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AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM OWNERSHIP  
FOR  
PRESCOTT COMMONS CONDOMINIUM

PLEASE CROSS MARGINAL REFERENCE WITH THE DECLARATION OF CONDOMINIUM OWNERSHIP FOR PRESCOTT COMMONS CONDOMINIUM RECORDED AT OR 1737, PAGE 703 ET SEQ. OF THE SUMMIT COUNTY RECORDS.

THIS WILL CERTIFY THAT A COPY OF THIS AMENDED AND RESTATED DECLARATION OF CONDOMINIUM OWNERSHIP FOR PRESCOTT COMMONS CONDOMINIUM WAS FILED IN THE OFFICE OF THE FISCAL OFFICER OF SUMMIT COUNTY, OHIO.

**JOHN A. DONOFRIO**

DATED: 2-14-11

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FISCAL OFFICER

By John A. Donofrio  
John A. Donofrio



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## INTRODUCTION

This Amended and Restated Declaration of Condominium Ownership for Prescott Commons Condominium ("Amended and Restated Declaration") incorporates the Declaration, as recorded on August 12, 1994, at OR 1737, Page 703 et seq. ("Declaration") of the Summit County Records, the First Amendment recorded on August 19, 1994 at Instrument No. 50634084, the Second Amendment recorded on January 13, 1995 at Instrument No. 50672624, the Third Amendment recorded on February 22, 1995 at Instrument No. 50681335, the Fourth Amendment recorded on May 24, 1995 at Instrument No. 50705453, the Fifth Amendment recorded on August 1, 1995 at Instrument No. 50724921, the Sixth Amendment recorded on November 3, 1995 at Instrument No. 50754160, the Seventh Amendment recorded on December 29, 1995 at Instrument No. 50768921, the Eighth Amendment recorded on May 16, 1996 at Instrument No. 50808150, the Ninth Amendment recorded on July 26, 1996 at Instrument No. 50832070, the Tenth Amendment recorded on September 5, 1996 at Instrument No. 50844872, the Eleventh Amendment recorded on January 23, 1997 at Instrument No. 50884389, the Twelfth Amendment recorded on May 13, 1997 at Instrument No. 54017294, the Thirteenth Amendment recorded on July 13, 1998 at Instrument No. 54164684 (collectively the "Expansion Amendments"), the Amendment to the Declaration recorded on July 24, 1998 at Instrument No. 54169303 ("1998-1 Amendment"), the Amendment to the Declaration recorded on October 29, 1998 at Instrument No. 54209264 ("1998-2 Amendments"), the Amendments to the Declaration recorded on January 29, 2003 at Instrument No. 54816255 ("2003-1 Amendments"), the Amendment to the Declaration recorded on February 24, 2003 at Instrument No. 54828361 ("2003-2 Amendment"), the Amendments to the Declaration recorded on January 13, 2005 at Instrument No. 55142458 ("2005-1 Amendments") and the Amendment to the Declaration recorded on February 14, 2005 at Instrument No. 55152076 ("2005-2 Amendment"). The result is a single text that is written as if the text of the Expansion Amendment, 1998-1 Amendment, 1998-2 Amendments, 2003-1 Amendments, 2003-2 Amendment, 2005-1 Amendments and 2005-2 Amendment have been included in the Amended and Restated Declaration.

This Amended and Restated Declaration has been prepared at the direction of Prescott Commons Condominium Association ("Association") for the convenience of the Unit Owners as well as for prospective purchasers of Units within Prescott Commons. Exhibit B to the Amended and Restated Declaration is included in this Amended and Restated Declaration by reference only. That Exhibit, as amended, is available for review at the Summit County Fiscal Office.

Unit Owners and prospective Unit Owners are reminded that this Amended and Restated Declaration does not materially amend the Declaration and all recorded Amendments. The Declaration and all recorded Amendments are available for review at the Summit County Fiscal Office. Any inconsistency between the Declaration and Amendments, and this Amended and Restated Declaration shall be resolved in favor of the Declaration and Amendments.



John A Donofrio, Summit Fiscal Officer

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AMENDED AND RESTATED DECLARATION OF  
CONDOMINIUM OWNERSHIP FOR  
PRESCOTT COMMONS CONDOMINIUM

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AMENDED AND RESTATED  
DECLARATION OF CONDOMINIUM OWNERSHIP  
FOR PRESCOTT COMMONS CONDOMINIUM

THIS DECLARATION was first prepared as of the 15<sup>th</sup> day of May, 1994, by First Akron Development Corporation, a Corporation organized and existing under the laws of the State of Ohio, hereinafter referred to as "Grantor."

WITNESSETH:

WHEREAS, Grantor developed the residential community known as PRESCOTT COMMONS ("Declaration") as described on Exhibit B in various Phases (defined below); and

WHEREAS, Grantor executed and caused to be filed the Declaration of Condominium Ownership for Prescott Commons Condominium on August 12, 1994, at OR 1737, Page 703 et seq. of the Summit County Records ("Declaration"), which subject the real property depicted in Exhibit B that the Grantor has submitted to the easements, restrictions, covenants, and conditions contained in the Declaration; and

WHEREAS, the Prescott Commons Condominium Association ("Association") was originally formed and continues to regulate, administer, and govern Prescott Commons for the fulfillment of the objectives of this Declaration (defined below); and

WHEREAS, the Grantor caused to be filed the First Amendment recorded on August 19, 1994 at Instrument No. 50634084, the Second Amendment recorded on January 13, 1995 at Instrument No. 50672624, the Third Amendment recorded on February 22, 1995 at Instrument No. 50681335, the Fourth Amendment recorded on May 24, 1995 at Instrument No. 50705453, the Fifth Amendment recorded on August 1, 1995 at Instrument No. 50724921, the Sixth Amendment recorded on November 3, 1995 at Instrument No. 50754160, the Seventh Amendment recorded on December 29, 1995 at Instrument No. 50768921, the Eighth Amendment recorded on May 16, 1996 at Instrument No. 50808150, the Ninth Amendment recorded on July 26, 1996 at Instrument No. 50832070, the Tenth Amendment recorded on September 5, 1996 at Instrument No. 50844872, the Eleventh Amendment recorded on January 23, 1997 at Instrument No. 50884389, the Twelfth Amendment recorded on May 13, 1997 at Instrument No.



