

**DECLARATION OF CONDOMINIUM OWNERSHIP**  
**FOR**  
**THE GREENS AT THE VILLAGES OF WETHERINGTON CONDOMINIUMS**

Declaration Index

<u>ITEM</u>	<u>PAGE</u>
<b>ARTICLE I DEFINITIONS.....</b>	<b>1</b>
<b>ARTICLE II THE LAND.....</b>	<b>4</b>
<b>ARTICLE III NAME.....</b>	<b>4</b>
<b>ARTICLE IV PURPOSES; RESTRICTIONS .....</b>	<b>4</b>
Section 1. Purposes.....	4
Section 2. Restrictions.....	5
(a) Unit Uses.....	5
(b) Common Elements Uses .....	5
(c) Limited Common Elements Uses .....	5
(d) Visible Areas.....	5
(e) Nuisances.....	6
(f) Vehicles.....	6
(g) No Renting and/or Leasing .....	6
(h) Signs .....	7
(i) Replacements.....	7
(j) Structural Integrity.....	7
(k) Building on Easements .....	7
(l) Animals.....	7
(m) Conveyances .....	8
(n) Architectural Control .....	8
(o) Arbitration.....	8
(p) Owner/Resident Information .....	9
(q) Occupancy Restriction.....	9
<b>ARTICLE V IMPROVEMENT DESCRIPTIONS.....</b>	<b>9</b>
Section 1. Residential Buildings.....	9
Section 2. Other Improvements.....	10
<b>ARTICLE VI UNITS.....</b>	<b>10</b>
Section 1. Unit Designations, Size and Location.....	10
Section 2. Composition of Units .....	10
<b>ARTICLE VII COMMON AND LIMITED COMMON ELEMENTS .....</b>	<b>12</b>
Section 1. Common Elements - Description.....	12
Section 2. Limited Common Elements - Description. ....	12
Section 3. Undivided Interests.....	12
<b>ARTICLE VIII UNIT OWNERS' ASSOCIATION.....</b>	<b>13</b>
Section 1. Establishment of Association.....	13
Section 2. Membership.....	13

Section 3. Voting Rights.....	13
Section 4. Board of Directors.....	14
Section 5. Authority .....	14
Section 6. Delegation of Authority; Professional Management .....	14
Section 7. Authorization to Own Other Condominium Property.....	14
<b>ARTICLE IX AGENT FOR SERVICE.....</b>	<b>15</b>
<b>ARTICLE X MAINTENANCE AND REPAIR.....</b>	<b>16</b>
Section 1. Association Responsibility .....	16
Section 2. Individual Responsibility.....	16
<b>ARTICLE XI UTILITY SERVICES.....</b>	<b>17</b>
<b>ARTICLE XII INSURANCE; LOSSES .....</b>	<b>17</b>
Section 1. Fire and Extended Coverage Insurance .....	17
Section 2. Liability Insurance .....	18
Section 3. Other Association Insurance .....	18
Section 4. Insurance Representative; Power of Attorney .....	19
Section 5. Unit Owner's Insurance .....	19
Section 6. Sufficient Insurance .....	20
Section 7. Insufficient Insurance .....	20
Section 8. Fidelity Bond Coverage.....	20
<b>ARTICLE XIII DAMAGE; RESTORATION; REHABILITATION AND RENEWAL</b>	<b>21</b>
Section 1. Restoration of Substantial Damage and Destruction.....	21
Section 2. Rehabilitation and Renewal .....	21
<b>ARTICLE XIV CONDEMNATION .....</b>	<b>22</b>
Section 1. Standing .....	22
Section 2. Use of Proceeds .....	22
Section 3. Power of Attorney .....	23
<b>ARTICLE XV GRANTS AND RESERVATIONS OF RIGHTS AND EASEMENTS</b>	<b>23</b>
Section 1. Easements of Enjoyment; Limitations.....	23
Section 2. Right of Entry for Repair, Maintenance and Restoration.....	24
Section 3. Easements for Encroachments .....	24
Section 4. Easement for Support.....	24
Section 5. Easements for Utilities .....	24
Section 6. Easements for Services .....	25
Section 7. Power of Attorney .....	25
Section 8. General .....	25
<b>ARTICLE XVI ASSESSMENTS AND ASSESSMENT LIENS .....</b>	<b>25</b>
Section 1. Types of Assessments .....	25
Section 2. Purpose of Assessments .....	25
Section 3. Elements; Apportionment; Due Dates.....	26
(a) Annual Operating Assessments .....	26
(b) Special Assessments for Capital Improvements.....	28

(c) Special Individual Unit Assessments.....	28
(d) Rules for Levying Enforcement Assessments for Violations.....	29
Section 4. Effect Date of Assessment.....	29
Section 5. Effect of Nonpayment of Assessments; Remedies of the Association. ...	29
Section 6. Subordination of the Lien to First Mortgages.....	31
Section 7. Certificate Regarding Assessments .....	32
Section 8. Cost of Enforcement .....	32
<b>ARTICLE XVII NOTICES TO AND VOTING RIGHTS OF LENDING</b>	
<b>INSTITUTIONS.....</b>	<b>32</b>
Section 1. Notices .....	32
Section 2. Voting Rights.....	34
<b>ARTICLE XVIII CONDOMINIUM INSTRUMENT REQUIREMENTS.....</b>	<b>34</b>
Section 1. General .....	34
Section 2. Deposits .....	35
Section 3. Association Control.....	35
Section 4. Limited Warranty.....	35
(a) Units .....	35
(b) Common Elements .....	35
(c) Appliances, etc.....	36
(d) Extended Warranties .....	36
(e) Limitations .....	36
Section 5. Declarant's Obligations .....	37
<b>ARTICLE XIX AMENDMENTS .....</b>	<b>37</b>
Section 1. Power to Amend.....	37
Section 2. Method to Amend.....	38
<b>ARTICLE XX EXPANSIONS.....</b>	<b>39</b>
Section 1. Reservation of Expansion Option.....	39
Section 2. Limitations on Expansion Option. ....	39
Section 3. Maximum Expansion Time.....	39
Section 4. Legal Description.....	39
Section 5. Composition of Portions Added .....	39
Section 6. Time for Adding Portions .....	40
Section 7. Improvement Location Limitations .....	40
Section 8. Residential Use Restriction .....	40
Section 9. Compatibility of Structures .....	40
Section 10. Improvements Other than Structures .....	40
Section 11. Types of Units .....	40
Section 12. Limited Common Elements .....	41
Section 13. Supplementary Drawings .....	41
Section 14. Procedures for Expansion .....	41
Section 15. Effects of Expansion .....	41

Section 16. Maximum Number of Additional Units.....	42
<b>ARTICLE XXI GENERAL PROVISIONS.....</b>	<b>42</b>
Section 1. Condominium Instruments.....	42
Section 2. Covenants Running with the Land.....	42
Section 3. Enforcement.....	43
Section 4. Severability.....	43
Section 5. Notices.....	43
<b>EXHIBIT "A" Legal Description of Condominium Property.....</b>	<b>45</b>
<b>EXHIBIT "B" Allocation of Common Element Interests Among Condominium Units</b> <b>.....</b>	<b>46</b>
<b>EXHIBIT "C" Legal Description of Easement Area .....</b>	<b>48</b>
<b>EXHIBIT "D" Legal Description of Optional Expansion Area of Condominium</b> <b>Property .....</b>	<b>49</b>

## DECLARATION OF CONDOMINIUM OWNERSHIP

This is the Declaration of Condominium Ownership made on or as of the 20th day of September, 2001, pursuant to the provisions of Chapter 5311 of the Ohio Revised Code.

**WHEREAS**, Weaver Custom Homes, Inc. ("Declarant"), is the owner in fee simple of all the real property hereinafter described and the improvements thereon and appurtenances thereto; and

**WHEREAS**, the Declarant desires to create of this property a site of individually owned Units and commonly owned areas and facilities and to these ends, to submit this property to condominium ownership under the provisions of the Condominium Act,

**NOW THEREFORE**, Declarant hereby makes and establishes the following plan for condominium ownership of the property hereinafter described under and pursuant to the Condominium Act.

### ARTICLE I

#### DEFINITIONS

The terms used in this document shall have these meanings, unless the context requires otherwise:

(A) "Articles" and "Articles of Incorporation" mean the articles, filed with the Secretary of State of Ohio, incorporating The Greens at The Villages of Wetherington Condominium Association, Inc. as a corporation not-for-profit under the provisions of Chapter 1702 of the Revised Code of Ohio (the State of Ohio's non-profit corporation statutory act), as the same may be lawfully amended from time to time.

(B) "Association" and "The Greens at The Villages of Wetherington Condominium Association, Inc." means the corporation not-for-profit created by the filing of the Articles and is also one and the same as the Association created for the Condominium pursuant to the provisions of the Condominium Act.

(C) "Board" and "Board of Directors" mean those persons who, as a group, serve as the board of directors of the Association and are also one and the same as the board of directors of the Condominium established for the Condominium pursuant to the provisions of the Condominium Act.

(D) "Bylaws" mean the Bylaws of the Association, as the same may be lawfully amended from time to time, created under and pursuant to the provisions of the condominium law for the Condominium, and which also serve as the code of regulations of the Association under and pursuant to the provisions of Chapter 1702. A true copy of the Bylaws is attached hereto and made a part hereof.

(E) "Common Elements" means all of the Condominium Property, except that portion thereof described in this Declaration as constituting a Unit or Units, and is that portion of the Condominium Property constituting "common elements" of the Condominium under the provisions of the Condominium Act.

(F) "Condominium" and "The Greens at The Villages of Wetherington Condominiums" mean the condominium regime for the Condominium Property created under and pursuant to the provisions of the Condominium Act.

(G) "Condominium Act" means Chapter 5311 of the Revised Code of Ohio.

(H) "Condominium Instruments" means this Declaration, the Bylaws, the Drawings, and, as provided by the Condominium Act, "all other documents, contracts, or instruments establishing ownership of or exerting control over the Condominium Property or Unit." Individual contracts for the sales of Units, and attachments thereto, are Condominium Instruments.

(I) "Condominium Organizational Documents" means the Articles, the Bylaws, the Drawings, and this Declaration and as the same may lawfully be amended from time to time.

(J) "Condominium Property" means the tract of land hereinafter described as being submitted to the Condominium Act, all buildings, structures and improvements situated thereon, and all easements, rights and appurtenances belonging thereto.

