

DECLARATION OF CONDOMINIUM OWNERSHIP

FOR

THE HOMES OF EMERALD RIDGE CONDOMINIUM

This will certify that copies of this Declaration of Condominium Ownership for The Homes of Emerald Ridge Condominium and the Drawings attached hereto, have been filed in the office of the County Auditor, Cuyahoga County, Ohio.

COUNTY AUDITOR

By \_\_\_\_\_  
Deputy Auditor

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DECLARATION OF CONDOMINIUM OWNERSHIP

FOR

THE HOMES OF EMERALD RIDGE CONDOMINIUM

WHEREAS, The Homes of Emerald Ridge, Inc., an Ohio Corporation, hereinafter referred to as "Declarant", is the owner in fee simple of certain real property referred to as Phase No. 1 Parcel, herein described in Exhibit "C"; and

WHEREAS, it is the desire of Declarant to submit Phase No. 1 Parcel, together with the improvements thereon constructed and hereinafter described, to the provisions of Chapter 5311 of the Ohio Revised Code, for Condominium Ownership; and

WHEREAS, Declarant has the option to purchase additional land hereafter referred to as Phase No. 2 Parcel described on Exhibit "C-1" upon which Declarant may propose to construct additional Units, and

WHEREAS, Declarant desires to provide for submission of said No. 2 Parcel together with the improvements to be constructed thereon to the provisions of Chapter 5311 of the Ohio Revised Code;

NOW, THEREFORE, Declarant hereby submits said Phase No. 1 Parcel to the provisions of Chapter 5311 of the Ohio Revised Code and states:

Article 1.     Legal Description and Definitions.

A.     Legal Description. The legal description of the Phase No. 1 Parcel is contained on Exhibit "C" attached hereto and made a part hereof.

B.     Definitions. The terms defined in this Section B (except as herein otherwise expressly provided) for all purposes of this Declaration and of any amendment hereto shall have the respective meanings specified in this section.

(1)     "Assessment" means the determination of the share of common expenses and other charges which from time to time include, without limitation, the costs, expenses and charges for repairs and replacements made by the Association which were the obligation or responsibility of the Unit Owner to make, any special charges made by the Association to the Unit Owner for special services rendered to the Unit Owner or his ownership Interest and for special or extraordinary uses or consumptions attributable to such Unit Owner or his Ownership Interest, damages resulting from the failure of the Unit Owner or any occupant of the Unit to comply with any of the covenants, conditions, obligations or restrictions

contained in this Declaration or the By-Laws, or with any of the Rules and the costs of any action to obtain injunctive relief against such noncompliance, any other charges or assessments permitted by this Declaration or the By-Laws to be made against the Unit Owner or his Ownership Interest, interest upon each assessment and charged at the highest legal rate which may be charged to an individual (but in no event higher than ten percent per annum) from the date the assessment or charge first comes due to the date it is paid in full, and the reasonable costs of collection of any unpaid assessments and charges (including court costs and reasonable attorneys' fees).

(2) "Association" means the Homes of Emerald Ridge Condominium Unit Owners' Association, Inc., a non-profit corporation to be formed under Chapter 1702 of the Ohio Revised Code, being the entity responsible for the operation of the Condominium Property and consisting of all of the Unit Owners from time to time.

(3) "Board" means the Board of Trustees or Board of Managers of the Association as the same may be constituted from time to time.

(4) "By-Laws" means the By-Laws of the Association, annexed hereto as Exhibit "B" and made a part hereof.

(5) "Buildings" means that part of the Condominium Property constituting the buildings, structures and improvements described generally in Article 4 hereof. "Building" means any of the "Buildings".

(6) "Chapter 5311" means Chapter 5311 of the Ohio Revised Code, as the same may be amended or supplemented from time to time.

(7) "Common Areas and Facilities" means all of the Condominium Property except the Units. The Common Areas and Facilities shall include the tangible personal property existing for the common use, enjoyment, or safety of the Unit Owners, such as equipment, tools and supplies required for the maintenance of the Common Areas and Facilities.

(8) "Common Expenses" means those expenses designated as Common Expenses in Chapter 5311, in this Declaration, and in the By-Laws, or in any one or more of such documents, including, without limitations, the following:

- a. All sums lawfully assessed against the Unit Owners by the Association;
- b. Expenses and obligations of the Association incurred in the use, administration, maintenance, repair and replacement of the Common Areas and Facilities;

c. Expenses, charges and costs of utility services furnished to the Common Areas and Facilities, the Units, and the Unit Owners, or to any one or more of them, which are the obligations of the Association.

(9) "Common Surplus" means the amount by which Common Assessments collected during any period exceed Common Expenses.

(10) "Condominium Property" means the Land, all Buildings, improvements and structures on the Land, all easements, rights and appurtenances belonging to the Land, and all articles of personal property existing thereon for the common use of the Unit Owners, and consists of the Units and the Common Areas and Facilities.

(11) "Declaration" means this instrument and all of the Exhibits and attachments hereto as originally executed, or, if amended as herein provided, as so amended.

(12) "Drawings" means the drawings prepared and certified in accordance with Section 5311.07, relating to the Condominium Property, which Drawings are marked and identified as Exhibit "A", being pages of drawings, and are incorporated herein by reference.

(13) "Land" means the land described in Article 1, Section A as aforesaid.

(14) "Limited Common Areas and Facilities" means those parts of the Common Areas and Facilities reserved for the use of a certain Unit to the exclusion of the other Units.

(15) "Mortgagees" means a bank, savings and an association, insurance company, mortgage company or agency of the United States or any State, authorized and qualified to do business in the State of Ohio, and holding a first mortgage on a Unit or any portion of the Common Areas and Facilities.

(16) "Occupant" means the person or persons in possession of a Unit.

(17) "Ownership Interest" means the fee simple title interest in a Unit and the undivided percentage interest in the Common Areas and Facilities appertaining thereto. A ninety-nine year leasehold estate, renewable forever, shall be deemed to be a fee simple interest.

(18) "Person" means a human being, a corporation, partnership, and any other legal entity to which the law attributes the capacity of having the rights and duties.

(19) "Rules" means such rules and regulations governing the operation and use of the Condominium Property or any portion thereof as may be duly and lawfully adopted by the Association or the Board from time to time.

(20) "Unit" means a part of the Condominium Property consisting of one or more rooms on one or more floors of a Building and designated as a Unit in this Declaration and delineated on the Drawings attached hereto and a part hereof.

(21) "Unit Owner" means a person who owns a Unit and an undivided percentage interest in the Common Areas and Facilities, excluding, however, (i) those persons having such interest merely as security for the performance of an obligation, and (ii) those persons having a leasehold estate other than a ninety-nine year leasehold, renewable forever.

Article 2. Name.

The Condominium Property shall be known as the Homes of Emerald Ridge Condominium.

Article 3. The Purpose of and Restrictions on Ownership Use of Condominium Property.

A. Purpose. Except as provided in paragraph (9) of Section B of this Article 3, the Condominium Property shall be used exclusively for single family residence purposes and common recreational purposes auxiliary thereto and for no other purpose.

B. Restrictions.

(1) 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 herein expressly provided.

(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, without the prior written consent of the Association. No Unit owner shall permit anything to be done or kept in his Unit or in the Common Areas and Facilities which will result in the cancellation or restriction of insurance on the Buildings or content thereof, or which would be in violation of any law. No waste will be committed on any part of the Condominium Property.

(3) Exterior Surfaces and Buildings. No Unit Owner shall cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of the Buildings, and no awning, canopy, shutter, radio or television



antenna, or air conditioning unit shall be affixed to or placed upon the exterior walls or roof or any part thereof without the prior written consent of the Board.

(4) Animals and Pets. No animals of any kind shall be raised, bred or kept in any part of the Condominium Property, except dogs, cats or other conventional household pets may be kept in Units, subject to rules and regulations adopted by the Board, provided that they are not kept, bred or maintained for any commercial purpose; and provided further that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Condominium Property upon seven (7) days written notice from the Board.

(5) Nuisances. No noxious or offensive activity shall be carried on in any part of the Condominium Property, nor shall anything be done thereon which may be or become an annoyance or nuisance to the other Unit 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, except as herein otherwise provided.

(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, except in such areas as may be specifically designated by the Association for such purpose. The Common Areas and Facilities shall be kept free and clear of rubbish, debris and other unsightly materials.

(8) Lounging or Storage in Common Areas and Facilities. There shall be no playing, lounging, parking or storage of baby carriages, bicycles, wagons, toys, vehicles, abandoned automobiles, campers, boats, automobile tires, benches, chairs, or any other tangible personal property on any part of the Common Areas and Facilities except in accordance with rules and regulations therefore adopted by the Association.

(9) Prohibited Activities. No industry, business, trade or profession of any kind, commercial, religious, educational or otherwise, designated for profit, altruism, exploration, or otherwise, shall be conducted, maintained or permitted on any part of the Condominium Property nor shall any "For Sale" or "For Rent" signs, or other window display or advertising be maintained or permitted on any part of the Condominium Property, except in accordance with the rules and regulations therefore adopted by the Board; provided, however, that for a period of two years following the date on which this Declaration is filed for record with the Cuyahoga County Recorder, or until Declarant has sold or rented all the Units, whichever occurs first, the right is reserved by Declarant to use one or more

unsold Units for business or promotional purposes, including clerical activities, sales offices, model units and the like, in connection with the original sale or rental of said Units. For said period the further right is reserved to Declarant to place "For Sale" or "For Rent" signs on any unsold Units or in other areas of the Condominium Property. The right is hereby given the Association or any mortgagee as owner of an unsold or unoccupied Unit or Units to place "For Sale" or "For Rent" signs on such Unit or Units or in other areas of the Condominium Property. The aforementioned signs shall in all cases be of a kind and in such locations as will comport with the character of the Condominium Property.

