ***Name of the Condominium.***

The name by which the Condominium Property shall be known is "3rd & Smith Office Park Condominiums."

4. ***General Description of the Property.***

The Condominium Property consists of the real property described and identified on **Exhibit A** attached to and made a part of this Declaration and the Building and other improvements erected and to be erected on the Property and all articles of personal property intended for common use in connection with the Property.

5. ***Description of Building.***

3rd & Smith Office Park Condominiums (West Building) will consist of one multi-unit commercial building. The Building is designated on the Master Site Plan, a copy of which is attached to and made a part of this Declaration as **Exhibit C**, which Master Site Plan further shows the location of the Building on the Property. The Building contains a total of 12 separate Units consisting of basic floor plan types including:

2	1-room flats	type A
1	1-room flat	type B

1	1-room flat	type C
4	1-room flats	type D
4	1-room flats	type E

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

Building Designation	Number of Units of Type	Total Units in Building	Basements	Storeys
West	2 type A 1 type B 1 type C 4 type D 4 type E	12	None	2

The multi-unit Building is more particularly described and defined in the Plans and Specifications (the "Plans"), a copy of which Plans is attached to and made a part of this Declaration as **Exhibit D**, showing all particulars of the Building, including the layout, number of storeys, the location, ceiling and floor elevations, Building designation, Unit numbers, and dimensions of the Units. Such Plans bear the verified statement of Sherman R. Bynum, Indiana registered architect No. 3304 certifying that the Plans fully and accurately depict the layout, location, unit numbers, and dimensions of the Condominium Units as built. For a more particular description of the Building reference is made to the Plans filed with this Declaration as **Exhibit D**.

6. ***Description of Units.***

(a) The Unit designation of each Condominium Unit and other data concerning its proper identification are set forth in **Exhibit E** attached to and made a part of this Declaration. The percentage interests of each Unit in the Common Areas and Facilities owned as tenant-in-common with other Unit Owners shall be based on the size of each Unit expressed in terms of square footage in relation to the size of all Units expressed in terms of square footage. The percentage interests appurtenant to each Unit are as specified on **Exhibit E**.

(b) Each Unit shall constitute a single freehold estate and shall consist of all of the space bounded by the undecorated and/or unfinished interior surfaces of its perimeter walls, lowermost floors, uppermost ceilings, windows and window frames, door and door frames. Each Unit includes both the portions of the Building within such boundaries and the space so encompassed, including, without limitation, the decorated surfaces, including paint, lacquer, varnish, wallpaper, paneling, tile, carpeting, and any other finishing materials applied to interior walls, doors, floors, and ceiling and interior surfaces of permanent walls, interior non-load-bearing walls, windows, doors, floors, and ceiling. Each Unit consists of space bounded in the approximate dimensions shown on the Master Site Plan **(Exhibit C)** regardless of the absence of interior perimeter walls. As more fully described in paragraph 11 of this Declaration, 3rd & Smith Office Park Condominiums are designed to permit an Owner to acquire multiple adjacent Units combining the Units for a single purpose by removal of interior non-load-bearing perimeter walls. Construction or reconstruction of perimeter walls shall be on the property lines as specified on the Master Site Plan **(Exhibit C)**. Removal of load-bearing walls is not permitted.

7. ***Encroachments.***

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

8. ***Common Areas and Facilities.***

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

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

(b) All foundations, columns, girders, beams, supports, main walls, roofs, halls, corridors, lobbies, stairs, stairways, fire escapes, entrances and exits of the Building, and other structural members.

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

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

(e) All central and appurtenant installations for services such as power, lights, water, sewer, gas, and television; and all tanks, pumps, motors, cables, antennas, conduits, compressors, flues and ducts, mechanical systems, storm drains, and all other items used in connection with such central systems, whether located in Common Areas or in Units. (However, non-central and appurtenant installations for similar services which benefit directly only a particular Unit Owner shall **not** be considered Common Areas. By way of example, but not of limitation, an air conditioning compressor physically situated in the Common Areas but serving only one or more Units owned by a particular Unit Owner [rather than a central air conditioning system serving all Unit Owners] shall not be considered Common Areas.)