(K) "Declarant" means Weaver Custom Homes, Inc., provided the rights specifically reserved to Declarant under the condominium organizational

documents shall accrue only to such successors and assigns as are designated in writing by Declarant as successors and assigns of such rights.

(L) "Declaration" means this instrument by which the Condominium Property is submitted to the Condominium Act, as this instrument may be lawfully amended from time to time.

(M) "Director" and "Directors" mean that person or those persons serving, at the time pertinent, as a director or directors of the Association, and mean that same person or those persons serving in the capacity of a member of the board of directors of the Association, as defined in the Condominium Act.

(N) "Drawings" means the drawings for the Condominium, as the same may be lawfully amended from time to time, and are the Drawings required pursuant to the provisions of the Condominium Act. A set thereof is attached hereto, but the same may be detached and filed separately therefrom by the appropriate public authorities.

(O) "Eligible Mortgagees" means the holders of valid first mortgages on Units who have given written notice to the Association stating their names, addresses, and Units subject to their mortgages.

(P) "Limited Common Elements" means those Common Elements serving exclusively one Unit or more than one but less than all Units, the enjoyment, benefit or use of which are reserved to the lawful Occupants of that Unit or Units either in this Declaration, or by the Board, and is that portion of the Condominium Property constituting "limited common elements" of the Condominium under the provisions of the Condominium Act.

(Q) "Occupant" means a person lawfully residing in a Unit, regardless of whether that person is a Unit owner.

(R) "Person" means a natural individual, corporation, partnership, trustee, or other legal entity capable of holding title to real property.

(S) "Unit" and "Units" mean that portion or portions of the Condominium Property described as a unit or units in this Declaration, and is that portion of the Condominium constituting a "unit" or "units" of the Condominium under the provisions of the Condominium Act.



(T) "Unit owner" and "Unit owners" mean that person or those persons owning a fee-simple interest in a Unit or Units, each of whom is also a "member" of the Association, as defined in Ohio's non-profit corporation statutory act.

## **ARTICLE II**

### **THE LAND**

A legal description of the land constituting the Condominium Property, located in The City of Wooster, Wayne County, Ohio, is attached hereto and marked EXHIBIT "A".

## **ARTICLE III**

### **NAME**

The name by which the Condominium shall be known is "The Greens at The Villages of Wetherington Condominiums, Phase One".

## **ARTICLE IV**

### **PURPOSES; RESTRICTIONS**

**Section 1. Purposes.** This Declaration is being made to establish separate individual parcels from the Condominium Property to which fee simple interests may be conveyed for use as single family residences; to establish a unit owners' association to administer the Condominium; to provide for the preservation of the values of Units and the Common Elements; to provide for and promote the benefit, enjoyment and well-being of Unit owners and Occupants; to administer and enforce the covenants, easements, charges and restrictions hereinafter set forth; and to raise funds through assessments to accomplish these purposes.

Declarant, in order to establish a plan of condominium ownership for the Condominium Property, hereby subjects the Condominium Property to the provisions of Chapter 5311, Ohio Revised Code. The Condominium Property is hereby divided into FIFTY-SIX (56) separately designated and legally described

freehold estates, hereinafter described and referred to as "Units", and ONE (1) freehold estate, hereinafter described and referred to as the "Common Elements."

**Section 2. Restrictions.** The Condominium Property shall be subject to the following restrictions:

(a) **Unit Uses.** Each Unit shall be used and occupied solely as a residence and for purposes customarily incidental thereto. No Unit shall be utilized as a commercial facility nor shall any trade, business, occupation, or profession be conducted thereon. Declarant herein may use four Units from time to time as models and/or sales offices until all Units are sold.

(b) **Common Elements Uses.** The Common Elements (except the Limited Common Elements) shall be used in common by Unit owners and Occupants and their agents, servants, customers, invitees and licensees, in accordance with the purposes for which they are intended, and as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of the Units and subject to such rules and regulations as may from time to time be promulgated by the Board. Portions of the Common Elements shall be used as water retention areas.

(c) **Limited Common Elements Uses.** Those portions of the Common Elements described herein and shown on the Drawings as Limited Common Elements shall be used and possessed exclusively by the Unit owners and Occupants of the Unit or Units served by the same, as specified in this Declaration, subject to the restrictions on use of Common Elements and Limited Common Elements set forth in this Declaration and such rules and regulations as may from time to time be promulgated by the Board.

(d) **Visible Areas.** Nothing shall be caused or permitted to be hung or displayed on the outside or inside of windows (except for reasonable interior curtains, blinds, draperies, stained glass, and works of art) or placed on the outside walls of a building or otherwise outside a Unit, or any part thereof, and no sign, awning, canopy, shutter or television or citizens' band or other radio antenna or transmitter, or any other device or ornament, shall be affixed to or placed upon the exterior walls or roof or any part thereof, unless authorized by the Board, and subject to such rules and regulations as the Board may adopt from time to time. Each Unit is designed with one outdoor light connected to the individual Unit's meter. Maintenance and

repair of the light fixture shall be done by the Association. Modest Christmas lights are permitted during the Christmas season.

(e) **Nuisances.** No noxious or offensive activity shall be carried on in any Unit, or upon the Common Elements, nor shall either be used in any way or for any purpose which may endanger the health of or unreasonably disturb any Occupant. Barking dogs, whether inside or outside the Unit, and dogs digging in plant areas shall be considered nuisances.

(f) **Vehicles.** The Unit owners or Occupants of each Unit shall be entitled to park or keep two automobiles or other vehicles in front of any Unit or in designated parking spaces elsewhere on the property; provided however, no Unit owner or Occupant shall park a trailer, boat, mobile home or camper or allow a trailer, boat, mobile home or camper to be parked for a period exceeding six hours in front of any Unit or elsewhere on the property except in an enclosed structure. No Unit owners or Occupants shall make repairs to a vehicle of any kind for a period exceeding six hours in front of any Unit or elsewhere on the property except in an enclosed structure. Except as stated hereinabove, the Board may promulgate regulations restricting the parking of automobiles, inoperable vehicles, trucks, boats and recreational vehicles on the Common Elements, and may enforce such regulations or restrictions by levying enforcement assessments, having such vehicles towed away, or take such actions as it, in its sole discretion, deems appropriate.

(g) **No Renting and/or Leasing.** No leasehold interest or general tenancy for-profit shall be created by the Unit owner of any Unit.

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

**(h) Signs.** No sign of any kind shall be displayed to the public view on the Condominium Property except: (i) on the Common Elements, signs regarding and regulating the use of the Common Elements, provided they are approved by the Board; (ii) on the Common Elements to the exterior of a Unit, one professionally prepared sign advertising the Unit for sale or rent; and (iii) on the Common Elements and model Units, signs advertising the sale of Units by the Declarant during the initial sale period.

**(i) Replacements.** Any building erected to replace an existing building containing Units shall be of new construction, be of comparable size, design and construction to that replaced, and shall contain a like number of Units of comparable size to the Units in the building replaced. Except as specifically otherwise provided herein, there shall not be constructed or maintained on any portion of the Common Elements not presently devoted to residential buildings anything other than facilities for the common use of all Units.

**(j) Structural Integrity.** Nothing shall be done in any Unit, or in, on or to the Common Elements, which may impair the structural integrity of any improvement.

**(k) Building on Easements.** Within the easements for the installation and maintenance of utilities and drainage facilities no structure, planting or other material (except such as exist at the time of this Declaration) shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utility lines or which may change the direction of the flow of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easement areas. The utility facilities within the easement areas shall be subject to the right of the Association to maintain the same, and its right to delegate that right to a public authority or utility.

**(l) Animals.** No animal or pet of any kind may be kept or harbored in any Unit or on the Common Elements unless permitted by the Board. The Board may elect to permit the owners or Occupants of a Unit to keep household and domestic pets, not bred or maintained for commercial purposes, provided that: (i) the permitting of animals on the Common Elements shall be subject to such rules and regulations as the Board may from time to time promulgate, including without limitation, the right to place limitations on the size, number and type of such pets, the right to

prohibit such pets entirely, and the right to levy enforcement assessments against Persons who do not clean up after their pets; and (ii) the right of an Occupant to maintain an animal in a Unit shall be subject to termination if the Board, in its full and complete discretion, determines that maintenance of the animal constitutes a nuisance or creates a detrimental effect on the Condominium or other Units or Occupants.

**(m) Conveyances.** Each Unit shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof. The undivided interest of a Unit in the Common Elements shall be deemed to be conveyed or encumbered with the Unit even though that interest is not expressly mentioned or described in the deed, mortgage or other instrument of conveyance or encumbrance. To enable the Association to maintain accurate records of the names and addresses of Unit owners, each Unit owner agrees to notify the Association, in writing, within five days after an interest in that Unit owner's Unit has been transferred to another Person. In addition, each Unit owner agrees to provide to a purchaser of that owner's Unit a copy of the Condominium Organization Documents and all effective rules and regulations.

**(n) Architectural Control.** No building, fence, wall, sign or other structure shall be commenced, erected or maintained upon the Condominium Property, or any part thereof, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by the Board or its designated representative, as to harmony of external design, color and location in relation to surrounding structures and topography. In the event the Board, or its designated representative, fails to approve or disapprove such plans and specifications within 60 days after they have been submitted to it, approval will not be required and these provisions will be deemed to have been fully complied with.

**(o) Arbitration.** In the event of any dispute between Unit owners as to the application of these restrictions or any rule or regulation to any particular circumstance, the party aggrieved shall submit a complaint in writing to the Board specifying the dispute. The Board shall set a time, date and place for a hearing thereon within 60 days thereafter, and give written notice to each party thereof no less than three days in advance. 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 30 days thereafter. No action at law may be instituted by either party to such a dispute unless the non-binding arbitration pursuant hereto has first occurred.

(p) **Owner/Resident Information.** Each Unit owner must, within 30 days of May 11, 2015 or within 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 Unit owner. Any change in the information must be provided to the Board, in writing, within 30 days of said change.

