

## DECLARATION

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Submitting the property known as  
The Victorian Condominium, Cleveland  
Heights, Ohio, to the provisions of  
Chapter 5311 of the Ohio Revised Code\*

Date of Declaration ~~March 22, 1971~~\*

*See Deed  
1/11/1562  
Pg 195*

[This will certify that copies of this  
Declaration, together with Drawings and  
By-Laws attached as Exhibits thereto,  
have been filed in the Office of the  
County Auditor, Cuyahoga County, Ohio.

Date: May 6, 1971.

RALPH J. PERK  
County Auditor

By Beatrice Whitman  
Deputy

DECLARATION OF CONDOMINIUM OWNERSHIP  
FOR  
THE VICTORIAN CONDOMINIUM

■ THIS DECLARATION OF CONDOMINIUM OWNERSHIP FOR THE VICTORIAN CONDOMINIUM is made and executed at Cleveland, Ohio, this 22nd day of March, 1971 by THE VICTORIAN, an Ohio partnership (hereinafter referred to as "Grantor"), pursuant to the provisions of Chapter 5311 of the Ohio Revised Code.

Grantor, as the owner in fee simple of the Condominium Property (hereinafter defined) and for the purposes herein set forth, hereby declares as follows with respect to the divisions, covenants, restrictions, limitations, conditions and uses to which the Condominium Property may be put, and hereby specifies that this Declaration shall constitute covenants to run with the land and shall be binding on Grantor, its successors and assigns, and all subsequent owners of all or any part of the Condominium Property, together with their respective grantees, heirs, executors, administrators, devisees, successors or assigns.

ARTICLE I

DEFINITIONS

The following terms, for all purposes of this Declaration and of any amendment hereto, shall have the respective meanings specified in this Article:

Association: The Victorian Condominium Association, the organization of all the Unit Owners which administers the Condominium Property and more specifically described in Article IX hereof and its successors in interest.

Board: The board of managers of the Association as the same may be constituted from time to time.

Building: The Building constituting a part of the Condominium Property and generally described in Article V hereof.

By-laws: The By-laws which are referred to in Article IX hereof and which are in the form of Exhibit A which is attached hereto and as amended from time to time.

Chapter 5311: Chapter 5311 of the Ohio Revised Code, as the same may be amended or supplemented from time to time.

Common Areas and Facilities: All parts of the Condominium Property except the Units and which are designated as Common Areas and Facilities in Article VII hereof.

Common Expenses: Those expenses designated as Common Expenses in Chapter 5311, in this Declaration, in the By-laws, and the following:



(a) all sums lawfully assessed against the Unit Owners by the Association;

(b) expenses of the Association incurred in the administration, maintenance, repair and replacement of the Common Areas and Facilities; and

(c) expenses determined from time to time to be Common Expenses by the Association.

Condominium Property: The Parcel, together with the Building and all other improvements and structures now or hereafter erected, constructed or contained therein or thereon, all easements, rights- and appurtenances belonging thereto, and all articles of personal property existing for the common use of the Unit Owners.

Declaration: This instrument, and all of the Exhibits thereto, as originally executed, or, if amended as herein provided, as so amended.

Drawings: The drawings prepared and certified b.v Irving D. Robinson, Registered Architect, relating to the Condominium Property, which drawings are identified as Exhibit B to this Declaration.

Exclusive Use Areas: Those parts of the Common Areas and Facilities, other than Limited Common Areas and Facilities, reserved for use of a certain Unit or Units to the exclusion of other Units and designated as Exclusive Use Areas in Article VIII hereof.

Limited Common Areas and Facilities: Those parts of the Common Areas and Facilities reserved for use of a certain Unit to the exclusion of all other Units and designated as Limited Common Areas and Facilities in Article VIII hereof.

Occupant: The person or persons, other than the Unit Owner, who lawfully occupy a Unit or any part thereof.

Ownership Interest: A Unit and the undivided interest in the Common Areas and Facilities appertaining thereto.

Parcel: The entire tract of land, a legal description of which is set forth in Exhibit C which is attached hereto and by this reference is incorporated herein.

Rules: Such rules and regulations governing the operation and use of the Condominium Property or any portion thereof as may be adopted by the Association or the Board from time to time.

Unit: A part of the Condominium Property consisting of one or more rooms on one floor of the Building, and more specifically described in Article VI hereof.

Unit Owner: A person or persons, natural or artificial, owning the fee simple estate in a Unit and its undivided interest in the Common Areas and Facilities.

ARTICLE II

SUBMISSION OF CONDOMINIUM PROPERTY TO  
PROVISIONS OF CHAPTER 5311

The Condominium Property is hereby submitted to the provisions of Chapter 5311\* The Condominium Property is hereby divided into fifty-one (51) separately designated freehold estates consisting of (a) the Units hereinafter more fully described, and (b) one freehold estate consisting of the Common Areas and Facilities.

ARTICLE III

NAME OF CONDOMINIUM PROPERTY

The name by which the Condominium Property shall be known is THE VICTORIAN CONDOMINIUM.

ARTICLE IV

PURPOSES AND RESTRICTIONS ON THE USE  
OF CONDOMINIUM PROPERTY

1. Purposes. The purposes of the Condominium Property are to provide single-family housing and recreational facilities for the Unit Owners and their respective families, tenants, guests and servants in accordance with the provisions of Chapter 5311\*

2. Restrictions on Use. The Units and Common Areas and Facilities shall be used and occupied as follows:

(a) The Condominium Property shall be used for the purposes of housing and recreational purposes set forth above and the related common purposes for which the Condominium Property was designed, and for no other purpose. Each Unit shall be used and occupied as a residence for a single family, and for no other purpose and in accordance with applicable ordinances of the City of Cleveland Heights. Nothing herein contained shall prevent a Unit Owner from using a portion of his Unit for his office or studio, provided that the activities therein shall not interfere with the quiet enjoyment or comfort of any other Unit Owner or Occupant and further provided that such office or studio use does not involve the personal services of any Unit Owner; provided, further, however, that in no event shall any part of the Condominium Property be used as a school or music studio.

(b) There shall be no obstruction of the Common Areas and Facilities nor shall anything be stored in the Common Areas and Facilities without the prior written consent of the Association, except as herein expressly provided. Each



Unit Owner shall be obligated to maintain and keep his own Unit in good order and repair.

(c) Nothing shall be done or kept in any Unit or in the Common Areas and Facilities which will increase the rates of insurance on the Building, 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 in the Common Areas and Facilities which will result in the cancellation of insurance on the Building, or contents thereof, or which would be in violation of any law or regulation of any governmental authority. No waste shall be committed in the Common Areas and Facilities.

(d) No Unit Owner shall cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of the Building, and no sign, awning, canopy, shutter, radio or television antenna shall be affixed to or placed upon the exterior walls or roof or any part thereof, without the prior written consent of the Association.

(e) No animals or birds of any kind shall be raised, bred or kept in any Unit or in the Common Areas and Facilities, except that dogs, cats and other household pets may be kept in Units subject to the Rules, provided that they are not kept, bred, or maintained for any commercial purpose, and provided further that any such pet causing or creating a nuisance or disturbance shall be permanently removed from the Condominium Property upon three (3) days' written notice from the Association.

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

(g) Nothing shall be done in any Unit or in, on or to the Common Areas and Facilities which will impair the structural integrity of the Building or which would structurally change the Building except as is otherwise provided herein.

(h) No clothes, sheets, blankets, laundry of any kind, or other articles shall be hung out or exposed on any part of the Common Areas and Facilities. The Common Areas and Facilities shall be kept free and clear of rubbish, debris and other unsightly materials.

