



# **GARDENS OF WALDEN**

## **Declaration**

DECLARATION OF CONDOMINIUM OWNERSHIP

FOR

THE GARDENS OF WALDEN CONDOMINIUM ✓

This will certify that copies of this Declaration with the following exhibits attached thereto have been filed in the office of the County Auditor of Portage County, Ohio:

1. Exhibit "A" - Legal description of real property.
2. Exhibit "B" - Legal Description of additional real property for future expansion.
3. Exhibit "C" - Drawings, showing general plan and location of 10 condominium units.
4. Exhibit "C-1" - Detail building sheets.
5. Exhibit "D" - Condominium Association By-Laws.
6. Exhibit "E" - Illustrated Architectural Drawings.
7. Exhibit "F" - Schedule of Percentages of Interest.
8. Exhibit "G" - Easement for Common Private Drive.

NO TRANSFER REQUIRED

3/25/83

VICTOR BIASELLA  
AUDITOR *smc*

Portage County Auditor

By *Victor Biasella*  
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Dated: 3/25/83

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DECLARATION OF CONDOMINIUM OWNERSHIP  
THE GARDENS AT WALDEN CONDOMINIUM

WHEREAS, THE WALDEN COMPANY, LTD., an Ohio Limited Partnership, hereinafter referred to as "Developer", is the owner in fee simple of the real property described in Exhibit A, attached hereto and incorporated by reference herein; and,

WHEREAS, It is the desire of Developer to submit said real property, together with the improvements constructed thereon and described herein, to the provisions of Chapter 5311 of the Ohio Revised Code for condominium ownership; and,

WHEREAS, Developer is also the owner of additional real property described in Exhibit B, attached hereto and incorporated by reference herein, which is adjacent to the real property described in Exhibit A; and,

WHEREAS, Developer desires to provide, if it chooses, for the submission of the real property described in Exhibit B or portions thereof from time to time, together with the improvements to be constructed thereon, to the provisions of Chapter 5311 of the Ohio Revised Code.

NOW, THEREFORE, Developer hereby declares:

Article I. Legal Description and Definitions.

A. Legal Description.

The legal description of the real property to be submitted to the provisions of Chapter 5311 of the Ohio Revised Code is described in Exhibit A, attached hereto and incorporated by reference herein.

B. Definitions.

The following terms used herein are defined as follows:

1) Unit - means "unit" as is defined by Section 5311.01 (I) of the Ohio Revised Code and includes only the layout and delineation of a unit as shown on the drawings marked Exhibits C and C-1.

2) Unit Owner - means "unit owner" as defined by Section 5311.01 (J) of the Ohio Revised Code.

3) Association - means The Gardens of Walden Condominium Association and also shall mean the same as "unit owners association" as defined by Section 5311.01 (L) of the Ohio Revised Code.

4) Common Areas and Facilities - means "common areas and facilities" as defined by Section 5311.01 (B) of the Ohio Revised Code.

5) Limited Common Areas and Facilities - means "limited common areas and facilities" as defined by Section 5311.01 (K) of the Ohio Revised Code, which areas are so designated on the drawings and referred to in the drawings and the Declaration and By-Laws as "L.C.A.".

6) Common Expenses - means:

- i) common expense as defined by Section 5311.01 (D) of the Ohio Revised Code.
- ii) expenses of administration, expenses of maintenance, operation, repair or replacement of the common areas and facilities and of the portions of units to be maintained by the Association.
- iii) expenses declared to be common expenses by provisions of this Declaration or the By-Laws.
- iv) any valid charge against the condominium as a whole.

7) Condominium Property - means the real property described in Exhibit B and all buildings and other improvements thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property existing thereon for the common use of the unit owners; provided, however, if and when all or any part of the real property described in Exhibit B has been added to the Condominium Property pursuant to the provisions of Article XV hereof, the term "Condominium Property" shall also include the real property described in Exhibit B or said portions thereof, and all buildings and all other improvements thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property existing thereon for the common use of the unit owners.

8) All terms used herein which are defined in Chapter 5311 of the Ohio Revised Code have the same meaning herein.

Article II. Name and Address.

The name by which this condominium is to be identified is The Gardens of Walden Condominium and its address is Aurora, Ohio.

Article III. The Purpose of and Restrictions on Use of Condominium Property.

A. Purpose.

No part of the condominium property shall be used for other than single family housing and the common recreational purposes for

which the property was designed. Each unit shall be used for a single family and for no other purpose. An owner may use a portion of his unit for his office or studio provided that the activities therein shall not interfere with the quiet enjoyment or comfort of any other owner or occupant; and providing further that it does not involve the personal services of any unit owner.

B. Restrictions.

1) 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 hereafter expressly provided. Each unit owner shall be obligated to maintain and keep in good order and repair, his own unit.

2) Hazardous Uses and Waste - Nothing shall be done or kept in any unit or in the common areas and facilities which will increase the rate of insurance of the building or contents thereof, applicable for residential use. No unit owner shall permit anything to be done or kept in his unit, the L.C.A. appertaining thereto or in the common areas and facilities which will result in the cancellation of insurance on the building or contents thereof, or which would be in violation of any law. No waste will be committed upon any part of the condominium property.

3) Exterior Surfaces of Buildings - Unit owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of a building and no sign, awning, canopy, shutter, radio and/or television antenna or article of any kind whatsoever shall be affixed to or placed upon the exterior walls or roof or any part thereof, without the prior consent of the Association, other than those items originally provided by Developer.

4) Animals and Pets - No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred or kept in any unit or on the common areas and facilities, except that dogs, cats or other common and accepted household pets may be kept in units, subject to rules and regulations adopted by the Association, provided that they are not kept, bred or maintained for any commercial purpose; and provided further that when such pet shall be outside the unit on the

common areas and facilities, the owner shall at all times have said pet under his control and discipline.

5) Nuisances - No noxious or offensive activity shall be carried on in any unit or upon 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.

6) Impairment of Structural Integrity of Building - Nothing shall be done in any unit or in on or to the common areas and facilities which will impair the structural integrity of the building or which would structurally change the building.

SEE B1  
ON PAGE  
FOR  
DEFINITION  
OF FACILITY

7) Laundry or Rubbish in 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 areas and facilities and the same shall be kept free and clear of rubbish, debris and other unsightly materials.

8) Use of Common Areas and Facilities - There shall not be placed or parked any recreational implement, lawn furniture, boats, trailers, vehicles, toys or other similar articles on any part of the common areas and facilities except in accordance with rules and regulations therefor adopted by the Association.

9) Prohibited Activities - No industry, business, trade, occupation or profession of any kind, whether commercial, religious, educational or otherwise, whether designated for profit, altruism, exploration or otherwise, shall be conducted, maintained or permitted on any part of the condominium property. Notwithstanding anything contained in the Declaration or these By-Laws, Developer and its successor developers shall have the right to use one or more units for business or promotional purposes, including, but not limited to, sales offices and model units.

10) Alteration of Common Areas and Facilities - Nothing shall be altered or constructed upon or removed from the common areas and facilities except as hereinafter provided and except upon the written consent of the Association. In no event shall deterioration, construction or addition be made to a living unit within the common areas except within limited common areas which are associated with a particular living unit after written consent by the Association in accordance with its rules and regulations. Swimming pools, outdoor whirlpools, trampolines and similar recreational facilities are expressly prohibited.



11) Rental of Units - The respective units shall not be rented by the owners thereof for transient or hotel purposes, which shall be defined as rental for any period less than sixty (60) days. Other than the foregoing obligations, the owners of the respective units shall have the absolute right to lease the same in conformity with the By-Laws attached hereto as Exhibit D, provided that said lease shall require the lessee to abide by the terms of the Declaration and the By-Laws as well as the rules and regulations and shall give to the Board of Managers the right to dispossess or otherwise act for the unit owner in case of default under the lease or for violation of the By-Laws or the rules and regulations. The unit owner shall continue to be liable for all obligations of ownership of his unit and shall be responsible to the Board of Managers for the conduct of his lessee. Copies of all such leases shall be delivered to the Board of Managers prior to the date of the commencement of the tenancy under that lease.

C. Rights in Other Lands.

A Warranty Deed and Declaration of Covenants and Restrictions from The Walden Company, Ltd. has been recorded imposing certain covenants, restrictions, easements, charges and liens against the lands on which this condominium is located. Said Deed and Declaration is dated the 8th day of January, 1981 and is recorded in Volume 984, Pages 218 et seq. of the Portage County Record of Deeds. All unit owners have all of the rights, privileges and responsibilities created or imposed by said Deed and Declaration, including, but not limited to, all rights, privileges and responsibilities as a member of The Walden Association as the same is established in said Deed and Declaration. Said Deed and Declaration is hereby incorporated by reference as if fully rewritten herein.

Article IV. General Description of Buildings and Improvements.

A. Buildings.

1) There are \_\_\_\_\_ buildings containing \_\_\_\_\_ separate condominium units. The principal materials of which these buildings are constructed are wood, brick, block and glass. The location, layout, designation and boundaries of said units and the location, layout, designation and boundaries of the common areas and limited common areas,

insofar as is graphically practical are shown on the set of drawings set forth in Exhibits C and C-1 attached hereto and incorporated by reference herein.

Said drawings may be amended if and when all or any portion of the real property described in Exhibit B thereof has been added to the Condominium Property pursuant to the provisions of Article XV hereof.

2) Also attached hereto and set forth as Exhibit E are certain typical architectural views and typical unit interior layouts which are not intended to be part of the drawings required by Section 5311.07 of the Ohio Revised Code, or amendments thereto, but are intended to be used for an architectural reference.

B. Paved Areas.

There have also been constructed paved asphalt and concrete driveways and roadways which wind through the common property providing each unit with paved access to Walden Drive, a dedicated City of Aurora street, and also to various off-street parking areas within the condominium property.

Article V. Information about Condominium Property.

A. Units.

Each of the units hereinbefore declared and established as a freehold estate shall consist of all the space bounded by the undecorated surfaces of the perimeter walls, floors and ceilings of each unit, including the vestibules, balconies and garages, if any, as designated on the drawings, projected, if necessary, by any partitions or roof rafters to constitute a complete enclosure of space; provided that, wherever such undecorated surfaces or the area immediately adjoining such surfaces consist of plaster or plasterboard or concrete or wooden floor, all of such plaster or plasterboard or concrete or wooden floor contiguous to such surface shall be included within the unit, but excepting the space occupied thereby lying outside the perimeters of the unit. The dimensions, layouts and descriptions of each such unit are shown on the drawings and include without limitation:

1) The decorated surfaces, including paint, lacquer, varnish, wallpaper, tile and any other finishing materials applied to said perimeter walls, floors and ceilings, and also the aforesaid finishing materials applied to the interior walls, floors and ceilings.

2) All window sashes and doors, inclusive of door frames, in the interior and perimeter walls and the space occupied thereby.

3) The space within all fixtures located within the bounds of a unit and the space occupied by the fixtures themselves.

4) All unenclosed space, if any, within or occupied by structural parts of the building which may project into the unit, as defined above, from the unfinished perimeter floor level to the unfinished perimeter ceiling level and including, by way of illustration but not by way of limitation, the space between the shelves of built-in bookcases, if any, the space within built-in cabinets, if any and the hearths lying within fireplaces, if any.

5) All space between interior walls, floors and ceilings, including the space occupied by structural and component parts of the building and by utility pipes, wire and conduits.

6) All enclosed space, if any, between the roof and finished ceilings which is normally referred to as attic space.

But, excepting therefrom all of the following items located within the bounds of the unit as defined above:

1) The structural and component parts of all interior walls, floors and ceilings, except the decorated surfaces thereof.

2) All structural portions of the building, lying within the bounds of the unit as above defined.

3) All plumbing, electrical, heating, and other utility or service lines, pipes, wires, plugs and outlets lying within the bounds of a unit as above defined, but which also service other units within the Condominium Property.

Each unit fronts directly upon and has access to the land upon which the condominium is situated.

**B. Common and Limited Common Areas and Facilities.**

1) Description of Common Areas and Facilities - The entire balance of the land and improvements thereon, including, but not limited to, all buildings, foundations, roofs, main and supporting walls, exterior parking spaces and storage spaces, community and commercial facilities, sewer pipes, water mains, pumps, trees, lawns, gardens, pavement, wires, conduits, utility lines and ducts now or hereafter situated

on the condominium property, are hereby declared and established as the common areas and facilities.

2) Use of Common Areas and Facilities - Each owner of a unit shall own an undivided interest in the common areas and facilities as a tenant in common with all other such owners, and, except as otherwise limited in this Declaration and in the By-Laws attached hereto as Exhibit D, shall have the right to use the common areas and facilities for all purposes incident to the use and occupancy of his unit as a place of residence and such other incidental uses permitted by this Declaration and the By-Laws, including the non-exclusive easement, together with other unit owners, to the use and enjoyment of the common areas and facilities and for ingress and egress to and from the respective units, which rights shall be appurtenant to and shall run with his unit.

3) Ownership of Common Areas and Facilities - The percentage of ownership of the common areas and facilities attributable to the ownership interest in each unit together with the percentage of interest in the Association for voting purposes and for the division of common benefits and expenses, as hereinafter described in Section B of Article VIII of this Declaration, shall be as follows:

SEE "SCHEDULE OF UNITS" ATTACHED  
HERE TO AS EXHIBIT "F".

The percentage was determined by the proportion which the fair market value of the unit at the time of recording this Declaration bears to the then aggregate value of all of the units having an interest in the common areas and facilities.

Except in its capacity as a unit owner of unsold condominium ownership interests, Developer will not retain a property interest in any of the common areas and facilities after control of the condominium development is assumed by the Association except that Developer may retain an interest consistent with this Declaration and required to insure ingress and egress from and to the common areas and facilities by the prospective unit owners in additional property added to the Condominium Property by amendment of this Declaration pursuant to Article XV herein.

4) Description of the Limited Common Areas and Facilities - Included in the common areas and facilities, but restricted to the use of the owners of the units to which such areas and facilities

are appurtenances intended for the service of such units, referred to in Article V, Section A, hereof, are areas, whether open or enclosed, if any, designated or intended solely for the use of one or more of such units to the exclusion of the others, as shown on the drawings and referred to as limited common areas and facilities (L.C.A.), together with such areaways and access walks to reasonably provide access to said L. C. A. and the unit with which said L.C.A. is associated.

b) Partition - There shall be no partition of the common areas and facilities through judicial proceedings or otherwise until this Declaration is terminated and the Condominium Property is withdrawn from its terms or from the terms of any statute applicable to condominium ownership.

Article VI. General Provisions as to Units and Common Areas and Facilities.

A. Maintenance of Units.

1) By the Association - The Association, at its expense, shall be responsible for the maintenance, repair and replacement of those portions of each unit which contribute to the support of the building, excluding, however, interior walls, ceilings, floor surfaces and the cleaning and maintenance of flues, but including the exterior walls, roof and driveways.

2) By the 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 the L.C.A. appertaining thereto, and all installations in said unit and the L.C.A. appertaining thereto of such appliances, heating, plumbing, electrical and air conditioning fixtures or installations, and any other utility service facilities located within the unit boundaries and the L.C.A. appertaining thereto; said unit owner shall also maintain, repair and replace at his expense any air conditioning and/or heating apparatus located outside his unit which apparatus serves his unit and the L.C.A. appertaining thereto.~~
- b) To maintain and repair at his expense all patios, windows, doors, vestibules and entryways and all associated structures and fixtures therein, which are appurtenances to his unit and the L.C.A. appertaining thereto. The foregoing includes, without limitation, responsibility for all breakage, damage, malfunctions and ordinary wear and tear of such appurtenances.
- c) To maintain and repair all portions, including fixtures, of any addition that has been made to the unit.
- d) To perform his responsibilities in such a manner so as not unreasonably to disturb other persons residing within the building.

- e) Not to paint or otherwise decorate or change the appearance of any portion of the building not within the walls of the unit and the L.C.A. appertaining thereto, unless the written consent of the Association is obtained.
- f) To promptly report to the Association or its agent any defect or need for repairs, the responsibility for the remedying of which is with the Association.
- g) Not to make any alterations in the portions of the unit and the L.C.A. appertaining thereto or the building which are to be maintained by the Association or on the common areas and facilities or remove any portion thereof or make any additions thereto or do anything which would or might jeopardize or impair the safety or soundness of the building without first obtaining the written consent of the Board of Managers of the Association, nor shall any unit owner impair any easement without first obtaining the written consents of the Association and of the owner or owners for whose benefits such easement exists.

**B. Use and Maintenance of Common Areas and Facilities.**

1) Regulation by Association - No person shall use the common areas and facilities or any part thereof in any manner contrary to or not in accordance with such rules and regulations pertaining thereto as from time to time may be adopted by the Association. Without in any manner intending to limit the generality of the foregoing, the Association shall have the right, but not the obligation, to promulgate rules and regulations limiting the use of the common areas and facilities to members of the Association and their respective families, guests, invitees and servants, as well as to provide for the exclusive use by a unit owner and his guests, for specific occasions, of the recreational areas or other similar facilities. Such use may be conditioned upon, among other things, the payment by the unit owner of such assessments as may be established by the Association for the purpose of defraying costs thereof.

2) Management, Maintenance, Repairs, Alterations and Improvements -

Except as otherwise provided herein, management, maintenance repair, alteration and improvement of the common areas and facilities shall be the responsibility of the Association. The Association may, but shall not be required, to delegate all or any portion of its authority to discharge such responsibility of the Association to a manager, a managing agent or a management company. Such delegation may be evidenced by a management contract (which shall not exceed one (1) year duration), which may be executed on behalf of the Association by the officers of the

Association and which shall provide for the duties to be performed by the manager, managing agent or management company. Upon the expiration of said contract, the Association, by its Board of Managers, may renew the said management contract for an additional period, or designate a different manager for the property and enter into a new contract with said manager. Upon assumption of control of the Board of Manager by the unit owners, other than Developer, as provided in the By-Laws, said unit owners and the Association will not be bound for more than one (1) year by any management contract or agreement executed prior to said assumption of control unless such contract or agreement is renewed by a vote of the newly constituted Board of Managers.

3. Repairs to Common Areas and Facilities Necessitated by Unit Owners Acts.

Each owner agrees to maintain, repair and replace at his expense, all portions of the common areas and facilities which may be damaged or destroyed by reason of his own or any occupant's act or neglect, or by the act or neglect of any invitee, licensee or guest of such owner or occupant.

D. Use and Maintenance of Limited Common Areas and Facilities.

1) Each owner agrees to maintain, repair and replace, at his expense, all portions of the L.C.A. appertaining to his unit.

2) The Association shall not be responsible for the repair, maintenance or improvement of the L.C.A., except that within said limited common areas, snow shall be removed from drives and walkways by the Association.

E. Construction Defects.

The obligation of the Association and the 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.

F. Effect of Insurance or Construction Guarantees.

Notwithstanding the fact that the Association and/or any unit owner may be entitled to the benefit of any guarantees of material and workmanship furnished by any construction trade responsible for any

constructions defects, or to benefits under any policies of insurance providing coverage for loss or damage for which they are respectively responsible, the existence of construction guarantees or insurance coverage shall not excuse any delay by the Association or any unit owner in performing their obligation hereunder.

