

VOL 1391 PAGE 697

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STARK COUNTY RECORDER

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**DECLARATION**

Creating and Establishing A Plan for Condominium Ownership  
Under Chapter 5311 of The Revised Code of Ohio For

**THE PRESERVE CONDOMINIUM**

BOOK	4
PAGE	2
CITY	
COUNTY	

**CERTIFICATE OF AUDITOR**

A copy of this Declaration, with Bylaws and Drawings attached, was filed with the Stark County Auditor this 6th day of April, 1993.

Stark County Auditor

By: Jane Vignos  
Deputy Auditor

For Condominium Plat, see Condominium Plat Book Volume \_\_\_\_,  
Page \_\_\_\_ of the Stark County Records.

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**DECLARATION**

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This is the Declaration of The Preserve Condominium made effective the 2<sup>nd</sup> day of April, 1993, pursuant to the provisions of Chapter 5311 of the Revised Code of Ohio.

**Recitals**

A. The Preserve Company is the "Declarant" and owner in fee simple of all of the real property hereinafter described and the improvements thereon and appurtenances thereto.

B. The Declarant has created of this property a site of individually owned units, and commonly owned areas and facilities, and to these ends hereby submit this property to condominium ownership under the provisions of the Condominium Act of the State of Ohio.

**Definitions**

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

1. "Articles" and "Articles of Incorporation" mean the articles, filed with the Secretary of State of Ohio, incorporating The Preserve Condominium Unit Owners Association as a corporation not-for-profit under the provisions of Chapter 1702 of the Revised Code of Ohio, as the same may be lawfully amended from time to time.

2. "Association" and "The Preserve Condominium Unit Owners Association" mean 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.

3. "Board" and "Board of Trustees" mean those persons who, as a group, serve as the board of trustees of the Association and are also one and the same as the board of managers of the Condominium established for the Condominium pursuant to the provisions of the Condominium Act.

4. "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, 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.

5. "Common Areas" means all the Condominium Property, except that portion thereof described in this Declaration as constituting a Unit or Units, and is that portion of the Condo-

minium Property constituting "common areas and facilities" of the Condominium under the provisions of the Condominium Act.

6. "Common Expenses" means:

(a) "common expenses" as defined by Section 5311.01(D) of the Revised Code of Ohio.

(b) expenses of administration, expenses of maintenance, operation, repair or replacement of the common areas and facilities and of the portions of units to be maintained by the Association.

(c) expenses declared to be common expenses by the provisions of this Declaration or the Bylaws.

(d) any valid charge against the Condominium as a whole.

7. "Condominium" and "The Preserve Condominium" mean the condominium regime for the Condominium Property created under and pursuant to the provisions of the Condominium Act.

8. "Condominium Act" means the statutory law of the State of Ohio regulating the creation and operations of condominiums and is presently Chapter 5311 of the Revised Code of Ohio.

9. "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 thereof, are Condominium Instruments.

10. "Condominium organizational documents" means the Articles, Bylaws, the Drawings, and this Declaration, as the same may lawfully be amended from time to time.

11. "Condominium Property" means the tract of land herein-after described as being submitted to the Condominium Act, all buildings, structures, and improvements situated thereon, and all easements, rights, and appurtenances belonging thereto.

12. "Declarant" means The Preserve Company, an Ohio Joint Venture, its successors and assigns, provided the rights specifically reserved to Declarant under the Condominium organizational documents shall accrue only to such successors and assigns as are designed in writing by Declarant as successors and assigns of such rights.

13. "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.

14. "Drawings" means the drawings for the Condominium, as defined in the Condominium Act, filed simultaneously with the submissions of this Declaration for recording, as the same may be lawfully amended from time to time.

15. "Garage" means the parking garage made part of each Unit as shown on the Drawings.

16. "Eligible holder of a first mortgage lien" means the holder of a valid recorded first mortgage on a Unit, which holder has given written notice to the Association stating the holder's name, address and Unit or Units subject to its mortgage.

17. "Limited Common Areas" means those Common Areas 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 areas and facilities" of the Condominium under the provisions of the Condominium Act. Limited Common Areas may be referred to herein as "L.C.A."

18. "Occupant" means a person lawfully residing in a Unit, regardless of whether that person is a Unit Owner.

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

20. "Trustee" and "Trustees" mean that person or those persons serving, at the time pertinent, as a trustee or trustees of the Association, and mean that same person or those persons serving in the capacity of a member of the board of managers of the Association, as defined in the Condominium Act.

21. "Unit" or "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.

22. "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 nonprofit corporation statutory act.

#### The Plan

NOW, THEREFORE, Declarant hereby makes and establishes the following plan for condominium ownership of this property under and pursuant to the Condominium Act:

#### ARTICLE I

##### The Land

1.1 The Land. A legal description of the land constituting the Condominium Property, located in Stark County, Ohio, is attached hereto and marked "Exhibit A".



ARTICLE II

The Name

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2.1 The Name. The name by which the Condominium shall be known is THE PRESERVE CONDOMINIUM.

ARTICLE III

Purposes and Restrictions

3.1 This Declaration is being made to establish separate individual parcels from the Condominium Property, to which fee-simple interests may be conveyed, for use for single-family residential living; to establish a unit owners' association to administer the Condominium; to provide for the preservation of the values of Units and Common Areas; 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.

Restrictions

3.2 The Condominium Property shall be subject to the following restrictions, conditions and limitations which shall run with the land and shall be binding upon each Unit Owner, his heirs, executors, administrators, guests, tenants, licensees and assigns.

3.3 Unit Uses. Except as otherwise specifically provided in this Declaration, no Unit shall be used for any purpose other than that of a residence and purposes customarily incidental thereto. Notwithstanding the foregoing (a) professional and quasi-professional occupants may use a Unit as an auxiliary or secondary facility to an office established elsewhere; (b) an occupant maintaining a personal or professional library, keeping personal business or professional records or accounts, conducting personal business, making professional telephone calls or conducting correspondence, in or from a Unit, is engaged in a use expressly declared customarily incidental to principal residential use and is not in violation of these restrictions; (c) it shall be permissible for the Declarant to maintain, during the period of its sale of Units, one or more Units as sales models and office; and (d) one or more Units may be maintained for the use of the Association in fulfilling its responsibilities.

3.4 Common Area Uses. The Common Areas (except the Limited Common Areas) 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 Units, provided, however, that unless expressly provided herein, no Common Areas shall be used for any purpose other than the health, safe-

ty, welfare, convenience, comfort, recreation, or enjoyment of Unit Owners and occupants, subject to such rules and regulations as may from time to time be promulgated by the Board.

3.5 Limited Common Area Uses. Those portions of the Common Areas described herein and shown on the Drawings as Limited Common Areas 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 Areas and Limited Common Areas set forth in this Declaration and such rules and regulations as may from time to time be promulgated by the Board.

3.6 Visible Areas. Nothing shall be caused or permitted to be hung or displayed on the outside or inside of windows (except inoffensive drapes or curtains) or placed on the outside walls of a building or otherwise outside of 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 or in or on a patio or balcony unless authorized by the Board, and subject to such rules and regulations as the Board may adopt from time to time.

3.7 Nuisances. No noxious or offensive activity shall be carried on in any Unit, or upon the Common Areas, nor shall either be used in any way or for any purpose which may endanger the health of or unreasonably disturb any occupant.

3.8 Vehicles. The Board may promulgate regulations restricting the parking of automobiles, inoperable vehicles, trucks, boats, and recreational vehicles on the Common Areas, and may enforce such regulations or restrictions by levying fines, having such vehicles towed away, or taking such other actions as it, in its sole discretion, deems appropriate.

3.9 Renting and Leasing. No Unit or part thereof, unless the same is owned by the Association, shall be rented or used for transient or hotel purposes, which is defined as: (a) rental for any period less than sixty (60) days; (b) rental under which occupants are provided customary hotel services such as room service for food and beverages, maid service, furnishing of laundry and linen, busboy service, and similar services; or (c) rental to roomers or boarders, that is, rental to one or more persons of a portion of a Unit only. No lease may be of less than an entire Unit. Any lease agreement shall be in writing, shall provide that the lease shall be subject in all respects to the provisions hereto, and to the rules and regulations promulgated from time to time by the Board, and shall provide that the failure by the lessee to comply with the terms of the Condominium organizational documents and lawful rules and regulations shall be a default under the lease. A copy of each lease of a Unit shall be provided to the Board prior to the date of the commencement of the tenancy under that lease.

3.10 Signs. No sign of any kind shall be displayed to the public view on the Condominium Property except: (a) on the Common

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Areas, signs regarding and regulating the use of the Common Areas, provided they are approved by the Board; (b) within the Limited Common Area of or on the interior side of the window of a Unit, one professionally prepared sign advertising the Unit for sale or rent; and (c) on the Common Areas and model Units, signs advertising the sale of Units by the Declarant during the initial sale period.

3.11 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 Areas not presently devoted to residential buildings anything other than facilities for the common use of all Units.

3.12 Structural Integrity. Nothing shall be done in any Unit, or in, on, or to the Common Areas, which may impair the structural integrity of any improvement.

3.13 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 easements 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.

3.14 Animals. Except as hereinafter provided, no animals, livestock, or poultry of any kind shall be raised, bred, or kept in any Unit or on the Common Areas. Notwithstanding the foregoing, if the Board elects to allow such pets, household domestic pets not bred or maintained for commercial purposes may be maintained in a Unit, provided that: (a) no animals shall be permitted in any portion of the Common Areas except on a leash (not longer than six feet in length) maintained by a responsible person; (b) the permitting of animals on the Common Areas 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 fines against persons who do not clean up after their pets; and (c) 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.

3.15 Laundry or Rubbish in Common Areas and Facilities. No clothes, sheets, blankets, laundry of any kind or other articles

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shall be hung out or exposed on any part of the Common Areas and Facilities and the same shall be kept free and clear of rubbish, debris and other unsightly materials. All trash, garbage or other rubbish shall be deposited only in accordance with rules and regulations by the Board.

3.16 Hazardous Uses and Waste. Nothing shall be done or kept in any Unit or in the Common Areas and Facilities which will increase the rate of insurance of the building or contents thereof, applicable for residential use. No Unit Owner shall permit anything to be done or kept in his Unit, the L.C.A. appertaining thereto or in the Common Areas and Facilities which will result in the cancellation of insurance on the building or contents thereof, or which would be in violation of any law. No waste will be committed upon any part of the Condominium Property. Each Unit owner shall be obligated to maintain and keep his own Unit in good order and repair.