(10) Whenever any Unit is owned by a corporation, partnership, trust, or other entity (other than Declarant or a mortgage which acquires title either as a result of a foreclosure or acceptance of a deed in lieu of foreclosure) such Unit Owner through its officers or agents, i.e. president or chief executive officer, partner, or trustee, shall designate in writing one particular family which will be entitled to use the Unit. Only the designated family, its servants and guests may use the Unit. In the event such Unit Owner wishes to designate another family as the family entitled to use the Unit, the Board must approve the occupancy of the Unit by the new family. The family designated by such Unit Owner as the family which will occupy the Unit shall execute a written covenant by the adult members of the family entitled to use the Unit, in favor of the Association, whereby the members of the family occupying the Unit agree to comply with the terms and provisions of this Declaration, the By-Laws, and the rules and regulations which may be promulgated from time to time by the Association. Such written covenant shall contain an acknowledgment that the use of the Unit by the family will continue only so long as the aforementioned entity will continue to be a member of the Association. Upon demand by the Association in writing to such Unit Owner to promptly remove any party given permission to use a Unit owned by such Unit Owner for a failure of such party using the Unit to comply with the terms and conditions of this Declaration, the By-Laws, and the rules and regulations of the Association, such Unit Owner shall forthwith cause such party occupying the Unit to be removed. In the event such Unit Owner fails to remove the party using the Unit, the Association, as agent of such Unit Owner, may take such action as it deems appropriate to accomplish the removal of such user and all such action by the Association shall be at the cost and expense of such Unit Owner, which will reimburse the Association therefore, upon demand, for costs, together with such attorney's fees as the Association may incur in the removal.

(11) Each of the foregoing restrictions shall apply to all Unit Owners and to any natural or artificial person who from time to time occupies or is in possession of any part of the Condominium Property and to any other person lawful or unlawfully upon any part of the Condominium Property. No Unit Owner shall cause or permit to exist a violation of the foregoing restrictions by himself of any

of his employees, agents, guests, licensees or invitees, or any other person claiming by, through or under him.

(12) Rental of Units. The respective Units shall not be rented by the owners thereof for transient or hotel purposes, which shall be defined as (i) rental for any period less than thirty (30) days, or (ii) any rental if the occupants of the Units are provided customary hotel services such as room service for food and beverage, maid service, furnishing of laundry and linen and bellboy service other than the foregoing obligations, the Owner of the respective Units shall have the absolute right to lease the same provided that said lease is made subject to the covenants and restrictions of this Declaration.

Article 4. General Description of Building.

There are two different types of residential Units in the buildings under construction as follows:

The Aspen Unit is 1,350 square feet with a living/dining room, kitchen, breakfast room, 2 bedrooms, 2 baths, laundry/storage area and 2 car garage, all on one floor.

The Hawthorn Unit is 1,300 square feet with a living/dining room, kitchen, 2 bedrooms, 2 baths, laundry area and 1 car garage, all on one floor.

All Residential Units have an exterior deck or patio.

The Residential Units will be numbered in accordance with their street addresses on Emerald Ridge, Solon, Ohio 44139.

The building is wood frame. There are no elevators or basements. Each Unit has an individual electrical, gas and water meter.

There are no common recreational facilities in the current phase nor are any contemplated for the additional phases. There is no lodging provided for a custodian.

Each Unit has direct access to the Common Areas.

Article 5. Description of Units.

A. The Condominium Property currently consists of 20 Units. No more than 30 additional residential units will be added.

Exhibit "D" which is attached hereto contains a list of the Units, the percentage interest in the Common Areas and Facilities belonging to each Unit and the approximate square footage of each Unit.

Each Unit shall consist of all of the space bounded by the undecorated interior surfaces of the perimeter walls, floors and ceilings of said Unit projected, if necessary, by reason of structural or nonstructural divisions such as interior walls, and other partitions to constitute a complete enclosure of space, provided that, wherever such undecorated surfaces consist of plaster or plasterboard or the concrete floor, all of such plaster or plasterboard or concrete floor contiguous to such surface shall be included within the Unit. The exact layout and dimensions of such Units are shown on Exhibit "A" incorporated herein and include without limitation:

- (1) The decorated surfaces, including paint, lacquer, varnish, wallpaper, tile and any other finishing material applied to floors, ceilings and interior and perimeter walls;
- (2) All windows and doors, including the frames, sashes and jams, and the space occupied thereby, and all nonstructural interior walls;
- (3) All fixtures located within the bounds of a Unit installed in and for the exclusive use of said Unit commencing at the point of disconnection from the structural body of the building and from utility pipes, line or systems serving more than one Unit;
- (4) All control knobs, switches, thermostats and base plugs, floor plugs and connections affixed to or projecting from the walls, floors and ceiling which service either the Unit or the fixtures located therein, together with the space occupied thereby;
- (5) All plumbing, electric, heating, cooling and (other utility or service lines, pipes, wires, ducts or conduits which exclusively serve either the Unit or the fixtures located therein, and which are located within the bounds of the Unit;

B. Excepted from the description contained in (A) immediately above shall be all of the following items located within the bounds of the Unit as described above:

- (1) Any part of the structure contained in all interior walls, and the undecorated perimeter walls, floors and ceilings;

- (2) All vent covers, grills, plate covers and other coverings of space which are not part of the Unit, as defined above;
- (3) All plumbing, electric, heating, cooling and other utility or service lines, pipes, wires, ducts and conduits which serve any other Unit.

Article 6. Description of Common and Limited Common Areas and Facilities.

A. Common Areas and Facilities.

(1) The Common Areas and Facilities shall consist of all parts of the Condominium Property except the Units. Without limiting the generality of the foregoing, the Common Areas and Facilities shall include the following, whether or not located within the bounds of a Unit;

- a. the foundations, supports, supporting walls, roofs, gutters, and downspouts;
- b. the land on which the Building is located, yards, gardens, driveways and walks;
- c. installations of central utility services such as power, light, heat, telephone, gas, water, sewerage, serving more than one Unit; and all pipes, ducts, wires, conduits, receptacles, switches, grills, thermostats and control devices which are a part of, connected to, or used in conjunction with any of the foregoing;
- d. all apparatus and installations existing for common use;
- e. roadways, sidewalks and parking areas located on the Property and easements for the benefit of the Property;
- f. all personal property relating to the maintenance, repair and operation of the Buildings;
- g. all other parts of the Condominium Property necessary or convenient to its existence, maintenance and safety, or normally in common use.

(2) Ownership of Common Areas and Facilities. The Common Areas and Facilities shall be owned by the Unit Owners as tenants in common, and ownership thereof shall remain undivided. No action for partition of any part of the Common Areas and Facilities shall be maintainable, except as specifically provided in Chapter 5311, nor may any Unit Owner otherwise waive or release any rights in the Common Areas and Facilities; provided, however, that if any Unit is owned by two or more persons, including, but not limited to Units owned as partners, as tenants in common, or as joint tenants, nothing contained herein shall be deemed to prohibit a voluntary or judicial partition of such Unit ownership as between such persons.

(3) Use of Common Areas and Facilities. Except with respect to Limited Common Areas and Facilities, each Unit Owner may use the Common Areas and Facilities in accordance with the purposes for which they are intended, subject to the Rules, which right shall be appurtenant to and run with his Unit.

(4) Interest in Common Areas and Facilities. The percentage of interest of each Unit in the Common Areas and Facilities has been determined by Declarant in the proportion that the initial fair market value of the Unit bears to the aggregate initial fair market value of all Units and is contained on Exhibit "D" attached hereto) and made a part hereof. Said percentage interest shall subsequently be re-determined in accordance with the provisions of Article 20 herein.

(5) No Severance Common Areas Interest. Declarant, its successors and assigns and grantees, including Unit Owners, covenant and agree that the undivided percentage of interest in the Common Areas and Facilities and the fee titles to the respective Units shall not be separated or separately conveyed, encumbered, inherited or divided and each said undivided interest shall be deemed to be conveyed or encumbered with its respective Unit even though the description in the instrument, conveyance or encumbrance may refer only to the fee title to such Unit.

(6) Parking Spaces. As part of the Common Areas and Facilities, there exists outdoor parking facilities.

B. Limited Common Areas and Facilities. The following are hereby deemed Limited Common Areas and Facilities: (i) all, screens and storm windows serving a single unit; (ii) balconies and patios as adjoin the Units and which are designated on the drawings; (iii) indoor parking space for each unit in the garage/garages adjacent to a Unit and accessible by a doorway from the Unit; (iv) furnace/air conditioning equipment serving a single unit and located outside of a unit.

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

Article 7. Unit Owners' Association.

Declarant shall cause to be formed an Ohio Corporation not for profit to be called the Homes of Emerald Ridge Condominium Unit Owners' Association, Inc., which shall administer the Condominium Property. Each Unit Owner upon acquisition of title to the Unit, shall automatically become a member of the Association. Such membership shall terminate upon the sale or other disposition by such number of his Unit ownership, at which time the new owner of such Unit automatically shall become a member of the Association.

The Unit Owners' Association shall be established not later than the date the deed is filed for record following the sale of the first Unit.

The administration of the Condominium Property shall be in accordance with the provisions of this Declaration and the By-Laws of the Association which are attached hereto as Exhibit "B." Each owner, tenant, or occupant of a Unit shall comply with the provisions of the general law, this Declaration, the By-Laws and the Rules and Regulations of the Association.

Article 8. Statutory Agent.

The President of the Association or such other person designated by the Board shall serve as the Statutory Agent to receive service of process for the Association. Until such designation is made, Nancy H. Donnelly, having a place of business at 1400 Bank One Center, Cleveland, Ohio 44114 shall be designated as such Statutory Agent. The name and address of the Statutory Agent (and of such successor) shall be filed with the Ohio Secretary of State on the customary forms prescribed therefor.

Article 9. Amendment of Declaration and By-Laws.

A. By Declarant. This Declaration may be amended by Declarant, its successors and assigns, in the manner and within the terms provided in Article 20 hereof.

