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MONTE LINDO CONDOMINIUM

DECLARATION OF CONDOMINIUM PROPERTY

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Record

DECLARATION OF CONDOMINIUM PROPERTY  
ESTABLISHING A PLAN FOR CONDOMINIUM OWNERSHIP  
AND IMPOSING  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR THE PROJECT KNOWN AS

MONTE LINDO CONDOMINIUM

Prepared by:

JACK F. THORNTON  
ATTORNEY AT LAW  
COX AND THORNTON  
480 OHIO PIKE  
CINCINNATI, OHIO 45230

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COUNTY OF HAMILTON  
AUDITOR'S OFFICE

This will certify that copies of DECLARATION  
OF CONDOMINIUM PROPERTY for MONTE  
LINDO CONDOMINIUM, together with By-Laws,  
Drawings and Legal Description attached herein,  
have been filed in the office of the County  
Auditor, Hamilton County, Ohio.

Date: OCT. 29, 1979

County Auditor

By Leon Hellman

Real Estate Transfer Department  
Hamilton County, Ohio

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DECLARATION OF CONDOMINIUM PROPERTY  
OF  
MONTE LINDO CONDOMINIUM

KNOW ALL MEN BY THESE PRESENTS, that WHEREAS, VILLA BOVEDA APARTMENTS, an Ohio Limited Partnership (the "Declarant") is the Owner in fee simple of the following-described real property, to-wit:

Situate in Sycamore Township, Hamilton County, Ohio, and being part of Section 15, Town 4, Entire Range 1, Miami Purchase, and being more particularly described as follows:

PARCEL I:

Commencing at the center line intersection of Hunt Road with Plainfield Road, thence North  $11^{\circ} 39' 00''$  West with said center line of Plainfield Road, 786.00 feet to a point; thence North  $87^{\circ} 01' 00''$  East leaving the center line of said Plainfield Road, 198.00 feet to a point, said point being in the north line of said tract, said point also being the real point of beginning of the land herein described; thence North  $87^{\circ} 01' 00''$  East continuing with said north line, 235.47 feet to a point in the east line of said tract; thence South  $4^{\circ} 00' 00''$  West with said east line, 50.37 feet to a point in the south line of said tract; thence South  $87^{\circ} 01' 00''$  West with said south line, 229.35 feet to a point in the west line of said tract; thence North  $2^{\circ} 59' 00''$  West with said west line, 50.00 feet to the point of beginning.

Subject to easements, agreements and restrictions of record.

PARCEL II:

Situate in Sycamore Township, Hamilton County, Ohio, and being part of Section 15, Town 4, Entire Range 1, Miami Purchase, and being more particularly described as follows:

Commencing at the center line intersection of Hunt Road with Plainfield Road; thence North  $11^{\circ} 39' 00''$  West with said center line of Plainfield Road, 786.00 feet to a point; thence North  $87^{\circ} 01' 00''$  East leaving said center line, 433.47 feet to a point, said point being the real point of beginning for the land herein described; thence North  $87^{\circ} 01' 00''$  East, 11.63 feet to a point in the west line of said tract; thence North  $4^{\circ} 02' 30''$  East with said west line, 501.10 feet to a point in the north line of said tract; thence South  $87^{\circ} 03' 00''$  East with said north line, 345.68 feet to a point in the east line of said tract; thence South  $3^{\circ} 05' 00''$  West with said east line, 429.05 feet to a point; thence South  $87^{\circ} 03' 00''$  East, 271.00 feet to a point in the

center line of Hunt Road; thence South  $3^{\circ} 05' 00''$  West with said center line of Hunt Road, 60.00 feet to a point in the south line of said tract; thence North  $87^{\circ} 03' 00''$  West with said south line, 271.00 feet to a point; thence South  $52^{\circ} 33' 45''$  West continuing with said south line, 88.22 feet to a point; thence North  $87^{\circ} 03' 00''$  West continuing with said south line, 238.11 feet to a point; thence South  $87^{\circ} 01' 00''$  West continuing with said south line, 61.59 feet to a point; thence North  $4^{\circ} 00' 00''$  East, 50.37 feet to the point of beginning.

Subject to all legal highways.

Prior Instrument Reference: Certificate of Title No. 82095, Hamilton County, Ohio Registered Land Records.

WHEREAS, it is the desire and intention of Declarant to enable the foregoing real property together with all buildings, improvements, structures and other permanent fixtures of whatsoever kind situated thereon, and all easements, rights, appurtenances, and privileges belonging or pertaining thereto (the "Condominium Property"), to be owned under and pursuant to that certain type of ownership commonly known as "CONDOMINIUM" and to subject and submit such property to the provisions of Chapter 5311, Ohio Revised Code, for condominium ownership; and

WHEREAS, Declarant is further desirous of establishing for the mutual benefit of the Declarant and all future owners, mortgagees or occupants of the Condominium Property or any part thereof, which shall be known as "MONTE LINDO CONDOMINIUM", certain easements and rights, in, over and upon such Condominium Property and certain mutually beneficial restrictions and obligations with respect to the use, conduct and maintenance thereof; and

WHEREAS, Declarant desires and intends that the Declarant and the several owners, mortgagees, occupants and other persons hereafter acquiring any interest in the Condominium Property shall at all times enjoy the benefits of, and shall hold their interests therein subject to the rights, easements, privileges and restrictions hereinafter set forth in this Declaration and in the By-Laws of the Monte Lindo Condominium Unit Owners' Association attached hereto as Exhibit C and made a part hereof (the "By-Laws"), all of which are declared to be in furtherance of a plan to promote and protect the cooperative aspect of ownership and to facilitate the proper administration of the Condominium Property, and to enhance the value, desirability and attractiveness of the Condominium Property;

NOW THEREFORE, Declarant, as the owner in fee simple of the Condominium Property, hereby makes the following Declaration as to the divisions, covenants, restrictions, limitations, conditions and uses to which the Condominium Property may be put, declaring that said Declaration shall constitute covenants to run with the land and shall be binding on Declarant, 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, all in accordance with the provisions of Chapter 5311, Ohio Revised Code:

## ARTICLE I

NAME

Section 1.1. Name. The Condominium Property shall be known as "MONTE LINDO CONDOMINIUM".

## ARTICLE II

DEFINITIONS

Section 2.1. Definitions. The terms defined in this Article II (except as herein otherwise expressly provided, or unless the context otherwise requires) for all purposes of this Declaration and other Condominium Documents, including any amendments thereto shall have the respective meanings specified in this Article.

A. Articles of Incorporation. The Articles of Incorporation of the Monte Lindo Condominium Unit Owners' Association, Inc. which are filed with the Secretary of State of Ohio, and attached hereto as Exhibit B and made a part hereof.

B. Assessment. That portion of the common expenses which is to be paid by each unit owner, as provided in these Condominium Documents.

C. Association. Monte Lindo Condominium Unit Owners' Association, Inc., an Ohio corporation not for profit, its successors and assigns, constituting the Unit Owners' Association and, being the entity charged with the responsibility of operating, maintaining and administering the Condominium Property, and defined as a unit owners' association pursuant to Section 5311.01(L) of the Ohio Revised Code.

D. Board of Managers. Individuals appointed by Declarant or elected by the members (unit owners) or as otherwise provided to manage the Association.

E. Buildings. All of the structures presently constructed on the Condominium Property set forth herein.

F. By-Laws. By-Laws of the Association governing the administration, duties and management thereof and attached hereto as Exhibit C and made a part hereof.

G. Chapter 5311. That portion of the Ohio Revised Code, as the same may be amended or supplemented from time to time, which pertains to condominium ownership.

H. Common Areas and Facilities. Those parts of the Condominium Property not included in the designated units as shown on Exhibit A, including, but not limited to, the following:

(1) The land described in this Declaration.

(2) All other areas, facilities, places and structures that are not part of a unit and as depicted in the drawings attached as Exhibit A in this declaration, and amendments thereto, including, but not limited to the following, except as otherwise provided herein:



(a) The foundations, columns, girders, beams, supports, supporting walls, roofs, wiring, pipelines, halls, corridors, paved stoops, lobbies, stairs, stairways, balconies, decks, patios, porches, antenna systems, fire escapes, and common entrances and exits of all buildings;

(b) The yards, gardens, fences, parking areas, pipelines, and storage spaces;

(c) Installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air conditioning and incinerating;

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

(e) All portions of any structures and of any equipment and facilities situated in or on the common area;

(f) Any items such as appliances, equipment, fixtures, or other forms of personal property situated on the common area and which are owned in common by the owners;

(g) All other parts of the Condominium Property necessary or convenient to its existence, maintenance, and safety, or normally in common use, or that have been designated as common areas and facilities in the Declaration or exhibits attached hereto.

To the extent that the various items listed above may be part of particular unit(s), they are excluded from being common area.

Limited common areas and facilities are those parts of the common areas shown on the Drawings in Exhibit A, which are reserved for the exclusive use and benefit of the unit or units to which said areas are contiguous and into which unit or units said area has direct entrance.

