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AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM OWNERSHIP  
FOR  
MARINERS POINT CONDOMINIUM

PLEASE CROSS MARGINAL REFERENCE WITH THE DECLARATION OF CONDOMINIUM OWNERSHIP FOR MARINERS POINT CONDOMINIUM RECORDED AT VOLUME 057, PAGE 453 ET SEQ. OF THE ASHTABULA COUNTY RECORDS.

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## INTRODUCTION

The Declaration of Condominium Ownership for Mariners Point Condominium ("Original Declaration") was recorded on August 2, 1991 at Volume 056, Pages 7736 et seq. and re-recorded on August 21, 1991 at Volume 057, Page 453 et seq. of the Ashtabula County Records.

This Amended and Restated Declaration of Condominium Ownership for Mariners Point Condominium ("Amended and Restated Declaration") incorporates the Original Declaration, as recorded on August 2, 1991 at Volume 056, Pages 7736 et seq. and re-recorded on August 21, 1991 at Volume 057, Page 453 et seq., the First Amendment to the Original Declaration recorded on June 10, 1992 at Volume 61, Page 5486 et seq., the Second Amendment to the Original Declaration recorded on October 22, 1993 at Volume 70, Page 1239 et seq., the Third Amendment to the Original Declaration recorded on October 21, 1996 at Volume 91, Page 7899 et seq., and the Fourth Amendment to the Original Declaration recorded on June 3, 1998 at Volume 103, Page 9242 et seq. (collectively the "Expansion Amendments"), the Affidavit of Fact to the Original Declaration recorded on October 27, 2005 at Volume 354, Page 1615 et seq. (the "Affidavit"), the Amendments to the Original Declaration recorded on March 20, 2006 at Instrument No. 2006-00004076, the Amendment to the Original Declaration recorded on July 28, 2010 at Instrument No. 2010-00006679, and the Amendment to the Original Declaration recorded on July 11, 2014 at Instrument No. 2014-00006492 of the Ashtabula County Recorder's Records. The result is a single text that is written as if the text of the above-referenced Amendments has been included in the Amended and Restated Declaration.

This Amended and Restated Declaration has been prepared at the direction of the Mariners Point Condominium Association ("Association") for the convenience of the Unit Owners as well as for prospective purchasers of Units within Mariners Point Condominium.

Unit Owners and prospective Unit Owners are reminded that this Amended and Restated Declaration does not materially amend the Original Declaration and all recorded Amendments. The Original Declaration and all recorded Amendments are available for review at the Ashtabula County Recorder's Office. Any inconsistency between the Declaration and Amendments and this Amended and Restated Declaration will be resolved in favor of the Original Declaration and Amendments.

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**AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM OWNERSHIP  
FOR  
MARINERS POINT CONDOMINIUM**

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**AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM OWNERSHIP FOR  
MARINERS POINT CONDOMINIUM**

This Declaration is made by the CDP Development Co., Inc., an Ohio corporation, hereinafter called "Declarant";

**WITNESSETH:**

**WHEREAS**, the Declarant is the owner in fee simple of the real property hereinafter described as Parcel 1, together with all Buildings, improvements and other permanent fixtures situated thereon and appurtenance thereto; and

**WHEREAS**, it is the desire of Declarant to submit Parcel 1 to the provisions of Chapter 5311 of the Ohio Revised Code for condominium ownership and thereby to establish for their joint benefit and for the mutual benefit of all future Unit Owners, Mortgagees, or Occupants of Parcel 1 certain easements and mutually beneficial restrictions and obligations with respect to the use, conduct and maintenance of said property and to require that the Occupants shall hold their interests in Parcel 1 subject to the conditions, rights, easements, privileges and restrictions of public record and as hereinafter set forth in this Declaration, as well as the Bylaws of Mariners Point Association, a true copy of which Bylaws are attached hereto as Exhibit "A" and made a part hereof as though fully rewritten herein at length; and

**WHEREAS**, Declarant is the owner of Parcel 2 (hereinafter described) which is contiguous to Parcel 1, upon which Parcel 2 Declarant has or proposes to construct improvements for residential use; and

**WHEREAS**, Declarant desires to provide for the right and option to submit all or part of Parcel 2, together with the Buildings and improvements constructed or to be constructed thereon, in various Phases, to the provisions of the Act after this Declaration is filed for record with the Ashtabula County Recorder;

**NOW, THEREFORE**, the Existing Unit Owners and Declarant hereby declare as follows:

## ARTICLE I DEFINITIONS

1. **Definitions and Legal Description.** The terms used herein and in the Bylaws shall have the meanings stated in the Act, or as defined in the preamble clauses above or as follows, unless the context otherwise requires or specifies:

A. The legal description of Parcel 1 is attached hereto as "Exhibit C-1" and the legal description of Parcel 2 is attached hereto as "Exhibit C-2".

B. "Act" - the Ohio Condominium Act as set forth in Chapter 5311 of the Ohio Revised Code as the same may be amended or supplemented from time to time.

C. "Association" - Mariners Point Condominium Association is a nonprofit Ohio corporation acting as an organization of all the Unit Owners for administering the Condominium Property subject to this Declaration and which is more fully described in subsequent Articles in this Declaration.

D. "Board" - the Board of Directors of the Association as the same may be constituted from time to time.

E. "Buildings" - means all of the structures presently constructed on Parcel 1 as set forth in the Drawings; provided, however, when buildings have been added to the Condominium Property pursuant to the Provisions of Article XV hereof, the term "Buildings" shall also include all of any such buildings.

F. "Bylaws" - the Bylaws of the Association, an exact and true copy of which is attached hereto as Exhibit A and made a part hereof.

G. "Common Elements" - all parts of the Condominium Property except the Units as more fully described and designated in Article V hereof.

H. "Common Assessments" - means assessments charged proportionately against all Units for common purposes.

I. **“Common Expenses”** - means those expenses designated Common Expenses in the Bylaws, the Act and/or as may be declared by the Association, from time to time, which expenses may or may not include, but may not be limited to:

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

(ii) expenses of administration, repair and replacement of the Common Elements and maintenance of said Elements; and

(iii) reserves for future replacement and rehabilitation of Common Elements.

J. **“Common Losses”** - means the amount by which the Common Expenses during any period of time exceeds Common Assessments and Common Profits during that period.

K. **“Common Profits”** - means the amount by which the total income received from assessments charged for special benefits to specific Units, rents received from rentals of equipment or space in Common Elements, and any other fee, charge or income other than Common Assessments exceeds expenses allocable to the income, rental, fee or charge.

L. **“Common Surplus”** - means the amount by which Common Assessments collected during any period exceeds Common Expenses.

M. **“Condominium Property”** - means Parcel 1; Parcel 1 Buildings and all other improvements thereon; all easements, rights and appurtenances belonging thereto; and all articles of personal property existing thereon for the common use of the Unit Owners; provided, however, when all or portions of the Additional Property have been added to this Condominium Property pursuant to the provisions of Article XV hereof, the term “Condominium Property” shall also include all or such portions of the Additional Property which are so added and the Buildings thereon and all other improvements thereon; all easements, rights and appurtenances belonging thereto, and all articles of personal property existing thereon for the common use of the Unit Owners.

N. **“Declaration”** - this instrument and all Exhibits attached hereto and amendments hereto as provided in Article XV.

O. **“Drawings”** - the drawings attached to this Declaration, which were certified by David Mann, Registered Architect, and Wilford Mosier, Registered Surveyor, or when amended pursuant to Article XV hereof, as so amended.

P. **“Exhibits”** - all exhibits attached to the Declaration are made a part hereof as if fully rewritten herein at length.

Q. **“Limited Common Elements”** - those parts of the Common Elements reserved for use of a certain Unit to the exclusion of all other Units and designated as Limited Common Elements in Article VI.

R. **“Mortgagee”** - a person having a mortgage lien levied against a Unit and recorded with the County Recorder.

S. **“Occupant”** - person or persons, natural or artificial, other than the Unit Owner in possession.

T. **“Ownership Interest”** - a Unit and the undivided interest in the Common Elements appurtenant thereto.

U. **“Rules”** - the rules and regulations governing the operation and use of the Condominium Property as may be adopted from time to time by the Board.

V. **“Unit”** - that part of the Condominium Property more fully described in Article IV hereof.

W. **“Unit Owner”** - any person who owns a Condominium Unit.

X. **“Parcel 1 Buildings”** - means the structures and other facilities constructed on Parcel 1.

Y. **“Parcel 2 Buildings”** - means the structures and other facilities which are constructed or may be constructed by Declarant on all or part of Parcel 2, from time to time, pursuant to the provisions of Article XV hereof.

Z. "Phase" - the Condominium Property as presently constituted or any particular portion thereof which may be hereafter added pursuant to the provisions of Article XV hereof.

**ARTICLE II  
ESTABLISHMENT OF CONDOMINIUM OWNERSHIP AND DIVISION OF  
CONDOMINIUM PROPERTY**

Declarant is the owner of the properties described in Article I, Paragraph 1 (A) hereof which, together with the other portions of the Condominium Property is hereby submitted to the provisions of Chapter 5311 of the Ohio Revised Code.

**ARTICLE III  
NAME**

The Condominium Property shall be known as Mariners Point Condominium.

**ARTICLE IV  
DESCRIPTION OF PROPERTY AND UNITS**

1. **General Description of Condominium Property.** Until amended as provided in Article XV hereof, the Condominium Property consists of Parcel 1 and the Phase 1, 2, and 3 of Parcel 2 and the Buildings and other improvements located thereon, including, without limitation, five residential structures each containing at least 18 Units, and each Unit having a concrete pad for the location of central air conditioning equipment to serve each Unit, all easements, rights, and appurtenances belonging thereto, and all articles of personal property existing thereon for the common use of the Unit Owners. The Buildings are designated as Building Nos. 1, 2, 3, 4, and 5 on the Drawings. Building 1 contains 19 Units, and Buildings 2 and 4 each contain 18 Units, and Buildings 3 and 5 each contain 21 Units. The Units are designated as 111 through 115, 117, 121 and 123 through 127 and 131 through 137 in Building 1; Units 211 through 216, 221 through 226 and 231 through 236 in Building 2; Units 311 through 317, 321 through 327 and 331 through 337 in Building 3; Unit 411 through 416 and 421 through 426 and 431 through 436 in Building 4; and Units 511 through 517 and 521 through 527 and 531 through 537 in Building 5. Each Building is three stories in height. The first

number of each Unit designates the Building, the second number the floor in each Building, and the third number the Unit on each floor. There are no basement areas.

The following is a description of the Units in the Condominium:

Sloop: An efficiency Unit consisting of a combination kitchen, bedroom and a living-dining area with a full bath.

Units: 212, 215, 222, 225.

Schooner: Two bedroom, two bath Unit plus utility room, a full kitchen and a great room with a living room and dining area.

Units: 112, 113, 115, 123, 125, 126, 213, 214, 223, 224, 312, 314, 315, 316, 322, 324, 325, 326, 332, 334, 335, 336, 412, 413, 414, 415, 422, 423, 424, 425, 432, 433, 434, 435, 512, 513, 515, 516, 522, 523, 525, 526, 532, 533, 535, 536.

