

*Whippoorwill Glen*  
*Condominium Owners Association, Inc.*

October 2006

Dear Residents:

Since some of you do not have the WGCOA Declaration, By-Laws and Amendments, we have assembled a complete copy for each unit.

This notebook must remain with each unit. It is the owner's responsibility to ensure that it does and is delivered to the next owner of the unit.

A \$25.00 fee will be assessed for any replacements of document notebook.

Whippoorwill Glen Board of Managers

E0013-0732

459276

ARTICLES OF INCORPORATION

OF

WHIPPOORWILL GLEN CONDOMINIUM OWNERS' ASSOCIATION

APPROVED

By P. J. ...

Date 10-22-71

Amount 25.00

40917

The undersigned, a citizen of the United States, desiring to form a corporation, not for profit, under Section 1702.01, et seq., Revised Code of Ohio, does hereby certify:

FIRST. The name of said corporation shall be Whippoorwill Glen Condominium Owners' Association.

SECOND. The place in Ohio where the principal office of the Corporation is to be located is Washington Township, Montgomery County.

THIRD. The purpose or purposes for which said corporation is formed are as follows:

To exercise the powers of authority set forth in the Declaration of Condominium Ownership and By-Laws of Unit Owners' Association to be recorded in the Deed Records of Montgomery County, Ohio, as the same may, from time to time, be amended or supplemented in accordance with the terms and provisions thereof, said Declaration and By-Laws being incorporated herein as if set forth at length and pertaining to a certain tract of real estate specifically described in Exhibit "A" to said Declaration of Condominium Ownership for Whippoorwill Glen Condominium by Oak Creek South, Inc., and as may be expanded on certain additional land described on Exhibit "B" to said Declaration of Condominium Ownership for Whippoorwill Glen Condominium by Oak Creek South, Inc., and on that certain tract of real estate specifically described in Exhibit "C" to said Declaration of Condominium Ownership and known as the Amenity Land; and further to do all things being required or permitted by property owners' associations as provided in Chapter 5311 of the Revised Code of Ohio, and further to have and to exercise all powers, rights and authority granted to non-profit corporations under Chapter 1702 of the Revised Code of Ohio; and specifically to provide for the maintenance, preservation and control of the real estate and improvements located thereon as described under the terms of said Declaration of Condominium ownership referred to above and to promote the welfare and enjoyment of the residence and owners of condominium units on the Condominium property hereinbefore described which is subject to said Declaration.

In furtherance of the foregoing, and subject to the terms and conditions of said Declaration and By-Laws, the corporation may acquire, own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer, manage, administer and dedicate for common or public use, real and personal property, and may borrow money for any of the purposes of the corporation and in connection therewith, issue bonds, debentures, notes or other obligations therefor, either without security or by securing the same by pledge or mortgage of the whole or any part of the property of the corporation, and to exercise all of the rights and privileges and duties as set forth in the aforesaid Declaration and By-Laws as the same may be amended from time to time, to establish, levy, collect and enforce the payment of all charges or assessments made by the corporation pursuant to the terms and conditions of the Declaration and By-Laws and to do all things related thereto, and to do any and all things necessary, proper, pertinent or in any way related to the carrying out of the purposes hereinbefore set forth for the purposes set forth in the Declaration of Condominium Ownership and the By-Laws attached thereto, all as recorded in the Office of the Recorder of Montgomery County, Ohio, and pertaining to the Whippoorwill Glen Condominium.

FOURTH. The members of the Corporation shall be the owners of the units of the Condominium Property as described in the Declaration of Condominium Ownership hereinbefore referred to and subject to the terms, conditions and limitations as set forth in said Declaration and in the By-Laws attached thereto for the purposes of the governance of the within Corporation and specifically subject to certain voting rights retained by the Grantor in said Declaration of Condominium Ownership with respect to the election of a Board of Managers pursuant to certain terms and conditions and for a certain period of time, all as described therein.

FIFTH: The names and addresses of the initial members of the Board of Managers (Board of Trustees) of this corporation are, and their respective terms of office shall expire as of the annual meeting in the year indicated, as follows:

<u>Name</u>	<u>Address</u>	<u>Term Ends</u>
John G. Black	7970 South Suburban Road Centerville, Ohio 45459	1975
Stanley S. Swango, III	7970 South Suburban Road Centerville, Ohio 45459	1975
Robert Stephenson	7970 South Suburban Road Centerville, Ohio 45459	1975

E0013-0734

Richard Bertrand.

7970 South Suburban Road 1975  
Centerville, Ohio 45459

William A. Rogers, Jr.

