

CUYAHOGA COUNTY RECORDER
PATRICK J. O'MALLEY - 8
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AMENDMENTS TO THE
DECLARATION OF CONDOMINIUM OWNERSHIP
FOR
THE EASTMAN CONDOMINIUMS

PLEASE CROSS MARGINAL REFERENCE WITH THE DECLARATION OF
CONDOMINIUM OWNERSHIP FOR THE EASTMAN CONDOMINIUMS RECORDED
AT VOLUME 98-08836, PAGE 50 ET SEQ., OF THE CUYAHOGA COUNTY RECORDS.

**AMENDMENTS TO THE
DECLARATION OF CONDOMINIUM OWNERSHIP FOR
THE EASTMAN CONDOMINIUMS**

WHEREAS, the Declaration of Condominium Ownership for The Eastman Condominiums (the "Declaration") and the Bylaws of The Eastman Condominium Association (the "Bylaws"), Exhibit "C" to the Declaration, were recorded at Cuyahoga County Records Volume 98-08836, Page 50 et seq., and

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

WHEREAS, Article XIX, Section 19.2 of said Declaration authorizes amendments to the Declaration and Bylaws Article X, Section 10.12 authorizes amendments to the Bylaws, and

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

WHEREAS, the Association has in its records the signed, written consents to Amendments A and D signed by Unit Owners representing 91.67% of the Association's voting power as of January 3, 2006, and

WHEREAS, the Association has in its records the power of attorney signed by Unit Owners representing 91.67% of the Association's voting power authorizing the Association's officers to execute Amendments A and D on their behalf, and

WHEREAS, the Association has in its records the signed, written consents to Amendment B signed by Unit Owners representing 79.17% of the Association's voting power as of January 3, 2006, and

WHEREAS, the Association has in its records the power of attorney signed by Unit Owners representing 79.17% of the Association's voting power authorizing the Association's officers to execute Amendment B on their behalf, and

WHEREAS, attached hereto as Exhibit A is an Affidavit of the Association's President that copies of the Amendments will be mailed by certified mail or hand delivered or sent by telegram to all first mortgagees on the records of the Association once the Amendments are recorded with the Cuyahoga County Recorder's Office, and

WHEREAS, attached hereto as Exhibit B is a certification from the Association's Secretary as to the consenting mortgagees, on the records of the Association, to the Amendments, and

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

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

AMENDMENT A

INSERT a new DECLARATION ARTICLE IV, SECTION 4.2(p). Said new addition, to be added on Page 5 of the Declaration, as recorded at Cuyahoga County Records, Volume 98-08836, Page 50 et seq., is as follows:

- (p) No person who is adjudicated to be a sexual predator or a habitual sex offender and required to register with a designated registering agency, thereby requiring notice to be given pursuant to the Ohio Sex Offenders Act or similar statute from another jurisdiction, as the same may from time to time be amended, may reside in or occupy a Unit for any length of time. Any violation of this restriction shall subject the Unit Owner and/or any Occupant of the Unit to any and all remedies provided for by law as well as this Declaration. The Association shall not, however, be liable to any Unit Owner or Occupant, or anyone visiting any Unit Owner or the Association, as a result of the Association's alleged failure, whether negligent, intentional or otherwise, to enforce the provisions of this restriction.

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

AMENDMENT B

MODIFY BYLAWS ARTICLE II, SECTION 2.3 entitled, "Quorum," Said modification, to be made on Page 3 of the Bylaws, Exhibit "C" of the Declaration, as recorded at Cuyahoga County Records, Volume 98-08836, Page 50 et seq., is as follows (deleted language is crossed out; new language is underlined):

2.3 Quorum

Except as otherwise provided by the Act, the Declaration or herein, ~~the presence of those Unit Owners present in person or by proxy of a majority of Unit Owners shall constitute a quorum.~~ No action may be authorized or taken by a lesser percentage than required by the Act, by the Declaration or these Bylaws. ~~A majority of the voting power of the Association. Those present at a meeting, whether or not a quorum is present,~~ Those present at a meeting, may adjourn such meeting from time to time.

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

AMENDMENT D

DELETE DECLARATION ARTICLE XXI, SECTION 21.2 in its entirety. Said deletion is to be taken from Page 23 of the Declaration, as recorded at Cuyahoga County Records, Volume 98-08836, Page 50 et seq.

INSERT a new DECLARATION ARTICLE XXI, SECTION 21.2. Said new addition, to be added on Page 23 of the Bylaws, Exhibit "C" of the Declaration, as recorded at Cuyahoga County Records, Volume 98-08836, Page 50 et seq., is as follows:

21.2 All notices required or permitted hereunder, and under the Bylaws, to the Association or the Board of Directors, shall be in writing and shall be sent by regular U.S. mail, first-class postage prepaid, to the Board of Directors or the Association at the address of the Condominium Property or to such other address as the Board of Directors may designate from time to time by notice in writing to all Unit Owners. All notices to any Unit Owner shall be hand-delivered or sent by regular U.S. mail, first-class postage

prepaid, to such Unit Owner's Unit address or to such other address as may be designated by him/her from time to time, in writing, to the Board of Directors. Any notice required or permitted to be given to any occupant of a Unit other than a Unit Owner shall effectively be given if hand-delivered or sent by regular U.S. mail, first-class postage prepaid, to the Unit address.

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

IN WITNESS WHEREOF, the said The Eastman Condominium Association has caused the execution of this instrument this 7 day of March, 2006.

THE EASTMAN CONDOMINIUM ASSOCIATION

By: 
JOE MOSBROOK, its President

By: 
PAT SWENSON, its Secretary

STATE OF OHIO

COUNTY OF CUYAHOGA

)
)
)
SS

BEFORE ME, a Notary Public, in and for said County, personally appeared the above named The Eastman Condominium Association, by its President and its Secretary, who acknowledged that they did sign the foregoing instrument, on Page 5 of 8, and that the same is the free act and deed of said corporation and the free act and deed of each of them personally and as such officers.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal in Cleveland, Ohio, this 7 day of March, 2006.


NOTARY PUBLIC

My Comm. Expires 03/31/2007
My Notary Seal Expires 03/31/2007

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

EXHIBIT A

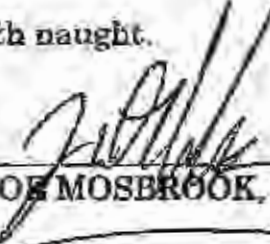
AFFIDAVIT

STATE OF OHIO)
)
COUNTY OF CUYAHOGA)

SS

JOE MOSBROOK, being first duly sworn, states as follows:-

1. He is the duly elected and acting President of The Eastman Condominium Association.
2. He caused copies of the Amendments to the Declaration of Condominium Ownership for The Eastman Condominiums to be mailed by certified mail or hand delivered or sent by telegram to all first mortgagees having bona fide liens of record against any Unit Ownerships of whose mortgage interests notice had been given to the Association.
3. Further affiant sayeth naught.



JOE MOSBROOK, President

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

Cleveland IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal in Ohio, this *30th* day of *March*, 2006.



NOTARY PUBLIC

Anna Marie Villanave - Notary Public
State of Ohio - Cuyahoga County
Commission Expires: *March 1, 2010*

EXHIBIT B

CERTIFICATION OF SECRETARY

The undersigned, being the duly elected and qualified Secretary of The Eastman Condominium Association, hereby certifies that there is on file in the Association's records, the names of the following mortgagees, if any, who have consented to the proposed Amendments to the Declaration of Condominium Ownership for The Eastman Condominiums.

NONE


PATRICIA M. SWENSON, Secretary

STATE OF OHIO)
)
COUNTY OF Cuyahoga) SS

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

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal in Cleveland, Ohio, this 19th day of March, 2006.

GORDON C. SHORT, Notary
NOTARY PUBLIC - STATE OF OHIO
My commission has no expiration date
Section 147.03 O.R.C.


NOTARY PUBLIC

REC-
EC - 258.00
PLAT - 259.20
TOTAL = 517.20

803975

THE EASTMAN CONDOMINIUMS

**CUYAHOGA COUNTY
STATE OF OHIO**

DECLARATION OF CONDOMINIUM OWNERSHIP

This will certify that copies of this Declaration, together with Drawings and Bylaws attached thereto as Exhibits, have been filed in the Office of the County Auditor, Cuyahoga County, Ohio.

Date: 7/13/78

CUYAHOGA COUNTY AUDITOR

By: James W. Day, Jr.