I. Common Assessments. Those Assessments charged proportionately against all Units for common purposes.

J. Common Expenses. Those expenses designated as common expenses in Chapter 5311, this Declaration or other condominium documents, including, without limitation, the following:

1. Maintenance, management, operation, repair and replacement of the common areas and facilities and those parts of the units as to which, pursuant to other provisions hereof, it is the responsibility of the Association to maintain, repair and replace;

2. Management and administration of the Association, including without intending to limit, the compensation paid by the Association to managing agents, accountants, attorneys and other employees;
3. All sums lawfully assessed against the unit owners by the Association and such other expenses determined from time to time to be common expenses by the Association.

K. Condominium Documents. This Declaration and the exhibits attached hereto, as the same from time to time may be amended. Said exhibits are as follows:

1. Exhibit A - The Drawings of the Condominium Plat Plan and Floor Plans;
2. Exhibit B - Articles of Incorporation of the Association;
3. Exhibit C - By-Laws of the Association.

L. Condominium Property. The Real Property described heretofore, including the land, the buildings and all other improvements, structures and fixtures, all easements, rights, appurtenances and privileges belonging or pertaining thereto, and all articles of personal property existing thereon for the common use of the unit owners.

M. Declarant. Villa Boveda Apartments, an Ohio Limited Partnership, and its successors and assigns.

N. Declaration. This instrument and all of the exhibits hereto.

O. Drawings. The plans and drawings filed with the Hamilton County Recorder's Office, applicable to this Declaration as shown in Exhibit A.

P. Limited Common Areas and Facilities. Those parts of the common areas and facilities reserved for the use of a certain unit or units to the exclusion of all other units and more specifically described in Article III, Section 3.3(D).

Q. Mortgagee. The holder of a first mortgage lien against an individual unit.

R. Occupant. A person or persons, natural or artificial, in possession of a unit (not necessarily the owner of a unit, however).

S. Ownership Interest. Fee simple title interest in a unit together with the undivided percentage of interest in the common areas and facilities appertaining thereto.

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

U. Unit. Those parts of the Condominium Property described in Article III and shown on Exhibit A hereof which are the subject of individual ownership.

V. Unit Owner(s). Any person or persons, natural or artificial, owning a condominium ownership interest in a unit.

### ARTICLE III

#### DESCRIPTION OF PROPERTY IN UNIT

Section 3.1. General Description of Condominium Property. The Condominium Property consists of the real estate and the building and other improvements thereon, including, without limitation, five residential structures, which contain all of the units, and also a clubhouse and a recreational building, and swimming pool. All buildings are of traditional architecture and are constructed primarily of brick masonry and wood with poured concrete foundations and wood roofs with asphalt shingles. All buildings and other improvements are situated as shown on the Drawings. Residential buildings are more particularly described as follows:

Building 4324: Building 4324 is a three-story building, and is comprised of four apartment-type units on each floor, for a total of 12 units, plus a laundry facility. The first floor units are designated as Units #1, 2, 3 and 4; the second floor Units as Units #5, 6, 7 and 8; and the third floor Units as Units #9, 10, 11 and 12. Units #1, 2, 3, 5, 6, 7, and 8 consist of a kitchen, living room, dining room, one full bath, one half bath, two bedrooms, and an entry hall, comprising a total area of 992.1 square feet. The living room in each third-floor unit, Units #9, 10, 11, and 12, has a cathedral-type ceiling. Units 9, 10, 11, and 12 consist of a kitchen, living room, dining room, one full bath, one half bath, a den, one bedroom, and an entry hall, comprising a total area of 992.1 square feet. Unit #4 consists of a kitchen, living room, dining room, one full bath, one bedroom, and entry hall, comprising a total area of 775 square feet. Each of the first-floor units has a 6 foot 0 inch by 9 foot 6 inch patio, which is part of the Limited Common Areas, and is shown on the Drawings. Each of the second and third floor units has a 6 foot 0 inch by 9 foot 6 inch deck, which is part of the Limited Common Areas.

The first floor contains a laundry facility, with a separate outside entrance, for use by all the unit owners of the Condominium Property, and is part of the Common Areas and Facilities.

Building 4326. Building 4326 is a three-story building, and is comprised of four apartment-type units on each floor, for a total of 12 units. The first floor Units are designated as Units #13, 14, 15 and 16; the second floor Units as Units #17, 18, 19 and 20; and the third floor Units as Units #21, 22, 23 and 24. Units #13, 14, 15, 16, 17, 18, 19, 20, 22, and 24 consist of a kitchen, living room, dining room, one full bath, one half bath, two bedrooms, and an entry hall, comprising a total area of 992.1 square feet. The living room in each third-floor unit, Units #21, 22, 23 and 24, has a cathedral-type ceiling. Units # 21 and 23 consist of a kitchen, living room, dining room, one full bath, one half bath, a den, one bedroom, and entry hall, comprising a total area of 992.1 square feet. Each of the first floor units has a 6 foot 0 inch by 9 foot 6 inch patio, which is part of the Limited Common Areas, and is shown on the Drawings. Each of the second and third floor units has a 6 foot 0 inch by 9 foot 6 inch deck, which is part of the Limited Common Areas.

Building 4328. Building 4328 is a two-story building, and is comprised of four apartment-type units on each floor, for a total of 8 units. The first floor units

are designated as Units #25, 26, 27 and 28; and the second floor Units as Units #29, 30, 31 and 32. Units #29, 30, 31 and 32 consist of a kitchen, living room, dining room, one full bath, one half bath, a den, one bedroom and an entry hall, comprising a total area of 992.1 square feet. The living room in each second floor unit, Units #29, 30, 31 and 32, has a cathedral-type ceiling. Units #25, 26, 27 and 28 consist of a kitchen, living room, dining room, one full bath, one half bath, two bedrooms and entry hall, comprising a total area of 992.1 square feet. Each of the first floor units has a 6 foot 0 inch by 9 foot 6 inch patio, which is part of the Limited Common Areas, and is shown on the Drawings. Each of the second floor units has a 6 foot 0 inch by 9 foot 6 inch deck, which is part of the Limited Common Areas.

**Building 4330.** Building 4330 is a three-story building, and is comprised of four apartment-type units on each floor, for a total of 12 units. The first floor units are designated as Units #33, 34, 35 and 36; the second floor Units as Units #37, 38, 39 and 40; and the third floor Units as Unit #41, 42, 43 and 44. Units #41 and 43 consist of a kitchen, living room, dining room, one full bath, one half bath, a den, one bedroom and an entry hall, comprising a total area of 992.1 square feet. The living room in each third-floor unit, Units 41, 42, 43, and 44, has a cathedral-type ceiling. Units #33, 34, 35, 36, 37, 38, 39, 40, 42 and 44 consist of a kitchen, living room, dining room, one full bath, one half bath, two bedrooms, and entry hall, comprising a total area of 992.1 square feet. Each of the first-floor units has a 6 foot 0 inch by 9 foot 6 inch patio, which is part of the Limited Common Areas, and is shown on the Drawings. Each of the second and third floor units has a 6 foot 0 inch by 9 foot 6 inch deck, which is part of the Limited Common Areas.

**Building 4332.** Building 4332 is a three-story building, and is comprised of four apartment-type units on each floor, for a total of 12 units. The first floor units are designated as Units #45, 46, 47, and 48; the second floor Units as Units #49, 50, 51 and 52; and the third floor Units as Units #53, 54, 55 and 56. Units #53, 54, 55 and 56 consist of a kitchen, living room, dining room, one full bath, one half bath, a den, one bedroom and an entry hall, comprising a total area of 992.1 square feet. The living room in each third floor unit, Units #53, 54, 55 and 56, has a cathedral-type ceiling. Units 45, 46, 47, 48, 49, 50, 51 and 52 consist of a kitchen, living room, dining room, one full bath, one half bath, two bedrooms, and entry hall, comprising a total area of 992.1 square feet. Each of the first floor units has a 6 foot 0 inch by 9 foot 6 inch patio, which is part of the Limited Common Areas, and is shown on the Drawings. Each of the second and third floor units has a 6 foot 0 inch by 9 foot 6 inch deck, which is part of the Limited Common Areas.

**Section 3.2. Units.** Each of the Units hereinbefore declared and established as a freehold estate shall consist of all the space bounded by and undecorated interior surfaces of the perimeter walls, floors and ceilings of said unit projected, if necessary, by reason of structural divisions such as interior walls, or doors and windows, to constitute a complete enclosure of space, and including without limitation:

1. The decorated surfaces, including paint, lacquer, varnish, wall-paper, tile and any other finishing material applied to floors, ceilings and interior and perimeter walls;

2. All windows, screens and doors, including the frames, sashes and jambs, and the space occupied thereby;

3. All fixtures located within the bounds of a unit, installed in and for the exclusive use of said unit, commencing at the point of disconnection from the structural body of the building and from utility pipes, lines, wires or networks serving the entire building of more than one unit thereof;

4. All control knobs, switches, thermostats, and base plugs, and plugs and connections affixed to or projecting from the walls, floors and ceilings which service either the unit or the fixtures located therein, together with the space occupied thereby;

5. All space between interior walls, including the space up to the interior surface of the ceilings, together with that space occupied by structural and component parts of the building and by utility pipes, wires, ducts and conduits;

6. All plumbing, heating, electric, cooling, and other utility or service lines, pipes, wires, ducts or conduits which serve either the unit or the fixtures located therein, and which are located within the bounds of the unit;

But excepting therefrom, all of the following items located within the bounds of the unit described above;

1. Any part of the structural and component parts of the perimeter walls;

2. All plumbing, electric, heating, cooling and other utility or service lines, pipes, wires, ducts and conduits which serve any other unit.