B. By Other. In addition to the manner of making amendments described or referred to in Paragraph A of this Article 9, this Declaration, the Drawings and the By-Laws attached hereto as Exhibit "B" may be amended only by the affirmative written vote given at a meeting held for the purpose thereof or filed with the Association representing Unit Owners entitled to exercise not less than seventy-five percent (75%) of the voting power of the Association. Upon the adoption of any amendment, the President of the Association shall file with the Recorder of Cuyahoga County an instrument executed with the same formalities as herein, containing the amendment being made, the volume and page of the original being amended, the manner of the adoption and the statement that a copy of the proposed amendment was sent by certified mail to all mortgagees of Units as contained in the records of the Association. Upon recording of said instrument, this Declaration shall thereupon be amended accordingly. No amendment shall have any effect upon a bona fide first mortgagee of a Unit until the written consent of such mortgagee to such amendment 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 nonconsenting mortgagees of the various Units shall be sufficient for reliance by the general public. No provision in this Declaration may be changed, modified, or rescinded, if after such change, modification or rescission the Declaration would conflict with the provisions of Chapter 5311, or any successor statute, nor may any amendment be made to the percentage interests set forth in attached Exhibit "D" without the prior unanimous approval of all Unit Owners and their respective mortgagees except as may be made by Declarant pursuant to the provisions of Article 20.

C. Special Amendment. Prior to the formation of the Association, Declarant shall have the right and power, and after the formation of the Association the Board shall have the right and power, to record a special amendment ("Special Amendment") to this Declaration at any time, and from time to time, which amends this Declaration (1) to comply with requirements of the Federal National Mortgage Association; the Government National Mortgage Association, and the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency, or any other public, quasipublic or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, (2) to induce any of such agencies or entities; to make, purchase, sell, insure, or guarantee first mortgages covering Condominium Ownership Interests, (3) to bring this Declaration into compliance with Chapter 5311 or (4) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment hereto, or (5) to comply with the underwriting requirements of insurance companies providing casualty insurance, liability insurance and other insurance coverages for the Condominium Development. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant and/or to the Board to vote in favor of, make, or consent to a Special Amendment on behalf of each owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence obligation, or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of the power to the Declarant and/or to the Board to vote in favor or, make and record Special Amendments.

Article 10. Drawings.

Attached hereto and marked Exhibit "A", Sheets 1 through \_\_\_\_ and made a part hereof is a set of drawings of the Condominium Property as prepared and certified by Western Reserve Consulting and H. David Howe, Jr., Registered Ohio Architect.

Article 11. Management, Maintenance, Repairs, Alterations and Improvements.

A. The Association. The Association shall manage the Common Areas and Facilities and shall maintain and keep the same (but not the Limited Common Areas and Facilities) in a state of good working order, condition and repair, in a clean, neat, safe and sanitary condition and in conformity with all laws, ordinances and regulations applicable to the Common Areas and Facilities, by promptly, properly and in a good and workmanlike manner, making all repairs, replacements, alterations and other improvements necessary to comply with the foregoing. The Association shall also be responsible for repairing all damage to a Unit caused by the Association, including damage caused by performance by the Association of its obligations hereunder. The Association may delegate all or any portion of its authority to discharge such responsibility to a manager or managing agent. Such delegation to a managing agent may be evidenced by one or more management contracts, each of which shall provide for termination for cause and shall provide for the payment of reasonable compensation to said managing agent as a Common Expense; provided, however, that no such management contract shall be for a term in excess of three (3) years. The Declarant on behalf of the Association may enter into a management



agreement for not more than one (1) year beyond the time the control of the Association is assumed by the Unit Owners.

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

(1) To maintain, repair and replace at his expense all portions of his Unit, and all internal installations of such Unit such as appliances, plumbing, electrical and heating fixtures or installations, and any portion of any other utility service facilities located within the Unit boundaries, other than such utility facilities serving other Units, and to assume the same responsibility with respect to the Limited Common Areas and Facilities belonging to his Unit.

(2) Not to make any alterations in the portions of the Unit or the Building which are to be maintained by the Association or remove any portion thereof or make any 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, nor shall any Unit Owner impair any easement without first obtaining the written consent of the Association and of the person or persons for whose benefit such easement exists.

(3) Not to enclose, paint or otherwise decorate or change the appearance of any portion of the Building not within the walls of the Unit, unless the written consent of the Board is first obtained.

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

(5) To perform his responsibilities in such a manner so as not unreasonably to disturb other persons residing within the Building.

(6) To maintain, repair and replace at his expense all portions of the Condominium Property which may be damaged or destroyed by reason of his own act or neglect, the act or neglect of any Occupant of his Unit, or the willful or uninsured act or neglect of any invitee, licensee or guest of such owner or Occupant, to the extent such damage or destruction is not covered by insurance maintained by the Association. Notwithstanding the foregoing obligation of the Unit Owner, the Association (or other Unit Owner in respect to his own Unit) may, but shall not be obligated to, repair and replace the property damaged or destroyed by reason of the act or neglect of a Unit Owner, an Occupant, or their invitee, licensee or guest, and charge and collect from such Unit Owner the cost and expense paid or incurred in making any such repair or replacement. If the repair or replacement is made by the Association, the cost and expense thereof shall be a lien against the Unit Owner's Ownership Interest which the Association may assert and collect in the same manner as the Association may assert and

collect a lien against a Unit Owner's Ownership Interest for non-payment of his share of assessments for Common Expenses. The right herein of the Association to assert and collect upon a lien shall not be exclusive, but shall be in addition to all other rights and remedies available to the Association, herein, in law and in equity for recovery of the cost and expense so incurred.

(7) To pay all costs for utility services (such as, without limitation, water, gas, electricity, sewage, rubbish and trash disposal or treatment and the like) furnished to his Unit or to the Limited Common Areas and Facilities and designated for his use, unless any or all of such services are provided as part of the Common Expenses, in which case all or any of such services so provided by the Association shall be paid for by the Unit Owner as part of his share of the Common Expenses.

(8) Not to decorate, landscape or adorn any Limited Common Areas and Facilities in any manner contrary to such rules and regulations as may be established therefor by the Board, without the prior written consent of the Board.

(9) In addition, and not by way of limitation, not to do any work which would jeopardize the soundness or safety of the Condominium Property, reduce the value thereof or impair any easement or hereditament without in every such case first obtaining the unanimous consent of all the other Unit Owners.

(10) Not to use the Common Areas and Facilities or any part thereof in such manner as to interfere with, restrict or impede the use thereof by others entitled to the use thereof or in any manner contrary to or not in accordance with this Declaration, the By-Laws or the Rules.

(11) Not to execute any deed, mortgage, lease or other instrument affecting title to his Ownership Interest 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 severance of such combined ownership. In furtherance of the foregoing responsibility and obligation and not in limitation thereof, any deed, mortgage, lease or other instrument purporting to affect the one without including also the other shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein.

C. Rights Against Third Parties. The obligation of the Association and of Unit Owners to repair, maintain and replace the portions of the Condominium Property for which they are respectively responsible shall not be limited, discharged or postponed by reason of the fact that any maintenance, repair or replacement may be necessary to cure any latent or patent defects in material or workmanship in the construction, repair, alteration or improvement of the Condominium Property. The undertaking of repair, maintenance or replacement by the

Association or Unit Owners shall not constitute a waiver, of any rights against any warrantor but such rights shall be specifically reserved.

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

Article 12. Easements.

A. Encroachments. In the event that, by reason of the construction, repair, restoration, settlement or shifting of the Building or by reason of the partial or total destruction and rebuilding of the Building, any part of the Common Areas and Facilities presently encroaches or shall hereafter encroaching upon any part of the Common Areas and Facilities, or, if by reason of the design or construction of utility systems, any main pipes, ducts or conduits serving either any other Unit or more than one Unit presently encroaches or shall hereafter encroach upon any part of any Unit, valid easements for the maintenance of such encroachment and for the use of such adjoining space are hereby established and shall exist for the benefit of such Unit and the Common Areas and Facilities, as the case may be, 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 or negligent conduct of such Owner.

B. Maintenance Easements. Each Unit Owner shall be subject to easements in favor of the Association in and over the Units and Limited Common Areas for access arising from necessity of maintenance or operation of the Building. Each Unit Owner shall have the permanent right and easement to and through the Common Areas and Facilities and walls to the use of water, sewer, power, television antenna (subject to the limitations contained herein), and other utilities now or hereafter existing within the walls, and further shall have an easement to hang pictures, mirrors and the like upon the walls of his Unit.

C. Easements for Certain Purposes. The Association may hereafter grant easements on behalf of Unit owners for the benefit of the Condominium Property, including the right to install, lay, maintain, repair and replace water mains and pipes, sewer lines, gas mains, telephone wires and equipment, ducts, public utility lines, electrical conduits and wires and television cables and antenna wires over, along, within or through any portion of the Common Areas and Facilities, or interior or perimeter walls, ceilings and floors, provided, however, that no such easement shall be granted within the boundaries of any Unit or any Limited Common Areas and Facilities except within or through interior or perimeter walls, ceilings or floors, and further provided that it is a condition to the use and enjoyment of any such easement, and the grantee of such easement does by the acceptance and use thereof covenant and agree, that the grantee of such easement shall restore the Condominium Property and all portions thereof to the condition

in which it existed prior to the grantee's use of such easement. Each Unit Owner hereby grant, and the transfer of title to a Unit Owner shall be deemed to grant to the Association an irrevocable power of attorney to execute, acknowledge and record, for and in the name of such Unit Owner, such instruments as may be necessary to effectuate the foregoing.

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

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

F. Damage Resulting from Exercise or Easements. All damage caused to the Condominium Property or the property of any Unit Owner as a result of any act or work performed pursuant to the authority granted or reserved in this Article 12 or as a result of the use of any easement granted or reserved herein shall be repaired, replaced or corrected promptly by the person performing the act or work by the grantee or holder of the easement being exercised, at the cost and expense of such person so that any such Condominium Property or other property so damaged will be restored (or replaced) to the condition in which it existed immediately prior to such damage.