54017294, the Thirteenth Amendment recorded on July 13, 1998 at Instrument No. 54164684 (collectively the "Expansion Amendments"); and

WHEREAS, on July 24, 1998, the Association, with and upon the written affirmative vote of more than seventy-five percent (75%) of the Association's voting power, caused an amendment to the Declaration to be made and filed at Instrument No. 54168303 ("1998-1 Amendment"), on October 29, 1998 the Association, with and upon the written affirmative vote of more than seventy-five percent (75%) of the Association's voting power, caused an amendment to the Declaration to be made and filed at Instrument No. 54209264 ("1998-2 Amendment"), on January 29, 2003 the Association, with and upon the written affirmative vote of more than seventy-five percent (75%) of the Association's voting power, caused an amendment to the Declaration to be made and filed at Instrument No. 54816255 ("2003-1 Amendments"), on February 24, 2003, the Association, with and upon the written affirmative vote of more than seventy-five percent (75%) of the Association's voting power, caused an amendment to the Declaration to be made and filed at Instrument No. 54828361 ("2003-2 Amendment"), on January 13, 2005 pursuant to Section 5311.05(E)(1) of the Ohio Revised Code, as amended on July 20, 2004, the Board of Directors, without a vote of the Owners, caused amendments to the Declaration to be made and filed at Instrument No. 55142458 ("2005-1 Amendments") "to bring the Declaration in compliance with this Chapter" and on February 14, 2005 pursuant to Section 5311.05(E)(1) of the Ohio Revised Code, as amended on July 20, 2004, the Board of Directors, without a vote of the Owners, caused amendments to the Declaration to be made and filed at Instrument No. 55152076 ("2005-2 Amendment") "to bring the Declaration in compliance with this Chapter;" and

WHEREAS, for ease of reference and use the Association now desires to restate the Declaration, as amended by the Expansion Amendments, 1998-1 Amendment, 1998-2 Amendment, 2003-1 Amendments, the 2003-2 Amendment, the 2005-1 Amendments, and the 2005-2 Amendment with the express understanding that any inconsistency between this Amended and Restated Declaration of Condominium Ownership for Prescott Commons Condominium ("Amended and Restated Declaration") and the Declaration and/or Expansion Amendments, 1998-1 Amendment, 1998-2 Amendment, 2003-1 Amendments, 2003-2 Amendment, 2005-1 Amendments or 2005-2 Amendment, shall be resolved in favor of the Declaration and/or Expansion Amendments, 1998-1 Amendment, 1998-2 Amendment, 2003-1 Amendments, 2003-2 Amendment, 2005-1 Amendments or 2005-2 Amendment; and



WHEREAS, the only provisions from the 1998-1 Amendment, 1998-2 Amendment, 2003-1 Amendments, 2003-2 Amendment, 2005-1 Amendments or 2005-2 Amendment that are not included in this Amended and Restated Declaration is the following statement, the first sentence of which has been modified so as to apply to all provisions modified by the 1998-1 Amendment, 1998-2 Amendment, 2003-1 Amendments, 2003-2 Amendment, 2005-1 Amendments or 2005-2 Amendment:

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

WHEREAS, unless specifically stated otherwise below, as used in this Amended and Restated Declaration, the term "Declaration" refers to the Declaration as amended from time to time by Grantor and as further amended from time to time by the Unit Owners and filed with the Summit County Fiscal Office.

NOW THEREFORE, pursuant to the Grantor's Declaration, the 1998-1 Amendment, 1998-2 Amendment, 2003-1 Amendments, 2003-2 Amendment, 2005-1 Amendments or 2005-2 Amendment, it is declared that Prescott Commons shall be held, sold and conveyed subject to the easements, restrictions, covenants, and conditions, stated below, which shall run with the title to the real estate and be binding on, and inure to the benefit of, all parties having any right, title, or interest in such real estate or any part thereof, and their respective heirs, personal representatives, successors, and assigns.

AMENDED AND RESTATED DECLARATION OF

CONDOMINIUM OWNERSHIP PRESCOTT COMMONS CONDOMINIUM

This Declaration made this 15th day of May, 1994 pursuant to Chapter 5311 of the Ohio Revised Code by First Akron Development Corporation, a Corporation organized and existing under the laws of the State of Ohio, having its principal offices at 611 W. Market Street, Akron, Ohio, 44303 and referred to hereinafter as Grantor.

**1. Submission of Property.**

Grantor, which is Owner in fee simple of the lands, the buildings and all other improvements constructed or to be constructed thereon, together with all easements, rights, and appurtenances belonging thereto, and all other property personal or mixed, intended for use in connection therewith, as described below and hereinafter collectively referred to as the "Property," hereby declares certain divisions, covenants, restrictions, limitations, conditions and uses respecting the Property, intending thereby to submit the Property to the provisions of Chapter 5311 of the Ohio Revised Code, hereinafter referred to as the Condominium Act, and further intending thereby to create covenants running with the land and binding the Grantor, its successors and assigns forever.

**2. Name of Condominium**

The Condominium shall be known as Prescott Commons Condominium.

**3. Description of Land.**

The land on which the buildings and improvements constituting the Property are to be located is described as follows:

Situated in the City of Cuyahoga Falls, County of Summit and State of Ohio and known as being Block "J" of East Bath Village, Subdivision No.4 as shown by the Plat recorded in Plat Cabinet "J," Slide 694 & 695 of Summit County Map Records, be the same more or less but subject to all legal highways and easements of record.

**4. Units.**

There will be a total of 82 Units, each with its own street address, contained in thirty (30) buildings as shown on the General Development Plan for Prescott Commons Condominium, attached hereto as Exhibit "B." All Units will be





restricted to residential use, and all will be compatible in quality of construction, the principal materials to be used and in architectural style. The address for each Unit, the type of Unit it is and the proportionate interest of its Owner in the Common Elements of Prescott Commons Condominium are set forth in the Schedule of Percentage of Interest attached hereto as Exhibit "C."

#### 5. Description of Buildings.

The buildings constructed upon the Property are 1 and 1½ story, multi-family dwellings containing between 2 and 5 dwelling Units and the private garages associated with such dwelling Units.

In general, the buildings are constructed on a concrete slab; however, where major changes in topography occur between the front and rear of the building, the buildings so affected are constructed with basements. Vinyl or aluminum siding, aluminum windows and trim are used as exterior finishes on all dwelling Units and garages. Each Unit includes a deck or patio depending upon the topography evident at the rear of the Unit.

#### 6. Type of Units

A total of seven (7) different Unit types, hereinafter referred to as Unit Types "A," "B," and "C" within the Village Home Series and "D," "E," "F" and "G" within the Western Reserve Ranch Home Series are to be constructed at Prescott Commons Condominium. The following is a description of each Unit Type. The exact limits of the Limited Common Element of each Unit is shown on Exhibit "B" to the Declaration of Condominium.

##### Unit Type "A"

- Chesapeake series.

These Units are 34' wide by 26' deep, one and one half story dwellings and are offered in five different floor plans. These Units have a Limited Common Element that is generally 20' deep in the rear and 12' to 20' deep in the front. The width of the Limited Common Element is 54' for two-car garage units and 46' if the Unit has a one-car garage. Where the Unit is also an end Unit the Limited Common Element may extend up to 5' to the side of the Unit. The exact limits of the Limited Common Element of each Unit are shown on the Condominium Plat.