3. Supporting walls, fixtures, and other parts of the building that are within the boundaries of a unit, but which are necessary for the existence, support, maintenance, safety, or comfort of any other part of the Condominium Property.

### Section 3.3. Common Areas and Facilities.

A. Description: The common areas and facilities shall consist of all parts of the condominium property except the units.

B. Ownership of Common Areas and Facilities. The common areas and facilities comprise, in the aggregate, a single freehold estate and shall be owned by the unit owners, as tenants in common, and the ownership thereof shall remain undivided. Unless consented to by at least 75% of the Unit Owners and by the holders of first mortgages on Units to which at least 75% of the votes of Units subject to mortgages held by holders of first mortgages appertain, the Association shall not by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common areas and facilities, or any portion thereof (the granting of easements for public purposes consistent with the intended use of the common areas and facilities by the Association

shall not be deemed a transfer within the meaning of this clause). No action for partition of any part of the common areas and facilities may be commenced by any Unit Owner, except as otherwise 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 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.

A par value of 1.7857143 is hereby assigned to each and every one of the fifty-six (56) units, except Unit Number 4 which is hereby assigned a par value of 1.7857135. The percentage of interest in the Common Areas and Facilities appurtenant to each unit is equal to its par value. The following table sets forth the percentage of interest in the common areas and facilities appurtenant to each unit, and the square foot area comprising each unit.

UNIT NUMBER	PERCENTAGE INTEREST IN COMMON AREAS	AREA OF UNIT (IN SQ. FEET)	UNIT NUMBER	PERCENTAGE INTEREST IN COMMON AREAS	AREA OF UNIT (IN SQ. FEET)
1	1.7857143	992.1	29	1.7857143	992.1
2	1.7857143	992.1	30	1.7857143	992.1
3	1.7857143	992.1	31	1.7857143	992.1
4	1.7857135	775.0	32	1.7857143	992.1
5	1.7857143	992.1	33	1.7857143	992.1
6	1.7857143	992.1	34	1.7857143	992.1
7	1.7857143	992.1	35	1.7857143	992.1
8	1.7857143	992.1	36	1.7857143	992.1
9	1.7857143	992.1	37	1.7857143	992.1
10	1.7857143	992.1	38	1.7857143	992.1
11	1.7857143	992.1	39	1.7857143	992.1
12	1.7857143	992.1	40	1.7857143	992.1
13	1.7857143	992.1	41	1.7857143	992.1
14	1.7857143	992.1	42	1.7857143	992.1
15	1.7857143	992.1	43	1.7857143	992.1
16	1.7857143	992.1	44	1.7857143	992.1
17	1.7857143	992.1	45	1.7857143	992.1
18	1.7857143	992.1	46	1.7857143	992.1
19	1.7857143	992.1	47	1.7857143	992.1
20	1.7857143	992.1	48	1.7857143	992.1
21	1.7857143	992.1	49	1.7857143	992.1
22	1.7857143	992.1	50	1.7857143	992.1
23	1.7857143	992.1	51	1.7857143	992.1
24	1.7857143	992.1	52	1.7857143	992.1
25	1.7857143	992.1	53	1.7857143	992.1
26	1.7857143	992.1	54	1.7857143	992.1
27	1.7857143	992.1	55	1.7857143	992.1
28	1.7857143	992.1	56	1.7857143	992.1

The undivided percentage of the unit owners in the common areas and facilities and the fee simple title to the respective units shall not be separated or separately conveyed, encumbered, inherited or divided, and each undivided interest shall be deemed to be conveyed or encumbered with its respective unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to such unit.

Such percentage amount shall remain constant, and unless consented to by the holders of first mortgages on Units to which 100% of the votes of Units subject to mortgages held by holders of first mortgages appertain, and by 100% of all of the Unit Owners, the Association shall not change the pro rata interest or obligations of any individual Unit, represented by the percentage of interest in the common areas and facilities appurtenant to such Unit, for the purpose of (i) levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards, or (ii) determining the pro rata share of ownership of each condominium unit in the common areas and facilities.

C. **Use of Common Areas and Facilities.** Each Unit owner shall have the right to use the common areas and facilities in accordance with the purpose 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 areas and facilities 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 or in any manner contrary to or not in accordance with this Declaration, the By-Laws and the Rules.

D. **Use of 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 located within the bounds of his unit or which presently or may hereafter serve only his unit.

#### ARTICLE IV

##### UNIT OWNERS' ASSOCIATION

**Section 4.1. Membership.** Declarant shall forthwith cause to be formed an Ohio corporation not for profit, to be called the "Monte Lindo Condominium Unit Owners' Association, Inc.," which shall administer the Condominium Property subject to the provisions of Article V hereof. Each unit owner, upon acquisition of the ownership interest in a unit within the condominium property, shall automatically become a member of the Association, and membership shall be limited to Unit Owners. Such membership shall terminate upon the sale or other disposition of his ownership interest, at which time the new owner of such ownership interest shall automatically become a member of the Association. Until the Association is established, the Declarant shall act in all instances where action of the Association, or its Board of Managers or Officers, is authorized or required by law or this Declaration. The Association shall be established not later than the date the deed or other evidence of ownership is filed for record following the first sale of an ownership interest in a unit.

**Section 4.2. Board of Managers and Officers.** The Board of Managers and Officers of the Association elected as provided in the By-Laws of the Association

attached hereto as Exhibit C 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 a member of the Board of Managers solely in his capacity as an officer or a member of the Board of Managers, 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 attached hereto as Exhibit C.

Not later than the time that Condominium Ownership interests to which twenty-five (25%) percent of the undivided interests in the Common Areas and Facilities appertain have been sold and conveyed by the Declarant, the Unit Owners' Association shall meet and the Unit Owners, other than the Declarant, shall elect twenty-five (25%) percent of the members of the Board of Managers. Not later than the time that Condominium Ownership interests to which fifty (50%) percent of the undivided interests appertain have been sold and conveyed, such Unit Owners shall elect thirty-three and one-third (33-1/3%) percent of the Members of the Board of Managers.

Except as above provided, the Declarant, or persons designated by Declarant, shall have the right and authority to appoint and remove members of the Board of Managers and other Officers of the Association, and to exercise the powers and responsibilities otherwise assigned by law or this Declaration to the Association, the Board of Managers or other Officers of the Association, from the date of establishment of the Association until the earlier of:

A. Three (3) years, or

B. Thirty (30) days after the sale and conveyance of condominium ownership interests to which appertain seventy-five (75%) percent of the undivided interests in the Common Areas and Facilities to purchasers in good faith for value.

Within thirty (30) days of the expiration of any period during which Declarant exercises powers under this Article IV, the Association shall meet and elect all members of the Board of Managers and all other Officers of the Association. The persons so elected shall take office upon election.

Neither the Association nor the Unit Owners will be subject to any management contract or agreement executed prior to the assumption of control provided for above for more than one (1) 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 By-Laws and this Declaration.

The Board Members appointed or elected by the Declarant hereunder need not be members of the Association, provisions of the Declaration and By-Laws to the contrary notwithstanding, and need not be Officers or Directors of the Declarant, but may be any adult person, competent to contract under the laws of the State of Ohio.



Section 4.3. Administration of Condominium Property. The administration of the Condominium Property shall be in accordance with the provisions of this Declaration and the By-Laws. Each Unit Owner and occupant shall comply with the provisions of this Declaration, the By-Laws, and the Rules and the decisions and resolutions of the Association or its representatives, as lawfully amended from time to time, and failure to comply with any such provisions, decisions or resolutions shall be grounds for an action for damages or for injunctive relief.

Section 4.4. Service of Process. Until such time as the President of the Association is elected, the person to receive service of process for the Association shall be Donald G. Attermeyer, 9417 Montgomery Road, Cincinnati, Ohio 45242. When and after the Association is lawfully constituted, the President thereof shall be the person to receive service of process, and his name and address (and that of each successor) shall be filed with the Secretary of State of Ohio on such forms as are prescribed for the subsequent appointment of a statutory agent for an Ohio corporation not for profit.

## ARTICLE V

### MANAGEMENT, MAINTENANCE, REPAIRS, ALTERATIONS AND IMPROVEMENTS

Section 5.1. Responsibility of the Association. Except as otherwise provided herein, the administration of the Condominium Property, including the management, maintenance, repair, alteration and improvement of the Common Areas and Facilities and any property leased to the Association 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. 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 the willful or uninsured negligent act or neglect of himself or any other of his household, or by the willful or uninsured negligent act or neglect of any invitee, licensee or guest of such owner or member of his household.