Schooner w/

Chart Room: Third floor Unit and contains same improvements as the basic Schooner, plus a loft area which contains a master bedroom and bath.

Units: 132, 133, 135, 136, 233, 234.

Ketch: An angled Unit, containing two bedrooms, a den, two full baths, a great room with a living room and dining room area, a full kitchen and a utility room.

Units: 114, 124, 313, 323, 333, 514, 524, 534.

Ketch w/

Upper Deck: A Ketch Unit with an additional bedroom in the loft area.

Units: 134.

Yawl: An end Unit containing one bedroom, living room, dining area, kitchen, a single bath and a utility room with washer and dryer hookup.

Units: 111, 127, 211, 216, 221, 226, 311, 317, 321, 327, 331, 337, 411, 416, 421, 426, 431, 436, 511, 517, 521, 527, 531, 537.

Yawl w/

Eagles Nest: A Yawl Unit plus a second bedroom in the loft area with a full bath and walk in closet.

Units: 131, 137, 231, 236.

Catamaran: A combination of Yawl and Schooner Units containing two bedrooms and a den or three bedrooms plus a 2½ or 3 full baths, living room, dining room or area, full kitchen and utility room.

Units: 117, 121.

Sloop w/

Chart Room: Third floor Unit and contains same improvements as the basic Sloop plus a loft area containing a bedroom.

Units: 232, 235.

Although Units may have the same designation and floor plan, they may differ in size which is reflected in the Drawings and percent of ownership set forth in Paragraph 3(B) hereof.

The Buildings are each three stories in height and of contemporary architecture with vinyl siding. The Units are built on a concrete slab with footers at least 18" x 3'4" deep. The main floor of the Units is 4" concrete with ¾ inch underlayment covered by carpeting or tile. Inside walls are ½ inch drywall with pre-finished trim. Where required, 5/8 inch fire-code drywall is used. All windows and slider doors are insulated glass. Roof is supported with computer-designed trusses on 24" centers; 15 lb. felt and asphalt shingles. Standard 2" x 4" wall construction with R13 insulation value, covered outside with 7/16 inch wafer board and 4" vinyl siding. The ceiling has R19 insulation value; the ground floor R8

insulation value, and R30 insulation value between top floor and roof line. See the Drawings for additional details.

2. **Description of Units.** Each Unit shall constitute a freehold estate and shall consist of the space bounded by the horizontal and vertical planes formed by the undecorated interior surfaces of the perimeter walls, the upper surface of the basement floors and the lower surface of the ceiling of the highest level of each Unit (regardless of the materials) projected, if necessary, by reason of structural division such as interior walls, floors, ceilings, and other partitions as may be necessary to form a complete enclosure of space with respect to such Unit, all as shown on the Drawings. Without limiting the generality of the foregoing, each Unit shall include:

A. any finishing material applied or affixed to the interior surfaces of the perimeter walls, floors, or ceilings including, but not limited to, paint, lacquer, varnish, wallpaper, tile and paneling;

B. the receptacle and switch plates or covers within the bounds of the Unit;

C. the space occupied by any Common or Limited Common Elements located within the bounds of the Unit, but shall not include any Common Elements located within the bounds of such Unit; and

D. all nonstructural interior walls (other than walls separating Units) and all space between interior walls, floors and ceilings, including the space occupied by structural and component parts of the Building and by utility pipes, wires and conduits.

Except with respect to any of the Common Elements located within the bounds of the Unit, each Unit Owner shall be entitled to the exclusive ownership and possession of his Unit and to the ownership of any undivided interest of the Common Elements in the percentage hereinafter expressed. No Unit Owner shall, by deed, plat or otherwise, subdivide, or in any other manner, cause his Unit to be subdivided into tracts, parcels or Units smaller than the whole Unit as shown on the Drawings.

Each Unit has a direct exit to a public street or to a Common Element or easement leading to a public street.



**ARTICLE V  
COMMON ELEMENTS**

1. **Description.** Except as otherwise in this Declaration provided, the Common Elements shall consist of all part of the Condominium Property except the Units and shall include, but not be limited to, foundations, roofs, gutters, downspouts, exterior lighting fixtures, installations of central services such as outside lighting, sewer lines, cold water lines for each Building, yards, surface parking areas, roads, walks, and storage spaces for rubbish disposal and all repairs and replacements of any of the foregoing.

2. **Ownership of Common Elements.** The Common Elements shall be owned by the Unit Owners as tenants in common, and ownership thereof shall remain undivided. No action for partition of any part of the Common Elements shall be maintainable, except as specifically provided in the Act, nor may any Unit Owner otherwise waive or release any rights in the Common Elements; provided, however, that if any Units shall be owned by two or more co-Unit Owners as tenants in common or as joint tenants, nothing herein contained shall be deemed to prohibit a voluntary judicial partition of such Unit ownership as between such co-Unit Owners.

Until amended as provided in Article XV, the percentage of interests in the Common Elements of each Unit has been determined by Declarant in accordance with the provisions of Chapter 5311.04 of the Act based on the proportion that the square footage each Unit bears to the aggregate square footage of all the Units on the date this Declaration is filed for record. If Additional Property is added to the Condominium Property then the percentage of interest herein shall be adjusted in accordance with the provisions of Article XV hereof.

The percentage of ownership interest of each Unit Owner is set forth in Exhibit D.

The undivided percentage of interest of the Unit Owners in the Common Elements and the fee title to the respective Units shall not be separate or separately conveyed, encumbered, inherited or divided, and each undivided interest shall be deemed to be conveyed or encumbered with such respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to such Unit.

Except as provided in Article XV hereof, the undivided percentage of interest of the Unit Owners may not be amended without the unanimous consent of all Unit Owners and their Mortgagees.

3. **The Use of Common Elements.** Each Unit Owner shall have the right to use the Common Elements in accordance with the purposes for which they are intended and for all purposes incident to the use and occupancy of his Unit, and such rights shall be appurtenant to and run with his Unit, provided, however, that no person shall use the Common Elements or any part thereof in such manner as to interfere with or restrict or impede the use thereof by others entitled to the use thereof.

## **ARTICLE VI LIMITED COMMON ELEMENTS AND EXCLUSIVE USE AREAS**

1. **Limited Common Elements.** Each Unit Owner is hereby granted an exclusive and irrevocable license to use and occupy the Limited Common Elements located within the bounds of his Unit or which serve only his Unit. The Limited Common Elements with respect to each Unit shall consist of:

A. all structural interior walls and one half (1/2) of any wall separating one Unit from the other, doors (including the entrance door to each Unit and all hardware attached thereto), floors, ceilings, skylights, if any, and rafter ceilings located within the bounds of a Unit, excluding structural and component parts thereof;

B. all ducts and heating and air conditioning equipment, systems and control devices located within or outside the bounds of each Unit but which serves only such Unit;

C. all gas, electric, television lines or antennas, sewer, water or other utility or service lines, parts, wires and conduits located within the bounds of such Unit and which serve only such Unit;

D. patios, balcony or balconies, one or more stoops, if any, and any concrete pads or decks for the placement of central air conditioning equipment which serve only such Unit;

E. all glass and screens within window and door frames within or attached to the perimeter walls of each Unit;

F. all other Common Elements as may be located within the bounds of such Unit and which serve only such Unit.

No Unit Owner, however, shall decorate, paint, or otherwise adorn any patio, balcony or deck in any manner contrary to the Rules unless he shall first obtain the written consent of the Board nor shall any Unit Owner decorate or apply any finishing material to the exterior surface of any door except that the Unit Owner may clean the interior and exterior surfaces of any window or glass which is part of the door.

The Board may authorize the use of Limited Common Elements, as distinguished from the Common Elements and Exclusive Use Areas, for the construction of open, unenclosed patios, hedges, decks, fences, or similar improvements provided that the improvements are maintained and insured by the Unit Owner of the Unit to which the Limited Common Element is appurtenant. The construction of an addition to or an expansion of a Unit into Limited Common Elements or Common Elements may not be authorized without the consent of all Unit Owners.

2. **Exclusive Use Areas.** Each Unit Owner is hereby granted an exclusive license to use and enjoy such Exclusive Use Areas as the Association may allocate to such Unit Owner; provided, however, that the Association may, at any time and from time to time, revoke such license and reassign the use of such areas in accordance with such standards as it may establish from time to time. All expenses paid by the Association which is attributable to an exclusive use area shall be assessed directly to the Unit Owner to whom the exclusive use area has been granted and such charges shall be considered as part of the Unit Owners assessment and subject to the provisions of Article X of this Declaration.

## ARTICLE VII ASSOCIATION

1. **Condominium Association.** Declarant shall cause to be formed an Association for the administration of the Condominium Property to be called the Mariners Point Condominium Association which shall be a nonprofit Ohio

corporation. Each Unit Owner shall be a member of the Association, including Unit Owners in Parcel 2 or any part thereof if this Declaration is amended in accordance with Article XV, which membership shall terminate upon the sale or other disposition by such member of his Unit at which time the successor Unit Owner shall become a member of the Association. The Association shall be governed by the Bylaws which may be amended from time to time as therein provided.

The Association shall be established not later than the date the Deed is filed for record with the County Recorder conveying the first sale of an Ownership Interest. Except in its capacity as a Unit Owner of unsold condominium Ownership Interests, the Declarant shall not retain a property interest in any of the Common Elements. Until the first meeting of Unit Owners is called in accordance with Article I, Section 5(A) of the Bylaws, and members of the Board of Directors are elected from Unit Owners other than the Declarant or its agents in accordance with Article III, Section 3 of the Bylaws, the Declarant or persons designated by it may appoint and remove members of the Board and other officers of the Association, and may assert any other rights granted in Section 5311.08(D) of the Act subject, however, to the obligations, conditions and limitations set forth in Section 5311.08(D) of the Act.

2. **Administration of Condominium Property.** The administration of the Condominium Property shall be in accordance with the provisions of this Declaration and the Bylaws and each Unit Owner and Occupant shall comply with the provisions of this Declaration, the Bylaws and Rules and the decisions and resolutions of the Association with the understanding that failure to comply with any such provisions, decisions, or resolutions shall be the grounds for an action for damage or for injunctive relief.

#### **ARTICLE VIII AGENT FOR SERVICE OF PROCESS**

Celia Jones, a natural person resident in the county in which the Condominium Property is situated and whose resident address is 4108 Lake Road, Ashtabula, Ohio 44004, Ashtabula County, Ohio, is hereby appointed as the agent to receive service of process for the Association. The agent for service of process may be changed from time to time by filing with the Secretary of State of Ohio an

appropriate form for the appointment of a statutory agent of an Ohio nonprofit corporation.

**ARTICLE IX  
GENERAL PROVISIONS AS TO UNITS IN  
COMMON AND LIMITED COMMON ELEMENTS**

1. **Easements.** The Condominium Property is hereby made subject to the following easements, each of which shall be in perpetuity, and shall run with the land, and shall inure to the benefit of and be binding upon the Declarant, each Unit Owner, each Mortgagee in whose favor a mortgage shall be granted with respect to any Unit, and any other person having an interest in the Condominium Property, or any part thereof, and their respective heirs, devisees, administrators, executors, personal representatives, successors, nominees, trustees and assigns of any of the forgoing persons.