### **Unit Type "B"**

#### **- The Hyannis/Nantucket series.**

These Units are 26' wide and 34' deep, one and one half story dwellings and are offered in two different floor plans. These Units have a Limited Common Element that is generally 20' deep in the rear and 12' to 20' deep in the front. The width of the Limited Common Element is 46' feet for Units with a two-car garage and 38' for Units with a one-car garage. Where the Unit is also an end Unit the Limited Common Element for the Unit may extend up to 5' to the side of the Unit. The exact limits of the Limited Common Element of each Unit are shown on the Condominium Plat.

### **Unit Type "C"**

#### **- The Plymouth series.**

These Units are 36' wide by 26' deep, one story dwellings with a 14' by 16' wing which may be extended to the front, rear or side of the Unit. These Units are normally constructed as end Units and have a Limited Common Element that extends generally 15' to 20' from the front of the garage and 20' from the rear of the dwelling. Where the wing extends to the front or rear, the wing is in the Limited Common Element. The width of the Limited Common Element is 61' when the wing is to the front or rear. Where the wing is to the side of the Unit, the width of the Limited Common Element is 75'. The exact limits of the Limited Common Element of each Unit are as shown on the Condominium Plat.

### **Unit Type "D"**

#### **- The Middleton series.**

These Units are approximately 46' wide by 53'8" deep, one story dwelling with rear master suite and a side attached garage. These Units have a Limited Common Element that extends generally 20' to 22' from the front of the garage and 15' to 20' from the rear of the dwelling. The exact limits of the Limited Common Element of each Unit are as shown on the Condominium Plat.

### **Unit Type "E"**

#### **- The Walden series.**

The Units are approximately 54' wide by 42' deep, one story dwelling with a side attached garage and the option of rear and side extensions. These Units have a Limited Common Element that extends generally 20' to 22' from the front of the garage and 15' to 20' from the rear of the dwelling. The exact limits of the Limited Common Element of each Unit are as shown on the Condominium Plat.

### Unit Type "F"

#### - The Alcott series.

The Units are approximately 55' wide and 46' deep, one story dwelling with a rear master bedroom suite and a side attached garage. There is also a rear porch option. These Units have a Limited Common Element that extends generally 20' to 22' from the front of the garage, and 15' to 20' from the rear of the dwelling. The exact limits of the Limited Common Element of each Unit are as shown on the Condominium Plat.

### Unit Type "G"

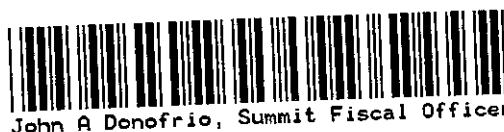
#### - The Lancaster series.

These Units are approximately 46' wide and 44 ½' deep, one story dwelling with a rear master bedroom suite, optional garden bath, and optional great room extension. These Units have a Limited Common Element that extends generally 20' to 22' from the front of the garage and 15' to 20' from the rear of the dwelling. The exact limits of the Limited Common Element of each Unit are as shown on the Condominium Plat.

The Grantor hereby reserves the right to add additional Unit types which will be shown, with their Limited Common Element on "As Built" drawings filed with the County Recorder prior to the transfer of ownership of these Units. Such additional Unit types will be compatible in quality of construction and the principal materials to be used and architectural style to the Unit types described herein. While some types may be acquired as "Limited Edition" models with 64 square feet greater foundation area or with certain plan options which likewise add to the foundation area, these modifications do not affect the Limited Common Element of the dwelling's type. Such plan modifications, along with the locational characteristics of the Unit, do affect the Base Selling Price of each Unit, and its Percentage Interest in the Condominium.

### 7. Definition of Space within the Units.

Each of the Units shall consist of all of the space bounded by the interior surfaces of the perimeter walls, floors and ceilings of the Unit and such interior walls and other partitions or roof rafters necessary to constitute a complete enclosure of space. Wherever such surfaces consist of plaster or plasterboard, all of such plaster and plasterboard contiguous to such surface shall be included within the Unit. The exact layout and dimensions of each Unit are shown in Exhibit "B" and include, without limitation:



(A) Inclusions:

(1) The decorated surfaces, including paints, lacquer, varnish, wallpaper, tile and any other finishing material applied to perimeter walls, floors, and ceilings;

(2) All windows, screens and doors (other than the exterior of the garage door), including the frames, sashes and jambs, and the space occupied thereby;

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

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

(5) All space between interior walls, including the space occupied by utility pipes, wires, ducts and conduits which serve the individual Unit; but excluding the space occupied by structural and component parts of the building, and which serve any other Unit;

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

(7) All decks, patios, fencing or walls which are part of the original construction or which are made by the Unit Owner after having been approved by the Board of Directors; but, excepting therefrom, all of the following items (said items shall be Common Elements) located within the bounds of any Unit as described above:

(B) Exceptions:

(1) Any part of the structure contained in any interior walls, and the structural component parts of perimeter walls;

(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;

(4) All supporting walls, fixtures and other parts of the Building which are within the boundaries of a Unit but which are necessary for the existence, support, maintenance, safety or comfort of any other part of the Condominium Property;

(5) All Porches or Room Additions which are part of the original construction or which are made by the Unit Owner after having been approved by the Board of Directors.

**8. Common Elements.**

Common Elements shall consist of the Land; all foundations, slabs, structural elements and exterior surfaces of all buildings; all exterior utility lines and all shared interior utility lines, drives and parking areas, trees, shrubs and landscaping and other common features.

**9. Limited Common Elements.**

Limited Common Elements are those portions of the Common Elements that are immediately adjacent to the respective Condominium Units and are hereby set aside for the exclusive use of the respective Condominium Unit Owners subject to such restrictions governing their use as may be established by the Bylaws of Prescott Commons Condominium Association. The extent of the Limited Common Element for each of the respective condominium units is shown on the General Plan for Prescott Commons Condominium attached hereto as Exhibit "B." The Limited Common Element typically extends at least 12' to 20' from the front of the unit garage and 15' to 20' feet from the front and rear of the Units, and 5' from the side of any end unit.

**10. Proportionate Representation; Participation in Common Profits, and Expenses; Definitions.**

Each Unit Owner shall share in the common profits and expenses, as hereinafter defined, and in the total voting power of the Unit Owners' Association in accordance with such Unit Owner's interest in the Common Element as set forth in the Schedule of Percentage of Interest, attached hereto as Exhibit "C." Proportionate representation may be limited in accordance with the provisions of the Bylaws attached hereto as Exhibit "A."



The Percentage of Interest is calculated at one point in time to reflect the cost of the base Unit, site feature premiums and plan options of each Owner's Unit, divided by the total of the cost of all base Units, site feature premiums and plan options of all Units. This calculation is made based upon projections prior to the start of construction and again upon the completion of construction of all Units, and thus may not reflect a Unit Owner's actual cost.