Section 5.2. Unit Owner. The responsibility of each Unit Owner shall be as follows:

A. 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, electrical and air conditioning fixtures or installations, and any portion of any other utility service facilities located within the Unit boundaries and any heating or air conditioning equipment located within or outside the Unit boundaries designed and installed for the exclusive purpose of servicing equipment located within the Unit boundaries; and to do likewise with all Limited Common Areas and Facilities designated by the Association for his use.

B. To maintain and repair all windows, doors, vestibules and entryways of his Unit and all associated structures and fixtures which are

appurtenances to his Unit. The foregoing includes, without limitation, responsibility for all breakage, damage, malfunctions and ordinary wear and tear of such appurtenances.

C. To perform his responsibilities in such manner so as not unreasonably to disturb other persons residing within the condominium.

D. Not to paint or otherwise decorate or change the appearance of any portion of the building not within the walls of the Unit, unless the written consent to the Association is obtained.

E. To promptly report to the Association or its managing agent any defect or need for repairs, the responsibility for the remedying of which is with the Association.

F. Not to make any alterations in the portions of the Unit or the building which are to be maintained by the Association or remove any portion thereof or make any addition thereto or do anything which would or might jeopardize or impair the safety or soundness of the building without first obtaining written consent of the Association, nor shall any Unit Owner impair any easement without first obtaining the written consent of the Association and of the owner or owners for whose benefit such easements exist. Unless consented to by the holders of first mortgages on Units to which at least 75% of the votes of Units subject to mortgages held by holders of first mortgages appertain, and by at least 75% of the Unit Owners, neither the Association nor any Unit Owner shall be entitled to partition or subdivide any Unit.

Section 5.3. Construction Defects. The obligation of the Association and of owners to repair, maintain and replace the portions of the 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 Property. The undertaking of repair, maintenance or replacement by the Association or owners shall not constitute a waiver of any rights against any warrantor but such rights shall be specifically reserved.

Section 5.4. Effects of Insurance or Construction Guarantees. Notwithstanding the fact that the Association and/or any Unit owner may be entitled to the benefit of any guarantee of material and workmanship furnished by any construction trade 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 any construction guarantee or insurance coverage shall not excuse any delay by the Association or any Unit owner in performing its or his obligation hereunder.

## ARTICLE VI

### EASEMENTS

Section 6.1. Encroachments. In the event that, by reason of the partial or total destruction and rebuilding of any building, any part of the Common Areas and Facilities presently encroaches or shall hereafter encroach upon any part of a Unit, or any part of a Unit presently encroaches or shall hereafter encroach upon any part of

the Common Areas and Facilities, or if by reason of the design or construction of any unit it shall be necessary or advantageous to an 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, or, if by reason of the design or construction of utility systems, any main pipes, ducts or conduits serving either any other Unit or more than one Unit presently encroaches or shall hereafter encroach upon any part of any 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 the owner of any Unit if such encroachment occurred due to the willful conduct of said owner.

Section 6.2. Maintenance Easements. The owner of each Unit shall be subject to easement for access arising from necessity of maintenance or operation of the entire building. The owner of each Unit 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.

Section 6.3. Easements for Certain Utilities. The Association may hereafter grant easements on behalf of Unit Owners to entities for utility purposes for the benefit of the Condominium Property, or the owners of adjoining properties, 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 and the transfer of title to a Unit owner shall be deemed to grant 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.

Section 6.4. Easements Through Walls Within Units. Easements are hereby declared and granted to the Association to install, lay, maintain, repair and replace 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 Unit boundaries.

Section 6.5. Easements to Run With Land. 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 undersigned, its successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in the Condominium Property, or any part or portion thereof.

Section 6.6. Reference to Easements in Deeds. Failure to refer specifically to any or all of the easements and/or rights described in this Declaration in any deed of conveyance or in any mortgage or trust deed or other evidence of obligation shall not defeat or fail to reserve said rights or easements but same shall be deemed conveyed or encumbered along with the unit.

## ARTICLE VII

COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY.

**Section 7.1. Covenants and Restrictions.** The following covenants, restrictions, conditions and limitations as to use and occupancy which shall run with the land shall be binding upon each Unit owner, his heirs, tenants, licensees and assigns.

**A. Purpose of Property.** No unit shall be used for any purpose other than as a residence site as follows:

1. For a single family meaning a group of one or more persons each of whom is related to the other by blood, marriage or adoption who are living together and maintaining a common household, but excluding more than one married couple and excluding two or more parents (not married to each other and not themselves parent and child) who have their children or stepchildren living with them.

2. In the alternative, as a residence site for persons who do not constitute such a "family" but subject to the following restrictions on the total number of persons (including children) occupying any unit: Any two bedroom unit may be used or occupied by no more than three persons; and the one bedroom unit by no more than two persons, until and unless the Association adopts Rules altering this requirement and no such Rule may be adopted except by the Board of Managers of the Association at a meeting duly called for that purpose.

3. In accordance with frequent approach in zoning codes of protecting values in residence districts by prohibiting the use of single family residences for roomers and boarders, and in order to provide similar protections for the owners of units, it is hereby provided that no boarders or roomers shall be permitted.

4. The restriction above to the use of any unit as a single family residence shall not prohibit the conduct of a "home occupation" or profession carried on by residents permitted to reside on the premises under Section 7.1 of this Declaration and in connection with which (a) there is used no sign or display that will indicate from the exterior that the building is being utilized in whole or in part for any purpose other than that of a single family residence dwelling; (b) there is no commodity sold or services dispensed upon the premises; (c) no person is employed other than residents permitted to reside in that unit under Sections 1 and 2 above; and (d) no mechanical or electrical equipment is used except such as is permissible for and is customarily found in purely domestic or household premises for the family residing therein. A professional person may use his residence for infrequent consultation, emergency treatment, or performance of occasional or emergency religious rites, but not

for the general practice of his profession. Permitted home occupations shall not include barber shops, beauty shops, shoe or hat repair shops, tailoring shops or any type of pick-up station or similar commercial activities but the recitation of these particular exclusions shall not be deemed to constitute authorization for the conduct of other businesses or enterprises which are precluded by this or other sections of this Declaration.

B. Obstruction of Common Areas and Facilities. 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 consent of the Association, except as hereinafter expressly provided. Each Unit owner shall be obligated to maintain and keep in good order and repair his own Unit.

C. Parking. No part of the Common or Limited Common Areas and Facilities shall be used for parking of any trailer, truck, boat, motorcycle, scooter or anything other than operative automobiles. The word "trailer" shall include trailer coach, house trailer, mobile home, automobile trailer, campcar, camper or any other vehicle, whether or not self-propelled, constructed or existing in such manner as would permit the use and occupancy thereof for human habitation, for storage, or the conveyance of machinery, tools or equipment whether resting on wheels, jacks, tires or other foundation. The word "truck" shall include and mean every type of motor vehicle other than passenger cars and other than any pickup truck which is used as the sole automobile vehicle by a family occupying one of said Units. No covering or walling in of said uncovered parking space shall be permitted. Guests, licensees and invitees shall be permitted to park on paved common areas designated for use only to the extent that it shall not obstruct traffic flow or unreasonably inconvenience other unit owners.

D. Hazardous Uses and Wastes. Nothing shall be done or kept in any Unit or in the Common or Limited Common Areas and Facilities which will increase the rate of insurance of the buildings, or contents thereof, applicable for residential use, 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 or Limited Common Areas and Facilities which will result in the cancellation of insurance on the buildings, or contents thereof, or which would be in violation of any law. No waste shall be committed in the Common or Limited Common Areas and Facilities.

E. Exterior Surfaces of Buildings. Unit owners shall not cause or permit anything to be hung or displayed on the outside windows or placed on the outside walls of a building, and no sign, awning, canopy, shutter, or radio or television antenna shall be affixed to or placed upon the exterior walls or roof or any part thereof, without the prior consent of the Association.

F. Signs. No signs of any kind shall be displayed to the public view of the properties except those on the Common Areas and approved in advance by the Board of Managers, those regarding and regulating the use of the Common Areas and approved in advance by the Board of Managers, and those used by the Declarant to advertise any unit for sale or rent or to identify the financing agent during the sales period. This section shall specifically preclude, among others, signs situated on the Common Area or upon any unit advertising certain premises being for sale or for rent, other than as permitted to be used by the Declarant to advertise any unit for sale or rent or to identify the financing agent.

G. Animals and Pets. No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred or kept in any Unit or in the Common Areas and Facilities, except that dogs, cats, or other household pets may be kept in Units, subject to the Rules, and provided that they are not kept, bred, or maintained for any commercial purpose. Any such pet permitted to run loose, that causes or creates a nuisance or unreasonable disturbance, or otherwise kept in violation of this Declaration, the By-Laws, or the Rules, shall be permanently removed from the property upon seven (7) days written notice from the Board of Managers of the Association. Pets permitted as above shall be leashed or restrained during walking or exercise within the Common Area.

\* \* \* H. Nuisances. 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 owners or occupants.