(i) Except in areas specifically designed and intended for such purpose, there shall be no playing, lounging or parking or placing of baby carriages, playpens, bicycles, wagons, toys, vehicles, benches or chairs in or on any part of the Common Areas and Facilities not within the bounds of a Unit.

(j) No industry, business, trade, occupation or profession of any kind, whether for commercial, religious, educational, charitable or other purposes shall be conducted, maintained or permitted on any part of the Condominium Property except such as may be permitted by the Association and subject to the Rules; nor shall any "For Sale" or "For Rent" signs or other window displays or advertising be maintained or permitted by any Unit Owner on any part of the Condominium Property or in any Unit therein, except that (1) Grantor or its agent may place "For Sale" or "For Rent" signs on any unsold or unoccupied Units and may place such other signs on the Condominium Property as may be required to facilitate the sale of unsold Units, and (ii) the Association or its agent or representative may place "For Sale" or "For Rent" signs on any Unit or on the Condominium Property for the purpose of facilitating the disposal of Units by any Unit Owner, mortgagee, or the Association.

(k) Nothing shall be altered, added or constructed in or removed from the Common Areas and Facilities, except upon the written consent of the Association.

(l) The Units shall not be rented by the respective Unit Owners thereof for transient or hotel purposes, which shall be defined as (1) rental for any period less than six months, or (ii) any rental if the Occupants of the Units-- are provided customary hotel service such as room service for food and beverage, maid service, furnishing of laundry and linen and bellboy service. Other than the foregoing obligations, the Unit Owners of the respective Units shall have the absolute right to lease the same, provided that said lease is made subject to the covenants and restrictions in this Declaration and further subject to the By-laws, and shall further have the approval of the Association.

(m) During the period in which sales of Units by the Grantor are in process, Grantor may occupy or grant permission to any person or entity to occupy, with or without rental, as determined by Grantor, one or more Units for business or promotional purposes, including clerical activities, sales offices and model Units for display and the like, provided that



the activities in the Units so occupied do not unreasonably interfere with the quiet enjoyment of any other Unit Owner or Occupant.

## ARTICLE V

### GENERAL DESCRIPTION OF BUILDING

A general description of the Building constituting a part of the Condominium Property is as follows:

The Building, consisting of three stories and ground floor, and ground floor parking garage, and containing 50 Units, is constructed of masonry and concrete frame with concrete steel and brick columns and concrete and steel beams and concrete floors, the exterior surfaces being primarily of brick and stone on the ground floor and brick and stone on the floors above, all as more fully set forth in the Drawings.

## ARTICLE VI

### UNITS

1. Designation of Units. Each of the Fifty (50) Units hereinbefore declared and established as a separate freehold estate shall consist of all the space bounded by the horizontal and vertical planes formed by the respective undecorated interior surfaces of the perimeter walls, windows, doors, floors and ceilings of each such Unit, including the vestibule, if any, immediately adjacent to each Unit, projected, where appropriate /'by' reason of structural divisions such as interior walls and other partitions, as may be necessary to form a complete enclosure; all of the dimensions, layouts and descriptions of each such Unit being as shown graphically in the Drawings related thereto, which Drawings are attached hereto as Exhibit B. 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, without limitation, paint, lacquer, varnish, wall-paper, tile and paneling;

(b) The receptacle and switch plates or covers within the bounds of the Unit; and

(c) The space occupied by any Common Areas and Facilities located within the bounds of the Unit, but shall not include any Common Areas and Facilities located within the bounds of such Unit. The Units forming a part of the Condominium Property are more particularly described in the Drawings and are designated as follows:

Unit Designation	Location	Number of Rooms	Square Feet
101	1st Floor, West wing	5 and 2 baths	1,500
201	2nd Floor, West wing	5 and 2 baths	1,500
301	* 3rd Floor, West wing	5 and 2 baths	1,500
102	1st Floor, West wing	6 and 2 baths	1,760
202	2nd Floor, West wing	6 and 2 baths	1,760
302	3rd Floor, West wing	6 and 2 baths	1,760
103	1st Floor, West wing	5 and 2 baths	1,720
203	2nd Floor, West wing	5 and 2 baths	1,720
303	3rd Floor, West wing	5 and 2 baths	1,720
104	1st Floor, West wing	5 and 2 baths	1,500
204	2nd Floor, West wing	5 and 2 baths	1,500
304	3rd Floor, West wing	5 and 2 baths	1,500
105	1st Floor, West wing	5 and 2 baths	1,500
205	2nd Floor, West wing	5 and 2 baths	1,500
305	3rd Floor, West wing	5 and 2 baths	1,500
106	1st Floor, West wing	5 and 2 baths	1,500
206	2nd Floor, West wing	5 and 2 baths	1,500
306	3rd Floor, West wing	6 and 2-1/2 baths	2,518
107	1st Floor, West wing	6 and 2 baths	1,542
207	2nd Floor, West wing	6 and 2 baths	1,542
108	1st Floor, Center Core	5 and 2 baths	1,500
208	2nd Floor, Center Core	5 and 2 baths	1,500
308	3rd Floor, Center Core	5 and 2 baths	1,500
209	2nd Floor, Center Core	5 and 2 baths	1,500
309	3rd Floor, Center Core	5 and 2 baths	1,500
110	1st Floor, East wing	4 and 2 baths	1,240
210	2nd Floor, East wing	4 and 2 baths	1,240
310	3rd Floor, East wing	4 and 2 baths	1,240
111	1st Floor, East wing	5 and 2 baths	1,500
211	2nd Floor, East wing	5 and 2 baths	1,500
311	3rd Floor, East wing	5 and 2 baths	1,500
112	1st Floor, East wing	6 and 2 baths	1,760
212	2nd Floor, East wing	6 and 2 baths	1,760
312	3rd Floor, East wing	6 and 2 baths	1,760
113	1st Floor, East wing	6 and 2 baths	1,542
213	2nd Floor, East wing	6 and 2 baths	1,542
114	1st Floor, East wing	5 and 2 baths	1,720
214	2nd Floor, East wing	5 and 2 baths	1,720
314	3rd Floor, East wing	5 and 2 baths	1,720
115	1st Floor, East wing	5 and 2 baths	1,500
215	2nd Floor, East wing	5 and 2 baths	1,500
315	3rd Floor, East wing	5 and 2 baths	1,500
116	1st Floor, East wing	5 and 2 baths	1,500
216	2nd Floor, East wing	5 and 2 baths	1,500
316	3rd Floor, East wing	5 and 2 baths	1,500
117	1st Floor, East wing	5 and 2 baths	1,500
217	2nd Floor, East wing	5 and 2 baths	1,500
317	3rd Floor, East wing	6 and 2-1/2 baths	2,518
118	1st Floor, East wing	6 and 2 bath's	1,542
218	2nd Floor, East wing	6 and 2 baths	1,542



No Unit Owner shall, by deed, plat or otherwise, subdivide or in any other manner cause his Unit to be separated into tracts or parcels smaller than the whole Unit as shown on the Drawings.

2. Ownership of a Unit. Except with respect to any of the Common Areas and Facilities located within the bounds of a Unit, each Unit Owner shall be entitled to the exclusive ownership and possession of his Unit, and to the ownership of an undivided interest of the Common Areas and Facilities in the percentage expressed in Article VII hereof.

