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BLAIR PLACE CONDOMINIUM ASSOCIATION  
DECLARATION OF CONDOMINIUM OWNERSHIP  
FOR  
BLAIR PLACE CREEK CONDOMINIUM ✓

INDEXED

✓  
In Re: Plat 95-55

This Instrument Prepared by:

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# DECLARATION OF CONDOMINIUM OWNERSHIP

## BLAIR PLACE CONDOMINIUM

This Declaration made this 7th day of July, 1995 pursuant to Chapter 5311 of the Ohio Revised Code by COLONIAL FOREST ESTATES, INC. organized and existing under the laws of the State of Ohio, having its principal offices at 26800 Fargo Avenue, Cleveland, Ohio 44146, and referred to hereinafter as "Grantor".

### 1. Submission of Property.

Grantor, which is Owner in fee simple of the lands, the buildings and all other improvements constructed or to be constructed thereon, together with all easements, rights, and appurtenances belonging thereto, and all other property personal or mixed, intended to use in connection therewith, as described below and hereinafter collectively referred to as the "Property", hereby declares certain divisions, covenants, restrictions, limitations, conditions and uses respecting the Property, intending thereby to submit the Property to the provisions of Chapter 5311 of the Ohio Revised Code, hereinafter referred to as the Condominium Act, and further intending thereby to create covenants running with the land and binding the Grantor, its successors and assigns forever. Grantor is also the owner of contiguous parcels to Phase I Cluster Site No. 2 of Hawthorn Subdivision Phase, Two, upon which the Grantor proposes to construct improvements for residential use in successive phases, being Phase 2, and Phase 3, and to submit each successive phase of development as completed to the provisions of Chapter 5311 of the Ohio Revised Code, as provided for herein and through one or more Amendments to Declaration of Condominium Ownership. The Property is subject to all the terms and conditions contained in HAWTHORN OF AURORA PLANNED UNIT DEVELOPMENT DECLARATION OF COVENANTS AND RESTRICTIONS APPLICABLE TO ALL SINGLE FAMILY LOTS AND CLUSTER SITES which was filed and described in the Office of the Portage County Recorder on June 14, 1990 under Instrument No. 87709 and located in Volume 1096, Page 130 et seq.

### 2. Name of Condominium.

The Condominium shall be known as BLAIR PLACE CONDOMINIUM.

### 3. Description of Land.

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

#### LEGAL DESCRIPTION OF PHASE I

#### CLUSTER SITE NO. 2 OF HAWTHORN SUBDIVISION PHASE, TWO

Situated in the City of Aurora, County of Portage and State of Ohio, and known as being part of Original Aurora Township Lot 9 and also known as being part of Cluster Site No. 2 of Hawthorn

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Subdivision, Phase Two, as recorded in Volume 94, Page 92 of Portage County Records and being further bounded and described as follows:

Commencing at the most easterly corner of Sublot 122 on the westerly right-of-way of Walnut Ridge Trail (60 feet wide) as shown on said Hawthorn Subdivision, Phase Two Plat;

Thence southeasterly along the curved right-of-way of Walnut Ridge Trail to the left, said curve having a radius of 397.04 feet and a central angle of 01 degrees 26 minutes 40 seconds for an arc distance of 10.01 feet and a chord that bears south 37 degrees 38 minutes 58 seconds east a distance of 10.01 feet to the principal point of beginning of the property herein described;

Course No. 1 - Thence south 51 degrees 37 minutes 40 seconds west a distance of 220.00 feet to a point;

Course No. 2 - Thence north 38 degrees 21 minutes 00 seconds west a distance of 185.00 feet to a point;

Course No. 3 - Thence south 87 degrees 58 minutes 33 seconds west a distance of 194.31 feet to a point;

Course No. 4 - Thence south 02 degrees 01 minutes 27 seconds east a distance of 149.27 feet to a point on the centerline of Blair Circle;

Course No. 5 - Thence continuing south 02 degrees 01 minutes 27 seconds east a distance of 11.00 feet to a point;