The Board of Directors shall have the right to make an additional assessment on any Unit with a Porch or Room Addition which is made the Unit Owner, after having been approved by the Board of Directors, to pay for the additional cost of maintenance, repair, replacement and insurance for such additions which become part of the Common Elements. Such additional assessment to any Unit will not affect the Percentage of Interest of such Unit.

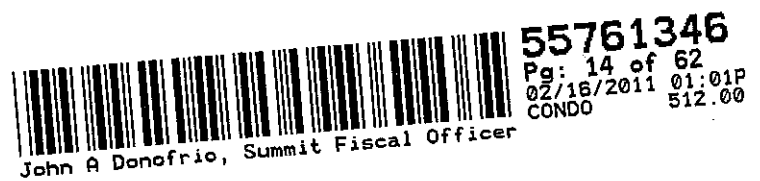
#### 11. Covenants and Agreements.

Grantor, its successors and assigns, by this Declaration, and all further Owners of Units, by acceptance of their respective deeds, hereby covenant and agree as follows:

(A) The Common Elements shall remain undivided, and no right shall exist to partition or divide any of them, except when withdrawal of the Property from the Condominium Act is authorized by the affirmative vote of all Unit Owners. In that event, the Board of Directors shall cause to be paid, released or discharged all liens and encumbrances, except taxes and assessments not then due and payable, on all or any part of the Condominium Property and shall cause to be filed in the offices of the Auditor and Recorder of the County, a certificate signed by the president of the Unit Owners' Association, stating that all Owners of the Condominium have elected to remove the Property from the Condominium Act, and that encumbrances have been paid, released or discharged.

On the filing of such certificate, the Property will be deemed removed from the provisions of the Condominium Act, and will be held in common by all Unit Owners in proportion to their respective interests in the Common Elements of the Condominium as established herein.

(B) If any portion of the Common Elements encroaches on any Unit, or if any Unit encroaches on any other Unit, or any portion of the Common Elements, as a result of the construction of the Buildings; or if any such encroachment shall occur as a result of settling or shifting of Buildings, a valid easement for such encroachment



and for the maintenance of the same so long as the Buildings stand, shall exist. In the event a Building or Buildings, or any Common Elements therein, shall be partially or totally destroyed, as a result of fire or other casualty, or as a result of condemnation or eminent domain proceedings, and then rebuilt, the minor encroachments of parts of the Common Elements on any Unit, or of any Unit on any other Unit or any portion of the Common Elements, due to such rebuilding, shall be permitted, and valid easements for such encroachments and the maintenance thereof for so long as the Buildings stand, shall exist.

(C) Each Unit Owner shall have an easement in common with the Owners of all other Units to use all pipes, wires, ducts, cables, conduits, public utility lines and other Common Elements located in any of the other Units. The Board of Directors, on behalf of all Unit Owners, shall have a right of access to each Unit to inspect the same, and to maintain, repair or replace the Common Elements therein or appurtenant thereto.

(D) Each Unit shall be used by its respective Owner only as a residential dwelling by the Owner, his family, tenants, and social guests, and for no other purpose whatsoever. The Developer shall have the right to rent or lease any Units remaining in its name until such time as the same are sold to individual purchasers. No Unit Owner may partition or subdivide any Unit.

(E) Each Owner of a Unit or Units shall, automatically upon becoming Owner of such a Unit or Units, become a member of a Unit Owners' Association to be established for the administration of the Condominium Property and shall remain a member thereof until such time as his Ownership shall for any reason cease, at which time his membership in the Association shall likewise cease.

(F) Administration of the Condominium shall be in accordance with the provisions of this Declaration and the Bylaws of the Association which are made a part hereof and attached hereto as Exhibit "A."

(G) Each Unit Owner shall comply with the provisions of this Declaration, and the Bylaws, decisions and resolutions of the Association, as lawfully amended from time to time. Failure to comply with such provision, decision or resolution shall be grounds for an action for damages or for injunctive relief, or both, brought by the Unit Owners' Association, by a Unit Owner or Owners, or both.

(H) No Owner of a Condominium Unit may exempt himself from liability for his proportionate share of the common expenses by waiver of the use or enjoyment of any of the Common Elements, or by abandonment of his Condominium Unit.

(I) Except as otherwise provided, the Association shall manage the Common Elements and shall reasonably maintain and keep the same 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 Elements, by promptly, properly and in a good and workmanlike manner, making all repairs, replacements, alterations and other improvements necessary to comply with the foregoing.

(1) The Association's responsibility includes, but is not limited to, the roadways, driveways, parking areas, and sidewalks, including reasonable snowplowing; concrete stoops; foundations; roof systems, including gutters and downspouts; siding; trim; fascia; vents and covers; shutters; exterior light fixtures, door bell and doorbell lights; exterior water faucets and electrical outlets; exterior utility lines and shared interior utility lines; exterior painting and caulking of buildings, doors, garage doors and trim; signage, including Unit addresses; all flue and venting pipes from the point of connection to the exterior; chimney screens, caps and/or covers; exterior exterminating; and landscaping, including mowing, fertilizing, and re-seeding of lawn areas, except those areas enclosed by a privacy fence, and trimming, maintaining, removing and/or replacing shrubs, except those planted by the Unit Owner in the front and side beds appurtenant to his Unit, and all trees.

(2) The foregoing, however, shall not be construed to impose a contractual liability upon the Association for maintenance, repair and replacement, but rather the Association's liability shall be solely limited to damages resulting from negligence.

(3) The Association may also elect to make any necessary repairs to a Unit, which, at the Board's discretion, is necessary to preserve the appearance of the Association, if, after having been given at least thirty (30) days' notice, a Unit Owner fails to make such necessary repairs. The cost of such necessary repairs shall be charged as a special assessment against the responsible Unit Owner's account.

(J) The responsibility of each Unit Owner shall be as follows:





(1) To maintain, repair, and replace at his expense all portions of his Unit, including the garage, and all installations of such Unit, including, but not limited to, all drywall or plasterboard; the decorated surfaces, including painting, lacquer, varnish, wallpaper, tile and any other finishing material applied to walls, floors and ceilings; all control knobs, switches, thermostats and base plugs, floor plugs and connections affixed to or projecting from the walls, floors and ceilings, which serve either the Unit or the fixtures located therein and the space occupied; doors and windows (except that the Association will paint all exterior frames and trim and the exterior of the front and rear doors and garage doors), including frames, sashes and jambs, screen doors, glass doors, window mullion dividers, window screens, skylights and their frames, garage doors and all mechanical apparatuses used for opening and closing of the garage door; exhaust fans and appliances; and all heating, plumbing, gas, electrical and air conditioning fixtures or installations, and any portion of any other utility service facilities lines including dryers, pipes, wires and or conduits located within his Unit boundaries or serving only one Unit, including the air conditioning equipment for his Unit.