(q) **Occupancy Restriction.** A Person who is classified a Tier III or Tier II sexual offender/child-victim offender, or any future equivalent classification, and for whom the County Sheriff or other government entity must provide community notification of the sex offender's residence is prohibited from residing in or occupying a Unit or remaining in or on the Condominium Property for any length of time. The classification of a sexual offender/child-victim offender and determination of whether notice is required is made by a court of law pursuant to the Ohio Sex Offenders Act, as may be amended or renamed from time to time, or similar statute from another jurisdiction. The Association is not, however liable to any Unit owner or Occupant, or anyone visiting any Unit owner or the Association, as a result of the Association's alleged failure, whether negligent, intentional, or otherwise, to enforce the provisions of this restriction.

## ARTICLE V

### IMPROVEMENT DESCRIPTIONS

**Section 1. Residential Buildings.** There are 14 residential buildings on the Condominium Property, each building containing four Units, for a total of 56 Units. The principal materials of which these buildings are constructed are wood, glass, drywall, concrete, concrete block, vinyl siding, "shake" vinyl siding, and stone. The buildings are located as shown on the Drawings.

**Section 2. Other Improvements.** In addition to the buildings, there are exterior walkways and green areas, concrete and asphalt drive and parking areas, landscaping, and underground and above-ground conduits and facilities for utilities. All streets, driveways, and access ways within the Condominium Property are private in nature, and part of the Common Elements, and none of the same shall be dedicated to public use. The Association shall have full responsibility for maintenance and repair of such areas, pursuant to Article X, Section 1 of this Declaration.

## ARTICLE VI

### UNITS

**Section 1. Unit Designations, Size and Location.** Each of the 56 Units are designated by a number on the Drawings where that Unit is located. The layout, location, designation, and dimensions of the Buildings and of each Unit, the number of rooms in each Unit, the approximate area of each Unit in square feet, the layout, location, and dimensions of the Common Elements and Limited Common Elements to which each Unit has access, the location and dimensions of appurtenant easements, and other particulars, are shown graphically on the Drawings for the Greens at the Villages of Wetherington Condominiums. Each Unit has direct access to Common Elements which lead directly to a public or private street.

**Section 2. Composition of Units.** Each Unit consists of the space in the building designated by that Unit's designation on the Drawings that is bounded by the undecorated interior surfaces of the perimeter walls, the unfinished surface of the floor, and the unfinished interior surface of the ceiling, all projected, if necessary by reason of structural divisions such as interior walls and partitions, to constitute a complete enclosure of space, and all improvements within that space. Without limiting the generality of the foregoing, each Unit shall include:

- (a) the decorated surfaces, including paint, lacquer, varnish, wallpaper, tile and other finishing material applied to floors, ceilings, and interior and perimeter walls, carpet, and also the floors and ceilings themselves and the drywall, paneling and other finishing material attached to the structural parts of the perimeter walls;

(b) all windows, screens and doors, and including the frames, sashes and jambs and the space occupied thereby, and the hardware therefor;

(c) all fixtures and appliances installed for the exclusive use of that 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, including, without limiting the generality hereof, built-in cabinets, dishwashers, garbage disposal Units, refrigerators, stoves and hoods, television antennas and cables , and air conditioning units and heat pumps , and components thereof, if any, serving only that Unit, and all exterior lights and lighting fixtures serving only that Unit;

(d) all control knobs, switches, thermostats and electrical outlets 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;

(e) all interior walls that are not necessary for support of the structure, and all components thereof and the space encompassed thereby;

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

(g) the attic space or storage space above a Unit, if any, to which the Unit has direct and exclusive access;

EXCLUDING THEREFROM, however, all of the following items located within the bounds of that Unit:

(a) any supporting element of the building contained in all interior walls;

(b) all vent covers, grilles, plate covers, and other coverings of space which are not a part of a Unit as heretofore defined; and



(c) all plumbing, electric, heating, cooling and other utility or service lines, pipes, sump pumps and accessories thereto, wires, ducts and conduits which serve any other Unit.

## ARTICLE VII

### COMMON AND LIMITED COMMON ELEMENTS

**Section 1. Common Elements - Description.** All of the Condominium Property, including all of the land and all improvements thereon and appurtenances thereto, except those portions labeled or described herein or in the Drawings as a part of a Unit, are Common Elements.

All streets, driveways, and access ways within the Condominium Property are private in nature, and part of the Common Elements (or Limited Common Elements in the case of the driveway appurtenant to a particular Unit), and none of the same shall be dedicated to public use. The Association shall have full responsibility for maintenance and repair of such areas, as part of the Common Elements pursuant to this Declaration.

**Section 2. Limited Common Elements - Description.** Those portions of the Common Elements that are labeled or designated "LCE" or "Limited Common Elements" on the Drawings, are Limited Common Elements reserved exclusively for use of a certain Unit or Units to the exclusion of the other Units. The Limited Common Elements shall consist of the following:

- (a) Patio, if any, adjoining a Unit.
- (b) Porch and/or deck, if any, adjoining a Unit.
- (c) Driveway, if any, constituting an entrance to a Unit from a public or private street, right of way or easement.
- (d) Those areas adjoining each Unit that are designated as "Limited Common Elements" on the legend of the recorded condominium plat.

**Section 3. Undivided Interests.** The undivided interest in the Common Elements of each Unit is shown on the attached EXHIBIT " B", and, in each case,

is based on the gross interior finished square footage of the first floor ("Square footage") of the Unit, which is measured inward from the exterior surfaces of the exterior walls, and includes space occupied by interior partitions, but excludes garage areas, basements, and areas which may be finished at a later time.

In calculating undivided interests, the Square Footage of all Units in the Condominium, at any time, will be added together, and the undivided interest of each Unit determined by dividing the Square Footage of each Unit by the total of the Square Footages of all Units, and rounding to thousandths of a percent, and further adjusted at thousandths of a percent, in the Declarant's sole discretion, as is necessary so that the total of all undivided interests equals exactly 100 percent.

The Common Elements shall be owned by the Unit owners as tenants in common, and ownership thereof shall remain undivided. No Unit owner may waive or release any rights in the Common Elements. Further, the undivided interest in the Common Elements of a Unit shall not be separated from the Unit to which it appertains.

## ARTICLE VIII

### UNIT OWNERS' ASSOCIATION

**Section 1. Establishment of Association.** The Association has been formed to be and to serve as the Unit owners' Association of the Condominium.

**Section 2. Membership.** Membership in the Unit Owners' Association shall be limited to the Unit owners, and every Person or entity who is or becomes a record owner of a fee simple interest or an undivided fractional fee-simple interest in a Unit is a Unit owner and shall be a member of the Association. The foregoing is not intended to include Persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Unit, and transfer of a Unit shall automatically transfer membership to the transferee.

**Section 3. Voting Rights.** Each Unit owner shall be entitled to one vote for each Unit owned in fee simple. The vote with respect to that Unit shall not be divided, but shall be cast only as all of the owners of that Unit agree; provided however, that unless timely challenged by a co-owner of a Unit, any owner of a fee simple interest in that Unit may cast the entire vote with respect to that Unit.

**Section 4. Board of Directors.** The Board of Directors shall be five Persons elected by the Unit owners, each of whom must be a Unit owner or the spouse of a Unit owner. That notwithstanding, no one Unit may be represented by more than one Person on the Board at any one time. If a Unit owner is not an individual, that Unit owner may nominate for the Board of Directors any principal, member of a limited liability company, partner, director, officer, or employee of that Unit owner. The Directors duly elected and serving on the effective date hereof shall serve the balance of his or her term; and the terms of the newly elected Directors shall be staggered so that every two years two Directors are elected and every third year one Director is elected. Thereafter, the Director term shall be for three years. Terms shall expire and successors elected at the annual meeting of the Association.

**Section 5. Authority.** The Board shall have all authority to manage, maintain, repair, replace, alter and improve the Common Elements and assess and collect funds for the payment thereof, and do all things, and exercise all rights provided by the Condominium Organizational Documents or the Condominium Act that are not specifically reserved to Unit owners.

**Section 6. Delegation of Authority; Professional Management.** The Board may delegate all or any portion of its authority to discharge its responsibilities to a managing agent. This delegation of authority and responsibility to a managing agent may be evidenced by one or more management contracts which may provide for the payment of reasonable compensation to such managing agent as a common expense. Nothing contained herein shall preclude Declarant, or any other entity designated by Declarant from being employed as managing agent or to provide management, maintenance and repair services, provided that the terms of employment are bona fide and commercially reasonable to the Unit owners at the time entered into under the circumstances then prevailing and are terminable by the Association, without cause and without penalty, on 90 days written notice.

**Section 7. Authorization to Own Other Condominium Property.** The Declarant anticipates that six separate condominium regimes will be established and built in the nearby area to comprise The Villages of Wetherington. Five of these condominium regimes will consist of residential Units and Common Elements, including the Condominium established by this Declaration. The sixth condominium (“the Villages of Wetherington Condominium”) will consist of a recreational building, a parking lot for that building, the private streets (Wetherington Lane and Barrington Way) shared by all of the condominium regimes, and possibly other common elements. The Villages of Wetherington

Condominium will be owned in equal shares by the Unit owners' associations of the five residential condominiums. The use, maintenance and repair of such **Common Elements**, and all other rights and obligations relating to The Villages of Wetherington Condominium, will be established by a separate Declaration of Condominium Ownership, Bylaws of the Unit owners' association, and rules and regulations of the Board of Directors of that association. The Condominium created by this Declaration is hereby authorized and empowered to become a part-owner of The Villages of Wetherington Condominium and to pay assessments to the Unit owners' association of that condominium.

The Declarant anticipates that the City of Wooster will widen and improve West Highland Avenue at some time in the future. The Declarant expects the cost of that work for that portion of the road adjacent to the condominiums comprising The Villages of Wetherington area to be assessed against The Villages of Wetherington Condominium, which will in turn charge that cost in equal shares to the individual condominium associations. It is the intent of this Declaration that such an assessment shall be shared equally among all of the Unit owners in the various condominium regimes comprising The Villages of Wetherington, and that the various condominium associations cooperate to achieve such a result.

The statements in this Section 7 regarding the Declarant's future plans are intended for informational purposes only, and do not create any contract or obligation on the part of the Declarant to develop or build such additional condominiums or facilities, or limit or restrict the manner in which such additional condominiums or facilities may be developed or built.