G. No Severance of Ownership.

No owner shall execute any deed, mortgage, lease or other instrument affecting title to his unit ownership without including therein both his interest in the unit and his corresponding percentage of ownership in the common areas and facilities, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, lease or other instrument purporting to affect the one without also including the other shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein. For purposes of conveyance of title to a purchaser of a unit, description by setting forth the name of the Condominium Property, the number of the unit or units and the numbers of the volumes and initial pages of the records of the Declaration and drawings shall be adequate to convey the fee simple title thereto together with the percentage in and to the common areas and facilities.

H. Easements.

1) Encroachments - In the event that, by reason of the construction, reconstruction, settlement or shifting of the building; or by reason of the design or construction of any unit and/or the L.C.A. appertaining thereto; or by reason of errors in the drawings, any part of the common areas and facilities encroaches or shall hereafter encroach upon any part of a unit and/or L.C.A. appertaining thereto; or any part of a unit and/or L.C.A. presently encroaches or shall hereafter encroach upon any part of the common areas and facilities, or any other unit, and/or the L.C.A. appertaining thereto; or if by reason of the design or construction of systems, any main pipes, ducts or conduits serving more than one unit presently encroaches or shall hereafter encroach upon any part of any unit and/or the L.C.A. appertaining thereto; 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 or in favor of the common areas and facilities if such encroachment occurred due to the willful conduct of said owner.

2) Maintenance Easements - The owner of each unit shall be subject to easements for access arising from necessity of maintenance or operation of the entire building. The owner of each unit shall have a permanent right and easement to and through the common areas and facilities and walls for 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.

3) Easements for Certain Utilities - The Association may hereafter grant easements for utility purposes for benefit of the Condominium Property, including, but not limited to, the right to install, lay, maintain, repair and replace water mains and pipes, sewer lines, gas mains and lines, telephone wires and equipment and electrical conduits and wires over, under, along and on any portion of the common areas and facilities and each unit owner hereby grants the Association an irrevocable power of attorney to execute, acknowledge and record, for and in the name of such unit owner, such instruments as may be necessary to effectuate the foregoing.

4) Easements Through Walls Within Units - Easements are hereby declared and granted 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.

5) Easements for Garages and Parking - Easements are hereby declared and created for ingress and egress into and from each unit owner's garage for the benefit of said unit owner and his guests. No other unit owner or unit owner's invitee, assign and/or guest shall block or deny access, ingress or egress to another unit owner to said unit owner's garage. Further, easements are hereby declared and created for the benefit of all unit owners and their invitees



and guests to park automobiles for a period of no more than twenty-four (24) hours in designated parking areas in the common areas.

6) Easements to City of Aurora - Easements are hereby declared and granted to the City of Aurora, Ohio, and any successor public utility operating the City's water and sewer services, for the purpose of maintaining, operating, relocating, removing and replacing necessary sewer and water lines, manholes and appurtenances thereto that now exist or may hereafter be installed upon the condominium property, wherever situated, with the right of reasonable access thereto. The City of Aurora, and its assigns, shall be responsible for restoring the condominium property as closely as may be practicable to its original condition.

7) Easements for Pond Maintenance - Easements are hereby granted and declared for the benefit of the Association, its agents and assigns, and any adjacent condominium association and its agents and assigns to enter upon the condominium property for the purpose of maintaining ponds and bodies of water located within the boundary of the condominium.

8) Other Easements - Easements are hereby declared and granted for roadway purposes and for ingress and egress to Developer and its assigns, as set forth in Exhibit G, attached hereto and incorporated by reference herein. Further, an easement for common drive purposes for the benefit of the unit owners and others is declared and set forth in Exhibit H, attached hereto and incorporated by reference herein.

9) Easements to Run with the 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 any interest in said land or any part or portion thereof.

10) Rights to Oil and Gas - The Condominium Property is subject to the right of Developer to obtain, explore and drill for producing oil and gas under said property, however, in no event shall any drilling or exploration occur on the Condominium Property. All rights to said oil and gas are hereby reserved to Developer, its successors and assigns.

Article VII. Unit Owners' Association.

A. Membership.

Developer shall cause to be formed a unit owners association to be called The Gardens of Walden Condominium Owners Association (hereinafter and before sometimes called the "Association") which shall act as the manager of the Condominium Property. 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 a condominium ownership interest in the development. Each unit owner, upon acquisition of title to a unit within the Condominium Property as presently constituted, shall automatically become a member of the Association. Membership in the Association shall be limited to unit owners.

B. The 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 D shall exercise the powers, discharge the duties and be vested with the rights conferred by operation of law, except as otherwise specifically provided; however, in the event any such power, duty or right shall be deemed exercisable or dischargeable by or vested in an officer or member of the Board 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.

C. 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 owner, tenant or occupant of a unit shall comply with the provisions of this Declaration, the By-Laws and decisions and resolutions of the Association and/or its representatives, as lawfully amended from time to time. Failure to comply with any such provisions, decisions or resolutions shall be grounds for an action to recover sums due for damages or for injunctive relief.

D. Service of Process.

The person to receive service of process for the Association shall be Charles E. Zumkehr, Eleven South River Street, Kent, Ohio 44240. In the event Charles E. Zumkehr is not registered with the Secretary of the State of Ohio as statutory agent for The Gardens of Walden Condominium Association, an Ohio corporation not for profit, the person to receive such service shall be the statutory agent for such corporation.

Article VIII. Assessments.

A. General.

Assessments for the payment of the common expenses shall be made in the manner provided herein and in the manner provided in the By-Laws.

B. Division of Common Profits and Common Expenses.

The proportionate shares of the separate owners of the respective condominium units in the common profits and the common expenses of the operation of the Condominium Property as well as their proportionate representation for voting purposes in the Association is based upon the proportionate estimated fair value that each of the units bears to the aggregate fair value of all of the units. The acquisition or occupancy of any unit shall be conclusive evidence against the owner or occupant thereof that the percentage set forth opposite each unit in Exhibit F is in the proportion that the fair value of the unit bears to the aggregate value of all of the units having an interest in the common areas and facilities, said values to be determined as of the date this Declaration is filed for record and subsequently redetermined as of the date(s) of any amendment(s) adding units to the condominium pursuant to Article XV herein. The proportionate share of profits and expenses and proportionate representation for voting purposes of each unit owner shall be in accordance with said percentages set forth in Exhibit F. The fair value of each unit as determined by the creator of this Declaration shall be conclusive as to all parties.

C. 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.

D. Lien of Association.

The Association shall have a lien upon the estate or interest in any unit of the owner thereof and its percentage of interest in the common areas and facilities for the payment of the portion of the common expenses chargeable against such unit which remain unpaid for ten (10) days after the same have become due and payable, from the time a certificate therefor, subscribed by the Association, is filed with the Recorder of Portage County, Ohio, pursuant to 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. 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 or discharged by the final judgment or order of the Court in an action brought to discharge such lien as hereinafter provided. In addition, the unit owner and any occupant thereof shall be personally liable for such expenses chargeable for the period of his ownership or occupancy. Said lien shall also secure any future unpaid common expenses which accrue after the filing of said lien.

E. Priority of Association's Lien.

The lien provided for in Section D of this Article VIII shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of bona fide first mortgages which 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.

F. Non-Liability of Judicial Sale Purchaser for Past Due Common Expenses.

Where the mortgagee of a first mortgage of record or other purchaser of a unit acquires title to the unit as a result of a judicial sale resulting from litigation to which the Association has been made a party, such acquirer of title, his successors and assigns, shall not be 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 collectable from all of the units, including that of such acquirer, his successor or assigns.

G. 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 levied 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, after demand has been made upon the Association in writing, setting forth the amount of all unpaid assessments against the grantor due to 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's estate and "grantee" shall include a devisee or intestate heir of said decedent.

H. Dispute 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 bring action in the Court of Common Pleas for Portage County, Ohio, for the discharge of such lien.

Article IX. Insurance.

A. Fire and Extended Coverage Insurance.

The Association shall obtain for the benefit of all unit owners insurance on all building, structures or other improvements now, or at any time hereafter, constituting a part of the Condominium Property against loss or damage by fire, lightning, perils as are at this time comprehended within the term "extended coverage", vandalism and malicious mischief in an amount not less than 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 Exhibit F. Such policy shall provide for built-in or installed fixtures and equipment in an amount not less than the replacement value thereof. Such policy may include a deductible provision with a maximum of One Hundred Dollars (\$100) per occurrence. Each unit owner shall be responsible for any deductible amount in the event of a casualty loss to his unit.

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. In the event any unit owner or occupant violates this provision, any diminution in insurance proceeds resulting from the existence of such other insurance shall be chargeable to the unit owner who acquired, or whose occupant acquired, such other insurance, and said unit owner shall be liable to the Association to the extent of any such diminution and/or loss of proceeds.

At the express written consent of a unit owner, such insurance may be extended to insure additions and alterations to a unit (including but not limited to cabinetry, railings, flooring, tile, carpeting, fixtures, and similar installations and additions or replacements thereof) attached to or situated within that portion of the premises used exclusively by said unit owner and acquired or installed at the expense of said unit owner or previous owner of said unit. The cost of such additional insurance shall not be a common expense and shall be the sole responsibility of the unit owner, with no liability or duty on the Association to obtain, maintain or pay for such additional insurance.

Such insurance policy may contain an endorsement recognizing the interest of any mortgagee or mortgagees of any unit. In the event of any loss estimated to be in excess of Ten Thousand Dollars (\$10,000), the Association shall forthwith notify all mortgagees of said estimated loss. The Board of Managers shall also require the insurance carrier of the Association to so notify all mortgagees who are named as "insured" whose interest may appear. However, in no event shall the

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Board of Managers or the Association be liable for any loss because of failure to notify a mortgagee of record unless said mortgagee has registered with the Association as provided in subparagraph (B) of Article XVIII. Mortgagees of record shall have a right to participate in any insurance claim proration in the event said claim is finally determined to be in excess of Ten Thousand Dollars (\$10,000). Notwithstanding the foregoing right to participate in said claim, a mortgagee shall not have the right to participate if the claim is a result of a loss or damage to a unit other than a unit or units on which said mortgagee holds a lien unless it can be reasonably shown that its security has been affected by the loss or damage. Any mortgagee may waive the provisions of this paragraph.

Such policy of insurance shall be written with a company licensed to do business in the State of Ohio and holding a "Policy Holders Rating" of "A" or better and a "Financial Size Category Rating" of "XII" or better as such ratings are determined by Bests Key Rating Guide. Such policy shall also provide for the release by the insurer thereof of any and all rights of subrogation or assignment and all causes and rights of recovery against the Association, its officers, the Board of Managers, and any unit owner, member of his family, 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.

B. Public Liability Insurance.

The Association shall insure itself, all unit owners, members of their respective families and other persons residing with them in the Condominium Property, their tenants and all persons lawfully in possession or control of any part of the Condominium Property, 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 Three Hundred Thousand Dollars (\$300,000) in respect to bodily injury, disease, illness or death suffered by any one person, to the limit of not less than Five Hundred Thousand Dollars (\$500,000) in respect to any one occurrence, and to the limit of not less than Fifty Thousand Dollars

(\$50,000) in respect to damage to or destruction of property arising out of any one accident. Such insurance shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a unit owner or occupant because of negligent acts of the Association, the Board of Managers, other unit owners or occupants. Such policy shall not insure against liability for personal injury or property damage arising out of or relating to the individual units.

C. Other Association Insurance.

In addition, the Board of Managers may purchase and maintain contractual liability insurance, directors' and officers' liability insurance and such other insurance as the Board may determine.

D. Insurance Premiums.

Insurance premiums for the policies referred to in Sections A, B and C of this Article IX shall be a common expense unless otherwise provided.

E. Liberal Construction.

The provisions of this Article IX shall be liberally construed for the purpose of enabling the Association to provide the most comprehensive and economical insurance coverage possible, and for this purpose the Association is empowered to coordinate the group and individual coverages contemplated herein.

Article X. Damage or Destruction and Restoration of Buildings.

A. Sufficient Insurance.

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

B. 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, taking into account any insurance proceeds attributable to specific unit owner improvements and additions, then unless the unit owners shall within ninety (90) days after such damage or destruction, if they are entitled to do so pursuant to Section C of this Article X, elect to withdraw the property from the provisions of this Declaration, such repair, restoration or reconstruction of the units so damaged or destroyed shall be undertaken by the Association at the expense of the owners of the units so damaged or destroyed in the same proportions which the cost of repair, restoration or reconstruction of each such unit so damaged or destroyed bears to the total cost of repair, restoration or reconstruction of all such units. 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 shall 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. The amount so advanced by the Association shall be assessed to such owner, and such assessment shall have the same force and effect and, if not paid, may be enforced in the same manner as hereinbefore provided for the non-payment of assessments.

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 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 and facilities shall be borne by the unit owners in proportion to their respective percentages of interest in the common areas and facilities.

3) All damaged or destroyed portions of the Condominium Property which are insured 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.

C. Non-Restoration of Damage or Destruction.

In the event of substantial damage to or destruction of seventy percent (70%) or more of the units (rounded to the nearest whole unit) the unit owners by the affirmative vote of those entitled to exercise not less than seventy-five percent (75%) of the voting power, may elect not to repair or restore such damage or destruction. Upon such election all of the Condominium Property shall be subject to an action for sale as upon partition at the suit of any unit owner. In the event of any such sale, or a sale of the Condominium Property after such election by agreement of all unit owners, the net proceeds of the sale, together with the net proceeds of insurance, if any, and all 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 this share of such proceeds until all liens and encumbrances on his unit have been paid, released or discharged.

Article XI. Rehabilitation and Other Improvements.

The Association may, by the affirmative vote of unit owners entitled to exercise not less than seventy-five percent (75%) of the voting power, determine that the Condominium Property is obsolete in

whole or in part and elect to have the same renewed and rehabilitated. The Board of Managers of the Association shall thereupon proceed with such renewal and rehabilitation and the cost thereof shall be a common expense. 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 ten (10) days after receiving notice of such vote, to receive the fair value of his unit, less the amount of any liens and encumbrances thereof as of the date such vote is taken, in return for a conveyance of his unit, subject to such liens and encumbrances, to the Association. 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 thirty (30) days thereafter, and, if such owner and a majority of the Board of Managers of the Association cannot agree upon the fair 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 XII. Removal from Condominium Ownership.

The unit owners by unanimous vote may elect to remove the Condominium Property from the provisions of Chapter 5311 of the Ohio Revised Code. 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 Summit County, Ohio, and by him recorded. Such certificate shall certify therein under oath that all liens and encumbrances, except any taxes and assessments not then due and payable, upon all or any part of the common areas and facilities have been paid, released or discharged. Such certificate shall have also been signed by the unit owners, each of whom shall certify therein under oath that all such liens and encumbrances on his unit or units have been paid, released or discharged, and further, such certificate shall have been signed by the President and Secretary of the Board of Managers on behalf of the Association.

Article XIII. Amendment of Declaration and By-Laws.

A. Procedure.

This Declaration and the By-Laws attached hereto as Exhibit D may be amended upon the filing for record with the Recorder of Portage 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 at least two members of the Board of Managers of the Association. Said instrument shall certify that the unit owners entitled to exercise at least seventy-five percent (75%) of the voting power of the Association have signed a written acceptance of said amendment and that said written acceptance is on file with the Secretary of the Board of Managers. Such recorded amendment must be executed by said officers with the same formalities as this instrument, 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.

B. Developer's Consent.

No amendment shall have any effect, however, upon Developer, the rights of Developer under this Declaration and By-Laws and upon the rights of bona fide first mortgagees until the written consent to such amendment of Developer and/or mortgagees has been secured. Such consents shall be retained by the Secretary of the Association, and his certification in the instrument of amendment as to the names of the consenting and non-consenting mortgagees of the various units shall be sufficient for reliance by the general public. If less than all mortgagees consent to an amendment to the Declaration, and/or the By-Laws attached hereto as Exhibit D, 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. Developer's right to notice of and consent to such amendment shall terminate upon the fifth (5th) anniversary of this Declaration, or upon the sale by Developer of all of the units that may be included within the Condominium Property, whichever shall first occur.

C. Construction.

The provisions of Article XV with respect to additions to Condominium Property shall supersede any inconsistent provisions of this Article XIII.

Article XIV. Remedies for Breach of Covenants and Regulations.

A. Abatement and Enjoinment.

The violation of any restriction, condition or regulation adopted by the Association or the breach of any covenant or provision contained in the Declaration or in the By-Laws of the Association shall give the Association the right, in addition to the rights hereinafter set forth in this Article, to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, any breach or continuance thereof, and further, the Association or its agent shall not be thereby deemed guilty of trespass in any manner for notifying owner of said breach.

B. 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 this Declaration or the By-Laws of the Association, and such violation shall continue for thirty (30) days after notice in writing from the Association, or shall occur repeatedly during any thirty (30) day period after written notice of request from the Association to cure such violation, then the Association shall have the power to issue to the defaulting owner a ten (10) day notice in writing to terminate the rights of said defaulting owner to continue as an owner and to continue to occupy, use or control his unit, and thereupon an action in equity may be filed by the Association against the defaulting owner for a decree of mandatory injunction against the owner or occupant to cure such violation, or, subject to the prior consent 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, 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 shall be sold (subject to the lien of any existing mortgage) at a judicial sale upon such notice and terms as the Court shall establish,

except that the Court shall enjoin and restrain the defaulting owner 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 attorney's fees and all other expenses of the proceedings, and all such items shall be taxed against the defaulting owner in said decree. Any balance of proceeds (after satisfaction of such charges) any unpaid assessments hereunder or any liens shall be paid to the owner. Upon the confirmation of such sale the purchaser 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 an appropriate writ for the purpose of acquiring such possession. 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 and these By-Laws.

Article XV. Additions to Condominium Property.

Developer hereby explicitly reserves the right and option to expand the condominium property by submitting the real property described in Exhibit G (hereinafter referred to as the "Additional Property") or portions thereof from time to time, together with the restrictions, buildings, structures and improvements thereon, all easements, rights and appurtenances belonging thereto or to which it is subject and all articles of personal property existing for the common use of the unit owners to the provisions of this Declaration and these By-Laws and Chapter 5311 of the Ohio Revised Code, and to amend this Declaration in such respects as Developer may deem advisable in order to effectuate such submission or submissions, including, without limiting the generality of the forgoing, the right to amend this Declaration so as:

- 1) To include the real property described in Exhibit B or portions thereof and the improvements constructed thereon as part of the Condominium Property, and
- 2) To add drawings thereof to Exhibits C, C-1 and E, and
- 3) To expand, adjust, extend and modify the easement described in Exhibit G so as to serve and include the Additional Property described in Exhibit B, and



4) To provide that the owners of units in the buildings will have an interest in the common areas and facilities of the Condominium Property and to amend Article IV (B) (3) hereof, so as to establish the percentage of interest in the common areas and facilities which the owners of all units within the buildings on the Condominium Property will have at the time of such amendment or amendments. Each percentage shall be, with respect to each unit, in the proportion that the fair market value of each unit at the date said amendment is filed for record bears to the then aggregate value of all the units within the said buildings on the Condominium Property, which determination shall be made by Developer and shall be conclusive and binding upon all unit owners.

Notwithstanding any other provision of this Declaration to the contrary, including but not limited to Article XIII above, Developer's exercise of its option to expand the Condominium Property and to amend the Declaration and By-Laws pursuant to said election does not require the consent of any person or entity. Developer is not subject to any limitations on its option to expand unless said limitation is expressly provided in this Article.