**A. Encroachments.** If by reason of the construction, repair, restoration, partial or total destruction and rebuilding, or settlement or shifting of any of the Buildings or improvements constituting a part of the Condominium Property, any part of the Common Elements shall encroach upon any part of a Unit, or any part of a Unit shall encroach upon any part of the Common Elements, or any part of a Unit shall encroach upon any part of any other Unit, or if by reason of the design or construction or rebuilding of the utility systems comprised within the Condominium Property, any pipes, ducts, or conduits serving that Unit shall encroach upon any other Unit, easements in favor of the Unit Owner or Association, as the case may be, for such encroachments and the maintenance of any such encroachments are hereby established; provided, however, in no event shall a valid easement for any encroachment be created in favor of a Unit Owner if such encroachment occurred due to his willful conduct.

**B. Right-of-Way, Utility and Support Easements.** Every portion of a Building or utility easement and line or any improvements or any portion of the Condominium Property contributing to the support of another Building, utility easement and line, improvement, or another portion of the Condominium Property, shall be burdened with an easement of support for the benefit of all other such Buildings, portions thereof, utility easements and lines, improvements and other portions of the Condominium Property.

Each Unit shall be subject to such easements of access as may be necessary for the maintenance, repair or replacement of any Common Elements or the operation of the Buildings in which such Unit is located and shall be specifically subject to such easements as may be necessary for the installation, maintenance, operation, repair, removal, or replacement of any pipes, ducts, wires, conduits, television lines or antennae, or structural components in the interior walls or ceilings of such Units and/or for the purpose of sewer and water facilities in the floor of each Unit. In this respect, easements are hereby granted in favor of each Unit Owner to and through the Common Elements as may be necessary for the use of water gas, sewer, electric power and other utilities now or hereafter existing within the walls and/or other portions of the Condominium Property and further, for the use of television antennae on the roofs or other areas comprising the Common Elements subject to prior approval by the Association as hereinafter provided. There is further reserved for the Declarant, the Association, the Management Company, or their respective contractors, agents and employees, the use of the outdoor faucets of Units for the purpose of watering yard and planting beds.

**C. Reserved Easements.** Easements are hereby reserved in favor of Declarant and its successors or assigns (including all future Unit Owners) over and under the land comprising the Condominium Property (as the same may be expended from time to time) for the benefit of Parcel 2, or any part thereof, jointly and severally, to:

(i) install, use, maintain, repair and replace pipes, wires, conduits, or other utility lines, water, storm and sanitary sewer, gas, electric, telephone, and televisions lines and services and appurtenances thereto;

(ii) traverse by motor vehicle or otherwise over all common roadways and walkways as a means of ingress and egress to a dedicated road;

(iii) to establish the grade on each Parcel or any portion thereof with each other Parcel or any portion thereof and for necessary access over each parcel to construct the Parcel Buildings and other improvements on each Parcel or any portion thereof.

**D. Future Easements to Others.** Such easements as Declarant and/or the Association, if the same has been formed, from time to time may hereafter grant to others on behalf of the Unit Owners of the Condominium Property for utility purposes, including, but not limited to, the right to install, lay, maintain, repair and replace water mains and pipes, sewer lines, gas mains, telephone wires and equipment and television and electrical conduits and wires over, under and along any portion of the Common Elements provided that it shall be a condition precedent to the use and enjoyment of any such easements that the Unit Owner or Unit Owners of land benefitted thereby shall, at its or their expense, restore the Common Elements to the same condition as existed prior to the installation of any such utility improvements. Each Unit Owner and his respective Mortgagee, by acceptance of a deed conveying such Ownership Interest or a mortgage encumbering such Ownership Interest, as the case may be, hereby irrevocably appoints Declarant, or the Association, if the same has been formed, his attorney-in-fact, coupled with an interest, to execute, acknowledge and record for and in the name of each Unit Owner and his Mortgagee such easements or other instruments as may be necessary to effect the foregoing.

**E. Existing Easements.** Such easements are easements which have been granted by or to Declarant or its predecessors in title by or to third parties and which have been duly recorded with the County Recorder prior to the filing of this Declaration.

Each grantee of a Unit and each Mortgagee in whose favor a mortgage with respect to any Unit is granted shall be subject to and have the benefit of (as the case may be) each of the easements herein provided in the same manner and to the same extent as though such easements were expressly provided for and fully set forth in the deed of conveyance or mortgage (as the case may be), notwithstanding the omission from such deed of conveyance or mortgage (as the case may be) of reference to such easements.

The Association, on behalf of the Unit Owners, may hereafter grant, amend or release easements, and any obligations incident thereto, relating to the Condominium Property or any part thereof; provided, however, if Declarant retains ownership in any Unit or any part of the Condominium

Property, then the Association may only so act if it first obtains the written consent of the Declarant to any such act.

**2. Management, Maintenance, Repairs and Replacement of Common Elements.**

**A. Condominium Instrument Requirements.**

i. **General.** The Condominium Act requires that certain information be provided in the Condominium instruments. Much of such information is provided elsewhere in the Condominium organizational documents and in other documents. However, the following data is set forth to insure that the Unit Owners have been properly informed.

ii. **Deposits.** Any deposit or down payment made in connection with a sale of a Unit by Declarant or its agent will be held in trust or escrow until, delivered at the time of the closing of the sale, or returned to or otherwise credited to the buyer, or forfeited to the Declarant. If in the case of any such sale, a deposit or down payment of \$2,000.00 or more is held for more than 90 days, interest at the rate of at least 4% per annum for any period exceeding 90 days shall be credited to the buyer at the time of closing of the sale or upon return or other credit made to the buyer, or added to any forfeiture to the Declarant. Deposits held in trust or escrow pursuant to sales by Declarant or its agent shall not be subject to attachment by creditors of Declarant or the buyer.

iii. **Association Control.** Except in its capacity as a Unit Owner of unsold Units, the Declarant or its agent will not retain a property interest in any of the Common Elements after control of the Association is assumed by the Association. The Unit Owners of Units that have been sold by the Declarant or its agent will assume control of the Association and the Common Elements, as elsewhere provided herein, in compliance with the requirements of the Condominium Act. Neither the Association nor the Unit Owners will be subject to any management control or agreement executed prior to the assumption of control of the Association by Unit Owners other than Declarant for more than one year subsequent to that assumption of control unless



such a contract or agreement is renewed by a vote of the Unit Owners pursuant to the provisions of the Bylaws.

iv. **Limited Warranty.** The following are the limited warranties (and limitations thereon) which the Declarant gives to a buyer of a Unit from it, at the time the sale of the Unit to the buyer is closed.

a. **Units.** Except as provided in subparagraph c, below, the Declarant warrants to provide and pay for the full cost of labor and materials for any repair or replacement of structural, mechanical, and other elements pertaining to the Unit, occasioned or necessitated by a defect in material or workmanship, that arise within a period of one year from the date the deed to the buyers for that Unit is filed for record.

b. **Common Elements.** The Declarant warrants to provide and pay for the full cost of labor and materials for any repair or replacement of the roof and structural components, and mechanical, electrical, plumbing, and common service elements serving the Condominium Property as a whole, occasioned or necessitated by defects in material or workmanship, that arise within a period of two years from the date the deed is filed for record following the sale of the first Unit in the Condominium to a purchaser in good faith for value.

c. **Appliances, etc.** In the case of ranges, refrigerators, disposal, and other appliances, if any, installed and furnished by the Declarant as part of the Unit, the Declarant assigns to the buyers all express and implied warranties of the manufacturer, and the Declarant's warranty with respect to such items is limited to the Declarant's warranty that the same have been properly installed.

d. **Extended Warranties.** The Declarant assigns to the buyers any warranties made to the Declarant that exceed the time periods for warranties that the Declarant has given to the buyers by this limited warranty.

e. **Limitations.**

(1) No responsibility is assumed for damage from any cause, whatsoever, other than to repair or replace, at the Declarant's cost, items containing defects covered by Declarant's warranty.

(2) No responsibility is assumed for consequential or incidental damage except to the extent, if any, not permitted to be excluded or limited by law.

(3) Implied warranties, if any, are limited to one year from the date on which the Unit is deeded to the buyers, except to the extent, if any, that limitation is not lawful.

(4) These written warranties are the only express warranties the Declarant gives to the buyers unless additional warranties are included in a written contract between the Declarant and the buyers.

(5) Any request for service must be sent in writing to the Declarant at such address as the Declarant may designate, from time to time, in writing to the buyers. The Declarant or the Declarant's designated representative will commence performance of the Declarant's obligations under this warranty within 30 days after receipt of the buyer's request for service, and complete the same as soon as reasonably possible. All repairs and adjustments will be made Monday through Friday, 8:00 a.m. to 5.00 p.m.

f. **Other Rights.** This written limited warranty gives the buyers specific legal rights and the buyers may also have other legal rights under law.

v. **Declarant's Obligations.** Declarant will assume the rights and obligations of a Unit Owner in its capacity as Unit Owner

of Units not yet sold, including, without limitation, the obligation to pay Common Expenses attaching to such Units, from the date this Declaration is filed for record.

a. **Responsibility of the Association.** The management, maintenance, repair and replacement of the Common Elements shall be the responsibility of the Association, but the Association shall, unless otherwise agreed in writing by 75% of the Unit Owners and their respective Mortgagees, engage a professional independent management company to discharge such responsibilities. Such delegation shall be evidenced by a management contract which shall not exceed two years in duration and which shall provide for the payment of reasonable compensation to said managing agent as a Common Expense. Said agreement shall also provide that the management contract may be terminated for cause on 30 days' written notice. Upon the expiration of the initial term, the management contract may be renewed by its terms or otherwise from time to time for successive periods, no one of which terms shall exceed two years. The Declarant may, after this Declaration is filed, cause a contract to be entered into with a management agent in accordance with the conditions hereof except that such contract shall provide that it may be terminated by the Association at any time after one year subsequent to the assumption of control of the Association by the Unit Owners in accordance with Article VII hereof. The Association, at its expense, will be responsible for the reasonable maintenance, repair, and replacement of those portions of the Common Elements located within the bounds of a Unit; excluding, however, the interior surfaces of any perimeter walls, floors, and ceilings and the surfaces of any interior walls and the windows and doors attached to the Unit interior walls or perimeter walls, which are a part of the Common Elements and other portions of the Common Elements within its bounds, the maintenance, repair, or replacement of which is the responsibility of a Unit Owner under any other provisions of this Declaration. Nothing herein contained shall be deemed to impose any contractual liability on the Association for the maintenance, repair, or replacement

of the Common Elements or any portion thereof, but the Association's liability shall be limited to damages resulting from negligence.

b. **Responsibility of Unit Owner.** The responsibility of each Unit Owner shall be as follows:

(1) to maintain, repair and replace, at his expense, all portions of his Unit and all internal installations of such Unit such as appliances, heating, plumbing, air conditioning, and electrical fixtures and installations located within the Unit bounds and not constituting a part of the Common Elements;