## **ARTICLE IX**

### **AGENT FOR SERVICE**

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

## ARTICLE X

### MAINTENANCE AND REPAIR

**Section 1. Association Responsibility.** The Association shall maintain and repair the Common Elements, including but not limited to utility facilities serving more than one Unit, utility lines in the Common Elements, lawns, shrubs, trees, walkways, driveways and access ways, and all buildings and private streets which are a part of the Common Elements, including the outdoor light(s) on each Unit. Notwithstanding the foregoing sentence, the Association shall not be responsible for watering those shrubs, trees and other plantings adjoining the foundation of a Unit, and shall not be responsible for any damage resulting from the failure of the Unit owner to water such items.

**Section 2. Individual Responsibility.** Each Unit owner shall repair and maintain the Unit or Units, and all components thereof, owned by that Unit owner and any patio, porch or deck area accessory to each Unit. Without limiting the generality of the foregoing, this repair and maintenance responsibility shall include repair and maintenance of all windows, screens, and doors, including the frames, sashes and jambs, and the hardware therefor, and watering of those trees, shrubs and other plantings adjoining the Unit. In the event a Unit owner shall fail to make any such repair or perform such maintenance, or in the event the need for maintenance or repair of any part of the Common Elements or Limited Common Elements is caused by the negligent or intentional act of any Unit owner or Occupant, and the cost of repair is not covered by insurance, the cost of such maintenance and repair shall constitute a special individual Unit assessment, as hereinafter defined, on the Unit owned by such Unit owner. The determination that such maintenance or repair is necessary, or has been so caused, shall be made by the Board. If the Board determines that those trees, shrubs and other plantings adjoining the Unit have died or been damaged as a result of the Unit owner's failure to water them as required by this Article X, then the Unit owner shall be responsible for their replacement, and if paid by the Association, the cost thereof shall constitute a special individual Unit assessment against such Unit. The Unit owner shall be responsible, at the Unit owner's cost, for replacing bulbs in any exterior light fixture whose power switch is controlled by the Unit owner.

## ARTICLE XI

### UTILITY SERVICES

Each Unit owner by acceptance of a deed to a Unit agrees to pay for utility services separately metered or separately charged by the utility company to that Unit. In the event any service is not separately metered the cost thereof shall be a common expense.

## ARTICLE XII

### INSURANCE; LOSSES

**Section 1. Fire and Extended Coverage Insurance.** The Board shall have the authority to and shall obtain insurance for all buildings, structures, fixtures, and equipment and common personal property and supplies now or at any time hereafter constituting a part of the Common Elements, or common property of the Association, against loss or damage by fire, lightning, and such other perils as are ordinarily insured against by standard extended coverage endorsements, and all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" or "special cause of loss" endorsement, where such is available, issued in the locale of the Condominium Property, in amounts at all times sufficient to prevent the Unit owners from becoming co-insurers under the terms of any applicable co-insurance clause or provision and not less than 100 percent of the current replacement cost of such items (exclusive of land, foundations, footings, excavations, and other items normally excluded from coverage), as determined from time to time by the insurer. This insurance:

(a) shall provide coverage for only such built-in or installed improvements, fixtures, equipment, and appliances that are part of the Declarant's standard specifications for a base Unit of a particular type; all builder upgrades of such items shall be the insurance responsibility of the individual Unit owner.

(b) shall provide for coverage of interior walls, windows and doors and the frames, sashes, jambs and hardware therefor, even though these improvements may be parts of Units;

(c) shall be obtained from an insurance company authorized to write such insurance in the State of Ohio;

(d) shall be written in the name of the Association for the use and benefit of the Unit owners;

(e) shall contain or have attached the standard mortgagee clause commonly accepted by institutional mortgage investors in the area in which the Condominium Property is located, which (i) must provide that the carrier shall notify all first mortgagees named at least ten days in advance of the effective date of any reduction in or cancellation of the policy; and (ii) must be endorsed to provide that any proceeds shall be paid to the Association for the use and benefit of first mortgagees as their interests may appear; and,

(f) unless otherwise determined by the Board, shall contain a waiver of subrogation of rights by the carrier as to the Association, its officers and Directors, and all Unit owners.

The costs of this insurance shall be a common expense, payable by the Association.

**Section 2. Liability Insurance.** The Association shall obtain and maintain a comprehensive policy of public liability insurance covering all of the Common Elements, insuring the Association, the Directors, and the Unit owners and Occupants, with such limits as the Board may determine, covering claims for personal injury and/or property damage. This insurance shall include protection against such risks as are customarily covered with respect to developments similar in construction, location and use, as determined by the Board. This insurance shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit owner or Occupant because of negligent acts of the Association, the Board, or other Unit owners or Occupants.

**Section 3. Other Association Insurance.** In addition, the Board may purchase and maintain contractual liability insurance, directors' and officers' liability insurance, fidelity insurance, and such other insurance as the Board may determine.

**Section 4. Insurance Representative; Power of Attorney.** Each Unit owner, by acceptance of a deed to a Unit, irrevocably appoints the Association or its designated representative, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purposes. The Association, or such designated representative, shall receive, hold or otherwise properly dispose of any proceeds of insurance, in trust, for Unit owners and their first mortgage holders, as their interests may appear. This power is for the benefit of each and every Unit owner, and their respective first mortgage holders and the Association and such power runs with the land, is coupled with an interest and is irrevocable.

**Section 5. Unit Owner's Insurance.** Any Unit owners or Occupant may, at their own expense, carry such insurance in addition to that provided by the Association pursuant hereto as that Unit owner or Occupant may determine, subject to the provisions hereof, and provided that no Unit owner or Occupant may at any time purchase individual policies of insurance against loss by fire or other casualty covered by the insurance carried pursuant hereto by the Association. In the event any Unit owner or Occupant violates this provision, any diminution in insurance proceeds resulting from the existence of such other insurance shall be chargeable to the Unit owner who acquired or whose Occupant acquired such other insurance, who shall be liable to the Association to the extent of any diminution and/or loss of proceeds. Without limiting the foregoing, a Unit owner or Occupant may obtain insurance against liability for events occurring within a Unit, losses with respect to personal property and furnishings, and losses to improvements owned by the Unit owner or Occupant, provided that if the Association obtains insurance for permanent improvements and built-in fixtures and equipment, then the insurance obtained by the Unit owner with respect to improvements within the Unit shall be limited to the type and nature of coverage commonly referred to as "tenant's improvements and betterments". All such insurance separately carried shall contain a waiver of subrogation rights by the carrier as to the Association, its officers and Directors, and all other Unit owners and Occupants.

Each Unit owner shall be responsible for obtaining and paying the premiums for casualty insurance coverage for such owner's Unit, consisting of all space bounded by the interior, un-drywalled surfaces of the perimeter walls, floors and ceilings, and the contents of said Unit, the foregoing including (without limitation) all floor and wall coverings, furniture, fixtures, appliances, and other betterments installed by each Unit owner, and any personal property kept by the



Unit owner within the Unit or elsewhere on the Condominium Property. The Unit owner's insurance responsibility shall include (but not be limited to) the value of all builder upgrades of built-in or installed improvements, fixtures, equipment, and appliances beyond those called for by the Declarant's standard specifications for a base Unit (with unfinished basement, if any) of the type purchased by that Unit owner. 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's policy or the individual Unit owner's policy.

**Section 6. Sufficient Insurance.** In the event the improvements forming a part of the Common Elements or any portion thereof shall suffer damage or destruction from any cause or peril insured against and the proceeds of any policy or policies insuring against such loss or damage and payable by reason thereof shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken by the Association and the insurance proceeds shall be applied by the Board in payment therefor; provided, however, that in the event that within sixty days after such damage or destruction the Unit owners shall elect to terminate the Condominium, then such repair, restoration or reconstruction shall not be undertaken.

**Section 7. Insufficient Insurance.** In the event the improvements forming a part of the Common Elements or any portion thereof shall suffer damage or destruction from any cause or peril which is not insured against, or, if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction, then, unless the Unit owners shall elect within sixty days after such damage or destruction not to make such repair, restoration or reconstruction, the Association shall make repairs, restoration or reconstruction of the Common Elements so damaged or destroyed at the expense (to the extent not covered by insurance) of all Unit owners in proportion to their respective undivided interest in the Common Elements. Should any Unit owner refuse or fail after reasonable notice to pay that Unit owner's share of such cost in excess of available insurance proceeds, the amount so advanced by the Association shall be assessed against the Unit of such Unit owner and that assessment shall have the same force and effect, and, if not paid, may be enforced in the same manner as herein provided for the nonpayment of assessments.

**Section 8. Fidelity Bond Coverage.** The Board may obtain fidelity bond coverage with respect to persons handling Association funds in amounts deemed reasonably necessary by the Board to protect against substantial losses.

## ARTICLE XIII

### DAMAGE; RESTORATION; REHABILITATION AND RENEWAL

**Section 1. Restoration of Substantial Damage and Destruction.** In the event of substantial damage to or destruction which renders one-half or more of the Units then comprised within the Condominium Property untenable, the Unit owners may, by the vote of those entitled to exercise not less than 75 percent of the voting power of all Unit owners, elect not to reconstruct or repair such damaged part at a meeting which shall be called within 90 days after the occurrence of the casualty, or, if by such date the insurance loss has not been finally adjusted, then within 30 days after such final adjustment. 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 Elements. 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. Each Unit owner and his respective mortgagee, by acceptance of a deed conveying such condominium ownership interest or a mortgage encumbering such condominium ownership interest, as the case may be, hereby irrevocably appoints the Association as his attorney-in-fact, coupled with an interest, and authorizes, directs and empowers such attorney-in-fact, at the option of the attorney-in-fact, to carry out the provisions of this Article XIII.

**Section 2. Rehabilitation and Renewal.** The Association, with the consent of Unit owners entitled to exercise not less than 75 percent of the voting power of Unit owners may determine that the Condominium 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.

## ARTICLE XIV

### CONDEMNATION

**Section 1. Standing.** Except as hereinafter provided, the Association, or its designated representative, or authorized successor, as director, shall represent the Unit owners in any condemnation or eminent domain proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of all or any part of the Condominium Property, and shall have the sole and exclusive right to settle the loss with the condemning authority and to receive the award or proceeds of settlement for the use and benefit of the Unit owners and their mortgagees as their interests may appear. Notwithstanding the foregoing, in the event that a Unit owner may lawfully separately pursue and realize upon a claim for incidental and consequential loss or damage to that Unit owner resulting from a taking under the power of eminent domain, such as for relocation and moving expenses, loss of favorable mortgage terms, and other such individual incidental or consequential loss, that Unit owner may, at his, her or its election, separately pursue such claim, provided, that the pursuing of the same, or the realization of an award thereof, neither jeopardizes, in any way, an action by the Association to recoup the losses incurred by it, any other Unit owner, or the direct loss with respect to the Unit itself, or with regard to the usability thereof, nor diminishes any way for any such loss.