Developer's reservation of rights under this Article shall expire seven (7) years from the date this Declaration is filed for record unless Developer elects to renew his right to expand for an additional seven (7) year period. Said election to renew the right to expand shall be exercised within six (6) months prior to the expiration of the original seven (7) year period. Said election shall be made in writing to the Secretary-Treasurer of the Association. Said written election shall be accompanied by the written consent of the majority of the unit owners other than Developer. The only circumstances that will terminate this expansion option prior to the time limits described above would be completion of the entire projected possible development of this condominium by the inclusion of the maximum number of units or unless Developer, by written notice to the Association, elects to waive said expansion option effective at a time prior to the expiration of said seven (7) year period.

Developer is not required to add all, or any particular portion, of the Additional Property to the Condominium Property. There are no limitations in regard to which portions of the Additional Property may be added to the Condominium Property. Developer is free to fix boundaries of any portion(s) of the Additional Property for the purpose of adding said portion(s) to the Condominium Property, and there are no limitations as to the order in which portions so designated by Developer may be added.

There are no limitations as to the location of any improvements that may be made on any portion of the Additional Property added to the Condominium Property. The maximum number of units that may be created on the Additional Property and added to the Condominium Property is ninety (90) making a total of one hundred (100) units in the entire development. No more than five (5) units per acre shall be created on any portion of the Additional Property added to the Condominium Property. The foregoing shall neither limit nor restrict nor be so construed as to limit or restrict the number of dwelling units that may be constructed on all or any portion of the Additional Property that is not added to the Condominium Property.

All units that may be created on the Additional Property and added to the Condominium Property will be restricted exclusively to residential use, except that Developer and its successor developers shall have the right to use one or more units for business or promotion purposes, including but not limited to sales offices and model units. The maximum percentage of the aggregate land and floor area of all units that may be created on the Additional Property, or any portion thereof, and added to the Condominium Property that are not restricted exclusively to residential use is zero (0), since no such unit may be so created and added.

Any structures erected on any portion of the Additional Property added to the Condominium Property need not be compatible with structures on the previously submitted property in terms of quality of construction, the principal materials to be used or architectural style. Units created on any portion of the Additional Property and added to the Condominium Property need not be substantially identical to units on previously submitted land. There are no limitations as to what types of units may be created on the Additional Property and added to the Condominium Property.

In addition to the actual condominium units to be placed upon the Additional Property, sewer, water, gas, electric and other utility lines, road systems and landscaping must be constructed upon the Additional Property to complete any additions.

There are no restrictions or limitations upon improvements that may be made on any portion of the Additional Property and added to the Condominium Property.

Developer reserves the right with respect to all or any portion of the Additional Property added to the Condominium Property, to create limited common areas (L.C.A.'s) therein of substantially the same type, size and number as those areas then so designated as L.C.A. in the Condominium Property.

Article XVI. Sale, Lease, Rental or Other Disposition.

A. Sale or Lease.

Any unit owner other than Developer who wishes to sell or lease his unit ownership shall give to the Board of Managers no less than fifteen (15) days prior written notice of the terms of any contemplated sale or lease, together with the name and address of the proposed purchaser or lessee. 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 or lease such unit ownership upon the same terms, which option shall be exercisable for a period of thirty (30) days following the date of receipt of such notice; provided, however, that if the proposed purchase or lease 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 B of this Article XVI. If said option is not exercised by the Board of Managers within the aforesaid period, the unit owner may, at the expiration of said period, contract to sell or lease such unit ownership to the proposed purchaser or lessee named in such notices upon the terms specified therein.

B. Gift.

Any unit owner other than Developer 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 unit 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 ninety (90) days written notice of his or her intent to make such gift prior to the contemplated date thereof, together with the name and address 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 appraisal as herein provided, which option shall be exercisable until the date of expiration as provided herein. Within fifteen (15) days after receipt of said written notice by the Board of Managers, the Board of Managers and the unit owners desiring to make such gift shall each appoint a qualified real estate appraiser. The two appraisers so appointed shall, within ten (10) days after their appointment, appoint another qualified real estate appraiser. Within fifteen (15) days after the appointment of said third appraiser, the three appraisers 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 unit owner and the Board of Managers. The Board of Managers' option to purchase the unit ownership or interest therein shall expire forty-five (45) days after the date of receipt by it of such notice.

C. Devise.

In the event any unit 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 to be determined by appraisal. 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 and shall thereupon give written notice of such appointment to the said devisee or devisees or personal representative, as the case may be. Within fifteen (15) days thereafter said devisee or devisees or personal representative, as the case may be, shall appoint a qualified real estate appraiser. Within ten (10) days after the appointment of said appraiser the two so appointed shall appoint another qualified real estate appraiser. Within fifteen (15) days thereafter the three appraisers 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. If any party mentioned above fails to act within the time specified above, the other party may give notice to him specifying such failure, and if he fails to so act within ten (10) days of such notice, the following shall be the consequences:

- 1) Failure of Board of Managers to appoint appraiser--all rights of Board under this subparagraph shall terminate.

- 2) Failure of personal representative or devisee or devisees to appoint appraiser--appraiser appointed by Board shall select another qualified appraiser and the two shall proceed to determine the fair market value within fifteen (15) days of said selection and give notice of said determination as provided above. In the event they cannot agree they shall appoint a third appraiser within said period and proceed to determine fair market value as provided above.

The Board of Managers' option to purchase the unit ownership or interest therein at the price determined by the appraisers shall expire sixty (60) days after the date of receipt by it of such notice if the personal representative of the deceased unit owner is empowered to sell and shall expire ten (10) months 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 devisee or devisees or 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 unit owners as hereinafter provided, to bid at any sale of the unit ownership or interest therein of any deceased unit owner which sale is held pursuant to an order or direction of the court having jurisdiction over that portion of the deceased unit owner's estate which contains his or her unit ownership or interest therein.

D. Judicial Sale.

1) In the event any unit ownership or interest therein is sold at a judicial or execution sale (other than mortgage foreclosure sale), the person acquiring title through such sale shall, before taking possession of the unit so sold, give thirty (30) days written notice to the Board of Managers of his intention to do so. The members of the Board of Managers and their successors in office, acting on behalf of consenting unit owners as hereinafter provided, 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 from the time of such judicial sale. If said option is not exercised by the Board of Managers within said thirty (30) days after receipt of such notice, it shall thereupon expire, and said purchaser may thereafter take possession of said unit. The Board of Managers shall be deemed to have exercised its option if it tenders the required sum of money to the purchaser prior to the expiration of the said option.

2) 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 trust deed against his unit ownership, the Association shall have the right to cure such default by paying the amount so owing to the party entitled thereto and shall thereupon be subrogated to whatever rights the previous creditor possessed and shall thereupon have a lien therefor against such unit ownership, which lien shall have the same force and effect and may be enforced in the same manner as provided in Article VIII.

E. 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 the subject matter of such option. The Board of Managers may bid to purchase at any sale of a unit ownership or interest therein, which sale is held pursuant to an order or direction of a court upon the prior written consent of the aforesaid voting members, which 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 unit owners consenting thereto.

F. Release, Waiver, and Exceptions to Option.

Upon the written consent of two (2) of the Board members any of the options contained in this Article XVI may be released or waived and the unit ownership or interest therein which is subject to same may be given or devised free and clear of the provisions of this Article. The Board of Managers action to release or waive the operation of Article XVI as to any unit owner's proposed lease, sale or other disposition is within the sole discretion of the Board of Managers and not subject to review by the Association.

G. 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 XVI, as hereinabove set forth, have been met by a unit 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 unit owners in favor of all persons who rely thereon in good faith, and such certificate shall be furnished upon request at a reasonable fee not to exceed Fifty Dollars (\$50.00), to any unit owner who has in fact complied with the provisions of this Article XVI or in respect to whom the provisions of this Article XVI have been waived.

H. Financing of Purchase Under Option.

1) Acquisition of unit ownership or any interest therein under the provisions of this Article shall be made from an assessment levied by the Association against each consenting unit 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.

2) 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. Said documents shall not obligate the Association nor any non-consenting unit owner.

I. Title to Acquired Interests.

Unit ownerships or interests 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 unit 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 unit owners and the proceeds thereof may thereafter be disbursed at such time and in such manner as the Board may determine.



Article XVII. Condominium Instrument Requirements.

A. General.

The condominium act requires that certain information be provided in the condominium instruments. Much of this is provided elsewhere in the condominium Declaration and By-Laws and in other documents, but in order that all such information be provided in this Declaration, various items of that information are set forth in the following sections of this Article.

B. Deposits.

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

C. Association Control.

Except in its capacity as a unit owner of unsold units, Developer or its agent will not retain a property interest in any of the common areas and facilities after control of the Association is assumed by the Association. The owners of units that have been sold by Developer or its agent will assume control of the Association and the common areas and facilities, as elsewhere provided herein, in compliance with the requirements of the condominium act. Neither the Association nor the unit owners will be subject to any management contract or agreement executed prior to the assumption of control of the Association by unit owners other than Developer 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 provisions of the By-Laws.

D. Limited Warranty.

The following are the limited warranties (and limitations thereon) which Developer gives to the purchasers of a unit from it, which are not enforceable by the purchasers unless and until the sale of the unit to the purchasers is closed.

1) Units. Except as provided in subparagraph 3, below, Developer warrants to provide and pay for the full cost of labor and materials for any repair or replacement of structural, mechanical and other elements pertaining to the unit, occasioned or necessitated by defects in material or workmanship that arise within a period of one (1) year from the date the deed to the purchasers for that unit is filed for record.

2) Common Areas and Facilities. Developer warrants to provide and pay for the full cost of labor and materials for any repair or replacement of the roof and structural components, and mechanical, electrical, plumbing and common service elements serving the condominium as a whole, occasioned or necessitated by defects in material or workmanship that arise within a period of two (2) years from the date the deed is filed for record following the sale of the first unit in the condominium to a purchaser in good faith for value.

3) Appliances, etc. In the case of ranges, refrigerators, washing machines, clothes dryers, hot water heaters and other similar appliances, if any, installed and furnished by Developer as part of the unit, Developer assigns to the purchasers all express and implied warranties of the manufacturer, and Developer's warranty with respect to such items is limited to Developer's warranty that the same have been properly installed.

4) Extended Warranties. Developer assigns to the purchasers any warranties made to Developer that exceed the time periods for warranties the Developer has given to the purchasers by this limited warranty.

5) Limitations.

- a. No responsibility is assumed for damage from any cause, whatsoever, other than to repair or replace, at Developer's cost, items containing defects covered by Developer's warranty.
- b. No responsibility is assumed for consequential or incidental damage except to the extent, if any, not permitted to be excluded or limited by law.

- c. Implied warranties, if any, are limited to one (1) year from the date on which the unit is deeded to the purchasers, except to the extent, if any, that limitation is not lawful.
- d. These written warranties are the only express warranties Developer gives to the purchaser unless additional warranties are included in a written contract between Developer and the purchasers.
- e. Any request for service must be sent in writing to the Developer at 700 Bissell Road, Aurora, Ohio 44202 or at such other address as Developer may designate, from time to time, in writing to the purchasers. Developer or Developer's designated representative will commence performance of Developer's obligations under this warranty within thirty (30) days after receipt of the purchaser's request for service, and complete the same as soon as reasonably possible. All repairs and adjustments will be made Monday through Friday, 8:00 a.m. to 5:00 p.m.

6) Other Rights. This written limited warranty gives the purchasers specific legal rights and the purchasers may also have other legal rights under law.

E. Developer's Obligations.

Developer will 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 units, from the date this Declaration is filed for record.

Article XVIII. Miscellaneous Provisions.

A. Each grantee of Developer, 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 the By-Laws, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such owner in like manner as though the provisions of the Declaration and the By-Laws were recited and stipulated at length in each and every deed of conveyance.

B. Each grantee of Developer, by the acceptance of a deed of conveyance, acknowledges the correctness insofar as is physically possible of the

drawings and that the same comply with the as-built requirements of the Ohio Condominium Act.

C. 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.

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

E. If any of the privileges, covenants or rights created by this Declaration or the By-Laws shall be unlawful or void for violation of the rule against perpetuities or some analogous statutory provision, the rule restricting restraints on alienation, or any other statutory or common law rules imposing time limits, then such provision shall continue until twenty-one (21) years after the death of the survivor of the now living descendants of John Glenn and Howard Metzenbaum, United States Senators from Ohio, and Ronald Reagan, President of the United States of America.

F. Except as expressly provided in writing, neither Developer 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 by the By-Laws attached hereto as Exhibit D or in Developer's (or its representative's) capacity as developer, 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 (except in the case of gross negligence) ex delicto. 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 any neighboring property or personal

property located on or about the Condominium Property, or by reason of the failure to function or disrepair of any utility services (heating, air conditioning, electricity, gas, water, sewage, etc.).

G. In the event that the Association and/or any unit owner receives the proceeds of a taking by eminent domain, said proceeds may not be used to expand or extend the Condominium Property unless the written consent of all mortgagees is given.

In the event that the Association should determine to expand or extend the Condominium Property from funds received by said taking, all mortgagees shall have a right to participate in said funds which are allocated for said expansion or extensions prorata as the total of undivided interests upon which they hold a lien bears to the total of all undivided interests upon which all mortgagees hold a lien.

H. In order to facilitate communications and notices with mortgagees of record, the Association and/or the Board of Managers shall not be liable to any mortgagees for a loss incurred or suffered as a result of failure to receive a notice required to be given in the Declaration unless said mortgagee has delivered to the Board of Managers the following information addressed as follows:

To the Secretary  
Board of Managers  
The Gardens of Walden Condominium Association

Said information to be given shall include:

1. Description of units covered by mortgage lien.
2. Name of mortgagees.
3. Name of all mortgagors.
4. Amount of mortgage lien.
5. Address of mortgagee for notice purposes.

I. The heading of each article and to each section hereof are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Declaration nor in any way affect this Declaration.

J. 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.

IN WITNESS WHEREOF, this Declaration is made this 24<sup>th</sup> day of MARCH, 1983.

Witnessed By

Janice P. Rinaldi  
Karl C. Wier

THE WALDEN COMPANY, LTD.,  
An Ohio Limited Partnership

By Manuel Barenholtz  
Manuel Barenholtz  
General Partner

STATE OF OHIO )  
COUNTY OF PORTAGE ) . SS:

I, JANICE P. RINALDI, Notary Public in and for said County and State, do hereby certify that THE WALDEN COMPANY, LTD., by Manuel Barenholtz, its General Partner, has this day acknowledged the signing and execution of said instrument, for and on behalf of said partnership, and has acknowledged that the same, in all respects, is his free act and deed as such partner and the free act and deed of said partnership.

And I further certify that Manuel Barenholtz is known to me to be the individual and partner described herein and who executed said instrument.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at AURORA, Ohio, this 24<sup>th</sup> day of MARCH, 1983.

Janice P. Rinaldi  
Notary Public

This Instrument Prepared by:

WILLIAMS, ZUMKEHR AND WELSER

Charles E. Zumkehr, Esquire  
David A. Eli, Esquire  
Eleven South River Street  
Kent, Ohio 44240  
(216) 673-3444

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AMENDMENT TO THE

DECLARATION OF CONDOMINIUM OWNERSHIP FOR

THE GARDENS OF WALDEN CONDOMINIUM

INDEXED

x Kaman Ott Cusimano

BOOK 549 PAGE 0242

AMENDMENT TO THE  
DECLARATION OF CONDOMINIUM OWNERSHIP FOR  
THE GARDENS OF WALDEN CONDOMINIUM

WHEREAS, the Declaration of Condominium Ownership for The Gardens of Walden Condominium was recorded at Volume 1002, Pages 1036 et seq., of Portage County Records, and

WHEREAS, The Gardens of Walden Condominium Association is a corporation consisting of all Unit Owners in The Gardens of Walden Condominium and as such is the representative of all Unit Owners, and

WHEREAS, Article XIII, Section A of said Declaration authorizes amendments to the Declaration, and

WHEREAS, Unit Owners representing in excess of 75.0% of the voting power of the Association have executed an instrument in writing setting forth specifically the new matter to be added, and

WHEREAS, attached hereto as Exhibit A is an Affidavit of the President of the Association that a copy of the amendment was mailed by certified mail to all mortgagees on the records of the Association having bona fide liens of record against any Unit ownership, and

WHEREAS, the Association has in its records the consents to the Amendment signed by Unit Owners representing 77.2% of the voting power of the Association and further has in its records the consents, if any, of the mortgagees as certified by the Secretary in the attached Exhibit B, and

WHEREAS, the Association has in its records the power of attorney signed by Unit Owners representing 77.2% of the voting power of the Association authorizing the officers of The Gardens of Walden Condominium Association to execute this recorded document on their behalf, and

WHEREAS, the proceedings necessary to amend the Declaration as required by Chapter 5311 of the Ohio Revised Code and the Declaration of Condominium Ownership for The Gardens of Walden Condominium have in all respects been complied with,



NOW THEREFORE, the Declaration of Condominium Ownership for The Gardens of Walden Condominium is hereby amended by the following:

ADD a new PARAGRAPH 11 TO DECLARATION ARTICLE VI, SECTION H. Said new addition, to be added on Page 14 of the Declaration as recorded in Portage County Records Volume 1002, Page 1036 et seq., is as follows:

11) The Board of Managers may, on behalf of and for the benefit of the Association and the Condominium Property, grant to The Walden Association, including its successors and assigns, an easement for the purpose of constructing, maintaining, replacing, and using a walking path, or substantially similar installation, along with adjoining landscape improvements, through and along the Condominium Property upon such terms and conditions that the Board reasonably determines to be in the Association's best interest; each Unit Owner hereby grants the Association an irrevocable power of attorney to execute, acknowledge and record for and in the name of such Unit Owner such easements or other instruments as may be necessary to carry out this provision.

Any conflict between this provision and any other provisions of the Declaration and Bylaws shall be interpreted in favor of this amendment enabling the Board to grant an easement for the purpose of a walking path. Upon the recording of this amendment, only Unit Owners of record at the time of such filing shall have standing to contest the validity of the amendment, whether on procedural, substantive or any other grounds, provided further that any such challenge shall be brought within one year of the recording of the amendment.

BOOK 549 PAGE 0244

IN WITNESS WHEREOF, the said The Gardens of Walden Condominium Association has caused the execution of this instrument this 3<sup>rd</sup> day of July, 2000.

THE GARDENS OF WALDEN CONDOMINIUM ASSOCIATION ✓

Signed and acknowledged  
in the presence of both:

X *Doris Lipman*  
Witness #1: DORIS LIPMAN

By: *[Signature]*  
DAN LIPMAN, its President

X *Angela Mancini*  
Witness #2: ANGELA MANCINI

By: *Fern Pomerantz*  
FERN POMERANTZ, its Secretary

This instrument prepared by:  
DAVID W. KAMAN, Esq.  
Kaman, Ott & Cusimano, Attorneys at Law  
50 Public Square  
600 Terminal Tower  
Cleveland, Ohio 44113  
(216) 696-0650

BOOK 549 PAGE 0245

STATE OF OHIO )  
 )  
COUNTY OF Cuyahoga ) SS

BEFORE ME, a Notary Public in and for said County, personally appeared the above named The Gardens of Walden Condominium Association, by its President and its Secretary, who acknowledged that they did sign the foregoing instrument and that the same is the free act and deed of said corporation and the free act and deed of each of them personally and as such officers.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at maple heights, Ohio, this 7<sup>th</sup> day of July, 2000.