(f) All exterior walkways.

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

The percentage of undivided interests in the Common Areas and Facilities as pertaining to each Unit and its Owner for all purposes is as set forth in **Exhibit E** attached to and made a part of this Declaration.

9. ***Use of Common Areas and Facilities.***

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

10. ***Description of Limited Common Areas and Facilities.***

Limited Common Areas and Facilities shall mean and include those Common Areas and Facilities reserved for use by a certain Unit or Units to the exclusion of other Units and shall mean all sites, areas, places, and locations designated as L.C.A. on the Master Site Plan and/or Plans and Specifications. **There will be no Limited Common Areas in the West Building development area but may be Limited Common Areas in the Expansion Area.** References in this Declaration and the By-laws to Common Areas and Facilities shall include Limited Common Areas and Facilities unless the context clearly indicates otherwise. Each Unit Owner is granted an exclusive and irrevocable license to use and occupy the Limited Common Areas and Facilities associated with and/or assigned to such Owner's Unit.

11. ***Statement of Purposes, Uses, and Restrictions.***

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

(a) The Condominium Property shall be used for office and commercial purposes and purposes auxiliary to such use and for no other purposes. All use and occupancy shall be in accordance with the list of approved uses and applicable restrictions as required by the "PCD" approval designation by the City of Bloomington Plan Commission (the "Commission") and the City of Bloomington Common Council (the "Council"). No future amendments to the PCD restrictions or approved uses by the Commission or the Council shall be applicable to the Condominium Property unless or until such restrictions and approved uses are themselves approved by Declarant, or, after surrender of control of the Association by Declarant, the Board of Administrators or its delegate. However, to protect any Unit Owner and to control the mix of uses of the Condominium Property, Declarant may restrict or prohibit any Unit or all other Units from being used for certain purposes by inserting a restrictive covenant in the original deed of conveyance from Declarant to the initial Unit Owner(s) whose use is to be restricted or prohibited. Such restrictive covenant shall identify the Unit Owner(s) for whose benefit the restrictive covenant was established and shall remain in effect until such Unit Owner (or such Unit Owner's successors and/or assigns) shall execute and record an instrument terminating the restrictive covenant.

(b) There shall be no obstruction of the Common Areas and Facilities. Nothing may be stored in the Common Areas and Facilities, excluding the Limited Common Areas and Facilities located within the bounds of a Unit or pertaining to a Unit, without the prior written consent of the Board of Administrators.

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

(d) No sign of any kind shall be displayed to the public view from any Unit or from the Common Areas and Facilities without the prior written consent of the Board of Administrators.

(e) No animals, livestock, or poultry of any kind shall be raised, bred, or kept in any Unit or in the Common Areas and Facilities.

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

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

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

(i) Regardless of anything in this Declaration to the contrary, Declarant, and such persons it may select, so long as Declarant owns a Unit, shall have the right of ingress and egress over, upon and across the Common Areas and Facilities, the right to utilize one or more Condominium Units as a model or office, the right to erect signs upon the Property for the purpose of advertising availability of Units and similar uses, and the right to store materials on the Common Areas and Facilities and make such other use as may be reasonably necessary incident to sale of the Condominiums and operation of the Units and Common Areas and Facilities.

(j) Until Declarant transfers control of the Association to the Owners, Declarant reserves the right, in its sole discretion, to approve combining single Units as a single use and, as a consequence, enlarging the available square footage floor space for such use. Unless otherwise specified by Declarant, consent to the combining of Units to enlarge the applicable floor space for a single use shall be for an indefinite term and shall constitute a right appurtenant to the Units designated for such use. Declarant may delegate the authority described in this paragraph 11 to the Board of Administrators. Declarant or its delegate is not empowered to approve any use or combination of Units for a single use which violates the PCD restrictions imposed by the Council. Declarant or the Board of Administrators shall maintain such documents or records as are necessary to identify the combination of Units approved by Declarant or it delegate and the accompanying use.