**Section 2. Use of Proceeds.** The award or proceeds of settlement in any such proceedings, after reduction by the costs, if any, incurred in obtaining the same shall be applied first to the cost of restoring or replacing all damaged improvements on the remaining Condominium Property in accordance with the Drawings, or in accordance with any new plans and specifications therefor approved by Unit owners exercising no less than 75 percent of the voting power of Unit owners. If the award or proceeds are insufficient for such purpose, the excess cost shall be paid by the Association and, to the extent funds of the Association are insufficient therefor, in the judgment of the Board, such excess cost shall be a common expense and assessed among the Units in the same manner as special assessments for capital improvements are assessed. Except as hereinafter provided, the balance of any such award or proceeds of settlement, if there is an excess, shall be allocated and disbursed to the Unit owners, and their first mortgagees, as their interests may appear, in proportion to the relative undivided interest of the Units in the Common Elements. Notwithstanding the foregoing, in the event that as a result of any such taking, and consequent restoration or replacement, any Unit could not reasonably be restored to a condition comparable

to that which existed prior to the taking, or could not be replaced, prior to the allocation and disbursement of any sum to any other Unit owner or his, her or its mortgagee, there shall be allocated and disbursed from such award or proceeds, to each Unit owner whole Unit cannot be restored or replaced, and his, her or its respective first mortgagee, as their interests may appear, such amount as is equal to the then fair market value of the Unit that cannot be so restored or replaced. Thereupon, such Unit or Units, and the owners thereof, shall be immediately and automatically divested of any interest in the Condominium, the Condominium property, and the Association, including, without limiting the generality of the foregoing, divestment of an undivided interest, vote, membership in the Association, and liability for common expenses. All such rights and interests shall be reallocated among all other Units and Unit owners in the same relative proportions as those rights and interests were prior to such taking.

**Section 3. Power of Attorney.** Each Unit owner, by acceptance of a deed to a Unit, appoints the Association, or its designated representative, or authorized successor, as his, her or its attorney-in-fact to represent that Unit owner, settle losses, receive and utilize the award or proceeds of settlement, and do all things necessary or desirable for such attorney-in-fact to exercise the rights and fulfill the responsibilities of the Association set forth in this Article with respect to condemnation or eminent domain proceedings. This power is for the benefit of each and every Unit owner, each holder of a first mortgage on a Unit and the Association, and such power runs with the land, is coupled with an interest, and is irrevocable.

## ARTICLE XV

### GRANTS AND RESERVATIONS OF RIGHTS AND EASEMENTS

**Section 1. Easements of Enjoyment; Limitations.** Every Unit owner shall have the right and easement of enjoyment in, over and upon the Common Elements and a right of access to and from his, her or its Unit, which rights and easements shall be appurtenant to and shall pass with the title to a Unit, subject to the right of the Board to make reasonable rules and regulations concerning the use and management of the Common Elements, provided that no such rule or regulation shall limit or prohibit the right of ingress and egress to a Unit, or any part thereof, or to that Unit's parking facilities. Any Unit owner may delegate that Unit owner's right of enjoyment to the Common Elements and of ingress and egress to the members of that Unit owner's family and to Occupants.

In addition, every Unit owner shall have a non-exclusive right and easement of access to and from his, her or its Unit, over that portion of the private street known as Wetherington Lane which extends from the phase of the Condominium in which said Unit is located to the public road known as West Highland Avenue. If and when the Condominium is expanded to encompass the entire expansion area, said non-exclusive easement shall cover the area described on EXHIBIT "C" attached to this Declaration.

**Section 2. Right of Entry for Repair, Maintenance and Restoration.** The Association shall have a right of entry and access to, over, upon and through all of the Condominium Property, including each Unit, to enable the Association to perform its obligations, rights and duties pursuant hereto with regard to maintenance, repair, restoration and/or servicing of any items, things or areas of or in the Condominium Property.

**Section 3. Easements for Encroachments.** Each Unit and the Common Elements shall be subject to easements for encroachments on any other Unit and upon the Common Elements created or arising by reason of overhangs; or by reason of deviations in construction, reconstruction, or repair; or by reason of shifting, settlement, or movement of the structures; or by reason of errors in the Drawings. Valid easements for these encroachments and for the maintenance of same, so long as the encroaching structures remain, shall and do exist.

**Section 4. Easement for Support.** Every portion of a building or utility line or any improvement on any portion of the Condominium Property contributing to the support of another building, utility line or improvement on another portion of the Condominium Property shall be burdened with an easement of support for the benefit of all other such buildings, utility lines, improvements and other portions of the Condominium Property.

**Section 5. Easements for Utilities.** There is hereby created upon, over and under all of the Condominium Property easements to the Association for ingress and egress to, and the installation, replacing, repairing and maintaining of all utilities, including, but not limited to water, sewer, gas, telephone, electricity, master television antennas and cable television. By this easement it shall be expressly permissible for the providing utility company to construct and maintain the necessary poles and equipment, wires, circuits, and conduits, on, above, across and under the Condominium Property, so long as such poles, equipment, wires, circuits, and conduits do not unreasonably interfere with the use and enjoyment of

the Condominium Property. Should any utility company furnishing a service request a specific easement by separate recordable document, the Board shall have the right to grant such easement without conflicting with the terms hereof.

**Section 6. Easements for Services.** A non-exclusive perpetual easement is hereby granted to all police, firemen, ambulance operators, mailmen, deliverymen, garbage and trash removal personnel, and all similar persons, and to the local governmental authorities and the Association, but not to the public in general, to enter upon the Common Elements in the performance of their duties.

**Section 7. Power of Attorney.** Each Unit owner, by acceptance of a deed to a Unit, hereby irrevocably appoints Declarant as his, her or its attorney-in-fact, to execute, deliver, acknowledge and record, for and in the name of such Unit owner, such deeds of easement and other instruments as may be necessary or desirable, in the sole discretion of the Board's authorized representative, to further establish or effectuate the foregoing easements. This power is for the benefit of each and every Unit owner, the Association, and Declarant, and the real estate to which it is applicable; it runs with the land, is coupled with an interest, and is irrevocable.

**Section 8. General.** The Easements and grants provided herein shall in no way affect any other recorded grant or easement.

## ARTICLE XVI

### ASSESSMENTS AND ASSESSMENT LIENS

**Section 1. Types of Assessments.** The Declarant for each Unit within the Condominium hereby covenants, and each Unit owner by acceptance of a deed to a Unit (whether or not it shall be so expressed in such deed), is deemed to covenant and agree to pay the Association: (1) annual operating assessments; (2) special assessments for capital improvements; and (3) special individual Unit assessments. All of such assessments shall be established and collected as hereinafter provided.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of Unit owners and Occupants and the best interests of the Condominium Property.

### **Section 3. Elements; Apportionment; Due Dates.**

#### **(a) Annual Operating Assessments.**

(1) At the time of the filing of this Declaration, and within 30 days after the beginning of each fiscal year of the Association thereafter, the Board shall estimate, and prorate among the Units on the basis of the percentage interest of each Unit in the Common Elements, common expenses of the Association which may include the following:

(i) the estimated next fiscal year's cost of the maintenance, repair, and other services to be provided by the Association;

(ii) the estimated next fiscal year's costs for insurance and bond premiums to be provided and paid for by the Association;

(iii) the estimated next fiscal year's costs for utility services not separately metered;

(iv) the estimated amount required to be collected to maintain a general operating reserve to assure availability of funds for normal operations of the Association, in an amount deemed adequate by the Board;

(v) an amount deemed adequate by the Board to maintain a reserve for the cost of unexpected repairs and replacements of capital improvements and for the repair and replacement of major improvements for which cash reserves over a period of time in excess of one year ought to be maintained;

(vi) the estimated next fiscal year's costs for the operation, management and administration of the Association, including, but not limited to, fees for property management, fees for legal and accounting services, costs of mailing, postage, supplies and materials for operating the Association, and the

salaries, wages, payroll charges and other costs to perform these services, and any other costs constituting common expenses not otherwise herein specifically excluded, and

(vii) the cost of assessments that will be due from the Association to a separate condominium association that will manage and control a recreational building, private streets known as Wetherington Lane and Barrington Way, and possibly other common elements for the joint use of the Unit owners of the Condominium and other nearby residential condominium or housing developments.

(2) The Board shall thereupon allocate to each Unit that Unit's share of all of these items, prorated in accordance with each respective Unit's undivided interest in the Common Elements, and thereby establish the annual operating assessment for each separate Unit. For administrative convenience, any such assessment may be rounded to the nearest whole dollar.

(3) The annual operating assessment shall be payable in advance, in equal monthly installments, provided that nothing contained herein shall prohibit any Unit owner from prepaying assessments in annual, semi-annual, quarterly or monthly increments. The due dates of any such installments shall be established by the Board; and, unless otherwise provided, the Association shall collect on or before the first day of each month from those who own the Unit an equal monthly pro rata share of the annual operating assessment for that Unit.

(4) If the amounts so collected are, at any time, insufficient to meet all obligations for which those funds are to be used, the deficiency shall be assessed by the Board among the Units on the same basis as heretofore set forth.

(5) If assessments collected during any fiscal year are in excess of the funds necessary to meet the anticipated expenses for which the same have been collected, the excess shall be retained as reserves, and shall in no event be deemed profits nor available, except on dissolution of the Association, for distribution to Unit owners.



**(b) Special Assessments for Capital Improvements.**

(1) In addition to the annual operating assessments, the Board may levy, in any fiscal year, special assessments to construct, reconstruct or replace capital improvements on the Common Elements to the extent that reserves therefor are insufficient, provided that new capital improvements not replacing existing improvements shall not be constructed nor funds assessed therefor without the prior consent of Unit owners exercising no less than 75 percent of the voting power of all Unit owners.

(2) Any such assessment shall be prorated among all Units in proportion to their respective undivided interests in the Common Elements, and shall become due and payable on such date or dates as the Board determines following written notice to the Unit owners.