I. Impairment of Structural Integrity of Building. Nothing shall be done in any Unit or in, on, or to the Common or Limited Common Areas and Facilities which will impair the structural integrity of any building or which would structurally change any building.

J. Laundry or Rubbish on Common Areas and Facilities. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Common or Limited Common Areas and Facilities. The Common and Limited Common Areas and Facilities shall be kept free and clear of rubbish, debris, and other unsightly materials. Storage of trash containers shall be strictly in accordance with the Rules.

K. Lounging or Storage in Common Areas and Facilities. There shall be no playing, lounging, parking of baby carriages or playpens, bicycles, wagons, toys, vehicles, benches or chairs on any part of the Common Areas and Facilities except in accordance with the Rules.

L. Alteration of Common Areas and Facilities. Nothing shall be altered or constructed in or removed from the Common Areas and Facilities except as otherwise provided in this Declaration and except upon the written consent of the Association.

M. Rental of Units. The owners of the respective Units (including the Declarant) shall have the right to lease or rent any Unit, subject to the provisions in Article XV. In no event shall said lease or rental period be less than twelve months.

N. Non-Discrimination. No owner (including the Declarant), or any employee, agent or representative thereof, shall discriminate upon the basis of sex, race, color, creed or national origin in the sale, lease or rental of any Unit nor in the use of the Common Areas and Facilities.

O. Rules. The listing of the specific use restrictions shall not bar the Association from making any reasonable rules which place additional or different use restrictions on the Condominium Property.

P. Compliance with Covenants, Conditions and Restrictions. Every Unit Owner shall comply strictly with the covenants, conditions and restrictions set forth in this Declaration, with the By-Laws of the Association and with the Rules in relation to the use and operation of the Units, the Common Areas and Facilities and the other Condominium Property. Failure to comply with any of the same shall be ground for an action to recover sums due, for damages, or injunctive relief or any or all of them. Such action may be maintained by a Unit Owner, the Association on its own behalf or on behalf of the Unit Owners aggrieved, or by any person who holds a mortgage lien upon a Unit and is aggrieved by such non-compliance. In any case of flagrant or repeated violation by a Unit Owner, he may be required by the Association to give sufficient surety or sureties for his future compliance with said covenants, conditions, restrictions, By-Laws, and Rules.

Section 7.2. Invalidation. Each of the above restrictions and covenants shall be independent of every other. Invalidation of any of the above by judicial proceeding or any other means shall in no way effect the validity of the others.

## ARTICLE VIII

### ASSESSMENTS

Section 8.1. General. Assessments for the maintenance and repair of the Common Areas and Facilities and leased recreational facilities, and for the insurance, real estate taxes and assessments of the Common Area and Facilities and leased recreational facilities, together with the payment of the common expenses, shall be made in the manner provided herein and in the By-Laws.

**Section 8.2. Special Assessments - Capital Improvements.** In addition to the assessments authorized in Section 8.1., the Association may levy in any assessment year special assessments applicable to that year only for the following purposes:

- (a) defraying part or all of the common expenses as to the cost of reconstruction, repair, or replacement of capital improvements on the Common Area or on Association property, including leased recreational facilities, and the construction or purchase of new capital improvements, in each instance including personal property and fixtures;
- (b) defraying costs of repair and restoration as referred to in Article X.

Such special assessments for capital improvements may be levied only upon the affirmative vote of a majority of the voting power of the members of the Association at a meeting duly called for that purpose, except that these and expenses of the Insurance Trustee or the Association in connection with a loss under the insurance coverage and the disbursement of funds thereby shall be an assessment against the owners of any damaged or destroyed units, and against all unit owners in case of damage to or destruction of the Common or Limited Common Areas, and such assessments shall not require a vote of the members of the Association.

**Section 8.3. Division of Common Profits and Common Expenses.** The proportionate shares of the separate owners of the respective Units in the common profits and the common expenses of the operation of the Condominium Property is based upon the proportionate par value that each of the Units bears to the aggregate par value of all the Units. Such proportionate share of profits and expenses of each Unit owner shall be in accordance with the percentages set forth in Article III hereof. The Declarant shall assume the rights and obligations of a Unit Owner in its capacity as owner of units not yet sold, including, without limitation, the obligation to pay common expenses attaching to such interests, from the date this Declaration is filed for record.

**Section 8.4. Late Charges.** The Association may impose a charge against Unit Owner who fails to pay any amount assessed by the Association against him or his Unit within thirty (30) days after the date of such assessment and who fails to exercise his rights under this Declaration or under the laws of the State of Ohio to contest such assessment in an amount of Two Dollars and 00/100 (\$2.00) per day for every day after the expiration of such thirty (30) day period.

**Section 8.5. Non-Use of Facilities.** No owner of a Unit may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the Common Areas and Facilities or by the abandonment of his Unit.

**Section 8.6. Lien of Association.** The Association shall have a lien upon the estate or interest in any Unit of the owner thereof and upon its appurtenant percentage of interest on the Common Areas and Facilities for the payment of the



portion of the common expense and late charges as described above chargeable against such Unit which remain unpaid for ten (10) days after the same has become due and payable, which lien shall be effective on the date a certificate of lien, subscribed by the President of the Association, is filed for record in the office of the Recorder of Hamilton County, Ohio, pursuant to the authorization given by the Board of Managers of the Association. Such certificate shall contain a description of the Unit, the name or names of the record owner or owners thereof and the amount of such unpaid portion of the common expenses and late charges accrued as of the date of the certificate. Such lien shall remain valid for a period of five (5) 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 if discharged by the final judgment or order of the Court on an action brought to discharge such lien as hereinafter provided. In addition, each Unit Owner shall be personally liable for all assessments levied by the Association against his unit while he is a Unit Owner.

Section 8.7. Priority of Association's Lien. The lien provided for in Section 8.6 of this Article VIII is prior to any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of bona fide first mortgages that have been filed for record, and may be foreclosed in the same manner as a mortgage on real property in an action brought by the Association. In any such foreclosure action, the owner or owners of the Unit affected shall be required to pay a reasonable rental for such Unit during the pendency of such action, and the plaintiff in such action is entitled to the appointment of a receiver to collect the same. In any such foreclosure action, the Association shall be entitled to become a purchaser at the foreclosure sale.

Section 8.8. Disputes as to Common Expenses. Any 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 pursuant to Section 5311.18(c) of the Ohio Revised Code, commence an action for the discharge of the lien in the Court of Common Pleas of Hamilton County, Ohio, or for an order determining the proper apportionment of common expenses to his Unit.

Section 8.9. Purchaser at Foreclosure Sale Subject to Declaration, By-Laws, and Rules of the Association. Any purchaser of a Unit in a foreclosure sale shall automatically become a member of the Association and shall be subject to all the provisions of this Declaration, the By-Laws and the Rules.

Section 8.10. Non-Liability of a Foreclosure Sale Purchaser for Past Due Common Expenses. When the mortgagee of a first mortgage of record or other purchaser of a Unit acquires title to the Unit as a result of foreclosure of the first mortgage or by deed in lieu of foreclosure, such acquirer of title, his successors and assigns, shall not be solely liable for the share of the common expenses or other assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the Units, including that of such acquirer, his successors or assigns.

Section 8.11. 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 by the Association against the grantor and his Unit for his share of common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the Board of Managers of the Association setting forth the amount of all unpaid assessments against the grantor due the Association, and such grantee shall not be liable for nor shall the Unit conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount set forth in such statement for the period reflected in such statement. As used in this paragraph "grantor" shall include a decedent and "grantee" shall include a legatee or intestate heir of said decedent.

Section 8.12. Date of Commencement of Assessments. The full monthly assessment provided for herein shall commence as of the date this Declaration is filed for record. This commencement date shall apply to monthly assessments, special assessments for capital improvements and to special individual unit assessments. The Declarant, in its capacity as owner of units not yet sold, shall be obligated to pay all assessments and common expenses from the date this Declaration is filed for record to the date of conveyance with regard to each unit. All assessments and common expenses after the date of conveyance of each respective unit shall be the obligation of the unit owner who purchased such unit.

## ARTICLE IX

### INSURANCE AND RECONSTRUCTION

Section 9.1. Fire and Extended Coverage Insurance. The Association as a common expense shall obtain for the benefit of all owners insurance on all buildings, structures or other improvements now or at any time hereafter constituting a part of the Condominium Property against loss or damage by fire, lightning and such perils as are at this time comprehended within the term "extended coverage," and vandalism and malicious mischief in an amount not less than 100% of the replacement value thereof. Such insurance shall be written in the name of, and the proceeds thereof shall be payable to, the Association, as Trustee for each of the unit owners in accordance with the percentage ownership in the Common Areas and Facilities set forth in Article III herein. Such policy shall provide for built-in or installed fixtures and equipment in an amount not less than 100% of the replacement value thereof.

Such insurance by the Association shall be without prejudice to the right of the owner of a Unit to obtain individual contents or chattel property insurance, but no Unit owner may at any time purchase individual policies of insurance on his Unit or his interest in the Common Areas and Facilities as real property unless the Association shall be named insured in such policy, and be advised of the same.