Article 13. Assessments and Lien of Association.

A. General. Assessments for the Common Expenses shall be made in the manner provided herein and in the By-Laws. The proportionate shares of the owners of the respective Units in the Common Profits and the Common Expenses of the Condominium Property is the same as their respective proportionate interests in the Common Areas and Facilities, as set forth in Article 6A(4) above. Every Unit Owner shall pay his proportionate share of Common Expenses and other assessments in such manner and at such times as are provided herein and in the By-Laws.

B. Non-Use of Facilities. No owner of a Unit may exempt himself from liability for assessments by waiver of the use or enjoyment of any of the Common Areas and Facilities or by the abandonment of his Unit.

C. Failure to Pay Assessments When Due. In the event any Unit Owner fails to pay any assessment made by the Board within ten (10) days after the same shall have become due and payable, the Board may, in its discretion and in addition to any other right or remedy conferred by law or contained herein or in the By-Laws, discontinue any or all services to the Unit owned by such Unit Owner which may be included as part of the Common Expenses. Any

assessment not paid within ten (10) days after the same shall have become due and payable shall bear interest until the same shall have been paid at the rate of ten percent (10%) per annum from and after the date the same became due. Each Unit Owner shall also be liable for any and all costs incurred by the Association in connection with the collection of delinquent assessments from such Owner, including attorney fees.

D. Lien of Association. The Association shall have a lien upon each Unit Owner's Ownership Interest for the payment of the portion of any assessments or Common Expenses chargeable against such Unit which remain unpaid for ten (10) days after the same have become due and payable, together with the other amounts provided for in Section C above, from the time a certificate therefore, subscribed by the President of the Association, is filed with the Recorder of Cuyahoga County, Ohio, pursuant to authorization given by the Board. Upon filing such a lien, notification thereof shall be by regular mail to the Unit Owner and his mortgagee as shown on the books 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, assessments, and other amounts due. 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, each Unit Owner and any occupant thereof shall be personally liable for such expenses chargeable for the period of his ownership or occupancy.

E. Priority of Association's Lien. The lien provided for in Section D of this Article 13 shall take priority over any lien or encumbrance subsequently arising or created, except liens or real estate taxes and assessments, and may be foreclosed in the same manner as a mortgage on real property in an action brought by or on behalf of the Association. In any such foreclosure action, the owner or owners of the Unit affected shall be required to pay a reasonable rental for such Unit during the pendency of such action, and the plaintiff in such action shall be entitled to the appointment of a receiver to collect the same. In any such foreclosure action, the Association, or its agent or nominee, shall be entitled to become a purchaser at the foreclosure sale.

F. 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 an action in the Court of Common Pleas for Cuyahoga County, Ohio, for the discharge of such lien.

G. Non-Liability of Foreclosure Sale Purchaser for Past Due Common Expenses. Where the mortgagee of a first mortgage of record or other purchaser of Unit acquires title to the Unit as a result of foreclosure of the first mortgage, or in the event a first mortgagee should accept a deed in lieu of foreclosure, such acquirer of title, its 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 such acquisition of title to such Unit by such acquirer unless such share is secured by a Lien for assessments recorded prior to the recording

of the foreclosed mortgage. Any funds received on the judicial sale of the Unit in excess of the first mortgage lien, the court costs and the real estate taxes, shall, however, be paid over to the Association, to the extent of the unpaid assessments due to the Association. The Unit Owner of a unit prior to the judicial sale thereof shall be and remain after the date of the judicial sale personally and primarily liable for the Assessments against the judicially sold Unit up to the date of the judicial sale; but such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Units, including that of such acquirer, its successors and assigns.

H. Liability for Assessments Upon Voluntary Conveyance. In a conveyance of a Unit, other than a conveyance described in Section G next above, the grantee of the Unit shall be jointly and severally liable with the grantor for all unpaid assessments by the Association against the grantor and his Unit for his share of Common Expenses up to the time of the conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefore. However, any such grantee shall be entitled to a statement from the Board, within ten (10) days after receipt by the Board of a request therefore, setting forth the amount of all unpaid assessments or other charges; and such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount set forth in such statement for the period reflected in such statement. As used in this paragraph "grantor" shall include a decedent and "grantee" shall include a devisee or heir, donee, or any other successor or assign of a grantor.

Article 14. Insurance.

A. Authority to Purchase. All insurance policies upon the Condominium Property (except as hereinafter provided) shall be purchased by the Association for the benefit of the Unit Owners (without naming them) and their respective mortgagees as their interests may appear. All of said policies shall, to the extent available, provide:

- (1) For the issuance of certificates of insurance with mortgagee endorsements to the holders of first mortgage on the Units, if any;
- (2) That the insurer waives its right of subrogation against Unit Owners, Occupants, the Association, any managing agent, and their respective families, agents, tenants, guests and all persons lawfully in possession of a Unit;
- (3) That improvements to Units made by Unit Owners shall not affect the valuation for the purposes of such insurance of the Buildings and all other improvements upon the land and that any "other insurance" clause in such policies exclude individual Unit Owners' policies from consideration;
- 4) That coverage under such policies will not be terminated, canceled or substantially modified without ten (10) days prior written notice to all insured; and

(5) That the insurer waives all defenses based upon co-insurance or contribution.

The Association agrees for the benefit of the Unit Owner and each Unit Mortgagee that it shall pay the premium for the casualty insurance hereinafter required to be carried by the Association at least ten (10) days prior to the expiration date of such policy and such premises shall be assessed as a Common Expense.

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

C. Coverage. The Common Areas and Facilities, Buildings and all of the insurable improvements upon the Condominium Property and all personal property as may be owned by the Association, shall be insured in an amount not less than 90% of the full replacement cost thereof, exclusive of excavation and foundations. Such coverage shall grant protection against the following:

(1) Loss or damage by fire and other hazards covered by the standard extended coverage endorsement including coverage for the payment of Common Expenses with respect to damaged Units during the period of reconstruction thereof, with a deductible clause of \$1,000.00 or such other amount as the Board shall deem best;

(2) Such other risks as from time to time customarily shall be covered with respect to Buildings similar in construction, location and use including but not limited to vandalism, wind storm, water damage and malicious mischiefs the policy or policies providing such coverage shall provide that notwithstanding any provision thereof which gives the carrier an election to restore damage in lieu of making a cash settlement therefore, such option shall not be exercised in case of the termination of the Condominium as provided for in this Declaration or pursuant to the provisions of Chapter 5311 of the Ohio Revised Code.

The Association shall further insure itself, any managing agent, the Unit Owners and their respective families, agents, tenants, guests and employees and all persons lawfully in possession or control of any part of the Condominium Property, against liability for personal injury, disease, illness or death and for injury, disease, illness or death and for injury to or destruction of property occurring upon, in or about, or arising from or relating to the Common Areas and Facilities, including without limitation, water damage, legal liability and hired automobile to afford protection to a limit of not less than ONE MILLION DOLLARS (\$1,000,000.00). Such

insurance shall not insure against liability for personal injury or property damage arising out of or relating to the individual Units. All liability insurance shall contain cross-liability endorsements to cover liabilities of the Unit Owners as a group to a Unit Owner.

The Association shall also obtain and maintain, to the extent obtainable, fidelity insurance covering all employees which handle Association funds; public liability insurance covering each member of the Board, the managing agent, the manager and each Unit Owner, in such limits as the Board may deem proper, and such other insurance policies as the Association deems desirable. The Board shall review such limits once each year.

Premiums upon insurance policies purchased by the Association shall be paid by the Association and charged as Common Expenses.

D. Insurance Trustee - Distribution of Proceeds. All casualty insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their respective mortgagees as their respective interests may appear and shall provide that all proceeds in excess of One Hundred Thousand Dollars (\$100,000.00) payable as a result of casualty losses shall be paid to any bank, which is selected by the Association, subject to the approval of any mortgagees having an interest therein, which approval should not be unreasonably withheld, located in Cuyahoga County, Ohio, and with a net worth in excess of \$50,000,000.00, as Trustee. Such Insurance Trustee shall not be liable for payment of premiums, nor for the renewal of the policies, for the sufficiency of coverage, for the form or contents of the policies, nor for the failure to collect any insurance proceeds. The Insurance Trustee has no obligation to inspect the property to determine whether a loss has been sustained or to file any claim or claims against any insurer or any other person. The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid to it and to hold the same in trust for distribution in accordance with the terms and conditions hereinafter set forth and for the benefit of the Association, the Unit Owners and their respective mortgagees. The policy shall further provide that any proceeds up to One Hundred Thousand Dollars (\$100,000.00) payable as a result of a casualty loss shall be payable to the respective mortgagees as their interests may appear and to the president of the Condominium Association, as Trustee, for the benefit of the Association and Unit Owners.

E. Sufficient Insurance. In the event the improvements forming a part of the Condominium Property, or any portion thereon, shall suffer damage or destruction from any cause or peril insured against and the proceeds of any policy or policies insuring against such loss or damage and payable by reason thereof shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction, shall be undertaken by the Association subject to the approval of any mortgagees having an interest therein, which approval shall not be unreasonably withheld, and the insurance proceeds shall be applied by the Association or the Insurance Trustee in payment therefor; provided, however, that in the event, within sixty (60) days after such damage or destruction, the Unit Owners, if they are entitled to do so pursuant to Article 15, 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.