**(c) Special Individual Unit Assessments.** The Board may levy an assessment against an individual Unit, or Units, to reimburse the Association for those costs incurred in connection with that Unit or Units properly chargeable by the terms hereof to a particular Unit (such as, but not limited to, the cost of making repairs that are the responsibility of a Unit owner, and a Unit owner's enforcement and arbitration charges). Any such assessment shall become due and payable on such date as the Board determines, and gives written notice to the Unit owners subject thereto. Additionally, during the first years of the Condominium's existence and until such time as real estate taxes and assessments are split into separate tax bills for each Unit, the Association shall have the right to pay the real estate taxes and assessments attributable to the Condominium Property in the event the same have not been paid, when due, and assess each Unit owner for his, her or its shares of such real estate taxes and assessments as a special individual Unit assessment. The share of those taxes and assessments attributable to a Unit shall be computed by multiplying the total taxes and assessments for all of the Condominium Property by the undivided interest in Common Elements attributable to that Unit. The calculation by the Association of the Units' shares of taxes and assessments shall be binding upon all Unit owners.

The Board may impose reasonable charges to the Unit owner for providing copies of the Declaration, Bylaws or amendments thereto as well

as reasonable charges for the handling of re-financing and/or resale documentation, and/or statements of unpaid Assessments.

**(d) Rules for Levying Enforcement Assessments for Violations.**

The Board of Directors may levy enforcement assessments under a written policy adopted by the Board and given to each Unit owner, for the purposes of enforcing the Declaration, Bylaws or rules as determined by the Board.

The Board has the authority to impose interest and administrative late fees for the late payment of Assessments; impose returned check charges; and, in accordance with Chapter 5311, 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.

**Section 4. Effect Date of Assessment.** Any assessment created pursuant hereto shall be effective, provided it is created as provided herein, if written notice of the amount thereof is sent by the Board to the Unit owner subject thereto at least ten days prior to the due date thereof, or the due date of the first installment thereof, if to be paid in installments. Written notice mailed or delivered to a Unit owner's Unit shall constitute notice to that Unit owner, unless the Unit owner has delivered written notice to the Board of a different address for such notices, in which event the mailing of the same to that last designated address shall constitute notice to that Unit owner.

**Section 5. Effect of Nonpayment of Assessments; Remedies of the Association.**

**(a)** If any assessment or any installment of any assessment is not paid within 30 days after the same has become due, the Board, at its option, without demand or notice, may: (i) declare the entire unpaid balance of the assessment immediately due and payable; (ii) charge interest on the entire unpaid balance (or on an overdue installment, alone, if it has not exercised its option to declare the entire unpaid balance due and payable) at the rate of 10 percent per annum; (iii) charge a reasonable, uniform late charge, as determined from time to time by the Board; and (iv) charge reasonable attorneys' fees and other costs incident to the collection of any overdue assessment.

The Association will credit payments made by a Unit owner in the following order of priority:

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

(b) Annual operating and both types of special assessments, together with interest, late charges, reasonable attorneys' fees and collection costs, shall be a charge and a continuing lien in favor of the Association upon the Unit against which each such assessment is made.

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.

(c) At any time after an assessment levied pursuant hereto remains unpaid for 30 or more days after the same has become due and payable, a certificate of lien for all or any part of the unpaid balance of that assessment, and interest and costs, may be filed with the Recorder of Wayne County, Ohio, pursuant to authorization given by the Board. The certificate shall contain a description of the Unit against which the lien exists, the name or names of the record owner or owners thereof, and the amount of the unpaid portion of the assessments and other fees and charges recoverable under this Article XVI, and shall be signed by the president or other chief officer of the Association.

(d) The lien provided for herein shall remain valid for a period of five years from the date a certificate of lien was duly filed therefor, unless sooner released or satisfied in the same manner provided by law in the State of Ohio for the release and satisfaction of mortgages on real property, or discharged by the final judgment or order of a court in any action brought to discharge the lien.

(e) Any Unit owner who believes that an assessment chargeable to his, her or its Unit (for which a certificate of lien has been filed by the

Association) has been improperly charged against that Unit, may bring an action in the Court of Common Pleas of Wayne County, Ohio for the discharge of that lien. In any such action, if it is finally determined that all or a portion of the assessment has been improperly charged to that Unit, the court shall make such order as is just, which may provide for a discharge of record of all or a portion of that lien.

(f) Each such assessment together with interest and costs shall also be the joint and several personal obligation of the Unit owner or owners who owned the Unit at the time when the assessment fell due. The obligation for delinquent assessments, interest, late charges and costs shall not be the personal obligation of that Unit owner's successors in title unless expressly assumed by the successors, provided however, that the right of the Association to a lien against that Unit, or to foreclose any lien thereon for these delinquent assessments, interest, late charges and costs, shall not be impaired or abridged by reason of the transfer, but shall continue unaffected thereby.

(g) The Association, as authorized by the Board, may file a lien or liens to secure payment of delinquent assessments, interest, late charges and costs, bring an action at law against the owner or owners personally obligated to pay the same, and an action to foreclose a lien, or any one or more of these. In any foreclosure action, the Association shall be entitled to become a purchaser at the foreclosure sale. In any such action, interest and cost of such action (including attorney fees) shall be added to the amount of any such assessment, to the extent permitted by Ohio law.

(h) No owner may waive or otherwise escape liability for the assessments provided for in this Declaration by non-use of the Common Elements, or any part thereof, or by abandonment of his, her or its Unit.

**Section 6. Subordination of the Lien to First Mortgages.** The lien of the assessments provided for herein shall be subject and subordinate to the lien of any duly executed first mortgage on a Unit recorded prior to the date on which such lien of the Association arises, and any holder of such first mortgage which comes into possession of a Unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale, shall take the property free of any claims for unpaid installments of assessments for charges against the mortgaged Unit which

became due and payable prior to the time such holder or purchaser took title to that Unit.

(i) When a Unit owner is delinquent in the payment of assessments for more than 30 days, the Board may, by a majority vote, suspend the privileges of the Unit owner and/or right of the Occupants to use the recreational facilities.

**Section 7. Certificate Regarding Assessments.** The Board shall, upon demand, for a reasonable charge, furnish a certificate signed by the President, Treasurer, Secretary or other designated representative of the Association, setting forth whether the assessments on a specified Unit have been paid. This certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

**Section 8. Cost of Enforcement.** The Board may levy reasonable enforcement assessments against any Unit owner (either by their conduct or by the conduct of any Occupant or guest of their Unit) who violates any provision of the Declaration, Bylaws, or rules. The Board may levy reasonable charges for damage to the Common Elements or any other part of the Condominium Property that the Association is responsible to maintain. Said Unit owner must pay to the Association, in addition to any other sums due, any enforcement assessments, any charges for damage, and all fees, costs, and expenses the Association incurs, including reasonable attorneys' fees and court costs, in connection with the enforcement of any provision of the Declaration, Bylaws, or rules, or for repair of damage. Said enforcement assessments, charge for damage, fees, costs, and expenses will be charges as a special individual unit assessment against said Unit, and is the personal obligation of said Unit owner. The Association, in addition to all other remedies available, has the right to place a lien on the estate or interest in the Unit of said Unit owner as further explained and set forth in Declaration Article XVI, Section 5.

## **ARTICLE XVII**

### **NOTICES TO AND VOTING RIGHTS OF LENDING INSTITUTIONS**

**Section 1. Notices.** Any Eligible Mortgagee, upon written request to the Association (which request states the name and address of such holder or insurer

and the Unit designation), shall be entitled to timely written notice by the Association of:

(a) any proposed addition to, change in, or amendment of the Condominium Organizational Documents of a material nature, including any addition to, change in, or amendment of any provision establishing, providing for, governing, or regulating: (i) voting rights; (ii) increases in assessments that raise the previously assessed amount by more than 25 percent, assessment liens, or priority of such liens; (iii) reductions in reserves for maintenance, repair, and replacement of Common Elements ; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the Common Elements (including the Limited Common Elements ), or rights to their use; (vi) redefinition of the boundaries of any Unit; (vii) convertibility of Units into Common Elements or vice versa; (viii) expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium; (ix) hazard of fidelity insurance requirements; (x) imposition of any restrictions on the leasing of Units; (xi) imposition of any restrictions on a Unit owner's right to sell or transfer that Unit owner's Unit; (xii) if the Condominium consists of fifty (50) or more Units, a decision by the Association to establish self-management if professional management had been required previously by the Condominium Instruments or by an Eligible Mortgagee; (xiii) restoration or repair of the Condominium Property after damage or partial condemnation in a manner other than specified in the Condominium Instruments; (xiv) termination of the legal status of the Condominium after substantial destruction or condemnation occurs; or (xv) expressly benefiting mortgage holders, insurers, or guarantors. No addition to, change in, or amendment of the Condominium Organizational Documents shall be considered material if it is for the purpose of correcting technical errors, or for clarification only.

(b) any proposed decision or action that: (i) terminates professional management and establishes self-management when professional management has been required previously by an Eligible Mortgagee; (ii) causes restoration or repair of the Condominium Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Organizational Documents; (iii) substantial damage or destruction not be restored; (iv) the Condominium Property be renewed or rehabilitated; (v) significant new capital improvements not replacing existing improvements be constructed; (vi)

would, without addition to, change in, or amendment of the Condominium Organizational Documents, make any change with respect to the items described in subsection (a) of Section 1 of this Article.

(c) (i) any condemnation or casualty loss that affects either a material portion of the Condominium Property or the Unit securing its mortgage; (ii) any delinquency for 60 days in the payment of assessments or charges owed by the Unit owner of any Unit on which it holds a mortgage; (iii) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; and (iv) any proposed action that requires the consent of a specified percentage of Eligible Mortgagees. A holder, insurer or guarantor of a first mortgage lien on a Unit which has sent a written request to the Association stating its name, address, and the Unit designation or address of the Unit on which it holds, insures or guarantees the mortgage shall be entitled to timely written notices of the events described in this subsection (c).

**Section 2. Voting Rights.** No action with respect to which Eligible Mortgagees are entitled to notice, as provided in subsections (a) and (b) of Section 1 of this Article, may be taken without the consent of Eligible Mortgagees of Units to which at least 51 percent of the votes of Units subject to mortgages held by Eligible Mortgagees appertain. No action to terminate the Condominium or that would have that effect other than by reason of substantial destruction or condemnation of the Condominium Property, shall be taken without the consent or Eligible Mortgagees of Units to which at least 75 percent of the votes of Units subject to mortgages held by Eligible Mortgagees appertain.