This instrument prepared by:

Michael J. Linden, Esq.
MICHAEL J. LINDEN CO., L.P.A.
1111 Chester Avenue, Suite 400
Cleveland, Ohio 44114
(216) 621-0590

RECORDED
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CUYAHOGA COUNTY, OHIO

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REFERENCE NOTES
FOR MAPS ACCOMPANYING THIS DECLARATION AND
BY LAWS OF VOL. 121 PAGES 74 TO 79
INCLUSIVE OF CONDOMINIUM MAP RECORDS.

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DECLARATION OF CONDOMINIUM OWNERSHIP

FOR

THE EASTMAN CONDOMINIUMS

THIS DECLARATION is made and entered into this ____ day of _____, 1998, by SCHILLING SQUARE DEVELOPMENT, LTD., (herein referred to as "Declarant") for the purpose of submitting certain property to condominium use and ownership in accordance with the provisions of the "Act" (herein defined).

WHEREAS, Declarant is the owner in fee simple of the Parcel of real estate (herein defined as the "Parcel") and desires to submit to the provisions of the Act the Condominium Property (herein defined), of which the Parcel is a part.

NOW, THEREFORE, Declarant hereby declares:

ARTICLE I
DEFINITIONS

The terms defined in this Article I (except as herein otherwise expressly provided or unless the context otherwise requires), for all purposes of this Declaration, the Bylaws and the Drawings and any amendments thereto, shall have the respective meanings hereinafter set forth:

1.1 "Act" means the Ohio Condominium Act as contained in Ohio Revised Code Chapter 53111, as the same may be amended or supplemented from time to time.

1.2 "Assessments" means regular and special assessments charged proportionately against all Units for common purposes.

1.3 "Association" means The Eastman Condominium Association, a non-profit corporation to be formed under Chapter 1702 of the Ohio Revised Code, which shall be a unit owners' association as defined in the Section 5311.01(L) of the Act.

1.4 "Board" means the Board of Managers of the Association as the same may be constituted from time to time.

1.5 "Bylaws" means the Bylaws of the Association, attached hereto as Exhibit "C" and made a part hereof.

1.6 "Common Areas and Facilities" means all parts of the Condominium Property except the Units.

1.7 "Common Expenses" means all costs, expenses and charges which the Association may charge against a Unit or a Unit Owner as Assessments pursuant to this Declaration, the Bylaws or the Act.

1.8 "Common Profits" means the amount by which the total income received by the Association from any rental, fee, charge or other receipt (excluding Assessments) exceeds the expenses allocable to such income.

1.9 "Condominium Ownership Interest" means a fee simple estate in a Unit, together with its appurtenant undivided interest in the Common Areas and Facilities.

1.10 "Condominium Property" means the Parcel, the Residential Building, all other structures, improvements and facilities that have been or may hereafter be constructed or installed on the Parcel, all easements, rights and appurtenances thereunto belonging, and all articles of personal property owned by Declarant or the Association and now or hereafter located on the Parcel for the common use of the Unit Owners.

1.11 "Declaration" means this instrument and all of the Exhibits hereto, as originally executed, or, if amended, as so amended, by which the Condominium Property is submitted to the provisions of Chapter 5311 of the Act.

1.12 "Drawings" means the drawings prepared and certified Neff & Associates, Engineers, and G. Herschman Architects, Inc., Registered Architects, in accordance with Section 5311.07 of the Act, which Drawings are marked and identified as Exhibit "B".

1.13 "Limited Common Areas and Facilities" means the Common Areas and Facilities reserved for the use of a certain Unit to the exclusion of all other units.

1.14 "Occupant" means the natural person or persons in possession of a Unit.

1.15 "Parcel" means the land described in Exhibit "A" hereof.

1.26 "Residential Building" means that part of the Condominium Property consisting of the four (4) story multi-family residential building constructed on the Parcel.

1.16 "Rules" means such rules or regulations as the Association periodically may adopt relative to the use of all or any part of the Condominium Property.

1.17 "Special Charges" means all costs, expenses and charges (excluding Assessments) which the Association shall charge against a Unit or a Unit Owner pursuant to this Declaration, the Bylaws or the Act.

1.18 "Unit" means that part of the Condominium Property designated in Article VI hereof and delineated on the Drawings.

1.19 "Unit Owner" means a person or persons natural or artificial, owning the fee simple estate in a Unit, together with its appurtenant undivided interest in the Common Areas and Facilities.

ARTICLE II
SUBMISSION TO CONDOMINIUM STATUTES

Declarant hereby submits the Condominium Property to the provisions of the Act.

ARTICLE III
NAME OF CONDOMINIUM PROPERTY

The Condominium Property shall be known as The Eastman Condominiums.

ARTICLE IV
PURPOSE AND RESTRICTIONS AFFECTING THE PROPERTY

4.1 The Condominium Property (the purpose of which is to effect a plan for home ownership pursuant to the Act) consists of twenty-four (24) Units contained in the Residential Building, each as designated as delineated in Article VI of this Declaration and in the Drawings, each of which constitutes a single freehold estate and each of which has an undivided interest in the Common Areas and Facilities appurtenant to it. The dimensions, layout, designation, location and approximate area of the Common Areas and facilities and the Units, and the number of rooms contained within each Unit, are shown graphically on the Drawings.

4.2 The use of the Condominium Property is subject to the following restrictions:

- (a) Each Unit shall be used and occupied solely as a single family residence and for no other purpose. No part of the Condominium Property shall be utilized as a commercial facility nor shall any trade, business, occupation or profession be conducted therein.
- (b) No part of the Condominium Property shall be occupied in a manner which will result in the cancellation of or in the increase of the rate of any insurance policy maintained in respect of the Condominium Property or which would be in violation of any law or regulation of governmental authority. No waste shall be committed in the Common Areas and Facilities.
- (c) No noxious or offensive activity shall be carried on in any Unit or in the Common Areas and Facilities, nor shall any other activity be permitted therein which shall result in annoyance or nuisance to the Unit Owners.

- (d) The Common Areas and Facilities shall at all times be kept unobstructed and free and clear of all rubbish, debris and other unsightly materials.
- (e) No change, alteration, construction or decoration of any kind shall be permitted in the Common Areas and Facilities unless done pursuant to prior written approval of the Association.
- (f) No signs, window displays, advertising devices, lights, or related materials of any kind shall be permitted upon the Condominium Property, except as shall be permitted by the written consent of the Association, or as shall be installed by Declarant in connection with its sale of the Units comprised as part of the Condominium Property.
- (g) The Common Areas and Facilities shall be used in conformity with the Rules.
- (h) No Unit Owner or Occupant shall cause or permit anything to be hung or displayed on the outside or inside of the windows or placed on the outside walls of the Residential Building, and no sign, awning, canopy, shutter, radio or television antenna shall be affixed to or placed upon the exterior walls or roofs or any part thereof, without the prior consent of the Association.
- (i) No animals or birds of any kind shall be raised or bred in any Unit or in the Common Areas and Facilities, except as may be permitted by express provision in the Rules and subject to such Special Charges as the Association may impose, provided, however, that in no event shall any such activity be permitted for commercial purposes, and provided further that any such pet causing or creating a nuisance or disturbance shall be permanently removed from the Condominium Property upon three (3) days' written notice from the Association.
- (j) Nothing shall be done in any Unit or in, on or to the Common Areas and Facilities which will impair the structural integrity of the Residential Building.
- (k) Nothing shall be altered, added or constructed in or removed from the Common Areas and Facilities except with the prior written consent of the Association.
- (l) The Units shall not be rented by the respective Unit Owners thereof for transient or hotel purposes, which shall be defined as (i) rental for any period less than three months, or (ii) any rental if the Occupants of the Units are provided customary hotel service, such as room service for food and beverage, maid service, or the furnishing of laundry and linen

and bellboy service. Other than the foregoing obligations, the Unit Owners of the respective Units shall have the absolute right to lease the same, provided that said lease is made subject to the covenants and restrictions in this Declaration, the Bylaws and the Rules.

- (m) During the period in which sales of Units by the Declarant or its agents are in process, Declarant may occupy or grant permission to any person or entity to occupy, with or without rental, as determined by Declarant, one or more Units and such portions of the Common Areas and Facilities as Declarant considers necessary, for business or promotional purposes, including clerical activities, sales offices and model Units for display and the like.
- (n) Any unenclosed parking areas parking spaces in the garages shall only be used for the periodic parking of automobiles and not for the parking of any other kind of vehicle nor for the storage of any automobile or other vehicle. Any automobile (other than an automobile periodically parked, as permitted herein), vehicle or other item occupying such a space (or any portion thereof) may be removed and/or stored at the sole expense of the Unit Owner who shall have caused or permitted an improper use of said unenclosed parking area(s).
- (o) Each Limited Common Area and Facility shall be subject to such additional restrictions as may be set forth in the Rules.