(2) to maintain, repair and replace, at his expense, all portions of the Limited Common Elements designated for his use including patios, decks, and/or courtyards and the interior of any fences, subject to any Rules or regulations of the Association;

(3) to maintain, repair and replace, at his expense, any doors (including, but not limited to, interior Unit doors, entrance/front doors, storage doors, and patio doors) and windows and skylight windows, including the glass, screens, trim, hinges, locks, thresholds, frames, sashes, jambs, and hardware, automatic storage door opener equipment, and keypad of or attached to any such doors or windows, within or attached to the perimeter walls, or interior walls, or roof of his Unit or the Limited Common Elements;

(4) not to unreasonably disturb other Unit Owners in the performance of the responsibilities set forth in this Declaration;

(5) not to paint or otherwise finish or decorate or change the appearance of any portion of the Buildings not within the bounds of the Unit, without the prior written consent of the Association;

(6) to report promptly to the Association or its managing agent any defect or need for repairs of which he has knowledge, the responsibility of the remedying of which is with the Association;

(7) not to make any alterations in any portions of the Buildings which are to be maintained by the Association or to remove any portion thereof or make any additions thereto or do anything which would or might jeopardize or impair the safety or soundness of the Buildings without prior written consent of the Association;

(8) to pay the Unit's proportionate share (as determined in the sole discretion of the Board) of all costs or utility services furnished to his Unit for which he is not billed directly;

(9) not to impair or obstruct any easement without the prior written consent of the Association and of any other person for whose benefit such easement exists; and

(10) to observe, fulfill and perform all other obligations of a Unit Owner as set forth in this Declaration or the Bylaws or the Rules.

Each Unit Owner agrees to maintain, repair and replace, at his expense, all portions of the Common Elements which may be damaged or destroyed by reason of his own or his Occupant's acts or neglect, or by the act or neglect of any tenant, guest, invitee or servant of such Unit Owner or Occupant.

c. **Construction Defects.** The obligation of the Association and of the Unit Owners to repair, maintain, or replace the portions of the Condominium Property for which they are respectively responsible shall not be limited, discharged, or postponed by reason of the fact that any

maintenance, repair, or replacement may be necessary to cure any latent or patent defects in materials or workmanship in the construction of the Condominium Property.

d. **Effect of Insurance or Construction Guarantee.** Notwithstanding the fact that the Association and/or any Unit Owner may be entitled to the benefit of the warranties and any guarantees of material and workmanship furnished by the Declarant or the benefits under any policies of insurance providing coverage of loss or damage for which they are respectively responsible, the existence of construction guarantees or insurance coverage shall not excuse any delay in the Association or any Unit Owner in performing its or his obligations hereunder.

## **ARTICLE X COMMON EXPENSES AND ASSESSMENTS**

1. **Common Profits and Common Expenses.** The Common Profits of the Condominium Property shall be distributed among, and the Common Expenses shall be assessed against the Unit Owners by the Association according to the percentage of interest in the Common Elements of their respective Units as heretofore set forth in Article V(2). Each Unit Owner shall pay his proportionate share of assessments for Common Expenses and any special assessments levied against him, and no Unit Owner shall exempt himself from liability for such assessments by waiver of the use or enjoyment of any of the Common Elements or by the abandonment of his Unit. In addition, a Working Capital Fund shall be established consisting of a one-time charge of twice the amount of the monthly Unit assessment paid by each initial Unit Owner of a Unit at the time such Unit Owner takes title to the Unit.

2. **Declarant's Obligation to Pay Common Expenses and Assessments.** In accordance with the requirements of Section 5311.25(F) of the Act, Declarant will assume the rights and obligation of a Unit Owner for all Units not sold to third parties including, without limitation, the obligation to pay those Common Expenses charged to Unit Owners from and after the date this Declaration is filed for record. Nothing contained in this subparagraph shall be construed to prohibit payment by the Association to Declarant for sums expended by Declarant for

improvements, repairs, alterations, maintenance, insurance and other expenses incurred by Declarant pertaining to the Common Elements and Limited Common Elements of the Condominium Property. Conversely, nothing contained herein shall prohibit Declarant from paying all the then designated Common Expense thereby eliminating any immediate need for Unit assessments.

3. **Payments.** All assessments unless otherwise provided for herein or otherwise designated by the Board shall be annual assessments, but may be paid in monthly installments so long as said installments are paid when due. Assessments and installments thereon paid on or before 10 days after the day when the same shall become due, shall not bear interest, but all sums not paid on or before 10 days when due, plus collection costs (as hereinafter defined), shall bear interest at the rate of 12% per annum (or the maximum permitted by the Veterans Administration, FHA or any other governmental or insurance agencies if said agencies are involved in any Unit Owner's mortgage) from the date the assessment payment first becomes due. If any installment of any assessment is not paid on or before 30 days after the same shall become due, the Board of Directors shall notify in writing the first Mortgagee of said Unit and may declare the balance of the entire annual assessment as to the delinquent Owner then due and payable as if so originally assessed; provided, however, that these provisions shall not apply to Declarant for delinquent assessments on unsold Units owned by Declarant. In addition to the remedies hereinafter set forth, the Board of Directors may also, in their sole discretion, discontinue any and all services (including central utilities) to the Unit owned by any Unit Owner which may be included as part of the Common Expenses who fails to pay his assessment within 30 days after the same has become due and payable. Further, the delinquent Unit Owner shall reimburse the Association, immediately upon demand, for any and all charges costs, damages, expenses, and fees (including legal fees) incurred by the Association in enforcing or collecting payment of the assessments (hereinafter called "Collection Costs").

The Association shall credit payments made by a Unit Owner in the following order of priority:

- (1) First, to interest owed to the Association;
- (2) Second, to administrative late fees owed to the Association;
- (3) Third, to collection costs, attorney's fees, and paralegal fees incurred by the Association; and

- (4) Fourth, to the principal amounts the Unit Owner owes to the Association for the Common Expenses or enforcement assessments chargeable against the Unit.

4. **Lien for Assessment.** The Association shall have a lien upon each Unit Owner's Ownership Interest for the payment of all assessments levied by the Association against such Unit which remains unpaid for 10 days after the same had become due and payable, including Collection Costs, the accumulation of interest thereon. Said lien shall be effective from and after the time of recording a certificate therefore with the County Recorder. The Certificate of Lien shall set forth the description of the Unit, the name or names of the Unit Owner or Unit Owners, the amount due and the date when due. Such Certificate and claim of lien shall be executed and verified by an officer of the Association or by managing agent of the Association. Said lien shall remain valid for a period of five years from the time of filing thereof unless sooner released or satisfied in the same manner provided by law for the release and satisfaction of mortgages on real property or discharged by the final judgment or order of a court in an action brought to discharge all or any part of such lien as hereinafter provided. Such lien shall be subordinate to the lien of a mortgage or other liens recorded prior to the date of recording the claim of the Association lien. Liens for assessment may be foreclosed by suit brought in the name of the Association in like manner as a foreclosure of a mortgage on real property. In any such foreclosure, the Unit Owner of the Unit shall be required to pay a reasonable rental for the use of the Unit and the Association shall be entitled, as a matter of law, to the appointment of a receiver to collect the same. The Association may also bring a suit to recover money judgment for the unpaid assessments, accumulated interest, and Collection Costs without waiving the lien securing the same, it being understood that the Unit Owner shall be personally liable for any unpaid and outstanding obligations against his Unit.

The Association has a lien upon each Unit's Ownership Interest for any unpaid interest, administrative late fees, enforcement assessments, and collection costs, attorney's fees, and paralegal fees.

5. **Statement of Unpaid Expenses.** Any prospective grantee or Mortgagee of an Ownership Interest may request, in writing, a written statement from the Board or managing agent of the Association setting forth the amount of unpaid assessments, accumulated interest and Collection Costs with respect to the Unit ownership to be sold or encumbered. Upon receipt of said request, the Board



and/or agent shall, within 10 days after such request, furnish such a statement. In the case of a sale of any Ownership Interest, no grantee shall be liable for nor shall any Ownership Interests be subject to a lien for any unpaid assessments, accumulated interest and Collection Costs which become due prior to the date of the making of such request and which are not set forth in such statement. In the case of the creation of any mortgage, any lien of the Association which become due prior to the date of the making of such request shall be subordinate to such mortgage if such unpaid assessments, accumulated interest and Collection Costs are not set forth in the statement.

The Board may impose reasonable charges to the Unit Owner for providing copies of the Declaration, Bylaws or amendments thereto as well as reasonable charges for the handling of re-financing and/or resale documentation, and/or statements of unpaid assessments.

**6. Disputes as to Common Expenses.** A Unit Owner who believes that the portion of Common Expenses chargeable to his Unit, for which a certificate of lien has been filed by the Association, has been improperly charged against him or his Unit may commence an action for the discharge of the lien in the Court of Common Pleas for Ashtabula County, Ohio. In the action, if it is finally determined that the portion of Common Expenses has been improperly charged to the Unit Owner or his Unit, the court shall make an order as is just, which may provide for a discharge of record of all or a portion of the lien.

**7. Liability for Assessments Upon Voluntary Conveyance.** In a voluntary conveyance of a Unit, the grantee of the Unit shall be jointly and severally liable with the grantor for all unpaid assessments, accumulated interest, and Collection Costs against the latter up to the time of transfer without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor except as may be provided in subparagraph 4 above or in the event of a deed in lieu of foreclosure as hereinafter provided for. A Unit Owner shall be liable for all assessments made while he is the Unit Owner of a Unit, and no Unit Owner shall be liable for any such assessments made after he ceases to be the Unit Owner of the Unit.

**8. Liability for Assessments by Purchaser from Foreclosure Sale.** Where the Mortgagee of a first mortgage of record or other purchaser of a Unit obtains title to the Unit as a result of the foreclosure of the assessment lien or lien filed prior to the assessment lien, or where a Mortgagee of a first mortgage of record

obtains title to the Unit as a result of a conveyance in lieu of foreclosure of the first mortgage, such acquirer of title, its successor and assigns, shall not be liable for the share of the Common Expenses or assessments by the Association pertaining to such Unit or chargeable to the former Unit Owner of such Unit which became due prior to the acquisition of title in the manner above provided. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectable from all of the Unit Owners including such acquirer, its successors and assigns, and shall be levied against said parties at the time of the first assessment next following the acquisition of title by such person. It is understood, however, that the Association does not waive any right which it may have to collect said unpaid assessment, accumulated interest, and Collection Costs from the Unit Owner of the Unit at the time said assessment was incurred.

**ARTICLE XI  
RESTRICTIONS AS TO USE AND OCCUPANCY OF  
CONDOMINIUM PROPERTY**

1. **Restrictions.** The covenants and restrictions hereinafter set forth as to the use and occupancy of the Condominium Property shall run with the land and shall be binding upon each Unit Owner and Occupant.

2. **Purpose of Condominium Property.** No part of the Condominium Property shall be used for other than housing and the related common purposes for which the Condominium Property was designed. Designated "garage areas" may not be converted into "living areas". Each Unit shall be used as a residence by the Unit Owner and his family, or by lessees or guests of the Unit Owner and his family, except as may hereinafter be provided.