F. Insufficient Insurance. In the event the improvements (other than the portion of the Units the insuring of which is the responsibility of the individual Unit Owners) 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 (plus any deductible amount) shall not be sufficient to pay the cost of repair, restoration or reconstruction (based on estimates obtained by the Association), then, unless the Unit Owners shall within sixty (60) days after such damage or destruction, if they are entitled to do so pursuant to Article 15, elect to withdraw the property from the provision of this Declaration, such uninsured cost or repair, restoration or reconstruction of the Units and of Limited Common Areas and Facilities so damaged or destroyed shall be undertaken by the Association, subject to the approval of any mortgagees having an interest therein, which approval shall not be unreasonably withheld, at the expense of the Owners of the Units so damaged or destroyed in the same proportions which the cost or repair, restoration or reconstruction of each such Unit and/or Limited Common Areas and Facilities, or structure forming the boundaries thereof, so damaged or destroyed bears to the total cost of repair, restoration or reconstruction for all such Units and Limited Common Areas and Facilities, and such uninsured cost of repair, restoration or reconstruction of all or any part of the remainder of the Common Areas and Facilities shall be undertaken by the Association at the expense of the owners of Units in the same proportions in which they shall own the Common Areas and Facilities. The uninsured cost of repair and reconstruction to be paid by the Unit Owners shall be an assessment levied upon the appropriate Unit Owners by the Board, without a vote of the members, in amounts sufficient to pay the uninsured cost of repair or reconstruction one or more such assessments may be made, as necessary. Should any Unit Owner refuse or fail after reasonable notice to pay his share of such cost in excess of available insurance proceeds, the amount thereof may be advanced by the Association and the amount so advanced by the Association shall be assessed to such owner and such assessments shall have the same force and effect, and if not paid, may be enforced in the same manner as hereinbefore provided for the nonpayment of assessments.

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 that loss occurring by reason of 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.

G. Disbursement of Insurance Proceeds and Assessment. The proceeds of insurance collected on account of a casualty, and any sums deposited with the Insurance Trustee by the Association from collections of assessments against Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed in payment of the costs of reconstruction and repair in the following manner:

(1) The portion of insurance proceeds representing damage for which the responsibility of reconstruction and repair lies with a Unit Owner shall be paid to such contractors, suppliers and personnel as do the work or supply the materials or services required for such reconstruction or repair, in such amounts and at such times as the Unit Owner may direct, or if there is a mortgagee endorsement, then to such payees as the Unit Owner and the first mortgagee jointly direct; provided, however, that nothing contained herein shall be construed so as to limit or modify the responsibility of the Unit Owner to make such reconstruction or repair;

(2) The portion of insurance proceeds representing damage for which the responsibility or reconstruction and repair lies with the Association shall be disbursed as follows:

a. If the amount of the estimated costs of reconstruction and repair is less than One Hundred Thousand Dollars (\$100,000.00) then the construction fund shall be paid to such contractors, suppliers and personnel as do the work or supply the materials or services for such reconstruction or repairs upon the order of the Association; provided, however, that upon request of a mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such proceeds shall be disbursed subject to the approval of such mortgagees, which approval shall not be unreasonably withheld; or

b. If the amount of the estimated costs of reconstruction and repair is more the One Hundred Thousand Dollars (\$100,000.00) then the construction fund shall be applied by the Insurance Trustee, subject to the approval of any mortgagees having an interest therein, which approval shall not be unreasonably withheld, to the payment of such costs and shall be paid to or for the account of the Association from time to time as the work progresses, but not more frequently than once in any calendar month. The Insurance Trustee shall make such payments upon the written request of the Association, accompanied by a certificate, dated not more than fifteen (15) days prior to such request. Such certificate shall be signed by a responsible officer of the Association and by an architect in charge of the work, who shall be selected by the Association and shall (i) state that the sum requested has either been paid by the Association or is justly due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with the work; (ii) give a brief description of the services and materials and the several amounts so paid for by the Association pending withdrawal of insurance proceeds; state that the sum requested does not exceed the value of the services and materials described in the

certificate; (iv) state that except for the amount stated in such certificate to be due as aforesaid and for work subsequently performed, there is no outstanding indebtedness known to the person signing such certificate after due inquiry, which might become the basis of a vendors, mechanic's, materialmen's or similar lien upon such work, the Common Areas and Facilities or any Unit; and (v) state that the cost of the work remaining to be done subsequent to the date of such certificate, as estimated by the person signing such certificate, does not exceed the amount of the construction fund remaining in the hands of the Insurance Trustee after the payment of the sum so requested.

(3) If the damage or destruction is to be repaired, all expenses of the Insurance Trustee shall be first paid, and the remaining proceeds shall be disbursed in payment for repairs and reconstruction as hereinbefore provided. It shall be presumed that the first monies disbursed in payment of such costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in any construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be distributed jointly to the Unit Owners and their mortgagees who are the beneficial owners of the funds.

(4) The Insurance Trustee may rely upon a certificate of the Association certifying as to whether or not the damaged property is to be reconstructed or repaired. The Association, upon request of the Insurance Trustee, deliver such certificate as soon as practical.

H. Adjustment of Loss. Immediately after any damage or destruction by fire or other casualty to all or any part of the Condominium Property covered by insurance obtained or maintained by the Association, the Board or its duly authorized agent shall commence the filing and adjustment of all claims for repairing or restoring the Condominium Property to substantially the same condition in which it existed prior to the fire or other casualty. Such costs shall include the total cost of reconstruction and equipment, including without limitation demolition and removal of damaged property or improvements, architectural and engineering and other professional fees direct construction costs for labor and materials. Each Unit Owner shall be deemed to have delegated, and does delegate upon acquisition of his Unit, to the Board or its agent, his right to adjust with the insurer any and all claim under the casualty insurance policies referred to above.

I. Waiver of Subrogation. Each Unit Owner and Occupant and the Association agree, provided such agreement does not invalidate or prejudice any policy of insurance of the Owner thereof, that in the event the Condominium Property (including the Units therein), or any part thereof or any fixtures or personal property located therein or thereon are damaged or destroyed by fire or other casualty that is covered by insurance of any Unit Owner, Occupant or the Association, or the lessees or sublessees of any of them, the rights or claims, if any, of any such

party against any other such party, or against the employee, agents, licensees or invitees of any such party, with respect to such damage or destruction and with respect to any loss resulting therefrom are hereby waived to the extent of the coverage of said insurance.

Article 15. Non-Restoration of Damage or Destruction.

In the event of substantial damage or destruction of 45 or more of the Units, the Unit Owners by the affirmative vote of those entitled to exercise not less than seventy-five percent (75%) of the voting power of the Association at a meeting held not more than sixty (60) days after the occurrence of a casualty or damage or destruction, may elect not to repair or restore the Condominium Property. Upon such election, all of the Condominium Property shall be subject to an action for sale as upon partition at the suit of any Unit Owner. In the event of any such sale or a sale of the Condominium Property after such election by agreement of all Unit Owners, the net proceeds of the sale together with the net proceeds of insurance, if any, and any other indemnity arising because of such damage or destruction, shall be considered as one fund and shall be distributed to all Unit Owners in proportion to their respective percentages of interest in the Common Areas and Facilities. No Unit Owner, however, shall receive any portion of his share of such proceeds until all liens and encumbrances on his Unit have been paid, released or discharged. Upon such payment, the interest of the Unit Owner in the Condominium Property shall terminate, and the Unit Owner shall execute and deliver any and all such documents as may be reasonably requested by the Association to evidence such termination.

Article 16. Rehabilitation and Renewal of Obsolete Property.

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 shall thereupon proceed with such renewal and rehabilitation and the cost thereof shall be a Common Expense. In consideration of the conveyance to the Association of his Unit, subject to such liens and encumbrances hereinafter referred to, any Unit Owner who does not vote for such renewal and rehabilitation may elect, in a writing served by him on the President of the Association within five (5) days after receiving notice of such vote, to receive the fair market value of his Unit, plus such owner's pro rata share of any undistributed Common Profits accrued to the date of such vote, less the sum of the following: (i) the amount of any liens and encumbrances thereon as of the date such vote is taken; (ii) the amount of any liens and encumbrances arising out of actions of said Unit Owner during the period from the date of such vote to the date of conveyance; and (iii) the amount of any Common Expenses accruing with respect to said Unit prior to the date of such vote, whether assessed or not assessed.

All such liens and encumbrances shall be paid by the Association at the time of the conveyance. In the event of such election, such conveyance and payment of the consideration therefore, which shall be a Common Expense to the Unit Owners who have not so elected, shall be made within ten (10) days thereafter, and, if such owner and a majority of the Board cannot agree upon the fair market value of such Unit, such determination shall be made by the majority

vote of three appraisers, one of which shall be appointed by such Unit Owner, one of which shall be appointed by the Board, and the third of which shall be appointed by the first two appraisers, and the conveyance and payment shall occur within ten (10) days after such determination.

Article 17. Remedies for Violations.

A. Abatement and Enjoinment. The violation of any restriction or conditions or regulation adopted by the Board or the breach of any covenant or provision contained in this Declaration or in the By-Laws of the Association attached hereto as Exhibit "B", shall give the Association, in addition to the rights hereinafter set forth in this Article, the right:

- (1) To enter upon the land or any Unit or Limited Common Areas and Facilities or portion thereof upon which, or to which, such violation or breach exists and to summarily abate and remove at the expense of the Owner of such Unit, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions of this Declaration and the By-Laws of the Association, and the Board, or its agents, shall not be thereby deemed guilty in any manner of trespass; or
- (2) To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

B. Involuntary Sale. If any owner (either by his own conduct or by the conduct of any Occupant of his Unit) shall violate any of the covenants or restrictions or provisions of the general law, this Declaration or of the By-Laws of the Association, attached hereto as Exhibit "B", or the Rules, and such violation shall continue for thirty (30) days after notice in writing from the Board, or shall occur repeatedly during any 30-day period after written notice or request from the Board to cure such violation, then the Board shall have the power, upon ten (10) days prior written notice, to Terminate the rights of the said defaulting owner or Occupant to continue as an Owner or Occupant and to continue to occupy, use or control his Unit. The Board shall also notify the first mortgagee of the defaulting owner as shown in its records. At any time within ninety (90) days after such notice, an action may be filed by the Board against the defaulting Owner for a decree of mandatory injunction against the Owner or Occupant subject to the prior consent in writing of any mortgagee having an interest in the Unit Ownership of the defaulting Owner, which consent shall not be unreasonably withheld. In the alternative, the action may pray for a decree declaring the termination of the defaulting Owner's right to occupy, use or control the Unit owned by him, and ordering that all the right, title and interest of the Unit Owner be sold at a judicial sale upon such notice and terms as the Court shall establish, provided that the Court shall enjoin and restrain the defaulting Owner directly or indirectly from reacquiring his interest at such judicial sale. The proceeds of any such judicial sale will be distributed first to pay the costs of said sale, mortgages of record according to their priority, then liens of record, according to their priority, reasonable attorneys' fees of the Association, real estate taxes and assessments 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 and 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 such instrument of conveyance as may be provided by order of the Court, and to immediate possession of the Unit sold and may apply to the Court for a writ for the purpose of acquiring such possession and it shall be a condition of any such sale, and the decree shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration.