ARTICLE V **GENERAL DESCRIPTION OF PROPERTY**

5.1 The Condominium Property is principally comprised of the four story Residential Building containing three (3) separate entrances with two (2) Units off each entrance on each of the four (4) floors for a total of twenty-four (24) Units. The addresses, type of Units, square footages of each unit and a description of the Units are set forth in Exhibit "D" attached hereto.

ARTICLE VI **DESCRIPTION OF UNIT**

6.1 Subject to the provisions of Article VII hereof, each Unit consists of the following parts of the Condominium Property (said parts being herein referred to as the Unit Components): the space bounded by and comprised within the horizontal and vertical planes formed by the respective interior and undecorated surfaces of its perimeter floors, ceilings and walls appertaining to such Unit (projected through any windows, doorways, pipes, ducts, wires or conduits or structural divisions, such as interior walls or partitions which intervene, as necessary to form a complete enclosure of space with respect to such Unit), the doors and windows (including doors and windows in the perimeter walls of each Unit), together with all

built-in equipment, such as appliances and fixtures, and further together with that portion of the utility systems for water and sewer as are located wholly within and servicing solely that Unit to which the same are appurtenant, and further together with the finished surfaces consisting of the paint, varnish, wallpaper, carpeting and the like applied to the undecorated surfaces of the perimeter and interior floors, ceilings and walls.

6.2 No Unit Owner shall, by deed, plat or otherwise, subdivide or in any other manner cause his Unit to be separated into tracts or parcels smaller than the whole Unit as shown on the Drawings.

6.3 Each Unit Owner shall be entitled to the exclusive ownership and possession of his Unit, and to the ownership of an undivided interest in the Common Areas and Facilities in the percentage designated in Exhibit "D".

ARTICLE VII COMMON AREAS AND FACILITIES

7.1 That part of the Condominium Property which comprises the Common Areas and Facilities consist of the following:

- (a) The land comprising the Parcel, foundations, supports, supporting walls, roofs, roof deck, skylights, gutters, downspouts, and all other structural parts of the Residential Building, together with that portion of all utility lines, wires, pipes and conduits, for water, electricity, power and sewer which connect each Unit with the main service lines providing such utility services; the entranceways, interior hallways and stairways, elevators, exterior stairways and landings; the lower level basement including but not limited to the storage areas, multi purpose rooms, mechanical rooms, maintenance rooms and bathrooms; the paved, unenclosed parking areas, driveways, and sidewalks; the grounds adjoining such facilities now or hereafter comprising a part of the Condominium Property, and all apparatus and all installations to be used in common and further together with all parts of the Condominium Property which are necessary or convenient to the existence, maintenance and safety of the Condominium Property, all replacements of any of the foregoing and all other parts of the Condominium Property which have not been designated or delineated as part of the Units in this Declaration or in the Drawings.
- (b) Any Units that may be owned by the Association.

7.2 The Limited Common Areas and Facilities consist of the following:

- (a) The storage lockers in the lower basement level, one of which will be assigned to each Unit (but not the hallways leading to said lockers).

(b) The parking spaces assigned to each Unit.

7.3 The Common Areas and Facilities comprise, in the aggregate, a single freehold estate owned by the Unit Owners as tenants in common as to which the respective percentages of interest therein appertaining to each of the Units referred to in Section 4.1 hereof are set forth in Exhibit "D". Said percentages of interest, as shown in Exhibit "D", were based upon a par value of 1 divided by 24, the total number of Units in the Condominium Property. Except as permitted in Article XIX hereof, the percentages of interest, as set forth in Exhibit "D", cannot be altered or amended except by an amendment to this Declaration unanimously approved by all the Unit Owners affected. The undivided interest in the Common Areas and Facilities shall not be separated from the Unit to which said interest shall be automatically conveyed, encumbered or leased with the Unit even though such interest is not expressly referred to in any deed, mortgage or lease in respect of said Unit.

7.4 In any deed, mortgage, lease or lien created in respect of any interest or estate in a Unit, it shall be sufficient to describe such Unit by setting forth the name of the Condominium Property, the Unit designation, and the Cuyahoga County Recorder's Volume and Page references in respect of the recording of this Declaration and the Drawings.

ARTICLE VIII **UNIT OWNERS ASSOCIATION**

Declarant shall cause to be incorporated and organized the Association which shall be established not later than the date the deed or other evidence of ownership is filed for record following the first sale of a Condominium Ownership Interest. Membership in the Association is limited solely to Unit Owners, and all Unit Owners shall be members. Each Unit Owner shall be bound by the Bylaws and the Rules. Such membership shall terminate upon the sale or other disposition by such member of his Condominium Ownership Interest, at which time the successor owner of said Condominium Ownership Interest shall automatically become a member of the Association. The governance of the Association and the administration of the Condominium Property shall be in accordance with the provisions of the Act, this Declaration and the Bylaws. The Board and officers of the Association, elected as provided in the Bylaws, shall exercise the powers, discharge the duties and be vested with the rights conferred by operation of law, by the Bylaws and by this Declaration upon the Association, provided, however, that any such power, duty or right shall be exercisable or dischargable by, or vested in, an officer of the Association or member of the Board solely in his capacity as said officer or member of said Board, and said officer or member of the Board is authorized to act in such capacity to the extent required to authenticate his acts and to carry out the purposes of this Declaration and the Bylaws.

ARTICLE IX
SERVICE OF PROCESS

The President of the Association shall serve as the Statutory Agent to receive service of process for the Association. Until such designation is made, Michael J. Linden, Attorney at Law, having an address at 1111 Chester Avenue, Suite 400, Cleveland, Ohio 44114, shall be designated as such Statutory Agent. The name and address of the Statutory Agent (and of each successor) shall be filed with the Ohio Secretary of State on the appropriate forms prescribed therefor.

ARTICLE X
DUTIES OF ASSOCIATION

10.1 Except as otherwise provided in Article XI of this Declaration, the Association at all times, at its cost, shall maintain the Common Areas and Facilities, including the Limited Common Area defined in Section 7.2 hereof in good order, condition, replacement and repair, and shall maintain, plant, seed, reseed, fertilize, cut, and trim all the lawns comprised as part of the Condominium Property. The Association shall plow snow from the unenclosed parking areas, driveways and sidewalks.

10.2 The Declarant, prior to formation of the Association, and the Association thereafter may, but shall not be required to, delegate all or any portion of its authority and responsibilities to a manager, managing agent, or management company (herein referred to as the "Managing Agent"). Such delegation may be evidenced by a management agreement which shall provide for the duties to be performed by the Managing Agent and for the payment to the Managing Agent of a reasonable compensation as a Common Expense. Upon the expiration of each management agreement, the Association may renew said agreement or enter into a different agreement with a different Managing Agent; provided, however, that no management agreement or renewal thereof shall be for a term longer than three (3) years and shall be terminable at any time for cause upon thirty (30) days' prior written notice. In addition, no management agreement executed by Declarant on behalf of the Association shall provide for a term expiring more than one (1) year following the assumption of control of the Association by the Unit Owners, as specified in the Act, unless said management agreement is renewed by a vote of Unit Owners pursuant to the Bylaws required by Section 5311.08 of the Act. The Managing Agent, whether selected by the Declarant or the Association, may be an entity owned in whole or in part, associated with in whole or in part, or in any other manner connected or associated with any partner, agent, contractor or employee of Declarant without in any manner restricting, limiting or affecting the validity of the management agreement with said Managing Agent.

ARTICLE XI
DUTIES OF UNIT OWNERS

- 11.1 Each Unit Owner at all times shall:
- (a) Except as set forth in Article X, maintain, at his cost, his Unit in good order, condition, replacement and repair, subject, however, to the provisions of Article XIV hereof;
 - (b) Maintain, at his cost, that portion of the utility systems located wholly within and servicing only his Unit, subject, however, to the provisions of Article XIV hereof;
 - (c) Perform his responsibilities in such a manner as shall not unreasonably disturb the Occupants of other Units;
 - (d) Pay all costs for utility services furnished to his Unit;
 - (e) Promptly report to the Association or the Managing Agent (if any) employed by it the need for any repairs to any portion of the Condominium Property which are the obligation of the Association to maintain hereunder;
 - (f) Reimburse the Association for such costs, if any, in excess of proceeds of insurance, as the Association shall incur for maintaining, repairing or replacing any portion of the Common Areas and Facilities (including those portions thereof designated in this Declaration as Limited Common Areas and Facilities) which may be damaged or destroyed by his act or negligence or by the act or negligence of any of his tenants, invitees, licensees or guests.

