

FHA No. 3276-B
(Addendum)

U. S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION

ADDENDUM TO MODEL FORM OF ENABLING DECLARATION (FHA FORM NO. 3276-B)

In provision "R" subsection "3" insert after words "..... condominium units built" and before the words "on the development area" the following words:

"under FHA-insured project mortgages"

In provision "R" subsection "5" insert after the words "..... corporation may" and before the words "levy in any assessment year" the following words:

"subject to HUD approval"

3/24/72
GPO 037-078

FHA FORM NO. 3276-B
New 12/71

U.S. DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT
FEDERAL HOUSING ADMINISTRATION

MODEL FORM OF ENABLING DECLARATION

Establishing the Condominium Regime for One Section
of a Series of Condominium Regimes in One
Development Area. (Under Section 234.)*

Condominium Section No. _____ Name of Project _____

THIS ENABLING DECLARATION, made in the County of _____, State
of _____, on this _____ day of _____, 19____,
by _____ (hereinafter referred to as "Grantor"), pursuant to the provi-
sions of the Condominium Property Act of the State of _____ (hereinafter referred to as the "Act"),
as amended, WITNESSETH THAT:

WHEREAS, the Grantor is the fee simple owner of the certain real property (hereinafter referred to as the
"Development Area") situated in _____ County, State of _____,
and more particularly described as follows:
(legal land description of the Development Area)**

WHEREAS, the Grantor has constructed a community recreational facility (describe as swimming pool, com-
munity house, etc.) on a section of the aforesaid Development Area known as Section Number _____ *** and
more particularly described as follows:
(legal land description of Section Number _____ of the Development Area)

and has conveyed the aforesaid Section and the community recreational facility located thereon to the _____
Nonprofit Recreational Corporation.

WHEREAS, the Grantor intends to construct and establish a condominium regime on each of the remaining
sections**** of the Development Area, each of which sections and the number of condominium units to be

- * For use where a series of adjoining separate condominium regimes are to be established on separate sections of land, and an off-site community recreational facility on another section of land is to be owned by a non-profit corporation, the members of which are the owners of the condominium units in each condominium regime. An Enabling Declaration must be filed and recorded for each separate condominium regime covering its respective separate section of land.
- ** The Development Area includes all the sections of land intended to be submitted to condominium regimes and the section of land on which the community recreational facility is to be located.
- *** This section of land must be separate and distinct from the remaining separate sections of the Development Area.
- **** Each remaining section must be a separate and distinct section on which a separate condominium regime is to be established.

constructed thereon are listed below:

Section Number _____	_____ (No. of units)
Section Number _____	_____ (No. of units)
Section Number _____	_____ (No. of units)
Section Number _____	_____ (No. of units)
Section Number _____	_____ (No. of units)
Total condominium units for all sections	_____ (Total)

WHEREAS, the Grantor has constructed and established condominium regimes on Section(s) Number(s) _____, and _____ of the Development Area.*

WHEREAS, the Grantor has constructed a multifamily project on a section of the Development Area known as Section Number _____ consisting of _____ units, and it is now the intention and desire of the Grantor to submit and establish Section Number _____ of the Development Area as a condominium regime hereinafter referred to and known as " _____ Condominium, Section Number _____."

NOW, THEREFORE, said Grantor, the fee simple owner of a section of the Development Area known as Section Number _____ and more particularly described as follows:
(legal land description of Section Number _____ of the Development Area)

hereby makes the following declaration as to divisions, covenants, restrictions, limitations, conditions and uses to which the above described real property and improvements thereon, known as Section Number _____, consisting of a _____ ** unit multifamily project and appurtenances, may be put, hereby specifying that said declaration shall constitute covenants to run with the land and shall be binding on said Grantor, its successors and assigns, and all subsequent owners of all or any part of said real property and improvements, together with their grantees, successors, heirs, executors, administrators, devisees or assigns:

A. Said Grantor, in order to establish a condominium regime, hereinafter referred to and known as _____ Condominium, Section Number _____, for the above-described property and improvements, hereby covenants and agrees that it hereby divides said real property into the following separate freehold estates:

1. _____ ** separately designated and legally described freehold estates, each consisting of a condominium unit, as shown on the plat for _____ Condominium, Section Number _____ prepared and certified by _____, licensed to practice in the State of _____, which plat is dated _____ and on the plans for _____ Condominium, Section Number _____ prepared by _____, dated _____, all of which are recorded among the Land Records of _____ County, simultaneously herewith, which plat and plans are attached hereto as Exhibit A, and incorporated herein by reference and made a part hereof, and hereinafter are called Exhibit A.
2. A freehold estate consisting of the remaining portion of the real property as described and referred to herein as the common areas and facilities, as shown on Exhibit A.

* For the first condominium regime to be established, this Whereas clause should be deleted.
** Insert number of units.

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B. For the purpose of this declaration, the ownership of each condominium unit shall include the respective undivided interest in the common areas and facilities specified and established in paragraph "E" hereof.

C. A portion of the common areas and facilities is hereby set aside and allocated for the respective condominium units as is hereinafter designated, and as shown on Exhibit A, attached hereto, and said areas shall be known as restricted common areas and facilities.

D. The _____ * individual condominium units hereby established and which shall be individually conveyed are described as follows:
(legal description of each condominium unit meeting State condominium law requirements)

E. The value of each condominium unit and its percentage of undivided interest in the common areas and facilities hereby established which shall be conveyed with each respective condominium unit is as follows:

Condominium Unit Number	Value of Condominium Unit	Percentage of Undivided Interest

The above respective undivided interests established and to be conveyed with the respective condominium units as indicated above, cannot be changed; and said Grantor, its successors and assigns, and grantees, covenant and agree that the undivided interests in the common areas and facilities and the fee titles to the respective condominium units conveyed therewith together with the restricted common areas facilities allocated for the restrictive use of the respective condominium units, shall not be separated or separately conveyed; and each said undivided interest and allocated restricted common area and facility shall be deemed to be conveyed or encumbered with its respective condominium unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to the condominium unit. Each of the aforesaid percentages of undivided interest shall be equivalent to the percentage which the value of the condominium unit bears to the value of all of the condominium units and all of the common areas and facilities.

F. The proportionate shares of the separate owners of the respective condominium units in the profits and common expenses in the common areas and facilities as well as their proportionate representation for voting purposes in the Association of Owners shall be percentages established for each unit as provided in paragraph "E" hereof.

G. The restricted common areas and facilities allocated for the restricted uses of the respective condominium units are as follows:

CONDOMINIUM UNIT 1: That portion of the parking area designated as parking space No. 1; storage space No. 1; together with balcony adjoining the condominium unit associated with condominium unit 1 on the south. Said restricted areas are further described, located, and shown on Exhibit A, attached hereto.**

H. Said Grantor, its successors and assigns, by this declaration, and all future owners of the units, by their acceptance of their deeds, covenant and agree as follows that:

* Insert number of units.
** Descriptive material for guidance; conform to actual facts.