(k) No clause in this Declaration shall preclude any Unit Owner from erecting physical walls or partitions within a Unit nor from permitting more than one use within a Unit.

12. ***Easements.***

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

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

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

13. ***Partition, Generally.***

Neither the Common Areas and Facilities nor any individual Unit shall be divided nor shall any right to partition a Unit or the Common Areas and Facilities exist. Nothing in this Declaration, however, shall be deemed to prevent ownership of a Condominium Unit by more than one person, either as tenants-by-the-entirety or tenants-in-common or in any other form permitted by law. Likewise, nothing in this Declaration shall be deemed to prevent two or more Units on the same storey in the same Building and owned by the same Owner from being joined by the removal of a portion of the wall dividing such Units; however, the partial removal of such wall shall not alter or eliminate the configuration of such Unit or Units, which shall continue to be configured in accordance with the Master Site Plan and/or the Plans and Specifications. (See paragraph 6.)

14. ***Liens.***

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

15. ***Nature of Interest in Units.***

Every Unit, together with its undivided interest in the Common Areas and Facilities, shall for all purposes be, and it is declared to be and to constitute a separate parcel of real property and the Owner shall be entitled to the exclusive ownership and possession of such Unit subject only to the covenants, restrictions, easements, by-laws, rules, regulations, resolutions and decisions adopted pursuant to and as may be contained in this Declaration and in the accompanying By-laws and in the minutes of the Board of Administrators and the Association. The percentage of undivided interest in the Common Areas and Facilities of each Unit shall not be separated (subject to the provisions of paragraph 28) from the Unit to which it appertains and shall be deemed to be conveyed or encumbered or released from liens with the Unit even though such interest is not expressly mentioned or described in the conveyance or other instrument.

16. ***Taxes.***

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

17. ***Association.***

(a) In order to provide for the maintenance, repair, replacement, administration, and operation of the Property, this Declaration creates an incorporated association to be known as "3rd & Smith Office Park Condominiums Association of Owners, Inc." Membership shall be composed of all of the Owners of the Units at 3rd & Smith Office Park Condominiums. Each Owner of a Unit shall be a member of the incorporated association, but membership shall automatically terminate when such person ceases to be an Owner and will be transferred to the new Owner.

(b) The 3rd & Smith Office Park Condominiums Association of Owners, Inc. (the "Association") shall be governed in accordance with and as prescribed by the By-laws attached to this Declaration.

(c) Declarant, by this Declaration, and all Unit Owners, by the acceptance of their deeds, covenant and agree to be bound by the conditions, restrictions and obligations contained in the By-laws of the Association and the provisions of this Declaration.

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

(e) Declarant shall appoint the members of the initial Board of Administrators of the Association which shall control during the period of its incumbency all matters which would be within the authority of either the Association or the Board of Administrators under this Declaration, the By-laws, or the Act, except that certain powers including the power of assessment shall be limited as provide in the By-laws. By taking title to a Unit, each Owner shall confer and shall be deemed to have conferred upon Declarant an irrevocable proxy to vote in such Owner's name, place and stead on any and all matters on which the Owners or any of them are entitled to vote under this Declaration, the By-laws, or the Articles of Incorporation of the Association. The initial Board of Administrators shall serve until the time when Declarant turns over control of the regime to the Association, which shall take place no later than the earliest to occur of the following events:

(i) 60 days after all Units in the Property have been sold by Declarant; or

(ii) the fifth anniversary of the date of this Declaration.