3.17 Obstruction of Common Areas and Facilities. There shall be no obstruction of the Common Areas and Facilities nor shall anything be stored in the Common Areas and Facilities without prior consent of the Association except as hereafter expressly provided.

3.18 Alteration of Common Areas and Facilities. Nothing shall be altered or constructed upon or removed from the Common Areas and Facilities except as hereinafter provided and except upon the written consent of the Association. In no event shall deterioration, construction or addition be made to a living Unit within the Common Areas except within Limited Common Areas which are associated with a particular living Unit and only after written consent by the Association in accordance with its rules and regulations. Swimming pools, outdoor whirlpools, trampolines, swing sets, basketball hoops and similar recreational facilities are expressly prohibited.

3.19 Pollution Control. Unit Owners may not use any salt or chemical compounds for the purpose of melting snow or ice on any part of the Condominium Property or apply fertilizers or weed/insect control chemicals to any part of the Condominium Property without first obtaining approval of the Board.

3.20 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 Areas 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. The right of a Unit Owner to sell, transfer, or otherwise convey that Owner's Unit is not subject to any right of first refusal or similar restriction, and any Unit Owner may transfer that Owner's Unit free of any such limitation. 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 (5) days after an interest in that Unit Owner's Unit has been transferred to another person. In addition, each Unit

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Owner agrees to provide to a purchaser of that Owner's Unit a copy of the Condominium organizational documents and all effective rules and regulation.

3.21 Discrimination. No action shall at any time be taken by the Association or its Board which in any manner would discriminate against any Unit Owner in favor of another.

3.22 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 sixty (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.

3.23 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 sixty (60) days thereafter, and give written notice to each party thereof no less than three (3) 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 thirty (30) days thereafter. No action at law may be instituted by either party to such a dispute unless arbitration pursuant hereto has first been had.

#### ARTICLE IV

##### Improvement Descriptions

4.1 There are eleven (11) residential buildings as a part of the Condominium, containing twenty-two (22) Units. The residential buildings are described in Exhibit B attached hereto.

4.2 The principal materials of which these buildings are constructed are brick, aluminum, wood, glass, concrete and dry-wall. The buildings are located as shown on the Drawings.

#### ARTICLE V

##### Units

5.1 Unit Designations. Each of the Units is designated by number on the Drawings where that Unit is located.

Information concerning the Units, with the listing of proper Unit designations, is shown on the attached Exhibit B. The location and designation of each Unit is also shown on the Condominium Plat filed herewith.

5.2 Unit Composition. Each Unit consists of the space in the building designated by the 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 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, or, as appropriate, in addition, each Unit shall include:

- (1) 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 themselves;
  - (2) All windows, screens and doors, and including the frames, sashes, and jambs and the space occupied thereby, and the hardware therefor;
  - (3) 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, dishwasher, garbage disposal units, refrigerators, stoves and hoods, television antennas and cables, furnace, hot water heater, air-conditioning unit, and components thereof, if any, serving only that Unit;
  - (4) All plumbing, electric, heating, cooling, and other utility or service lines, pipes, wires, ducts, or conduits, wherever located, which serve only that Unit;
  - (5) 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 herein, together with the space occupied thereby;
  - (6) All interior walls that are not necessary for support of the structure, and all space encompassed thereby, and the space within a Unit occupied by structural and component parts of the building and by utility pipes, wires, ducts, and conduits;
  - (7) The attic space or storage space above a Unit, if any, to which the Unit has direct access; and
  - (8) The garage(s) designated as part of a Unit as shown upon the Drawings,
- excluding therefrom, however, all of the following items located

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within the bounds of that Unit:

- (1) Any supporting element of the building contained in all interior walls;
- (2) All vent covers, grills, plate covers, and other coverings of space which are not a part of a Unit as heretofore defined; and
- (3) 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 VI

##### Common and Limited Common Areas

6.1 Common Areas - 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 Areas.

6.3 Limited Common Areas. Those portions of the Common Areas that are labeled or designated "LCA" or "limited common areas" on the Drawings, are Limited Common Areas. Limited Common Areas shall include but are not limited to all patios, decks, front walks, driveway and all parking spaces designated for the use of a Unit to the exclusion of other Units, and all material such as lath, furring, or wallboard which forms the surface bounding a Unit and all fixtures serving a Unit to the exclusion of other Units but located outside of such Units.

6.3 Undivided Ownership Interest. Each Unit Owner shall own an undivided interest in the Common Areas which interest shall be based upon a par value expressed in points determined by the proportion that the net square footage of all the Units having an interest in the Common Areas determined upon a range method. For purposes of determining net square footage of a Unit, storage space, garage space and Limited Common Areas such as decks and patios shall not be included, but all areas of living space whether on one or more levels shall be included in such determination. The total interest in the Common Areas shall be the sum of the par value points assigned to the individual Units. Each Unit shall be assigned one (1) par value point for each full 100 square feet of space within such Unit as measured in accordance with this Section 6.3.

The percentage of interest in the Common Areas of each Unit is shown on the attached Exhibit B, and in each case, is in the proportion that the par value points of a Unit at the date of this Declaration is filed for record bears to the then aggregate par value points of all units in the Condominium.

The Common Areas 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 Areas. Further, the undivided interest in the Common Areas of a Unit shall not be separated from the Unit to which it pertains.

6.4 Effect of Expansion. If at a later time the Condominium is expanded, as hereinafter provided, each new unit shall be assigned par value points in accordance with the procedure set forth in Section 6.3 above and the undivided interests of Units in the Common Areas shall be uniformly reallocated in the proportion which the par value points assigned to each Unit bears to the aggregate par value points assigned to all Units.

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## ARTICLE VII

### Unit Owners' Association

7.1 Establishment of Association. The Unit Owners' Association of the Condominium has been formed and a true copy of the By-Laws thereof is attached hereto as Exhibit C. The Declarant is presently the sole member of the Association.

7.2 Membership. Membership in the Unit Owners' Association shall be limited to the Unit Owners, and every person or entity who is or has become a record owner of a fee or undivided 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.

7.3 Voting Rights. There shall be one vote for each Unit owned in fee simple to be cast by the Unit Owner. If there is more than one Unit Owner, the Unit Owners may cast their proportionate shares of the vote for their Unit as they choose. Any Unit Owner may cast the entire vote for his Unit unless that action is timely challenged by the other Unit Owner in which case each such unit Owner shall be entitled to cast his proportionate share of the vote for the Unit.

7.4 Board of Trustees. The Board initially shall be those three persons named as the initial Trustees pursuant to the provisions of the Articles, or such other person or persons as may from time to time be substituted by the Declarant. No later than the time that Units to which 25% of the undivided interests in the Common Areas appertain have been sold and conveyed by the Declarant, the Unit Owners shall meet, and from and after that date there shall be three (3) Trustees. The Unit Owners other than the Declarant shall elect one-third (one (1)) of the Trustees at such meeting and the Declarant shall designate the other two-thirds (two (2)) of the Trustees, which three (3) shall serve until the meeting described in the next paragraph. For purposes of computing the undivided interest referred to in this paragraph, those interests shall be computed by comparing the number of Units sold and conveyed to the maximum number of Units that



may be created. Members of the Board designated by the Declarant need not be members of the Unit Owners' Association; however, all other members of the Board must be members of the Unit Owners' Association.

Within thirty (30) days after the earlier of (a) five years from the date of the establishment of the Association, or (b) the sale and conveyance of Units to which 75% of the undivided interest in the Common Areas appertain, the Association shall meet and all Unit Owners, including the Declarant, shall elect three (3) Trustees to replace all of those Trustees earlier elected or designated by the Unit Owners or the Declarant, respectively, and elect new officers of the Association. The terms of the three (3) Trustees shall be staggered so that the terms of one-third of the Trustees will expire and successors will be elected at each annual meeting of the Association. Thereafter, at such annual meetings, successors of the Trustees whose term then expires shall be elected to serve a three (3) year term.

Notwithstanding the foregoing, the Declarant shall have the right at any time to waive its right to select one or more Trustees or to vote in an election of Trustees. If the Declarant waives its right to select one or more Trustees, the membership shall meet and elect the members of the Board otherwise to have been selected by the Declarant.

7.5 Authority. The Board shall have all authority to manage, maintain, repair, replace, alter, and improve the Common Areas 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.

7.6 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; provided, however, that any agreement for professional management shall be terminable by the Association for cause on thirty (30) days' written notice; shall be terminable by either party, without penalty, on ninety (90) days' written notice; shall not exceed one (1) year unless renewed by agreement of the parties for successive one (1) year periods; and shall be bona fide and commercially reasonable at the time entered into under the circumstances then prevailing. Subject to the foregoing, nothing contained herein shall preclude the Declarant, or any other entity designated by the Declarant, from being employed as managing agent. The managing agent, or the Board if there is no managing agent, shall have the authority to enter into contracts with the Declarant or one or more other firms or corporations affiliated with the Declarant for the providing of management, maintenance, and repair services, provided the same are bona fide and commercially reasonable to the Unit Owners at the time entered into under the circumstances then prevailing and are terminable by the Association, without cause

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and without penalty, on ninety (90) days' written notice.

The decision by the Board not to have professional management, or to terminate professional management and assume self management, shall not be made without the consent of eligible holders of first mortgages on Units to which at least 51% of votes of Units subject to such mortgages appertain.

#### ARTICLE VIII

##### Agent for Service

8.1 Agent for Service. The name of the person to receive service of process for the Association, and that person's residence or place of business which is Stark County, Ohio, where the Condominium is situated, is: Mark A. Prosize, 4119 Whipple Avenue, NW, Suite D, Canton, Ohio 44718.

In the event this individual for any reason ceases to be registered with the Secretary of State of Ohio as Statutory Agent for the Association, the person so registered shall be the person to receive service of process for the Association.

#### ARTICLE IX

##### Maintenance and Repair

9.1 Association Responsibility. The Association shall maintain and repair the Common Areas, including and not limited to utility facilities serving more than one Unit, utility lines in the Common Areas, lawns, shrubs, trees, walkways, drives, parking areas, and the structural portions and exterior portions of all buildings which are a part of the Common Areas and that do not constitute part of a Unit; provided, however, that the Association shall not be required to perform cleaning or snow and/or ice removal with respect to patio and deck areas.