Such policy of insurance may contain an endorsement recognizing the interest of any mortgagee or mortgagees of any Unit.

Such policy shall also provide for the release by the insured thereof of any and all rights of subrogation or assignment and all causes and rights of recovery against any Unit Owner, member of his family, his tenant, or other occupant of the

Condominium Property for recovery against any one of them for any loss occurring to the insured property resulting from any of the perils insured against under such insurance policy.

**Section 9.2. Sufficient Insurance.** In the event the improvement 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 this Article IX shall elect to sell the Condominium Property or to withdraw the same from the provision of this Declaration, then such repair, restoration or reconstruction shall not be undertaken.

**Section 9.3. 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 thirty (30) days after such damage or destruction, if they are entitled to do so pursuant to this Article IX, 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 together with its Limited Common Areas and Facilities so damaged or destroyed bears to the total cost of repair, restoration or reconstruction for all such Units, and Limited Common Areas and Facilities, 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 all the owners of Units in the same proportions in which they own the Common Areas and Facilities. 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 assessments 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.

To determine the share of each Unit owner of the cost in excess of the available insurance proceeds, the following principles shall govern:

1. The cost of repair, restoration or reconstruction of all uninsured and underinsured (to the extent of such underinsurance) damage or destruction to Units and Limited Common Areas and Facilities appertaining thereto shall be borne by the Unit Owner.
2. The cost of repair, restoration or reconstruction of the uninsured and underinsured (to the extent of such underinsurance) damage or destruction of Common Areas shall be borne by the Unit owners in proportion to their respective percentages of interest in the Common Areas and Facilities.

3. All insured, damaged or destroyed portions of the Condominium Property shall be deemed underinsured in the same proportion.

The term "uninsured damage or destruction" as used herein shall mean loss occurring by reason of a hazard not covered by the insurance policies of the Association. The term "underinsured damage or destruction" as used herein shall mean loss occurring by reason of a hazard covered by the insurance policies of the Association, but for which the proceeds are insufficient to cover the cost of repair, restoration or reconstruction.

The final determination made with the insurers as to insured, uninsured and underinsured damage or destruction shall govern.

Section 9.4. Non-Restoration of Damage or Destruction. In the event of substantial damage to or destruction of a majority of the Units, the Unit owners by the affirmative vote of those entitled to exercise not less than 75% of the voting power may elect not to repair or restore such damage or destruction provided such election is consented to by the holders of first mortgages on Units to which at least 75% of the votes of Units subject to mortgages held by holders of first mortgages appertain. 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 owners. In the event of any such sale, 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 percentages of interest 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.

Section 9.5. Liability Insurance. The Association, as a common expense, shall insure itself, the Board of Managers and all Unit owners against liability for bodily injury, disease, illness or death and for injury to or destruction of property occurring upon, in or about, or arising from the Common Areas and Facilities, such insurance to afford protection to a limit of not less than One Hundred Thousand and 00/100 (\$100,000.00) Dollars in respect to bodily injury, disease, illness or death suffered by any one person, and to the limit of not less than Three Hundred Thousand and 00/100 (\$300,000.00) Dollars in respect to any one occurrence, and to the limit of not less than Fifty Thousand and 00/100 (\$50,000.00) Dollars in respect to damage to or destruction of property arising out of any one accident.

Such policy shall not insure against liability for personal injury or property damage arising out of or in relation to the individual Units, or Limited Common Areas appertaining thereto.

Section 9.6. Right of Mortgagee to Remedy Lack of Insurance Coverage. If any insurance coverage provided for in this Article IX, or otherwise required, ceases to exist for any reason, any mortgagee of any of the Units or other portion of the Condominium Property may remedy such lack of insurance coverage by purchasing insurance policies to supply the required insurance coverage. The cost incurred by a mortgagee to obtain such insurance coverage shall be deemed a loan to the Unit Owners' Association and shall bear interest at an annual rate determined by the mortgagee, not to exceed the maximum legal rate in effect at such time, until paid.

## ARTICLE X

REHABILITATION AND RENEWAL OF OBSOLETE PROPERTY

The Association may, by the affirmative vote of Unit owners entitled to exercise not less than seventy-five (75%) percent 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. The Board of Managers of the Association shall thereupon proceed with such renewal and rehabilitation and the cost thereof shall be a common expense. In consideration of the conveyance to the Association of his Unit, subject to such liens and encumbrances hereinafter referred to, any Unit owner who does not vote for such renewal and rehabilitation may elect, in a writing served by him on the President of the Association within five (5) days after receiving notice of such vote, to receive the fair market value of his Unit, plus such owner's pro rata share of any undistributed profits accrued to the date of such vote, less the sum of the following:

1. The amount of any liens and encumbrances thereon as of the date such vote is taken;
2. The amount of any liens and encumbrances arising out of action of said unit owner filed during the period from the date of such vote to the date of conveyance;
3. The amount of any liens and encumbrances thereafter arising because of unpaid common expenses of the Association accruing prior to the date of such vote;
4. The amount of any common expenses accruing prior to the date of such vote, whether assessed or not assessed.

In the event of such election, such conveyance and payment of the consideration therefor, which shall be a common expense to the Unit owners who have not so elected, shall be made within ten (10) days thereafter, and, if such owner and a majority of the Board of Managers of the Association cannot agree upon the fair market value of such Unit, such determination shall be made by the majority vote of three appraisers, one of which shall be appointed by such Unit owner, one of which shall be appointed by the Board of Managers, and the third of which shall be appointed by the first two appraisers.

## ARTICLE XI

REMOVAL FROM CONDOMINIUM OWNERSHIP

Section 11.1. Except as otherwise specifically provided in this Section 11.1, the Association is not entitled to, by act or omission, seek to abandon or terminate the Condominium Project. The Unit owners, by unanimous vote may elect to remove the Condominium Property from the provisions of Chapter 5311, Ohio Revised Code provided such election is consented to by the holders of first mortgages on Units to which at least 75% of the votes of Units subject to mortgages held by holders of first mortgages appertain. 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 Hamilton County, Ohio, and by him recorded. Such certificate shall be signed by the President of the Board of Managers of the Association, who shall certify therein under oath that all liens and encumbrances, except taxes 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 all of 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 XII

### REMEDIES FOR BREACH OF COVENANTS AND RESTRICTIONS

Section 12.1. Abatement and Enjoinment. The violation of any restriction or condition or rule of the Association or the breach of any covenant or provision contained in this Declaration or in the By-Laws of the Association attached hereto as Exhibit C, shall give the Board of Managers, in addition to the rights hereinafter set forth in this Item, the right:

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, the structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions of this Declaration, the By-Laws, or the Rules, and the Board of Managers, or its agents, shall not be thereby 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.

Section 12.2. Involuntary Sale. If any owner (either by his own conduct or by the conduct of any other occupant of his Unit) shall violate any of the covenants or restrictions or provisions of the general law, this Declaration or of the By-Laws, or the Rules, and such violation shall continue for fifteen (15) days after notice in writing from the Board of Managers, or shall occur repeatedly during any one-year period after written notice or request from the Board of Managers to cure such violation, then the Board of Managers shall have the power to issue to the defaulting owner a thirty (30) day notice in writing to terminate the rights of the said defaulting owner to continue as an owner and to continue to occupy, use or control his unit. Thereupon, an action in equity may be filed by the Board of Managers against the defaulting owner for a decree of mandatory injunction against the owner or occupant subject to the prior consent in writing of any mortgagee having a security interest in the unit ownership of the defaulting owner, which consent shall not be unreasonably withheld. In the alternative, the action may pray for a decree declaring the termination of the defaulting owner's right to occupy, use or control the Unit owned by him on account of the breach of covenant, and ordering that all the right, title and interest of the owner in the property be sold (subject to the lien of any existing mortgage) at a judicial sale upon such notice and terms as the court shall establish, provided that the court shall

enjoin and restrain the defaulting owner directly or indirectly from reacquiring his interest at such judicial sale. The Association, however, may acquire said 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 fees, court reporter charges, reasonable attorneys' fees, real estate taxes and assessments and all other expenses of the proceeding, and all such items shall be taxed against the defaulting owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder or any liens, may be paid to the owner. Upon the confirmation of such sale, the purchaser thereat shall thereupon be entitled to a deed to the Unit ownership and to immediate possession of the Unit sold 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 the property sold subject to this Declaration.

### ARTICLE XIII

#### SALE OF UNIT BY OWNER

Section 13.1. Sale. Any owner other than Declarant who wishes to sell his unit ownership shall give to the Board of Managers no less than twenty (20) days prior written notice of the terms of any contemplated sale, together with the name and address of the proposed purchaser. The members of the Board of Managers acting on behalf of consenting unit owners as hereinafter provided, shall at all times have the first right and option to purchase such unit ownership upon the same terms, which option shall be exercisable for a period of twenty (20) days following the date of receipt of such notice; provided, however, that if the proposed purchase shall be for a consideration which the Board of Managers deems inconsistent with the bona fide fair market value of such unit ownership, the Board of Managers may elect to exercise such option in the manner, within the period, and on the terms set forth in Section 13.2 of this Article XIII. If said option is not exercised by the Board of Managers within the aforesaid option period, the Owner may, at the expiration of said period, contract to sell such unit ownership to the proposed purchaser named in such notice upon the terms specified therein.