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

18. ***Common Expenses.***

Each Unit Owner shall contribute, in proportion to the undivided interest as set forth in **Exhibit E** toward the expenses of administration and of maintenance and repair of the Common Areas and Facilities and any other expense lawfully agreed upon; and shall pay any special assessment duly assessed by the Board of Administrators, all in accordance with the By-laws of the Association, this Declaration, and the provisions of the Act. However, Declarant or Declarant's successor in interest as developer, shall be excused from contributing toward the Common Expenses (including special assessments) for those unoccupied Units offered for the first time for sale. Such period of excuse from contribution shall begin on the day this Declaration is recorded in the office of the Recorder of Monroe County, Indiana, and shall terminate on the first day of the 24th calendar month following the month in which the closing of the sale of the first Unit occurs.

19. ***Insurance.***

The Board of Administrators shall obtain and maintain at all times insurance of the type and kind in not less than the amounts provided in this Declaration and the By-laws and including insurance for such other risks, of a similar or dissimilar nature, as are or shall customarily be covered with respect to other condominium properties similar in construction, design and use. Such insurance shall be governed by the following provisions:

(a) The Board of Administrators shall have the authority to and shall obtain insurance policies upon the Condominium Property for the benefit of the Unit Owners and their Mortgagees as their interests may appear, and provision shall be made for the issuance of certificates of mortgagee endorsements to the Mortgagees of the Unit Owners and delivery of such certificates to Mortgagees within 10 days from their original issuance or the issuance of the renewals. The originals of all such policies and the endorsements shall be deposited with the Board of Administrators, as insurance trustees, and certificates of insurance, together with proof of payment of premiums, shall be delivered to the Unit Owners at least 10 days prior to the expiration date with respect to the then current policies. Unit Owners may, at their option, obtain insurance coverage at their own expense upon their own personal property and for their living expenses and such other coverage as they may desire, including coverage for built-in appliances, cabinets, and other facilities or systems not covered by the insurance obtained by the Board of Administrators.

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

(i) *Fire.* The Buildings and all other improvements upon the land and all personal property included in the Common Areas and Facilities shall be insured in an amount equal to the maximum insurable replacement value as determined annually by the Board of Administrators with the assistance of the insurance company providing coverage. The policies evidencing such coverage shall contain clauses providing for waiver of subrogation, the standard condominium endorsements (excepting the Waiver of Subrogation provision), and shall provide that such policies may not be cancelled or substantially modified without at least 30 days prior written notice to all the insureds, including all Mortgagees or Unit Owners. Such coverage shall provide protection against:

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

(B) Such other risks as from time to time shall be customarily covered with respect to buildings similar to construction, location and use as the Building, including but not limited to vandalism and malicious mischief. All such policies shall provide that adjustment of loss shall be made by the Board of Administrators as insurance trustees.

(ii) *Public Liability.* The Board of Administrators shall also be required to obtain and maintain to the extent obtainable, public liability insurance in such limits as the Board of Administrators may, from time to time, determine, covering each member of the Board of Administrators, the managing agent, if any, and each Unit Owner with respect to liability arising out of the ownership, maintenance, or repair of the Common Areas and Facilities. Such insurance shall include endorsements covering cross liability claims of one insured against another, including the liability of the Unit Owners as a group in a single Unit Owner. The Board of Administrators shall review such limits annually. Until the first meeting of the Board of Administrators following the initial meeting of the Unit Owners, such public liability insurance shall be in amounts not less than $300,000/$1,000,000 for claims for bodily injury and $300,000 for claims for property damage. Each Unit Owner, at such Owner's expense, shall keep in force comprehensive personal liability insurance in such amounts as the Board of Administrators shall from time to time determine, but in no case less than $100,000 for each occurrence.

(iii) *Other.* Such other insurance coverage including worker's compensation and directors' liability coverage as the Board of Administrators shall determine from time to time to be desirable.