## ARTICLE VII

### COMMON AREAS AND FACILITIES

1. Description. Except as otherwise in this Declaration provided, the Common Areas and Facilities shall consist of all parts of the Condominium Property except the Units. Without limiting the generality of the foregoing, the Common Areas and Facilities shall include the following, whether located within the bounds of a Unit or not:

(a) the foundations, columns, girders, beams, supports, supporting walls, roofs, halls, corridors, lobbies, balconies, patios, stairs, stairways, entrances and exits of the Building;

(b) yards, gardens, surface parking areas, roads, walks, party room, card room, billiard room, garage, ramps and storage spaces;

(c) installations of central services such as power, light, gas, hot and cold water, heating and air conditioning equipment for Common Areas, and incinerating, and all pipes, ducts, wires, premises for superintendent, conduits, fan coil units, receptacles, switches, grills, thermostats and control devices which are a part of, connected to, or used in conjunction with any of the foregoing;

(d) the elevators, tanks, pumps, motors, fans, compressors, ducts and, in general, all apparatus and installations existing for common use;

(e) the doors and windows in the perimeter walls of a Unit;

(f) all other parts of the Condominium Property necessary or convenient to its existence, maintenance and safety, or normally in common use, or which have been designated as Common Areas and Facilities in the Drawings; and

(g) all repairs and replacements of any of the foregoing.

Unless otherwise provided by this Declaration or the By-laws, the care, maintenance, repair and replacement of all or any portion of such Common Areas and Facilities located within the bounds of a Unit shall be the responsibility of the Unit Owner.

2. Ownership of Common Areas and Facilities.

The Common Areas and Facilities 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 Areas and Facilities shall be maintainable, except as specifically provided in Chapter 5311, nor may any Unit Owner otherwise waive or release any rights in the Common Areas and Facilities; provided, however, that if any Unit shall be owned by two or more co-owners as tenants in common or as Joint tenants, nothing herein contained shall be deemed to prohibit a voluntary or Judicial partition of such Unit ownership as between such co-owners.

3. Use of Common Areas and Facilities.

Except with respect to Limited Common Areas and Facilities and Exclusive Use Areas, each Unit Owner shall have the right to use the Common Areas and Facilities for all purposes incident to the use and occupancy of his Unit as a place of residence, and such other incidental uses permitted by this Declaration and the By-laws, and subject to the Rules, including the non-exclusive easement, together with other Unit Owners to the use and enjoyment of the Common Areas and Facilities and for ingress and egress to and from the respective Units, which rights shall be appurtenant to and shall run with his Unit. The extent of such ownership in the Common Areas and Facilities is hereby deemed and expressed by the percentage amount hereinafter set forth; such percentage amount shall remain constant and shall not be changed except by an amendment to this Declaration unanimously approved by all Unit Owners.

4. Interest in Common Areas and Facilities.

The percentage of ownership of the Common Areas and Facilities attributable to each Unit, together with the percentage of interest in the Association for voting purposes and for the division of common profits and Common Expenses, as hereinafter described in Article XII of this Declaration, has been determined by Grantor in accordance with the provisions of Chapter 5311 and shall be as follows:

<u>Unit Number</u>	<u>Percentages of Interest in Common Areas and Facilities, Percentage Representation for Voting Purposes in the Association and Percentage Interest in Common Profits and Expenses</u>
101	1.791
201	1.845
301	1.861
102	2.147
202	2.184
302	2.217



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Percentages of Interest in  
Common Areas and Facilities,  
Percentage Representation for  
Voting Purposes in the Associa-  
tion and Percentage Interest in  
Common Profits and Expenses

Unit Number	
103	2.108
203	2.147
303	2.184
104	1.861
204	1.897
304	1.933
105	1.971
205	2.007
305	2.047
106	1.861
206	1.897
306	2.686
107	1.933
207	1.971
108	1.971
208	2.007
308	2.047
209	1.861
309	1.897
110	1.541
210	1.613
310	1.651
111	1.828
211	1.861
311	1.897
112	2.181
212	2.253
312	2.291
113	1.933
213	1.971
114	2.108
214	2.147
314	2.184
115	1.861
215	1.933
315	1.971
116	1.971
216	2.007
316	2.047
117	1.861
217	1.933
317	2.686
118	1.933
218	2.007

5. No Severance of Ownership, No Unit

Owner shall execute any deed, mortgage, lease or other instrument affecting title to his Unit Ownership without including therein both his interest in the Unit and his interest in the Common Areas and Facilities, it being the intention hereof to prevent any division of such combined ownership. Any such deed, mortgage, lease or other instrument purporting to affect the one without including also

the other shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein. For purposes of conveyance of title to a purchaser of an Ownership Interest, description by unit number and reference to this Declaration and to the attached Drawings shall be adequate to convey the fee simple title thereto together with the percentage interest in and to the Common Areas and Facilities.

#### ARTICLE VIII

##### LIMITED COMMON AREAS AND FACILITIES AND EXCLUSIVE USE AREAS

###### 1. Limited Common Areas and Facilities.

Each Unit Owner is hereby granted an exclusive and irrevocable license to use and occupy the Limited Common Areas and Facilities reserved exclusively for the use of his Unit.

The Limited Common Areas and Facilities shall consist of

- (a) the balconies, patios and the windows and doors in the perimeter walls of a Unit, the use and occupancy of which shall in each case be limited to the adjoining Unit, and
- (b) all of the Common Areas and Facilities as may be located within the bounds of a Unit, which are intended for the service of the Unit, the use and occupancy of which shall in each case be limited to such Unit. No Unit Owner shall decorate, landscape or adorn any balcony in any manner contrary to the Rules unless he shall first obtain the written consent of the Association, nor shall any Unit Owner decorate or apply any finishing or other material to the exterior surface of any door (other than a glass door) or any surface of any window or glass door which is not part of a Unit, except that a Unit Owner may clean the interior and exterior surfaces of any such window or glass door.

###### 2. Exclusive Use Areas.

Each Unit Owner is hereby granted an exclusive but revocable 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 re-assign the use of such areas in accordance with such standards as it may establish from time to time. The Association may require that maintenance of any Exclusive Use Areas shall be the sole responsibility of such licensee.

#### ARTICLE IX

##### ASSOCIATION

Grantor shall cause to be formed an Ohio corporation not for profit to be called The Victorian Condominium Association (or a name similar thereto) which shall administer the Condominium Property. Each Unit Owner, upon acquisition of title to an Ownership Interest in a Unit, shall automatically become a member of the Association. Such membership shall terminate upon the sale or other disposition by such member of his Ownership Interest, at which time the successor Unit Owner shall



automatically become a member of the Association. The Association shall be governed by the By-laws. The By-laws may contain, in addition to the provisions required to be included therein by Chapter 5311, any further provisions deemed by the Association to be desirable or necessary to the proper administration of the Condominium Property and not inconsistent with the Act or this Declaration. The Board and officers of the Association elected as provided in the By-laws shall exercise the powers, discharge the duties and be vested with the rights conferred by operation of law, by the By-laws and by this Declaration upon the Association; except as otherwise specifically provided; provided, however, that in the event any such power, duty or right shall be deemed exercisable or dischargeable by, or vested in, an officer or member of the Board solely in his capacity as an officer or member of said Board, he shall be deemed to act in such capacity to the extent required to authenticate his acts and to carry out the purposes of this Declaration and the By-laws.

#### ARTICLE X

##### AGENT FOR SERVICE OF PROCESS

The person to receive service of process for the Association shall be the president of the Association. The president of the Association shall be a resident of The Victorian Condominium and a Unit Owner thereof. Until such time as a president is elected, Irving Fine, a natural person resident in the county in which the Condominium Property is situated and whose business address is 4447 Lee Road, Cleveland, Cuyahoga County, Ohio, is hereby appointed as the agent to receive service of process for the Association.