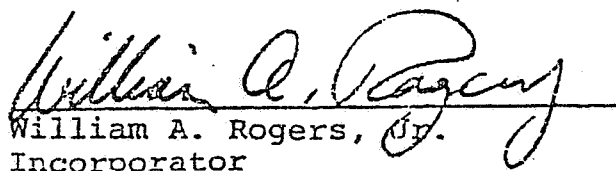
2260 Winters Bank Tower 1975  
Dayton, Ohio 45402

SIXTH: This non-profit corporation does not contemplate pecuniary gain or profit to the members thereof. In the event of the dissolution of the corporation then the assets of the corporation shall be dedicated to an appropriate public agency to be used for purposes similar to those for which this corporation was created, if such public agency meets the statutory requirements of Ohio law as a unit owners association. The within corporation may be dissolved provided that said action is taken by not less than seventy-five percent (75%) of the voting power of said corporation, and provided further, that another entity has been created to act as the unit owners' association required pursuant to Section 5311.01(J), Ohio Revised Code, to function and serve as the administrative agency for the condominium property hereinbefore described and referred to.

SEVENTH: This Corporation shall exist perpetually unless dissolved in accordance with the terms of these articles and in accordance with the law of the State of Ohio.

EIGHTH: Indemnification. The Corporation shall indemnify any and every member of the Board of Managers, officer or employee against expenses, judgments, decrees, fines, penalties, or amounts paid in settlement in connection with the defense of any pending or threatened action, suit, or proceeding, criminal or civil, to which such member of the Board of Managers, officer or employee, is or may be made a party by reason of being or having been such a member of the Board of Managers, an officer or an employee, provided a determination is made by the Board of Managers in the manner set forth in Ohio Revised Code Section 1702.12(e)(1) to the effect (1) that such member of the Board of Managers, officer or employee was not, and has not been adjudicated to have been, negligent or guilty of misconduct in the performance of his duties to the corporation of which he is a member of the Board of Managers, officer or employee, (2) that he acted in good faith in what he reasonably believed to be the best interest of such corporation, and (3) that, in any manner the subject of a criminal action, suit or proceeding, he had no reasonable cause to believe his conduct was unlawful. Such indemnification shall not be deemed exclusive of any other rights to which such member of the Board of Managers, officer or employee may be entitled under these articles, the regulations or by-laws of this corporation, the Declaration of Condominium Ownership, any agreement or any insurance purchased by this corporation, or by vote of the members, or otherwise.

IN WITNESS WHEREOF, the undersigned incorporator has executed the within Articles of Incorporation on this 20<sup>th</sup> day of August, 1974.

  
William A. Rogers, Jr.  
Incorporator

15976

JOE D. PEGG  
RECORDER

Nov 6 3 16 PM '74

WHIPPOORWILL GLEN CONDOMINIUM  
WASHINGTON TOWNSHIP, MONTGOMERY COUNTY, OHIO

MONTGOMERY CO. OHIO  
RECORDED

157-52

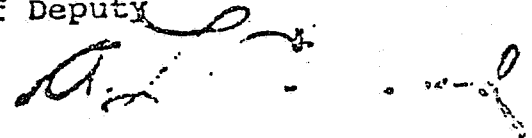
DECLARATION OF CONDOMINIUM OWNERSHIP BY  
OAK CREEK SOUTH, INC.

I hereby certify that copies of the within Declaration, together with Drawings and By-Laws attached as Exhibits thereto, have been filed in the office of the County Auditor, Montgomery County, Ohio.

Dated: 6 Nov., 1974

County Auditor

By Melvin W. Cummings  
Chief Deputy



COUNTY AUDITOR

FOR CONDOMINIUM PLAN & MAP  
SEE PLAT BOOK 98, PAGES 1,  
1A & 1B

This Instrument Prepared by:

Iddings, Jeffrey & Donnelly  
Attorneys at Law  
2260 Winters Bank Tower  
Dayton, Ohio 45402

NOV 6 1974

TRANSFERRED  
A.L. OSWALD  
COUNTY AUDITOR

-74 547A01 -

*DECLARATION OF  
CONDOMINIUM OWNERSHIP*

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DECLARATION OF CONDOMINIUM OWNERSHIP

FOR

WHIPPOORWILL GLEN CONDOMINIUM

THIS DECLARATION OF CONDOMINIUM made this 22<sup>nd</sup> day of October, 1974, by OAK CREEK SOUTH, INC., an Ohio corporation, with its place of business at 7970 South Suburban Road, Centerville, Ohio, 45459, hereinafter referred to as "Developer"

WITNESSETH:

WHEREAS, Developer is the holder of title, in fee simple, to a parcel of land upon which it has constructed thirty-one (31) residential units, and containing <sup>5.245</sup> 4.347 acres, more or less, hereinafter described as the "Land", and desires to declare the land and all buildings, structures and improvements thereon as a condominium; and

WHEREAS, Developer is also the owner of title, in fee simple, to an approximately 4.846 acre tract, adjacent to the Land, hereinafter described as the "Additional Land"; and