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

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

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

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

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

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

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

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

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

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

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

20. ***Distribution of Insurance Proceeds.***

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

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

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

21. ***Duty to Repair.***

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

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

22. ***Partition After Casualty Loss.***

If the Building shall in the aggregate be more than two-thirds (2/3) destroyed by fire or other casualty then restoration must be approved within 120 days from the date of damage or destruction by not less than Unit Owners owning two-thirds (2/3) of the Units contained in the Building. If such approval is not obtained then, in such event:

(a) That portion of the entire Condominium Property owned by the Unit Owners of the destroyed Building shall be deemed to be owned as tenants in common by the Unit Owners;

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

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

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

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

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

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

24. ***Rights of Declarant***

(a) Regardless of anything to the contrary contained in this Declaration, or in the By-laws or any rules and regulations as may be adopted from time to time by the Board of Administrators, Declarant is irrevocably empowered to sell, lease, and/or mortgage Units and portions of Units to any purchaser, lessee, or mortgagee approved by it in Declarant's sole discretion, and Declarant shall have the right to transact any business necessary to consummate sales or rentals of Units or portions of Units including, but not limited to, the right to maintain models, have signs, use the Common Areas and Facilities, and to show Units to prospective customers, tenants, and other persons. The sales office, signs, and all items pertaining to sales shall not be considered Common Areas and Facilities, and shall remain the property of Declarant. Declarant retains the right to be the Owner of any unsold Units or parcels.

(b) Regardless of anything to the contrary contained in this Declaration, or in the By-laws or any rules and regulations as may be adopted from time to time by the Board of Administrators, Declarant, until such time as all Units have been conveyed to Owners (including Units which come into existence after the annexation of the real estate in the expansion area described in **Exhibit F**, reserves the right to amend this Declaration to accommodate the reasonable requirements of mortgagees.

25. ***Units Subject to Declaration, By-laws, Rules and Regulations.***

All present and future Owners, tenants, and occupants of Units shall be subject to and shall comply with the provisions of this Declaration, the By-laws, and any rules and regulations as may be adopted in accordance with the By-laws, as the Declaration, By-laws, rules and regulations may be amended from time to time. **Rules and regulations may include certain limitations concerning style and decoration, to the extent that such features may have a potential adverse impact on**

other Unit Owners. To enhance external aesthetics and to promote consistency of appearance of the Condominium development, it is the intention of Declarant that all Units in the Building be subject to certain standards of appearance and quality imposed initially by Declarant and subsequently by the Board of Administrators. Prior to construction of any improvements or implementation of any decoration in a Unit, each respective Unit Owner shall submit written plans and specifications describing such intended improvements and decoration to Declarant or the Board of Administrators, as applicable, who shall approve or deny such plans, in writing, within 15 days after receipt of such plans. If no action to approve or deny such plans has been taken by Declarant or the Board of Administrators within such period of time, such plans shall be deemed approved. The acceptance of a deed of conveyance, the execution of a lease, or the occupancy of any Unit shall constitute an agreement that the provisions of this Declaration, By-laws, and any rules and regulations which may be adopted are accepted and ratified by such Owner, tenant, or occupant, and all of such provisions shall be deemed and taken to be covenants running with the land and shall bind any person having at any time any interest or estate in such Unit as though such provisions were made a part of each and every deed of conveyance or lease.

26. ***Personal Property.***

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

27. ***Interpretation.***

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

28. ***Amendment to Declaration.***

(a) ***By Owners.*** This Declaration may be amended by the vote of at least 66-2/3% in Common Interest of all Unit Owners, cast in person or by proxy at a meeting duly held in accordance with the provisions of the By-laws, which such amendment shall become effective upon recordation of a written instrument duly executed and acknowledged by Unit Owners holding 66-2/3% in Common Interest of the Condominium in the office of the Recorder of Monroe County, Indiana;

however, any such amendment made pursuant to this paragraph 28(a) which amends or alters the percentage of undivided interests in the Common Areas and Facilities, or voting rights, shall require the approval of all Unit Owners and shall become effective only upon recordation in the appropriate registry of a written instrument executed and acknowledged by all Unit Owners.