[Signature]  
NOTARY PUBLIC  
Commission Expires  
May 21, 2005

BOOK 549 PAGE 0246

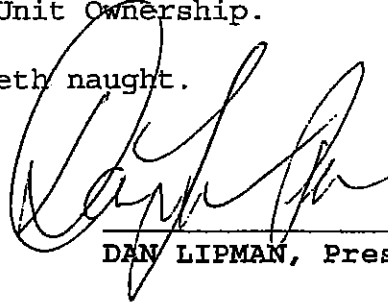
EXHIBIT A

AFFIDAVIT

STATE OF OHIO )  
 )  
COUNTY OF Cuyahoga ) SS

DAN LIPMAN, being first duly sworn, states as follows:

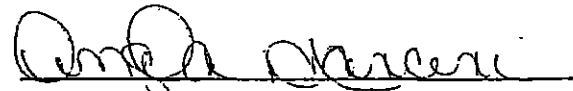
1. He is the duly elected and acting President of The Gardens of Walden Condominium Association.
2. As such President, he caused copies of the amendment to the Declaration of The Gardens of Walden Condominium to be mailed by certified mail to all mortgagees on the record of the Association having bona fide liens of record against any Unit Ownership.
3. Further affiant sayeth naught.



\_\_\_\_\_  
DAN LIPMAN, President

BEFORE ME, a Notary Public in and for said County, personally appeared the above named DAN LIPMAN who acknowledges that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Maple Heights, Ohio, this 7<sup>th</sup> day of July, 2000.



NOTARY PUBLIC  
Commission Expires  
May 21, 2005

BOOK 549 PAGE 0247

EXHIBIT B

CERTIFICATION OF SECRETARY

The undersigned, being the duly elected and qualified Secretary of The Gardens of Walden Condominium Association, hereby certifies that there is on file in the records of the Association, the names of the following mortgagees, if any, who have consented to the proposed Amendment to the Declaration of The Gardens of Walden Condominium.

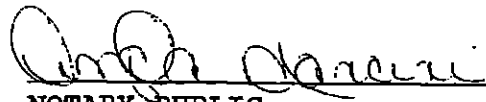
N O N E

  
\_\_\_\_\_  
FERN POMERANTZ, Secretary

STATE OF OHIO                    )  
  )  
COUNTY OF Cuyahoga        )      SS

BEFORE ME, a Notary Public in and for said County, personally appeared the above named FERN POMERANTZ who acknowledged that she did sign the foregoing instrument and that the same is her free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Maple Heights, Ohio, this 7<sup>th</sup> day of July, 2000.

  
\_\_\_\_\_  
NOTARY PUBLIC  
Commission Expires  
May 21, 2005

BOOK 549 PAGE 0248

JUL 21 2000

NO TRANSFER  
REQUIRED

JANET ESPOSITO  
AUDITOR 

## THE GARDENS OF WALDEN CONDOMINIUM ASSOCIATION

September 19, 2003

Dear Gardens of Walden Condominium Unit Owner:

Enclosed, please find a copy of the fully executed and recorded Amendments to the Declaration of Condominium Ownership of The Gardens of Walden Condominium Association. This document was filed with the Portage County Recorder's Office on August 18, 2003, at Instrument No. 200331305. Pursuant to the Ohio Condominium Act, the Amendments became binding and effective on the Association and the unit owners on the date they were filed.

You are advised to file the Amendments with your respective copies of the Declaration and Bylaws. You are also reminded that all of the documents must be passed on to a future buyer of your unit. The following recaps the major modifications covered in each amendment:

**AMENDMENT A:** This amendment addresses costs associated with collecting delinquent fees and enforcing Association rules. The "Cost of Collection" provision reinforces the Association's ability to pass the costs of collecting delinquent accounts back to the delinquent unit owner. Similarly, the "Cost of Enforcement" provision strengthens the Association's authority to pass the costs of enforcing our rules and regulations back to a violating unit owner.

**AMENDMENT B:** The changes included in this amendment update and improve the insurance provisions contained in the Declaration. In addition, with the rapidly rising costs of condominium association insurance premiums, these changes will provide for the Board the flexibility needed to explore all insurance options available.

In addition, the amendment clarifies that the Association is responsible for the deductible if damage is to the common areas, while the owner is responsible if his/her unit is damaged (which is consistent with the maintenance requirements contained in the Declaration). It also clarifies the issues of individual insurance coverage and mortgage company concerns, above and beyond what exists in our current documents. You are advised to review Amendment B with your insurance agent to ensure that you are properly insured.

**AMENDMENT C:** This amendment modifies the pertinent provisions in the Bylaws to ensure that they reflect the practices of the Association. We have, for some years, been operating under a fiscal year (October 1<sup>st</sup> - September 30<sup>th</sup>) calendar. The Bylaws were written to follow the calendar year.

**AMENDMENT D:** This amendment modifies the pertinent provisions in the Bylaws to ensure that they reflect the practices of the Association. Some years ago, to more fairly allocate the Association's work, the office of Secretary-Treasurer was split into two separate offices. The Bylaws identify the officer positions as President, Vice President, and Secretary-Treasurer. Current officer positions are President, Secretary, and Treasurer.

**BORROWING AMENDMENT:** This amendment allows the Board to apply for a bank loan to finance the cost of replacing all roofs yet to be replaced as part of the planned roof replacement program. The harsh winter has taken a toll on many roofs, necessitating the replacement of more roofs at this time than originally scheduled in the replacement program. In addition, there is an annual rise in the costs of replacing roofs each year. All roofs scheduled for replacement can be completed in one year and paid for through a bank loan. The loan will then be paid off over the next three to four years. This arrangement will allow for a net savings over time, by providing for the purchase of the roof replacements at the lowest possible cost. It will also allow for borrowing at a time when interest rates are low.

Should you have any questions about any of the amendments, do not hesitate to contact any Board of Managers member.

Sincerely,

The Board of Managers  
The Gardens of Walden Condominium Association  
Dan Lipman, President  
Stan Cole, Treasurer  
Sheryl Smith, Secretary

Enclosures

*Emu*  
LINDA FANKHAUSER  
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AMENDMENTS TO THE

**INDEXED**

DECLARATION OF CONDOMINIUM OWNERSHIP

FOR

THE GARDENS OF WALDEN CONDOMINIUM

PLEASE CROSS MARGINAL REFERENCE WITH THE DECLARATION OF  
CONDOMINIUM OWNERSHIP FOR THE GARDENS OF WALDEN CONDOMINIUM  
RECORDED AT VOLUME 1002, PAGE 1036 ET SEQ. OF THE PORTAGE COUNTY  
RECORDS.



AMENDMENTS TO THE  
DECLARATION OF CONDOMINIUM OWNERSHIP FOR  
THE GARDENS OF WALDEN CONDOMINIUM

WHEREAS, the Declaration of Condominium Ownership for The Gardens of Walden Condominium (the "Declaration") and The Gardens of Walden Condominium Association By-Laws (the "Bylaws"), Exhibit D to the Declaration, were recorded at Portage County Records Volume 1002, Page 1036 et seq., and

WHEREAS, The Gardens of Walden Condominium Association (the "Association") is a corporation consisting of all Unit Owners in The Gardens of Walden and as such is the representative of all Unit Owners, and

WHEREAS, Article XIII of said Declaration authorizes amendments to the Declaration and Bylaws Article XI authorizes amendments to the Bylaws, and

WHEREAS, Unit Owners representing at least 75% of the Association's voting power have executed instruments in writing setting forth specifically the matters to be modified (the "Amendments"), and

WHEREAS, attached hereto as Exhibit A is an Affidavit of the Association's President that unit owners exercising at least 75% of the Association's voting power have signed a written acceptance of said Amendments and that a copy of the Amendments was mailed by certified mail to all mortgagees on the records of the Association, and

WHEREAS, the Association has in its records the signed, written consents to Amendment A signed by Unit Owners representing 80.975% of the Association's voting power, and

WHEREAS, the Association has in its records the power of attorney signed by Unit Owners representing 80.975% of the Association's voting power authorizing the Association's officers to execute Amendment A on their behalf, and

WHEREAS, the Association has in its records the signed, written consents to Amendment B signed by Unit Owners representing 76.309% of the Association's voting power, and

WHEREAS, the Association has in its records the power of attorney signed by Unit Owners representing 76.309% of the Association's voting power authorizing the Association's officers to execute Amendment B on their behalf, and

WHEREAS, the Association has in its records the signed, written consents to Amendment C signed by Unit Owners representing 82.559% of the Association's voting power, and

WHEREAS, the Association has in its records the power of attorney signed by Unit Owners representing 82.559% of the Association's voting power authorizing the Association's officers to execute Amendment C on their behalf, and

WHEREAS, the Association has in its records the signed, written consents to Amendment D signed by Unit Owners representing 80.913% of the Association's voting power, and

WHEREAS, the Association has in its records the power of attorney signed by Unit Owners representing 80.913% of the Association's voting power authorizing the Association's officers to execute Amendment D on their behalf, and

WHEREAS, the Association has in its records the signed, written consents to Amendment E signed by Unit Owners representing 81.433% of the Association's voting power, and

WHEREAS, the Association has in its records the power of attorney signed by Unit Owners representing 81.433% of the Association's voting power authorizing the Association's officers to execute Amendment E on their behalf, and

WHEREAS, the proceedings necessary to amend the Declaration as required by Chapter 5311 of the Ohio Revised Code and the Declaration of Condominium Ownership for The Gardens of Walden Condominium have in all respects been complied with.

NOW THEREFORE, the Declaration of Condominium Ownership for The Gardens of Walden Condominium is hereby amended by the following:

#### AMENDMENT A

INSERT a new DECLARATION Article XIV, Section C entitled, "Cost of Collection." Said new addition, to be added on Page 27 of the Declaration as recorded in Portage County Records Volume 1002, Page 1036 et seq., is as follows:

C. Cost of Collection.

An owner, who fails to pay any assessments within twenty-five (25) days after same have become due and payable, shall be liable for any late charges and any and all costs incurred by the Association in connection with the collection of said owner's account, including reasonable attorney fees, recording costs, title reports and/or court costs.

INSERT a new DECLARATION Article XIV, Section D entitled, "Cost of Enforcement." Said new addition, to be added on Page 27 of the Declaration as recorded in Portage County Records Volume 1002, Page 1036 et seq., is as follows:

D. Cost of Enforcement.

If any owner (either by his conduct or by the conduct of any occupant or guest of his unit) shall violate any provision of the Declaration, Bylaws or any rule adopted, said owner shall pay to the Association, in addition to any other sums due, any penalty assessments for violation of said provision or rule levied by the Board, all costs and expenses incurred by the Association in connection with the enforcement of said provision or rule, including reasonable attorney fees and/or court costs. Said penalty assessments, costs and expenses shall be charged as a special assessment against said owner. The Association, in addition to all other remedies available, shall have the right to place a lien upon the estate or interest of said owner as further explained and set forth in Declaration Article VIII, Section D.

Any conflict between these provisions and any other provisions of the Declaration and Bylaws shall be interpreted in favor of this amendment regarding the cost of collection and cost of enforcement. Upon the recording of this amendment, only owners of record at the time of such filing shall have standing to contest the validity of the amendment, whether on procedural, substantive or any other grounds, provided further that any such challenge shall be brought in the court of common pleas within one year of the recording of the amendment.

#### AMENDMENT B

DELETE DECLARATION Article IX, Section A, entitled "Fire and Extended Coverage Insurance," in its entirety. Said deletion to be taken from Pages 18-19 of the Declaration as recorded in the Portage County Records, Volume 1002, Page 1036 et seq.

INSERT A NEW DECLARATION Article IX, Section A, entitled "Casualty Insurance." Said new addition, to be added on Pages 18-19 of the Declaration as recorded in the Portage County Records, Volume 1002, Page 1036 et seq., is as follows:

A. Casualty Insurance.

(1) Scope of Coverage. The Association shall carry casualty insurance, subject to a deductible as provided for in subsection (4) below, on all of the insurable improvements comprising the common areas, the limited common areas and all personal property as may be owned by the Association and for which the Association is responsible.

(2) Risks to be Insured and Amount Thereof. The Association's casualty insurance shall protect against loss or damage by fire and hazards now or hereafter embraced by "extended coverage, vandalism and malicious mischief," and all other perils which are customarily covered, including perils normally covered by the standard "all-risk" endorsement, where such is

available at a reasonable cost; in an amount sufficient to cover at least ninety percent (90%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any such casualty (excluding excavation and foundation costs and other items normally excluded from such coverage).

(3) Beneficiary Interests. Subject to the provisions of subsection (5) below, the Association's casualty insurance shall be for the benefit of the Association, each of the owners, and the holders of mortgages upon the ownership interests, as their interest may appear, and shall provide for the issuance of certificates of insurance with mortgagees' endorsements to the holders of mortgages on the units, if any.

(4) Deductibles. The Association's casualty insurance may include a reasonable deductible as determined by the Board. In the absence of any negligence, the deductible shall be paid by the party who would be responsible for the loss or repair in the absence of insurance and in the event of multiple parties or combined claims covered by the Association's casualty insurance policy, shall be allocated in relation to the amount each party's claim bears to the total claim, with the party incurring the larger share of the loss responsible for the larger share of the deductible. If any loss or repair is due to the negligence or intentional act of the Association or the owner (or anyone for which either is respectively responsible as provided for in this Declaration), then in such case, the negligent, responsible party, being either the Association or the owner, shall be responsible for the full amount of the deductible.

(5) Claim Filing. The Board shall have the sole right and authority to file, or authorize the filing of, any and all claims for damage or destruction that are or may be covered by the Association's casualty insurance policy regardless of the person(s), including mortgagees, who may be named as an additional insured or beneficiary of such policy, as the Board determines is consistent with the intent of this Declaration and in the Association's best interests; provided, however, that a mortgagee having an interest in such losses may participate in the settlement negotiations, if any, related thereto. The failure or refusal of the Association to process or file any claim for damage or destruction to any part of the Condominium Property under the Association's casualty insurance, shall not give rise to any claim against the Association or the Board.

(6) Appraisals. The Board shall conduct a periodic insurance review that may, at the option of the Board, include a professional replacement cost appraisal, without respect to depreciation, of any and all improvements and personal property comprised in the Condominium Property, by one or more qualified persons. The cost of any such appraisal shall be a common expense.

(7) Insurance Company Rating. All policies shall be written with a company licensed to do business in the State of Ohio and, unless not reasonably available to the Association, holding a rating of "A" or better by Best's Insurance Reports, or its present day equivalent.

(8) Mortgagee and Additional Insurance Requirements. Notwithstanding anything to the contrary anywhere in this Article IX, the Board shall have full right and authority, but not the obligation, to purchase casualty insurance, and/or any other insurance policy or endorsement, that includes any and all such terms, conditions or requirements, as the Board determines is in the Association's best interests and is necessary to comply with any requirements of Federal National Mortgage Association ("FNMA") or Federal Home Loan Mortgage Corporation ("FHLMC"), or the designee of FNMA or FHLMC. If the Association provides, as the Board so decides, any additional casualty insurance coverage, or any additional terms or conditions thereto, beyond the minimum requirements contained in this Article IX, for less than all the owners, the Association may levy a special assessment against only those owners so requiring such additional insurance in an amount to be determined by the Board. The Board shall further have the right and power to execute and record special amendments to this Article XV, as the Board determines to be in the Association's interest, to comply with the requirements of FNMA and/or FHLMC. In furtherance of the right and power to record such special amendment, a power coupled with an interest is hereby reserved and granted to the Board to vote in favor of, make or consent to such special amendment on behalf of each owner as proxy or attorney-in-fact as the case may be.

(9) Owner Insurance. Each owner shall separately insure those portions of his unit, not insured by the Association, and insurance on the limited common areas and unit up to the amount of the Association's casualty insurance deductible when either such areas are insured by the Association, against loss by fire and other hazards and perils now or hereafter embraced by "extended coverage, vandalism and malicious mischief" and "all-risk" insurance and shall file a copy of the policy(ies), or such other insurance information as the Board may require, with the Association within thirty (30) days of receipt of a request from the Association. Each owner (or occupant) shall further separately insure the personal contents of his/her unit, as well as any other personal property, which he stores elsewhere on the Condominium Property.

(10) Disbursement of Excess Insurance Proceeds. The Association shall use insurance proceeds received to defray the cost of repairing the damage to the common areas. If the cost of such repairs is less than the amount of such insurance proceeds, the excess shall be retained by the Association and placed in the reserve maintenance fund or such other fund as

may be established for the purpose of providing for the maintenance, repair and replacement of the common areas and facilities.

(11) Waiver of Subrogation. Each owner and occupant, as a condition of accepting title and possession, or either one of such, of a unit, and the Association agree, that in the event any part(s) of the Condominium Property or the fixtures or personal property of anyone located therein or thereon are damaged or destroyed by fire or other casualty that is covered by insurance of any owner, occupant or the Association, and the lessees of any one of them, as provided for in this Article IX, the rights, if any, of any party against the other, or against the employees, agents, licensees or invites of any party, with respect to such damage or destruction and with respect to any loss resulting therefrom are hereby waived to the extent of the insurance proceeds actually recovered.

Any conflict between the above provisions and any other provisions of the Declaration and Bylaws shall be interpreted in favor of this revision of the Association's and owners' casualty insurance obligations. Upon the recording of this amendment, only owners of record at the time of such filing shall have standing to contest the validity of the amendment, whether on procedural, substantive or any other grounds, provided further that any such challenge shall be brought within the court of common pleas within one year of the recording of the amendment.

#### AMENDMENT C

MODIFY BYLAWS Article I, Section 4(a) entitled, "Annual Meeting," beginning with the fourth sentence. Said modification, to be made on Page 2 of the Bylaws, Exhibit D of the Declaration as recorded in Portage County Records Volume 1002, Page 1036 et seq., is as follows (deleted language crossed-out; new language underlined):

(a) Annual Meeting. ... There shall be annual meetings of the unit owners held in Portage County, Ohio, in the first ~~calendar~~ fiscal quarter of each year, commencing in the year following the first meeting. At the annual meeting, the unit owners shall elect the necessary member or members to the Board for the year ensuing. At the annual meeting, any matters concerning the welfare of the Condominium may be discussed and referred to the Board for proper action. At the annual meeting, the President and ~~Secretary-Treasurer~~ shall submit reports ~~in writing~~ for the fiscal year just ending, which report shall be ~~read~~ presented to the unit owners. The annual meeting shall be presided over and conducted by the President, or in his absence, the ~~Secretary-Treasurer~~.

MODIFY BYLAWS Article VI, Section 2 entitled, "Preparation of Estimated Budget." Said modification, to be made on Page 14 of the Bylaws, Exhibit D of the Declaration as

recorded in Portage County Records Volume 1002, Page 1036 et seq., is as follows (deleted language is crossed-out; new language is underlined):

Section 2. Preparation of Estimated Budget.