## **ARTICLE XVIII**

### **CONDOMINIUM INSTRUMENT REQUIREMENTS**

**Section 1. General.** The Condominium Act requires that certain information be provided in the Condominium Instruments. Much of this is provided elsewhere in the Condominium Organizational Documents and in other documents, but in order that all such information be provided in this Declaration, various items of that information are set forth in the following sections of this article.

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

**Section 3. Association Control.** Except in its capacity as a Unit owner of unsold Units, the Declarant or its agent will not retain a property interest in any of the Common Elements after control of the Association is assumed by the Association. The owners of Units that have been sold by the Declarant or its agent will assume control of the Association and the Common Elements, as elsewhere provided herein, in compliance with the requirements of the Condominium Act. Neither the Association nor the Unit owners will be subject to any management contract or agreement executed prior to the assumption of control of the Association by Unit owners other than Declarant for more than one (1) year subsequent to that assumption of control unless such a contract or agreement is renewed by a vote of the Unit owners pursuant to the provisions of the Bylaws.

**Section 4. Limited Warranty.** Following are the limited warranties (and limitations thereon) which the Declarant gives to the buyers of a Unit from Declarant, which are not enforceable by the buyers unless and until the sale of the Unit to the buyers is closed.

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

(b) **Common Elements.** The Declarant warrants to provide and pay for the full cost of labor and materials for any repair or replacement of the roof and structural components, and mechanical, electrical, plumbing and common service elements serving the Condominium as a whole, occasioned or necessitated by defects in material or workmanship, that arise



within a period of two years from the date the deed is filed for record following the sale of the first Unit in the applicable phase of the Condominium to a purchaser in good faith for value.

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

(d) **Extended Warranties.** The Declarant assigns to the buyers any warranties made to the Declarant that exceed the time period for warranties that the Declarant has given to the buyers by this limited warranty.

(e) **Limitations.**

(1) No responsibility is assumed for damage from any cause, whatsoever, other than to repair or replace, at the Declarant's cost, items containing defects by Declarant's warranty.

(2) No responsibility is assumed for consequential or incidental damage except to the extent, if any, not permitted to be excluded or limited by law.

(3) Implied warranties, if any, are limited to one year from the date on which the Unit is deeded to the buyers, except to the extent, if any, that limitation is not lawful.

(4) These written warranties are the only express warranties the Declarant gives to the buyers unless additional warranties are included in a written contract between the Declarant and the buyers.

(5) Any request for service must be sent in writing to the Declarant at 2171-A Eagle Pass, Wooster, Ohio 44691, or at such other address as the Declarant may designate from time to time in writing to the buyers. The Declarant or the Declarant's designated

representative will commence performance of the Declarant's obligations under this warranty within 30 days after receipt of the buyer's request for service, and complete the same as soon as reasonably possible.

**Section 5. Declarant's Obligations.** Declarant will assume the rights and obligations of a Unit owner in its capacity as owner of Units not yet sold, including, without limitations, the obligation to pay common expenses attaching to such Units, from the date this Declaration is filed for record.

## ARTICLE XIX

### AMENDMENTS

**Section 1. Power to Amend.** Except as hereinafter provided, amendment of this Declaration (or the other Condominium Organizational Documents) shall require the consent of Unit owners exercising not less than 75 percent of the voting power of Unit owners. Notwithstanding the foregoing:

(a) The consent of all Unit owners shall be required for any amendment effecting a change in:

(1) the boundaries of any Unit;

(2) the undivided interest in the Common Elements appertaining to a Unit or the liability for common expenses appertaining thereto;

(3) the number of votes in the Association appertaining to any Unit; or

(4) the fundamental purposes of which any Unit or the Common Elements are restricted;

(b) The consent of Unit owners exercising not less than 75 percent of the voting power of Unit owners shall be required to terminate the Condominium.

(c) In any event, Declarant reserves the right and power, and each Unit owner by acceptance of a deed to a Unit is deemed to and does give and grant to Declarant a power of attorney, which right and power is coupled with an interest and runs with the title to a Unit and is irrevocable (except by Declarant) for a period of three years from the date of the filing of the Declaration, to amend the Condominium Organizational Documents, to the extent necessary to correct any scrivener's errors, typographical errors, or factual errors or omissions, or to conform to the requirements of the Condominium Act or any other federal, state or local law or to conform to the requirements then governing the purchase or insurance of mortgages by The Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association, Mortgage Guaranty Insurance Corporation, the Federal Housing Administration, the Veterans Administration, or any other such agency or organization; provided that if there is a Unit owner other than the Declarant, the Declaration shall not be amended to increase the scope or the period of control of the Declarant.

(d) In any event, there is reserved to the Association, through its Board, from and after such time as Declarant no longer owns any Unit, the right and power, and each Unit owner by acceptance of a deed to a Unit is deemed to and does give and grant to the Association, through its Board, a power of attorney, which right and power is coupled with an interest and runs with the title to a Unit and is irrevocable (except by the Board), to amend the Condominium Organizational Documents to the extent necessary to correct typographical or factual errors or omissions, the correction of which would not impair the interest of any Unit owner, mortgagee, insurer, or guarantor.

**Section 2. Method to Amend.** An amendment to this Declaration (or the Drawings or the Bylaws), adopted with the consents hereinbefore provided, in a writing executed with the same formalities as this Declaration by two officers of the Association and containing a certification that the amendment was duly adopted in accordance with the foregoing provisions, shall be effective upon the filing of the same with the Auditor and Recorder of Wayne County, Ohio.

## ARTICLE XX

### EXPANSIONS

**Section 1. Reservation of Expansion Option.** Declarant expressly reserves the right and option, but not the obligation, to expand the Condominium Property, but only within the limitations, and subject to the terms, set forth in this Article.

**Section 2. Limitations on Expansion Option.** Declarant has no obligation to or limitation of its option to expand the Condominium Property except as provided in this article or elsewhere in this Declaration, and except as otherwise so expressly limited, has the sole right, power, and authority to expand the Condominium Property, without the consent of any Unit owners.

**Section 3. Maximum Expansion Time.** Except as hereinafter provided, Declarant's option to expand the Condominium Property shall expire and terminate at the end of seven years from the date this Declaration is filed for record. Notwithstanding the foregoing, Declarant, with the consent of a majority of the Unit Owners other than Declarant, may extend its option to expand the Condominium Property for an additional five years, if it exercises its right to so renew within six months prior to the expiration of that initial seven year period. Declarant shall have the right to waive its option to expand at any time. There are no other circumstances that will terminate the option prior to the expiration of the time limit.

**Section 4. Legal Description.** A legal description, by metes and bounds, of all of the land that, through exercise of Declarant's option, may be added to the Condominium Property by submission to the Condominium Act as part of this Condominium, is attached to this Declaration as EXHIBIT "D", and is referred to herein as "the Additional Property."

**Section 5. Composition of Portions Added.** The Declarant has the right to expand the Condominium Property to include the Additional Property, or any portion thereof, in one or more submissions. Neither all nor any portion of the Additional Property must be added to the Condominium Property, nor, if any of the Additional Property is added, shall it be required that a particular portion of the Additional Property must be added, provided that portions added meet all other requirements set forth in this Article. There are no limitation fixing the boundaries of portions added, or regulating the order in which portions are added.

**Section 6. Time for Adding Portions.** Portions of the Additional Property may be added to the Condominium Property from time to time, and at different times, within the time limits previously described.

**Section 7. Improvement Location Limitations.** There are no established or defined limitations as to the location of any improvements that may be made on any portion of the Additional Property added to the Condominium Property except such limitations as may then be in effect by reason of the laws and lawful rules and regulations of the appropriate governmental bodies and authorities having jurisdiction.

**Section 8. Residential Use Restriction.** No Units may be created on the Additional Property or portions thereof and added to the Condominium Property that are not restricted exclusively to residential use.

**Section 9. Compatibility of Structures.** All structures erected on all or any portion of the Additional Property and added to the Condominium Property will be compatible with structures then on the Condominium Property in terms of quality of construction, the principal materials to be used, and architectural style, and design. Comparable style and design shall be deemed to exist if the exterior appearance of the structures on the Additional Property is compatible and harmonious with those then on the Condominium Property. Design shall not be deemed to be incompatible or not comparable because of variances in set-backs or locations of structures in relation to other improvements, or minor changes in design or finish detail.

**Section 10. Improvements Other than Structures.** If all or a portion of the Additional Property is added to the Condominium Property, drives, sidewalks, yard areas, and other improvements similar to those then on the Condominium Property shall be constructed on the Additional Property. Declarant reserves the right, at its sole option to construct additional recreation facilities on the Additional Property. Except as noted, improvements other than structures added to the Condominium Property shall not include improvements except of substantially the same kind, style, design, and quality as those improvements then on the Condominium Property.

**Section 11. Types of Units.** All Units that are created on all or any portion of the Additional Property and added to the Condominium Property shall be of the same types as the Units then on the Condominium Property, provided, however,

that any such Units shall be deemed of the same type, notwithstanding changes in interior layout, or minor changes in design or finish detail.

**Section 12. Limited Common Elements.** Declarant reserves the right with respect to all or any portion of the Additional Property added to the Condominium Property to create Limited Common Elements therein of substantially the same type and size as those areas then so designated as such in the Condominium Property, including, without limiting the generality of the foregoing, patios and parking areas. The precise size and number of such newly created Limited Common Elements cannot be ascertained precisely, because those facts will depend on how large each portion added may be, the size and location of the building and other improvements on each portion, and other factors presently undetermined.

**Section 13. Supplementary Drawings.** The Drawings show the location of the Condominium Property and the Additional Property. Declarant does not consider any other drawings or plans currently appropriate in supplementing the foregoing provisions of this article. However, at such time as Declarant adds all or any portion of the Additional Property to the Condominium Property it shall file Drawings with respect to the Additional Property as required by the Condominium Act.

**Section 14. Procedures for Expansion.** All or any portion of the Additional Property shall be added to the Condominium Property by the execution and filing for record by the Declarant, or its successor or successors as owner of the portion added and as assignee of the right to expand the Condominium, in the manner provided by the Condominium Act, of an amendment to the Declaration that contains the information and Drawings with respect to the Additional Property and improvements thereon added required by the Condominium Act.