#### ARTICLE XI

##### GENERAL PROVISIONS AS TO UNITS AND COMMON AREAS AND FACILITIES

1. Easements. (a) In the event that (i) by reason of the construction, reconstruction, settlement or shifting of the Building, any part of the Common Areas and Facilities encroaches or shall hereafter encroach upon any part of any Unit or any of the Common Areas and Facilities or any other Unit or (ii) by reason of the design or construction of any Unit, it shall be necessary or advantageous to a Unit Owner to use or occupy, for normal uses and purposes, any portion of the Common Areas and Facilities consisting of unoccupied space within the Building and adjoining his Unit, valid easements for the maintenance of such encroachment and for the use of such adjoining space are hereby established and shall exist for the benefit of such Unit and the Common Areas and Facilities, as the case may be, so long as all or any part of the Building containing such Unit shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of any Unit Owner or in favor of the Unit Owners as owners of the Common Areas and Facilities if such encroachment occurred due to the willful conduct of said Unit Owner or Unit Owners.

(b) Each Unit shall be subject to such easements of access as may be necessary for the maintenance, repair or replacement of any Common Areas and Facilities or the operation of the Building in which such Unit is located, and shall be further subject to such easements as may be necessary for the Installation, maintenance, operation, repair, removal or replacement of any pipes, wires, ducts, conduits, public utility lines or structural components running through the walls of the Units, whether or not such walls lie in whole or in part within the bounds of a Unit. Each Unit Owner shall have the permanent right and easement to and through the Common Areas and Facilities and walls to the use of water, sewer, power, television antenna, and other utilities now or hereafter existing within the walls, and further shall have an easement to hang pictures, mirrors and the like upon the walls of his Unit.

(c) The Association may hereafter grant easements for utility purposes for the benefit of the Condominium Property, including the right to install, lay, maintain, repair and replace water mains and pipes, sewer lines, gas mains, telephone wires and equipment, and electrical conduits and wires over, under, along and on any portion of the Common Areas and Facilities; and each Unit Owner hereby grants the Association an irrevocable power of attorney to execute, acknowledge and record, for and in the name of such Unit Owner, such instruments as may be necessary to effectuate the foregoing.

(d) Each Unit Owner of a Unit which is adjacent to an adjoining balcony shall have for himself, his heirs and assigns an exclusive easement for his use and enjoyment of such balcony; provided, however, that no Unit Owner shall decorate, landscape or adorn such balcony in any manner contrary to such rules and regulations as may be established therefor by the Association, unless he shall first obtain the written consent of the Association.

(e) All easements and rights described herein are easements appurtenant, running with the land, perpetually in full force and effect, and at all times, shall inure to the benefit of and be binding on the Grantor, its successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof.

(f) Reference in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration, shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees of such parcels as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such document.

2. Use of Common Areas and Facilities. No person shall use the Common Areas and Facilities or any part thereof in any manner contrary to or not in accordance with this Declaration or the Rules pertaining thereto.



Without in any manner intending to limit the generality of the foregoing, the Board shall have the right, but not the Obligation, to promulgate from time to time Rules governing the use of the Common Areas and Facilities by Unit Owners and Occupants and their respective families, tenants, guests, invitees and servants, as well as to provide for the exclusive use by a Unit Owner and his guests, for specific occasions, of the recreational areas or other similar facilities. Such use may be conditioned upon, among other things, the payment by the Unit Owner or Occupant of such special assessments as may be established by the Board for the purpose of defraying the costs thereof.

3. Management, Maintenance, Repairs and Replacement of Common Areas and Facilities. Except as otherwise provided herein, or in the Rules, the management, maintenance, repair and replacement of the Common Areas and Facilities shall be the responsibility of the Association. The Association may delegate all or any portion of its authority to discharge such responsibility to a manager or managing agent. Such delegation may be evidenced by a management contract (which shall not exceed two (2) years in duration) which shall provide for the payment of reasonable compensation to said manager or managing agent as a Common Expense. Upon the expiration of the initial term of any such management contract, the Association may renew such contract from time to time for successive periods (no one of which shall exceed two (2) years in duration) or enter into a new management contract for an additional period not to exceed two (2) years; provided, however, that designation of a different manager for the Condominium Property shall require the approval of members entitled to exercise not less than seventy-five per cent (75%) of the voting power of the Association.

The managing agent, for the period ending two (2) years after the date this Declaration is filed for record, shall be the Grantor (or any other entity designated by Grantor to act in such capacity) and Grantor (or such other entity) shall be entitled to receive reasonable compensation for its services in such capacity. The rights of the Association to designate a different managing agent as above provided shall be subject to the rights of Grantor (or such other entity) during said initial two (2) year period hereunder.

4. Maintenance of Units. (a) The Association, at its expense, shall be responsible for the maintenance, repair and replacement of those portions of the Common Areas and Facilities located within the bounds of a Unit, excluding, however, (i) the interior surfaces of the perimeter walls, floors, doors and ceilings, (ii) the surfaces of any interior walls which, are part of the Common Areas and Facilities, and (iii) other portions of the Common Areas and Facilities within its bounds, the maintenance, repair or replacement of which is the responsibility of a Unit Owner under any other provision of this Declaration

(b) 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 and plumbing, heating and air conditioning, and electrical fixtures and installations located within the Unit bounds and not constituting a part of the Common Areas and Facilities;

(2) to maintain, repair and replace at his expense such portions of any Exclusive Use Area licensed, granted or otherwise assigned to such owner, as the Association shall from time to time determine;

(3) to repair and replace at his expense any doors and windows constituting a part of the Common Areas and Facilities that may be damaged or broken by the Unit Owner or any of his occupants, tenants, guests, invitees or servants;

(4) to perform his responsibilities in such manner so as not unreasonably to disturb other persons residing within the Building;

(5) not to paint or otherwise finish or decorate or change the appearance of any portion of the Building 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 for the remedying of which is with the Association;

(7) not to make any alterations in any portions of the Building 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 Building without the prior written consent of the Association; and

(8) not to impair or obstruct any easement without the prior written consents of the Association and of any other person for whose benefit such easement exists.

(c) Nothing herein contained shall be deemed to impose any contractual liability on the Association for the maintenance, repair or replacement of the Common Areas and Facilities or any portion thereof, but the Association's liability shall be limited to damages resulting from negligence.

5. Repairs to Common Areas and Facilities and Owner's Acts. Each Unit Owner agrees to maintain, repair and replace at his expense all portions of the Common Areas and Facilities which may be damaged or destroyed by



reason of his own or his Occupant's act or neglect, or by the act or neglect of any tenant, guest, invitee or servant of such Unit Owner or Occupant.

6. Construction Defects. The obligation of the Association and of Unit Owners to repair, maintain and 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 material or workmanship in the construction of the Condominium Property.

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

## ARTICLE XII

### COMMON EXPENSES AND ASSESSMENTS

1. Obligation of Unit Owners to Pay Assessments. The common profits of the Condominium Property shall be distributed among and the Common Expenses shall be charged to the Unit Owners according to the percentages of interest in the Common Areas and Facilities of their respective Units as set forth in Article VII hereof. Every Unit Owner shall pay his proportionate share of assessments for Common Expenses and any special assessments levied against him.

2. -Failure to Pay Assessments When Due. In the event any Unit Owner fails to pay any assessment made by the Board within ten (10) days after the same shall have become due and payable, the Board may, in its discretion, discontinue any or all services to the Unit owned by such Unit Owner which may be included as a part of the common expenses. Any assessment not paid within ten (10) days after the same shall have become due and payable shall bear interest at such rate, not in excess of eight percent (8%) per annum, as may be determined by the Board until the same shall have been paid.

3. 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 with respect to the Unit Ownership to be sold or encumbered, and the Board shall, within ten (10) days after receipt of 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 Interest be subject to a lien for, any unpaid assessments which became

due prior to the date of the making of such request shall be subordinate to such mortgage, if such unpaid assessments are not set forth in such statement.