3. **Lawful Use.** No immoral, improper, or offensive or unlawful use shall be made of the Condominium Property or any part thereof and all valid laws, zoning ordinances and regulations of all governmental authorities having jurisdiction thereof shall be observed. The responsibility of meeting the requirements of governmental authorities which shall require maintenance, modification or repair of the Condominium Property shall be same as the responsibility for maintenance and repair of the property concerned.

4. **Hazardous Use and Waste.** Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance on the

Common Elements or on any other Unit on or in the Condominium Property or contents thereof without the prior written consent of the Association. No Unit Owner shall permit anything to be done or kept in his Unit or the Common Elements which will result in the cancellation of insurance on the Common Elements or other Units on the Condominium Property or contents thereof, or which would be in violation of any law. No waste shall be committed in the Common Elements.

5. **Obstruction of Common Elements.** There shall be no obstruction of nor shall anything be stored in the Common Elements excluding those areas designated for parking of vehicles or for the location of central waste disposal containers or other uses authorized by the Association. There shall be no storing in the Common Elements (for a period greater than eight hours) of any trucks, buses, recreational vehicle, trailers, house trailers, boats, boat trailers or the like without the specific consent, in writing, granted by the Board and in no event shall any such items obstruct the use of the Common Elements by other Unit Owners, nor shall there be any storing of unlicensed or inoperable vehicles of any kind.

6. **Exterior Appearances.** No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed from any Unit or in any Limited Common or Common Elements (except as hereinafter provided) and such Common Elements and/or Limited Common Elements shall be kept free and clear of rubbish, debris, or other unsightly material. Nothing shall be hung or displayed on the outside wall of any living Unit and no awning, canopy, shade, window guard, ventilator, fan, air conditioning device, radio or television antenna may be affixed to or placed upon the exterior walls or roof of any part thereof without the prior written consent of the Board. If the Board may so desire, it shall designate areas which may be utilized by the Occupants for hanging clothes, sheets, blankets and other articles outside to dry, but in no event shall such articles be left outdoors overnight or on Saturdays or Sundays. Unless otherwise determined by the Board, all front windows will have white curtains or drapes or drapes with white lining.

No planting or gardening shall be done except in Limited Common Elements, unless otherwise approved by the Board, and no fences, hedges, or walls shall be erected except those installed in accordance with the initial construction of the Building or are approved by the Board or its designated representative.

7. **Animals and Pets.** Unless otherwise determined by a vote of 90% of the voting power of the Unit Owners, no animals, rabbits, livestock, fowl or poultry of any kind shall be raised or bred or kept in any Unit or in the Common Elements, except that a dog or cat, or other household pet, may be kept in the Units subject to the Rules and provided that they are not kept, bred, or maintained for any commercial purpose. Notwithstanding anything herein or in the Rules to the contrary, any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Condominium Property upon three days' written notice from the Board or managing agent.

8. **Nuisances.** No nuisances shall be allowed upon the Condominium Property nor any use or practice which is the source of nuisances to occupants or which interferes with the peaceful possession and proper use of the Condominium Property by its occupants. All parts of the Condominium Property shall be kept in a clean and sanitary condition and no rubbish, refuse or garbage shall be allowed to accumulate or any fire hazard allowed to exist. Further, there shall be no playing, lounging, or parking of baby carriages, playpens, bicycles, wagons, toys, vehicles, benches, or chairs on any part of the Common Elements not within the bounds of the Unit or within the bounds of the Limited Common Elements of each Unit except in accordance with the Rules.

9. **Impairment of Structural Integrity of Building.** Nothing shall be done in any Unit or in, on, or to the Common Elements or Limited Common Elements which would impair the structural integrity or structurally change any of the Buildings. Nothing shall be altered, constructed, or removed from or added to the Common Elements or Limited Common Elements except as provided in this Declaration without the prior written consent of the Association and, further, nothing shall be done which would or might jeopardize or impair the safety or soundness of the Common or Limited Elements.

10. **Prohibited Activities.** No industry, business trade, occupation or profession of any kind, commercial, religious, educational or otherwise shall be conducted, maintained, or permitted on any part of the Condominium Property except for such limited profession or business use as the Board or the Declarant, upon application of a Unit Owner, from time to time may authorize as not being incompatible with the residential character of the Condominium Property (such as the creation of additional traffic or excessive parking, noise, odor, etc.) and as may be allowed by local ordinances; provided, however, the Declarant as the Unit

Owner of any Units which have not been sold (a Unit is not "sold" until a deed for the Unit has been filed for record with the appropriate county recorder) may make such use of the Condominium Property on a rent-free basis (provided that Declarant is not in default of payment or otherwise under the terms of the first mortgage on the Condominium Property) until all Units therein are sold by Declarant and as may facilitate the completion of any construction for such sale, including without limiting the generality of the foregoing, the right to enter all Units, Common Elements, Limited Common Elements for construction purposes, the right to store materials, the right to show the property, the right to display signs, the right to use one or more Units owned by Declarant for business or promotional purposes, including clerical activities, sale offices and model Units in connection with the original sale or other disposition of any Unit.

11. **Signs.** No "For Sale" or "For Rent" signs or other types of displays or advertising of any nature shall be maintained or permitted on any part of the Common or Limited Common Elements or Units without prior Board approval. The right is reserved to Declarant or his agent to place "For sale" or "For Rent" signs or other promotional signs, designations, or materials in connection with any unsold or unoccupied Units it may from time to time own. The same right is reserved to any institutional first Mortgagee or Unit Owner or holder of a mortgage originally given to an institutional first Mortgagee which may become the Unit Owner of a Unit and to the Association as to any Unit which it may own. In any other cases, after Declarant has conveyed all its Units to be constructed hereunder, permission must be first obtained from the Board before any such sign may be displayed.

12. **Rental of Units.** No Units shall be rented by the Unit Owner for transient or hotel purposes. For purposes of this provision, a "transient or hotel purpose" shall be defined as a rental for a period of less than 30 days or rental to an Occupant wherein customary hotel services such as furnishing of laundry and room service is maintained. Other than the foregoing, Unit Owners shall have the right to lease their respective Units provided that said lease is in writing and made subject to the covenants and restrictions in this Declaration and the Bylaws and Rules and any Occupant shall be subject to all of said Rules as though the Occupant were the Unit Owner. Nothing herein contained shall permit a Unit Owner to be relieved from any duties or responsibilities or obligations hereunder because his Unit is occupied by a third party.

The Association may initiate eviction proceedings, pursuant to Chapters 5321 and 1923 of the Revised Code, to evict a tenant. The action shall be brought by the Association, as the Unit Owner's Agent, in the name of the Unit Owner. In addition to any procedures required by Chapters 5321 and 1923 of the Revised Code, the Association shall give the Unit Owner at least ten days written notice of the intended eviction action. The costs of any eviction action, including reasonable attorney's fees, shall be charged to the Unit Owner and shall be the subject of a special assessment against offending Unit and made a lien against that Unit.

13. **Unit Owner/Occupant Information.** Each Unit Owner shall, within 30 days of the recording of the Amendment recorded on March 20, 2006 at Instrument No. 200600004076 or within 30 days of title transferring to the Unit Owner, provide to the Association the Unit Owner's and/or all Occupants' names, home and business mailing addresses, home and business telephone numbers and the name, business address and business telephone number of any person who manages the Unit as an agent of that Unit Owner. Any change in the information shall be provided to the Board, in writing, within 30 days of said change.

## **ARTICLE XII INSURANCE**

1. **Authority to Purchase.** All insurance policies upon the Condominium Property except as hereinafter provided shall be purchased by the Association for the benefit of the Unit Owners and their respective Mortgagees as their interest may appear. All of said policies shall provide:

A. For the issuance of certificates of insurance with Mortgagee endorsements to the holders of first mortgages on the Units, if any.

B. That the insurer waives its right of subrogation against Unit Owners, Occupants, and the Association.

C. That the improvements to Units made by Unit Owners shall not affect the valuation for the purposes of such insurance of the Buildings and all other improvements upon the land.

Such policies and copies of all endorsements shall be deposited with the Insurance Trustee (hereinafter provided for) who must first acknowledge that the policies

and any proceeds thereof will be held in accordance with the terms hereof. The Association agrees for the benefit of the Unit Owners and each Unit Mortgagee that it shall pay the premiums for the casualty insurance hereinafter required to be carried by the Association at least 30 days prior to the expiration date of such policy and such premiums shall be assessed as a Common Expense. Each policy shall further provide that coverage thereunder shall not be terminated for nonpayment of premiums without at least 10 days' written notice to each Unit Mortgagee. A Mortgagee may collect from its mortgagor said mortgagor's respective portion of the insurance premiums, but shall remit said amount to the Association for the payment of the total insurance premium when it becomes due. Within 10 days after an insurable casualty, all Unit Mortgagees shall receive notice of such casualty if the estimated claim shall exceed \$5,000.00.

2. **Unit Owner's Insurance.** Each Unit Owner must obtain insurance at his own expense, affording coverage upon his personal property and for his own personal liability and as may be required by law and may obtain casualty insurance at his own expense upon any improvements to his Unit made by him in which he would have an insurable interest in excess of his interest in the casualty insurance policy purchased by the Association. Each insurance policy, however, shall provide that it shall be without contribution as against the casualty insurance purchased by the Association or shall be written by the carrier of such insurance for the Association and shall contain the same waiver of subrogation as that referred to in subparagraph 1(B) above.

3. **Coverage.** The Buildings and all other insurable improvements upon the Condominium Property and all personal property as may be owned by the Association shall be insured in an amount equal to the maximum insurable replacement value thereof excluding excavating and foundations, as determined annually by the insurance company affording such coverage. Such coverage shall grant protection against the following:

A. Loss or damage by fire and other hazards covered by the standard extended coverage endorsement including coverage for the payment of Common Expenses with respect to damaged Units during the period of reconstruction thereof.

B. Such other risks as from time to time customarily shall be covered with respect to Buildings similar in construction, location, and use as the Buildings including, but not limited to, vandalism, wind storm, water

damage, and malicious mischief. The policy providing such coverage shall provide that notwithstanding any provision thereof which gives the carrier an election to restore damage in lieu of making a cash settlement therefor, such option shall not be exercised in case of the termination of the condominium as provided for in this Declaration or pursuant to the provisions of the Act.

The Association shall further insure itself, any managing agent, the Unit Owners and their respective families, agents, tenants, guests, employees, officers, Directors of the Association and all persons lawfully in possession or control of any part of the Condominium Property, against liability for personal injury, disease, illness, or death and for injury to or destruction of property occurring upon, in, or about, of arising from or relating to the Common Elements, including, without limitation, water damage, legal liability, hired automobile, nonowned automobile, and off-premises employee coverage, such insurance to afford protection to a limit of not less than \$1,000,000.00 in respect to personal injury, disease, illness, or death suffered by any one person and to the limit of not less than \$1,000,000.00 in respect to any one occurrence and to the limit of not less than \$500,000.00 in respect to damage to or destruction of property arising out of any one accident. Such insurance is not required to insure against liability for personal injury or property damage arising out of or relating to the individual Units. All liability insurance shall contain cross-liability endorsements to cover liabilities of the Unit Owners as a group to a Unit Owner.