11.2 If a Unit Owner shall fail to perform the duties to be performed by him pursuant to this Article XI, the Association shall perform said duty on behalf of said Unit Owner, and the cost so incurred shall constitute a Special Charge and shall be borne solely by the Unit Owner on whose behalf the Association shall have performed such duty and incurred such cost.

ARTICLE XII
COMMON EXPENSES AND SPECIAL CHARGES; COMMON PROFITS

12.1 The costs, expenses and charges paid or incurred by the Association, for the common purposes of the Unit Owners, in administering the Condominium Property, in performing its duties and in furnishing the services authorized or required to be furnished by it pursuant to this Declaration, the Bylaws and the Act together with the allocable share of the

Common Facilities Costs imposed pursuant to the General Provisions shall be Common Expenses, assessed and collected in the manner provided by the Bylaws.

12.2 Any Assessment or Special Charge not paid within ten (10) days after the same shall have become due and payable shall bear interest until the same shall have been paid at a rate fixed by the Association, but in no event greater than the maximum rate permitted by law. The Association shall have a lien upon each Condominium Ownership Interest in respect of which any Assessments or Special Charges shall remain unpaid for ten (10) days after the same have become due and payable, in like manner and with the same effect as the lien of the Association for Common Expenses accorded by Section 531.18 of the Act.

12.3 In the event a mortgagee in whose favor a first mortgage or second mortgage or second mortgage shall have been granted with respect to any Unit shall acquire title to the Unit as a result of foreclosure, or deed in lieu of foreclosure, neither such Unit or such mortgagee, its successors and assigns, shall be liable for the share of the Assessments and Special Charges assessed by the Association with respect to such Unit as shall become due prior to such acquisition of such title to such Unit. Such unpaid share of Assessments and Special Charges shall, in such event, be Common Expenses collectible from and allocated to all of the Units, including such Unit, the title to which shall have been obtained as result of foreclosure or deed in lieu of foreclosure.

12.4 In the event that a Unit shall be voluntarily conveyed by a Unit Owner, other than a mortgagee who shall have obtained title thereto as a result of foreclosure or deed in lieu of foreclosure, the grantee thereof (automatically upon acquiring title thereto) shall be liable for all unpaid Common Expenses and Special Charges which shall have become due prior to such conveyance, without prejudice, however, to the right of the grantee to recover from his grantor such amounts as shall be paid by the grantee therefor.

12.5 The Common Profits shall be distributed among the Unit Owners in accordance with their respective percentages of interest in the Common Areas and Facilities appurtenant to their respective Units.

12.6 Upon the conveyance or transfer of title to a Unit (whether voluntarily or involuntarily), all funds, credits and Common Profits then pertaining to such Unit shall automatically inure to the sole benefit of the grantee or transferee of such Unit.

ARTICLE XIII EASEMENTS

13.1 The Condominium Property is hereby made subject to the following easements, each of which shall be in perpetuity (unless otherwise limited by the Act or indicated herein), shall run with the land, and shall inure to the benefit of the be binding upon the Declarant, each Unit Owner, each mortgagee in whose favor a mortgage shall be granted

with respect to any Unit, and any other person having an interest in the Condominium Property, or any part thereof, and their respective heirs, divides, administrators, executors, personal representatives, successors and assigns:

- (a) In the event that (i) by reason of the construction, reconstruction, repair, restoration, settlement or shifting of any of the Residential Building or improvements constituting a part of the Condominium Property, any part of the Common Areas and Facilities encroaches or shall hereafter encroach upon any part of any Unit, or any part of any Unit presently encroaches or hereafter encroaches upon any of the Common Areas and Facilities or any other Unit, or (ii) by reason of the design or construction of the utility systems comprised within the Condominium Property any pipes, ducts or conduits serving a Unit presently or hereafter encroaches upon any other Unit, valid easements for the maintenance of such encroachments and for the use of such adjoining space are hereby established and shall exist for the benefit of such Unit and the Common Areas and Facilities, as the case may be, provided, however, that in no event shall a valid easement for any encroachment be created in favor of any Unit Owner or in favor of any other Unit Owner if such encroachment occurred due to the willful conduct of any Unit Owner.
- (b) The Association may hereafter grant easements for utility purposes for the benefit of the Condominium Property, including the right to install, lay, maintain, repair and replace water mains and pipes, sewer lines, gas mains, telephone wires and equipment, and electrical conduits, and wires over, under, along and on any portion of the Common Areas and Facilities, and each Unit Owner and the holder(s) of any mortgage(s) encumbering his Unit hereby grant the Association an irrevocable power of attorney, coupled with an interest, to execute, acknowledge and record, for and in the name of such Unit Owner and such mortgage(s), such instruments as may be necessary to effectuate the foregoing.
- (c) Subject to the provision of Section 20.2 of this Declaration, the Declarant reserves unto itself, for the benefit of and use by Declarant, its agents, licensees, servants, tenants, personal representatives, successors and assigns: (i) an easement for ingress and egress over, through, and under a Unit when such ingress and egress is necessary for Declarant to perform Declarant's warranty obligations in accordance with Section 20.4 of this Declaration; and (ii) an easement in order periodically to enter upon the Condominium Property, to construct and install, at its sole cost and expense, such storage facilities, unenclosed parking areas and/or such recreational facilities and amenities as Declarant in its discretion shall consider appropriate for the enhancement of the Condominium Property.

13.2 Each grantee of a Unit, and each mortgagee in whose favor a mortgage with respect to any Unit is granted, shall be subject to each of the easements herein provided, in the same manner and to the same extent as though such easements were expressly provided for and fully set forth in the deed of conveyance or mortgage (as the case may be) as exceptions thereto, notwithstanding the omission from such deed of conveyance or mortgage (as the case may be) of reference to such easements.

ARTICLE XIV INSURANCE, DAMAGE AND DESTRUCTION

14.1 The Association, as a Common Expense, shall obtain for the benefit of the Association, all of the Unit Owners and their respective mortgagees, as their interest may appear, and thereafter maintain in full force and effect at all times, insurance (except such insurance as may be separately provided for by a Unit Owner pursuant to Section 14.3 of this Declaration) on the following (comprising and being hereinafter referred to as the "Insured Property"): The Residential Building, and all structures and improvements and facilities now and at any time hereafter constituting a part of the Condominium Property, including, but not limited to the Unit Components referred to in Section 6.1 of this Declaration and all personal property owned by the Association. Said insurance shall afford protection against loss or damage by fire, lightning and such other perils known commonly as "All Risk" in Cuyahoga County, Ohio and such other risks as from time to time customarily shall be covered with respect to buildings, structures, improvements and facilities similar in construction, location and use as the buildings, structures, improvements and facilities comprised as part of the Condominium Property, including without limitation, vandalism, malicious mischief, and water damage. The property insurance to be purchased hereunder shall be in an amount equal to the full replacement cost of the Insured Property, exclusive of excavations and foundations and such improvements to individual Units which may be separately insured by Unit Owners as provided in Section 14.3 of this Declaration. Except for such of the following provisions (if any) that are not obtainable in casualty insurance for other comparable condominium developments (as defined in the Act) in Cuyahoga County, Ohio, such casualty insurance shall provide (i) for the issuance of certificates of insurance to the Unit Owners, (ii) for the issuance of certificates of insurance to the holders of mortgages on the Units, (iii) that for the purpose of such insurance, improvements to Units made by Unit Owners shall not affect the valuation of the Insured Property, (iv) for the payment of claims without apportionment or contribution, as though no other policy existed, (v) that the insurer waives all defenses based upon the "increase in hazard" provision, co-insurance, invalidity arising by acts of an insured, or similar defenses and waiving the so-called "vacancy" clause, (vi) that no insurer waives its right of subrogation against Declarant, Unit Owners, the Association, any Managing Agent and their respective families, agents, tenants, guests and employees and all persons lawfully in possession or control of any part of the Condominium Property, (vii) that the insurer waives its right to elect to restore the Condominium Property, or any part thereof, in lieu of making a cash settlement in the case of the termination of this Condominium as provided for this Declaration or pursuant to the provisions of Chapter 5311 of the Act, and (viii) that coverage under such insurance will not be terminated, canceled or materially modified without ten (10) days prior written notice to all insured, including each

mortgagee holding a mortgage encumbering a Unit. The Association shall pay the premiums for the insurance herein required at least thirty (30) days prior to the expiration date thereof.