4. Responsibility of Unit Owners for Unpaid Assessments. Except as otherwise provided in paragraph 3 of this Article XII, in the case of any voluntary conveyance of a Unit, ~~the Grantee of the Unit shall be jointly and severally liable~~ with the grantor for all unpaid assessments 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. A Unit Owner shall be liable for all assessments made while he is the owner of a Unit, and no Unit Owner shall be liable for any such assessments made after he ceases to be the owner of a Unit.

5\* Lien for Unpaid Assessments. The Association shall have a lien upon each Ownership Interest for the payment of all assessments, against the Unit constituting a part of such Ownership Interest ~~which remain unpaid for ten~~ (10) days after the same have become due and payable in like manner and with the same effect as the lien of the Association for Common Expenses accorded by Chapter 5311.

### ARTICLE XIII

#### INSURANCE

##### 1. Fire and Extended Coverage Insurance.

(a) The Board shall from time to time obtain for the ~~benefit of all Unit Owners~~ insurance on the Building and all other structures, Improvements and personal property constituting a part of the Condominium Property and on the permanent additions and improvements located within the bounds of each Unit against loss or damage by fire, lightning, such perils as are comprehended within the term "extended coverage", vandalism and malicious mischief, and, in the case of personal property comprising part of the Condominium Property, against theft, in an amount not less than the full insurable value thereof, with replacement value endorsement. Without limiting the generality of the foregoing, such insurance shall not cover personal property located within any locker, such property being the sole risk of the owner thereof. Such insurance shall be written in the name of, and the proceeds thereof shall be payable to, the Association as trustee for the Unit Owners and their respective mortgagees, if any, in accordance with the percentage ownership in the Common Areas and Facilities set forth in Section 4 of Article VII herein, and provision shall be made for the issuance of certificates of such insurance to the Unit Owners and their respective mortgagees, if any. Such policy shall provide for built-in or installed fixtures and equipment in an amount not less than the full insurable value thereof, with replacement value endorsement. The coverage afforded by such insurance shall be reviewed by the Board not less



frequently than once each year to determine if the amounts payable thereunder and the coverage thereof comply with the requirements of this subparagraph (a). Each Unit Owner shall promptly advise the Board or the managing agent, if any, of the nature and value of any permanent additions or improvements contemplated to be made with respect to his Unit. Such insurance shall also provide for the waiver by the insurer of any and all rights of subrogation or assignment and all causes and rights of recovery against the Unit Owners, and their respective families, tenants, guests and servants, and each of them, the Association, the Board, any managing agent and all persons lawfully in possession or control of any part of the Condominium Property for recovery against them or any of them for any loss occurring to the insured property resulting from any of the perils insured against under such insurance policy.

(b) The maintenance of such insurance by the Association shall be without prejudice to the right of any Unit Owner to obtain individual contents or chattel property insurance, but no Unit Owner may at any time procure individual policies of insurance insuring against any loss or damage covered by any of the insurance procured by the Board in accordance with subparagraph (a) of this paragraph 1, unless the Association shall be a named insured in such policy. All policies of insurance purchased by Unit Owners shall contain waivers of subrogation or assignment in form satisfactory to the Board, and copies of all such policies shall be deposited with the Board or the managing agent.

2. Public Liability Insurance. The Board shall insure itself, the Association, any managing agent, the Unit Owners and members of their respective families, tenants, guests and servants 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, or arising from or relating to the Common Areas and Facilities, such insurance to afford protection to a limit of not less than One Million Dollars (\$1,000,000) in respect to personal injury, disease, illness or death suffered by any one person, and to the limit of not less than One Million Dollars (\$1,000,000) in respect to any one occurrence, and to the limit of not less than Five Hundred Thousand Dollars (\$500,000) in respect to damage to or destruction of property arising out of any one accident. Such insurance shall not insure against liability for personal injury or property damage arising out of or relating to the individual Units.

3. Association as Agent. The Association shall be the exclusive agent for each of the Unit Owners and for each holder of a mortgage or other lien upon any Unit, to adjust all claims arising under Insurance policies procured by the Association, and to execute and deliver releases upon the payment of claims.

4. Insurance Premiums. Insurance premiums for the policies referred to in Sections 1 and 2 of this Article XIII shall be a Common Expense.

#### ARTICLE XIV

##### DAMAGE OR DESTRUCTION AND RESTORATION OF BUILDING

1. Sufficient Insurance. In the event the improvements forming a part of the Condominium Property, or any portion thereof, shall suffer damage or destruction from any cause or peril insured against, and the proceeds of any policy or policies insuring against such loss or damage and payable by reason thereof shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken by the Association and the insurance proceeds shall be applied by the Association in payment therefor; provided, however, that in the event, within thirty (30) days after such damage or destruction, the Unit Owners, if they are entitled to do so pursuant to Section 3 of this Article XIV, shall elect to sell the Condominium Property or to withdraw the same from the provisions of this Declaration, then such repair, restoration or reconstruction shall not be undertaken.

2. Insufficient Insurance. In the event the improvements forming a part of the Condominium Property, or any portion thereof, shall suffer damage or destruction from any cause or peril which is not insured against, or, if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction, then, unless the Unit Owners shall within ninety (90) days after such damage or destruction, if they are entitled to do so pursuant to Section 3 of this Article XIV, elect to withdraw the property from the provisions of this Declaration, such repair, restoration or reconstruction of the Units so damaged or destroyed shall be undertaken by the Association at the expense of the owners of the Units so damaged or destroyed in the same proportions which the cost of repair, restoration or reconstruction of each such Unit so damaged or destroyed bears to the total cost of repair, restoration or reconstruction for all such Units, and such repair, restoration or reconstruction of all or any part of the Common Areas and Facilities shall be undertaken by the Association at the expense of each and every Unit Owner in proportion to their Ownership Interests. Should any Unit Owner refuse or fail after reasonable notice to pay his share of such cost in excess of available insurance proceeds, the amount thereof may be advanced by the Association and the amount so advanced by the Association shall be assessed to such owner, and such assessment shall have the same force and effect and, if not paid, may be enforced in the same manner as hereinbefore provided for the non-payment of assessments

3. Non-Restoration of Damage or Destruction  
In the event of substantial damage to or destruction of twenty-five (25) or more of the Units, the Unit Owners, by



the affirmative vote of those entitled to exercise not less than seventy-five per cent (75%) of the voting power, may elect not to repair or restore such damage or destruction. Upon such election, all of the Condominium Property shall be subject to an action for sale as upon partition at the suit of any Unit Owner. In the event of any such sale or a sale of the Condominium Property after such election by agreement of all Unit Owners, 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 their respective interests in the Common Areas and Facilities. 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.

#### ARTICLE XV

##### REHABILITATION AND SUBSEQUENT IMPROVEMENTS

The Association may, by the affirmative vote of Unit Owners entitled to exercise not less than seventy-five per cent (75%) of the voting power, determine that the Condominium Property is obsolete "in whole or in part, and elect to have the same renewed and rehabilitated as provided in Chapter 5311. The Board shall thereupon proceed with such renewal and rehabilitation and the cost thereof shall be a Common Expense. In the event that the Association decides to have the Condominium Property renewed and rehabilitated as so provided in the Act, 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 as of the date such vote is taken, in accordance with the provisions of Article XVII hereof.