1. The common area and facilities shall remain undivided; and no owner shall bring any action for partition, it being agreed that this restriction is necessary in order to preserve the rights of the owners with respect to the operation and management of the condominium.
2. The condominium units shall be occupied and used by the respective owners only as a private dwelling for the owner, his family, tenants and social guests and for no other purpose.
3. The owner of the respective condominium units shall not be deemed to own the undecorated and/or unfinished surfaces of the perimeter walls, floors and ceilings surrounding his respective condominium unit, nor shall said owner be deemed to own pipes, wires, conduits or other public utility lines running through said respective condominium units which are utilized for, or serve more than one condominium unit, except as tenants in common with the other condominium unit owners as heretofore provided in paragraph "E". Said owner, however, shall be deemed to own the walls and partitions which are contained in said owner's respective condominium unit, and also shall be deemed to own the inner decorated and/or finished surfaces of the perimeter walls, floors and ceilings, including plaster, paint, wallpaper, etc.*
4. The owners of the respective condominium units agree that if any portion of the common areas and facilities encroaches upon the condominium units, a valid easement for the encroachment and for the maintenance of same, so long as it stands, shall and does exist. In the event the multifamily structure is partially or totally destroyed, and then rebuilt, the owners of condominium units agree that minor encroachment of parts of the common areas and facilities due to construction shall be permitted and that valid easements for said encroachment and the maintenance thereof shall exist.**
5. Every wall depicted on Exhibit A as being partly in one condominium unit and partly in an adjacent condominium unit is a party wall, and the owner of each condominium unit shall have the right to use and enjoy the party wall jointly with the owner of the adjacent unit; that each such condominium unit shall have the benefit of, and be burdened with, a perpetual easement to the extent that such party wall shall deviate from the vertical by reason of any shifting of the building, or any part thereof; and that should such party wall be injured or damaged by any cause other than the deliberate or negligent conduct of either such condominium unit owner, it shall be repaired at the joint expense of such adjacent owners.**
6. Every condominium unit owner shall have a perpetual easement in, upon, through and over the land of the condominium regime, to keep, maintain, use, operate, repair and replace: (a) 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 of the elements, whether such subsequent position be, in whole or part, adjacent, subjacent, or superjacent to said original position; (b) every chimney, cupola, weathervane, stack, or vent, if originally installed by the Grantor; (c) every threshold, screen door, storm window, shutter, hood, awning and all hardware pertaining thereto; (d) every rain gutter, downspout, roof overhang, and exterior wall light, if originally installed by the Grantor.**
7. Every condominium unit owner shall have a perpetual easement in the land of the condominium regime for the subterranean installations, maintenance and repair of any pipe, cable, wire, or other conduit of liquids or energy supplying water, sewerage, telephone, radio, television, electricity, heat, steam, or other similar service to the unit owned by him, subject, however, to the provision that the work of installation or repair shall be performed by the Association of Owners or the agent of the Association and further subject to the provisions set forth in Exhibit B appended to this Enabling Declaration.***
8. If there are additional condominium regimes located in the aforesaid Development Area, or in the future, the Grantor, for itself, its successors and assigns, hereby declares that the condominium unit owned in such condominium regimes, shall have a perpetual easement in the land of this condominium regime and the owners of condominium units in this condominium regime shall have a perpetual easement in the land of such other condominium regimes for the following purposes: (a) to maintain, use, repair and replace all existing storm sewerage systems and roadways used by the owners in the condominium regimes as ingress or egress to their property: (a) for the subterranean installation, maintenance and repair of any pipe, cable or other conduit of liquids or energy supplying water, sewerage, telephone, radio, television, electricity, heat, or other similar services to the condominium regimes subject, however, to the provision that where the work to be done is not a repair or replacement of any existing facility it shall be done only with the written permission of the Association of Owners of the condominium regime involved, which

* Descriptive material for guidance; conform to actual facts.

** This provision may be deleted if not applicable or changed to describe actual situation, subject to HUD approval.

permission shall not be unreasonably withheld.

9. An owner of a condominium unit shall automatically, upon becoming the owner of a condominium unit or units, be a member of the Association of Owners for this condominium regime, hereinafter referred to as the "Association" and shall remain a member of said Association until such time as his ownership ceases for any reason, at which time his membership in said Association shall automatically cease.
10. The owners of condominium units covenant and agree that the administration of the condominium regime shall be in accordance with the provisions of this Declaration, the By-Laws of the Association which are made a part hereof and attached as Exhibit "B", and shall be subject to the terms of a Regulatory Agreement executed by the Association and the Secretary of Housing & Urban Development, which Agreement is made a part hereof and is attached as Exhibit "C".
11. Each owner, tenant or occupant of a condominium unit shall comply with the provisions of this Declaration, the By-Laws, decisions and resolutions of the Association or its representative, and the Regulatory Agreement, as lawfully amended from time to time, and failure to comply with any such provisions, decisions, or resolutions, shall be grounds for an action to recover sums due, for damages, or for injunctive relief.
12. This Declaration shall not be revoked or any of the provisions herein amended unless all of the owners and the mortgagees of all of the mortgages covering the condominium units unanimously agree to such revocation or amendment by duly recorded instruments.
13. No owner of a condominium unit may exempt himself from liability for his contribution towards the common expenses by waiver of the use or enjoyment of any of the common areas and facilities or by the abandonment of his condominium unit.