9.2 Individual Responsibility. Each Unit Owner shall repair and maintain the Unit or Units, and all components thereof, owned by that Unit Owner and shall promptly report to the Association or its agent of any defect or need for repairs, the responsibility for remedying of which is with the Association. 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 removal of ice and snow from the patios and decks, and repairs of patios and decks; however, each Unit Owner shall perform his responsibilities in such manner so as not unreasonably to disturb other persons residing within the building, and shall not make any alterations in the portions of the Unit and the LCA appertaining thereto or the buildings which are to be maintained by the Association or on the Common Areas and Facilities or remove any portion thereof or make any additions thereto or do anything which would or might jeopardize or impair the safety or soundness of the building

without first obtaining the written consent of the Board of Trustees of the Association, nor shall any Unit Owner impair any easement without first obtaining the written consent of the Association and of the Owner or Owners for whose benefits such easements exist. 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 Areas or Limited Common Areas is caused by the negligent or intentional act of any Unit Owner or occupant, or occurs as a result of the failure of any Unit Owner or his, her, or its predecessors in title to timely pursue to conclusion a claim under any warranty, express, implied, or imposed by law, 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 herein-after 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.

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#### ARTICLE X

##### Utility Services

10.1 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 utility service is not separately metered, the cost thereof shall be a common expense and paid by the Association.

#### ARTICLE XI

##### Insurance; Losses; Bonds

11.1 The Board shall have the authority to and shall obtain insurance for all buildings and structures now or at any time hereafter constituting a part of the Common Areas against loss or damage by fire, lightning, and such other hazards as are ordinarily insured against by fire and extended coverage policies issued in the locale of the Condominium Property, in amounts at all times sufficient to prevent the Unit Owners from become co-insurers under the terms of any applicable co-insurance clause or provision and not less than 100% of the insurable value (based on replacement cost) of such buildings and structures, exclusive of the cost of foundations, footings, and excavations, as determined from time to time by the insurer. This insurance:

(1) May provide for built-in installed improvements, fixtures, and equipment, and 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;

(2) Shall be obtained from an insurance company authorized to write such insurance in the State of Ohio which has a current rate of B/VI, or better, or, if Class V, has a general policy

holder's rating of at least BBB+, as determined by the then latest edition of Best's Insurance Reports, or its successor guide;

(3) Shall be written in the name of the Association for the use and benefit of the Unit Owners;

(4) 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 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, unless otherwise prohibited by The Mortgage Corporation, to the holders of first mortgages on Units; and

(5) Unless otherwise determined by the Board, shall contain a waiver of subrogation of rights by the carrier as to the Association, its officers, and Trustees, and all Unit Owners.

The cost of the insurance shall be a common expense, payable by the Association; provided, however, if the Board so elects, each Unit Owner shall, promptly upon receipt of an invoice for his, her or its share of the premium for that insurance, pay that Unit Owner's respective share of that premium directly to the insurance company issuing that insurance. A Unit Owner's share shall be determined by multiplying the premium being apportioned by that Owner's Unit undivided interest in the Common Areas. If that premium is not paid by the Unit Owner, it shall constitute a special individual Unit assessment, as hereinafter defined.

11.2 Liability Insurance The Association shall obtain and maintain a comprehensive policy of public liability insurance covering all of the Common Areas, insuring the Association, the Trustees, and the Unit Owners and occupants, with such limits as the Board may determine, but not less than \$1,000,000.00 per occurrence, 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 because of negligent acts of the Association, the Board, or other Unit Owners.

11.3 Other Association Insurance In addition, the Board may purchase and maintain contractual liability insurance, trustees' and officers liability insurance, and such other insurance as the Board may determine.

11.4 Unit Owners' Insurance. Any Unit Owner or occupant may 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

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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 "tenants' 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 Trustees, and all other Unit Owners and occupants.

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11.5 Sufficient Insurance. In the event the improvements forming a part of the Common Areas or any portion thereof shall suffer damage or destruction from any cause of peril insured against and the proceeds of a 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 (60) days after such damage or destruction the Unit Owners and eligible holders of first mortgages, if they are entitled to do so pursuant to the provisions of the Declaration, shall elect to terminate the Condominium, then such repair, restoration, or reconstruction shall not be undertaken.

11.6 Insufficient Insurance. In the event the improvements forming a part of the Common Areas of any portion thereof shall suffer damage or destruction from any cause or destruction from any cause or peril 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 and eligible holders of first mortgages, if they are entitled to do so pursuant to the provisions of the Declaration, shall elect within sixty (60) 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 Areas so damaged or destroyed at the expense (to the extent not covered by insurance) of all Unit Owners in proportion to their respective undivided interests in the Common Areas. 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 nonpayment of assessments.

11.7 Procedure for Reconstruction or Repairs. Immediately after a casualty causing damage to any portion of the Condominium Property, the Association shall obtain reliable and detailed estimates of the cost to replace the damaged property in a condition as good as that immediately before the casualty. Such costs may include professional fees and premiums for such bonds as the Board deems necessary.

The insurance proceeds and the sums from collections from, and special assessments against, the Unit Owners on account of such casualty, and funds in any appropriate reserves shall constitute a construction fund which shall be applied by the Association to the payment of the cost of reconstruction and repair of the Condominium Property. It shall be presumed that the first monies disbursed in payment of such costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in any construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be used to reduce other common expenses or replenish appropriate reserves.

11.8 Fidelity Bonds. At such time as the Condominium contains more than four (4) Units, the Unit Owners may require the Board to obtain fidelity bond coverage with respect to persons handling Association funds, naming the Association as the named insured, in such amounts as the Board determines sufficient to provide protection, but in no event less than 1 1/2 times the Association's estimated annual operation expenses and reserves. In the event the bond would not otherwise cover volunteers, it must be endorsed to cover such persons.

#### ARTICLE XII

##### Damage: Restoration: Rehabilitation and Renewal

12.1 Restoration of Substantial Damage or Destruction. In the event of substantial damage to or destruction of all Units in a residential building, the Association may, with the consent of Unit Owners entitled to exercise not less than 80% of the voting power of Unit Owners, and the consent of eligible holders of first mortgages on Units to which at least 75% of the votes of Units subject to mortgages held by eligible holders of mortgages appertain, determine not to repair or restore such damage or destruction. In such an event, all the Condominium Property shall be sold as upon partition.

In the event of an election not to repair or restore substantial damage or destruction, the net proceeds of insurance paid by reason of such damage or destruction shall be added to the proceeds received from the sale as upon partition, and the total amount distributed among the owners of the Units, and the holders of their respective first mortgage liens, (as their interests may appear), in proportion to their percentage interests in Common Areas.

12.2 Rehabilitation and Renewal. The Association,

with the consent of Unit Owners entitled to exercise no less than 75% of the voting power of Unit Owners, and the consent of eligible holders of first mortgages appertain, 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 XIII

#### Eminent Domain

The following provisions shall control all takings of the Condominium Property through the exercise of power of eminent domain, to the extent permitted by law.

13.1 Notice and Participation. If all or any part of any Unit or of the Common Areas shall be taken, injured, or destroyed by the exercise of power of eminent domain, each Unit Owner and approved mortgagee affected thereby shall be entitled to notice of such taking and to participate through the Association in the proceedings incident thereto.

13.2 Total Taking of Unit. If a Unit is acquired by eminent domain, or if part of a Unit is acquired by eminent domain leaving the Unit Owner with a remnant which may not practically or lawfully be used for any purpose permitted by this Declaration, then unless the decree otherwise provides: (i) the Unit's voting power shall completely terminate, and (ii) the Unit's entire percentage interest in the Common Areas and in the common surplus and expenses shall automatically be reallocated to the remaining Units in proportion to their respective percentage interests before the taking; and the Association shall attempt to promptly obtain the execution and recording of an amendment to this Declaration reflecting the reallocations. Any remnant of the Unit remaining after part of a Unit is taken under this section is thereafter a Common Area. The award attributable to such a taking shall be paid to the Unit Owners whose Units were subject to said taking, in accordance however with the terms of Paragraph 13.5 below.

13.3 Partial Taking of Unit. Except as provided in Paragraph 13.2 above, if part of a Unit is acquired by eminent domain, Paragraph 6.3 of ARTICLE VI hereof shall be amended upon acquisition to reallocate the proportionate interests in the Common Areas and in the common surplus and expenses which the owners of all Units will have immediately after such acquisition in accordance with the method for determining percentage interest set forth in said Paragraph 6.3 of ARTICLE VI, and the Association shall attempt to promptly obtain the execution and recording of an Amendment to this Declaration reflecting the reallocations. The award attributable to such a taking shall be paid to the Unit Owners whose Units were subject to said partial taking in accordance with the terms of Paragraph 13.5 below.

13.4 Taking of Common Areas. If part of the

Common Areas is acquired by eminent domain, the award attributable to such taking shall be paid to the Association. The Association shall divide any portion of the award not used for any restoration or repair of the remaining Common Areas among the Unit Owners in proportion to their respective percentage interest in the Common Areas before the taking, but the portion of the award attributable to the acquisition of a portion of the Limited Common Areas shall be divided equally among the owners of the Units which such Limited Common Areas benefited at the time of the acquisition.

13.5 Agency and Power of Attorney. The Association is hereby constituted and appointed agent for all Unit Owners and their mortgagees, with full authority to negotiate and make binding settlements on behalf of and in the name of said Owners and mortgagees concerning the value and extent of all takings of Common Area by any agency or entity exercising the power of eminent domain; provided, however, that the Association shall be authorized to make such binding settlements only with the consent of all approved mortgagees holding a first mortgage on any Unit(s) taken by the agency or entity.

13.6 Mortgagee's Rights. In the event any Unit or the Common Areas, or any portion thereof, are made the subject matter of any condemnation or eminent domain proceeding or are otherwise sought to be acquired by a condemning authority, the holders of first mortgages on the interests taken will have first priority, to the extent of their respective interests, with respect to distribution to such Unit of the net proceeds of any award of settlement. Each Unit Owner shall give the holder of a first mortgage on that Owner's Unit timely written notice of such proceeding acquisition.

ARTICLE XIV

Grants and Reservations of Rights and Easements

14.1 Easements of Enjoyment-Limitations. Every Unit Owner shall have a right and easement of enjoyment in, over and upon the Common Areas 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 Areas, 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 Areas and to ingress to and egress to the members of that Unit Owner's family and to occupants.