#### ARTICLE XVI

##### SALE, LEASING OR OTHER ALIENATION - -

1. Sale or Lease. Any Unit Owner, other than Grantor, who wishes to sell or lease his Ownership Interest or any interest therein (or any lessee of any Ownership Interest wishing to assign or sublease such Ownership Interest) to any person shall give to the Board, not less than thirty (30) days prior to the date of the proposed sale or lease, written notice of the terms of any proposed sale or lease, together with his name and address, the Unit of which he is the owner and which is to be the subject matter of the proposed sale or lease, the name and address of the proposed purchaser or lessee, the amount deemed by him to constitute the fair market value of such Ownership Interest, and the amount of any liens and encumbrances thereon. The members of the Board, acting on behalf of consenting Unit Owners as hereinafter provided, shall at all times have the first right and option to purchase or lease such Ownership Interest or interest therein upon the

same terms, which option shall expire thirty (30) days after the date of receipt by it of such notice; provided, however, that if the proposed purchase or lease shall be for a consideration which the Board does not deem to reflect the fair market value of such Ownership Interest or interest therein, the Board may elect to exercise such option in the manner, within the period, and on the terms set forth in paragraph 2 of this Article XVI. If said option is not exercised by the Board within the aforesaid option period, the owner or lessee may, upon the expiration of said option, contract to sell or lease (or sublease or assign) such Ownership Interest of such interest therein to the proposed purchaser or lessee named in such notice upon the terms specified therein. Anything herein to the contrary notwithstanding, no Unit shall be leased to any transient tenant, and no lease of any Unit shall be for less than six (6) months.

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2. Inter Vivos Gift. Any Unit Owner, other than Grantor, who wishes to make an inter vivos gift of his Ownership Interest or any interest therein to any person or persons (other than his spouse and his lineal descendants or any one or more of them), shall give to the Board, not less than sixty (60) days prior to the date of the proposed gift, written notice of his intent to make such gift and shall specify in said notice his name and address, the Unit of which he is the owner and which is to be the subject matter of the proposed gift, the name and address of the intended donee, the contemplated date of said gift, the amount deemed by him to constitute the fair market value of such Ownership Interest or interest therein, and the amount of any liens and encumbrances thereon. The members of the Board, acting on behalf of consenting Unit Owners as hereinafter provided, shall at all times have the first right and option to purchase or otherwise acquire such Ownership Interest or interest therein for cash at the fair market value thereof less the amount of any liens and encumbrances thereon. If the Board does not deem the amount so specified in said notice to be the fair market value of such Ownership Interest or interest therein, the Board may, within ten (10) days after the service of such written notice by the Unit Owner, so notify the Unit Owner in writing and specify a different amount-as-the fair market value of said Ownership Interest or interest therein. The fair market value of the Ownership Interest or interest therein involved shall be deemed to be the amount specified by the Unit Owner, or if the Board as aforesaid has specified a different amount, then the amount specified by the Board, unless either (a) the Board and the Unit Owner at any time within twenty (20) days after the service of such notice by the Unit Owner agree upon a different amount, or (b) either the Unit Owner or the Board, within said twenty (20) day period (but not thereafter) serves a written notice on the other that he or it desires that the determination of such fair market value shall be made by a board of appraisers, in which case, such determination shall be made by the majority vote of a board of three appraisers, one of whom shall be appointed by the Board and the other of whom shall be appointed by the Unit Owner, each such appointment to be made within five (5) days after the receipt by the other party of the aforesaid notice, and the third of whom shall be appointed by the first two appraisers within five (5) days after the



last of their respective appointments. Upon such determination, said appraisers shall promptly give written notice thereof to the Unit Owner and the Board. The Board's option to purchase or otherwise acquire said Ownership Interest or interest therein shall expire fifteen (15) days after the date the fair market value thereof becomes fixed as aforesaid.

3. Devise and Inheritance. In the event any Unit Owner dies and his Ownership Interest or any interest therein passes by devise or under the laws of intestacy to any person or persons other than his spouse and his lineal descendants or one or more thereof, the members of the Board, acting on behalf of consenting Unit Owners as hereinafter provided, shall have the first right and option (exercisable in the manner hereinafter set forth) to purchase said Ownership Interest or interest therein either from the devisee or devisees or the heir or heirs of the deceased Unit Owner or, if a power of sale is conferred by the will of any such Unit Owner upon the personal representative named therein, from such personal representative acting pursuant to said power, for cash at the fair market value thereof, less the amount of any liens and encumbrances thereon. Within sixty (60) days after the appointment of a personal representative of the deceased Unit Owner, the Board shall give notice of this option to said devisee or devisees, heir or heirs, or personal representative, as the case may be, and shall specify therein an amount deemed by the Board to constitute the fair market value of such Ownership Interest or interest therein. If the person or persons to whom such notice is given do not deem the amount so specified in said notice to be the fair market value of such Ownership Interest or interest therein, such person or persons may within fifteen (15) days after the service of such written notice so notify the Board in writing and specify a different amount as the fair market value of said Ownership Interest or interest therein. The fair market value of the Ownership Interest or interest therein involved shall be deemed to be the amount specified by the Board or if such person or persons as aforesaid has or have specified by such person or persons, unless either (a) the Board and such person or persons at any time within thirty (30) days after the service of such written notice by the Board agree upon a different amount or (b) either such person or persons or the Board within said thirty (30) day period (but not thereafter) serves a written notice upon the other that he, they or it desires that the determination of such fair market value shall be made by a board of appraisers, in which case such determination shall be made by the majority vote of a board of three appraisers, one of whom shall be appointed by the Board and the other of whom shall be appointed by such person or person, each such appointment to be made within five (5) days after the receipt by the other party of the aforesaid notice, and the third of whom shall be appointed by the first two appraisers within five (5) days after the last of their respective appointments. Upon such determination, said appraisers shall promptly give written notice thereof to such person or persons and the Board. The Board's option to purchase or otherwise acquire said Ownership Interest or interest therein shall expire thirty (30) days after the date the fair market value thereof

becomes fixed as aforesaid if the personal representative of the deceased Unit Owner is empowered to sell and shall expire three (3) months after said date if said personal representative is not empowered to sell. Nothing herein contained shall be deemed to restrict the right of the Board or its authorized representative, pursuant to authority given to the Board by the Unit Owners as hereinafter provided, to bid at any sale of the Ownership Interest or interest therein of any deceased Unit Owner, which sale is held pursuant to an order or direction of the court having jurisdiction over that portion of the deceased Unit Owner's estate which contains his or her Ownership Interest or interest therein.

#### 4. Involuntary Sale.

(a) In the event any Ownership Interest or interest therein is sold at a judicial or execution sale (other than a mortgage foreclosure sale), the person acquiring title through such sale shall, before taking possession of the Unit so sold, give to the Board not less than thirty (30) days prior to the date such person intends to take possession, written notice of such intention together with his name and address, the Unit purchased, and the purchase price, whereupon the members of the Board, acting on behalf of consenting Unit Owners as hereinafter provided, shall have the first right and option to purchase such Ownership Interest or interest therein at the same price for which it was sold at such sale; provided, however, that as to any mortgagee purchasing at such sale, the purchase price shall be the price for which it was sold at such sale or the fair market value thereof, whichever is higher. Any mortgagee purchasing at such sale shall, if it deems said fair market value to be higher than the price for which it was sold at said sale, specify in the notice provided for hereinabove, the fair market value of such Ownership Interest or interest therein. If the Board does not deem the amount so specified in said notice to be the fair market value thereof, then the Board may elect to exercise such option in the manner, within the period, and on the terms set forth in paragraph 2 of this Article XVI. Except as otherwise provided herein, if said option is not exercised by the Board within said thirty (30) days after receipt of such notice, it shall thereupon expire and said purchaser may thereafter take possession of said Unit. The Board shall be deemed to have exercised its option if it tenders to an escrow agent selected by it the required sum of money for the account of the purchaser within said thirty (30) day period.

(b) In the event any Unit Owner shall default in the payment of any monies required to be paid under the provisions of any mortgage or deed of trust on or against his Ownership Interest, the Board shall have the right to cure such default by paying the amount so owing to the party entitled thereto and shall thereupon have in addition to any right of subrogation resulting from such payment, a lien therefor against such Ownership Interest, which lien shall have the same force and effect and may be enforced in the same manner as a lien of the Association for unpaid Common Expenses.