4. **Insurance Trustee - Distribution of Proceeds.** All casualty insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their respective Mortgagees as their respective interest may appear and shall provide that all proceeds payable as a result of casualty losses shall be paid to any bank, as trustee, which is selected by the Association and located in Ohio, with trust powers which will accept and assume the responsibility and provisions hereinafter set forth. Said Insurance Trustee shall not be liable for payment of premiums nor for the renewal of the policies, nor for the sufficiency of coverage, nor for the form or contents of policies, nor for the failure to collect any insurance proceeds. The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for distribution in accordance with the terms and conditions hereinafter set forth and for the benefit of the Association Unit Owners and their respective Mortgagees.



**ARTICLE XIII  
RECONSTRUCTION OR REPAIR OF DAMAGE**

**1. Responsibility for Reconstruction or Repair.**

**A. Unit Owner's.** If the damage is only to those parts of one Unit for which the responsibility of maintenance and repairs is that of the Unit Owner, then the Unit Owner shall be responsible for reconstruction and repair after casualty.

**B. Association's.** If any part of the Common Elements shall be damaged by casualty, such damaged portion shall be promptly reconstructed or repaired as hereinafter provided unless such damage rendered one half or more of the Units untenable and the Unit Owners, by the vote of those entitled to exercise not less than 75% of the voting power, as well as the consent of 75% of the first Mortgagees, based upon one vote for each mortgage owned, elect not to reconstruct or repair such damaged part, at a meeting which shall be called within 90 days after the occurrence of the casualty, or if by such date the insurance loss has not been finally adjusted, then within 30 days thereafter. Any such reconstruction or repair shall be substantially in accordance with the Drawings. Further, in all other instances except as set forth in subparagraph (A) above, the responsibility of reconstruction and repair after casualty shall be that of the Association. In the event the aforementioned election is held and it is determined that the damage shall not be reconstructed or repaired, then all of the Condominium Property shall be subject to an action for sale as one entity. Said sale shall be negotiated and consummated by the Board with prior approval of 75% of the voting power and 75% of the first Mortgagees, based upon one vote for each mortgage owned. The net proceeds of the sale, together with the net proceeds of insurance, if any, and any other indemnity arising because of such damage or destruction, shall be considered as one fund and shall be distributed to all Unit Owners in proportion to the respective percentages of interest in the Common Elements. No Unit Owner, however, shall receive any portion of his share of such proceeds until all liens and encumbrances on his Unit have been paid, released or discharged.

**2. Procedure for Reconstruction or Repair.**

**A. Estimates of Cost.** Immediately after casualty damage to any portion of the Condominium Property for which the Association has the responsibility of maintenance and repair, the Association shall obtain firm contract bids from at least three reliable contractors for the cost to place the damaged property in condition as good as that before the casualty. All bid shall require the contractor to deposit with the Association a performance and completion bond in the full amount of the contract price which must be issued by corporate surety company authorized to do business in the State of Ohio and satisfactory to the Association; provided, however, if Declarant is the Unit Owner of any Units and/or is constructing Buildings which may be added to the Condominium Property in the future pursuant to Article XV hereof, then Declarant, if it is the successful bidder, shall not be required to obtain any such bonds. In addition, the cost may be increased by the Association to include professional fees and the Insurance Trustee' fees as the Board of Directors deems necessary.

**B. Special Assessments.** If the proceeds of the insurance policies are not sufficient to defray the estimated cost of reconstruction and repair by the Association including the aforesaid fees, one or more special assessments shall be made against all Unit Owners in sufficient amounts to provide funds for the payments of such costs and such assessments shall be deposited with the Insurance Trustee. All such assessments against the Unit Owners shall be in proportion to their Ownership Interests as set forth in Article V hereof or as may be amended.

**C. Disbursement of Construction Fund.** The Association shall then deposit with the Insurance Trustee the contract, bonds and the proceeds of the casualty insurance collected and heretofore referred to and the sums deposited with the Insurance Trustee by the Association from collections of special assessments as aforescribed. Said money shall constitute a construction fund which shall be disbursed by the Insurance Trustee for the payment of the cost of reconstruction and repair of the areas and facilities for which the Association is responsible to reconstruct and repair and said payment shall be made from time to time as work progresses, but not more frequently than once in any calendar month. The Trustee shall not accept for disbursement any sums less than an amount to pay in full the contract price for repair plus estimated fees. The Trustee

shall make such payments upon the written request of the Association, accompanied by a certificate dated not more than 15 days prior to such request signed by the contractor, a responsible officer of the Association and by an architect in charge of the work, who shall be selected by the Association. If there is no architect in charge of work, the contractor and two Officers of the Association shall be required to execute said certificate. The certificate shall set forth the following:

(i) that the sum then required either has been paid by the Association or is justly due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with the work, giving a brief description of the services and materials, and that the sum requested does not exceed the value of the services and materials described in the certificate and the contract for the performance of such work;

(ii) that except for the amounts stated in such certificate to be due as aforesaid and for work subsequently performed, there is no outstanding indebtedness known to the persons signing such certificate after due inquiry which might become the basis of a vendor's, mechanic's, materialman's or similar lien arising from such work;

(iii) that the cost as estimated by the persons signing the certificate of work remaining to be done after the date of the certificate does not exceed the amount of the construction fund remaining in the hands of the Trustees after payment of the sum requested; and

(iv) the contractor shall also issue a "Sworn Statement of Original Contractor" in accordance with Section 1311.04 of the Ohio Revised Code with each certificate.

It shall be presumed that the first moneys disbursed in payment of cost of reconstruction and repair shall be from insurance proceeds and if there be a balance in any construction fund after the payment of all of the costs of the reconstruction, repair and fees for which the fund is established, such balance shall be disbursed to the Association. The Association shall then disburse said balance on a pro rata basis to the Unit Owners as follows:

First, to reimburse Unit Owners for all or any portion of the moneys contributed as a "special assessment" in accordance with paragraph 2(B) of this Article; the balance, if any, shall be distributed pro rata based upon beneficial ownership jointly to the Unit Owners and their respective Mortgagees. The above procedure pertaining to disbursement of construction funds through a Trustee as herein described can be waived by unanimous agreement of the Board, provided the cost of construction and repair does not exceed the sum of \$10,000.00. In such event, the Board may act as disbursing agent based upon appropriate contractor lien release. If the Board determines not to fund through a Trustee and the amount of construction exceeds \$10,000.00, then any such changed method of disbursement must receive the approval of Unit Mortgagees.

**D. Certification to Proceed with Work.** The Insurance Trustee may rely upon a certificate of the Association certifying as to whether or not the damaged property is to be reconstructed or repaired. The Association, upon request of the Insurance Trustee, shall deliver such certificate as soon as practical.

**E. Insurance Adjustments.** Each Unit Owner shall be deemed to have delegated to the Board his right to adjust with insurance companies all losses under policies purchased by the Association except in any case where the damage is restricted to one Unit, subject to the rights of Mortgagees of such Units.

**F. Repair of Unit by Unit Owner.** Unless the Unit Owners elect not to restore the damage in accordance with paragraph 1.B of this Article, each Unit Owner shall repair and restore that portion of his Unit not required to be covered under the casualty insurance required to be carried by the Association.

**G. Encroachments.** Encroachments upon or in favor of a Unit Owner or a Unit which may be created as a result of any reconstruction or repair shall not constitute the basis for a claim or proceeding by a Unit Owner upon whose property such encroachment exists, provided that such reconstruction or repair was either substantially in accordance with the plans and specifications or with the Building when originally constructed. Such encroachment or encroachments shall be allowed to continue in existence for so long as the Building and/or Units stand.

**ARTICLE XIV  
REHABILITATION OF EXISTING BUILDING**

The Association may, by the affirmative vote of Unit Owners entitled to exercise not less than 75% of the voting power, determine that the Condominium Property is obsolete in whole or in part and elect to have same renewed and rehabilitated. In such event, any Unit Owner who does not vote for such renewal and rehabilitation may elect to receive the fair market value of his Ownership Interest, less the amount of any liens and encumbrances thereon, in accordance with the provisions of Article XVIII hereof.

**ARTICLE XV  
ADDITIONS TO CONDOMINIUM PROPERTY**

The Declarant hereby expressly reserves for a period of seven years from the date this Declaration is filed for record, the right and option to expand the Condominium Property without further consent of any Unit Owners. The Declarant further reserves the right and option to renew said right to expand for an additional seven year period provided said option is exercised six months prior to the expiration of the original seven year term and a majority of the Unit Owners, outside of Declarant, consent to such extension. There are no circumstances that will terminate this option prior to the expiration of the aforesaid seven year period, nor are there any limitations on Declarant's option to expand the Condominium Property.

The Additional Property (Parcel 2), together with the Buildings and other improvements to be constructed thereon (the "Additional Property Buildings"), and all easements, rights and appurtenances belonging thereto, and all personal property existing for the common use of the Unit Owners, through exercise of this option, may be submitted to the provisions of the Act and thereby added to the Condominium Property. There are no limitations as to the portions of Parcel 2 that may be added to the Condominium Property and such portions or phases may be added at different times without any limitations as to the portions of Parcel 2 or regulating the order in which such portions may be added from time to time from Parcel 2 to the Condominium Property.

Further, there are no restrictions or limitations as to the improvements or the location of any improvements that may be made to or on any portion of Parcel

2, except such improvements may include storm and sanitary sewers, water, electric, telephone, television, and other utility lines, walkways, drives and landscaping all of which may be necessary to properly serve any portion of Parcel 2 which may be added to the Condominium Property.

The Buildings constructed on Parcel 2 shall not contain more than 99 Units or a density of more than 20 Units per acres. Although the Declarant anticipates that the additional Buildings constructed on any portion of Parcel 2 will be compatible with the Buildings on the Condominium Property in terms of quality of construction and principal materials to be used and may be compatible in architectural style, the Additional Buildings need not be compatible with the Parcel 1 Buildings with respect to the foregoing. All Units constructed on Parcel 2 shall be occupied and used only for private residential purposes, except for such limited professional and business use as the Board or the Declarant upon application of a Unit Owner, from time to time, may authorize as being compatible with the residential character of the Condominium Property and except for use by Declarant prior to the sale as provided in this Declaration.

The Declarant further reserves the right to create Limited Common Elements within the portions of Parcel 2 added to the Condominium Property. The Declarant reserves the right to determine types, sizes and maximum number of such Limited Common Elements in each portion so added.

Upon each exercise by Declarant of the option to expand the Condominium Property, Declarant, in accordance with Section 5311.051 of the Act, shall execute and file for record an amendment to this Declaration which shall allocate and reallocate percentages of interest in the Common Elements of the Condominium Property appertaining to each Unit of the Condominium Property. Such allocation or reallocation shall be based upon the same formula as previously used and more fully described in Article V of this Declaration.