(2) To maintain, repair and/or replace at his expense all of the following items that are on the outside of the Unit and/or are Limited Common Elements used by the Unit: concrete pad for air conditioning compressor unit; concrete patio pad, including any concrete or wooden steps located thereon; decks, including the railings, steps, foundations and painting/staining; patios; privacy fences and area enclosed by such fences, if any; and light bulbs for exterior fixtures attached to the Units. All maintenance, repair and/or replacement required hereinabove, at the Unit Owner's expense, shall be in accordance with plans and/or specifications as approved by the Board.

(3) At his expense, to water the lawn, shrubs and trees surrounding his Unit as necessary to maintain it in a healthy, green and attractive manner, compatible with the lawns throughout the balance of the Condominium Property.

(K) In accordance with Ohio Revised Code Section 5311.09(A)(2) and (3), each Unit Owner shall, within thirty (30) days of the recording of this Amendment or within thirty (30) days of title transferring to the Unit Owner, provide to the Association the Unit Owner's and/or all occupants' names, home and business mailing addresses, home and business telephone numbers, and the name, business address and business telephone number of any person who manages the Unit as



an agent of that Owner. Any change in the information shall be provided to the Board, in writing, within thirty (30) days of said change.

**12. Restrictions as to the Use and Occupancy of the Condominium Property.**  
The following restrictions, conditions and limitations shall run with the land and shall be binding upon each Unit Owner and each Unit Owner's heirs, tenants, successors and assigns:

(A) Each Unit shall be used for residential purposes and for no other purpose. That portion of the Unit that was originally constructed for use as a garage shall be used solely for garage and storage purposes.

(B) A Unit Owner may use a portion of his Unit for his office or studio subject to the following provisions:

(1) Such use meets the requirements for a home occupation within the City of Cuyahoga Falls;

(2) Such use does not interfere with the quiet enjoyment of any other Unit Owner or Occupant;

(3) Such use is compatible with the residential character of the Condominium and does not result in the Unit becoming principally an office, studio or school distinct from a residence. The Board may adopt Rules which further limit such use.

(C) Nothing shall be done or kept within any Unit, Limited Common Element or Common Element that would result in an increase in the rate of insurance applicable for residential use as the same pertains to the Condominium Property, without the written consent of the Board.

(D) No Unit Owner shall keep, store, or use any hazardous or toxic substance or waste (as defined by applicable law or regulation) within his Unit, Limited Common Element or Common Element without the prior written consent of the Board. Owners and Occupants must not pour or spill any oil, solvent, or any other volatile or inflammable material into the storm sewers, garage catch basins, or Common Elements. Ohio EPA and the City of Cuyahoga Falls prohibit such dumping.



(E) Other than those originally approved by the Developer, no installation or improvement, including without limitation, a sign, awning, canopy, screen, shutter, external or outside antenna of any kind, or any other item shall be permitted without the prior written consent of the Board of Directors.

(F) No animals shall be raised, bred or kept in any Unit or Common Element for any commercial purpose. Dogs, cats or other common household pets may be kept in a Unit subject to any Rules that may be adopted by the Board of Directors. Owners must clean up after their pets. Pets cannot be tied in any Common Element and no stake poles and runs are to be placed in any Common Element.

(G) No clothing or any other household fabric shall be hung outside of any Unit.

(H) No commercial truck, motor home, boat or other similar commercial or recreational vehicle, licensed or unlicensed, may be parked or stored on any street or driveway in or upon the Condominium Development except in the confines of the garage.

(I) No furniture or appliances are to be placed permanently on Common Elements. Picnic tables, grills, etc. may be used on Common Elements but must be removed from the grass area after use and placed in the patio or deck area. Toys, tricycles, etc. may not be left in the Common Elements overnight.

(J) Nothing may be stored in the patio or deck area other than patio furniture, grills, etc.

(K) No Unit shall be leased by a Unit Owner to others for business, speculative, investment or any other purpose. The purpose of this restriction is to create a community of resident owners.

This restriction does not apply to: 1) Units which are occupied by the parent(s) or child(ren) of the Unit Owner; or, 2) any Unit Owner leasing his Unit at the time of recording of this amendment with the County Recorder, and who has registered his Unit as being leased with the Association within three (3) months of the recording of this amendment, said Unit Owner shall continue to enjoy the privilege of leasing that Unit until the title to said Unit is transferred to a subsequent owner.



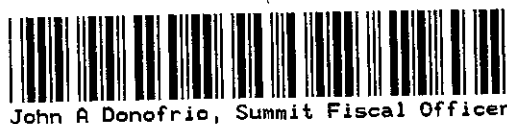
To meet a special situation and to avoid an undue hardship or practical difficulty, the Board shall grant permission to a Unit Owner to lease his/her Unit to a specified lessee for a one-time period not less than six (6) consecutive months nor more than twenty-four (24) consecutive months. The one-time hardship exception of up to twenty-four (24) months may in no event be extended beyond the one twenty-four (24) month period.

In no event shall a Unit be leased by the Unit Owner thereof for transient purposes, which is defined to mean a lease for any period less than six (6) full, consecutive calendar months.

All exempted leases shall be in writing, shall require the lessee to abide by the terms of the Declaration and the Bylaws, as well as any rules and regulations adopted by the Board, and shall give the Board the right to dispossess or otherwise act for the Unit Owner in case of default under the lease or for violation of the Declaration, Bylaws or the rules and regulations. Any land contract for the sale of a Unit must be recorded and a recorded copy of the same shall be delivered to the Association. Any land contract not recorded shall be considered an impermissible lease. The Unit owner shall continue to be liable for all obligations of ownership of his Unit and shall be responsible to the Board for the conduct of his/her lessee. Copies of all exempted leases shall be delivered to the Board prior to the beginning of the lease term.

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

(L) No person who is determined to be a sexual predator pursuant to the Ohio Sex Offenders Act or similar statute from another jurisdiction and required to register with a designated registering agency pursuant to said Act or similar statute, as the same may from time to time be amended, may reside in or occupy a Unit for any length of time. Any violation of this restriction shall subject the Unit Owner and/or any occupant of the Unit to any and all remedies provided for by law as well



as this Declaration. The Association shall not, however, be liable to any Unit Owner or occupant, or anyone visiting any Unit or the Association, as a result of the Association's alleged failure, whether negligent, intentional or otherwise, to enforce the provisions of this restriction.

**13. Architectural Control.**

No building, fence, wall or other structure shall be erected, placed, or altered within the Condominium Development until the plans and specifications showing the nature, kind, shape, height(s), materials, colors and location of the same shall have been submitted to and approved by the Developer in writing, to assure the harmony of external design and location in relation to surrounding structures and topography. Responsibility for "Architectural Control," as described above, will transfer from the Developer to the Board of Directors for Prescott Commons Condominium, upon completion of construction of all Units within the Condominium Development.