Course No. 6 - Thence north 87 degrees 58 minutes 33 seconds east a distance of 38.09 feet to a point of curvature;

Course No. 7 - Thence southeasterly along the arc of said curve, to the right, having a radius of 139.00 feet and a central angle of 30 degrees 02 minutes 37 seconds for an arc distance of 72.89 feet and a chord that bears south 77 degrees 00 minutes 08 seconds east a distance of 72.05 feet to a point of tangency;

Course No. 8 - Thence south 61 degrees 58 minutes 50 seconds east a distance of 50.00 feet to a point of curvature;

Course No. 9 - Thence northeasterly along the arc of said curve, to the left, having a radius of 161.00 feet and a central angle of 62 degrees 53 minutes 51 seconds for an arc distance of 176.74 feet and a chord that bears north 86 degrees 34 minutes 15 seconds east a distance of 168.00 feet to a point of tangency;

Course No. 10 - Thence south 34 degrees 52 minutes 41 seconds east a distance of 30.90 feet to a point;

Course No. 11 - Thence north 44 degrees 24 minutes 40 seconds east a distance of 245.00 feet to a non-tangent point of curvature

on the westerly right-of-way of Walnut Ridge Trail;

Course No. 12 - Thence northwesterly along the curved right-of-way of Walnut Ridge Trail and the arc of said curve, to the right, having a radius of 397.04 feet and a central angle of 07 degrees 13 minutes 01 seconds for an arc distance of 50.01 feet and a chord that bears north 41 degrees 58 minutes 49 seconds west a distance of 49.98 feet to the point of beginning and containing 1.5374 acres of land be the same more or less, but subject to all legal highways and easements of record.

#### LEGAL DESCRIPTION OF UTILITY

#### EASEMENT FOR HAWTHORN OF AURORA

#### CLUSTER SITE NO. 2, PHASE 1

Situated in the City of Aurora, County of Portage and State of Ohio, and known as being part of Original Aurora Township Lot 9 and being further bounded and described as follows:

Commencing at the most easterly corner of Sublot 122 on the Westerly right-of-way of Walnut Ridge Trail (60 feet wide) as shown in Hawthorn Subdivision Phase Two as recorded in Volume 94 Page 92 of Portage County Plat Records;

Thence Southeasterly along the curved right-of-way of Walnut Ridge Trail to the Left, said curve having a radius of 397.04 feet and a central angle of 01 degrees 26 minutes 26 seconds for an arc distance of 9.98 feet and a chord that bears south 37 degrees 38 minutes 51 seconds east a distance of 9.98 feet to the principal point of beginning of the property herein described;

Course No. 1 - Thence south 48 degrees 01 minutes 10 seconds west a distance of 220.79 feet to a point of curvature;

Course No. 2 - Thence southwesterly along the arc of said curve, to the right, having a radius of 125.00 feet and a central angle of 70 degrees 00 minutes 00 seconds for an arc distance of 152.72 feet and a chord that bears south 83 degrees 01 minutes 10 seconds west a distance of 143.39 feet to a point of tangency;

Course No. 3 - Thence north 61 degrees 58 minutes 50 seconds west a distance of 50.00 feet to a point of curvature;

Course No. 4 - Thence northwesterly along the arc of said curve, to the left, having a radius of 175.00 feet and a central angle of 30 degrees 02 minutes 37 seconds for an arc distance of 91.76 feet and a chord that bears north 77 degrees 00 minutes 08 seconds west a distance of 90.72 feet to a point of tangency;

Course No. 5 - Thence south 87 degrees 58 minutes 33 seconds west a distance of 38.09 feet to a point;



Course No. 6 - Thence south 02 degrees 01 degrees minutes 27 seconds east a distance of 50.00 feet to a point;

Course No. 7 - Thence north 87 degrees 58 minutes 33 seconds east a distance of 38.09 feet to a point of curvature;

Course No. 8 - Thence southeasterly along the arc of said curve, to the right, having a radius of 125.00 feet and a central angle of 30 degrees 02 minutes 37 seconds for an arc distance of 65.54 feet and a chord that bears south 77 degrees 00 minutes 08 seconds east a distance of 64.80 feet to a point of tangency;