No more than thirty (30) days after the end of the fiscal year, as determined by the Board, and prior to the annual meeting. ~~Each year on or before December 1<sup>st</sup>,~~ the Association shall estimate the total amount necessary to pay the cost of wages, materials, insurance, services and supplies which will be required during the ensuing fiscal calendar year for the rendering of all services, together with a reasonable amount considered by the Association to be necessary for a reserve for contingencies and replacements, and shall on or before December 15<sup>th</sup>, notify each owner in writing as to the amount of such estimate, with reasonable itemization thereof. Said "estimated cash requirement" shall be assessed to the owners according to each owner's percentage of ownership in the common areas and facilities as set forth in the Declaration. On or before January 1<sup>st</sup>, of the ensuing calendar year and the first of each and every month of said calendar year, each owner shall be obligated to pay to the Association, or as it may direct, one-twelfth (1/12<sup>th</sup>) of the assessment made pursuant to this paragraph. On or before the date of the annual meeting of each fiscal calendar year, the Association shall supply to all owners an itemized accounting of the maintenance expenses for the preceding fiscal calendar year actually incurred and paid together with a tabulation of the amounts collected pursuant to the estimates provided and showing the net amount over or short of the actual expenditures plus reserves. Any excesses or shortages shall be applied to or against reserves, as determined by the Board. ~~Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited according to each owner's percentage of ownership in the common areas and facilities to the next monthly installments due from owners under the current year's estimate, until exhausted, and any net shortage shall be added according to each owner's percentage of ownership in the common areas and facilities to the installments due in the succeeding six (6) months after rendering of the accounting.~~

Any conflict between this provision and any other provisions of the Declaration and Bylaws shall be interpreted in favor of this amendment regarding the timing of the annual meeting and the preparation of the annual budget based upon the fiscal year. Upon the recording of this amendment, only owners of record at the time of such filing shall have standing to contest the validity of the amendment, whether on procedural, substantive or any other grounds, provided further that any such challenge shall be brought in the court of common pleas within one year of the recording of the amendment.

## AMENDMENT D

MODIFY BYLAWS Article III, Section 1 entitled, "Election and Designation of Officers." Said modification, to be made on Page 8 of the Bylaws, Exhibit D of the Declaration as recorded in Portage County Records Volume 1002, Page 1036 et seq., is as follows (deleted language crossed-out; new language underlined):

### Section 1. Election and Designation of Officers.

At the first meeting of the Board in each year (at which a quorum shall be present) held next after the annual meeting of the Unit Owners Association, the Board shall elect officers and employees as it shall determine. They may also appoint an executive committee or special committees. The officers of the Association shall be a President, ~~Vice President~~ Secretary, and ~~Secretary-Treasurer~~, all of whom shall be members of the Board.

MODIFY the last two sentences of BYLAWS Article I, Section 4(a) entitled, "Annual Meeting." Said modification, to be made on Page 2 of the Bylaws, Exhibit D of the Declaration as recorded in Portage County Records Volume 1002, Page 1036 et seq., is as follows (deleted language crossed-out; new language underlined):

(a) Annual Meeting. ... At the annual meeting, the President and ~~Secretary-Treasurer~~ shall submit reports ~~in writing~~ for the fiscal year just ending, which report shall be ~~read~~ presented to the unit owners. The annual meeting shall be presided over and conducted by the President, or in his absence, the ~~Secretary-Treasurer~~.

MODIFY BYLAWS Article III, Section 3 entitled, "Duties of Officers." Said modification, to be made on Page 9 of the Bylaws, Exhibit D of the Declaration as recorded in Portage County Records Volume 1002, Page 1036 et seq., is as follows (deleted language crossed-out; new language underlined):

### Section 3. Duties of Officers.

The President shall conduct all meetings of the Association and the Board; the ~~Secretary-Treasurer~~ shall act in the absence of the President, ~~and~~ the ~~Secretary-Treasurer~~ shall keep the minutes of the Association and Board meetings, and the Treasurer shall handle the financial affairs of the Association, including deposit of funds, shall write and sign checks for the legitimate expenses of the Association as authorized by the Board, and prepare and maintain the records required by Revised Code Section 5311.09.

Any conflict between these provisions and any other provisions of the Declaration and Bylaws shall be interpreted in favor of this amendment



splitting the office of Secretary-Treasurer; provided, further, that any remaining reference(s) to "Secretary-Treasurer" shall be interpreted as "Secretary." Upon the recording of this amendment, only owners of record at the time of such filing shall have standing to contest the validity of the amendment, whether on procedural, substantive or any other grounds, provided further that any such challenge shall be brought in the court of common pleas within one year of the recording of the amendment.

AMENDMENT E

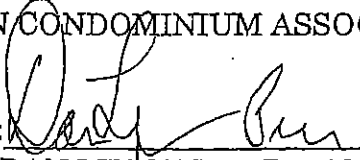
INSERT a new BYLAWS ARTICLE II, SECTION 5, Paragraph (a), entitled "Borrowing." Said addition, to be made on Page 5 of the Bylaws, Exhibit D of the Declaration as recorded in Portage County Records Volume 1002, Page 1036 et seq., is as follows:

(a) Borrowing. The Board, on behalf of the Association, shall also be empowered to borrow money, assign the Association's right to future income, including the right to receive and collect common assessments, and issue, sell or pledge notes, bonds or other evidences of indebtedness of the Association as collateral for any monies borrowed, and execute related documents for same; provided such borrowing is limited to expenditures for the insurance of, maintenance, repair, or replacement of, or capital additions or improvements as approved by the members in accordance with the Bylaws, to the Condominium Property.

Any conflict between this provision and any other provision in the Declaration and Bylaws shall be interpreted in favor of this provision giving the Board, on behalf of the Association, the authority to borrow funds for limited purposes. Upon the recording of this amendment, only Unit Owners of record at the time of such filing shall have standing to contest the validity of the amendment, whether of procedural, substantive or any other grounds, provided further that any such challenge shall be brought within the court of common pleas one year of the recording of the Amendment.

IN WITNESS WHEREOF, the said The Gardens of Walden Condominium Association has caused the execution of this instrument this 15<sup>th</sup> day of August, 2003.

THE GARDENS OF WALDEN CONDOMINIUM ASSOCIATION


By:   
DAN LIPMAN, its President

By:   
SHERYL SMITH, its Secretary

STATE OF OHIO )  
 ) SS  
COUNTY OF PORTAGE )

BEFORE ME, a Notary Public, in and for said County, personally appeared the above named The Gardens of Walden Condominium Association, by its President and its Secretary, who acknowledged that they did sign the foregoing instrument, on Page 10 of 12, and that the same is the free act and deed of said corporation and the free act and deed of each of them personally and as such officers.

IN WITNESS WHEREOF I have hereunto set my hand and official seal in Aurora, Ohio, this 15<sup>th</sup> day of August, 2003.

  
\_\_\_\_\_  
NOTARY PUBLIC  
Robin C. Gray, Notary Public  
State of Ohio  
My Commission Expires 3/16/2004  
Notary #99NT0110

This instrument prepared by:  
KAMAN & CUSIMANO, Attorneys at Law  
50 Public Square  
600 Terminal Tower  
Cleveland, Ohio 44113  
(216) 696-0650

*EMMK*  
BOHNIÉ M. HOWE  
PORTAGE CO. RECORDER

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**INDEXED**

AMENDMENTS TO THE  
DECLARATION OF CONDOMINIUM OWNERSHIP  
...  
FOR  
THE GARDENS OF WALDEN CONDOMINIUM ✓

PLEASE CROSS MARGINAL REFERENCE WITH THE DECLARATION OF CONDOMINIUM OWNERSHIP FOR THE GARDENS OF WALDEN CONDOMINIUM RECORDED AT VOLUME 1002, PAGE 1036 ET SEQ. OF THE PORTAGE COUNTY RECORDS.

**AMENDMENTS TO THE  
DECLARATION OF CONDOMINIUM OWNERSHIP FOR  
THE GARDENS OF WALDEN CONDOMINIUM**

WHEREAS, the Declaration of Condominium Ownership for The Gardens of Walden Condominium (the "Declaration") and the Bylaws of The Gardens of Walden Condominium Association (the "Bylaws"), Exhibit D to the Declaration, were recorded at Portage County Records Volume 1002, Page 1036 et seq., and

WHEREAS, Section 5311.05(E)(1) of the Ohio Revised Code, as amended on July 20, 2004, authorizes the Board of Directors, without a vote of the Owners, to amend the Declaration "to bring the Declaration in compliance with this Chapter," and

WHEREAS, the Board of Directors approved the following matters to be modified (the "Amendments") in order to bring the Declaration into compliance with Ohio Revised Code Chapter 5311, and

WHEREAS, the proceedings necessary to amend the Declaration as permitted by Chapter 5311 of the Ohio Revised Code and the Declaration of Condominium Ownership for Gardens of Walden Condominium have in all respects been complied with.

NOW THEREFORE, the Declaration of Condominium Ownership for Gardens of Walden Condominium is hereby amended by the Board of Directors as follows:

- (1) All references in the Declaration and Bylaws to the term "Common Areas" or "Common Areas and Facilities" shall be replaced with the term "Common Elements."
- (2) All references in the Declaration and Bylaws to the term "Limited Common Areas" or "Limited Common Areas and Facilities" shall be replaced with the term "Limited Common Elements."
- (3) All references in the Declaration and Bylaws to the term "Board of Managers" shall be replaced with the term "Board of Directors."
- (4) INSERT a new SECTION E, entitled "Enforcement Assessments," to the end of DECLARATION ARTICLE XIV. Said new addition, to be added on Page 27 of the Declaration, as recorded at Portage County Records Volume 1002, Page 1036 et seq., is as follows:

E. Enforcement Assessments. In accordance with Ohio Revised Code Section 5311.081(B)(12), the Board shall have the authority to impose interest and administrative late fees for the late payment of Assessments; impose returned check charges; and, in accordance with the procedure

outlined in Ohio Revised Code Section 5311.081(C)(1), impose reasonable enforcement Assessments for violations of the Declaration, the Bylaws, and the rules of the Association, and reasonable charges for damage to the Common Elements.

(5) INSERT a new 2<sup>nd</sup> PARAGRAPH to the end of DECLARATION ARTICLE VIII, SECTION D, entitled "Lien of Association." Said new addition, to be added on Page 17 of the Declaration, as recorded at Portage County Records Volume 1002, Page 1036 et seq., is as follows:

In accordance with Ohio Revised Code Section 5311.18(A)(1)(b), the Association has a lien upon each Unit's ownership interest for any unpaid interest, administrative late fees, enforcement Assessments, and collection costs, attorney's fees, and paralegal fees.

(6) INSERT a new PARAGRAPH to the end of DECLARATION ARTICLE III, SECTION B(11), entitled "Rental of Units." Said new addition, to be added on Page 5 of the Declaration, as recorded at Portage County Records Volume 1002, Page 1036 et seq., is as follows:

In accordance with Ohio Revised Code Section 5311.19(B), the Association may initiate eviction proceedings, pursuant to Chapters 5321 and 1923 of the Revised Code, to evict a tenant. The action shall be brought by the Association, as the Unit Owner's Agent, in the name of the Unit Owner. In addition to any procedures required by Chapters 5321 and 1923 of the Revised Code, the Association shall give the Unit Owner at least ten days written notice of the intended eviction action. The costs of any eviction action, including reasonable attorney's fees, shall be charged to the Unit Owner and shall be the subject of a special Assessment against the offending Unit and made a lien against that Unit.

(7) DELETE the 4<sup>th</sup> SENTENCE OF BYLAWS ARTICLE VI, SECTION 1, entitled "Obligation of Owners to Pay Assessments." Said deletion, to be made on Page 14 of the Bylaws, Exhibit D of the Declaration, as recorded at Portage County Records Volume 1002, Page 1036 et seq., is as follows (deleted language is struck-through):

~~The Developer will assume the obligations of a unit owner in its capacity as owner of condominium ownership interests not yet sold, including, without limitation, the obligation to pay common expenses attaching to such interest, from the date the Declaration is filed for record.~~

**INSERT a new PARAGRAPH to the end of BYLAWS ARTICLE VI, SECTION 1, entitled "Obligation of Owners to Pay Assessments." Said new addition, to be added on Page 14 of the Bylaws, Exhibit D of the Declaration, as recorded at Portage County Records Volume 1002, Page 1036 et seq., is as follows:**

**In accordance with Ohio Revised Code Section 5311.18(A)(2), the Association shall credit payments made by a Unit Owner in the following order of priority:**

- (1) First, to interest owed to the Association;**
- (2) Second, to administrative late fees owed to the Association;**
- (3) Third, to collection costs, attorney's fees, and paralegal fees incurred by the Association; and**
- (4) Fourth, to the principal amounts the Unit Owner owes to the Association for the common expenses or enforcement Assessments chargeable against the Unit.**

**(8) INSERT a new 2<sup>nd</sup> PARAGRAPH to BYLAWS ARTICLE VI, SECTION 9, entitled "Remedies for Failure to Pay Assessments." Said new addition, to be added on Page 17 of the Declaration, as recorded at Portage County Records Volume 1002, Page 1036 et seq., is as follows:**

**In accordance with Ohio Revised Code Section 5311.081(B)(18), when a Unit Owner is delinquent in the payment of Assessments for more than thirty (30) days, the Board may, by a majority vote, suspend the voting privileges of the owner and/or right of the occupants to use the recreational facilities.**

**(9) INSERT a new 2<sup>nd</sup> PARAGRAPH to the end of BYLAWS ARTICLE V, SECTION 3, entitled "Special Services." Said new addition, to be added on Page 12 of the Bylaws, Exhibit D of the Declaration, as recorded at Portage County Records Volume 1002, Page 1036 et seq., is as follows:**

**In accordance with Ohio Revised Code Section 5311.081(B)(15), the Board may impose reasonable charges to the Unit Owner for providing copies of the Declaration, Bylaws or amendments thereto as well as reasonable charges for the handling of re-financing and/or resale documentation, and/or statements of unpaid Assessments.**

(10) INSERT a new SECTION B(12), entitled "Owner/Resident Information," to DECLARATION ARTICLE III. Said new addition, to be added on Page 5 of the Declaration, as recorded at Portage County Records Volume 1002, Page 1036 et seq., is as follows:

12) Owner/Resident Information. In accordance with Ohio Revised Code Section 5311.09(A)(2) and (3), each Unit Owner shall, within thirty (30) days of the recording of this Amendment or within thirty (30) days of title transferring to the Unit Owner, provide to the Association the Unit Owner's and/or all occupants' names, home and business mailing addresses, home and business telephone numbers, and the name, business address and business telephone number of any person who manages the Unit as an agent of that Owner. Any change in the information shall be provided to the Board, in writing, within thirty (30) days of said change.

(11) INSERT a new 2<sup>nd</sup> SENTENCE to the end of BYLAWS ARTICLE II, SECTION 7, entitled "Regular Meeting." Said new addition, to be added on Page 6 of the Bylaws, Exhibit D of the Declaration, as recorded at Portage County Records Volume 1002, Page 1036 et seq., is as follows:

In accordance with Ohio Revised Code Section 5311.08(A)(4)(a), any Board meeting may be held in person or by any method of communication, including electronic or telephonic communication, provided that each Board member can hear, participate and respond to every other Board member.

(12) INSERT a new 2<sup>nd</sup> PARAGRAPH to BYLAWS ARTICLE II, SECTION 5, entitled "Powers and Duties of the Board," and INSERT new SUBPARAGRAPHS (a), (b), (c), (d), (e), (f), (g) and (h), thereafter. Said new additions to be added on Page 5 of the Bylaws, Exhibit D of the Declaration, as recorded at Portage County Records Volume 1002, Page 1036 et seq., is as follows:

In accordance with Ohio Revised Code Section 5311.081(B), in addition to all other powers enumerated herein, the Board may exercise all powers of the Association, including the power to do the following:

(a) Hire and fire attorneys, accountants, and other independent contractors and employees that the Board determines are necessary or desirable in the management and/or operation of the Condominium Property and the Association;

(b) Commence, defend, intervene in, settle, or compromise any civil, criminal, or administrative action or proceeding that is in the name of, or threatened against, the Association, the Board, or the

Condominium Property, or that involves two or more Unit Owners and relates to matters affecting the Condominium Property;

(c) Enter into contracts and incur liabilities relating to the operation of the Condominium Property;

(d) Adopt rules that regulate the use or occupancy of Units, the maintenance, repair, replacement, modification, and appearance of Units, Common Elements, and Limited Common Elements when the actions regulated by those rules affect Common Elements or other Units;

(e) Grant easements, leases, licenses, and concessions through or over the Common Elements;

(f) Impose and collect fees or other charges for the use, rental, or operation of the Common Elements or for services provided to Unit Owners;

(g) Purchase insurance and fidelity bonds the Board considers appropriate or necessary; and

(h) Invest excess funds in investments that meet standards for fiduciary investments under Ohio law.

Any conflict between the above provisions and any other provisions of the Declaration and Bylaws shall be interpreted in favor of the above amendments. Upon the recording of these amendments, only Unit Owners of record at the time of such filing shall have standing to contest the validity of these amendments, whether on procedural, substantive or any other grounds, provided further that any such challenge shall be brought in the court of common pleas within one year of the recording of the amendments.

IN WITNESS WHEREOF, the said The Gardens of Walden Condominium Association has caused the execution of this instrument this 25 day of MAY, 2005.

✓  
THE GARDENS OF WALDEN CONDOMINIUM ASSOCIATION

By: Terry Klebes, President  
TERRY KLEBES, its President



STATE OF OHIO )  
                  *GEauga* )     SS  
COUNTY OF PORTAGE )

BEFORE ME, a Notary Public, in and for said County, personally appeared the above named The Gardens of Walden Condominium Association, by Terry Klebes, its President, who acknowledged that he did sign the foregoing instrument, on Page 6 of 7, and that the same is the free act and deed of said corporation and the free act and deed of him personally and as such officer.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal in BAINBRIDGE Ohio, this 25<sup>th</sup> day of MAY, 2005.

*Nancy D. Catalano*  
NOTARY PUBLIC

NANCY D. CATALANO, Notary Public  
State of Ohio, Cuyahoga County  
My Commission Expires June 14, 2008

X This instrument prepared by:  
KAMAN & CUSIMANO, Attorneys at Law  
50 Public Square  
600 Terminal Tower  
Cleveland, Ohio 44113  
(216) 696-0650



SONNIE M. HOWE  
PORTAGE CO. RECORDER

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**INDEXED**

AMENDMENT TO THE  
DECLARATION OF CONDOMINIUM OWNERSHIP  
FOR  
THE GARDENS OF WALDEN CONDOMINIUM ✓

PLEASE CROSS MARGINAL REFERENCE WITH THE DECLARATION OF  
CONDOMINIUM OWNERSHIP FOR THE GARDENS OF WALDEN  
CONDOMINIUM RECORDED AT VOLUME 1002, PAGE 1036 ET SEQ. OF  
THE PORTAGE COUNTY RECORDS.