C. Cure by Association. If any Unit Owner fails to perform any act that he is required to perform by this Declaration, the By-Laws or the Rules, the Association may, but shall not be obligated to, undertake such performance or cure such violation, and shall charge and collect from said Unit Owner the entire cost and expense, including reasonable attorney's fees, of such performing or cure incurred by the Association. Any such amount shall be deemed to be an additional assessment upon such Unit Owner and shall be due and payable when the payment of the assessment next following notification of such charge becomes due and payable, and the Association may obtain a lien for said amount in the same manner and to the same extent as if it were a lien for Common Expenses.

Article 18. Eminent Domain.

In the event there is the taking of all or any portion of the Condominium Property by eminent domain procedures or conveyance under threat thereof, each Unit Owner hereby designates and appoints the Association and its duly authorized agents as his exclusive agent to negotiate and settle any and all matters, proceedings and litigation relating thereto. If the award for any such taking is less than Twenty Five Thousand Dollars (\$25,000.00), it shall be paid to the Association, and, if in excess of Twenty Five Thousand Dollars (\$25,000.00), it shall be paid to the Insurance Trustee, and shall be applied by the Board or the Insurance Trustee, as the case may be, for the repair and restoration of the Condominium Property in the same manner as if such funds were insurance proceeds under Article 14 above and subject to the right of the Unit Owners entitled to exercise seventy-five percent (75%) or more of the voting power of the Association to elect not to repair or restore the Condominium Property as provided in Article 15 above.

Article 19. Miscellaneous Provisions.

A. Each grantee of a Unit, by the acceptance of a deed, lease, or other instrument of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the Land, and shall bind 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 this Declaration were recited and stipulated at length in each and every deed of conveyance.

B. Upon the removal of the Condominium Property from the provisions of Chapter 5311, all easements, covenants and other rights, benefits, privileges, impositions and obligations declared herein to run with the Land or any Unit shall terminate and be of no further force nor effect.

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 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 shall be unlawful or void for violation of (i) the rule against perpetuities or some analogous statutory provision, (ii) the rule restricting restraints on alienation, or (iii) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of Ronald Reagan and/or James Carter.

F. For such time as said Declarant, its successors and assigns, owns one or more of the Units established and described herein, said Declarant, its successors and assigns shall be subject to the provisions of this Declaration and the Exhibits attached hereto; and said Declarant covenants to take no action which would adversely affect the rights of the Association or any Unit Owner with respect to assurances against latent defects in the property or other rights assigned to the Association by reason of the establishment of the Condominium.

G. Neither Declarant nor its representatives, successors or assigns shall be liable for any claim whatsoever arising out of or by reason of any actions performed pursuant to any authority granted or delegated to it by or pursuant to this Declaration or the By-Laws attached hereto or in Declarant's (or its representatives) capacity as owner, manager or seller of the Condominium Property or any part thereof, whether or not such claim (i) shall be asserted by a Unit Owner, occupant, the Association, or by any person or entity claiming through any of them; or (ii) shall be on account of injury to person or damage to or loss of property wherever located and however: caused; or (iii) shall arise *ex contractu* or (except in the case of intentional torts or gross negligence) *ex delictu*. Without limiting the generality of the foregoing, the foregoing enumeration includes all claims for, or arising by reason of, the Condominium Property or any part thereof being or becoming out of repair or containing any patent or latent defects, or by reason of any 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 (heat, air conditioning, electricity, gas, water, sewage, etc.). None of the foregoing provisions of this Section G shall, however, relieve or release Declarant from any obligations undertaken by it for the benefit of purchasers of Units to make and pay for repairs, renewals, alterations, replacements and improvements of the Condominium Property.

H. Wherever the masculine singular form of the pronoun used in this Declaration, it shall be construed to mean the masculine, feminine or neuter, singular or plural, wherever the context so required.

I. The captions used in this Declaration are inserted solely as a matter of convenience and shall not be relied upon and/or used in construing the effect or meaning of any of the text hereof.

J. Declarant reserves unto itself the right to make corrections or changes in this Declaration, or any of the Exhibits attached thereto that arise due to typographical mistakes or scrivener errors. Said changes may be made by Declarant despite the fact it does not own 75% of the interest of the voting power of the Association but shall only be done if said changes do not materially affect the Ownership interest of anyone else. Said changes shall otherwise be in accordance with Article 9 of this Declaration.

Article 20. Addition to Condominium Property.

A. General. Declarant contemplates that it will construct additional structures on the Phase No. 2 Parcel, said residential structures being substantially similar to the residential structure constructed on Phase No. 1 Parcel, and shall submit said Phase No. 2 Parcel, together with the structures and other improvement, now or hereafter constructed thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property existing for the common use of the Unit Owners to this Condominium as hereinafter provided. Said additional property may be added in one or more phases. Declarant shall establish a new percentage of interest of each Unit in the former and added Common Areas and Facilities which percentage of interest shall be on the basis of fair market value. It shall be arrived at by dividing the total of all Units then in existence by the fair market value of the particular Unit. The percentage of interest of each Unit in the Association for voting purposes, for the distribution of Common Profits, for the assessment and payment of Common Expenses, and for all other purposes would become the new percentage of interest established by Declarant as aforesaid. The allocation made by Declarant would and shall be conclusive and binding upon such Unit Owners, but, unless otherwise required by law, any new percentages of interest established by Declarant for the respective Units comprised in the Phase No. 1 Building shall not exceed the respective percentages of interest specified in Exhibit "D" hereof for such Units.

B. Development of Phase No. 2 Parcel. Declarant, on behalf of itself and its successors and assigns, hereby covenants with and for the benefit of each Unit Owner, each mortgagee in whose favor a mortgage shall be granted with respect to any Unit, and the Respective heirs, successors and assigns thereof, to hold and use Phase No. 2 Parcel, or any portion thereof, in accordance with and subject to the following covenants, rights, reservations, limitations and restrictions which shall run with the land and are imposed for the Uniform and orderly development of Phase No. 2 Parcel, or any portion thereof, in a manner consistent with the development of Phase No. 1 Parcel; however, except as stated hereafter, there are no limitations on the rights of Declarant to develop said Phase No. 2 Parcel.



(1) No use shall be made of any part of Phase No. 2 Parcel or any portion thereof, except for residence and accessory uses customarily incident thereto and no building or other structure shall be erected, placed, altered, moved or permitted to remain upon Phase No. 2 Parcel, or any portion thereof, except for residence use or accessory uses customarily incident thereto.

(2) No residence building or other residence structure shall be erected, placed, altered, moved or permitted to remain upon the Phase No. 2 Parcel, or any portion thereof, except residential buildings having (a) an external design appearance which is architecturally compatible with the Phase No. 1 Buildings, (b) material and workmanship of equal or better quality than such incorporated in the Phase No. 1 Buildings, (c) not less than thirteen hundred square feet per Unit plus one car attached garage.

(3) There shall not be more than 30 separate residential Units upon the Phase No. 2 Parcel contained in 15 Buildings. Improvements on said Phase No. 2 shall include such amenities as necessary or consistent with the development of the Phase No. 1 Parcel such as sewer, street, landscaping and the like.

(4) Declarant reserves the right to create limited Common Areas and Facilities to be a part of the Units within the buildings to be added on the Phase No. 2 Parcel, similar to the limited Common Areas and Facilities appertaining to the Units contained herein.

(5) If Declarant is unable to complete the development of the Phase No. 2 Parcel within seven years from the date this Declarant is filed for record, renewable for an additional seven year period at the option of Declarant, its successors and assigns, exercisable within six months prior to the expiration of the first seven-year period with the consent of the majority of the Unit Owners other than the Declarant, the option to expand the Condominium Property will expire.

(6) The foregoing covenants, rights, reservations, limitations and restrictions shall bind the Declarant and its successors and assigns, and shall be deemed to be covenants running with the land herein described as Phase No. 2 Parcel, or any portion thereof, until either such entire Parcel is added to the Condominium Property, or construction of residence buildings shall be completed upon such Parcel, whichever shall first occur.