**Section 15. Effects of Expansion.** Upon the filing for record of an amendment to the Declaration adding all or any portion of the Additional Property to the Condominium property:

- (a) the added portion shall thereafter be subject to all of the terms and provisions hereof, to the same extent and with the same effect as if that added portion had been provided herein as constituting part of the Condominium Property; that is, the rights, easements, covenants, restrictions, and assessment plan as set forth herein shall run with and be applicable to the added portion in the same manner, to the same extent, and

with the same force and effect as the terms of this Declaration apply to the Condominium Property;

(b) the Unit owner or Unit owners of the Unit or Units in the added portion shall thereupon become members, to the same extent, with the same effect, subject to the same obligations, and imbued with the same rights, as all other members; and

(c) the undivided interests of Units in the Common Elements, as so expanded, shall be allocated as hereinbefore provided; and

(d) in all other respects, all of the provisions of this Declaration shall include and apply to such additional portions, and to the Unit owners, mortgagees, and lessees thereof, with equal meaning and of like force and effect.

**Section 16. Maximum Number of Additional Units.** The maximum number of Units that may be established within the Additional Property and added to the Condominium Property is 40. However, the foregoing shall neither limit nor restrict or be so construed as to limit or restrict the number of dwelling Units that may be constructed on all or any portion of the Additional Property that is not added to the Condominium Property.

## ARTICLE XXI

### GENERAL PROVISIONS

**Section 1. Condominium Instruments.** The Condominium Act requires certain provisions and information to be provided in "Condominium Instruments". Provisions regarding deposits, warranties and other items are set forth in individual Unit sales contracts and attachments thereto, in the cases of sales by Declarant, and those items are incorporated herein by reference.

**Section 2. Covenants Running with the Land.** The covenants, conditions, restrictions, easements, reservations, liens and charges created hereunder or hereby shall run with and bind the land, and each part thereof, and shall be binding upon and inure to the benefit of all parties having any right, title or interest in or to all or any part of the Condominium Property, and the Association, and their respective heirs, executors, administrators, successors and assigns.

**Section 3. Enforcement.** In addition to any other remedies provided in this Declaration, Declarant, (only with respect to those rights directly benefiting the Declarant), the Association, and each Unit owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens and charges set forth herein or in the Bylaws or now or hereafter imposed by or through the Association's rules and regulations. Failure by Declarant, the Association or by any Unit owner to proceed with such enforcement shall in no event be deemed a waiver of the right to enforce at a later date the original violation or a subsequent violation, nor shall the doctrine of laches nor any statute of limitations bar the enforcement of any such restriction, conditions, covenant, reservation, easement, lien or charge.

**Section 4. Severability.** Invalidation of any one or more of these covenants, conditions, restrictions, or easements by judgment or court order shall in no way affect any other provisions, which provisions shall remain in full force and effect. In the event any language of this Declaration conflicts with mandatory provisions of the Condominium Act, the latter's requirements shall prevail and the conflicting language shall be deemed to be invalid and void, provided that such invalidity shall in no way affect any other provisions of this Declaration, which provisions shall remain in full force and effect.

**Section 5. Notices.**

(a) All notices required or permitted under the Declaration or Bylaws, to the Association or the Board, must be made in writing and sent by regular U.S. mail, first-class postage prepaid, to the Board of Directors or the Association at the address of the Condominium Property or to such other address as the Board of Directors may designate by a notice in writing to all Unit Owners.

(b) All notices required or permitted under the Declaration or Bylaws to any Unit Owner must be hand-delivered or sent by regular U.S. mail, first-class postage prepaid, to such Unit Owner's Unit address or to such other address designated by the Unit Owner in writing to the Board. Any notice required or permitted to be given to any occupant of a Unit other than a Unit Owner will effectively be given if hand-delivered or sent by regular U.S. mail, first-class postage prepaid, to the Unit address.



(c) In addition to the methods described in Paragraphs (a) and (b) above, due to the ongoing development of new technologies and corresponding changes in business practices, to the extent permitted by Ohio and federal law, as well as by the Board, now or in the future: (1) any notice required in the Declaration or Bylaws to be sent or received; (2) any signature, vote, consent, or approval required to be obtained; or (3) any payment required to be made, under the Declaration or Bylaws, may be accomplished or required using the most advanced technology available at that time provided such use is a generally accepted business practice. This includes, without limitation, the use of electronic mail or other electronic transmission in lieu of any Association required written notice to Unit Owners, individually or collectively, to or from any Unit Owner who has given the Association written consent to such use of electronic mail or other electronic transmission, and for the Association to properly and effectively receive any Unit Owner's signature, vote, consent, or approval the Association needs or requires, subject to the following:

(1) For voting on the election of Board members, the Association may provide for voting by electronic transmission. However, if the Association cannot guarantee the anonymity of a Unit Owner's vote, the Association must provide the Unit Owner with the option of casting an anonymous printed ballot.

(2) An electronic mail or other electronic transmission to a Unit Owner is not considered delivered and effective if the Association's transmission to the Unit Owner fails two consecutive times, e.g. the Association receives an "undeliverable" or similar message, or the inability to deliver the transmission to the Unit Owner becomes known to the person responsible for sending the transmission. If the electronic mail or other electronic transmission is not delivered or effective, the Association will deliver such notice or other communication to the Unit Owner in writing by regular U.S. mail to the Unit Owner's Unit or last known address, by hand delivery to the Unit Owner, or by leaving the notice under or attached to the front door of the Unit Owner's Unit.

(3) Unit Owner who has not given the Association written consent to such use of electronic mail or other electronic transmission will receive notices, as provided in Paragraph (a) of this Article XXI, Section 5.

## **EXHIBIT "A"**

### **Legal Description of Condominium Property**

See Exhibit A of Original Declaration recorded at Wayne County Records Volume 352, Page 1887 et seq., on September 24, 2001.

See Exhibit A of Amendment Number One to the Declaration recorded at Wayne County Records Volume 373, Page 2115 et seq., on March 22, 2002.

See Exhibit A of Amendment Number Two to the Declaration recorded at Wayne County Records Volume 387, Page 2014 et seq., on August 1, 2002.

**EXHIBIT "B"**

**Allocation of Common Element Interests Among Condominium Units**

Unit Number and Type	Number of Rooms	Gross Interior Finished Sq. Ft. (First Floor)	Undivided Interest In Common Elements
101 Baycrest (bsmt)	7	1225	1.711%
102 Heritage (slab)	8	1416	1.977%
103 Candleberry (bsmt)	6	1225	1.711%
104 Legacy (slab)	9	1504	2.098%
105 Baycrest (bsmt)	7	1225	1.711%
106 Candleberry (bsmt)	6	1225	1.711%
107 Candleberry (slab)	6	1225	1.711%
108 Baycrest (slab)	7	1225	1.711%
109 Candleberry (bsmt)	7	1225	1.711%
110 Baycrest (bsmt)	7	1225	1.711%
111 Candleberry (slab)	6	1225	1.711%
112 Baycrest (slab)	7	1225	1.711%
121 Legacy (bsmt)	9	1504	2.098%
122 Baycrest (slab)	7	1225	1.711%
123 Legacy (bsmt)	9	1504	2.098%
124 Candleberry (slab)	6	1225	1.711%
113 Baycrest (bsmt)	7	1225	1.711%
114 Heritage (slab)	8	1416	1.977%
115 Candleberry (bsmt)	6	1225	1.711%
116 Heritage (slab)	8	1416	1.977%
117 Candleberry (bsmt)	6	1225	1.711%
118 Baycrest (slab)	7	1225	1.711%
119 Candleberry (bsmt)	6	1225	1.711%
120 Candleberry (slab)	6	1225	1.711%
133 Candleberry (bsmt)	6	1225	1.711%
134 Legacy (slab)	9	1504	2.098%
135 Candleberry (bsmt)	6	1225	1.711%
136 Legacy (slab)	9	1504	2.098%
129 Candleberry (bsmt)	6	1225	1.711%
130 Candleberry (slab)	6	1225	1.711%

131 Candleberry (bsmt)	6	1225	1.711%
132 Candleberry (slab)	6	1225	1.711%
125 Heritage (bsmt)	8	1416	1.977%
126 Candleberry (slab)	6	1225	1.711%
127 Heritage (bsmt)	8	1416	1.977%
128 Candleberry (slab)	6	1225	1.711%
145 Heritage (bsmt)	8	1416	1.977%
146 Baycrest (bsmt)	7	1225	1.711%
147 Heritage (bsmt)	8	1416	1.977%
148 Candleberry (bsmt)	6	1225	1.711%
141 Candleberry (bsmt)	6	1225	1.711%
142 Baycrest (slab)	7	1225	1.711%
143 Baycrest (bsmt)	7	1225	1.711%
144 Candleberry (slab)	6	1225	1.711%
137 Legacy (bsmt)	9	1504	2.098%
138 Candleberry (slab)	6	1225	1.711%
139 Baycrest (bsmt)	7	1225	1.711%
140 Baycrest (slab)	7	1225	1.711%
153 Candleberry (bsmt)	6	1225	1.711%
154 Baycrest (bsmt)	7	1225	1.711%
155 Candleberry (bsmt)	6	1225	1.711%
156 Candleberry (bsmt)	6	1225	1.711%
149 Baycrest (bsmt)	7	1225	1.711%
150 Candleberry (bsmt)	6	1225	1.711%
151 Baycrest (bsmt)	7	1225	1.711%
152 Candleberry (bsmt)	6	1225	1.711%
TOTALS		71,611	100%

**EXHIBIT "C"**

**Legal Description of Easement Area**

(serving entire condominium, including expansion area)

See Exhibit C of Original Declaration recorded at Wayne County Records Volume 352, Page 1887 et seq., on September 24, 2001.

See Exhibit C of Amendment Number One to the Declaration recorded at Wayne County Records Volume 373, Page 2115 et seq., on March 22, 2002.

See Exhibit C of Amendment Number Two to the Declaration recorded at Wayne County Records Volume 387, Page 2014 et seq., on August 1, 2002.

**EXHIBIT “D”**

**Legal Description of Optional Expansion Area**  
**of Condominium Property**

(Future Phases)

See Exhibit D of Original Declaration recorded at Wayne County Records Volume 352, Page 1887 et seq., on September 24, 2001.

See Exhibit D of Amendment Number One to the Declaration recorded at Wayne County Records Volume 373, Page 2115 et seq., on March 22, 2002.