14.2 Easement for Garages and Parking. Easements are hereby declared and created for ingress and egress into and from each Unit Owner's garage for the benefit of said Unit Owner and his guests. No other Unit Owner or Unit Owner's invitee, assign and/or guest shall block or deny access, ingress or egress of



another Unit Owner to said Unit Owner's garage. Further, easements are hereby declared and created for the benefit of all Unit Owners and their invitees and guests to park automobiles for a period of no more than 24 hours in designated parking areas in the Common Areas.

14.3 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, right 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.

14.4 Easements for Encroachments. Each Unit and the Common Areas shall be subject to easements for encroachments on any other Unit and upon the Common Areas created or arising by reason of overhangs; 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.

14.5 Easements 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.

14.6 Easements for Utilities. There is hereby created upon, over and under all of the Condominium Property easements to the Association for ingress to and egress to, and the installation, replacement, repair, and maintenance of all utilities, including, but not limited to, water, sewer, gas, telephone, electricity, security systems, master television antennas, and cable television. By this easement it shall be expressly permissible for the Association to grant to the providing utility company permission 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 reasonably 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.

14.7 Easement for Services. A nonexclusive 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 Areas in the performance of their duties.

14.8 Easements Reserved to Declarant.

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(1) Declarant hereby reserves, for the maximum period permitted by law, on its own behalf and on behalf of its successors and assigns, and any party now or hereafter having any interest in the additional property described in Exhibit D, the right and easement to enter upon the Condominium Property in order to install, maintain, repair, and replace pipes, wires, antennas, cables, towers, conduits, and other lines and facilities for the purpose of providing water, sanitary sewer, storm or drainage sewer, electrical, telephone, television, and other utility or quasi-utility services to and for part or all of the additional property; the right and easement to extend and tie into main line utility and service lines in the Common Areas as permitted by public authorities and any utility company involved and to extend such lines into the additional property to service the same; the right and easement to use such pipes, wires, antennas, cables, towers, conduits, and other lines and facilities for the applicable services; and the right and easement to enter upon the Condominium Property to the extent necessary in order to construct residential units and/or other improvements on the additional property. Any utilization of the foregoing rights and easements reserved, however, shall not unreasonably interfere with the use and enjoyment of the Condominium Property; and, if any damage, destruction or disturbance occurs at the Condominium Property as a result of such utilization, the Condominium Property shall be restored promptly to the condition which existed immediately prior to such utilization at the sole expense of the person or persons making such utilization.

(2) Declarant hereby reserves, for the maximum period permitted by law, on its own behalf and on behalf of its successors and assigns and any party now or hereafter having any interest in the expansion property as described on Exhibit D, the nonexclusive right to use, maintain and repair the roadways, driveways, pavement, sidewalks and parking areas and garage entrances in common with all parties now or hereafter having any interest in the Condominium Property.

The reservation of easement in the immediately preceding paragraph and any grant made by Declarant, its successors, or assigns, pursuant to such reservation of easement shall require any party benefiting therefrom who owns all or any part of the additional property to pay his proportionate share of the cost of maintaining such roadways, etc., in good repair, together with all parties now or hereafter having any interest in the Condominium Property.

14.9 Power of Attorney. Each Unit Owner, by acceptance of a deed to a Unit, hereby irrevocably appoints Declarant 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 the real estate to which it is applicable, runs with the land, and is coupled with an interest.

14.10 General. The easements and grants provided herein shall in no way affect any other recorded grant or easement.

#### ARTICLE XV

##### Assessments and Assessment Liens

15.1 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 to the Association (a) annual operating assessments, (b) special assessments for capital improvements, and (c) special individual Unit assessments, all of such assessments to be established and collected as hereinafter provided.

15.2 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.

##### 15.3 Annual Operating Assessments.

(1) Prior to the closing by the Declarant of the sale of the first Unit, and prior to the beginning of each fiscal year of the Association thereafter, the Board shall estimate, and prorate among the Units on the basis of the undivided interest of each Unit in the Common Areas (expressed as par value points), common expenses of the Association consisting of the following:

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

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

(c) The estimated next fiscal year's cost for utility services not separately metered;

(d) 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;

(e) 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 (1) year ought to be maintained; and

(f) 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, sup-

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plies, 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.

(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 Areas, 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 for 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 prorate 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 or available, except on dissolution of the Association, for distribution to Unit Owners.

15.4 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 Areas 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% of the voting power of Unit Owners and the consent of eligible holders of first mortgages on Units to which at least 51% of the votes of Units subject to mortgages held by eligible holders of mortgages appertain.

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

15.5 Special Individual Unit Assessment. The Board may levy an assessment against an individual Unit, or Units, to reimburse the Association for those costs incurred in connection

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with that Unit or Units properly chargeable by the terms hereof to a particular Unit (such as, but not limited to, the cost of insurance premiums separately billed to 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 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 share 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 Areas attributable to that Unit. The calculation by the Association of the Units's shares of taxes and assessments shall be binding upon all Unit Owners.

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15.6 Effective 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 (10) days prior to the 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 the last designated address shall constitute notice to that Unit Owner.

15.7 Effect of Nonpayment of Assessment-Remedies of the Association.

(1) If any assessment or any installment of any assessment is not paid within ten (10) days after the same has become due, the Board, at its option, without demand or notice, may (a) declare the entire unpaid balance of the assessment immediately due and payable, and (b) charge interest on the entire unpaid balance (or on an overdue installment alone, if it hasn't exercised its option to declare the entire unpaid balance due and payable), at the highest rate of interest then permitted by law, or at such lower rate as the Board may from time to time determine.

(2) Annual operating and both types of special assessments, together with interest and costs, shall be a charge and a continuing lien in favor of the Association upon the Unit against which each such assessment is made.

(3) At any time after an installment of an assessment levied pursuant hereto remains unpaid for ten (10) 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 Stark

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 shall be signed by the president or other chief officer of the Association.

(4) 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 laws 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 an action brought to discharge the lien.

(5) 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 Stark 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.

(6) Each assessment, together with interest and costs, shall also be the joint and several personal obligation of the Unit Owners who owned the Unit at the time the assessment fell due. The obligation of that Owner or 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 and costs, shall not be impaired or abridged by reason of the transfer, but shall continue unaffected thereby.

(7) The Association, as authorized by the Board, may file a lien or liens to secure payment of delinquent assessments, interest 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 Owner or Owners affected shall be required to pay a reasonable rental for that Unit during the pendency of such action, and the Association as plaintiff in any such action shall be entitled to become a purchaser at the foreclosure sale.

(8) In any action by the Association to collect such assessments, interest and costs of such action (including attorneys' fees) shall be added to the amount of any such assessment, to the extent permitted by Ohio law.

(9) No Owner or Owners may waive or otherwise escape liability for the assessments provided for in this Declaration by nonuse of the Common Areas, or any part thereof, or by abandonment of his, her, or its Unit.

15.8 Subordination of the Lien to First Mortgages.  
The lien of assessments provided for herein shall be subject and

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

15.9 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.

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#### ARTICLE XVI

##### Notices to Mortgagees

16.1 Any holder or insurer of a first mortgage, 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:

(1) Any proposed amendment of the Condominium organizational documents effecting a change in (a) the boundaries of any Unit, (b) the undivided interest in the Common Areas appertaining to any Unit or the liability for common expenses appertaining to any Unit, or (c) the purposes to which any Unit or the Common Areas are restricted;

(2) Any proposed termination of the Condominium as a condominium regime;

(3) Any condemnation or eminent domain proceeding affecting the Condominium Property or any part thereof, of which the Board obtains notice;

(4) Any significant damage or destruction to the Common Areas;

(5) Any decision by the Association not to restore substantial damage or destruction;

(6) Any decision by the Association to renew or rehabilitate the Condominium Property;

(7) Any decision by the Association to construct new capital improvements not replacing existing improvements;

(8) Times and places of Unit Owners' meetings; and

(9) Any default under the Condominium organizational documents which gives rise to a cause of action against a Unit Owner whose Unit is subject to the mortgage of such holder or insured, when the default has not been cured in sixty (60) days.

#### ARTICLE XVII

##### Condominium Instrument Requirements

17.1 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.

17.2 Deposits. Any deposit or down payment made in connection with a sale of a Unit by the Declarant or its agent will be held in trust or escrow until delivered at the time of 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% per annum for any period exceeding ninety (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 the Declarant or its agent shall not be subject to attachment by creditors of the Declarant or the buyer.

17.3 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 Areas 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 Areas, 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 the 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.

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

(1) Units. Except as provided in subparagraph 5(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

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workmanship, that arises within a period of one (1) year from the date the deed to the buyers for that Unit is filed for record.

(2) Common Areas and Facilities. 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 (2) years from the date the deed is filed for record following the sale of the first Unit in the Condominium to a buyer in good faith for value.

(3) Appliance, etc. In the case of ranges, refrigerators, disposals, and other appliances, if any, installed and furnished by the Declarant as part of the Unit, the Declarant assigns to the buyer all express and implied warranties of the manufacturer, and the Declarant's warranty that the same have been properly installed.

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

(5) Limitations:

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

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

(c) Implied warranties, if any, are limited to one (1) year from the date on which the Unit is deeded to buyer, except to the extent, if any, that limitation is not lawful.

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

(e) Any request for service must be sent in writing to Declarant at 4119 Whipple Avenue, NW, Suite D, Canton, Ohio 44718, or at such other address as the Declarant may designate, from time to time, in writing to the buyer. The Declarant or the Declarant's designated representative will commence performance of the Declarant's obligations under this warranty within thirty (30) days after receipt of the buyer's request for service, and complete the same as soon as reasonably possible. All repairs and adjustments will be made Monday through Friday, 8:00 A.M. to 5:00 P.M.

(6) Other Rights. This written limited warranty gives

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the buyer specific legal rights and the buyer may also have other legal rights under law.

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

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#### ARTICLE XVIII

18.1 Power to Amend. Except as hereinafter provided, amendment of this Declaration (or the other Condominium organizational documents) shall require (a) the consent of the Unit Owners exercising not less than 75% of the voting power of Unit Owners, and (b) the consent of eligible holders of first mortgages on Units to which at least 51% of the votes of Units subject to mortgages held by eligible holders of first mortgages appertain. Notwithstanding the foregoing:

(1) The consent of all Unit Owners shall be required for any amendment affecting a change in:

(a) the boundaries of any Unit;

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

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

(d) the fundamental purposes to which any Unit or the Common Areas are restricted;

(2) The consent of Unit Owners exercising not less than 80% of the voting power of Unit Owners and the consent of eligible holders of first mortgages on Units to which at least 75% of the votes of Units subject to mortgages held by eligible holders of first mortgage liens appertain shall be required to terminate the Condominium; and

(3) In any event, the Declarant reserves the right and power, and each Unit Owner by acceptance of a deed to Unit is deemed, to and does give and grant to the 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 (3) years from the date of the filing of the Declaration, to amend the Condominium organizational documents, to the extent necessary 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 the appropriate percentage (as de-

scribed elsewhere herein of eligible holders of first mortgage liens is obtained, or to correct typographical errors or obvious factual errors or omissions, the correction of which would not impair the interest of any Unit Owner or mortgagee; and further 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.