Section 13.2. Gift. Any owner other than Declarant who wishes to make a gift of his unit ownership or any interest therein to any person or persons who would not be heirs-at-law of the owner under the Ohio Statute of Descent and Distribution were he or she to die within ninety (90) days prior to the contemplated date of such gift, shall give to the Board of Managers not less than thirty (30) days written notice of his or her intent to make such gift prior to the contemplated date thereof, together with the names and addresses of the intended donee and the contemplated date of said gift. The members of the Board of Managers acting on behalf of consenting unit owners as hereinafter provided, shall at all times have the first right and option to purchase such unit ownership or interest therein for cash at fair market value to be determined by arbitration as herein provided, which option shall be exercisable until the date of expiration as provided herein. Within ten (10) days after receipt of said written notice by the Board of Managers, the Board of Managers and the owner desiring to make such gift shall each appoint a qualified real estate appraiser to act as arbitrators. The two arbitrators so appointed shall, within ten (10) days after their

appointment, appoint another qualified real estate appraiser to act as the third arbitrator. Within ten (10) days after the appointment of said arbitrator, the three arbitrators shall determine, by majority vote, the fair market value of the unit ownership or interest therein which the owner contemplates conveying by gift, and shall thereupon give written notice of such determination to the owner and the Board of Managers. The Board of Managers' option to purchase the unit ownership or interest therein shall expire thirty (30) days after the date of receipt by it of such notice.

Section 13.3. Devise. In the event any owner dies leaving a will devising his or her unit ownership, or any interest therein, to any person or persons not heirs-at-law of the deceased owner under the Ohio Statute of Descent and Distribution, and said will is admitted to probate, the members of the Board of Managers acting on behalf of consenting unit owners as hereinafter provided, shall have a like option (to be exercised in the manner hereinafter set forth) to purchase said unit ownership or interest therein either from the devisee or devisees thereof named in said will or if a power of sale is conferred by said will upon the personal representative named therein, from the personal representative acting pursuant to said power, for cash at fair market value which is to be determined by arbitration. Within sixty (60) days after the appointment of a personal representative for the estate of the deceased owner, the Board of Managers shall appoint a qualified real estate appraiser to act as an arbitrator, and shall thereupon give written notice of such appointment to said devisee or devisees or personal representative, as the case may be. Within ten (10) days thereafter said devisee or devisees, or personal representative, as the case may be, shall appoint a qualified real estate appraiser to act as an arbitrator. Within ten (10) days after the appointment of said arbitrator, the two so appointed shall appoint another qualified real estate appraiser to act as the third arbitrator. Within ten (10) days thereafter, the three arbitrators shall determine, by majority vote, the fair market value of the unit ownership or interest therein devised by the deceased owner, and shall thereupon give written notice of such determination to the Board of Managers and said devisee or devisees, or personal representative, as the case may be. The Board of Managers' right to purchase the unit ownership or interest therein at the price determined by the three arbitrators shall expire thirty (30) days after the date of receipt by it of such notice if the personal representative of the deceased owners is empowered to sell, and shall expire ninety (90) days after the appointment of a personal representative who is not so empowered to sell. The Board of Managers shall be deemed to have exercised its option if it tenders the required sum of money to said personal representative, as the case may be, within the said option periods. Nothing herein contained shall be deemed to restrict the right of the Board of Managers or its authorized representative pursuant to authority given to the Board of Managers by the owners as hereinafter provided, to bid at any sale of the unit ownership or interest therein of any deceased owners which sale is held pursuant to an order or direction of the court having jurisdiction over that portion of the deceased owner's estate which contains his or her unit ownership or interest therein.

Section 13.4. Involuntary Sale.

A. In the event any unit ownership 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 ten (10) days written notice to the members of the Board of Managers and their successors in office, acting on behalf of consenting unit



owners as hereinafter provided, and the Association shall have an irrevocable option to purchase such unit ownership or interest therein at the same price for which it was sold at said sale. If said option is not exercised by the Board of Managers within said ten (10) days after receipt of such notice, it shall thereupon expire and said purchaser may thereafter take possession of said unit. The Board of Managers shall be deemed to have exercised its option if it tenders the required sum of money to the purchaser within said ten (10) 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 therein, 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 therein, which lien shall have the same force and effect and may be entered in the same manner as a lien of the Association for unpaid common expenses.

C. The foregoing rights in favor of the Association shall be inapplicable to sales at a judicial or execution sale resulting from a first mortgage foreclosure, or conveyances to Financial Institution holders of first mortgages in lieu of foreclosure, and further shall be inapplicable to sales by Financial Institutions who have acquired title by foreclosure or conveyance in lieu of foreclosure.

Section 13.5. Consent of Voting Members. The Board of Managers shall not exercise any option hereinabove set forth to purchase any unit ownership or interest therein without the prior written consent of the members entitled to exercise not less than seventy-five percent (75%) of the voting power in the Association, and whose unit ownerships are not subject matter of such option. The Board of Managers may bid to purchase at any sale of a unit ownership or interest therein, which said sale is held pursuant to an order or direction of a court upon the prior written consent of the aforesaid voting members, which said consent shall set forth a maximum price which the Board of Managers is authorized to bid and pay for said unit or interest therein. The aforesaid option shall be exercised by the Board of Managers solely for the use and benefit of the owners consenting thereto.

Section 13.6. Release, Waiver, and Exceptions to Option. Upon the written consent of a majority of the Board members, any of the options contained in this Article XIII may be released or waived and the unit ownership or interest therein which is subject to an option set forth in this Article may be sold, conveyed, given or devised free and clear of the provisions of this Article. In addition, none of the options contained in this Article XIII shall be applicable to any sales to purchasers procured by or through Declarant (or its designee) for its own account or in its capacity as manager or managing agent of the Condominium Property.

Section 13.7. Proof of Termination of Option. A certificate executed and acknowledged by the Secretary of the Board of Managers stating that the provisions of this Article XIII as hereinabove set forth have been met by an owner, or duly waived by the Board of Managers, and that the rights of the Board of Managers hereunder have terminated, shall be conclusive upon the Board of Managers and the owners in

favor of all persons who rely thereon in good faith, and such certificate shall be furnished to any owner who has in fact complied with the provisions of this Article or in respect to whom the provisions of this Article have been waived, upon a request of a reasonable fee, not to exceed Ten Dollars (\$10.00).

Section 13.8. Financing of Purchase Under Option.

A. Acquisition of unit ownership or any interest therein under the provisions of this Article shall be made from the maintenance fund. If said fund is insufficient, the Association shall levy an assessment against each consenting owner in the ratio which his ownership bears with respect to the total ownership of all consenting owners, which assessment shall become a lien and be enforceable in the same manner as provided in Article VIII.

B. The Board of Managers, in its discretion, may borrow money to finance the acquisition of any unit ownership or interest therein authorized by this Article provided, however, that no financing may be secured by an encumbrance or hypothecation of any portion of the Condominium Property other than the unit ownership or interest therein to be acquired. The loan documents evidencing such borrowing may be executed by the members of the Board of Managers, a nominee of the Board of Managers or by a land trust of which the Board of Managers shall be the Beneficiary.

Section 13.9. Title to Acquired Interests. Unit ownerships or interest therein acquired pursuant to the terms of this Article shall be held of record in the name of the Association, or by a land trust of which the Association shall be the beneficiary. Such holding shall be in trust for the benefit of all the owners consenting to and participating in such acquisition. Said unit ownerships or interests therein shall be sold or leased by the Board of Managers for the benefit of such owners. All net proceeds of such sale and/or leasing shall be deposited in the maintenance fund and may thereafter be disbursed at such time and in such manner as the Board may determine.

Section 13.10. Use by Declarant. It is contemplated that all units in the condominium will be sold; however, the Declarant, through itself or any of its successors, affiliates or subsidiaries, shall be entitled to retain ownership, mortgage, sell or lease any unsold units so held by it and no such sale, mortgage or lease shall require the approval of the Board of Managers of the Association as to the proposed purchaser, mortgagee or lessee. Declarant shall also retain the right to use condominium units of its choice as sales models or for purposes of otherwise promoting or effecting sales or for the conducting of any business or activity attendant thereto.

## ARTICLE XIV

### SALES OF UNITS BY DECLARANT MISCELLANEOUS PROVISIONS

Section 14.1. Warranties. Declarant hereby grants a two-year warranty covering the full cost of labor and materials for any repair or replacement of roof and

structural components, and mechanical, electrical, plumbing and common service elements serving the Condominium Property, occasioned by or necessitated by a defect in material or workmanship; and a one-year warranty covering the full cost of labor and materials for any repair or replacement of structural, mechanical, and other elements pertaining to each unit, occasioned or necessitated by defect in material or workmanship. The foregoing warranties shall commence on the date the deed or other evidence of ownership is filed for record following the sale of the first condominium ownership interest to a purchaser in good faith for value. In the case of ranges, refrigerators, washing machines, clothes dryers, hot water heaters and other similar appliances, if installed and furnished as part of a Unit by Declarant, the valid assignment by the Declarant of the expressed and implied warranty of the manufacturer shall satisfy the Declarant's obligation under this Article with respect to such appliances. All warranties made to the Declarant that exceed the time periods in this Article with respect to any part of the Units or Common Areas and Facilities shall be assigned to the purchaser.