I. All sums assessed by the Association but unpaid for the share of the common expenses chargeable to any condominium unit shall constitute a lien on such condominium unit prior to all other liens except only (1) tax liens on the condominium unit in favor of any assessing unit and special district, and (2) all sums unpaid on the first mortgage of record.* Such lien may be foreclosed by suit by the Manager or Board of Directors of the Association, acting on behalf of the owners of the condominium units, in like manner as a mortgage of real property. In any such foreclosure the condominium unit owner shall be required to pay a reasonable rental for the condominium unit, if so provided in the By-Laws, and the plaintiff in such foreclosure action shall be entitled to the appointment of a receiver to collect the same. The manager or Board of Directors, acting on behalf of the owners of the condominium units, shall have the power to bid in the unit at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Suit to recover a money judgment for unpaid common expenses shall be maintainable without foreclosing or waiving the lien securing the same.

J. Where the mortgagee of a first mortgage of record or other purchaser of a condominium unit obtains title to the unit as a result of foreclosure of the first mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of the common expenses or assessments by the Association chargeable to such family unit which became due prior to the acquisition of title to such condominium unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the condominium unit owners, including such acquirer, his successors and assigns.

K. The respective condominium units shall not be rented by the owners thereof for transient or hotel purposes, which shall be defined as (a) rental for any period less than thirty (30) days; or (b) any rental if the occupants of the condominium unit are provided customary hotel services, such as room service for food and beverage, maid service, furnishing laundry and linen, and bellboy service. Other than the foregoing obligations, the owners of the respective condominium units shall have the absolute right to lease same provided that said lease is made subject to the covenants and restrictions contained in this Declaration and further subject to the By-Laws and Regulatory Agreement attached hereto.

L. In the event the property subject to this Enabling Declaration is totally or substantially damaged or

* The list of liens having priority over the assessments by the Association for common expenses may be expanded provided the approval of HUD is obtained.

destroyed, the repair, reconstruction, or disposition of the property shall be as provided by _____

M. In a voluntary conveyance of a condominium unit the grantee of the unit shall be jointly and severally liable with the grantor for all unpaid assessments by the Association against the latter for his share of the common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the Manager or Board of Directors, as the case may be, setting forth the amount of the unpaid assessments against the grantor due the Association and such grantee shall not be liable for, nor shall the condominium unit conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount therein set forth.

N. All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the "Act", this Declaration, or in the By-Laws, shall be deemed to be binding on all owners of condominium units, their successors and assigns.

O. The Board of Directors or the Manager shall obtain and continue in effect blanket property insurance in form and amounts satisfactory to mortgagees holding first mortgages covering condominium units but without prejudice to the rights of the owner of a condominium unit to obtain individual condominium unit insurance. Such blanket property insurance shall cover loss by damage and fire and such other hazards as are covered under standard extended coverage provisions and may include such other and additional coverage as the Board of Directors deems necessary or desirable.

P. Insurance premiums for any blanket insurance coverage and the other insurance coverages, shall be a common expense to be paid by monthly assessments levied by the Association; and such payments shall be held in a separate escrow account of the Association and used solely for the payment of the blanket property insurance premiums and other insurance premiums as such premiums become due.

Q. Grantor covenants to take no action which would adversely affect the rights of the Association with respect to assurances against latent defects in the property or other rights assigned to the Association, the members of such Association and their successors in interest, as their interests may appear, by reason of the establishment of the condominium regime.

R. With respect to the _____ Nonprofit Recreational Corporation, hereinafter referred to as "Corporation" and its facilities, said Grantor, by this Declaration and all owners of the condominium units, by their acceptance of their deeds, covenant and agree as follows that:

1. As used in this paragraph S -

- (a) "Unit" or "condominium unit" shall mean a condominium unit in a condominium regime approved by the Secretary of Housing and Urban Development which is located in the Development Area;
- (b) "Grantor" shall mean any owner or owners of a Part of the Development Area;
- (c) "Part of the Development Area" shall mean any part of the Development Area on which a condominium regime approved by the Secretary of Housing and Urban Development has not been established.
- (d) "Secretary of Housing and Urban Development" shall mean the Secretary or his duly appointed representative.