**AMENDMENT TO THE**  
**DECLARATION OF CONDOMINIUM OWNERSHIP FOR**  
**THE GARDENS OF WALDEN CONDOMINIUM**

**WHEREAS**, the Declaration of Condominium Ownership for The Gardens of Walden Condominium (the "Declaration") and The Gardens of Walden Condominium Association Bylaws (the "Bylaws"), Exhibit D to the Declaration, were recorded at Portage County Records Volume 1002, Page 1036 et seq., and

**WHEREAS**, The Gardens of Walden Condominium Association (the "Association") is a corporation consisting of all Unit Owners in the Gardens of Walden and as such is the representative of all Unit Owners, and

**WHEREAS**, Article XIII of said Declaration authorizes amendments to the Declaration and Bylaws Article XI authorizes amendments to the Bylaws, and

**WHEREAS**, Unit Owners representing at least 75% of the Association's current voting power, based on ownership interests, have executed instruments in writing setting forth specifically the matter to be modified (the "Amendment"), and

**WHEREAS**, the Association has in its records the signed, written consents to the Amendment signed by Unit Owners representing 76.82% of the Association's voting power as of September 26, 2011, and

**WHEREAS**, the Association has in its records the power of attorney signed by Unit Owners representing 76.82% of the Association's voting power authorizing the Association's officers to execute the Amendment on their behalf, and

**WHEREAS**, attached hereto as Exhibit A is an Affidavit of the Association's President that copies of the Amendment will be mailed by certified mail to all mortgagees on the records of the Association once the Amendment is recorded with the Portage County Recorder's Office and that Unit Owners representing at least 75% of the Association's voting power affirmatively approved the Amendment, in writing, and such approval is filed with the Association's Secretary, and

WHEREAS, the proceedings necessary to amend the Declaration as required by Chapter 5311 of the Ohio Revised Code and the Declaration have in all respects been complied with.

NOW THEREFORE, the Declaration of Condominium Ownership for The Gardens of Walden Condominium is hereby amended by the following:

INSERT A SECOND SENTENCE TO DECLARATION ARTICLE VI, SECTION A, PARAGRAPH 1 entitled, "By the Association." Said insertion, to be made on Page 9 of the Declaration, as recorded at Portage County Records, Volume 1002, Page 1036 et seq., is as follows (deleted language is crossed-out; new language is underlined):

1) By the Association - The Association, at its expense, shall be responsible for the maintenance, repair and replacement of those portions of each Unit which contribute to the support of the building, excluding, however, interior walls, ceilings, floor surfaces and the cleaning and maintenance of flues, but including the exterior walls, roof and driveways. Furthermore, the Association shall not be responsible for the maintenance, repair, and/or replacement of any utility drains, lines, and pipes, and any other utility service facilities that serve only one Unit and is located in the Unit, Limited Common Elements, or Common Elements.

INSERT A SECOND SENTENCE TO DECLARATION ARTICLE VI, SECTION A, PARAGRAPH 2(a). Said insertion, to be made on Page 9 of the Declaration, as recorded at Portage County Records, Volume 1002, Page 1036 et seq., is as follows (deleted language is crossed-out; new language is underlined):

a) To maintain, repair and replace at his expense all portions of his Unit and the L.C.E. appertaining thereto, and all installations in said Unit and the L.C.E. appertaining thereto of such appliances, heating, plumbing, electrical and air conditioning fixtures or installations, ~~and~~ Furthermore, the Unit Owner shall be responsible for the maintenance, repair, and replacement of any other utility service facilities and utility drains, lines, and pipes located within the Unit boundaries, and the L.C.E. appertaining thereto, and/or Common Elements but serves only his Unit; said Unit Owner

shall also maintain, repair and replace at his expense any air conditioning and/or heating apparatus located outside his Unit which apparatus serves his Unit and the L.C.E. appertaining thereto.

Any conflict between this provision and any other provisions of the Declaration and Bylaws shall be interpreted in favor of this amendment making the individual Unit Owners responsible for the maintenance, repair, and replacement of the utility drains, lines, and pipes serving their Units. The invalidity of any part of the above provision, shall not impair or affect in any manner the validity, enforceability, or effect the remainder of the provision. Upon the recording of this amendment, only Unit Owners of record at the time of such filing shall have standing to contest the validity of the amendment, whether on procedural, substantive or any other grounds, provided further that any such challenge shall be brought in the court of common pleas within one year of the recording of the amendment.

IN WITNESS WHEREOF, the said The Gardens of Walden Condominium Association has caused the execution of this instrument this 31<sup>st</sup> day of October, 2011.

✓  
THE GARDENS OF WALDEN CONDOMINIUM ASSOCIATION

By: Bill Morris  
BILL MORRIS, its President

By: George Schumacher  
GEORGE SCHUMACHER, its Secretary

STATE OF OHIO )

COUNTY OF Summit )

SS

BEFORE ME, a Notary Public, in and for said County, personally appeared the above named The Gardens of Walden Condominium Association, by its President and its Secretary, who acknowledged that they did sign the foregoing instrument, on Page 4 of 6, and that the same is the free act and deed of said corporation and the free act and deed of each of them personally and as such officers.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal in Stow, Ohio, this 31 day of October, 2011.

Ronald Lindeen  
NOTARY PUBLIC

Ronald Lindeen  
Resident Summit County  
Notary Public, State of Ohio  
My Commission Expires: 03/24/2015

Place notary stamp/seal here:



This instrument prepared by:  
KAMAN & CUSIMANO, LLC, Attorneys at Law  
2000 Terminal Tower  
50 Public Square  
Cleveland, Ohio 44113  
(216) 696-0650

**EXHIBIT A - AFFIDAVIT**

STATE OF OHIO )  
COUNTY OF Summit ) SS

**BILL MORRIS**, being first duly sworn, states as follows:

1. He is the duly elected and acting President of The Gardens of Walden Condominium Association.
2. He caused copies of the Amendment to the Declaration to be mailed by certified mail to all mortgagees having bona fide liens of record against any Unit Ownerships of whose mortgage interests notice had been given to the Association.
3. The Association received the signed, written consents of Unit Owners representing 76.82% of the Association's voting power in favor of the Amendment to the Declaration in accordance with the provisions of Declaration Article XIII and caused such signed, written consents to be filed with the Secretary for The Gardens of Walden Condominium Association.
4. Further affiant sayeth naught.

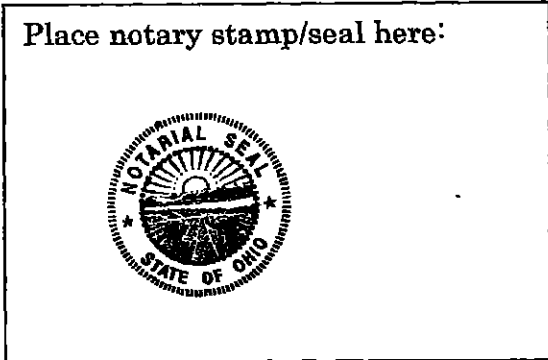
Bill Morris  
BILL MORRIS, President

BEFORE ME, a Notary Public, in and for said County, personally appeared the above named **BILL MORRIS** who acknowledges that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal in Stow, Ohio, this 31 day of October, 2011.

Ronald Lindeen  
NOTARY PUBLIC

Ronald Lindeen  
Resident Summit County  
Notary Public, State of Ohio  
My Commission Expires: 03/24/2015





*Enc 2*  
BONNIE M. HOWE  
PORTAGE CO. RECORDER

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**INDEXED**

AMENDMENT TO THE

*X Keman & Cusimano*

DECLARATION OF CONDOMINIUM OWNERSHIP

FOR

THE GARDENS OF WALDEN CONDOMINIUM



PLEASE CROSS MARGINAL REFERENCE WITH THE DECLARATION OF CONDOMINIUM OWNERSHIP FOR THE GARDENS OF WALDEN CONDOMINIUM RECORDED AT VOLUME 1002, PAGE 1036 ET SEQ., OF THE PORTAGE COUNTY RECORDS.

**AMENDMENT TO THE  
DECLARATION OF CONDOMINIUM OWNERSHIP FOR  
THE GARDENS OF WALDEN CONDOMINIUM**

**WHEREAS**, the Declaration of Condominium Ownership for The Gardens of Walden Condominium (the "Declaration"), together with all Exhibits was recorded at Portage County Records Volume 1002, Page 1036 et seq., and

**WHEREAS**, The Gardens of Walden Condominium Association (the "Association") is a corporation consisting of all Unit Owners in Gardens of Walden and as such is the representative of all Unit Owners, and

**WHEREAS**, Article XIII of said Declaration authorizes amendments to the Declaration, and

**WHEREAS**, this Amendment concerns the addition of a room to Unit 18-J, which is presently owned by Michael Fritz, and

**WHEREAS**, Michael Fritz delivered the consents for the Amendment to all Unit Owners of record and obtained signed, written consents from Unit Owners exercising 100% of the voting power of the Association setting forth the specific language of the Amendment as required under Article XIII of the Declaration as verified in the Affidavit attached hereto as Exhibit B, and

**WHEREAS**, the Association has in its records the consents to the Amendment signed by 100% of the Unit Owners as obtained and collected by Michael Fritz, and

**WHEREAS**, the Association has in its records the power of attorney signed by Unit Owners representing 100% of the Association's voting power authorizing the Association's officers to execute the Amendment on their behalf, and

**WHEREAS**, attached hereto as Exhibit C is an Affidavit of the Association's President that copies of the Amendment will be mailed by certified mail to all mortgagees on the records of the Association once the Amendment is recorded with the Portage County Recorder's County Recorder's Office, and

**WHEREAS**, the proceedings necessary to amend the Declaration as required by Chapter 5311 of the Ohio Revised Code and the Declaration have in all respects been complied with.

**NOW THEREFORE**, the Declaration of Condominium Ownership for The Gardens of Walden Condominium Association is hereby amended by the following:

INSERT a new PARAGRAPH 3 to DECLARATION ARTICLE IV, Section A, entitled "Buildings." Said new addition, to be added on Page 6 of the Declaration, recorded at Portage County Records Volume 1002, Page 1036 et seq., is as follows:

3) In accordance with Ohio Revised Code Section 5311.04(G), the layout and dimensions of Unit 18-J are hereby modified to include the addition of a three (3) season sun room to the Unit as shown on Exhibit "A" to this Amendment, which is marked "Unit 18-J Addition." All interior and exterior components, individually and collectively, of said sun room shall be part of Unit 18-J. The Owner of Unit 18-J shall in turn be responsible for any and all maintenance, repair, and/or replacement, as well as insuring, of the said sun room in its entirety. If any part of the sun room needs to be temporarily moved or relocated to permit the Association to maintain, repair, or replace any part of the Common Elements, such movement or relocation shall be done at the Unit Owner's expense.

Exhibit "A," which is to be filed with the Association's records and may be attached and incorporated to this Amendment by reference only, is hereby considered a supplement to the Drawings for the said Unit that were originally filed with the Portage County Records as part of the Seventh Amendment to the Gardens of Walden Condominium at Volume 36, Page 16 et seq. The addition of the said sun room to said Unit shall have no effect on the percentage of ownership interest for said Unit or any other Unit.

Any conflict between this provision and any other provisions of the Declaration and Bylaws shall be interpreted in favor of this Amendment providing for the expansion of the said Unit as described above. Upon the passage of this amendment, only Unit Owners of record at the time shall have standing to contest the validity of the amendment, whether on procedural, substantive or any other grounds, provided further that any such challenge shall be brought in the court of common pleas within one year of the recording of the amendment.



# EXHIBIT A

EXISTING SKYLIGHTS.  
MAINTAIN SEPARATION  
FROM RIDGE

2'-3 3/4"  
4 3/4"

WOOD FASCIA TO  
MATCH EXISTING

NEW BOARD AND  
BATTEN SIDING TO  
MATCH EXISTING

NEW LANDING AND  
STEPS BY OTHERS

EXISTING GRADE

EXISTING BO  
AND BATTEN  
SIDING TO RE

← PROPOSED ADDITION | EXISTING RE →

**REAR ELEVATION**

1/4" = 1'-

**EXHIBIT B**

**AFFIDAVIT**

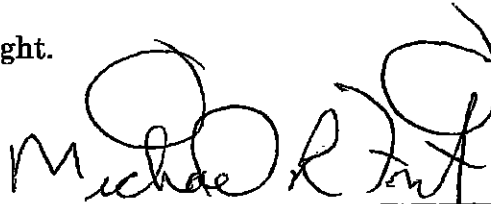
STATE OF OHIO )

COUNTY OF Portage )

SS

MICHAEL FRITZ, being first duly sworn, states as follows:

1. He is the current Unit Owner of Unit 18-J in The Gardens of Walden Condominium Association.
2. He caused the consents for the Amendment to be delivered all Unit Owners of record.
3. He obtained signed, written consents from Unit Owners of record exercising 100% of the voting power of the Association setting forth the specific language of the Amendment as required under Article XIII of the Declaration.
4. The Amendment was subsequently signed and returned to the Association by 100% of such Unit Owners.
5. Further affiant sayeth naught.



MICHAEL FRITZ, Unit Owner of Unit 18-J

BEFORE ME, a Notary Public, in and for said County, personally appeared the above named MICHAEL FRITZ who acknowledges that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal in Aurora, Ohio, this 1st day of August, 2007.

Monica Noble  
NOTARY PUBLIC

MONICA NOBLE, NOTARY PUBLIC  
STATE OF OHIO  
MY COMMISSION EXPIRES AUG. 21, 2008

EXHIBIT C

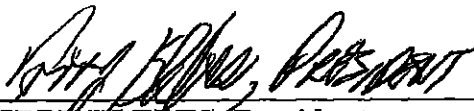
AFFIDAVIT

STATE OF OHIO )  
 )  
COUNTY OF Portage )

SS

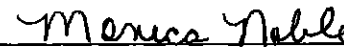
TERRY KLEBES, being first duly sworn, states as follows:

1. He is the duly elected and acting President of The Gardens of Walden Condominium Association.
2. He caused copies of the Amendment to the Declaration to be mailed by certified mail to all mortgagees having bona fide liens of record against any Unit Ownerships of whose mortgage interests notice had been given to the Association.
3. Further affiant sayeth naught.

  
 \_\_\_\_\_  
 TERRY KLEBES, President

BEFORE ME, a Notary Public, in and for said County, personally appeared the above named TERRY KLEBES who acknowledges that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal in Aurora, Ohio, this 1st day of August, 2007.

  
 \_\_\_\_\_  
 NOTARY PUBLIC

MONICA NOBLE, NOTARY PUBLIC  
STATE OF OHIO  
MY COMMISSION EXPIRES AUG. 21, 2008







W.M. Y&C  
LORI CALCEI  
PORTAGE CO. RECORDER

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AMENDMENT TO THE  
DECLARATION OF CONDOMINIUM OWNERSHIP  
FOR  
THE GARDENS OF WALDEN CONDOMINIUM

PLEASE CROSS MARGINAL REFERENCE WITH THE DECLARATION OF  
CONDOMINIUM OWNERSHIP FOR THE GARDENS OF WALDEN  
CONDOMINIUM RECORDED AT VOLUME 1002, PAGE 1036 ET SEQ. FOR  
THE PORTAGE COUNTY RECORDS. 6

**AMENDMENT TO THE  
DECLARATION OF CONDOMINIUM OWNERSHIP FOR  
THE GARDENS OF WALDEN CONDOMINIUM**

**WHEREAS**, the Declaration of Condominium Ownership for The Gardens of Walden Condominium (the "Declaration") was recorded at Portage County Records, Volume 1002, Page 1036 et seq., and

**WHEREAS**, The Gardens of Walden Condominium Association (the "Association") is a corporation consisting of all Unit Owners in Gardens of Walden Condominium and as such is the representative of all Unit Owners, and

**WHEREAS**, Declaration Article XIII authorizes amendments to the Declaration, and

**WHEREAS**, Unit Owners representing at least 75% of the Association's current voting power, based on ownership interests, have executed instruments in writing setting forth specifically the matter to be modified (the "Amendment"), and

**WHEREAS**, the Association has in its records the signed, written consents to the Amendment signed by Unit Owners representing 76% of the Association's voting power as of April 19, 2017, and

**WHEREAS**, the Association has in its records the power of attorney signed by Unit Owners representing 76% of the Association's voting power authorizing the Association's officers to execute the Amendment on their behalf, and

**WHEREAS**, attached as Exhibit A is an Affidavit of the Association's President stating that copies of the Amendment will be mailed by certified mail to all mortgagees on the records of the Association once the Amendment is recorded with the Portage County Recorder's Office and that at least 75% of the Association's voting power signed acceptance to the Amendment and that said acceptance is on file with the Association, and

**WHEREAS**, the proceedings necessary to amend the Declaration as required by Chapter 5311 of the Ohio Revised Code and the Declaration have in all respects been complied with.

NOW THEREFORE, the Declaration of Condominium Ownership for The Gardens of Walden Condominium is amended by the following:

**DELETE DECLARATION ARTICLE III, SECTION B(11) entitled, "Rental of Units," in its entirety. Said deletion to be taken from Page 5 of the Declaration, as recorded at Portage County Records, Volume 1002, Page 1036 et seq. and as amended at Instrument No. 200514257**

**INSERT a new DECLARATION ARTICLE III, SECTION B(11) entitled, "Leasing of Units." Said new addition, to be added on Page 5 of the Declaration, as recorded at Portage County Records, Volume 1002, Page 1036 et seq., is as follows:**

11) Leasing of Units - To create a community of resident Unit Owners, to remain within mortgagee owner-occupancy limitations, and to further protect and preserve the Declaration's fundamental purposes, including, without limitation, the preservation of property values and the well being of Unit Owners and occupants; no Unit can be leased, let, or rented, whether for monetary compensation or not, by a Unit Owner to others for business, speculative, investment, or any other purpose, subject to the following:

a) The above prohibition does not apply to:

1) Units that are occupied by the parent(s), child(ren), brother(s), or sister(s) of the Unit Owner; or,

2) any Unit Owner leasing or renting their Unit at the time of recording of this amendment with the Portage County Recorder's Office, and who has registered their Unit as being leased with the Association within 90 days of the recording of this amendment ("Grandfathered Unit"). The Unit Owner of a Grandfathered Unit can continue to enjoy the privilege of leasing that Unit, subject to the restrictions and requirements in subparagraph (c), until the current lease agreement for said Grandfathered Unit expires, at

which time the Unit will no longer be classified as a Grandfathered Unit.

b) To meet a special situation and to avoid a practical difficulty or other undue hardship, each Unit Owner has the right to lease their Unit to a specified renter/tenant for a one-time period of no more than 24 consecutive calendar months, subject to the restrictions and requirements as identified in subparagraphs c) and d) below. To exercise this right, the Unit Owner:

1) must provide the Board with prior, written notice at least 10 business days prior to the commencement of the lease;

2) cannot be more than 30 days delinquent in any assessment or other payment due to the Association. If the Unit Owner is more than 30 days delinquent, the Unit Owner may request and receive a one-time hardship exception only with the Board's prior written consent.

c) The leasing of any Unit in accordance with subparagraphs a) or b) above is subject to the following conditions and restrictions:

1) No Unit can be leased, let, or rented by the Unit Owner for transient purposes, which is defined to mean a rental for any period less than 12 full, consecutive calendar months, nor rented or leased to any business or corporate entity for the purpose of corporate housing or similar type usage. Sub-leasing of any Unit and the leasing of any individual rooms in a Unit, in whole or in part, is also prohibited.

2) The Association has at all times a limited power-of-attorney from and on behalf of any Unit Owner who is more than 30 days delinquent in the payment of any Assessment or charges due the

Association to collect the lease/rent payments directly from the delinquent Unit Owner's tenant/renter until such delinquency is paid in full.