Course No. 9 - Thence south 61 degrees 58 minutes 50 seconds east a distance of 50.00 feet to a point of curvature;

Course No. 10 - Thence southeasterly along the arc of said curve, to the left, having a radius of 175.00 feet and a central angle of 70 degrees 00 minutes 00 seconds for an arc distance of 213.80 feet and a chord that bears north 83 degrees 01 minutes 10 seconds east a distance of 200.75 feet to a point of tangency;

Course No. 11 - Thence north 48 degrees 01 minutes 10 seconds east a distance of 220.79 feet to a non-tangent point of curvature on the westerly right-of-way of Walnut Ridge Trail;

Course No. 12 - Thence northwesterly along the curved right-of-way of Walnut Ridge Trail and the arc of said curve, to the right, having a radius of 397.04 feet and a central angle of 07 degrees 13 minutes 15 seconds for an arc distance of 50.04 feet and a chord that bears north 41 degrees 58 minutes 42 seconds west a distance of 50.00 feet to the point of beginning and containing 0.6546 acres of land be the same more or less, but subject to all legal highways and easements of record.

#### 4. Units.

There will be a total of six (6) Units, each with its own street address, contained in three (3) buildings as shown on the General Development Plan for Blair Place Condominium, attached hereto as Exhibit "B". All Units will be restricted to residential use, and all will be compatible in quality of construction, the principal materials to be used and in architectural style. The address for each Unit, the type of Unit it is and the proportionate interest of its Owner in the Common Areas and Facilities of Blair Place Condominium are set forth in the Schedule of Percentage of interest attached hereto as Exhibit "C".

#### 5. Description of Buildings.

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

All buildings are constructed on a concrete slab or concrete

block basement foundation. Vinyl siding, aluminum windows and trim are used as exterior finishes on all dwelling Units and garages. Each Unit includes a patio, deck or both.

## 6. Type of Units.

A total of two different Unit types, hereinafter referred to as Unit Types "A", "B", be constructed at Blair Place Condominium. The following is a description of each Unit Type. The exact limits of the Limited Common Area of each Unit is shown on Exhibit "B" to the Declaration of Condominium.

### UNIT TYPE "A"

The Ruth Ann Series.

These Units are 32' wide by 71'4" deep, 2 story dwellings and are offered in two different floor plans. These Units have a two car garage, and a Limited Common Area which varies from 22' to 50' deep in the front and 15' deep in the rear. The width of the Limited Common Area is 10' to 26' to the side of the Unit. The exact limits of the Limited Common Area for each Unit are shown on the Condominium Plat.

### UNIT TYPE "B"

The Lisa-Marie Series.

These Units are 32' wide by 71'4" deep, 2 story dwellings with a 6' by 11'8" wing on side of unit and are offered in two different floor plans. These Units have a two car garage, and a Limited Common Area which varies from 22' to 50' deep in the front and 15' deep in the rear. The width of the Limited Common Area is 10' to 34' to the side of the Unit. The exact limits of the Limited Common Area for each Unit are shown on the Condominium Plat.

## 7. Definition of Space within the Units.

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

### (A) Inclusions:

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

(2) All windows, screens and doors (other than the

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exterior of the garage door), including the frames, sashes and jambs, and the space occupied thereby;

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

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

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

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

(7) All decks, patios, fencing or walls which are part of the original constructions or which are made by the Unit Owner after having been approved by the Board of Managers; but, excepting therefrom, all of the following items (said items shall be common Areas and Facilities) located within the bounds of any Unit as described above;

(B) Exceptions:

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

(2) All vent covers, grills, plate covers and other coverings of space which are not part of the Unit as defined above;

(3) All plumbing, electric, heating, cooling and other utility or service lines, pipes, wires, ducts and conduits which serve any other Unit;

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

(5) All porches or room additions which are part of the original construction or which are made by the Unit Owner after having been approved by the Board of Managers.