(b) ***Reserved Rights of Declarant.*** Regardless of any provision of this Declaration to the contrary, until all Units subject to this Declaration have been sold by Declarant and administration of the "Property" has been transferred to the Association, no amendment to this Declaration shall be effective unless approved in writing by Declarant, and during such period, Declarant reserves the right to change the interior design and arrangement of any unsold Units, to alter the boundaries between unsold Units, to change the number of Units, to add such additional Common Areas and Facilities, to add additional land to the land described in **Exhibits A and F** attached to this Declaration, and to add such additional Common Areas and Facilities to such additional land as it may deem desirable without amendment of this Declaration.

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

(c) ***Addition of New Phase.*** Declarant intends that 3rd & Smith Office Park Condominiums will ultimately consist of up to a total of 30 Units including the 12 Units described in this Declaration. Such 30 Units will consist of the initial phase covered by this Declaration consisting of 12 Units and designated as 3rd & Smith Office Park Condominiums (West Building) and one additional phase so that upon completion of the total Units contemplated 3rd & Smith Office Park Condominiums will consist of up to 30 Units. The additional Condominium Units will be contained in one more phase to be constructed on the balance of Lot Number 3 in Baker Subdivision, the approximate boundaries of which are described in **Exhibit F** attached to and made a part of this Declaration. Accordingly, Declarant reserves the right to amend this Declaration at any time within 10 years from the date of recordation of this Declaration, without the consent of the Owners, to incorporate into the Property (i) all or a portion of the additional Units constructed or to be constructed by Declarant; however, the total number of Condominium Units to be constructed on the additional land described in **Exhibit F** shall not exceed 18 Units so that the maximum Units which will comprise 3rd & Smith Office Park Condominiums shall not exceed 30. The expansion of the Condominium shall be governed by the following provisions:

(i) The area comprised within the present development and described in **Exhibit**

A is called the "Present Condominium Area." Declarant reserves the right, to be exercised in Declarant's sole discretion, from time to time within a 10-year period from the date of recordation of this Declaration, to annex to the Present Condominium Area all or a portion of the land described in **Exhibit F**, which land is called the "Development Area." Such annexation shall be by the recordation of an amended condominium declaration (the "Amended Declaration"), and no rights of any type or character whatsoever of any Unit Owner in an annexation within the Development Area shall attach until such amended declaration is recorded annexing part or all of the Development Area to the condominium regime created in this Declaration. Upon the recordation of such amended declaration, the land described in it, and the Condominium Units and all other improvements located on the land, shall be deemed to be governed in all respects by the provisions of this Declaration. Declarant further reserves the right, in the exercise of Declarant's sole discretion, to add land to the Development Area by a declaration stating such intention and describing the land so added.

(ii) Any amended declaration which is filed to accomplish annexation of land to the Present Condominium Area shall prescribe and adjust the percentage interest in the Common Areas and Facilities for all Units, if any, created by such amended declaration, and for all Units created by prior amended declarations, if any, and for all units created by this Declaration, on the following basis:

(A) For the purpose of this section, the following definitions shall be controlling:

At the time of recordation of each amended declaration,

(1) Existing Units and Existing Common Areas and Facilities shall mean, respectively, those Units and Common Areas and Facilities in existence prior to the creation of the new units and new common areas and facilities by each amended declaration, whether created by a prior amended declaration or this Declaration.

(2) New Units and New Common Areas and Facilities shall mean, respectively, those Units and Common Areas and Facilities which are created and added by each amended declaration.

(3) Aggregated Units and Aggregated Common Areas and Facilities shall mean, respectively, the sum of all Existing Units and New Units, and the sum of all Existing Common Areas and Facilities and New Common Areas and Facilities.

(B) At the time of recordation of each amended declaration, the square footage of the Property as a whole shall be the sum of the square footage of all Existing Units and New Units. The percentage interest in the Aggregate Common Areas and Facilities which is appurtenant to each Unit shall be based on the size of each Unit expressed in terms of square footage in relation to the size of all Units expressed in terms of square footage, whether Existing Units or New Units.

The recording of an amended declaration pursuant to this section shall not alter or affect the amount due from any Owners of Existing Units for Common Expenses or other assessments nor shall it alter or affect the lien securing such amounts.