(4) The Declarant also reserves the right and power to amend this Declaration in its entirety at any time prior to the first sale of a Unit.

18.2 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 formality 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 Stark County, Ohio.

#### ARTICLE XIX

##### Expansions

19.1 Reservation of Expansion Option. The Declarant expressly reserves the option to expand the Condominium Property as provided in this Article.

19.2 Limitations on Option. The Declarant has no limitations on its option to expand the Condominium Property, except as provided in the Article, or elsewhere in the Declaration, and except as otherwise so expressly limited, has the sole right, power, and authority to expand the Condominium Property. No Unit Owner's consent is required to enable the Declarant to expand the Condominium Property.

19.3 Maximum Expansion Time. The Declarant's option to expand the Condominium Property shall expire and terminate at the end of seven (7) years from the date this Declaration is filed for record, unless the Declarant, by written notice to the Association, elects to waive that option effective at a time prior to the expiration of that seven (7) year period. There are no other circumstances that will terminate that option prior to the expiration of that seven (7) year period.

19.4 Legal Description. A legal description, by metes and bounds, of all additional property that, through exercise of the Declarant's option, may be added to the Condominium Property by submission to the Condominium Act as part of this Condominium, is attached hereto and marked Exhibit D, and referred to herein as "the additional property".

19.5 Composition of Portions Added. Neither all nor any portion of the additional property must be added to the Condominium Property, nor, if any of the additional property is

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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. Except as expressly provided in this Article, there are no limitations on the portions of the additional property that may be added to the Condominium Property. Developer reserves the right to develop all or any portion of the additional property and shall not be obligated to incorporate such property into the Condominium Property.

19.6 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 limit previously described. There are no limitations fixing the boundaries of portions added, or regulating the order in which portions are added, excepted, however, that each portion added shall be contiguous, at some point, to what then constitutes the Condominium Property, so that at all times the entire Condominium Property shall be integral and contiguous development.

19.7 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.

19.8 Maximum Number of Units. The maximum total number of Units that may be created on the additional property and added to the condominium Property is sixty-eight (68) creating a total number of units of ninety (90), provided that the foregoing shall neither limit nor restrict nor be so construed as to limit or restrict the number of dwelling Units that may be constructed on all or any portion of the additional property that is not added to the Condominium Property. Subject to the foregoing total maximum number of Units that may be added to the Condominium Property, there is no limit as to the maximum number of Units per acre that may be created on any portion of the additional property added to the Condominium Property other than as may, from time to time, be imposed by law. The additional property is presently zoned in a zoning category that permits one and two-family dwellings.

19.9 Nonresident Uses. The maximum percentage of the aggregate land and floor area of all Units that may be created on the additional property or portions thereof and added to the Condominium Property that are not restricted exclusively to residential use is zero, since no such Unit may be so created and added.

19.10 Compatibility of Structure. 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 when on the Condominium Property. Design shall not be deemed to be incompatible or not comparable because of changes in the number of dwelling units in a building, or variances in setbacks or locations of structures in relation to other improvements.

19.11 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 that additional property, and no other nonstructural improvements. 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.

19.12 Limited Common Areas. The Declarant reserves the right with respect to all or any portion of the additional property added to the Condominium Property to create Limited Common Areas therein of substantially the same type, size, and number as those areas then so designated as such in the Condominium Property, including, without limiting the generality of the foregoing:

- (1) Patios and decks
- (2) Walkways, Driveways and Parking Areas

The precise size and number of such newly created Limited Common Areas cannot be ascertained precisely, because those facts will depend on how large each portion added may be, the size and location of the buildings and other improvements on each portion, and other factors presently undetermined.

19.14 Supplementary Drawings. The Condominium Plat shows the location and dimensions of the Condominium Property and the additional property. The Declarant does not consider any other drawings or plans, other than the Drawings, presently appropriate in supplementing the foregoing provisions of this Article. However, at such time as the Declarant adds all or any portion of the additional property to the Condominium Property, it shall file drawings and plans with respect to the additional property as required by the Condominium Act.

19.15 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 and all owners and lessees of the land so added, in the manner provided by the Condominium Act., of an amendment to the Declaration that contains the information, drawings, and plans with respect to the additional property and improvements thereon added required by the Condominium Act.

19.16 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:

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(1) 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 set forth herein shall run with and bind 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;

(2) The Owner or Owners of 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;

(3) The undivided interest of Units in the Common Areas, as so expended, shall be reallocated as hereinbefore provided; and

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

#### ARTICLE IX

##### General Provisions

20.1 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.

20.2 Enforcement. In addition to any other remedies provided in this Declaration, the 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 the 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, condition, covenant, reservation, easement, lien, or charge. Further, the Association and each Unit Owner shall have rights of action against each other for failure to comply with the provisions of the Condominium organizational documents, rules and regulations, and applicable law, and with respect to decisions made pursuant

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to authority granted thereunder, and the Association shall have the right to assess reasonable charges against a Unit Owner who fails to comply with the same, including the right to assess charges for the cost of enforcement and arbitration. Notwithstanding the foregoing, in the event of any dispute between the Association and any Unit Owner or occupant, other than with regard to assessments, that cannot be settled by an agreement between them, the matter shall first be submitted to arbitration in accordance with and pursuant to the arbitration law of Ohio then in effect (presently Chapter 2711 of the Revised Code of Ohio), by a single independent arbitrator selected by the Board.

20.3 Additional Remedies of the Association. If any of the terms, conditions and restrictions set forth herein, or in the Condominium Bylaws are violated, then after notice and opportunity of hearing, the Board of Trustees may suspend or withdraw a violating party's privileges to use any community and/or recreational facilities and/or Limited Common Areas which are part of the Condominium Property; suspend the voting rights of a violating party for a period not to exceed 60 days; enter upon the land or Unit or portion thereof where the violation or breach thereof exists without being deemed guilty of trespass, and at the expense of the defaulting party, summarily abate and remove any structure or condition constituting the violation; fine the violating party in an amount which may include a charge in the nature of a penalty; and in the event that the Board of Trustees determines that a violation is flagrant or repeated, then the Association may require the violating party to give surety for future compliance.

If any Owner (either by his own conduct or through the conduct of any resident or tenant of his Unit) shall be guilty of a violation of any of the covenants, restrictions, or provisions of this Declaration, of the Bylaws, or of the Rules and Regulations, and such violation shall continue for 30 days after notice in writing from the Board of Trustees, or shall occur repeatedly during any 30 day period after written notice or request for the Board to cure such violation, then the Board may file an action against the defaulting Unit Owner or resident for a decree of mandatory injunction against such Unit Owner or resident; or in the alternative, may issue to the defaulting Owner a 10 day notice in writing to terminate the rights of the said defaulting owner to continue as a Unit Owner and to continue to occupy, use, or control his Unit. Thereupon with the prior consent in writing of any approved mortgagee having a security interest in the Unit ownership of the defaulting Owner (which consent shall not be unreasonably withheld), the Board may file an action for a decree declaring the termination of the defaulting Owner's right to occupy, use, or control the Unit owned by him on account of the breach of covenant, and ordering that all the right, title and interest of the Owner in the property shall be sold (subject to the lien of any existing mortgage) at a judicial sale upon such notice and terms as the court shall establish, except that the court shall enjoin and restrain the defaulting owner from reacquiring his interest at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, master's or commissioner's fees, court reporter charges, reason-

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ble attorneys' fees, and all other expenses of the proceeding, and all such items shall be taxed against the defaulting Owner in said decree. Any balance of proceeds, after satisfaction of such charges, any unpaid assessments, and other amounts as provided for in this Declaration and in the Bylaws, and of any liens, may be paid to the defaulting Owner. Upon the confirmation of such sale, the purchaser at such sale shall thereupon be entitled to a deed to the Unit ownership and to immediate possession of the Unit sold. Such purchaser may apply to the court for a writ of assistance of the purpose of acquiring such possession. It shall be a condition of any such sale, and the decree shall so provide, that the purchaser shall take the interest in the property sold subject to this Declaration, the Bylaws and all Rules and Regulations of the Association.

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**20.4 Controlling Provisions.** All inconsistencies between or among the permissive provisions of any statute and any provisions of this Declaration and the Bylaws shall be resolved in favor of the Declaration and these Bylaws. In the event of any conflict or inconsistency between the provisions of the Declaration and the Articles or Bylaws of the Association (other than inconsistencies between permissive provisions of the Declaration and provisions of the Article or Bylaws, which shall be resolved in favor of the Articles or Bylaws), the terms and provisions of this Declaration shall prevail; and the Unit Owners and all persons claiming under them covenant to vote in favor of such amendments to the Articles or Bylaws as will remove such conflicts or inconsistencies.

**20.5 Rule Against Perpetuities and Restrictions on Alienation.** If any of the privileges, covenants, or rights created by this Declaration and/or by any of the exhibits hereto shall be unlawful or void for violation of: (i) the rule against perpetuities or some analogous statutory provision, (ii) the rule restricting restraints on alienation, or (iii) any other statutory or common law rules imposing time limits, then such provision shall continue only until 21 years after the death of the last survivor of the now living descendants of Mark A. Prosisie.

**20.6 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 wise affect any other provisions of this Declaration, which provisions shall remain in full force and effect.

**20.7 Gender and Grammar.** The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations, partnerships, to men or women, shall in all cases be assumed as though in such case fully expressed.



20.8 Captions. The captions of the various provisions of this Declaration are not part of the context hereof, but are merely labels to assist in locating the various provisions hereof.

IN WITNESS WHEREOF, the undersigned have executed this instrument this 2<sup>nd</sup> day of April, 1993.

Signed and acknowledged in the presence of

John M. Stark  
JOHN M. STARK  
Joseph E. Hill  
JOSEPH E. HILL

The Preserve Company

By: Mark A. Prosis  
Mark A. Prosis  
By: Marc W. Lawrence  
Marc W. Lawrence

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STATE OF OHIO )  
                  ) SS:  
STARK COUNTY )

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named Mark A. Prosis and Marc W. Lawrence, authorized Managers of The Preserve Company, an Ohio Joint Venture, who acknowledged that they did sign the foregoing instrument and that the same is their free act and deed individually and as Managers of such Joint Venture.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Canton, Ohio, this 2<sup>nd</sup> day of April, 1993.