14.2 All casualty insurance policies purchased by the Association shall be for the benefit of the Association and the respective interest may appear and such casualty insurance policies shall provide that all proceeds payable as a result of losses shall be paid jointly to the respective mortgagee(s) and the Unit Owners as their interest may appear. Provided, however, in the event the proceeds are less than Ten Thousand Dollars (\$10,000.00), the same shall be paid to the Unit Owners and their respective mortgagee(s).

14.3 Except as expressly provided in this Section 14.3, no Unit Owner shall separately insure his Unit or any part thereof against loss by fire or other casualty intended to be covered by the insurance described in Section 14.1 of this Declaration. Should any Unit Owner violate this provision, any diminution in insurance proceeds resulting from the existence of such other insurance, and/or failure to have the proceeds of such other insurance payable pursuant to the provisions of Section 14.1 of this Declaration shall be chargeable to the Unit Owner who acquired such other insurance, who shall be liable to the Association to the extent of any such diminution and/or loss of proceeds. Any improvements made by a Unit Owner within his Unit, as well as the personal property of a Unit Owner, may be separately insured by such Unit Owner. Any such insurance policy(s) shall contain the waiver of subrogation provisions referred to in Section 14.1 of this Declaration.

14.4 Liability Insurance.

The following provisions shall govern in respect of liability insurance:

- (a) The Association, as a Common Expense, shall purchase a policy or policies of comprehensive general liability insurance, and thereafter maintain the same in full force and effect at all times, insuring the Association, the Board, the Managing Agent, if any, and the Unit Owners, against liability for bodily injury or property damage occurring upon, in or about, or arising from the Common Areas and Facilities; such insurance shall afford protection to a limit combined single limit of not less than One Million Dollars (\$1,000,000.00). The Association shall also purchase, as a Common Expense, Auto Non-Ownership and Hired Liability Insurance.
- (b) Such comprehensive liability insurance shall not insure against liability for bodily injury or property damage occurring within an individual Unit arising out of those acts for which the Unit Owner is personally liable. A Unit Owner may carry such additional personal liability insurance as he may desire.

- (c) Notwithstanding the foregoing, until the Association is formed, such comprehensive liability insurance to be procured by the Association shall instead be procured by Declarant.

14.5 The Association shall also obtain such other insurance as the Board in its discretion may determine.

14.6 The following provisions shall govern in the event of any damages or destruction to the Insured Property:

- (a) In the event of any damage or destruction of any of the Insured Property, if the proceeds of any policy or policies insuring against such damage or destruction and payable by reason thereof shall be sufficient to pay the cost of repair, restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken by the Association and the insurance proceeds shall be applied in payment therefor; provided, however, that in the event, within ninety (90) days after such damage or destruction, the Unit Owners, if they are entitled to do so pursuant to subsection 14.6 (c) of this Declaration, shall elect not to repair, restore or reconstruct, then such repairs, restoration or reconstruction shall not be undertaken.
- (b) In the event such damage or destruction of the Insured Property shall be attributed to any cause or peril which is not insured against, or if insured against, the insurance proceeds shall not be sufficient to pay the cost of repair, restoration or reconstruction, then, unless the Unit Owners shall within ninety (90) days after such damage or destruction, if they are entitled to do so pursuant to subsection 14.6(c) of this Declaration, elect not to repair, restore or reconstruct such Insured Property, then such excess shall be provided either by means of Assessments or by means of an appropriation from the reserve maintenance fund, if any, or such other fund as may be established for the purpose of providing for the restoration and replacement of the Common Areas and Facilities or any combination of the foregoing methods, as the Board in its sole discretion may determine.
- (c) In the event any damage or destruction renders fifty percent (50%) or more of the Units uninhabitable, the Unit Owners may, by the vote of those entitled to exercise not less than 75% of the voting power, elect not to repair, restore or reconstruct the Insured Property at a meeting which shall be called within sixty (60) days after the occurrence of the casualty. Upon such election, all of the Condominium Property shall be subject to an action for sale as upon partition at the suit of any Unit Owner. In the event of any such sale or a sale of the Condominium Property after such election, by agreement of all Unit Owners, the net proceeds of the sale together with any net proceeds of insurance, if any, and any other indemnity arising because of such damage or destruction, shall be considered as one fund and shall be distributed to all Unit

Owners in proportion to their respective percentages of interest in the Common Areas and Facilities. No Unit Owner, however, shall receive any portion of his share of such proceeds until all liens and encumbrances on his Unit have been paid, released or discharged. Upon such payment, the interest of the Unit Owner in the Condominium Property shall terminate, and the Unit Owner shall execute and deliver any and all documents or instruments as may be reasonably requested by the Association to evidence such termination. Moreover, in the event of any such sale of the Condominium Property, the members of the Board are hereby authorized to execute and deliver, on behalf of the Association and all of the Unit Owners, any instruments necessary or required to effect such sale or sales and each Unit Owner shall be obligated to execute and deliver such instruments and to perform such acts as may be necessary or required to effect such sale or sales.

- (d) Immediately after any damage or destruction to all or any part of the Condominium Property which is required to be covered by insurance carried by the Association in accordance with the provisions of Section 14.1 of this Declaration, and Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair, restoration or reconstruction of the damaged or destroyed property. Such costs may include professional fees and premiums for bonds. Repair, restore, or reconstruct, as used in this subsection 14.6(d), means repairing, reconstructing or restoring the Insured Property to substantially the same condition in which it existed prior to such damage or destruction. Each Unit Owner upon acquisition of title to his Unit, shall be deemed to have delegated, to the Declarant, prior to the formation of the Association, and thereafter to the Board, or their respective agents, his right to adjust with insurance companies all losses under the casualty insurance required to be carried by the Association pursuant to Section 14.1 of this Declaration.
- (e) Except as otherwise provided in Section 14.6(c) of this Declaration, if all or any part of the Insured Property shall be damaged or destroyed, the Association shall cause the same to be restored substantially in accordance with the Drawings.
- (f) Unless the Unit Owners shall have elected not to restore such damage pursuant to subsection 14.6(c) of this Declaration, each Unit Owner shall repair and restore that portion of his Unit not required to be covered under the casualty insurance required to be carried by the Association pursuant to Section 14.1 of this Declaration.
- (g) In respect of all policies of insurance obtained by the Association and by the Unit Owners, the Association and each Unit Owner do hereby waive (to the extent permitted by such policy, but only to the extent of the proceeds payable

in connection therewith) all rights of recovery and causes of action against each other, the Unit Owners, the member of the family of each Unit Owner and his tenants and any other Occupants of the Condominium Property, the Association, the Board, and the Managing Agent, if any, for any loss which any of the perils insured against under any such policies; and each such policy shall provide for a release by the insurance company issuing such policy of such of its rights of subrogation thereunder as shall be co-extensive with the foregoing waivers.

- (h) The proceeds of insurance collected on account of a casualty, and the Assessments on account of such casualty and/or appropriations from any funds set aside for such purpose, shall constitute a construction fund which shall be disbursed by the Association in payment of the cost of repair, restoration or reconstruction, from time to time as the work progresses. The Association shall make such disbursements upon its receipt of certificates from the architect or general contractor selected by it to be in charge of the work or repair, restoration or reconstruction. Said certificates shall: (i) state that the sum requested is justly due to the contractors, subcontractors, materialmen, architects or other persons who rendered services or furnished materials in connection with the work; (ii) give a brief description of the services and materials for which such progress payment is requested; (iii) state that the sum requested does not exceed the value of the services and materials described in the certificate; (iv) state that except for the amount stated in such certificate to be due as aforesaid and for work subsequently performed, there is no outstanding indebtedness known to the person signing such certificate after due inquiry; which might become the basis of a mechanics', materialmen's or similar lien for such work upon the Common Areas and Facilities or any Unit; and (v) state that the cost of the work remaining to be done subsequent to the date of said certificate, does not exceed the amount of the construction fund remaining with the Association after the payment of the sums so requested. If there is a balance in the construction fund after payment of all costs of repair, reconstruction or restoration, such balance shall be distributed jointly to the Unit Owners and their respective mortgagees who are the beneficial owners of the funds.