5. Consummation of Purchase. Any option exercisable by the Board hereunder may be exercised within the respective option period by delivery by the Board of written notice of such exercise to the person or persons required to sell any Ownership Interest or interest therein to the Board in accordance with the provisions of this Article XVI. Any purchase effected pursuant to the provisions of this Article XVI shall be made by the payment of the purchase price by the Board, on behalf of the consenting Unit Owners, in return for a conveyance of the Ownership Interest or interest therein, subject to any liens and encumbrances thereon, to the president or chief officer of the Association as trustee for all consenting Unit Owners. Such conveyance and payment shall be made within twenty (20) days after the exercise of any option by the Board as in this Article XVI provided.

6. Consent of Voting Members. The Board shall not exercise any option hereinabove set forth to purchase any Ownership Interest or interest therein unless it shall have been authorized to do so by the affirmative vote of Unit Owners entitled to exercise not less than seventy-five per cent (75%) of the voting power and whose Units are not the subject matter of such option. The Board may bid and purchase at any sale of an Ownership Interest therein which is held pursuant to an order or direction of a court upon the prior authorization of the Unit Owners as aforesaid, which authorization shall set forth a maximum price which the Board is authorized to bid and pay for said Ownership Interest or interest therein.

7. Release, Waiver, and Exceptions to Option. The Grantor may, so long as it is managing agent, or the Board may, by unanimous written action, waive or release any of the options contained in this Article XVI and in such event, the Ownership Interest or interest therein which is subject to an option set forth in this Article XVI may be sold, conveyed, leased, given, devised or passed as contemplated in that instance without the requirements of the other paragraphs of this Article having been met. In addition, none of the options contained in this Article XVI shall be applicable to any sale, leases or subleases of any Ownership Interest with respect to which Grantor is the grantor, lessor or sublessor, respectively.

8. Evidence of Termination of Option. A certificate executed and acknowledged by the president or secretary of Grantor, if it is the managing agent, or of the Association stating that the provisions of this Article XVI as hereinabove set forth have been met by a Unit Owner, or duly waived or released, and that the rights of the Board hereunder have terminated, shall be conclusive upon the Board and the Unit Owners in favor of all persons who rely thereon in good faith, and such certificate shall be furnished upon request by the Association to any person or persons who have in fact complied with the provisions of this Article or with respect to whom the provisions of this Article have been waived or released, upon payment of a reasonable charge, not to exceed ten dollars (\$10.00) in any instance.

9. Financing of Purchaser Under Option.

(a) Acquisition of any Ownership Interest or interest therein under the provisions of this Article shall be made from the reserve for contingencies and replacements 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 which his percentage of interest in the Common Areas and Facilities bears to the percentage of interest in the Common Areas and Facilities of all consenting Unit Owners, which assessment shall become a lien and be enforceable as a lien for Common Expenses.

(b) The Board in its discretion, may borrow money to finance the acquisition of any Ownership Interest or interest therein authorized by this Article; provided, however, that no financing may be secured by an encumbrance on or hypothecation of any portion of the Condominium Property other than the Ownership Interest or interest therein to be acquired.

10. Title to Acquired Interests. Ownership Interests or interests therein acquired pursuant to the terms of this Article shall be held of record in the name of the president or other chief officer of the Association as trustee for all consenting Unit Owners. Such holding shall be for the benefit of all the Unit Owners consenting to and participating in such acquisition. Said Ownership Interests 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 Owners.

ARTICLE XVII

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 Articles XV and XVIII 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 (5) 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 owner and with respect to which such demand is made, the amount claimed by him as constituting such value, and the amount of such liens and encumbrances thereon. If the Board is unwilling to pay the amount so demanded, the Board may, on behalf of the Association, within ten (10) days after the service of such written demand, so notify the Unit Owner and make a counter offer



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 involved in the demand by the Unit Owner shall be deemed to be the amount demanded by him if he has complied with the provisions of this Article, or if the Association as aforesaid has made a counter offer of a different amount, then the amount specified in such counter offer, unless either (a) the Board and the Unit Owner at any time within twenty (20) days after the service of such demand agree upon a different amount, or (b) either the Unit Owner or the Association, within said twenty (20) day period (but not thereafter), 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 which case, such determination shall be made by the majority vote of a board of three appraisers, one of whom shall be appointed by the Board and the other of whom shall be appointed by the Unit Owner, each such appointment to be made within five (5) days after the receipt by the other party of the aforesaid notice, and the third of whom shall be appointed by the first two appraisers within five (5) days after the last of their respective appointments. The fair market value, determined as above provided, of 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 a 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 other Unit Owners. 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 ten (10) days after the fair market value of the Ownership Interest becomes fixed as aforesaid.

#### ARTICLE XVIII

##### REMOVAL OF PROPERTY FROM PROVISIONS OF CHAPTER 5311

Anything in Chapter 5311 to the contrary notwithstanding, the Unit Owners, by the affirmative vote of those entitled to exercise not less than 75% of the voting power, may elect to remove the Condominium Property from the provisions of Chapter 5311. 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 provisions of Article XVIII hereof. In the event of such election, all liens and encumbrances, except taxes and assessments not then due and payable, upon all or any part of the Condominium Property, shall be paid, released or discharged, and a certificate setting forth that such election was made shall be filed with the Recorder of Cuyahoga County, Ohio, and by him recorded. Such certificate shall be signed by the President of the Board, who shall certify therein under oath that all liens and encumbrances, except taxes and assessments not then due and payable, upon all or any part of the Common

Areas and Facilities have been paid, released or discharged, and shall also be signed by the Unit Owners, each of whom shall certify therein under oath that all such liens and encumbrances on his Unit or Units have been paid, released or discharged.

#### ARTICLE XIX

##### REMEDIES FOR BREACH OF COVENANTS AND RULES

1. Abatement and Enjoinment. If any Unit Owner (either by his own ~~conduct or by the~~ conduct of any Occupant of his Unit) shall violate any covenant or provision in this Declaration ~~or any restriction~~ or condition or regulation in the By-laws ~~contained or any~~ Rule adopted by the Association, the Association shall have the right, in addition to the rights ~~set forth in the next~~ succeeding paragraph of this Article XIX and those provided by law, (a) to enter upon the land or Unit or portion thereof upon which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting owner of such Unit, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions of this Declaration and the By-laws, and the Association, or its agent, shall not thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

2. Involuntary Sale. If any Unit Owner (either by his own conduct or by the conduct of any Occupant of his Unit) shall violate any covenant or restriction or provision herein or in the By-laws contained or any Rule adopted by the Association, and such violation shall continue for thirty (30) days after notice in writing from the Association, or shall ~~occur repeatedly~~ during any thirty (30) day period after written notice or request to cure such violation from the Association, then the Association.. shall have the right, upon the giving of ten (10) days prior written notice 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 an action in equity 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, in the alternative 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 interest 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 re-acquiring his interest at such Judicial sale. The proceeds of any such Judicial sale shall first be paid to discharge court costs, master's or commissioner's or receiver's fees, reasonable attorneys' fees,



court reporter charges and all other expenses of the proceeding, and all such items shall be taxed against such defaulting Unit Owner or defaulting 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 thereupon be entitled to a conveyance of the Ownership Interest or interest therein and to immediate possession of the Unit so conveyed, and may apply to the court for a writ of assistance for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the decree shall so provide, that the purchaser shall take the interest in such Ownership Interest or interest therein subject to this Declaration.