John M. Stark  
Notary Public  
Permanence

**THIS INSTRUMENT PREPARED BY:**  
Mark A. Prosis  
Attorney at Law  
4119 Whipple Avenue, NW, Suite D  
Canton, Ohio 44718  
(216) 492-3753

TPCDECA

**EXHIBIT A**

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To the Declaration of  
The Preserve Condominium

The real property comprising the Condominium consists of the following tract of land located in the Township of Jackson, County of Stark, State of Ohio and being part of the Northeast Quarter of Section 36 (T-11, R-9) and more fully described as follows:

R. JAMES HAMMONTREE, P.E., P.S.  
BRUCE M. BARR, P.E., P.S.  
LAWRENCE D. PHILLIPS, P.E., P.S.  
RONALD P. DOHY, P.S.  
GARY L. TOUSSANT, P.S.  
JOSE E. TOLEDO, P.E., P.S.  
RICHARD R. COOK, P.E., P.S.  
CHARLES F. HAMMONTREE, P.E., P.S.  
JAMES C. BOLLIBON, P.E., P.S.

**HAMMONTREE & ASSOCIATES, LIMITED**  
*Consulting Engineers - Planners - Surveyors*

TREEMORE BUILDING  
5233 STONEHAM ROAD  
NORTH CANTON, OHIO 44720

PHONE (216) 499-8817  
FAX (216) 499-0149  
TOLL FREE 1-800-394-8817

MICHAEL L. DECKER, P.S.  
RICHARD J. FAUJHABER, P.E., P.S.  
KEITH A. BENNETT, P.E.  
GREGORY S. MENCER, A.P.A.  
DANIEL J. GRINSTEAD, P.E.  
JEFFREY L. SPRAY, P.S.  
PAUL A. TOMIC, P.S.  
MARK E. FRANZEN, P.E.  
KARL J. OPRICH, P.E.  
BARBARA H. BENNETT, P.E.

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March 31, 1993

**DESCRIPTION OF THE PRESERVE - PHASE I, 3.676 ACRES**

Situated in the Township of Jackson, County of Stark, State of Ohio and being part of the Northeast Quarter of Section 36 (T-11, R-9):

Beginning at a PK nail set from County references at the southwest corner of said Northeast Quarter; thence S84°15'24"E, 25.00 feet to a 1/2" rebar with cap set; thence N05°46'00"E along the easterly right-of-way line of Woodlawn Avenue, N.W., 201.11 feet to the true place of beginning:

1. Thence continuing N05°46'00"E along said easterly right-of-way line 445.45 feet to a 1/2" rebar with cap set at a point of curvature;
2. Thence on a curve to the right having a radius of 20.00 feet, a central angle of 90°17'04", a tangent of 20.10 feet, a chord of 28.35 feet and a chord bearing of N50°54'32"E, an arc distance of 31.52 feet to a 1/2" rebar with cap set at a point of tangency;
3. Thence S83°56'56"E along the southerly right-of-way line of 26th Street, N.W., 179.90 feet to a 1/2" rebar with cap set;
4. Thence N05°46'00"E along the easterly end of said 26th Street, N.W., 25.00 feet to a 1/2" rebar with cap set;
5. Thence S83°56'56"E along the southerly line of a tract of land now or formerly owned by John Schrade, Paul Kalem and William Perdue, Trustees, 36.78 feet;
6. Thence S06°03'04"W, 95.33 feet;
7. Thence S83°56'56"E, 75.76 feet;

Description of the Preserve - Phase I, 3.676 Acres  
Page 2  
March 31, 1993

- VOL 1391 PAGE 740
8. Thence S05°46'00"W, 171.02 feet;
  9. Thence S89°05'12"E, 120.52 feet;
  10. Thence S05°46'00"W, 115.05 feet;
  11. Thence N84°14'00"W, 40.00 feet;
  12. Thence S35°16'19"W, 72.56 feet;
  13. Thence S05°46'00", 54.65 feet;
  14. Thence N84°14'00"W, 356.41 feet to the true place of beginning.

The above described tract of land encloses and comprises part of a tract of land that was conveyed to The Preserve Company by a deed recorded in Volume 1348, Page 145 of the Stark County Official Records and contains 3.676 acres as surveyed by Ronald P. Dohy, P.S. #6175 of Hammontree and Associates, Limited, Engineers and Surveyors of North Canton, Ohio in March of 1993.

The basis of bearings for this description is N05°46'00"E, the centerline of Woodlawn Avenue from Menlough Estates No. 2 as recorded in Plat Book 28, Page 15 of the Stark County Plat Records.

HAMMONTREE & ASSOCIATES, LIMITED

To the Declaration of  
The Preserve Condominium

**BUILDING AND UNIT DESCRIPTIONS**

There will be eleven (11) residential buildings on the Condominium Property. None of the buildings are completed. The location of the buildings can be seen by referring to the Drawings and supplemental drawings. Nine (9) of the buildings will be one and one-half (1 1/2) story duplexes with basement and loft. Two (2) of the buildings will be two (2) story duplexes with basement.

**One and One-half Story Unit**

Each unit consists of one-half of a one and one-half story duplex structure and includes approximately 1488 square feet of floor area. There is a total of five (5) rooms in each Unit - kitchen, living room, master bedroom, second bedroom and loft. The second bedroom and loft are located on the upper level in the space formed by the roof structure. Also included are a full bath on the first floor and a full bath on the second floor and a laundry room on the first floor. The foundation will include an excavated area and a crawl space as shown on the Drawings. Each Unit will have a concrete patio off the rear of the Unit (depending upon topography and set-back requirements) and Unit Owners will have the option of adding a wooden deck and/or sunroom on the rear of the Unit (depending upon topography and set-back requirements).

**Two Story Unit**

Each unit consists of one-half of a two story duplex structure and includes approximately 1980 square feet of floor area. There is a total of seven rooms in each Unit - kitchen, dining room, great room, master bedroom, second bedroom, third bedroom and loft/den. Also included are a full bathroom on the first and second floors and a laundry room on the first floor. Foundation will include an unfinished walk-out basement, depending on topography surrounding the Unit. For Unit with walk-out basements, Units will have a deck attached to the first floor.

**General Features for All Units**

Interior features will include oak trim, a kitchen with an

electric range, hood and dishwasher. The main bath on the first floor includes a garden tub. All units will have a gas log-type fireplace. Each Unit will have a combination of carpeting and vinyl flooring.

The front exterior will be veneered primarily with brick and some portions covered with aluminum siding. The remaining exteriors will be veneered primarily with aluminum siding with brick band. Each Unit will have a two car garage with an electric single overhead door. Some units will have side-loaded garages and some will have front-loaded garages depending on site layout.

Each Unit includes an undivided interest in the Common Areas as tenants in common with all Units in the Condominium. Upon future expansion of the Condominium, such interest is subject to readjustment pursuant to Article XIX, Section 19.16 of the Declaration. The percentage of ownership for each Unit is:

<u>Unit</u>	<u>Percentage Interest In Ownership of Common Area</u>
1a	4.270%
1b	4.270%
2a	4.270%
2b	4.270%
3a	4.270%
3b	4.270%
4a	4.270%
4b	4.270%
5a	4.270%
5b	4.270%
6a	4.270%
6b	4.270%
7a	4.270%
7b	4.270%
8a	5.785%
8b	5.785%
9a	4.270%
9b	4.270%
10a	4.270%
10b	4.270%
11a	5.785%
11b	5.785%
<b>Total Percentage Interest In Ownership of Common Area</b>	<b>100%</b>