C. Options. Declarant hereby explicitly reserves until itself, its successors and assigns, the right and option, at any time within a period of seven years commencing on the date this Declaration is filed for record in the office of the Cuyahoga County Recorder that Declarant determines to take the action contemplated above (a) to submit Phase No. 2 Parcel, either in whole or in part, together with all residential structures and other improvements now or hereafter constructed thereon, all easements, rights and appurtenances belonging thereto, and all articles of

personal property existing for the common use of the Unit Owners to the provisions of this Declaration and Chapter 5311, and (b) to amend this Declaration, in the manner provided in Article 9 hereof, in such respects as Declarant may deem advisable in order to effectuate such submission, including without limiting the generality of the foregoing, the right to amend this Declaration so as (i) to include Phase No. 2 Parcel, either in whole or in part, together with all residential structures and other improvements now or hereafter constructed thereon, all rights, easements and appurtenances belonging thereto, and all articles of personal property existing for the common use of the Unit Owners, as part of the Condominium Property, (ii) to include description of the Buildings constructed on the Parcel so added to the Condominium Property in this Declaration and to add drawings thereof to Exhibit "A" hereto, and (iii) to provide that the owners of Units in the Buildings constructed on the Parcels so added to the Condominium Property will have an interest in the Common Areas and Facilities of the Condominium Property and to amend Exhibit "D" hereof so as to establish the percentage of interest in the Common Areas and Facilities which the owners of all Units within the Building of the Condominium Property will have at the time of such amendment, which percentage shall be, with respect to each Unit, on a percentage basis, which determination shall be made by Declarant and shall be inclusive and binding upon all Unit Owners. There shall be filed, with such amendment, a set of drawings which show graphically all the particulars of the additional property and the improvements thereon and which are certified to in accordance with the provisions of Chapter 5311, as the same may then exist. Said amendment, in addition to declaring that it submits Phase No. 2 parcel to the provisions of this Declaration as aforesaid, shall contain the following particulars:

- (1) A general description of the Building or Buildings being added, stating the materials of which it is or they are constructed;
- (2) The designation of each Unit, a description thereof and of the immediate Common Areas and Facilities to which it has access, and any other data necessary for its proper identification;
- (3) A description of the Common Areas and Facilities and Limited Common Areas and Facilities and the percentages of interest therein appertaining to each Unit (both the former Units and the ones being added), which percentages shall be determined by Declarant in accordance with Section 5311.04 of the Revised Code;
- (4) A statement that each Unit Owner shall be a member of the Association;
- (5) A statement to the effect that this Declaration, except as expressly modified by the amendment (or previous amendments) to add the additional property, is and continues to be in full force and effect and fully applicable to the former Condominium Property and to all property added by the amendment; and

(6) Such other particulars as may be required by Chapter 5311 of the Ohio Revised Code;

(7) Be executed with the same formalities as this instrument;

(8) Refer to the Volume and Page in which this instrument and the Drawings are recorded; and

(9) Contain an affidavit by an officer of Declarant's corporation (or other appropriate individual in the case, of Declarant's successors and assigns) that a copy of the Amendment has been mailed by certified mail to all Unit Owners and all first mortgagees have bona fide lien of record against any Ownership Interest.

D. Failure to Exercise Options. Should any of the options reserved in this Article 20 to Declarant, its successors and assigns, not be exercised within the seven-year period specified, or the additional seven years as provided above, it shall in all respects expire and be of no further force or effect, and nothing shall obligate or burden the titles of Unit Owners to make or complete improvement contemplated or begun on any part or parts of the Condominium.

E. Consent. Declarant, its successors and assigns may exercise its option to submit Phase No. 2, either in whole or in parts, to this Declaration without obtaining the consent of subsequent Unit Owners, without limitations.

F. Reservations. Declarant hereby reserves the right to perform and do such other acts and things as may be necessary to carry out the intent and purposes of this Article 20, including without limitation, the right to convey to each Unit Owner of a Unit on the Land, an undivided interest in the Common Areas and Facilities of the Phase No. 2 Parcel to be added to this Declaration, either in whole or in part, in the reduced percentage amount declared and determined by Declarant in accordance with the provisions of this Article D, and to require each Unit Owner of a Unit on the Land (a) to incorporate in each deed conveying his Ownership Interest prior to expiration of the period herein provided for an express reference of summary of this Article 20, as Declarant might determine, or, if it is not incorporated in the deed, then (b) to execute and file for record from time to time an express acknowledgment of the existence and terms of this Article 20. Each Unit Owner of a Unit on the Land and each mortgagee of such Unit Owner agrees to accept such conveyance, make such reference or summary in his deed, and, if required, execute such an acknowledgment. Each Unit Owner agrees further that he shall upon demand do and perform such other acts as necessary to carry out the intent and purpose of this Article. If Chapter 5311 should be amended to provide a method or procedure for the expansion or addition of additional lands and improvements to an existing condominium by a Declarant, then Declarant hereby elects such method and/or procedure to be incorporated herein as another, alternative method and procedure by which additional parts may be added by Declarant, or its successors or assigns to this Condominium; provided, however, that such statutory amendment does not reduce the rights and privileges Declarant (or its successors or assigns) has or may have by virtue of this Declaration. The provisions of this Paragraph F and of Paragraph D and E of

this Article 20 are not to be construed as mandatory, limitations upon, or conditions precedent to the exercise, operations, or effect of the rights and options reserved and provisions provided for in paragraphs A and C of this Article 20, but are contained and reserved herein as supplementary and further assurance to the rights reserved by Declarant under said Paragraphs A and C of this Article 20.

G. Additional Easements. The Declarant hereby reserves unto itself, its agents, employees, licensees, successors and assigns, for so long as the Declarant or its assigns owns a Condominium Ownership interest in the Condominium Property or additional property, easements and rights:

(1) For ingress and egress by foot, automobile, truck and otherwise over, through and under the Condominium Property and any part thereof other than a Unit not owned by the Declarant.

(2) Easements reserved over Parcel No. 1 for the benefit of the Additional Property to establish the grade of the Additional Property and for necessary access to construct the Additional Property Buildings and other improvements on the Additional Property.

(3) Such easements as Declarant, from time to time may hereafter grant to others on behalf of the Condominium Property for roadway, access, utility and drainage purposes including, but not limited to, the right to install, lay, maintain and repair roadways, water mains and pipes, storm and sanitary sewer lines, gas mains, telephone wires and equipment and televisions and electrical conduits and wire over, under and along any portion of the Common Areas and Facilities (other than Limited Common Areas and Facilities), provided that it shall be a condition precedent to the use and enjoyment of any such easements that the owner or owners of land benefited thereby shall, at its or their expense, restore the Common Areas and Facilities to the same condition as existed just prior to the installation of any such utility improvements. Each Unit Owner and his respective mortgagee by acceptance of a deed converting such Condominium ownership Interest or a mortgage encumbering such Condominium Ownership Interest, as the case may be, hereby irrevocably appoints the Declarant, or the Association if the same has been formed, his Attorney-in-fact, coupled with an interest, and authorizes, delegates and empowers such Attorney, at the option of the Attorney, to execute, acknowledge and record for and in the name of such Unit Owner and his mortgagee such easements or other instruments as may be necessary to effect the foregoing.

Each grantee of a Unit and each mortgagee in whose favor a mortgage with respect to any Unit is granted shall be subject to and have the benefit of (as the case may be) each of the easements herein provided in the same manner and to the same extent as though such easements were expressly provided for and fully

set forth in the deed of conveyance or mortgage (as the case may be), notwithstanding the omission from such deed of conveyance or mortgage (as the case may be) of reference to such easements.

Article 21. Statutory Provisions.

The following provisions are included herein pursuant to the requisites of Section 5311.25 of the Ohio Revised Code.

A. Declarant states that any deposit or down payment made in connection with the sale of any Unit will be held in trust or escrow until delivered at settlement or returned to or otherwise credited to the purchaser, or forfeited to the Declarant and that if a deposit or down payment of Two Thousand Dollars (\$2,000.00) or more is held for more than ninety days, interest at the rate of at least four percent per annum for any period exceeding ninety days shall be credited to the purchaser at settlement or upon return or other credit made to the purchaser, or added to any forfeiture to the Declarant.

Deposits and down payments held in trust pursuant to this section shall not be subject to attachment by creditors of the Declarant or a purchaser.

B. Except in its capacity as a Unit Owner of unsold Condominium Units, the Declarant will not retain a property interest in any of the Common Areas and Facilities after control of the condominium development is assumed by the Unit Owners.

C. The Owners of the Units will assume control of the Common Areas and Facilities and the Condominium Association as stated in Article II, Section 4 of the By-Laws.

D. Neither the Association nor the Unit Owners will be subject to any management agreement executed prior to the assumption of control of the Association, as stated in Article II, Section 4 of the By-Laws, for more than one year subsequent to that assumption of control, unless such a contract or agreement is renewed by a vote of the Unit Owners pursuant to the By-Laws.

E. The Declarant warrants for a two-year period the full cost of labor and materials for any repair or replacement of roof and structural components, and mechanical, electrical, plumbing and common service elements serving the condominium property as a whole, occasioned or necessitated by a defect in material or workmanship.

The Declarant further warrants for a one-year period the full cost of labor and materials for any repair or replacement of structural, mechanical and other elements pertaining to each unit, occasioned or necessitated by a defect in material or workmanship.

The two-year warranty, referred to herein, shall commence for property submitted by the original declaration on the date the deed is filed for record following the sale of the first

condominium ownership interest to a purchaser in good faith for value. The two-year warranty shall commence for property submitted by amendment to the declaration, on the date the deed is filed for record following the sale of the first condominium ownership interest in the additional property to a purchaser in good faith for value.

The one-year warranty, referred to herein, shall commence on the date the deed is filed for record following the first sale of a condominium ownership interest to a purchaser in good faith for value.

In the case of ranges, refrigerators, dishwashers and other similar appliances installed and furnished as part of the Unit, the Declarant has assigned to the owner of said appliances the express and implied warranty of the manufacturer and this assignment satisfies the Declarant's obligation with respect to such appliances. The Declarant's warranty as to appliances is limited to the installation of the appliances. All warranties made to Declarant that exceed the time periods specified herein shall be assigned to purchaser.

F. The Declarant 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 interests from the date the Declaration is filed for record.

#### Article 22. Encumbrances of Record.

At the time Declarant obtained title to the premises, there were of record certain encumbrances which still remain. Following is a brief description of said encumbrances. No attempt or representation is made herein that the summary is complete or all inclusive, provided that this provision shall not limit or restrict any warranty of title contained in any conveyance of any Unit. The reader is referred to the actual documents which are recorded in the Cuyahoga County Records.