8. Common Areas and Facilities.

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

9. Limited Common Areas and Facilities.

Limited Common Areas and Facilities are those portions of the Common Areas and Facilities that are immediately adjacent to the respective Condominium Units and are hereby set aside for the exclusive use of the respective Condominium Unit Owners subject to such restrictions governing their use as may be established by the By-Laws of Blair Place Condominium Association. The extent of the Limited Common Area for each of the respective condominium units is shown on the General Plan for Blair Place Condominium attached hereto as Exhibit "B". The Limited Common Area typically extends at least 20 feet from the front of the Unit garage and 10 feet from the rear of the Units, and 5 to 10 feet from the side of Units.

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

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

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

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

11. Covenants and Agreements.

Grantor, its successors and assigns, by this Declaration, and



all further Owners of Units, by acceptance of their respective deeds, hereby covenant and agree as follows:

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

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

(B) If any portion of the Common Areas and Facilities encroaches on any Unit, or if any Unit encroaches on any other Unit, or any portion of the Common Areas, as a result of the construction of the Buildings, or if any such encroachment shall occur as a result of settling or shifting of Buildings, a valid easement for such encroachment and for the maintenance of the same so long as the Buildings stand, shall exist.

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

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

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

(F) Administration of the Condominium shall be in



accordance with the provisions of this Declaration and the By-laws of the Association which are made a part hereof and attached hereto as Exhibit "A".

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

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

## 12. Restrictions as to the Use and Occupancy of the Condominium Property.

The following restrictions, conditions and limitations shall run with the land and shall be binding upon each Unit Owner and each Unit Owner's heirs, tenants, successors and assigns:

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

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

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

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

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

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

(D) No Unit Owner shall keep, store, or use any hazardous or toxic substance or waste (as defined by applicable law or regulation) within his Unit, Limited Common Area or Common Area without the prior written consent of the Board. Owners and Occupants must not pour or spill any oil, solvent, or any other



volatile or inflammable material into the storm sewers, garage catch basin or Common Areas. The Ohio EPA prohibits such dumping.

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

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

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

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

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

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

### 13. Architectural Control.

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

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

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

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

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

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

15. Destruction of, or Damage to Property; Effect.

(A) Responsibility for Reconstruction or Repair:

(1) If any portion of the Common Area and facilities shall be damaged by perils covered by the Casualty Insurance, the Association shall cause such damaged portion to be promptly reconstructed or repaired to the extent of the funds made available to the Board of Managers, as hereinafter provided, and any such reconstruction or repair shall be substantially in accordance with the Drawings (Exhibit "B" as filed with the County Recorder); provided however, if such damage renders one-half or more of the Units then comprised within the Condominium Property untenable, the Unit Owners may, by the vote of those entitled to exercise not less than seventy-five percent (75%) of the voting power, elect not to reconstruct or repair such damaged part at a meeting which shall be called within ninety (90) days after the occurrence of the casualty; or, if by such date the insurance loss has not been finally adjusted, then within thirty (30) days after such final adjustment.

Upon such election, all of the Condominium Property shall be subject to an action for sale as upon partition at the suit of any Unit Owner. In the event of any such sale of the Condominium Property after such election by the Unit Owners, the net proceeds of the sale together with the net proceeds of insurance, if any, and any other indemnity arising because of such damage or construction, 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 this share of such proceeds until all liens and encumbrances on his Unit have been paid, released or discharged.

(2) Each Unit Owner shall be responsible for reconstruction and repair of his Unit after any casualty.

(B) Procedure for Reconstruction or Repair:

(1) Immediately after a casualty causing damage to any portion of the Common Areas and Facilities the Board of Managers of the Association shall obtain reliable and detailed estimates of the cost of to place the damaged property in condition as good as the condition of the property before the casualty. Such costs may include professional fees of public adjuster firms and others and premiums for such bonds as the Board deems necessary.

(2) If the proceeds of the Casualty Insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association (including the aforesaid fees and premiums, if any) one or more special assessments shall be made against all Unit owners in sufficient amounts to provide funds for the payment of such costs, and the proceeds of such special assessments shall be retained separately by the Board of Managers.