The Declarant reserves the right to assign its rights to expand the Condominium Property to any successor of the Declarant who stands in the same relationship to the Condominium Development as Declarant.

**ARTICLE XVI  
AMENDMENT OF DECLARATION**

Except as otherwise provided in this Declaration (including Article IX) and the Act, this Declaration may be amended upon the filing for record with the Recorder of Ashtabula County of an instrument in writing setting forth specifically the item or items to be amended and any new matter to be added, which instrument shall have been duly executed by either Unit Owners representing no less than 75% of the aggregate interest in the Common Elements set forth in Article V, paragraph 2 hereof and mortgage holders representing at least 61% of the votes of Units that are subject to mortgages held by eligible Unit Owners, or by the President or Vice President and the Secretary or Assistant Secretary of the Association together with an affidavit by said officers that the amendment has received the written approval of the Unit Owners and Mortgagees as required above. In the case of an amendment pursuant to Article XV hereof, such amendment shall be executed by the Declarant as required by the Act. All amendments must be executed with the same formalities as this instrument and must refer to the volume and page in which this instrument and its attached Exhibits are recorded. All amendments except those made pursuant to Article IX must contain an affidavit by the President of the Association or the President or Vice President of Declarant, as the case may be, that a copy of the amendment has been mailed by certified mail to all Unit Owners and all first Mortgagees having bona fide liens of record against any Unit ownership. Except as hereinabove provided, with respect to amendments as provided in Article IX hereof, no amendment shall have any effect, however, upon Declarant, the rights of Declarant under this Declaration and upon the rights of bona fide first Mortgagees until the written consent of Declarant and/or such Mortgagees to such amendment has been secured. Such consents shall be retained by the Secretary of the Association or the Declarant, as the case may be, and his certification in the instrument of amendments as to the consent or nonconsent of Declarant and the number of the consenting and nonconsenting Mortgagees of the various Units (based upon one vote for each mortgage owned) may be relied upon by all persons for all purposes.

Declarant shall have the right, exercisable in its sole discretion at any time during the seven year period following the date this Declaration is filed for record, to amend the Declaration and/or the Bylaws in such respects as Declarant may consider necessary, convenient or appropriate, for the purpose of complying with any regulations of (i) the Federal Home Loan Mortgage Corporation (as such

regulations may be amended periodically), (ii) Federal National Mortgage Association (as such regulations may be amended periodically), (iii) complying with any regulations of any federal or state governmental agency or instrumentality (as such regulations may be amended periodically), or for curing any ambiguity, inconsistency or formal or minor defect or omission in this Declaration and/or said Bylaws, and/or effecting any other change(s) not adverse to the Unit Owners of Units or to the holders of mortgages encumbering the Units. Declarant, on its own behalf, as the Unit Owner of all Units in the Condominium Property and on behalf of all subsequent Unit Owners, hereby consents and approves and reserves unto itself, and each Unit Owner and his Mortgagees, by acceptance of a deed conveying such Ownership Interest or a mortgage encumbering such Ownership Interest, as the case may be, and each Mortgagee consenting to the Declaration thereby and hereby covenants to, approves and acknowledges the reservation of Declarant's right to amend this Declaration in the manner provided herein, and all such Mortgagees, Unit Owners and their respective Mortgagees, upon request of Declarant, shall execute and deliver from time to time all such instruments and perform all such acts as may be deemed by Declarant to be necessary or proper to effectuate said provisions.

Notwithstanding anything contained herein to the contrary, this Declaration cannot be amended without first receiving 75% approval of the first Mortgagees (based upon one vote of each mortgage owned) wherein said amendment would:

- A. Seek to abandon or terminate the Condominium.
- B. Change the pro rata interest or obligations of any Condominium Unit as set forth in Article V(2) for purposes of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards or for determining the pro rata share of ownership of each Unit and appurtenant real estate and any improvements thereon which are owned by the Unit Owners in undivided pro rata interest (except as provided in Article XV and this Article as the same pertain to "Additional Property").
- C. Partition or subdivide any Condominium Unit.
- D. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements or property excluding



easements for public purposes consistent with the intended use of the Common Elements.

E. Amend this Article of the Declaration so that the above changes can be effectuated without the approval of the first Mortgagees.

#### **ARTICLE XVII REMOVAL OF CONDOMINIUM PROPERTY FROM PROVISIONS OF CHAPTER 5311**

Anything in the Act to the contrary notwithstanding, the Unit Owners, by the affirmative vote of those entitled to exercise not less than 90% of the voting power, may elect to remove the Condominium Property from the provisions of the Act. Any Unit Owner who does not vote for such removal may elect to receive the fair market value of his Ownership Interest, less the amount of any liens and encumbrances thereon, in accordance with the provision of Article XVIII hereof so long as all other requirements of the Act are satisfied. Prior to the removal of the Condominium Property from the provisions of the Act, all liens and encumbrances, except taxes and assessments not yet due and payable, must be paid in full or consent of any lien holder to the action of the Unit Owners must be secured in writing and in recordable form. A certificate of any such election as herein set forth shall be executed by the President and Secretary of the Association and filed with the County Recorder. Such certificate shall set forth the names and addresses of each consenting lien holder. Prior to the filing of such certificate; each nonconsenting lien holder must be paid and its respective lien discharged of record.

#### **ARTICLE XVIII PROCEEDINGS CONCERNING DISSENTING OWNERS**

Any Unit Owner who is entitled to notice of a meeting called to act upon any of the matters mentioned in Article XIV and Article XVII hereof and who does not vote in favor of such matters shall be entitled, upon complying with the provisions of this Article, to receive the fair market value of his Ownership Interest as of the date such vote is taken, less the amount of any liens and encumbrances thereon. Such Unit Owner, in order to become entitled to such receipt, shall serve a written demand therefor upon the President or other chief officer of the Association within

five days after receiving notice of such vote. The Unit Owner shall specify in said demand his name and address, the Unit of which he is the Unit Owner and with respect to which such demand is made, the amount claimed by him as constituting such value, the amount of such liens and encumbrances thereon and the names and addresses of the holders thereof. If the Board is unwilling to pay the amount so demanded, the Board may, on behalf of the Association, within 15 days after the service of such written demand so notify the Unit Owner and make a counteroffer of a different amount as the fair market value of the Ownership Interest as to which demand has been made in compliance herewith. The fair market value of the Ownership Interest shall be the demand made by the Unit Owner if he has complied with the provisions of this Article, or the Association as aforesaid has made a counteroffer of a different amount than the amount specified in such demand, then said counteroffer shall be the fair market value unless either the Board and the Unit Owner at any time within 20 days after the service of such demand or counteroffer, whichever is later, agree upon a different amount or either the Unit Owner or the Association within said 20 day period serves a written notice on the other that he or it desires that the determination of the fair market value of such Unit shall be made by a Board of Appraisers. In such case, the fair market value shall be determined by the majority vote of a Board of three appraisers, one of whom shall be appointed by the Board and the other whom shall be appointed by the Unit Owner and the two appointed appraisers shall appoint a third appraiser. Each appointment shall be made five days after receipt by the other party of the aforesaid notice, to have the ownership appraised and the third appointment by the two appraisers chosen by the parties shall be appointed within five days after the two appraisers are appointed. The cost of appraisal shall be borne equally by the parties. The fair market value, determined as above provided, for such Ownership Interest less the amount of any liens and encumbrances thereon as above provided shall be paid to the Unit Owner in return for conveyance of his Ownership Interest, subject to any liens and encumbrances thereon, to the President or chief officer of the Association as trustee for all of the Unit Owners. Thereafter, the liens and encumbrances shall be immediately paid unless otherwise agreed to by the Mortgagees or other lien holders. Such conveyance and payment of the consideration therefor, which shall be a Common Expense to the Unit Owners who have not elected to receive the fair market value of their Units, shall be made within 30 days after the fair market value of the Ownership Interest becomes fixed as aforesaid.

**ARTICLE XIX**  
**REMEDIES FOR BREACH OF COVENANTS AND RULES**

1. **Abatement and Enjoinment.** If any Unit Owner or any Occupant of a Unit shall violate any Rules or breach any covenant or provision contained in this Declaration or in the Bylaws, the Association shall have the right in addition to any rights provided by law or hereinafter set for in subparagraph 2 of this article to:

A. Enter into any Unit in which or as to which such violation or breach exists and to summarily abate and remove, at the expense of the Unit Owner of such Unit, any structure, thing or condition that may exist therein contrary to the intent and meaning of the provisions thereof or hereof, and the Association or its agents shall not thereby be deemed guilty in any manner of trespass; or

B. To enjoin, abate or remedy, by appropriate legal proceedings either at law or in equity, the continuance of any breach.

2. **Involuntary Sale.** If any Unit Owner, either by his conduct or the conduct of any Occupant of his Unit, shall violate any covenant or provision herein or in the Bylaws contained or any Rule adopted by the Association, and such violation shall continue for 30 days after notice in writing from the Association, or shall occur repeatedly during any 30 days period after written notice or request to cure such violation from the Association, the Association shall have the right, upon the giving of 10 days' prior written notice to the Unit Owner and his first Mortgagee to terminate the rights of such Unit Owner or Occupant to continue as a Unit Owner or Occupant and to continue to occupy, use or control his Unit, and thereupon, a legal action may be filed by the Association against such Unit Owner or Occupant for a decree of mandatory injunction against said Unit Owner or Occupant or, subject to the prior consent in writing of any Mortgagee having an interest in the Ownership Interest of such Unit Owner, which consent shall not be unreasonably withheld, a decree declaring the termination of the right of such Unit Owner or Occupant to occupy, use, or control the Unit owned or occupied by him and ordering that all the right, title, and interest of the Unit Owner or Occupant in his Ownership Interest or Interests therein shall be sold (subject to any liens and encumbrances thereon) at a judicial sale upon such notice and terms as the court shall establish, except that the court shall enjoin and restrain such Unit Owner or Occupant from reacquiring his interest at such judicial sale. The

proceeds of any such judicial sale shall first be paid to discharge court costs, receiver's fees, reasonable attorney fees and all other expenses of the proceeding, and all such items shall be taxed against such Unit Owner or Occupant in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments owing to the Association or any liens required to be discharged, may be paid to the Unit Owner or Occupant. Upon the confirmation of such sale, the purchaser thereat shall, subject to the rights and privileges of the Board provided in Article XX, thereupon be entitled to a conveyance of Ownership Interest or Interests therein and to immediate possession of the Unit so conveyed and may apply to the court for a writ for the purpose of acquiring such possession and it shall be a condition of such sale, and the decree shall so provide, that the purchaser shall take the interest in such Ownership Interest or Interests therein subject to this Declaration.

3. **Enforcement Assessments.** The Board shall have the authority to impose interest and administrative late fees for the late payment of assessments; impose returned check charges; and, in accordance with the procedure outlined in Ohio Revised Code Section 5311.081(C)(1), impose reasonable enforcement assessments for violations of the Declaration, the Bylaws, and the Rules of the Association, and reasonable charges for damage to the Common Elements.