ARTICLE XV CONDEMNATION

In the event of a taking by condemnation or by eminent domain (or sale in lieu thereof) of all or part of the Common Areas and Facilities, the award payable for such taking shall be applied by the Association for repair, restoration or reconstruction of such Common Areas and Facilities, in the manner provided in Article XIV hereof for the repair, restoration or reconstruction of the Insured Property with the proceeds of insurance, unless the Unit Owners entitled to exercise not less than seventy-five percent (75%) of the voting power elect not to repair, reconstruct or restore such Common Areas and Facilities. Any such election

shall be made in the manner provided in subsection 14.6 of the Declaration. In the event of such an election, the Association shall disburse the net proceeds of such award to the Unit Owners in proportion to their respective interests in the Common Areas and Facilities and in the manner provided in said subsection 14.6. No Unit Owner, however, shall receive any portion of this share of such award until all liens and encumbrances on his Unit have been paid, released or discharged.

ARTICLE XVI

RIGHTS OF FIRST MORTGAGEES

The following provisions inure to the benefit of each mortgagee holding a first mortgage encumbering a Unit:

- (a) The holder of any first mortgage encumbering a Unit in respect of which the Unit Owner shall be in default for a period of sixty (60) days in the performance of his obligations under this Declaration, the Bylaws and/or the Rules shall be provided with notice of said default by the Association. Within sixty (60) days after receiving said notice from the Association, the holder of the mortgage encumbering said Unit may (but shall not be obligated to do so) cure said default. If, however, said default is not curable within said sixty (60) day period by reason of delay(s) beyond the reasonable control of said mortgagee, then, providing said mortgagee has commenced to cure said default within sixty (60) day period and has continued thereafter with due diligence to complete the curing of said default, the time within which said mortgagee shall be permitted to cure said default shall be extended for a period co-extensive with said delay(s).
- (b) A first mortgagee, upon written request to the Board, shall be given a written statement by the Board of the number of Unit Owners who are more than one (1) month delinquent in the payment of monthly Assessments or Special Charge at the time said written request is received by the Board.
- (c) In general, and in order to facilitate the marketability of the Units, the Board shall comply, to the best of its ability, with requests by first mortgagees for information required by regulations of the Office of Thrift Supervision of the U.S. Treasury Department, Federal National Mortgage Association, Government National Mortgage Association, Department of Housing and Urban Development, the Veterans Administration and Mortgage Guaranty Insurance Corporation (or other private mortgage insurance company), or required by any other secondary mortgage market lender, or by any governmental insurer, guarantor or regulator of the first mortgage of any Unit.

- (d) Upon written request to the Association, each mortgagee shall have the right to receive notices of all meetings of the Association and to designate a representative to attend any such meeting.

ARTICLE XVII **OBSOLESCENCE**

The Association, by the affirmative vote of the Unit Owners entitled to exercise not less than seventy-five percent (75%) of the voting power, may determine that the Condominium Property is obsolete, in whole or in part, and should be renewed and rehabilitated. The Board shall thereupon proceed with such renewal and rehabilitation and the cost thereof shall be a Common Expense. Any Unit Owner who does not vote for such renewal and rehabilitation may elect, in a writing served by him on the President or other chief officer of the Association, within five (5) days after receiving notice of such vote, to receive the fair market value of his Unit, less the amount of any liens and encumbrances thereon as of the date such vote is taken, in return for a conveyance of his Unit (subject to the liens and encumbrances thereon) to the Association, as trustees for all other Unit Owners. In the event of such election, such conveyance and payment of the consideration therefor (which shall be a Common Expense, assessed only against the Unit Owners who have not so elected) shall be made within ten (10) days thereafter, and if a Unit Owner who shall have so elected and a majority of the Board cannot agree upon the fair market value of such Unit, such determination shall be made by the majority vote of a board of three appraisers. One of such appraisers shall be appointed by such electing Unit Owner, one shall be appointed by the Board, and the third shall be appointed by the first two appraisers.

ARTICLE XVIII **REMEDIES FOR BREACH OF COVENANTS AND RULES**

18.1 If any Unit Owner (either by his own conduct or by the conduct of any Occupant) shall violate any covenant, restriction, condition or provision in this Declaration, the Bylaws or the Rules, the Association shall have the right in addition to the rights set forth elsewhere in this Declaration and those provided by law, (a) to enter upon the Unit or portion thereof upon which, or as to which, such violation or breach exists and summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions of this Declaration, the Bylaws or the Rules, and the Association, or its agent, shall not thereby be deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

18.2 If any Unit Owner (either by his own conduct or by the conduct of any Occupants) shall violate any covenant, restriction, condition or provision in this Declaration, the Bylaws or the Rules, and such violation shall continue for thirty (30) days after notice in writing from the Association, or shall occur repeatedly during any thirty (30) day period after written notice or request to cure such violation from the Association, then the Association

shall have the right, upon the giving of ten (10) days' prior written notice to terminate the rights of such Unit Owner or Occupant to continue as Unit Owner or Occupant and to continue to occupy, use or control his Unit, and thereupon an action in equity may be filed by the Association against such Unit Owner or Occupant for a decree of mandatory injunction against said Unit Owner or Occupant or (subject to the prior consent in writing of any mortgagee having an interest in such Unit, which consent shall not be unreasonably withheld), for a decree declaring the termination of the right of such Unit Owner or Occupant to occupy, use, or control the Unit owned or occupied by him and ordering that all the right, title and interest of such Unit Owner or Occupant in his Unit shall be sold (subject to any liens and encumbrances thereon) at a judicial sale upon such notice and terms as the court shall establish, except that the court shall enjoin and restrain such Unit Owner or Occupant from re-acquiring 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 or receiver's fees, reasonable attorneys' fees, court reporter charges and all other expenses of the proceeding and all such items shall be imposed against such defaulting Unit Owner or Occupant. Any balance of proceeds, after satisfaction of any unpaid Assessments and Special Charges owing to the Association and any liens required to be discharged, may be paid to said Unit Owner or Occupant. Upon the confirmation of such sale, the purchaser thereof shall thereupon be entitled to a conveyance of all right, title and interest in said Unit and to immediate possession of the Unit so conveyed, and may apply to the court for a writ of assistance for the purpose of acquiring such possession, and it shall be a condition of any such sale and the decree shall so provide, that the purchaser shall take said interest in said Unit subject to this Declaration.

ARTICLE XIX **AMENDMENT OF DECLARATION AND BYLAWS**

19.1 Rights Reserved by Declarant. Declarant shall have the right, exercisable in its sole discretion at any time during the seven (7) year period following the date this Declaration is filed for record, and the Board shall have the right thereafter, to amend from time to time this Declaration, the Bylaws and/or the Drawing in such respects as Declarant may consider necessary, convenient or appropriate, for the purpose of (i) complying with any regulations of the Office of Thrift Supervision Board, the Federal National Mortgage Association, the Federal Housing Administration, the Federal Home Loan Mortgage Corporation, the Veterans Administration, the Department of Housing and Urban Development and/or the Mortgage Guaranty Insurance Corporation (as such regulations may be amended periodically), (ii) complying with any regulations of any federal, state, or local governmental agency or instrumentality (as such regulations may be amended periodically), (iii) curing any ambiguity, inconsistency or formal defect or omission in this Declaration, the Bylaws and/or the Drawings, and/or (iv) effecting any other change(s) not adverse to the Unit Owners or to the holders of mortgages encumbering the Units. Each Unit Owner, by accepting a deed conveying title to his Unit and each mortgagee, by accepting a mortgage encumbering any Unit, automatically consents and approves of the provisions of this Section 19.1, and all Unit Owners and their respective mortgagees shall perform such actions and shall promptly execute and deliver to Declarant and/or the Board, from time to time, as

Declarant and/or the Board shall request, all instruments as Declarant and/or the Board shall consider necessary, convenient or appropriate to effectuate the provisions of this Section 19.1. In addition, each Unit Owner, by acceptance of a deed in respect to his Unit, and each mortgagee, by accepting a mortgage encumbering any Unit, automatically hereby irrevocably appoints Declarant and/or the Board as the proxy of such Unit Owner and mortgagee, coupled with an interest, to act and vote for and on behalf of each such Unit Owner and each such mortgagee in such manner as shall enable Declarant and/or the Board to effectuate the rights reserved by Declarant and/or the Board pursuant to this Section 19.1, and to that end each such Unit Owner and each such mortgagee hereby authorizes, directs, and empowers Declarant and/or the Board, as the holder of such proxy, to execute, and to have witnessed, acknowledged and recorded, for and in the name of each such Unit Owner and each such mortgagee, such amendment(s) of the within Declaration, the Bylaws and/or the Drawings, together with such consent(s) thereto as Declarant and/or the Board shall consider necessary, convenient or appropriate to comply with the provisions of this Section 19.1 if Declarant shall exercise the rights reserved to it in this Section 19.1. Any documents requiring execution by any person, firm, corporation or other entity (other than Declarant) shall be in full compliance with this Section 19.1 if executed by Declarant and/or the Board on behalf of such person, firm, corporation or other entity.