(3) The proceeds of the Casualty Insurance referred to in Section 21(b) and the sums deposited with the Board of Managers from collections of special assessments against Unit Owners on account of such casualty, shall constitute a construction fund which shall be applied by the Board of Managers to the payment of the cost of reconstruction and repair of the Common Areas and Facilities from time to time as the work progresses, but not more frequently than once in any calendar month. The Board of Managers shall make such payments upon a certificate, dated not more than fifteen (15) days prior to such request, signed by an architect in charge of the work, who shall be selected by the Board of Managers, setting forth:

(a) that the sum then requested either has been paid by the Association or is justly due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with the work, giving a brief description of the services and materials, and that the sum requested does not exceed the value of the services and materials described in the certificate;

(b) that except for the amount stated in such certificates to be due as aforesaid less any prescribed hold back of funds, 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 vendor's mechanic's,

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materialmen's or similar lien arising from such work;

(c) that a Waiver of Lien as required by Section 1311 of the Ohio Revised Code will be obtained upon payment; and

(d) that the cost as estimated by the person signing such certificate of the work remaining to be done subsequent to the date of such certificate will not exceed the amount of the construction fund remaining in the hands of the Board of Managers after the payment of the sum so requested. It shall be presumed that the first monies disbursed in payment of such costs of reconstruction and repair shall be from insurance proceeds; and 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 retained by the Board of Managers for the maintenance, repair and replacement of these Common Areas and Facilities.

(4) Each Unit Owner shall be deemed to have delegated to the board his right to adjust with insurance companies all losses under the Casualty Insurance policies.

(C) Minor Repairs

(1) Notwithstanding the foregoing provisions of this Section, if the aggregate amount of the estimated costs of repairing any damage to the Common Areas and Facilities is less than Ten Thousand Dollars (\$10,000.00), the damage shall be repaired. Such insurance proceeds are as received on account of such damage shall be used by the Board of Managers to defray the cost of repairing the damage to the Common Areas and Facilities.

(2) If the cost of such repairs is less than the amount of such insurance proceeds, the excess shall be retained by the Board of Managers and placed in the maintenance fund or contingency fund as the Board in its sole discretion may determine. If the cost of such repairs exceeds the amount of such insurance proceeds, such excess may be provided either by means of Common Assessment levied by the Board against all Unit Owners in proportion to their respective Percentage of Ownership interest in the Common Areas and facilities, or by means of an appropriation from the contingency fund or such other fund as may be established for the purpose of providing for the maintenance, repair and replacement of the Common Areas and Facilities, as the Board may determine.

(D) Negligence of Unit Owner.

Each Unit Owner shall be liable for the expenses of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guest, employees, agents or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Association. A Unit Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or

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abandonment of his Unit or its appurtenances or of the Common Areas and Facilities or Limited Common Areas and Facilities.

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

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

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

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

**18. Eminent Domain.**

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

(B) In the event that the entire condominium property or substantially all thereof is taken through eminent domain proceedings or the threat thereof, the condominium shall terminate. In that event, the Board of Managers shall cause to be paid, released or discharged all liens and encumbrances, except taxes and assessments not then due and payable, on all or any part of the Condominium Property and shall cause to be filed in the offices of the Auditor and Recorder of the County, a certificate signed by the president of the Unit Owner's Association, stating that all Owners of the Condominium have elected to remove the Property from the Condominium Act, and that encumbrances have been paid, released or discharged, and the award or proceeds shall be apportioned among the Unit Owners in accordance with their percentage interest in the Common Areas and Facilities as set forth in the Schedule of Percentage of Interest attached hereto as Exhibit "C".

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

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

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

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

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

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

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

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

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

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party to the arbitration and the Board and its individual members shall not be held personally liable for any decision rendered pursuant to such arbitration procedure.

## 21. Insurance.

(A) The Board of Managers of the Unit Owners' Association shall insure all Unit Owners, their tenants and all persons lawfully in possession or control of any part of the Condominium Property, against liability for personal injury or property damage arising from or relating to the Common Areas and Facilities, in amounts deemed necessary by the Board of Managers, but in no event less than \$1,000,000.00.