**14. Assessment Liens; Costs of Enforcement.**

All sums assessed by the Association for common charges applicable to any Condominium Unit remaining unpaid for more than ten (10) days after same have become due and payable shall constitute a lien on such Condominium Unit prior to all other liens subsequently arising or created, except:

- (i) real estate tax and assessment liens of record, and
- (ii) first mortgage liens of record.

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

Such lien may be foreclosed in the same manner as a mortgage on real Property on behalf of all Unit Owners by the President of the Association, pursuant to the authorization of the Board of Directors thereof. During the pendency reasonable rental for the Unit and the Board of Directors shall be entitled to appoint a receiver to collect the same. The Board of Directors, acting on behalf of the Owners of all Units, shall have the power to bid on the Unit at foreclosure, and to acquire, hold, mortgage, and convey the same. Suit to recover a money judgement for unpaid common expenses may also be maintained without foreclosure or waiving the lien securing the payment of such expenses.



A Unit Owner (whether by his or her conduct or the conduct of any occupant in his or her Unit) violating any provision in this Declaration, or the Bylaws (including collection of delinquent accounts), or any Rule adopted thereunder, shall pay to the Association, in addition to any other sums due, all costs and expenses incurred by the Association in connection with the enforcement of said provision or rule or collection of the delinquent account, including attorney's fees, recording costs, court costs, title reports or any other similar type of costs.

**15. Insurance and Deductible; Destruction of, or Damage to Property; Effect.**

(A) Casualty Insurance. The Association shall carry casualty insurance on all insurable improvements comprising the Common Elements and all personal property as may be owned by the Association and for which the Association is responsible; and casualty insurance on all other structures and insurable improvements constituting a part of the Condominium Property, other than improvements located in the bounds of each Unit that have been placed therein by or on behalf of parties other than the Declarant or the Association. That is, the Condominium policy shall insure the fixtures, installations, wall and floor coverings, plaster or plasterboard (drywall), cabinetry, sinks, dishwashers, disposals, toilets, partitions and other improvements which were installed by the Declarant, but the Association shall not insure any improvements within the bounds of a Unit placed therein by or on behalf of any one other than the Declarant or the Association. The burden shall be upon the Unit Owner to determine whether improvements located within the bounds of such Owner's Unit shall be insured under the Association policy; provided, however, that a claim against the Association's casualty insurance shall not be made for any loss or damage to any insurable installations and improvements that are a part of the Unit, whether installed by the Declarant, Association or Unit Owner, that is lost or damaged as a result of a peril or event that originates from within the Unit. By way of example, if a washing machine hose breaks in a Unit and floods the same Unit, a claim against the Association's casualty insurance for the loss or damage occurring to the Unit in which the hose broke shall not be made. Loss or damage to other Units, as a result of the break, may be claimed against the Association's casualty insurance as provided for herein.

(B) Property Insurance.

(1) Amounts. The Condominium Property shall be insured for an amount (after application of any deductible or deductions) equal to one hundred percent (100%) of the current replacement cost. The replacement cost shall exclude land, foundation excavation and other items normally excluded from



coverage. Personal property owned by the Association shall be insured for an amount equal to its replacement value. The Board may also obtain Agreed Amount and Inflation Guard Endorsements. The Board is authorized to obtain appraisals periodically for the purpose of establishing the amounts required and the cost of such appraisals shall be a Common Expense.

(2) Deductibles. The policy may include a reasonable deductible and the amount thereof shall be added to the face amount of the policy to determine whether the amount equals the full replacement cost. The maximum deductible shall be the lesser of Ten Thousand Dollars (\$10,000.00) or one percent (1%) of the policy face amount. The deductible shall be paid by the party who would be responsible for the loss or repair in the absence of insurance and in the event of multiple parties or combined claims, shall be allocated in relation to the amount each party's claim bears to the total claim. By way of example, if a storm damages a roof, which would cost \$600.00 to repair, and causes interior water damage to a Unit, which would cost \$400.00 to repair, and the Association has a \$100.00 deductible, then the Association could recover \$540.00 (\$600.00 less \$60.00 share of deductible) and the Unit Owner could recover \$360.00 (\$400.00 less \$40.00 share of deductible).

(3) Risks Insured Against. The insurance shall afford protection against the following:

(a) loss or damage by fire and other perils normally covered by the standard extended coverage endorsement; and

(b) all other perils which are customarily covered, including perils normally covered by the standard "all-risk" endorsement, where such is available at reasonable cost.

(C) Other Provisions. Insurance policies required by this Article shall provide that:

(1) The insurer recognizes any Insurance Trust Agreement;

(2) The insurer waives the right to subrogation under the policy against a Unit Owner or member of the household of the Unit Owner;



(3) An act or omission by a Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will not void the policy or be a condition to recovery under this policy;

(4) If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy is primary;

(5) Insurance proceeds shall be paid to any insurance trustee designated in the policy for that purpose and in the absence of such designation, to the Association, in either case to be held in trust for each Unit Owner and such Unit Owner's mortgagee;

(6) The insurer may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner and each holder or a security interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses;

(7) The name of the insured shall be substantially as follows: "Prescott Commons Condominium Association, for the use and benefit of the individual owners."

(D) Unacceptable Policies. No policy shall be acceptable where:

(1) Under the terms of the insurance carrier's charter, bylaws or policy, contributions or assessments may be made against borrowers, FNMA, FHLMC or the designee of FNMA or FHLMC;

(2) By the terms of the carrier's charter bylaws or policy, loss payments are contingent upon action by the carrier's board of directors, policy holders or members; or

(3) The policy includes any limiting clauses (other than the insurance conditions) which could prevent FNMA, FHLMC or the borrowers from collection insurance proceeds.

(E) Liability Insurance. The Board shall obtain liability insurance in an amount determined by the Board. In no event shall the amount be less than One Million Dollars (\$1,000,000.00). This insurance shall cover all occurrences





commonly insured against for death, bodily injury and property damage arising out of or in connection with the use, ownership or maintenance of the Common Elements and the activities of the Association

(F) Other Provisions. Insurance policies carried pursuant to this Section shall provide that:

(1) Each Unit Owner is an insured person under the policy with respect to liability arising out of the interest of the Unit Owner in the Common Elements or membership in the Association. The insurer waives the right to subrogation under the policy against a Unit Owner or member of the household of the Unit Owner.

(2) An act or omission by a Unit Owner, unless acting within the scope of the Unit Owner's authority on behalf of the Association, will not void the policy or be a condition to recover under the policy.

(3) If, at the time of a loss under the policy, there is other insurance in the name of a Unit Owner covering the same risk covered by the policy, the Association's policy is primary.