2. All condominium unit owners shall automatically be members of the Corporation and shall enjoy the privileges and be bound by the obligations contained in the Corporation's Articles and By-Laws.

3. Each condominium owner for each condominium unit owned shall pay to the Corporation an annual assessment equal to 1/()** of the total sum necessary to provide for the insurance, reserve fund for replace-

* Insert applicable statutory reference; or, in the absence of statute, insert the following: "an Agreement approved by _____ % of the votes."

** Insert total number of condominium units planned for all sections of the Development Area.

ments, maintenance and operation of the swimming pool* and its facilities. For so long as there are less than _____** condominium units built on the Development Area the balance of said total sum not covered by the assessment against the condominium unit owners shall be assessed by the Corporation against, and be payable by, the Grantor to the Corporation.

4. The amount of assessment against each unit owner and, if any, against the Grantor, as provided for in subparagraph 3 shall be assessed by the Corporation as a lien at the beginning of each annual assessment period. Each assessment shall be due and payable within thirty (30) days of assessment, and upon default of payment within such period of time, shall be a lien against each condominium unit owned by the defaulting owner and against the Part of the Development Area, if any, owned by the defaulting Grantor, and the Corporation shall be entitled to enforce the payment of said lien according to the laws of the State of _____ and to take any other actions for collection from the defaulting parties. Any such lien against a condominium unit or against the Part of the Development Area, if any, owned by the Grantor shall be subordinate to any recorded first mortgage or first Deed of Trust covering such condominium unit, or, as the case may be, covering the Part of Development Area, if any, owned by the Grantor.
5. In addition to the annual assessments authorized above, the Corporation may levy in any assessment year special assessments for the purpose of defraying, in whole or in part, (a) the cost of any construction, reconstruction, repair or replacement of a capital improvement, including fixtures and personal property related thereto, or (b) the expense of any other contingencies; provided that any such assessments shall have the assent of two-thirds (2/3) of the votes of the members who are voting in person or by proxy at a meeting duly called for this purpose.
6. Each member for each condominium unit owned shall pay to the Corporation a special assessment equal to 1/ ()** of the total sum approved by the Corporation to meet the costs and expenses as provided in subparagraph 5 hereof. For so long as there are less than _____** condominium units built on the Development Area, the balance of any such total sum not covered by the special assessment against the condominium unit owners shall be assessed by the Corporation against, and be payable by, the Grantor to the Corporation.
7. The amount of the special assessment provided for in subparagraphs 5 and 6 shall be assessed as a lien by the Corporation. Each such assessment shall be due and payable within thirty (30) days of assessment, and upon default of payment within such period of time, shall be a lien against each condominium unit owned by the defaulting owner and against that Part of the Development Area, if any, owned by the defaulting Grantor, and the Corporation shall be entitled to enforce the payment of said lien according to the laws of the State of _____ and to take any other actions for collection from the defaulting parties. Any such lien against a condominium unit or against the Part of the Development Area, if any, owned by the Grantor shall be subordinate to any recorded first mortgage or first Deed of Trust covering such condominium unit, or, as the case may be, covering the Part of Development Area, if any, owned by the Grantor.
8. Both annual and special assessments may be collected on a monthly basis.

S. The provisions hereof shall be deemed independent and severable, and the invalidity or partial invalidity or unenforceability of any one provision or portion thereof as may be determined by a court of competent jurisdiction shall not affect the validity or enforceability of any provisions hereof.

T. The terms "Declaration" and "condominium regime" as used herein shall mean and include the terms "Master Deed" and "Plan of Apartment Ownership".

(Execution and acknowledgement)

* Guide description only; conform to facts.

** Insert total number of condominium units planned for all sections of the Development Area.