## ARTICLE XX

### GENERAL PROVISIONS

1. Grantor's Rights Pending Sale of a Majority of Units. Until such time as Grantor shall have consummated the sale of Units so that Unit Owners other than Grantor shall be entitled to exercise a majority of the voting power and a meeting of the Association at which a Board is elected is thereafter held, Grantor shall exercise the powers, rights, duties and functions of the Association and the Board, including, without limitation, the power to determine the amount of and levy assessments for Common Expenses and reserves.

2. Copies of Notices to Mortgage Lenders. Upon written request to the Board, the holder of any duly recorded mortgage on any Ownership Interest shall be given a copy of any and all notices permitted or required by this Declaration to be given to the Unit Owner or Owners whose Ownership Interest is subject to such mortgage.

3. Service of Notices on the Board. Notices required to be given to the Board or the Association may be delivered to any two members of the Board or to the chief officer of the Association, either personally or by certified mail, with postage prepaid, addressed to such members or officer at his Unit.

4. Service of Notices on Devisees and Personal Representatives. Notices required to be given any devisee, heir or personal representative of a deceased Unit Owner may be delivered either personally or by certified mail, with postage prepaid, to such party at his or its address appearing in the records of the court wherein the estate of such deceased Unit Owner is being administered.

5. Compliance with Covenants. All Unit Owners and Occupants shall comply with all covenants, conditions and restrictions set forth in any deed to which they are subject or in the Declaration, By-laws or Rules, as any of the same may be amended from time to time.

6. Non-Waiver of Covenants. No covenants, conditions or restrictions, obligations, or provisions

contained in this Declaration, the By-laws or the Rules 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.

7. Waiver of Damages. Neither Grantor, nor any employee, agent, successor or assign of Grantor, shall be liable for any claim or damage whatsoever arising out of or by reason of any actions performed pursuant to or in accordance with any authority granted or delegated to them or any of them by or pursuant to this Declaration (including, without limitation, the provisions of paragraph 3 of Article XI, and paragraph 1 of this Article XX hereof) or in the capacity of Grantor as developer, Unit Owner, Managing Agent or seller of the Condominium Property or any part thereof, whether or not such claim (i) 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, (ii) shall be on account of personal injury or property damage however caused, or (iii) shall arise ex contractu or (except in the case of willful misconduct or gross negligence) ex delictu. 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 or the Association, or their respective agents, employees, guests, tenants, invitees and servants, or by reason of any neighboring property or personal property located on or about the Condominium Property, 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 the like.

8. Headings. The heading to each Article and to each paragraph hereof is inserted only as a matter of convenience and for reference, and in no way defines, limits or describes the scope or Intent of this Declaration nor in any way affects this Declaration.

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

10. 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 rules restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limitations, then such provision shall continue in effect for only twenty-one (21) years after the death of the last survivor of the now living descendants of Richard M. Nixon, President of the United States, and Carl B. Stokes, Mayor of Cleveland, Ohio.



11. Covenants to Run with Land.

Each grantee of the Grantor, by the acceptance of a deed of conveyance, 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 Grantor, its successors and assigns, and any Unit Owner, Occupant, purchaser, lessee, mortgagee or other person having at any time any interest or estate in said land, and shall inure to the benefit of such owner in like manner as though the provisions of the Declaration were recited and stipulated at length in each and every deed of conveyance.

12. Interpretation of Declaration. 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 luxury condominium development.

ARTICLE XXI

AMENDMENTS TO DECLARATION AND  
ACTION WITHOUT MEETING

1. Amendments by Unit Owners or Board.

This Declaration and the By-laws may be amended upon the filing for record with the Recorder of Cuyahoga 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 the Unit Owners entitled to exercise at least seventy-five per cent (75%) of the voting power of the Association; provided, however, that the provisions of Articles VI, VII, Paragraph 6 of Article XVI and this Article XXI of this Declaration may be amended only by the affirmative vote of all...Unit .... Owners at a meeting held for such purpose. Such amendment 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, and must contain an affidavit by the president or other chief officer and the secretary of the Association that a copy of the amendment has been mailed by certified mail to all mortgagees having bona fide liens of record against any Unit ownership. No amendment shall have any effect, however, upon a bona fide first mortgagee until the written consent to such amendment of such mortgagee has been secured. Such consents shall be retained by the secretary of the Association and his certification in the instrument of amendment as to the names of the consenting and non-consenting mortgagees of the various Units shall be sufficient for reliance by the general public. If less than all mortgagees consent to an amendment to the Declaration and/or the By-laws attached hereto as Exhibit A said amendment or modification shall nevertheless be valid among the Unit Owners, inter sese,

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provided that the rights of a non-consenting mortgagee shall not be derogated thereby. No provision in this Declaration or By-laws attached hereto may be changed, modified or rescinded, however, which, after such change, modification or rescission would conflict with the provisions of Chapter 5311 of the Ohio Revised Code, nor may any amendment be made to the Ownership Interests set forth in Section 4 of Article VII without the prior unanimous approval of all Unit Owners arid their respective mortgagees.

2. Action Without Meeting. Any action Which may be authorized or taken at a meeting of the Unit Owners or of the Board, as the case may be, may be authorized or taken without a meeting with the affirmative vote or approval of, and in a writing or writings signed by all or entered upon the records of the Association. Any certificate with respect to the authorization or taking of any such action which is required to be filed with the recorder of the county in which the Condominium Property is situated shall recite the authorization or taking of such action was in a writing or writings approved and signed as specified in this Article XXI.

IN WITNESS WHEREOF, the said THE VICTORIAN has caused the execution of this instrument by its and its \_\_\_\_\_ this \_\_\_\_\_ day of \_\_\_\_\_, 1971.

Signed in the presence of: \_\_\_\_\_ THE VICTORIAN

By \_\_\_\_\_

And \_\_\_\_\_  
Authorized Partners

STATE OF OHIO )  
 ) SS .  
COUNTY OF CUYAHOGA )

BEFORE ME, a Notary Public in and for said County and State, appeared \_\_\_\_\_ and \_\_\_\_\_, partners of The Victorian, who having been first duly sworn, each acknowledged that they did execute the foregoing instrument and that the same was their free act and deed individually and as such partner, and the free act and deed of said partnership.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at Cleveland, Ohio, this \_\_\_\_\_ day of \_\_\_\_\_, 1971.

\_\_\_\_\_

Notary Public



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CONSENT OF MORTGAGEE

The undersigned^ Women's Federal Savings and Loan Association, the holder of a certain mortgage deed to the premises from The Victorian, dated September 18, 1969, and recorded in Volume 2826 , Page 245 Cuyahoga County Mortgage Records, hereby consents to the execution and delivery of the foregoing Declaration of Condominium Ownership with Exhibits thereto and to the filing thereof in the office of the County Recorder of Cuyahoga County, Ohio, and further subjects the above described mortgage to the provisions of Chapter 5311, Ohio Revised Code, and to the provisions of the foregoing Declaration of Condominium Ownership with attached Exhibits. ■

IN WITNESS WHEREOF, Women's Federal Savings and Loan Association, by its duly authorized officers, has caused the execution of the aforesaid. Consent this 24th day of March ,1971.

WOMEN'S FEDERAL SAVINGS AND  
LOAN ASSOCIATION

By

And

STATE OF OHIO )  
COUNTY OF CUYAHOGA ) SS»

BEFORE ME, a Notary Public in and for said County and State, appeared Frank J. Stringer and Cornelius J. Krawczski , known to me to be the Executive Vice President and Secretary , respectively, of Women's Federal Savings and Loan Association, who acknowledged that they did execute the aforesaid Consent of Mortgagee and that such execution was their free act and deed individually and as such officers of Women's Federal Savings and Loan Association and the free act and deed of said Association,

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at Cleveland, Ohio, this 24th day of March , 1971.

cZz/

Notary Public