TPCDECB1

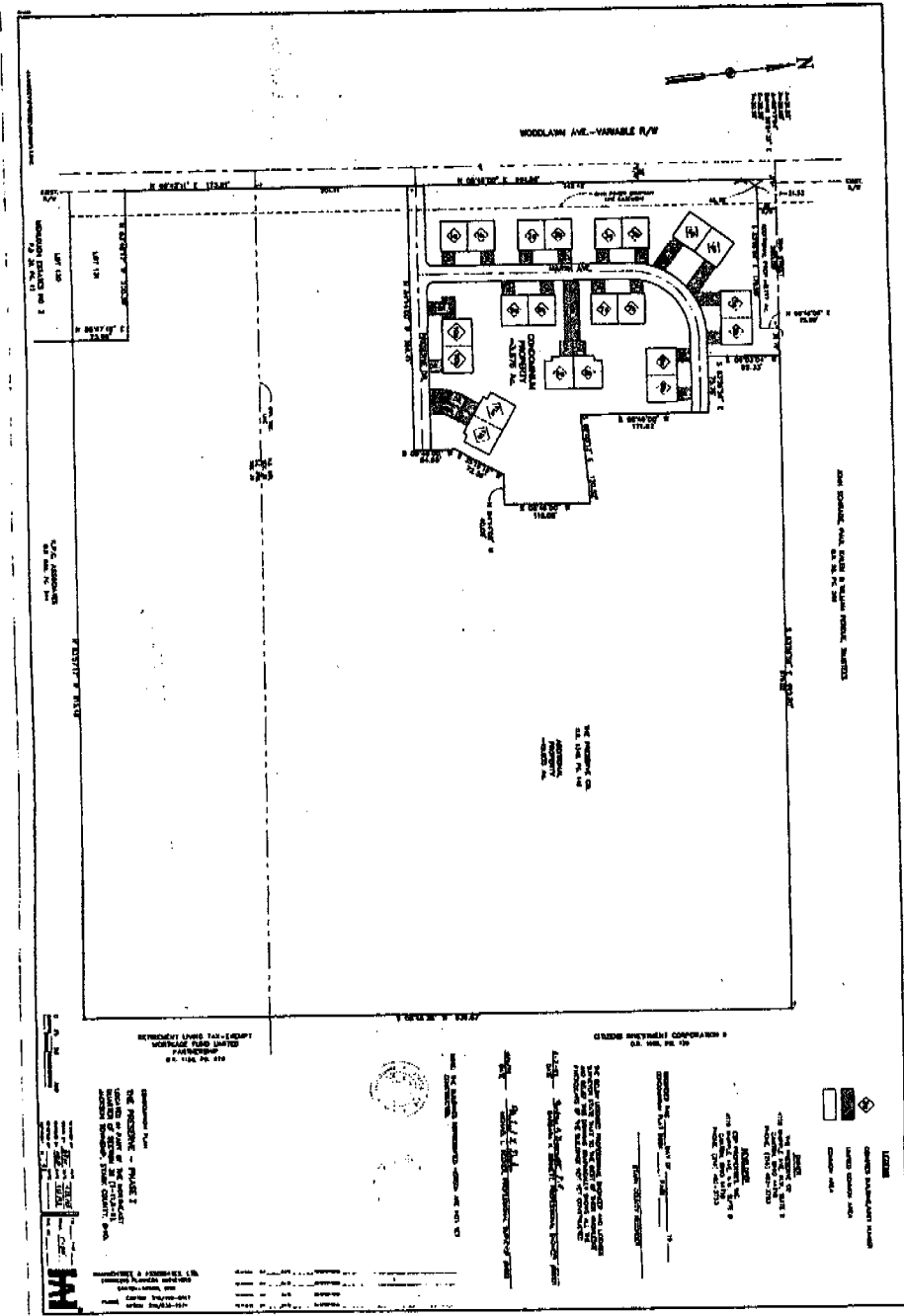
**EXHIBIT B-1**

**VOL. 1391 PAGE 743**

**To the Declaration of  
The Preserve Condominium**

1. Condominium Plat
2. Condominium Elevation
3. Condominium Floor Plan

VOL 1391 PAGE 744



2000 SQUARE FEET, 2000 SQUARE FEET, 2000 SQUARE FEET

2000 SQUARE FEET, 2000 SQUARE FEET, 2000 SQUARE FEET

STRENGTH AND DURABILITY  
WITHOUT TIES AND  
ANCHORS  
AS PER ACI 308

STEEL REINFORCEMENT  
AS PER ACI 308

**LEGEND**

- ◻ CONCRETE WALL/SLAB/BEAM
- ◻ CONCRETE COLUMN
- ◻ COLUMN

**NOTES**

1. ALL CONCRETE SHALL BE 4000 PSI STRENGTH.
2. ALL REINFORCEMENT SHALL BE #4.
3. ALL WALLS SHALL BE 12" THICK.
4. ALL SLABS SHALL BE 8" THICK.
5. ALL BEAMS SHALL BE 12" X 12" OR LARGER.
6. ALL COLUMNS SHALL BE 12" X 12" OR LARGER.
7. ALL REINFORCEMENT SHALL BE TYPED AS PER ACI 308.
8. ALL WALLS SHALL BE FINISHED WITH 1/2" GYPSUM BOARD.
9. ALL SLABS SHALL BE FINISHED WITH 1/2" GYPSUM BOARD.
10. ALL BEAMS SHALL BE FINISHED WITH 1/2" GYPSUM BOARD.
11. ALL COLUMNS SHALL BE FINISHED WITH 1/2" GYPSUM BOARD.

**GENERAL NOTES**

1. ALL WORK SHALL BE IN ACCORDANCE WITH THE LATEST EDITIONS OF THE BUILDING CODES AND SPECIFICATIONS.
2. ALL MATERIALS SHALL BE OF THE BEST QUALITY AVAILABLE.
3. ALL WORK SHALL BE SUBJECT TO INSPECTION AND APPROVAL BY THE LOCAL BUILDING DEPARTMENT.
4. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED TIME FRAME.
5. ALL WORK SHALL BE COMPLETED WITHIN THE SPECIFIED BUDGET.

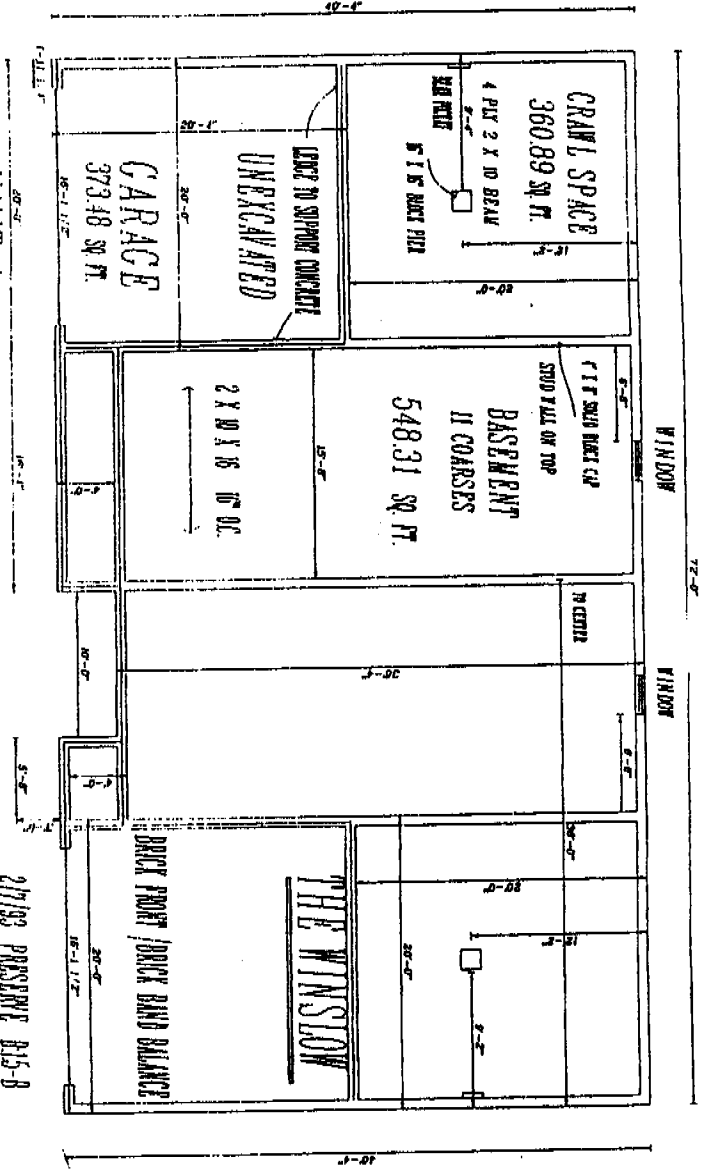


**ARCHITECT**  
 JOHN J. JACOBI & ASSOCIATES, INC.  
 1000 W. WASHINGTON ST.  
 CHICAGO, ILL. 60606  
 TEL: (312) 553-1100  
 FAX: (312) 553-1101



**CONTRACTOR**  
 JACOBI & ASSOCIATES, INC.  
 1000 W. WASHINGTON ST.  
 CHICAGO, ILL. 60606  
 TEL: (312) 553-1100  
 FAX: (312) 553-1101





UNIT 1

FOUNDATION PLAN

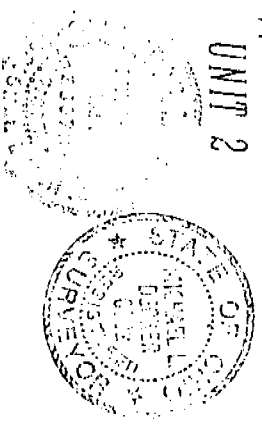
UNIT 2

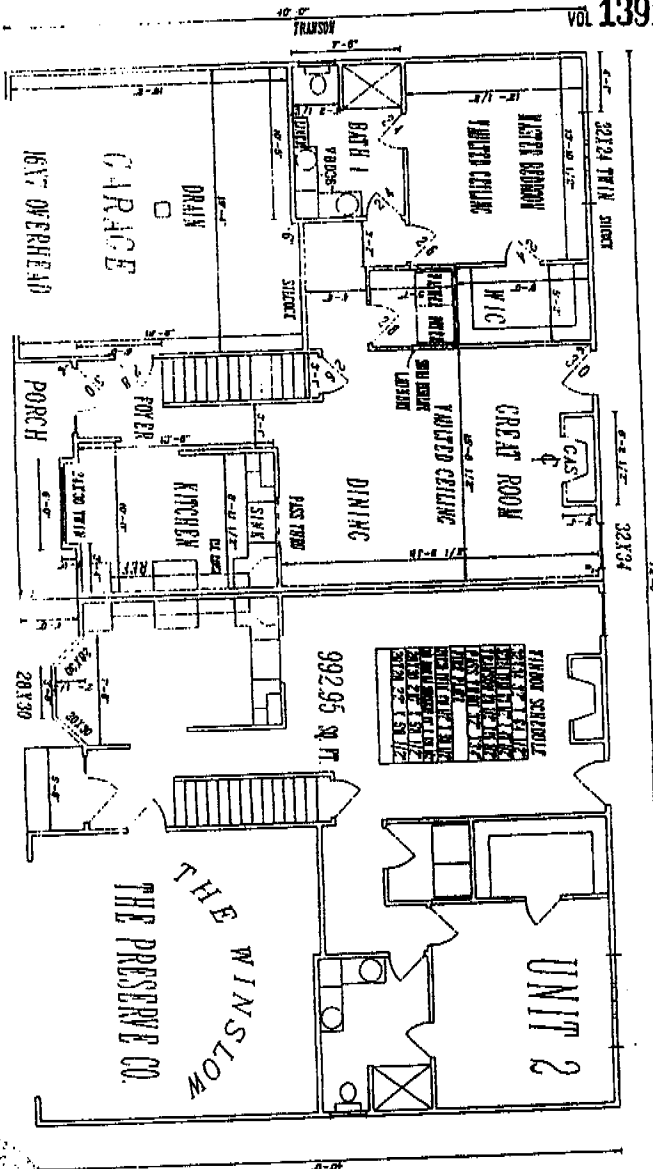
2/7/93 PRESERVE BLS-B

The below licensed professional engineer and licensed surveyor state that to the best of their knowledge and belief this drawing graphically shows all the particulars of the buildings to be constructed.

*Bruce W. Bain*  
*Michael J. Dade*

This plan is a typical representation of units 1 - 7, 9 and 10.

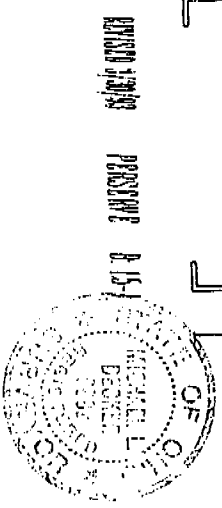
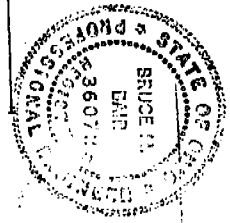




The below licensed professional engineer and licensed surveyor state that to the best of their knowledge and belief this drawing graphically shows all the particulars of the buildings to be constructed.