19.2 This Declaration and the Bylaws may be amended, and such amendment(s) shall be effective, upon the filing for record with the Recorder of Cuyahoga County, Ohio of an instrument in writing setting forth specifically the item or items to be amended and/or any new matter to be added, which instrument shall have been duly executed by the Unit Owners entitled to exercise at least seventy-five percent (75%) of the voting power of the Association. Such amendment must be executed with the same formalities as this instrument and its attached exhibits are recorded and must contain an affidavit by the President of the Association that a copy of the amendment has been mailed by certified mail or hand delivered or sent by telegram to all first mortgagees having bona fide liens of record against any Unit. No amendment shall have any effect, however, upon a bona fide first mortgagee until the written consent to such amendment of such mortgagee has been secured. Such consents shall be retained by the Secretary of the Association and his certification in the instrument of amendment as to the names of the consenting and non-consenting mortgagees of the various Units shall be sufficient for reliance by the general public. If less than all mortgagees consent to an amendment to this Declaration and/or the Bylaws, said amendment or modification shall nevertheless be valid among the Unit Owners, inter sese, provided that the rights of a non-consenting mortgagee shall not be derogated thereby.

19.3 Notwithstanding anything contained in this Article XIX to the contrary, no provision in this Declaration or the Bylaws may be changed, modified or rescinded, which, after such change, modification or recession would conflict with the provisions of the Act (including but not limited to the prohibition in Section 5311.08 of the Act that the Declaration may not be amended to increase the scope or period of control by the Declarant after there is a Unit Owner other than the Declarant) or the general law, nor may any amendment be made to the percentages of interest in the Common Areas and Facilities of

each Unit as set forth in Exhibit "D" hereof except by an amendment to this Declaration unanimously approved by all Unit Owners affected.

ARTICLE XX
CERTAIN PROVISIONS REQUIRED OR PERMITTED BY THE ACT

Notwithstanding any contrary provision in this Declaration, the Bylaws or any of the other "Condominium Instruments" (as defined in the Act) pertaining to the Condominium Property, each of said condominium instruments is subject to the following:

20.1 Any deposit or down payment made in connection with the sale of a Unit shall be held in trust or escrow until delivered at settlement or returned to or otherwise credited to the purchaser of a Unit or forfeited to the Declarant, and if a deposit or down payment of Two Thousand Dollars (\$2,000.00) or more is held for more than ninety (90) days, interest at the rate of at least four percent (4%) for any period exceeding ninety (90) days shall be credited to the purchaser of a Unit at settlement or upon return or other credit made to such purchaser, or added to any forfeiture to the Declarant. Deposits and down payments held in trust or escrow pursuant to this Paragraph shall not be subject to attachments by creditors of the Declarant of a purchaser of a Unit.

20.2 Except in its capacity as a Unit Owner of unsold Condominium Ownership Interests, neither Declarant nor its agent, (as defined in the Act) will retain a property interest in any of the Common Areas and Facilities after control of the Condominium Property is assumed by the Association. Notwithstanding the foregoing, the Declarant shall retain an interest consistent with this Declaration and required to insure ingress and egress, from and to the Common Areas and Facilities by the prospective Unit Owners in the Additional Condominium Property.

20.3 The Unit Owners of Condominium Ownership Interests that have been sold by the Declarant or its agent will assume control of the Common Areas and Facilities and of the Association as prescribed in division (C) of Section 5311.08 of the Act. Until the Association is established, the Declarant shall act in all instances where action of the Association or its officers is authorized or required by law or this Declaration. Except as stated in division (C) of Section 5311.08 of the Act, the Declarant or persons designated by it, may appoint and remove members of the Board and other officers of the Association and exercise the powers and responsibilities otherwise assigned by law or the Declaration to the Association, the Board or the officers of the Association. Said authorization shall extend from the date of the establishment of the Association until the earlier of:

- (1) Five (5) years; or
- (2) Thirty (30) days after the sale and conveyance of Condominium Ownership Interests to which appertain seventy-five percent (75%) of the undivided interests in the Common Areas and Facilities to purchasers of Units in good faith for value.

20.4 Solely and only to the extent such warranties are required by the provisions of Section 5311.25(E) of the Act, Declarant hereby furnishes a two (2) year warranty covering the full cost of labor and materials for any repair or replacement of roof and structural components and mechanical, electrical, plumbing and common service elements serving the Condominium Property as a whole, occasioned or necessitated by a defect in material or workmanship and a one (1) year warranty covering the full cost of labor and materials for any repair or replacement of structural, mechanical and other elements pertaining to each Unit, occasioned or necessitated by a defect in material or workmanship commencing as follows:

- (a) The two (2) year warranty shall commence (i) as to the Condominium Property submitted by this Declaration, on the date that the deed or other evidence of ownership is filed for record following the sale of the first Condominium Ownership Interest in the Condominium Property;
- (b) The one (1) year warranty shall commence on the date the deed or other evidence of ownership is filed for record following each sale of a Condominium Ownership Interest to a purchaser of a Unit in good faith for value;
- (c) In the case of ranges, refrigerators, washing machines, clothes dryers, hot water heaters, and other similar appliances, if any, installed and furnished as part of a Unit by Declarant, the valid assignment by the Declarant of the express and implied warranty of the manufacturer satisfies the Declarant's warranty and obligation with respect to such appliances, and the Declarant's warranty is limited to the installation of said appliances;
- (d) All warranties made to the Declarant that exceed the time periods set forth hereinabove with respect to any part of the Units or Common Areas and Facilities are hereby assigned to purchasers of Units.

20.5 The Declarant will assume the rights and obligations of a Unit Owner in his capacity as the owner of Condominium Ownership Interests not yet sold, including, without limitation, the obligation to pay the Common Expenses and Special Charges attaching to such Condominium Ownership Interest, from the date this Declaration is filed for record.

ARTICLE XXI **MISCELLANEOUS PROVISIONS**

21.1 No labor performed or materials furnished for use in connection with any Unit with the consent or at the request of a Unit Owner or his agent or subcontractor shall create any right to file a statement of mechanic's lien against the Unit of any other Unit Owner not

expressly consenting to or requesting the same or against any interest in the Common Areas and Facilities except as to the undivided interest therein appurtenant to the Unit of the Unit Owner for whom such labor shall have been performed and such materials shall have been furnished. Each Unit Owner shall indemnify and hold harmless each of the other Unit Owners from and against liability or loss arising from the claim of any lien against the Unit, or any part thereof, of any other Unit Owner for labor performed or for materials furnished in connection with work on the first Unit Owner's Unit. At the written request of any Unit Owner, the Association shall enforce such indemnity by collection as a Special Charge from the Unit Owner of the Unit on which the labor was performed and materials furnished the amount necessary to discharge any such lien, including all costs incidental thereto, and obtaining a discharge of the lien.

21.2 All notices required or permitted hereunder, and under the Bylaws and the Act, to the Declarant, the Association and the Board, shall be in writing and shall be sent by registered or certified mail, return receipt requested, as the case may be, to the Board at the address of the Condominium Property or to such other address as the Board may designate from time to time by notice in writing to all Unit Owners; to the Declarant at 11100 Detroit Avenue, Cleveland, Ohio 44102 or to such other address as the Declarant may designate from time to time by notice in writing to all Unit Owners; or to any Unit Owner at such Unit Owner's Unit address or to such other address as may be designated by him from time to time, in writing, to the Board. All notices shall be deemed to have been given and therefore effective when posted in the U.S. Mail, except notices of change of address which shall be deemed to have been given when received, and except as otherwise provided herein. Any notice required or permitted to be given to any Occupant shall effectively be given if hand delivered to such Occupant or placed in his mail box or placed under the door of the Unit occupied by such Occupant.

21.3 Each Unit Owner shall furnish written notice to the Secretary of the Association of the name and address of such Unit Owner's first mortgagee and of any change in the name and address of such mortgagee.