(iii) Each deed to a Unit is given on a conditional limitation to the end that the percentage interest of the grantee in the Common Areas and Facilities shall be divested pro tanto and vest in the grantees of other Units in accordance with the terms of this Declaration and any amended declaration which may be recorded pursuant to it. In addition, Declarant reserves the right of revocation which right may be exercised to assist in accomplishing this purpose.

Each deed to a Unit shall be deemed to reserve to the Declarant the power to appoint to Unit Owners, from time to time, the percentage interest in the Common Areas and Facilities set forth in any amended declaration or declarations, and the acceptance of such a deed by its grantee shall constitute the following on such grantee and those claiming under such grantee, including all mortgagees:

(A) A grant of an irrevocable power of attorney coupled with an interest to Declarant acting by and through authorized personnel, successors, assigns or designees, and each of them singly as attorney-in-fact, to shift the percentages of undivided ownership interest in the Common Areas and Facilities in accordance with the provisions of the Declaration and of amended declarations recorded pursuant to it; and

(B) An agreement with and consent to the following:

(1) The percentage of undivided ownership interest in the Common Areas and Facilities of each Unit shall automatically be shifted and reallocated in the manner set forth in each recorded amended declaration;

(2) Upon the recording of each amended declaration, the amount by which the percentage of undivided interest in the Common Areas and Facilities of each Unit is reduced by the amended declaration shall be released and divested by and from the Owner of the Unit so affected and reallocated among

other Owners of Units as set forth in such amended declaration;

(3) The provisions of this section are designed to accomplish a valid shifting in the percentages of ownership in the Common Areas and Facilities among the various Unit Owners as more Units are added. None of the provisions shall invalidate the other, but each shall be deemed supplementary to the other for accomplishing their respective goals; and

(4) This Declaration is in accordance with the Act.

29. ***Enforcement.***

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

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

30. ***Floor Plan.***

The Plans setting forth the layout, location, identification number, Building designation and dimensions for all Units and the Property are incorporated into this Declaration by reference. Such Plans, which are attached as **Exhibit D**, have been filed in the office of the Recorder of Monroe County, Indiana, in Horizontal Plat Cabinet ______, Envelope _______ on February 27, 1995, as Instrument Number 502267.

31. ***Invalidity.***

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

32. ***Waiver.***

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

33. ***Captions.***

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

34. ***Law Controlling.***

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

Declarant has caused this Declaration to be executed on February 23, 1995.

Third & Smith Development Corporation,
an Indiana corporation

By Carl B. Smith
Carl B. Smith, President

STATE OF INDIANA)
) SS:
COUNTY OF MONROE)

Before me, a Notary Public in and for said county and state, this 23rd day of February, 1995, at which time Carl B. Smith, president of Third & Smith Development Corporation, an Indiana corporation, personally appeared and acknowledged the execution of the above and foregoing Declaration to be a voluntary act and deed.

My Commission Expires: 1-25-99

Shelley M. Puckett
Shelley M. Puckett, Notary Public
A resident of Monroe County

This Instrument Prepared By
MORRIE ERICKSON, Attorney P.C.
Sturbridge Center, 810 Auto Mall Road
Bloomington, Indiana 47401
Telephone: (812) 335-1111

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EXHIBIT A

A part of Lot 3 of Baker Subdivision as recorded in Plat Cabinet C, Envelope 15 in the office of the Recorder of Monroe County, Indiana, being more particularly described as follows:

Beginning at the Northwest corner of said lot, thence South 88 degrees 40 minutes 23 seconds East along the North line of said lot 237.00 feet; thence South 00 degrees 05 minutes 28 seconds West 199.99 feet to the South line of said lot; thence North 88 degrees 40 minutes 23 seconds West along said South line 237.00 feet to the Southwest corner thereof; thence North 00 degrees 05 minutes 28 seconds East along the West line of said lot 199.99 feet to the Northwest corner thereof, said point being the point of beginning, containing 1.09 acres, more or less.