3) All leases must be in writing and a copy provided to the Board prior to the beginning of the lease term. The renter/tenant must abide by the terms of the Declaration, Bylaws, and rules and regulations. When a Unit Owner leases their Unit, the Unit Owner relinquishes all amenity privileges, but continue(s) to be responsible for all obligations of ownership of their Unit and is jointly and severally liable with the renter/tenant to the Association for the conduct of the renter/tenant and any damage to property.

4) In accordance with Ohio law, the Association may initiate eviction proceedings to evict any tenant, for any violation of the Declaration, Bylaws, rules, or applicable laws, by the tenant, any occupant of the Unit, or the Unit Owner of the Unit. The action will be brought by the Association, as the Unit Owner's agent, in the name of the Owner. In addition to any procedures required by State law, the Association will give the Unit Owner(s) at least 10 days written notice of the intended eviction action. The costs of any eviction action, including reasonable attorneys' fees, will be charged to the Unit Owner(s) and the subject of a special Assessment against the offending Unit Owner and made a lien against that Unit.

d) Any land contract for the sale of a Unit must be recorded with the Portage County Recorder's Office and a recorded copy of the land contract must be delivered to the Board within 30 days of such recording. Any land contract not recorded is an impermissible lease.

e) The Board may adopt and enforce rules and definitions in furtherance, but not in contradiction of the above provisions, including, without limitation, rules to address and eliminate attempts to circumvent the meaning or intent of this Section B(11) and in furtherance of the preservation of Gardens of Walden as an owner-occupied community and against the leasing of Units for investment or other purposes. The Board further has full power and authority to deny the occupancy of any Unit by any person or family if the Board, in its sole discretion, determines that the Unit Owner of such Unit is intending or seeking to circumvent the meaning, purpose, or intent of this Section B(11).

Any conflict between this provision and any other provisions of the Declaration and Bylaws will be interpreted in favor of this restriction on the leasing of Units. The invalidity of any part of the above provision does not impair or affect in any manner the validity or enforceability of the remainder of the provision. Upon the recording of this amendment, only Unit Owners of record at the time of such filing have standing to contest the validity of this amendment, whether on procedural, substantive, or any other grounds, provided further that any such challenge must be brought in the court of common pleas within one year of the recording of this amendment.

The Gardens of Walden Condominium Association has caused the execution of this instrument this 16<sup>th</sup> day of May, 2017.

THE GARDENS OF WALDEN CONDOMINIUM ASSOCIATION

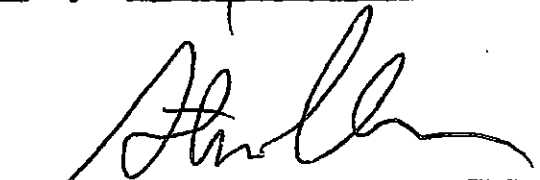
By:   
ROB CUSTER, its President

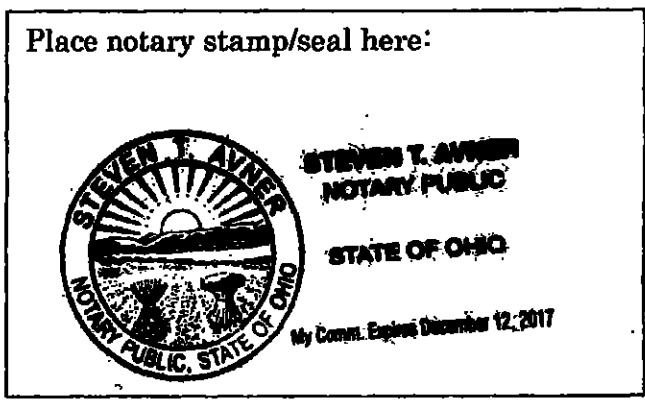
By:   
MARGARET KRINSKY, its Secretary

STATE OF OHIO )  
 )  
COUNTY OF CUYAHOGA ) SS

BEFORE ME, a Notary Public, in and for said County, personally appeared the above named The Gardens of Walden Condominium Association, by its President and its Secretary, who acknowledged that they did sign the foregoing instrument, on Page 6 of 8, and that the same is the free act and deed of said corporation and the free act and deed of each of them personally and as such officers.

16<sup>th</sup> I have set my hand and official seal in Cleveland, Ohio, this day of May, 2017.

  
\_\_\_\_\_  
NOTARY PUBLIC



This instrument prepared by:  
KAMAN & CUSIMANO, LLC, Attorneys at Law  
50 Public Square, Suite 2000  
Cleveland, Ohio 44113  
(216) 696-0650  
ohiocondolaw.com

EXHIBIT A

AFFIDAVIT

STATE OF OHIO )  
 )  
COUNTY OF CUYAHOGA ) SS

ROB CUSTER, being first duly sworn, states as follows:

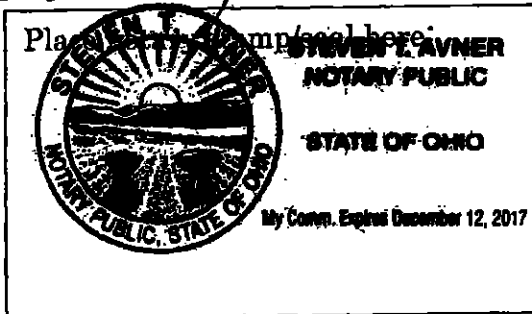
1. He is the duly elected and acting President of The Gardens of Walden Condominium Association.
2. He will cause copies of the Amendment to the Declaration to be mailed by certified mail to all mortgagees having bona fide liens of record against any Unit Ownerships of whose mortgage interests notice had been given to the Association once the Amendment is recorded with the Portage County Recorder's Office.
3. The Association received the signed, written consents of Unit Owners representing at least 75% of the Association's voting power signed acceptance of the Amendment and that said acceptance is on file with the Association.

Rob Custer  
ROB CUSTER, President

BEFORE ME, a Notary Public, in and for said County, personally appeared the above named ROB CUSTER who acknowledges that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have set my hand and official seal in Cleveland, Ohio, this 16<sup>th</sup> day of May, 2017.

Steve Lavner  
NOTARY PUBLIC







# **GARDENS OF WALDEN**

**By-Laws**

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EXHIBIT DTHE GARDENS OF WALDEN  
CONDOMINIUM ASSOCIATION  
BY-LAWS

The within By-Laws are executed and attached to the Declaration of The Gardens of Walden Condominium pursuant to Chapter 5311 of the Ohio Revised Code. Their purpose is to provide for the establishment of a Unit Owners Association for the government of the Condominium Property in the manner provided by the Declaration and by these By-Laws. All present or future owners or tenants or their employees, or any other person who might use the facilities of the Condominium Property in any manner shall be subject to the covenants, provisions or regulations contained in the Declaration and these By-Laws and shall be subject to any restrictions, conditions or regulations hereafter adopted by the Trustees which shall be called the Board of Managers of the Association. The mere acquisition or rental of any of the units located within the Condominium Property described in the Declaration, or the mere act of occupancy of any of the units will constitute acceptance and ratification of the Declaration and these By-Laws and the rules and regulations adopted pursuant thereto.

ARTICLE ITHE ASSOCIATIONSection 1. Name and Nature of Association.

The name of this Association shall be The Gardens of Walden Condominium Association, and its sole purpose shall be to manage, govern and control The Gardens of Walden Condominium, hereinafter sometimes referred to as Condominium, in accordance with the Declaration of said Condominium, and to carry out the purpose and intent of Chapter 5311 of the Ohio Revised Code.

Section 2. Membership.

Each unit owner, including The Walden Company Ltd., an Ohio Limited Partnership, which together with its successors and assigns is herein called "Developer", upon acquisition of title to a unit, shall be a member of The

Gardens of Walden Condominium Association, hereinafter sometimes referred to as the "Association". Such membership shall terminate upon the sale or other disposition by such member of his unit, at which time the new owner of such unit shall become a member of the Association.

Section 3. Voting Rights.

Each unit owner shall have voting power in proportion to such unit owner's percentage of interest in the common areas and facilities. This voting power can be exercised by the owner or owners of a unit, his or her heirs, assigns, devisees or personal representatives. If two or more persons own undivided interests in a unit, each may exercise the proportion of the voting power of all the owners of his unit that is equivalent to his proportionate interest in the unit.

Section 4. Meetings of Members.

(a) Annual Meeting. The first meeting of the unit owners shall be held in Portage County, Ohio, at a place and time determined by Developer. Said first meeting shall be held no later than the time that units to which twenty-five percent (25%) of the undivided interests in the common areas and facilities appertain have been sold and conveyed by Developer. For purposes of computing the individual interests referred to in this paragraph, those interests shall be computed by comparing the number of units sold and conveyed to the maximum number of units that may be created on the Condominium Property. There shall be annual meetings of the unit owners held in Portage County, Ohio, in the first calendar quarter of each year, commencing in the year following the first meeting. At the annual meeting, the unit owners shall elect the necessary member or members to the Board for the year ensuing. At the annual meeting, any matters concerning the welfare of the Condominium may be discussed and referred to the Board for proper action. At the annual meeting, the President and Secretary-Treasurer shall submit reports in writing for the year just ending, which report shall be read to the unit owners. The annual meeting shall be presided over and conducted by the President, or in his absence, the Secretary-Treasurer.

(b) Special Meetings. Special meetings may be called by the President or Secretary-Treasurer or by unit owners constituting at least twenty-five percent (25%) of the voting power by written notice,

mailed regular mail or personally delivered, to each unit owner at least five (5) days before the time and place for such meeting as shown in such notice. Notice of such meeting may be waived in writing by those entitled to notice. Special meetings shall be presided over and conducted by the President, or in his absence, the Secretary-Treasurer. Unless otherwise indicated in the notice thereof, any business may be transacted at any organizational, regular or special meeting.

(c) Quorum. To constitute a quorum at the Annual or any Special meeting, at least fifty percent (50%) of the voting power must be present at such meeting in person or by proxy.

(d) Proxy. Members may vote or act in person or by proxy. The person appointed as proxy need not be a member of the Association. Designation by a member or members of a proxy to vote or act on his or their behalf shall be made in writing to the Secretary-Treasurer of the Association and shall be revocable at any time.

(e) Actions Without a Meeting. All actions, except removal of officers, which may be taken at a meeting of the Association may be taken without a meeting with the unanimous consent in writing of all of the members of the Association. Such writing, signed by each member of the Association, shall be filed with the minutes and proceedings of the Association. Such writing may be circulated and signed by the unit owners in counterparts.

## ARTICLE II

### BOARD OF MANAGERS

#### Section 1. Initial Structure and Relinquishment of Developer Control.

The Board initially shall be those three (3) persons named as the initial Trustees pursuant to the provisions of the Articles of Incorporation of the Association, or such other person(s) as may from time to time be substituted by Developer. Until such time as Developer's control is relinquished as provided herein, Developer shall have the exclusive right to appoint and remove Board members and Association officers, and Developer shall exercise all powers and responsibilities otherwise assigned by law or by the Declaration and By-Laws to the Association, its officers or the Board of Managers.

No later than the time that units to which twenty-five percent (25%) of the undivided interests in the common areas and facilities appertain have been sold and conveyed by Developer, the unit owners shall meet and the unit owners other than Developer shall elect one (1) member of the Board of Managers. At this meeting Developer shall submit the resignation of one of the previously appointed Board members.

Within thirty (30) days after the earlier of (a) five (5) years from the date of the establishment of the Association or (b) the sale and conveyance to purchasers in good faith and for value, of units to which seventy-five percent (75%) of the undivided interests in the common areas and facilities appertain or (c) such time as Developer chooses to waive its right to appoint Board members, the Association shall meet and all unit owners, including Developer, shall elect three (3) Board members to replace all of those Board members earlier elected or appointed by the unit owners or Developer, respectively. The term of office of the three (3) Board members so elected shall be as follows:

One (1) Board member shall be elected for a term to expire at the annual meeting following his election.

One (1) Board member shall be elected for a term to expire at the second annual meeting following his election.

One (1) Board member shall be elected for a term to expire at the third annual meeting following his election.

Thereafter, all Board members elected shall serve three (3) year terms.

For purposes of computing the undivided interests referred to in this section, those interests shall be computed by comparing the number of units sold and conveyed to the maximum number of units that may be created. Since the maximum number of units that may be created is one hundred (100), the meeting prior to the sale and conveyance of twenty-five percent (25%) of the undivided interests shall occur prior to sale and conveyance of twenty-five (25) units. The meeting prior to sale and conveyance of seventy-five percent (75%) of the undivided interests shall occur prior to sale and conveyance of seventy-five (75) units.

Section 2. Number and Qualifications.

The Board shall consist of three (3) persons, all of whom, except as otherwise provided, must be owners and occupants of a unit. However, a spouse of a unit owner who is not the owner of any fee interest in the unit may be nominated and serve as an officer and member of the Board of Managers. No Board member appointed by Developer need be an owner or occupant of a unit.

Section 3. Election of Board Members; Vacancies.

The Board members shall be elected at each annual meeting of members of the Association or at a special meeting called for the purpose of electing Board members. At a meeting of members of the Association at which Board members are to be elected, only persons nominated as candidates shall be eligible for election as Board members and the candidates receiving the greatest number of votes shall be elected. In the event of the occurrence of any vacancy or vacancies in the Board, the vacancy created shall be filled by a special election held of the total membership to elect a member to fill the unexpired term of any vacancy. Said election to be otherwise as a regular election.

Section 4. Term of Office; Resignation.

Each Board member shall hold office for three (3) years and until his successor is elected, or until his earlier resignation, removal from office or death. Any Board member may resign at any time by oral statement to that effect made at a meeting of the Board or in a writing to that effect delivered to the Secretary of the Association, such resignation to take effect immediately or at such other time as the Board member may specify. Members of the Board shall serve without compensation.

Section 5. Powers and Duties of the Board.

The Board shall have the duty to direct the management of the operation of the Condominium Property and exercise the powers of the Association, except as otherwise provided in these By-Laws or in the Declaration, and shall have such powers as shall be delegated to it by the Association.



Section 6. Organizational Meeting.

Immediately after each annual meeting of members of the Association, the newly elected Board members and those Board members whose terms hold over shall hold an organizational meeting for the purpose of electing officers and transacting any other business. Notice of such meeting need not be given.

Section 7. Regular Meeting.

Regular meetings of the Board may be held at such times and places as shall be determined by a majority of the Board members, but at least four (4) such meetings shall be held during each fiscal year.

Section 8. Special Meeting.

Special meetings of the Board may be held at any time upon call by the President or any two (2) Board members. Written notice of the time and place of each such meeting shall be given to each Board member, either by personal delivery or by mail, telegram or telephone at least twenty-four (24) hours before the meeting, which notice need not specify the purposes of the meeting; provided, however, that attendance of any Board member at any such meeting, without protesting lack of proper notice prior to or at the commencement of the meeting, shall be deemed to be a waiver by him of notice of such meeting and such notice may be waived in writing, either before or after the holding of such meeting, by any Board member, which writing shall be filed with or entered upon the records of the meeting. Unless otherwise indicated in the notice thereof, any business may be transacted at any organizational, regular or special meeting. Provided the notice as provided herein is given and minutes of the meeting are kept and journalized in the Board Minute Book, meetings may be conducted by telephone or other telephone process allowing communication between all parties present.

Section 9. Actions Without a Meeting.

All actions, except removal of officers, which may be taken at a meeting of the Board, may be taken without a meeting with the unanimous consent in writing of all of the Board members. Such writing, signed by each Board member shall be filed with the minutes and proceedings of the Board.

Section 10. Quorum.

A quorum of the Board shall consist of a majority of the Board members then in office; provided that a majority of the Board members present at a meeting duly held, whether or not a quorum is present, may adjourn such meeting from time to time. If any meeting is adjourned, notice of such adjournment need not be given if the time and place to which such is adjourned are fixed and announced at such meeting. At each meeting of the Board at which a quorum is present, all questions and business shall be determined by a majority vote of those present, except as may be otherwise expressly provided in the Declaration or in these By-Laws.

Section 11. Removal.

At any regular or special meeting of the members of the Association duly called, at which a quorum shall be present, any one or more of the Board members may be removed. Any Board member whose removal has been proposed by the members of the Association shall be given an opportunity to be heard at such meeting.

Section 12. Bonding and Compensation.

The Board shall require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association and shall be a common expense. Members of the Board shall serve without compensation.

Section 13. Delegation of Authority; Professional Management.

The Board may delegate all or any portion of its authority to discharge its responsibilities to a managing agent. This delegation of authority and responsibility to a managing agent may be evidenced by one or more management contracts which may provide for the payment of reasonable compensation to such managing agent as a common expense, provided, however, that any agreement for professional management shall be terminable by the Association for cause on thirty (30) days written notice; shall be terminable by either party, without penalty, on no more than ninety (90) days written notice; shall not exceed one year unless renewed by agreement of the parties for successive one year periods; and shall be bona fide and commercially reasonable at the time entered

into under the circumstances then prevailing. Subject to the foregoing, nothing contained herein shall preclude Developer, or any other entity designated by Developer, from being employed as managing agent. The managing agent, or the Board if there is no managing agent, shall have the authority to enter into contracts with Developer or one or more other firms or corporations affiliated with Developer for the providing of management, maintenance and repair services, provided the same are bona fide and commercially reasonable to the unit owners at the time entered into under the circumstances then prevailing and are terminable by the Association, without cause and without penalty, on ninety (90) days written notice.

Section 14. Joint Facilities.

The Association shall have the authority to enter into an agreement with adjacent or nearby property owners to lease or otherwise share the use and expenses of certain facilities owned by or under the control of such property owners or owned by or under the control of this Association including, but not limited to, maintenance facilities and any recreation areas.

ARTICLE III

OFFICERS

Section 1. Election and Designation of Officers.

At the first meeting of the Board in each year (at which a quorum shall be present) held next after the annual meeting of the Unit Owners Association, the Board shall elect officers and employees as it shall determine. They may also appoint an executive committee or special committees. The officers of the Association shall be a President, Vice President and Secretary-Treasurer, all of whom shall be members of the Board.

Section 2. Term of Office, Removal, Vacancies.

The officers of the Association shall be elected for a term of one (1) year by the Board and serve until their successors are elected and qualified. Any officer or employee elected or appointed by the Board, other than that of a Board member, may be removed at any time upon a vote of a majority of the whole Board. Any vacancy in any office may be filled by the Board.

Section 3. Duties of Officers.

The President shall conduct all meetings of the Association and the Board; the Secretary-Treasurer shall act in the absence of the President, and the Secretary-Treasurer shall keep the minutes of the Association and Board meetings, shall handle the financial affairs of the Association, including deposits of funds, shall write and sign checks for the legitimate expenses of the Association as authorized by the Board, and prepare and maintain the records required by Revised Code Section 5311.09.

ARTICLE IV

MAINTENANCE AND IMPROVEMENTS

Section 1. Payments from Maintenance Funds.