(B) The Board shall also obtain for the benefit of Unit Owners, fire and extended coverage, vandalism and malicious mischief insurance (the "Casualty Insurance") on all building and structures of the Condominium Property. Such insurance shall be in an amount not less than 100% of the insurable replacement value thereof as determined by the insurance carrier and shall be on a blanket basis.

The insurance shall be written in the name of, and the proceeds thereof shall be payable to the Association as trustee for the Unit Owners and their respective mortgagees, as their interest may appear, and provision shall be made for the issuance, upon request, of certificates of such insurance to the Unit Owners and their respective mortgagees.

The coverage afforded by such insurance shall be reviewed by the Board not less frequently than once a year to determine if the amounts payable thereunder and the coverage thereof comply with the requirements of this Paragraph. Such insurance shall also provide for the waiver by the insurer of any and all rights of subrogation or assignment; which waiver shall be over and above any and all causes and rights of recovery against the Unit Owners, and their respective families, tenants, guests and servants, and each of them, the Association, the board, any managing agent and all persons lawfully in possession or control of any part of the Condominium Property, for recovery against them or any of them for any loss occurring to the insured Property resulting from any of the perils insured against under such insurance policy. The Board shall not use fire and extended coverage proceeds other than for the repair of the condominium Property except as set forth in Section 15 herein.

(C) Each Owner may, at his own expense, obtain insurance covering the contents of his individual Unit, including, but not limited to, all floor and wall coverings, furniture, fixtures and other betterment installed by each Unit Owner, and any personal property which he stores elsewhere on the Condominium Property. Further, each Unit Owner may, at his own expense, obtain public liability insurance for personal injuries or damage arising out of the use and occupancy of his Unit and Casualty insurance affording

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coverage upon his Unit and property inasmuch as the same will not be insured by the Association. However, such Casualty insurance shall provide that it shall be without contribution as against the Casualty insurance purchased by the Association, or shall be written y the carrier of such Casualty insurance and shall contain the same waiver of subrogation as that referred to in subsection (B) above.

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

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

## 23. Receipt of Services of Process.

Rinardo Constantino having his principal place of business at 26800 Fargo Avenue, Suite K, Mailbox No. 10, Bedford Heights, Ohio 44146, is hereby designated to receive service of process on behalf of the Unit Owners' Association in any action that may be brought, or proceedings that may be instituted by or against the Board of Managers or Unit Owners' Association.

## 24. Additions to Condominium Property.

Grantor contemplates constructing certain additional residential structures and other improvements upon additional Parcels, said construction to be accomplished in successive phases, being Phase No. 2 and Phase No. 3, said improvements to be similar in material and design to those contained upon Parcel No. 1, being Phase No. 1, and Grantor reserves right to submit all buildings, easements, rights and appurtenances and such land as is encompassed within successive Phases No. 2 and 3, together with all articles of personal property existing for the common use of the Unit Owners, to the provisions of this Declaration and Chapter 5311, so that the same will become in all respects part of the Condominium Property. In the event Grantor determines to take the action so contemplated, then Grantor shall have the right at any time within a period of three (3) years commencing on the date this Declaration is filed for record, without any action on the part of any Unit Owners or their mortgagees or the Association (1) to submit Phase No. 2 buildings, together with all easements, rights and appurtenances thereto, and all articles of personal property existing for the common use of the Unit Owners, to the provisions of this Declaration and Chapter 5311 and (2) to thereafter submit Phase No. 3 buildings, together with all easements, rights and appurtenances thereto, and all articles of personal property existing for the common use of the Unit Owners, to the provisions of this