Section 14.2. Earnest Money Deposits. Any deposit or down payment made in connection with the sale of a unit by the Declarant will be held in trust or escrow until delivered at settlement or returned to, or otherwise credited, to the purchaser, or forfeited to the Declarant. If any deposit or down payment of Two Thousand and 00/100 (\$2,000.00) Dollars, or more, is held for more than ninety (90) days, interest at the rate of four (4%) percent per annum for any period exceeding ninety (90) days shall be credited to the purchaser at settlement, or upon return or other credit, made to the purchaser, or added to any forfeiture to the Declarant.

Section 14.3. Current Tenants. All of the tenants currently occupying units on a rental basis shall be offered an option, exercisable within not less than ninety (90) days after notice, to purchase a condominium ownership interest, and such tenants shall also be given written notice of not less than one hundred twenty (120) days prior to being required to vacate the premises to facilitate the conversion.

Section 14.4. Limitation on Expansion of Control by Declarant. If there is a Unit Owner other than the Declarant, this Declaration shall not be amended to increase the scope or the period of control by the Declarant.

## ARTICLE XV

### OTHER MISCELLANEOUS PROVISIONS

Section 15.1. Limitation on Ownership of Units. No person, corporation, partnership, or other legal entity, except the Declarant and its successors and assigns as Declarant, and except the Association, shall be allowed to own any interest in more than three (3) Condominium Units at any one time. For the purpose of this Section, a husband and/or wife shall be considered as one person. The Board of Managers, at any time that it has knowledge that any person or legal entity is in violation of this Section, shall notify such owner of such violation, at which time the owner shall be required to place all units in excess of three owned by said person or entity for sale on the open market, or the Association may, at its option, exercise its right of first refusal and purchase said unit pursuant to the right and option of first refusal set forth in Article XIII hereof. This Section shall not be binding upon any Lending Institution who acquires title by foreclosure or deed in lieu of foreclosure from any unit owners, or any person or legal entity subsequently acquiring title from said Lending Institution.

Section 15.2. Notices of Mortgages. Any unit owner who mortgages his ownership or leasehold interest or interest herein, 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 a book entitled "Mortgagees of Units."

Section 15.3. Copies of Notices to Mortgage Lenders. Upon written request to the Board, the holder of any duly recorded mortgage on any ownership or leasehold interest or interest therein 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 or leasehold interest therein is subject to such mortgage.

Section 15.4. Covenants Running With the Land. Each grantee of Declarant 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 herein 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 bind and inure to the benefit of such person in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

Section 15.5. Termination. Upon the removal of the Condominium Property from the provisions of Chapter 5311, all covenants and other rights, benefits, privileges, impositions and obligations declared herein to run with the land or any ownership interest or interest therein shall terminate, except as to all easements which shall survive in all respects.

Section 15.6. 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.

Section 15.7. Severability. The invalidity of any covenant, restriction, condition, limitation or any other provisions of this Declaration, or any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration.

Section 15.8. Time Limits. If any of the privileges, covenants or rights, created by this Declaration shall be unlawful or void by reason of:

- A. The rule against perpetuities or some analogous statutory provision;
- B. The rule restricting restraints on alienation;
- C. Any other statutory or common law rules imposing time limits;

Then such provisions shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of Donald G. Attermeyer.

Section 15.9. Restrictions on Declarant. So long as said Declarant, its successors and assigns, owns one or more of the Units established and described herein, said Declarant, its successors and assigns shall be subject to the provisions of this Declaration and of Exhibits attached hereto; and said Declarant covenants to take no action which would adversely affect the rights of the Association with respect to assurances against latent defects in the property or other rights assigned to the Association by reason of the establishment of the condominium.

Section 15.10. Non-Liability of Declarant. Neither Declarant nor its representatives, successors or assigns shall be liable for any claim whatsoever arising out of or by reason of any actions performed pursuant to any authorities granted or delegated to it by or pursuant to this Declaration or the By-Laws attached hereto as Exhibit C or in Declarant's (or its representative's) capacity as developers, contractor, owner, manager or seller of the Condominium Property whether or not such claim shall be asserted by any Unit owner, occupant, the Association, or by any person or entity claiming through any of them; or shall be on account of injury to person or damage to or loss of property wherever located and however caused; or shall arise ex contractu or ex delictu, except as otherwise provided by Chapter 5311, or this Declaration. 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 Association, and their respective agents, employees, guests, and invitees, or by reason of the failure to function or disrepair of any utility services (heat, air conditioning, electricity, gas, water, sewage, etc.), except as provided in Section 14.1.

Section 15.11. Service of Notices on the Board. Notices to be given to the Board or the Association may be delivered to any two (2) members of the Board or to the President of the Association, either personally or by certified mail, with postage prepaid, addressed to such members or officers at their units.

Section 15.12. Headings. The heading to each Section and each Paragraph hereof is inserted only as a matter of convenience for reference and in no way defines, limits or describes the scope or intent of this Declaration nor in any way affects this Declaration.

Section 15.13. Retention of Ownership Interest by Declarant. Except in its capacity as a Unit Owner of unsold unit ownership interests, the Declarant will not retain a property interest in any of the Common Areas and Facilities after control of the Condominium Property is assumed by the Association, as provided in this Declaration and in the By-Laws.

Section 15.14. Interpretation. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the establishment and operation of a first class condominium development.

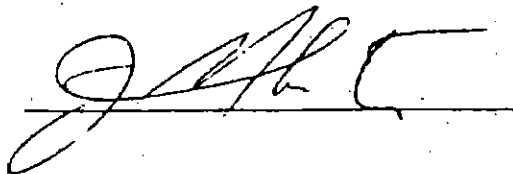
Section 15.15. Amendment of Declaration and By-Laws. This Declaration and the By-Laws attached hereto as Exhibit C may be amended upon the filing for record with the Recorder of Hamilton County, of an instrument in writing setting forth specifically the item or items to be amended and any new matter to be added, which instrument shall have been duly executed by the Unit owners entitled to

exercise at least seventy-five percent (75%) of the voting power of the Association. 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 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 by 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 this Declaration and/or the By-Laws attached hereto as Exhibit C said amendment or modification shall nevertheless be valid among the Unit Owners, *inter sese*, provided that the rights of a non-consenting mortgagee shall not be derogated thereby. No provision in this Declaration or By-Laws attached hereto as Exhibit C may be changed, modified or rescinded, if same, after such change, modification or rescission would conflict with the provisions of Chapter 5311, Ohio Revised Code, nor may any amendment be made to the percentage interests set forth in Section 3.3.(B) without the prior unanimous approval of all Unit owners and their respective mortgagees.

IN WITNESS WHEREOF, the said VILLA BOVEDA APARTMENTS, an Ohio Limited Partnership, has caused this instrument to be executed by DONALD G. ATTERMEYER, General Partner, this 18<sup>th</sup> day of October, 1979.

Signed and acknowledged  
in the presence of:

VILLA BOVEDA APARTMENTS  
An Ohio Limited Partnership


  
DONALD G. ATTERMEYER  
General Partner

Gloria H. Wayman

STATE OF OHIO

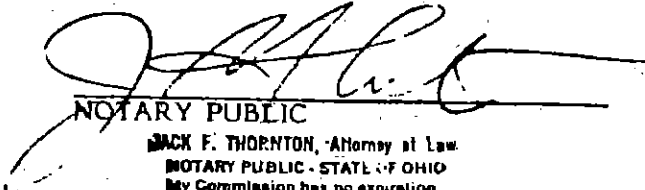
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COUNTY OF

BE IT REMEMBERED, That on this 18<sup>th</sup> day of October, 1979, before me, the subscriber, a Notary Public in and for said County and State,

personally appeared DONALD G. ATTERMEYER, General Partner of VILLA BOVEDA APARTMENTS, an Ohio Limited Partnership, the limited partnership whose name is subscribed to and which executed the foregoing instrument, and for himself and for and on behalf of said limited partnership, acknowledged the signing and execution of said instrument; and acknowledged that such execution was by authority of the said limited partnership; and that the signing and execution is his and its free and voluntary act and deed, for the uses and purposes of said instrument mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my Notarial seal, on the day and year last aforesaid.

  
NOTARY PUBLIC  
JACK F. THORNTON, Attorney at Law  
NOTARY PUBLIC - STATE OF OHIO  
My Commission has no expiration  
date, Section 147.03 R.C.

This Instrument Prepared By:

JACK F. THORNTON  
Attorney at Law  
COX AND THORNTON  
480 Ohio Pike  
Cincinnati, Ohio 45230