The Association, for the benefit of all the owners, shall acquire and shall pay for out of the maintenance fund hereinafter provided for or billed directly by the person who provides the service or product to the unit owners, in proportion to each unit owners interest in the condominium, the following:

(a) Utility Service for Common Areas and Facilities. Water, sewer, waste removal, electricity, telephone, heat, power or any other necessary utility service for the common areas and facilities;

(b) Casualty Insurance. A policy or policies of fire insurance, with extended coverage, vandalism and malicious mischief endorsements as provided in the Declaration, the amount of which insurance shall be reviewed annually;

(c) Liability Insurance. A policy or policies insuring the Association, the members of the Board and the owners against any liability to the public or to the owners (of units and of the common areas and facilities, and their invitees or tenants) incident to the ownership and/or use of the common areas and facilities and units, as provided in the Declaration, the limits of which policy shall be reviewed annually;

(d) Workmen's Compensation. Workmen's compensation insurance to the extent necessary to comply with any applicable law;

(e) Wages and Fees for Services. The services of any person or firm employed by the Association, including without limitation, the services of a person or firm to act as a manager or managing agent for the Condominium Property, the services of any person or persons required for the maintenance of or operation of the Condominium Property or the enforcement of the Declaration and these By-Laws and for the organization, operation and enforcement of the rights of the Association.

(f) Care of Common Areas and Facilities. Landscaping, gardening, snow removal, painting, cleaning, tuck-pointing maintenance, decorating, repair and replacement of the common areas and facilities (but not including the limited common areas and facilities and the interior surfaces of the units, which the owner shall paint, clean, decorate, maintain and repair), the operation of swimming pools, tennis courts and other recreational facilities, and such furnishing and equipment for the common areas and facilities as the Association shall determine are necessary and proper, and the Association shall have the exclusive right and duty to acquire the same for the common areas and facilities.

(g) Additional Expenses. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance or assessments which the Association is required to secure or pay for pursuant to the terms of the Declaration and these By-Laws, or which in its opinion shall be necessary or proper for the maintenance and operation of the Condominium Property as a first class condominium project or for the enforcement of the Declaration and these By-Laws.

(h) Discharge of Mechanic's Liens. Any amount necessary to discharge any mechanic's lien or other encumbrances levied against the Condominium Property or against the common areas and facilities, rather than merely against the interests therein of particular owners, it being understood, however, that the foregoing authority shall not be in limitation of any statutory provisions relating to the same subject matter. Where one or more owners are responsible for the existence of such lien, they shall be jointly and severally liable for

the cost of discharging it and any costs incurred by the Association by reason of said lien or liens shall be specifically assessed to said owners.

(i) Certain Maintenance of Units. Maintenance and repair of any unit if such maintenance and repair is necessary, in the discretion of the Association, to protect the common areas and facilities, or any other portion of a building, and the owner or owners of said unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair is delivered by the Association to said owner or owners, provided that the Association shall levy special assessments against such owner for the cost of said maintenance or repair.

(j) Capital Additions and Improvements. The Association's powers hereinabove enumerated shall be limited in that the Association shall have no authority to acquire and pay for out of the maintenance fund any capital additions and improvements (other than for purposes of replacing or restoring portions of the common areas and facilities, subject to all the provisions of the Declaration and these By-Laws) having an annual total cost in excess of Five Hundred Dollars (\$500), nor shall the Association authorize any structural alterations, capital additions to, or capital improvements of the common areas and facilities requiring an expenditure in excess of Five Hundred Dollars (\$500) without in each case the prior approval of the members of the Association entitled to exercise a majority of the voting power of the Association.

(k) Certain Utility Services to Units. The Association may pay from the maintenance fund for water, waste removal and/or any utilities which are not separately metered or otherwise directly charged to individual owners. However, the Association may discontinue such payments at any time, in which case each owner shall be responsible for direct payment of his share of such expenses as shall be determined by the Board of the Association. The Association reserves the right to levy additional assessments against any owner to reimburse it for excessive use, as shall be determined by the Board, by such owner of any utility service, the expense of which is charged to the maintenance fund.

(l) Miscellaneous. The Association shall pay such other costs and expenses designated as "common expenses" in the Declaration and in these By-Laws.

(m) Use of Joint Facilities. The rent for or payment for the use of joint facilities contemplated by Article II, Section (14).

#### ARTICLE V

##### GENERAL POWERS OF THE ASSOCIATION

###### Section 1. Rules and Regulations.

The Association, by vote of the members entitled to exercise a majority of the voting power of the Association, may adopt such reasonable rules and regulations and from time to time amend the same supplementing the rules and regulations set forth in the Declaration and these By-Laws as it may deem advisable for the maintenance, conservation and beautification of the Condominium Property, and for the health, comfort, safety and general welfare of the owners and occupants of the Condominium Property. Written notice of such rules and regulations shall be given to all owners and occupants, and the Condominium Property shall at all times be maintained subject to such rules and regulations. In the event such supplemental rules and regulations shall conflict with any provisions of the Declaration or of these By-Laws, the provisions of the Declaration and of these By-Laws shall govern.

###### Section 2. No Active Business to be Conducted for Profit.

Nothing herein contained shall be construed to give the Association authority to conduct an active business for profit on behalf of all the owners or of any of them.

###### Section 3. Special Services.

The Association may arrange for the provision of any special services and facilities for the benefit of such owners and/or occupants as may desire to pay for the same, including without limitation, cleaning, repair and maintenance of units and provision of special recreational, educational or medical facilities. Reasonable fees for such special services and facilities shall be determined by the Board and may be charged directly to participating owners, or paid from the maintenance fund and levied as a special assessment due from the participants.

Section 4. Applicable Laws.

The Association shall be subject to and governed by the provisions of any statute adopted at any time and applicable to property submitted to the condominium form of ownership (including without limitation, Chapter 5311 of the Ohio Revised Code); provided, however, that all inconsistencies between or among the permissive provisions of any statute and any provision of the Declaration and these By-Laws, shall be resolved in favor of the Declaration and these By-Laws, and any inconsistencies between any provision of the Declaration and these By-Laws and the mandatory provisions of any statute applicable to an association formed to administer property submitted to the condominium form of ownership, shall be resolved in favor of the latter statute. In the event of any conflict or inconsistency between the provisions of the Declaration and the Articles or By-Laws of the Association, the terms and provisions of the Declaration shall prevail, and the owners and all persons claiming under them covenant to vote in favor of such amendments in the Articles or By-Laws as will remove such conflicts or inconsistencies.

Section 5. Association's Right to Enter Units.

The Association or its agents shall have the right of access to any unit when necessary in connection with any maintenance or construction for which the Association is responsible. Such right shall be exercised with as little inconvenience to the owners as practicable, and any damage caused thereby shall be repaired by the Association, at the expense of the maintenance fund. In the event of any emergency originating in or threatening any unit, the management agent or his representative or any other person designated by the Board may enter the unit immediately, whether the owner is present or not.

ARTICLE VI

DETERMINATION AND PAYMENT OF ASSESSMENTS

Section 1. Obligation of Owners to Pay Assessments.

It shall be the duty of every Unit owner to pay his proportionate share of the expenses of administration, maintenance and repair of the common areas and facilities and of the other expenses provided for herein. Such proportionate share shall be in the same ratio as his percentage of ownership in the common areas and facilities as set forth in the Declaration. Payment thereof shall be in such



amounts and at such times as may be determined by the Board of the Association, as hereinafter provided. The Developer will assume the obligations of a unit owner in its capacity as owner of condominium ownership interests not yet sold, including, without limitation, the obligation to pay common expenses attaching to such interest, from the date the Declaration is filed for record.

Section 2. Preparation of Estimated Budget.

Each year on or before December 1st, the Association shall estimate the total amount necessary to pay the cost of wages, materials, insurance, services and supplies which will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount considered by the Association to be necessary for a reserve for contingencies and replacements, and shall on or before December 15th, notify each owner in writing as to the amount of such estimate, with reasonable itemization thereof. Said "estimated cash requirement" shall be assessed to the owners according to each owner's percentage of ownership in the common areas and facilities as set forth in the Declaration. On or before January 1st, of the ensuing year and the first of each and every month of said year, each owner shall be obligated to pay to the Association, or as it may direct, one-twelfth (1/12th) of the assessment made pursuant to this paragraph. On or before the date of the annual meeting of each calendar year, the Association shall supply to all owners an itemized accounting of the maintenance expenses for the preceding calendar year actually incurred and paid together with a tabulation of the amounts collected pursuant to the estimates provided and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited according to each owner's percentage of ownership in the common areas and facilities to the next monthly installments due from owners under the current year's estimate, until exhausted, and any net shortage shall be added according to each owner's percentage of ownership in the common areas and facilities to the installments due in the succeeding six (6) months after rendering of the accounting.

Section 3. Reserve for Contingencies and Replacements.

The Association shall build up and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual estimate which may be necessary for the year, shall be charged first against such reserve. If said "estimated cash requirement" proves inadequate for any reason, including non-payment of any owner's assessment, the Association shall prepare an estimate of the additional cash requirements then necessary, or necessary for the balance of the year, which additional amount of each requirement shall be assessed to the owners according to each owner's percentage of ownership in the common areas and facilities. The Association shall serve notice of such further assessment on all owners by a statement in writing giving the amount and reasons therefor, and such further assessment shall become effective with the monthly maintenance payment which is due more than ten (10) days after the delivery or mailing of such notice of further assessments. All owners shall be obligated to pay the adjusted monthly amount.

Section 4. Budget for First Year.

When the First Board elected hereunder takes office, the Association shall determine the "estimated cash requirement", as hereinabove defined, for the period commencing thirty (30) days after said election and ending on December 31st of the calendar year in which said election occurs. Assessments shall be levied against the owners during said period as provided in Section (2) of this Article VI.

Section 5. Failure to Prepare Annual Budget.

The failure or delay of the Association to prepare or serve the annual or adjusted estimate on the owner shall not constitute a waiver or release in any manner of such owner's obligation to pay the maintenance costs and necessary reserves, as herein provided, whenever the same shall be determined, and in the absence of any annual estimate or adjusted estimate, the owner shall continue to pay the monthly maintenance charge at the existing monthly rate established for the previous period until the monthly maintenance payment which is due more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

Section 6. Books and Records of Association.

The Association shall keep full and correct books of account and the same shall be open for inspection by any owner or any representative of any owner duly authorized in writing, at such reasonable time or times during normal business hours, as may be requested by the owner. Upon ten (10) days notice to the Board any unit owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such owner.

Any mortgagee holding a mortgage lien covering a condominium unit and/or any portion of the common areas and facilities shall have the right to inspect the books and records of the Association upon reasonable notice to the Board of Managers at such reasonable time or times during normal business hours.

Section 7. Status of Funds Collected by Association.

All funds collected hereunder shall be held and expended solely for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all of the owners and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the use, benefit and account of all of the owners in proportion to each owner's percentage in the common areas and facilities as provided in the Declaration.

Section 8. Annual Audit.

The books of the Association shall be audited once a year by the Board, and such audit shall be completed prior to each annual meeting. If requested by two (2) members of the Board, such audit shall be made by a certified public accountant. In addition and at any time requested by the owners of at least fifty percent (50%) of the units, including Developer if it be an owner, the Board shall cause an additional audit to be made.

Section 9. Remedies for Failure to Pay Assessments.

If an owner is in default of the monthly payment of the aforesaid charges or assessments for thirty (30) days, the Association may bring suit to enforce collection thereof, or to foreclose the lien therefor as provided in the Declaration, and there shall be added to the amount due the cost of said suit, together with legal interest and

reasonable attorneys' fees to be fixed by the Court. To the extent permitted by the Declaration, any decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments, and interest, costs and fees as above provided shall be and become a lien or charge against the unit ownership of the owner involved when payable and may be foreclosed by an action brought in the name of the Association as in the case of foreclosure of liens against real estate, as provided in the Declaration. As provided in the Declaration, the members of the Board and their successors in office, acting on behalf of the other unit owners, shall have the power to bid on the interest so foreclosed at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Any encumbrancer may from time to time request in writing a written statement from the Board setting forth the unpaid common expenses with respect to the unit covered by his encumbrance and unless the request shall be complied with within fifteen (15) days, all unpaid common expenses which become due prior to the date of the making of such request shall be subordinate to the lien of such encumbrance. Any encumbrancer holding a lien on any unit may pay any unpaid common expenses payable with respect to such unit and upon such payment such encumbrancer shall have a lien on such unit for the amounts paid at the same rank as the lien of his encumbrance.

Section 10. Security Deposits from Certain Owners.

If in the judgment of the Board the equity interest of any owner (whether the original owner or a subsequent purchaser or transferee) in his unit at any time is not sufficient to assure realization (whether by foreclosure of the lien referred to in Section (9) above, or otherwise) of all assessments, charges or other sums which may be levied by the Association, then whether or not such owner shall be delinquent in the payment of such levies, the Association shall have the right to require such owner to establish and maintain a security deposit in an amount which the Board deems necessary for such purpose, provided, however, that such security deposit shall in no event exceed an amount which, when added to such owner's equity interest in the purchased unit, will equal twenty-five percent (25%) of the purchase price of the unit in question. In the event that any owner shall fail

to pay any assessments, charges or other sums which may be due here-  
under, or shall otherwise violate any provisions of Chapter 5311 of the  
Ohio Revised Code or any covenants, terms and conditions of the Declaration,  
the Association shall have the right, but not the obligation, to apply  
such security deposit in reduction of its alleged damages resulting  
from such failure or violation, which right shall be in addition to  
all other remedies provided for in Chapter 5311 of the Ohio Revised Code,  
the Declaration or these By-Laws. Upon any sale by such owner of his  
unit, or at such time as such owner's equity in his unit is sufficiently  
great to dispense with the necessity of such security deposit, any  
unapplied balance of said security deposit remaining to the credit of  
said owner shall be refunded, provided that such owner shall not  
be in default under any of his obligations under the Declaration.  
The Association shall have the right to maintain all security deposits  
held by it, as aforesaid, in a single savings account and shall not be  
required to credit interest to any owner until such time as the security  
deposit is refunded. Said security deposit shall at all times be  
subject and subordinate to the lien referred to in the Declaration  
and Section (9) above and all rights thereto shall inure to the benefit  
of the lienor.

#### ARTICLE VII

##### GENERAL PROVISIONS

###### Section 1. Copies of Notice to Mortgage Lenders.

Upon written request to the Board, the holder of any recorded  
mortgage or trust deed against any unit ownership shall be given a  
copy of any or all notices permitted or required by the Declaration  
or these By-Laws to be given other unit owners whose unit ownership  
is subject to such mortgage or trust deed.

###### Section 2. Non-waiver of Covenants.

No covenants, restrictions, conditions, obligations or provisions  
contained in the Declaration or these By-Laws 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 3. Notices of Mortgages.

Any owner who mortgages his unit shall notify the Association, in  
such manner as the Association may direct, of the name and address

of his mortgagee and thereafter shall notify the Association of the full payment cancellation or other alteration of the status of such mortgage. The Association shall maintain such information in a book entitled "Mortgages of Units".

Section 4. Severability.

The invalidity of any covenant, restriction, condition, limitation or any other provision of these By-Laws, or of any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of these By-Laws.

ARTICLE VIII

BOARD OF MANAGERS

RULES AND REGULATIONS

Section 1. Adoption.

The Board may adopt rules and regulations governing the operation and use of the Condominium Property not in conflict with the Declaration or these By-Laws or those adopted by the members pursuant to Article V, Section (1) above by a vote of a majority of the members of the Board.

Section 2. Amendment.

Such rules and regulations may be amended from time to time by a majority vote of the members of the Board or by a vote of more than fifty percent (50%) of the voting power of the Unit Owners Association at the annual meeting of the same.

ARTICLE IX

NOTICES AND DEMANDS

Any notice by the Board to a unit owner shall be deemed to be given, and any demand upon him shall be deemed by him to have been duly made, if delivered in writing to him personally, or if mailed by regular mail, in any post office, addressed to him at the unit owned by such unit owner, provided, however, said unit owner has not provided written notice to the Board of any other address said unit owner desires to substitute for the unit address, in which case said notice address shall be used by the Board, and any notice by a unit owner to the Board shall be deemed to be duly given and any demand upon the Board shall be deemed to have been duly made if in writing, and delivered to an officer of the Unit Owners Association.

EXHIBIT G

EASEMENT

KNOW ALL MEN BY THESE PRESENTS, That

WHEREAS, THE WALDEN COMPANY, LTD., an Ohio Limited Partnership, the Grantor herein, is the owner of the real property described in Exhibit G-1, attached hereto and incorporated by reference herein; and,

WHEREAS, Grantor intends to construct upon said property The Gardens of Walden Condominium to be governed by The Gardens of Walden Condominium Association at a future date; and,

WHEREAS, Grantor has constructed common private drives which cross said property, which drives are described in Exhibit G-2, attached hereto and incorporated by reference herein; and,

WHEREAS, it is the intention of Grantor to avail said common private drives for the purposes set forth below to the aforesaid The Gardens of Walden Condominium Association together with other associations and home owners located upon property which is adjacent to said common private drives either now or in the future;

NOW, THEREFORE, for good and valuable consideration, received to its full satisfaction, Grantor does hereby give, grant, bargain and convey to the aforesaid The Gardens of Walden Condominium Association, to be formed, for the use and benefit of its members, unit owners, assigns, agents, employees, tenants, visitors, licensees and all other persons using the same for the benefit of any of them, a non-exclusive right and easement in, over and upon the real property described in Exhibit G-2 (or over such property which corresponds to the actual location of the above mentioned common private drives as such locations may be modified by Grantor due to field conditions) for the purpose of freely passing and repassing on foot or with vehicles, for all lawful purposes incident or proper to the enjoyment of the property described in Exhibit G-1 as residential property.

Grantor reserves unto itself, for the use and benefit of its successors and assigns, agents, employees, visitors and licensees, together with other condominium associations, unit owners, and home owners which do now or will in the future reside on lands adjacent to said common private drives, a perpetual right of way and non-exclusive easement over the property described in Exhibit G-2 (or as modified by Grantor) for purposes of freely passing and repassing on foot or with vehicles for all lawful purposes incident or proper to the enjoyment of property adjacent to said common drives as residential property, and for the further purposes of constructing, maintaining and servicing same,

and adjacent lands, and installing utilities in said common private drives incidental to residential development, and further for purposes of ingress and egress onto and across the property described in Exhibit G - 1.

A condition of this grant of Easement is that said The Gardens of Walden Condominium Association agrees to pay its share of the total costs of construction, maintenance and repair of said common private drives and improvements thereon, which share shall be in the same proportion as to the number of units in The Gardens of Walden Condominium bears to the total number of single family or condominium units which are located on property which is adjacent to said common private drives.

IN WITNESS WHEREOF, this Easement is executed this 24<sup>th</sup> day of MARCH  
1983.

Witnessed By

Janice P. Rinaldi  
Karl G. W.

THE WALDEN COMPANY, LTD.,  
an Ohio Limited Partnership

By Manuel Barenholtz  
Manuel Barenholtz,  
General Partner

STATE OF OHIO            )  
                                  )    SS:  
COUNTY OF PORTAGE    )

I, JANICE P. RINALDI, Notary Public in and for said County and State, do hereby certify that WALDEN COMPANY, LTD., by Manuel Barenholtz, its General Partner, has this day acknowledged the signing and execution of said instrument, for and on behalf of said partnership, and has acknowledged that the same, in all respects, is his free act and deed as such partner and the free act and deed of said partnership.

And I further certify that said Manuel Barenholtz is known to me to be the individual and partner described herein and who executed said instrument.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at AURORA, Ohio, this 24<sup>th</sup> day of MARCH, 1983.

Janice P. Rinaldi  
Notary Public

This Instrument Prepared by  
David A. Eli, Esquire  
WILLIAMS, ZUMKEHR AND WELSER  
Eleven South River Street  
Kent, Ohio 44240  
(216) 673-3444