4. **Suspended Rights.** When a Unit Owner is delinquent in the payment of assessments for more than 30 days, the Board may, by a majority vote, suspend the voting privileges of the Unit Owner and/or right of the Occupants to use the recreational facilities.

## ARTICLE XX SALE OF OWNERSHIP PROPERTY

1. **Maintenance of Community Interest.** In order to maintain a community of congenial residents and thus protect the value of the Units and in order to assure the financial ability of each Unit Owner to pay assessments made against him, the sale of any Units by any Unit Owner other than the Declarant shall be subject to the following provisions so long as the Condominium exists, which provisions each Unit Owner covenants to observe. In this respect, any decisions made by the Board or the Association shall never be predicated on race, color, creed, or national origin.

2. **Sale of Unit.** No Unit Owner may dispose of his Unit ownership or any interest therein by sale without approval of the Association as hereinafter set forth; provided, however, that the sale of a Unit by Declarant or by a Mortgagee who has acquired title to same due to default by its mortgagor shall be exempt from the provisions of this Article XX and shall have the right to sell said Unit directly to a purchaser without first complying with the terms and conditions of this Article XX. A Unit Owner intending to make a bona fide sale of his Unit or any interest therein shall give to the Association notice, in writing, of such intention, together with the name and address of the intended purchaser and such other information concerning the intended purchaser as the Association may reasonably require. Such notice shall be accompanied by an executed copy of the proposed contract to sell. If the notice to the Association is not given, then at any time after receiving knowledge of a transaction or event in which the ownership was sold, the Association, at its election and without notice, may approve or disapprove the sale transaction. If the Association disapproves the transaction, the Association shall proceed as if it had received the required notice on the date of such disapproval.

3. **Certificate of Approval.** Within 15 days after receipt of such notice and information pertaining to the sale of the Unit, the Association must either approve or disapprove the proposed transaction. If approved, the approval shall be stated in a certificate executed by the President and Secretary of the Association or said certificate may be executed by the manager.

4. **Disapproval.** If the proposed sale transaction is disapproved by the Association within said 15 day period after receipt of the information and notice, the Association shall deliver or mail by certified mail to the Unit Owner an agreement to purchase the Unit Owner's Unit and the Unit Owner must sell the Unit to the Association upon the following terms:

A. The price to be paid by the Association shall be that price stated in the disapproved contract.

B. The purchase price shall be paid in the manner and subject to the conditions of such agreement or, at the election of the Association, shall be paid in cash.

C. The sale shall be closed within 60 days after the delivery or mailing of said agreement to purchase.

D. If the Association shall fail to purchase or shall default in its agreement to purchase, the proposed transaction submitted by the Unit Owner shall be deemed to have been approved by the Association and a certificate of approval shall be issued heretofore provided.

5. **Consent of Voting Members.** The Board shall not exercise any option hereinabove set forth to purchase any Ownership Interest unless it shall have been authorized to do so by the affirmative vote of Unit Owner entitled to exercise not less than 75% of the voting power of the Association. The Board may bid and purchase at any sale an Ownership Interest or Interests therein which is sold pursuant to an order or direction of a court upon the prior authorization of the Unit Owners aforesaid which authorization shall set forth the maximum price which the Board is authorized to bid and pay for said Ownership Interest or Interests therein.

6. **Financing of Purchase.**

A. Acquisition of any Ownership Interest or Interests therein under this Article shall be made from the reserve for contingencies and replacements and for the account of consenting Unit Owners. If said reserve is insufficient, the Association shall levy a special assessment against each consenting Unit Owner in the proportion in which his percentage of interest in the Common Elements bears to the percentage of interest in the Common Elements of all consenting Unit Owners, which assessment shall become a lien and be enforceable lien for Common Expenses.

B. The Board, in its discretion, may borrow money to finance the acquisition of any Ownership Interest pursuant to the terms of this Article provided that no financing may be secured by any encumbrance on or hypothecation of any portion of the Condominium Property other than the Ownership Interest or Interests therein to be acquired.

7. **Title to Acquired Property.** Ownership Interests acquired pursuant to this Article shall be held of record in the name of the President or Secretary of the Association as trustee for all consenting Unit Owners. Such holding shall be for the benefit of all the Unit Owners consenting to the participation in such acquisition. Said Ownership Interest or Interests therein shall be sold or leased by

the Board for the benefit of such Unit Owners. All net proceeds of any such sale or leasing shall be deposited in the reserve fund and may thereafter be disbursed or credited at such time and in such manner as the Board may determine for the account of such consenting Unit Owner.

## ARTICLE XXI CONDEMNATION

1. **Entire Taking.** In the event all of the Common Elements are taken by condemnation, the net proceeds of the award shall be paid to the Association and considered as one fund and shall be distributed to all Unit Owners and their respective Mortgagees jointly proportioned to each Unit Owner's respective percentage of interest in the Common Elements.

2. **Partial Taking.** In the event of a partial taking of the Common Elements, this Condominium shall automatically and of and by itself be amended so that the parcel of land taken by the condemning authority is excluded from this Declaration. The share in the Common Elements of the Condominium Property by the Unit Owners which remains shall be redistributed among the remaining Unit Owners in proportion to their respective prior interest in the Condominium. Each Unit Owner shall be entitled to secure an award from the condemning authority for the taking of their respective Units or residual damage to their respective Unit and, in this regard, payment shall be made directly to the Unit Owner and their respective Mortgagee in the ordinary course under eminent domain procedures. All awards granted for the taking of Common Elements and/or damage to the residual of the Common Elements shall be paid to the Association and distributed to individual Unit Owners and their Mortgagees jointly as determined by three reputable real estate appraisers (who shall be members of the Master Appraisers Institute or the Society of Real Estate Appraisers), two of whom shall be appointed by the Board and the third of whom shall be appointed by the first two appraisers. The appraisers shall render written instructions to the Board allocating the total award to the Units in such proportion as they in their sole discretion determine to be the damage caused to the Units. It is agreed that their determination shall be final and binding upon all Unit Owners and their respective Mortgagees.

**ARTICLE XXII  
MISCELLANEOUS PROVISIONS**

1. **Action without Meeting.** Any action which may be authorized or taken at a meeting of the Unit Owners or of the Board, may be authorized or taken without a meeting with the affirmative vote or approval of, and in a writing or writings signed by all of the Unit Owners or all of the members of the Board respectively, which writing or writings shall be filed with or entered upon the records of the Association. Any certificate with respect to the authorization or taking of any action which is required to be filed with the Recorder of Stark County shall recite that the authorization of taking such action was in writing or writings approved and signed as specified in this Article.

2. **Declarant's Rights Pending Sale of Units.** Until such time as Declarant is required to call the first meeting of the Unit Owners in accordance with Article I, Section 5(A) of the Bylaws, the Declarant may exercise the powers, rights, duties and functions of the Association and the Board including, without limitation, the power to determine the amount of and to levy special assessments and assessments for Common Expenses.

3. **Notices of Mortgagees.** Any Unit Owner who mortgages his Ownership Interest or Interests therein shall notify the Association, in such manner as the Association may direct, of the name and address of his Mortgagees and thereafter shall notify the Association of the payment, cancellation, or other alteration in the status of such mortgages. The Association shall maintain such information in its working records.

4. **Copies of Notices to Mortgage Lender.** Except as otherwise required in the Declaration, upon written request to the Board, the holder of any duly recorded mortgage on an Ownership Interest or Interests therein shall be given a copy of any and all notices and financial statements permitted or required by this Declaration to be given to the Unit Owner or Unit Owners whose Ownership Interest or Interests therein is subject to such mortgage, and shall be notified by the Association, in writing, of any default in the performance or obligations under the condominium documents by the Unit Owner whose Ownership Interest is subject to such mortgage when and if said default is not cured within 30 days from incurring same. Further, if applicable, the Board shall automatically give the Federal Home Loan Mortgage corporation (c/o Servicer) or any other Mortgagee of a Unit upon their written request, notice in writing, of any loss to or the taking of



the Common Elements of the Condominium Property if such loss or taking exceeds \$10,000.00.

5. **Books and Records.** During normal working hours and upon 48 hours' prior notice, any Unit Owner or holder of a duly recorded mortgage of an Ownership Interest in the Condominium shall have a right to examine the books and records of the Association at such location designated by the Association or managing agent.

6. **Covenants Running with the Land.** Each Unit Owner by the acceptance of a deed of conveyance from Declarant accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges and the jurisdiction, rights and powers created or reserved by this Declaration and all rights, benefits and privileges of every character hereby granted created reserved, or declared and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such person in like manner as though the provisions of this Declaration were cited and stipulated at length in each and every deed of conveyance.

7. **Termination.** Upon the removal of the Condominium Property from the provisions of the Act, all easements, covenants, and other rights, benefits, provisions and positions and obligations declared herein to run with the land or any Ownership Interest or Interests therein shall terminate and be of no further force or effect.

8. **Waiver.** No covenants, restrictions, conditions, obligations, or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

9. **Severability.** The invalidity of any covenant, restriction, condition, or limitation of any other provisions of this Declaration, or of any part of the same, shall not impair or affect in any manner the validity and enforceability or effect of the rest of this Declaration.

10. **Liability.** Neither the Declarant nor any subsidiary of the Declarant, employee, agent, successor or assign of the Declarant or any such subsidiary, shall

be liable for any claim or damage whatsoever arising out of or by reason of any action performed pursuant to or in accordance with any authority granted or delegated to him or it or any of them by or pursuant to this Declaration or in the capacity of the Declarant or any such subsidiary as developer, Unit Owner, managing agent, or seller of the Condominium Property or any part thereof, whether or not such claim shall be asserted by any Unit Owner, Occupant, the Board, the Association, or by any person or entity claiming by or through any of them or shall be on account of personal injury or property damage however caused. Without limiting the generality of the foregoing, the foregoing enumeration includes all claims for or arising by reason of the Condominium Property or any part thereof being or becoming out of repair or containing any patent or latent defects, or by reason of any act or neglect of any Unit Owner, Occupant, the Board, the Association, the managing agent, or the respective agents, employees, guests, tenants, invitees, and servants or by reason of the failure to function or disrepair of any utility services, including, without limitation, heat, air conditioning, electricity, gas, water, sewage and light, except as may otherwise be guaranteed or warranted by Declarant.

**11. Insufficiency of Insurance.** In the event the insurance affected by the Association or managing agent on behalf of the Unit Owners and Occupants against liability for personal injury or property damage arising from or relating to the Common Elements shall, for any reason, not fully cover any such liability the amount of any deficit shall be a Common Expense to the Unit Owners, and any Unit Owner who shall have paid all or any portion of such deficiency in an amount exceeding his proportionate share thereof based on his percentage of interest in the Common Elements shall have a right to contribution from the other Unit Owners according to their respective percentage of interest in the Common Elements.

**12. Interpretation.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a condominium development.

**13. Perpetuities and Restraints on Alienation.** If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful or void for violation of (a) any rule against perpetuities or any analogous statutory provision; (b) any rule restricting restraints on alienation; or (c) any other statutory or common law rules imposing the limitations, then such provision shall

continue in effect for only 21 years after the death of the last survivor of the now living descendants of George Bush, President of the United States.