21.4 None of the members of the Board or the officers, employees or agents of the Association shall be liable to the Unit Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct, gross negligence or bad faith and except as provided herein or in the Bylaws. The Unit Owners, other than any mortgagee acquiring said Unit by reason of foreclosure or a deed in lieu of foreclosure, and the Association shall indemnify and hold harmless each of the members of the Board and the officers, employees or agents of the Association from and against all contractual liability to others arising out of contracts made by the Board on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the express provisions of the Declaration or the Bylaws. It is intended that the members of the Board shall have no personal liability with respect to any contract made by them on behalf of the Association. The liability of any Unit Owner arising out of any contract made by the Board or out of the aforesaid indemnity in favor of the members of the Board shall be limited to such proportion of the total liability thereunder as his interest in the Common Areas and Facilities bears to the

interests of all the Unit Owners in the Common Areas and Facilities. The provisions of this Section do not apply to and shall not preclude claims for property damage and personal injury by Unit Owners against the Board or any other insured under the liability insurance required to be maintained by the Association pursuant to this Declaration.

21.5 The Association may acquire and hold, for the benefit of the Unit Owners, real property and tangible and intangible personal property and may dispose of the same by sale or otherwise; and the beneficial interest in such personal property shall be owned by the Unit Owners in the same proportion as their respective interests in the Common Areas and Facilities. A transfer of a Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such personal property, whether or not such personal property is specifically mentioned therein.

21.6 Each of the covenants, restrictions, easements, terms, conditions, options and rights provided for in this Declaration and the Bylaws (hereinafter referred to as the "Provisions") shall constitute covenants running with the land and shall be binding upon and inure to the benefit of the Declarant and the Association and their respective successors and assigns, and any persons acquiring title to any Unit, together with their respective grantees, heirs, devisees, executors, administrators, personal representatives, successors and assigns.

21.7 The invalidity of any of the Provisions shall not impair or affect in any manner the validity or enforceability of the remaining Provisions.

21.8 The terms used throughout this Declaration and the Bylaws shall have the respective meaning ascribed thereto in the Act except where otherwise expressly defined in this Declaration or in the Bylaws.

21.9 Any inconsistency between the Act and the Declaration and the Bylaws shall, to the extent possible, be resolved in favor of the Declaration and the Bylaws. Any inconsistency between the Declaration and the Bylaws shall, to the extent possible, be resolved in favor of the Declaration.

21.10 Upon the removal of the Condominium Property from the Act (pursuant to Section 5311.17 of the Act), all easements, covenants and other rights, benefits, privileges, impositions and obligations created pursuant to this Declaration shall terminate and be of no further force or effect, except that such removal shall not release any Unit Owner in respect to any liability that shall have arisen prior to such removal.

21.11 No covenants, restrictions, conditions, obligations or provisions contained in this Declaration, in the Bylaws or in the Rules shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

21.12 Except as otherwise expressly provided in the Act, neither Declarant, nor any of its partners, nor any employee, agent, successor or assign of Declarant, shall be liable for

any claim or damage whatsoever arising out of or by reason of any actions performed pursuant to or in accordance with any authority granted or delegated to them or any of them or pursuant to this Declaration or by the Bylaws.

21.13 The use of the masculine gender herein or in the Bylaws shall be deemed to include the feminine and the neuter genders, as the case may be, and the use of the singular shall be deemed to include the plural, wherever the context so requires.

21.14 The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the establishment and operation of a first class Condominium development (as defined in the Act).

21.15 All Exhibits referred to in this Declaration are attached hereto and constitute an integral part of this Declaration.

ARTICLE XXII
RULES AGAINST PERPETUITIES


If any of the Provisions shall be in violation of the Rule against Perpetuities or any other analogous or comparable statutory or common law rule such of the Provisions shall be so affected thereby shall continue in effect only until twenty-one (21) years after the death of the last survivor of the now living Descendants of Bill Clinton, President of the United States and Al Gore, Vice President of the United States.

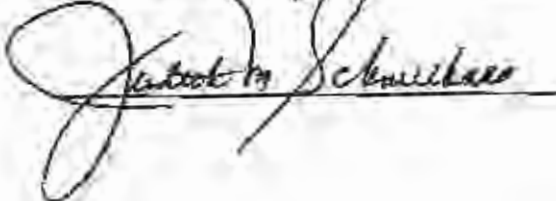
ARTICLE XXIII
MARGINAL REFERENCES

The heading of each Article of this Declaration is inserted for convenience and reference only and in no way shall be held to explain, modify, amplify or limit the meaning of such Article.

IN WITNESS WHEREOF, SCHILLING SQUARE DEVELOPMENT, LTD., the Declarant, has executed this Declaration by its duly authorized officers this 1 day of July, 1998.

In the Presence of :





SCHILLING SQUARE DEVELOPMENT
LTD., A Limited Liability Company

by  _____

by  _____

STATE OF OHIO)
) SS.
CUYAHOGA COUNTY)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named SCHILLING SQUARE DEVELOPMENT, LTD., a Limited Liability Company, by Eric Senders, its Member, and Carrie Senders, its Member, who acknowledged that they did sign the foregoing instrument and that the same is the free act and deed of Schilling Square Development, Ltd., by each of them personally and as members of said Limited Liability Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Cleveland, Ohio, and hereby certify the foregoing acknowledgment, this 1 day of July, 1998.



Notary Public



ROGER L. FRISMAN, Notary Public
State of Ohio, Summit County
My Commission Expires May 23, 2003

EXHIBIT "A"
TO THE DECLARATION OF CONDOMINIUM OWNERSHIP
FOR THE EASTMAN CONDOMINIUMS

LEGAL DESCRIPTION



Legal Description
Eastman Condominiums
June 29, 1998
File No. 11569-001

VOL. 98-08837 PAGE 21

Situated in the City of Cleveland, County of Cuyahoga, State of Ohio and known as being Sublot Nos. 23, 24 and 25 in Henry Lower's Subdivision of part of Original Brooklyn Township, Lot No. 9 as shown by the recorded plat in Volume 19 of Maps, Page 28 of Cuyahoga County Records and is further bounded and described as follows:

Beginning at the intersection of the Northerly right of way line of Detroit Avenue N.W. (formerly Detroit Street) 66 feet wide with the Easterly right of way line of West 111th Street (formerly Eastman Street) 50 feet wide;

- Course 1 Thence North $18^{\circ}-06'-12''$ East, along said Easterly right of way line of West 111th Street, a distance of 199.97 feet to a 5/8" iron pin (#7065) set at the Southwesterly corner of a parcel of land conveyed to Margaret Angel by deed recorded in Volume 92-5753, Page 45 of Cuyahoga County Records;
- Course 2 Thence South $71^{\circ}-41'-38''$ East, along the Southerly line of land so conveyed to Margaret Angel and along the Southerly line of a parcel of land conveyed to John and Angela S. Maselle by deed recorded in Volume 92-5753, Page 47 of Cuyahoga County Records, a distance of 166.51 feet to a 5/8" iron pin (#7065) set at the Southeasterly corner thereof and Westerly line of a parcel of land conveyed to Joseph M. Stickney by deed recorded in Volume 96-08117, Page 56 of Cuyahoga County Records;
- Course 3 Thence South $18^{\circ}-06'-04''$ West, along said Westerly line of land so conveyed to Joseph M. Stickney, as last aforesaid, and along the Westerly lines of parcels of land conveyed to Joseph M. Stickney by deed recorded in Volume 95-08572, Page 26 of Cuyahoga County Records and Ali S. Halabi and Ibrahim A. Lababidi by deed recorded in Volume 86-2298, Page 24 of Cuyahoga County Records, a distance of 199.96 feet to a 5/8" iron pin (#7065) set at the Southwesterly corner thereof and the Northerly right of way line of Detroit Avenue N.W., as aforesaid;
- Course 4 Thence North $71^{\circ}-41'-53''$ West, along said Northerly right of way line of Detroit Avenue N.W., a distance of 166.51 feet to the place of beginning and containing 0.7644 Acres (33,297 Square Feet) of land according to a survey made by Thomas J. Neff, Jr. Registered Surveyor No. 7065-Ohio in November of 1996.

Page 2
June 29, 1998
File No. 11569-001

The subject premises being part of the same land conveyed to Schilling Square Development, Ltd. by deed recorded in Volume 97-00738, Page 31 of Cuyahoga County Records.

Be the same more or less but subject to all legal highways.

EXHIBIT "B"
TO THE DECLARATION OF CONDOMINIUM OWNERSHIP
FOR THE EASTMAN CONDOMINIUMS

DRAWINGS

(ATTACHED HERETO)