*Samuel L. Davis*  
 Michael J. Davis

This plan is a typical representation of units 1 - 7, 9 and 10.



THE PRESERVE CO.  
 DIVISION 1301330 PAPERNO. B-157

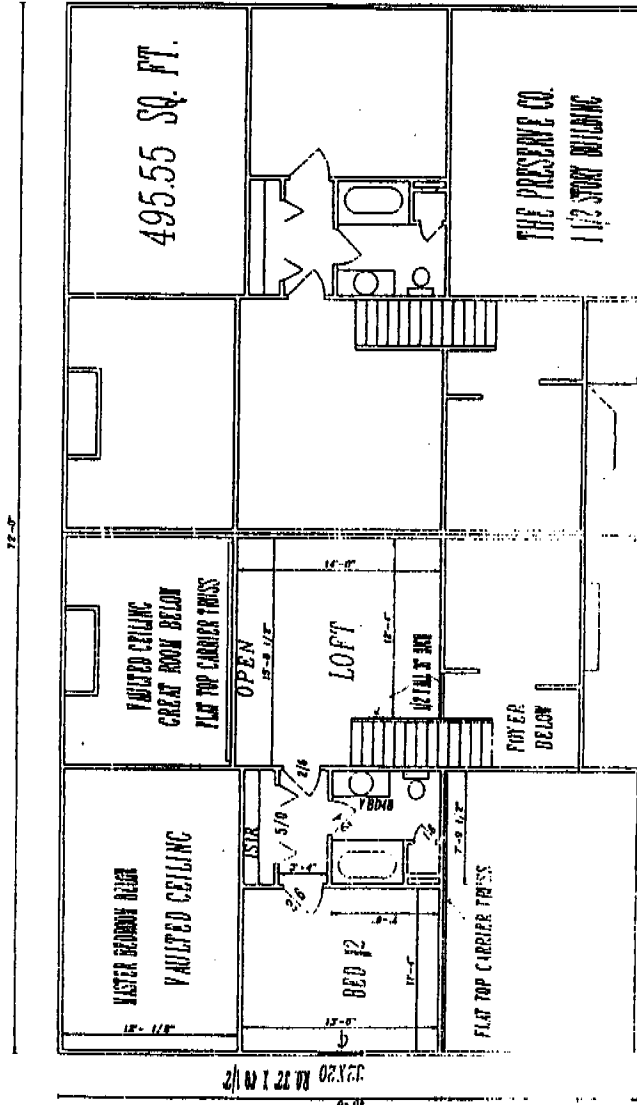


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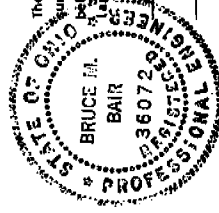
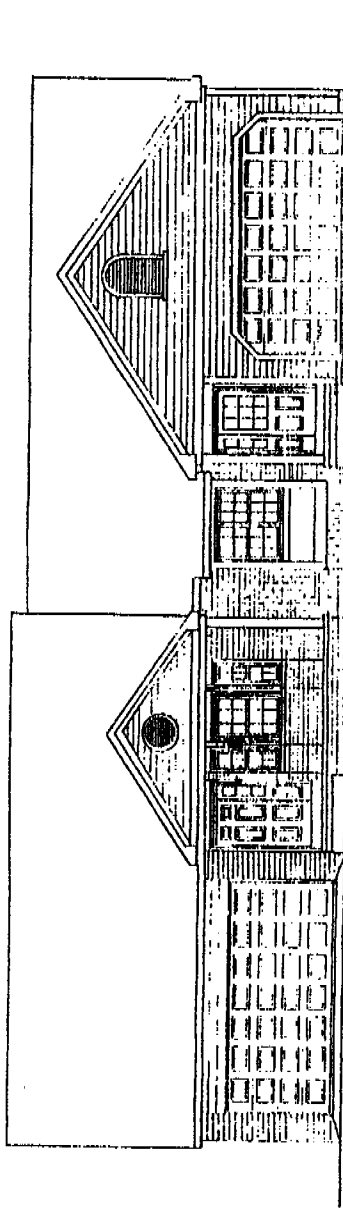
*Bruce M. Bain*  
*Michael J. Decker*

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This plan is a typical representation of units 1 - 7, 9 and 10.



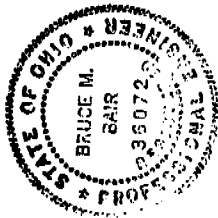
2/1/90 PRESERVE BLS-2



The below licensed professional engineer and licensed surveyor state that to the best of their knowledge and belief this drawing graphically shows all the particular parts of the buildings to be constructed.

*Bruce M. Bair*  
*Michael L. Decker*

This front elevation is a typical representation of units 1 - 7, 9 and 10.

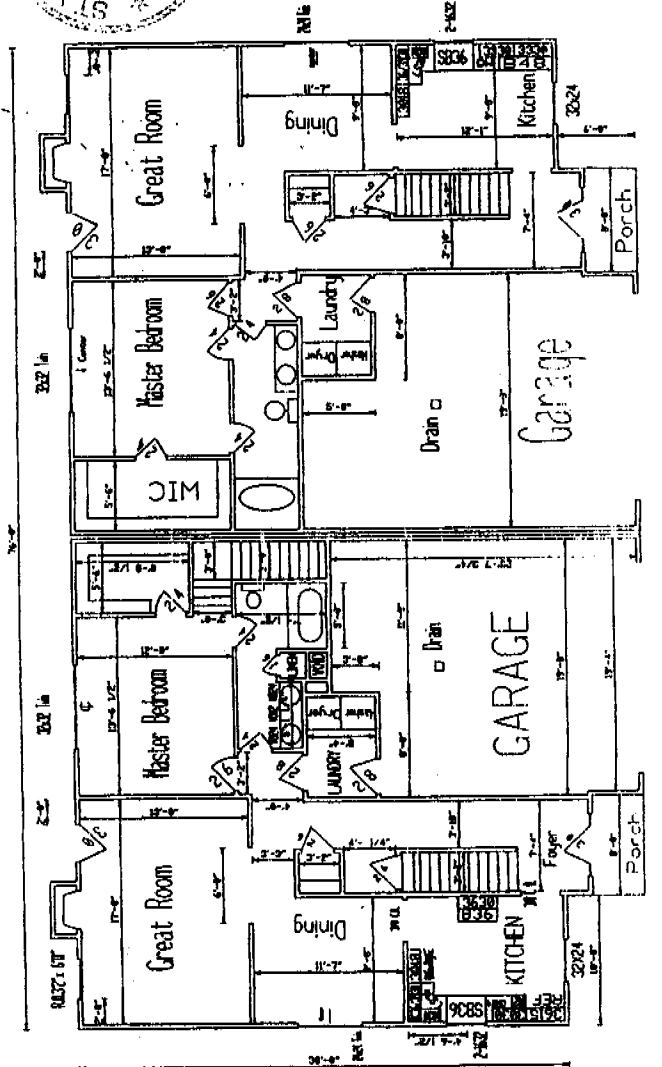
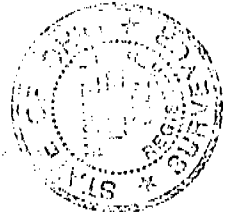


**VOL 1391 PAGE 749**

This plan is a typical representation of units 8 and 11.

The below licensed professional engineer and licensed surveyor state that to the best of their knowledge and belief this drawing graphically shows all the particulars of the buildings to be constructed.

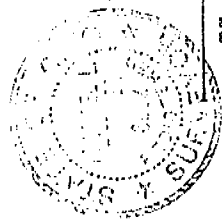
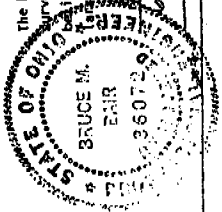
*Bruce M. Bair*  
*Michael Y. Dubei*



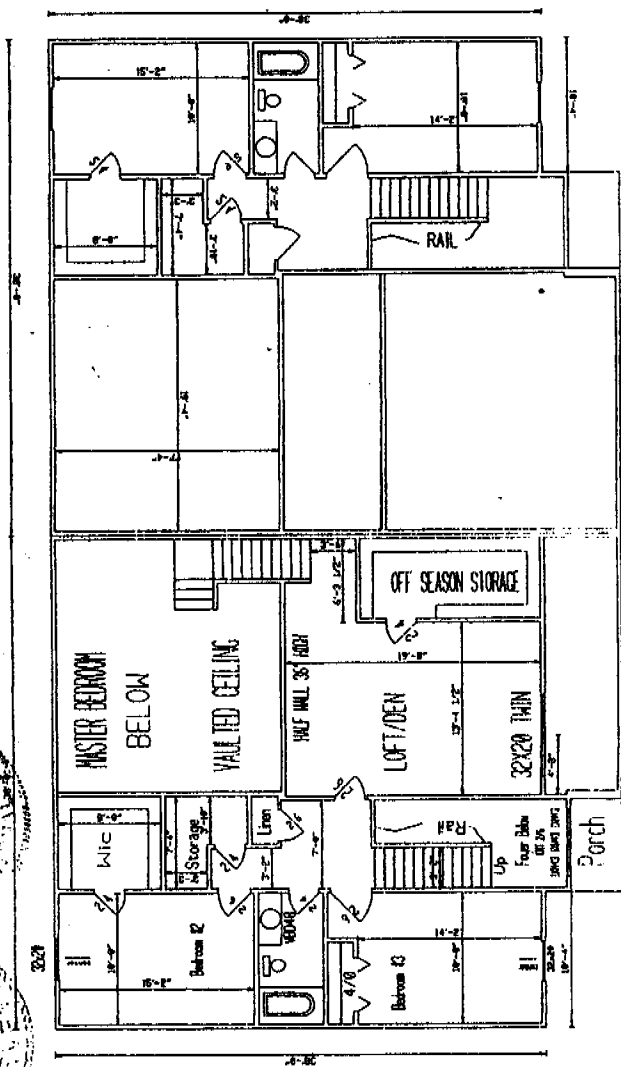
**THE PRESERVE HERITAGE TOWNHOMES**

The below licensed professional engineer and licensed surveyor state that to the best of their knowledge and belief this drawing graphically shows all the particular of the buildings to be constructed.

This plan is a typical representation of units 8 and 11.



*Bruce M. Bair*  
*Michael Y. Decker*



THE PRESERVE THE BRADFORD TOWNHOME