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Declaration and Chapter 5311 and (3) to amend this Declaration, in the manner provided in Section 25 hereof, in such respects as Grantor may deem advisable in order to effectuate such submission or submissions, including, without limiting the generality of the foregoing, the right to amend this Declaration so as (a) to include Phase No. 2 and Phase No. 3, and the improvements constructed thereon as part of the Condominium Property, (b) to include descriptions of Phase No. 2 and Phase No. 3 buildings in this Declaration and to add drawings thereof to Exhibit B hereto, (c) to provide that the owners of Units in the buildings will have an interest in the Common Areas and Facilities of the Condominium Property and to amend Section 10 hereof so as to establish the percentage of interest in the Common Areas and Facilities which the owners of all Units within the buildings on the Condominium Property will have at the time of such amendment or amendments, which percentage shall be, with respect to each Unit, in the proportion that the fair market value of each Unit at the date said amendment is filed for record bears to the then aggregate value of all the Units within the buildings on the Condominium Property, which determination shall be made by the Grantor and shall be conclusive and binding upon all Unit Owners. Grantor, on its own behalf as the owner of all Units in the Condominium Property and on behalf of all subsequent Unit Owners, hereby consents and approves, and each Unit Owner and his mortgagees by acceptance of a deed conveying such Ownership Interest or a mortgage encumbering such Ownership Interest, as the case may be, thereby consents to and approves, the provisions of this Section 24, including, without limiting the generality of the foregoing, the amendment of this Declaration by Grantor in the manner provided in Section 25 hereof, and all such Unit Owners and their mortgagees, upon request of Grantor, shall execute and deliver from time to time any or all such instruments and perform any or all such acts as may be deemed by Grantor to be necessary or proper to evidence such consent and effectuate said provisions.

#### 25. Amendment of Declaration.

This Declaration may be amended by the affirmative vote of those Unit Owners entitled to exercise not less than seventy-five per cent (75%) of the total voting power of the Unit Owners' Association, case in person or by proxy at a meeting duly called and held in accordance with the By-Laws attached hereto as Exhibit "A". No such amendment shall be effective until recorded in the office of the Portage County Recorder.

#### 26. Invalidity.

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

27. Waiver.

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

28. Captions.

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

Signed in the Presence of:

GRANTOR

Angela Quinte  
Harvey Snider

COLONIAL FOREST ESTATES, INC.

By

RINARDO CONSTANTINO

STATE OF OHIO

:

: SS

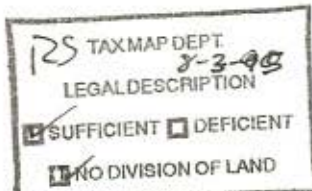
COUNTY OF CUYAHOGA

:

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named Colonial Forest Estates, Inc., an Ohio Corporation, by Rinardo Constantino, President, to me personally known, who acknowledged that he did sign the foregoing instrument and that the same is the free act and deed of him personally and as such officer and the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Solon, Ohio this 7th day of June, 1995.

Harvey Snider  
NOTARY PUBLIC



CLUSTER SITE # 2  
PLAT 94-92

HARVEY A. SNIDER, Attorney At Law  
Notary Public - State of Ohio  
My commission has no expiration date  
Section 147.03 R.C.

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# Colonial Forest Estates

26800 Fargo Avenue  
Suite K, Mailbox #10  
Bedford Heights, Ohio 44146  
765-0802

Phase I.

Unit	Bldg.	Street Address	Square Ft.	Percent Interest
19	J	840 Blair Circle	2207	16.75015
20	J	836 Blair Circle	2185	16.58318
21	K	832 Blair Circle	2185	16.58318
22	K	828 Blair Circle	2207	16.75015
23	L	824 Blair Circle	2185	16.58318
24	L	822 Blair Circle	2207	16.75015
			<hr/> 13,176	<hr/> 100%

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STATE OF OHIO            )  
                              ) SS.  
COUNTY OF CUYAHOGA )

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named Colonial Forest Estates, Inc., an Ohio Corporation, by MARK A. CONSTANTINO, President, to me personally known, who acknowledged that he did sign the foregoing instrument and that the same is the free act and deed of him personally and as such officer and the free act and deed of said corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Solon, Ohio this 27th day of December, 1995.

  
\_\_\_\_\_  
NOTARY PUBLIC

My Comm. Expires 12/31/98  
Section 147.03 R.C.

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