(4) Insurance proceeds shall be paid to any insurance trustee designated in the policy for that purpose, and in the absence of such designation, the Association in either case to be held in trust for each Unit Owner and such Unit Owner's mortgagee. The insurer may not cancel or refuse to renew the policy until thirty (30) days after notice of the proposed cancellation or non-renewal has been mailed to the Association, each Unit Owner and each holder of a security interest to whom a certificate or memorandum of insurance has been issued, at their respective last known addresses.

(G) Insurance Trustees, Power of Attorney. There may be named as an insured, on behalf of the Association, the Association's authorized representative. This representative may include any trustee with whom the Association may enter into any Insurance Trust Agreement or any successor to such trustee. Each of these shall be referred to herein as the "Insurance Trustee." This representative shall have exclusive authority to negotiate losses under any policy providing such property or liability insurance and to perform such other functions as are necessary to accomplish this purpose. Each Unit Owner appoints the Association, any Insurance Trustee or substitute Insurance Trustee designated by the Association, as attorney-in-fact. The purpose of this appointment shall be for



purchasing and maintaining such insurance. The duties shall include the following: collection and appropriate disposition of the proceeds thereof; the negotiation of losses and the execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose.

(H) Fidelity Bonds. The Association shall maintain blanket fidelity bonds for all officers, directors, trustees and employees of the Association or any other party (including volunteers) handling or responsible for funds of or administered by the Association. If the Association delegates some or all of the responsibility of the handling of the funds to a professional management company, then such company shall obtain such fidelity bond coverage. Such coverage shall be for those of its officers, employees or agents who handle or are responsible for funds of or administered on behalf of the Association. In such case, the Association shall be named as an additional loss payee. The total amount of fidelity bond coverage shall be based upon the Board's business judgment. The coverage shall not, however, be less than the estimated maximum of funds, including reserve funds, in the custody of the Association or professional management company at any given time during the term of the bond. However, in no event may the coverage be less than the sum of three (3) months' aggregate assessments on all units plus reserve funds.

(1) All such fidelity bonds shall:

(a) Name the Association as obligee as the named insured;

(b) Contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression;

(c) Contain an appropriate endorsement to cover persons who serve without compensation if the policy would not otherwise cover volunteers; and

(d) Provide that the bonds may not be canceled or substantially modified (including cancellation for non-payment of premium) without at least thirty (30) days prior written notice to the Association or Insurance Trustee and to a financial institution or entity which is servicing any mortgage on any part of the Property on behalf of the FNMA or FHLMC. The premiums on such bonds (except for those on fidelity bonds maintained by a



professional management company for its officers, employees and agents) shall be paid by the Association and shall be a Common Expense. The Board may waive or reduce the fidelity bond coverage required herein by institution of one or more of the following controls:

(i) The Association or any management company maintains separate bank accounts for the working account and reserve account, each with appropriate access controls and the bank in which the funds are deposited sends copies of the monthly bank statements directly to the Association President or Treasurer;

(ii) The management company maintains separate records and bank accounts for each owner's association that uses its services and the management company does not have the authority to draw checks on or transfer funds from - the association's reserve account;

(iii) Two members of the Board must sign any checks written on the reserve account.

(I) Unit Owners' Policies. Any insurance policy issued to the Association does not prevent a Unit Owner from obtaining insurance for his or her own benefit.

(J) Worker's Compensation Coverage. If necessary, the Board shall obtain and maintain Worker's Compensation Coverage to meet the requirements of the laws of the State of Ohio.

(K) Directors and Officers Insurance. The Board shall obtain and maintain directors' and officers' liability insurance, if available, covering all trustees and officers of the Association in such limits as the Board may, from time to time, determine.

(L) Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed in accordance with this section.

(1) If the damage or destruction is to be repaired or reconstructed, the proceeds shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. If any proceeds remain after defraying such costs of repairs or reconstruction of the Common Elements, such excess proceeds shall be retained by and for the benefit of the Association. If any Unit is involved and if no repair or



reconstruction is made after making such settlement as is necessary and appropriate with the affected Unit Owner(s) and their mortgagee(s), as their interest may appear, such excess proceeds shall be retained by and for the benefit of the Association. This is a covenant for the benefit of any mortgagee of a Unit and may be enforced by such mortgagee.

(2) If it is determined, as provided for in Section M of this Article, that the damage or destruction of the Common Elements for which the proceeds are paid shall not be repaired or reconstructed then such proceeds shall be disbursed in the manner as provided for excess proceeds in Section N hereof.

(M) **Damage or Destruction.** Immediately after the damage or destruction by fire or other casualty to all or any part of the Property covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance. The Board or its agent shall obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in the paragraph, means repairing or restoring the property to substantially the same condition in which it existed prior to the fire or other casualty.

(1) Any damage or destruction to the Common Elements shall be repaired or reconstructed unless Association shall decide not to repair or reconstruct. Such determination shall be made within sixty (60) days after the casualty. Such determination must be by a vote of at least seventy-five percent (75%) of the total votes of the Association. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available. No extension, however, shall exceed sixty (60) days. No mortgagee shall have the right to participate in the determination of whether the Common Elements damage or destruction shall be repaired or reconstructed.

(2) In the event that it should be determined by the Association in the manner described above that the damage or destruction of the Common Elements shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event that property shall be restored to its natural state. The Association shall maintain such property as an undeveloped portion of the Common Elements in a neat and attractive condition.



(N) Repair and Restoration. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Unit Owners, levy a special Assessment against all Unit Owners. Additional Assessments may be made in a like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the cost of repair, such excess shall be deposited to the benefit of the Association.

**16. Acquisition of a Unit at Foreclosure Sale; Effect.**

Any first mortgagee who obtains title to a Condominium Unit pursuant to the remedies provided in the mortgage, a deed in lieu of foreclosure, or foreclosure will not be liable for such Unit's unpaid assessments or charges which accrue prior to the acquisition of title to such Unit by the mortgagee. Any such unpaid share of common expenses or assessments shall be deemed common expenses collectible from all Condominium Units including the Unit acquired by such purchaser, his heirs, successors and assigns.

**17. Conveyance of Units; Liability for Assessments.**

Whenever a Condominium Unit is voluntarily conveyed, the Grantee shall be jointly and severally liable with the Grantor for all unpaid assessments by the Association against the latter for his share of common expenses up to the time of conveyance without prejudice to the Grantee's right to recover from the Grantor any amount paid by the Grantee for such assessments. Any Grantee shall be entitled to a statement from the Board of Directors of the Association setting forth the amount of any unpaid assessment due the Association from the Grantor. If such statement is requested, the Grantee shall not be liable, nor shall the Unit conveyed to such Grantee be subjected to a lien, for any unpaid assessment due the Association from the Grantor in excess of the amount set forth therein.