A. The Plat of Lot Split for Arthur Road Development Company recorded in Volume 277 of Maps, page 69 of Cuyahoga County Records, shows a 10 feet Utility Easement contiguous to Emerald Ridge Parkway and Aurora Road.

B. Covenants, Restrictions and Easements contained in deed of Declaration, Emerald Ridge by Arthur Road Development Company, an Ohio General Partnership, dated March 21, 1996 and filed for record March 21, 1996 at 3:50 p.m. in Volume 96-02360, page 3 of Cuyahoga County Records.

In addition, since Declarant took title, various utility easements have been executed by the Developer as required by the various utilities.

IN WITNESS WHEREOF, the said The Homes of Emerald Ridge, Inc., an Ohio corporation, has caused the execution of this instrument this \_\_\_\_\_ day of June, 1997.

Signed in the presence of:                      The Homes of Emerald Ridge, Inc.  
    An Ohio Corporation  
\_\_\_\_\_  
By

\_\_\_\_\_  
By \_\_\_\_\_  
H. David Howe, Jr., Secretary

STATE OF OHIO                      )  
    )        SS  
CUYAHOGA COUNTY                    )

BEFORE ME, a Notary Public, in and for said County, personally appeared the above named The Homes of Emerald Ridge Condominium, Inc., an Ohio corporation, by H. David Howe, Jr. its Secretary, who is duly authorized to sign on behalf of the Corporation who acknowledged that he 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 him personally and as such officer.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio, this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

\_\_\_\_\_  
Notary Public

CONSENT OF MORTGAGEE

The undersigned, National City Bank Corporation, is mortgagee of premises described in the within Declaration of Condominium Ownership for The Homes of Emerald Ridge Condominium by virtue of Mortgage Deed executed by The Homes of Emerald Ridge, Inc. and recorded in Mortgage Records of the Recorder of Cuyahoga County on \_\_\_\_\_ and being instrument no. \_\_\_\_\_.

The undersigned hereby consents to the execution and delivery of the foregoing Declaration of Condominium ownership, with the By-Laws and Drawings attached as exhibits thereto, and to the filing thereof in the Office of the County Recorder of Cuyahoga County, Ohio, and, further, subjects and subordinates said Mortgage Deed to the foregoing Declaration of Condominium ownership, with the By-Laws and Drawings attached as exhibits thereto, and to the provisions of Chapter 5311 of the Ohio Revised Code.

National City Bank Corporation

Signed and acknowledged  
in the presence of:

By \_\_\_\_\_

\_\_\_\_\_

By \_\_\_\_\_

STATE OF OHIO                    )  
  )  
COUNTY OF CUYAHOGA        )

SS

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

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at Cleveland, Ohio this \_\_\_\_\_ day of \_\_\_\_\_, 1997.

\_\_\_\_\_  
Notary Public



EXHIBIT A

Exhibit "A" will consist of a set of Drawings of the Condominium Property prepared and certified in accordance with the requirements of Chapter 5311 of the Ohio Revised Code.

EXHIBIT C

Situated in the City of Solon, County of Cuyahoga and State of Ohio, and being part of Original Solon Township Lot Nos. 17 and 32, Tract No. 1 and being part of the lands now conveyed to the Arthur Road Development Company as shown on Deed Volume 88-0426, Page 56 of the Cuyahoga County Deed Records;

Beginning at an I. Pin in a monument box at the centerline angle point of Aurora Road (60 feet wide) which is the Southwesterly corner of said Arthur Road Development Company Land, said monument box being North  $57^{\circ} 01' 43''$  West, 1196.66 feet from an I. Pin in a monument box at the intersection of said centerline of Aurora Road with the Easterly line of said Original Lot No. 32 and the Principal Place of beginning;

- (1) Thence along the Westerly line of the aforesaid Arthur Road Development Company Lands and along the Easterly line of the lands of Mt. Olive Cemetery Subdivision as shown in Plat Volume 90, Page 11 and the Chebra Ogudath Achim Congregation, the Slobodker Benevolent Cemetery Association on Deed Volume 3146, Page 418 North  $00^{\circ} 15' 58''$  -W, 420.36 feet;
- (2) Thence North  $89^{\circ} 44' 02''$  -E, 105.00 feet;
- (3) Thence South  $59^{\circ} 39' 42''$  -E, 272.64 feet;
- (4) Thence South  $89^{\circ} 45' 57''$  -E, 130.00 feet to the Westerly right-of-way of Emerald Ridge Parkway (60 feet Unrecorded);
- (5) Thence along the Westerly right-of-way of Emerald Ridge Parkway South  $00^{\circ} 14' 03''$  West, 358.00 feet;
- (6) Thence continuing along said right-of-way 80.12 feet along the arc of a curve which bears right and has a radius of 140.23 feet and a chord of 79.04 feet which bears South  $16^{\circ} 36' 10''$  West;
- (7) Thence continuing along said right-of-way South  $32^{\circ} 58' 17''$  -W, 25.00 feet;
- (8) Thence continuing along said right-of-way 94.25 feet along the arc of a curve which bears right and has a radius of 60.00 feet and a chord of 84.85 feet which bears South  $77^{\circ} 58' 17''$  West, to the Northerly right-of-way of aforesaid Aurora Road;
- (9) Thence along the Northerly right-of-way of Aurora Road, South  $57^{\circ} 01' 43''$  -E, 90.00 feet;
- (10) Thence South  $32^{\circ} 58' 17''$  -W, 30.00 feet to the centerline of Aurora Road;

(11) Thence along said centerline North  $-57^{\circ} -01' -43''$  -W, 485.00 feet to the Principal Place of Beginning and containing 5.187 acres of land (0.340 acre within the right-of-way of Aurora Road.)

As prepared by Anthony M. Picone, Registered Surveyor, May, 1996 (Revised 10/96)

The above described parcel of land being further known as Parcel B as shown by the recorded plat in Volume 280, Page 93 of Cuyahoga County Map Records.

EXHIBIT C-1

Situated in the City of Solon, County of Cuyahoga and State of Ohio and being part of Original Solon Township Lot Nos. 17 and 32, Tract 1 and being part of the lands now conveyed to the Arthur Road Development Company as shown on Deed Volume 88-0426, Page 56 of the Cuyahoga County Deed Records:

Beginning at an I. Pin in a monument box at the centerline angle point of Aurora Road (60 feet wide) which is the southwesterly corner of said Arthur Road Development Company Land said monument box being N-57° -01' -43" -W, 1196.66 feet from an I. Pin in a monument box at the intersection of said centerline of Aurora Road with the easterly line of said Original Lot No. 32; thence along the Westerly line of aforesaid Arthur Road Development Company Lands and along the easterly line of the lands of Mt. Olive Cemetery Subdivision as shown on Plat Volume 90, Page 11 and the Chebra Ogudath Achim Congregation, the Slobodker Benevolent Cemetery Association on Deed Volume 3146, Page 418 N-00° -15' -58" -W, 420.36 feet and the Principal Place of Beginning;

- (1) Thence continuing along the westerly line of said Arthur Road Development Company Land and easterly line of Mt. Olive Cemetery N-00° -15' -58" -W, 509.18 feet to a 5/8" I. Pin Found;
- (2) Thence continuing along the northerly and westerly line of said Arthur Road Development Company Lands and the southerly and easterly line of the Board of Trustees Mt. Olive Cemetery N-89° -12' -56" -E, 200.11 feet to a 5/8" I. Pin Found;
- (3) Thence continuing N -00° -15' -58" -W, 150.00 feet to a 5/8" I. Pin Set on the northerly line of said Arthur Road Development Company Land and southerly line of said Board of Trustees Mt. Olive Cemetery Association to a 5/8" I. Pin Set;
- (4) Thence along said northerly and southerly lines N-89° -12' -56" -E, 181.00 feet to a 5/8" I. Pin Set;
- (5) Thence S-00° -15' -58" -E, 380.00 feet to a 5/8" I. Pin Set;
- (6) Thence S-58° -18' -38" -E, 68.30 feet to a 5/8" I. Pin Set on the cul-de-sac of Emerald Ridge Parkway (60 feet wide unrecorded);
- (7) Thence along the westerly right-of-way of Emerald Ridge Parkway 113.37 feet along the arc of a curve which bears left and has a radius of 75.00 feet and a chord of 102.88 feet which bears S-11° -36' -48" -E;

- (8) Thence continuing along said right-of-way 28.88 feet along the arc of a curve which bears right and has a radius of 30.00 feet and a chord of 27.77 feet which bears S-27° -20' -27" -E;
- (9) Thence continuing along said right-of-way S-00° -14' -03" -W, 260.83 feet;
- (10) Thence N-89° -45' -57" -W, 130.00 feet;
- (11) Thence N-59° -39' -42" -W, 272.64 feet;
- (12) Thence S-89° -44' -02" -W, 105.00 feet to the Principal Place of Beginning and Containing 6.333 Acres of Land.

As prepared by Anthony M. Picone, Registered Surveyor.

January 1996

And being further known as Parcel C as shown on Plat Volume 280, Page 93 of Cuyahoga County Map Records.

EXHIBIT D

<u>UNIT NO.</u>	<u>APPROXIMATE SQUARE FOOTAGE</u>	<u>PERCENTAGE OF INTEREST IN COMMON AREAS AND FACILITIES</u>
5700 A	1,350	5.02
5700 B	1,350	5.02
5710 A	1,350	5.02
5710 B	1,350	5.02
5720 A	1,350	5.02
5720 B	1,350	5.02
5730 A	1,350	5.02
5730 B	1,350	5.02
5740 A	1,350	5.02
5740 B	1,350	5.02
5750 A	1,350	5.02
5750 B	1,350	5.02
5760 A	1,350	5.02
5760 B	1,350	5.02
5770 A	1,350	5.02
5770 B	1,300	4.82
5780 A	1,350	5.02
5780 B	1,350	5.02
5790 A	1,300	4.82
5790 B	1,350	5.02