**18. Eminent Domain**

(A) In the event that there is a taking of all or any portion of the Condominium property by eminent domain proceedings or conveyance under the threat thereof, each Unit Owner designates the Association and its duly authorized agents as the Unit Owners agent to negotiate and settle all matter concerning the eminent domain.

(B) In the event that the entire Condominium property or substantially all thereof is taken through eminent domain proceedings or the threat thereof, the

Condominium shall terminate. In that event, the Board of Directors shall cause to be paid, released or discharged all liens and encumbrances, except taxes and assessments not then due and payable, on all or any part of the Condominium Property and shall cause to be filed in the offices of the Auditor and Recorder of the County, a certificate signed by the president of the Unit Owner's Association, stating that all Owners of the Condominium have elected to remove the Property from the Condominium Act, and that encumbrances have been paid, released or discharged; and the award or proceeds shall be apportioned among the Unit Owners in accordance with their percentage interest in the Common Elements as set forth in the Schedule of Percentage of Interest attached hereto as Exhibit "C".

(C) In the event that substantially less than the entire Condominium Property is taken by eminent domain proceedings or disposed of in lieu thereof, the Condominium shall not terminate and the Board shall allocate, apportion and distribute the award or proceeds as follows:

1) The amount allocated to the taking of or injury to Common Elements, including any consequential damages, shall be distributed to the Association.

2) The amount allocated to the taking of or injury to any Unit shall be distributed to the Unit Owner.

3) The amount allocated for severance or consequential damages to one or more Units shall be apportioned among and distributed to the Unit Owners in the ratio that their percentage interest bears to the aggregate percentage interests of all Unit Owners so damaged.

4) In the event that a partial taking results the taking of an entire Unit, the percentage interest of such Unit in the Common Elements shall be reallocated to each remaining Unit in the ratio that the percentage interest of each remaining Unit bears to the aggregate percentage interests of all remaining Units.

#### 19. Agreements and Determination of the Association.

All agreements and determinations lawfully made by the Association in accordance with the voting percentages established in the Bylaws attached as Exhibit "A" shall be binding on all Unit Owners, their heirs, successors and assigns.

In addition to the provisions of the Bylaws, on the Association's behalf, the Board is also authorized and empowered to enter into one or more agreements for the shared and ongoing reasonable maintenance, repair, replacement and/or improvement of the entranceway area located at the intersection of East Bath Road and Hunters Parkway extending a maximum distance of twenty-five feet



(25') from the curb on both the east and west side of Hunter Parkway and no further to the north than the East Bath Woods Condominium's southerly property line along Hunter Parkway (the "Entranceway"). Any such agreement(s) shall also be binding on the Unit Owners, their heirs, successors and assigns, and shall require that the maintenance, repair, replacement and/or improvement of the Entranceway must be proportionately shared with the other community associations served by such Entranceway, including, without limitation, East Bath Woods Condominium Association, Prescott Green Condominium Association, Inc. and North Point at Hunters' Crossing Condominium Association, based on the total number of units within such communities. Such agreement(s) may also include, without limitation, an easement to or from the Association to share in the use, benefit and/or responsibility to maintain the Entranceway. The Association's share of such Entranceway expenses shall be evenly divided amongst and assessed against the Association's unit owners.

**20. Arbitration of Disputes Between Unit Owners.**

In the event of any dispute between Unit Owners as to any provision in the Declaration, the Bylaws, or any rule or regulation adopted thereunder to any particular circumstance, the aggrieved party shall submit a complaint in writing to the Board specifying such dispute. The Board shall forward a copy of the complaint to the person named in the complaint and the Board shall set a time, date and place for a hearing within forty-five (45) days thereafter and give written notice to each party thereof not less than five (5) days in advance. Such time period may be shortened or lengthened by the Board if the circumstances stated in the complaint would reasonably require a longer or shorter time period to arbitrate such dispute. The Board shall thereupon hear such evidence on the dispute as the Board deems proper and render a written decision on the matter to each party within ten (10) days thereafter (unless such decision would reasonably require a longer time period but not to exceed, in any event, thirty (30) days). No action at law may be instituted by either party to such a dispute unless arbitration pursuant hereto has first been had. The decision of the Board shall not be deemed to be binding on either party to the arbitration and the Board and its individual members shall not be held personally liable for any decision rendered pursuant to such arbitration procedure.

In accordance with Ohio Revised Code Section 5311.081(B)(12), the Board shall have the authority to impose interest and administrative late fees for the late payment of Assessments; impose returned check charges; and, in accordance with the procedure outlined in Ohio Revised Code Section 5311.081(C)(1), impose



reasonable enforcement Assessments for violations of the Declaration, the Bylaws, and the rules of the Association, and reasonable charges for damage to the Common Elements.

21. **Insurance.** [Deleted in its entirety pursuant to Amendment. See Article 15.]

22. **Duties and Liabilities of Grantor and/or the Developer.**

So long as Grantor and/or the Developer, their successors and assigns own one or more of the Condominium Units established and described herein, Grantor and/or the Developer, their successors and assigns shall be subject to the provisions of this Declaration and all Exhibits attached hereto. Grantor and/or the Developer further covenant to take no action that would adversely affect the right of the Association with respect to assurances against latent defects in the Property, or other rights assigned to the Association by reason of the establishment of the Condominium.

23. **Receipt of Service of Process.**

The person to receive service of process for the Association shall be as designated by the Board. This designation will be accomplished by filing with the Ohio Secretary of State the required statutory agent designation form.

24. **Amendment of Declaration.**

This Declaration, the Drawings and the Bylaws marked as "Exhibit A" may be amended only by the affirmative written vote of the 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 Summit 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. Effective with the recording of said instrument, this Declaration and the Bylaws should 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/her 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, so as to cause the Declaration to conflict





with Chapter 5311, Ohio Revised Code, or any successor statute, nor may any amendment be made to the percentage interests set forth in "Exhibit C" without the prior unanimous approval of all Unit Owners and their respective mortgagees.

**25. Invalidity.**

If anyone or more provisions of this Declaration are declared invalid, such invalidity shall in no way impair or affect in any manner, the enforceability, or effect, of the remainder of this Declaration.

**26. Waiver.**

No provision contained in this Declaration shall be deemed waived by reason of failure to enforce the same, irrespective of the number of violations or reason for such failure to enforce.

**27. Captions.**

Captions are inserted in this Declaration for convenience and reference only, and shall not be taken in any way to limit or describe the scope of this Declaration or any provision thereof.

IN WITNESS WHEREOF, the Prescott Commons Condominium Association, an Ohio non-profit corporation, has executed this instrument by its authorized officers, on this 21 day of January, 2011.

**PRESCOTT COMMONS CONDOMINIUM ASSOCIATION**

William B. Wilfong  
WILLIAM B. WILFONG, its PRESIDENT

Robbyn Watkins  
ROBBYN WATKINS, its SECRETARY