WHEREAS, Developer has constructed or is constructing a swimming pool, tennis court and maintenance building on the Land containing .523 acres, more or less, located adjacent to the Land for the use and benefit of the owners and occupants of residential units constructed on the Land and to be constructed on the Additional Land, said area hereinafter referred to as the "Amenity Land"; and

WHEREAS, Developer desires to provide for the development, in one or more stages, of all or any part of the Additional Land by the construction thereon of up to ~~23~~ residential units, all or any part of which may be included under this Declaration as provided herein;

NOW, THEREFORE, Developer hereby submits the Land, together with all buildings and improvements thereon, and all rights and easements appurtenant thereto, including those created hereafter, hereinafter collectively referred to as the "Condominium Property", to the provisions of Chapter 5311 of the Ohio Revised Code of Ohio, and to this Declaration:

1. LEGAL DESCRIPTIONS

A. The Land containing 4.347 acres, more or less,

is located in Section 36, Town 3, Range 5 M.R.S., Washington Township, Montgomery County, Ohio, and being lot No. 436 in Oak Creek South, Section Nine, as recorded in Plat Book 94, Page 22, of the Plat Records of Montgomery County, Ohio, and more particularly described on Exhibit A which is attached hereto and made a part hereof.

B. The Additional Land, containing 4.846 acres, more or less, a part or all of which may hereafter be submitted under this Declaration and become a part of the Condominium Property is located in Section 36, Town 3, Range 5 M.R.S., Washington Township, Montgomery County, State of Ohio, and more particularly described on Exhibit B which is attached hereto and made a part hereof.

C. The Amenity Land, containing .523 acres, more or less, is located in Section 36, Town 3, Range 5 M.R.S., Washington Township, Montgomery County, Ohio, and being more particularly described on Exhibit C which is attached hereto and made a part hereof.

2. NAME OF CONDOMINIUM PROPERTY:

The name by which the Condominium Property shall be known is Whippoorwill Glen Condominium.

3. PURPOSES, COVENANTS AND RESTRICTIONS:

The Condominium Property and the use thereof shall be subject to the following covenants, agreements, terms, conditions and restriction

A. No unit shall be used for any purpose other than that of a private dwelling place for a single family and for purposes necessarily incidental thereto, excepting, however, that those units owned by the Developer may be used for model home purposes or for office purposes related to the sale and development of the condominium project by the Developer, and, except as provided in this Declaration, no common area and facility shall be used for any purpose other than the health, safety, welfare, convenience, comfort, recreation, or enjoyment of the owners and occupants of the units and their guests.

*ANSWERING UNSURE TO PHYSICAL OR MENTAL HEALTH*  
B. No noxious, offensive, dangerous or hazardous activity or nuisance of any kind or character shall be committed, suffered, or maintained on any part of the Condominium Property.

\* C. No structure of a temporary character, tent, shack, storage or accessory structure or building, outbuilding, boat, canoe, camper or other recreational vehicle, truck, trailer, pick-up truck, bicycle, wagon, toy, baby carriage, playpen, bench, chair, clothes laundry, clothes line, awning, antenna, or noxious, offensive, or unsightly article shall be erected, parked, stored, or hung at any time on the common areas and facilities, except as permitted or directed by the Board of Managers of the Whippoorwill Glen Condominium Unit Owners' Association established in Paragraph 7 hereof, and hereinafter referred to as "Association";

and further excepting patio or sun umbrellas which may be used on the "sun decks" provided that said equipment shall be of a uniform nature as established by the Board of Managers of the Association, and further excepting guard rails which may be erected by the Unit Owner around such sun decks provided that such guard rails shall be of a uniform nature as established by the said Board of Managers of the Association.

D. No commercial activity, other than that carried on by Developer in the buying, selling, or leasing of units and operating, maintaining, repairing, and replacing the common areas and facilities, shall be conducted in or upon any part of the Condominium Property. No unit shall be used for hotel or transient purposes.

E. No animals, livestock, or poultry of any kind shall be raised, bred, or kept on any part of the Condominium Property except a reasonable number (as determined by the Board of Managers of the Association) of dogs, cats, or other household pets which are ordinarily and customarily kept in homes and which do not annoy or disturb residents of the Condominium Property. No animal shall be permitted to run loose on the common areas and facilities.

F. No sign of any kind shall be displayed to public view on any part of the Condominium Property except street name signs, directional signs, signs regulating the use of the common areas and facilities, and one sign, not more than five square feet, for each unit advertising it for sale or lease; provided, however, that this shall not apply to the Developer at the location of the model units.

G. Trash, garbage, or other waste shall not be dumped, deposited, or permitted to remain on the common areas and facilities except in covered, sanitary containers placed in the patios, or enclosed areas designed for the sanitary containers; provided, however, that this shall not prohibit the placing of sanitary containers either in front of the garage or at the curb next to the driveway on the particular days set aside for refuse collections by refuse haulers. No open fires shall be permitted in the common areas and facilities except in cooking grills.

5th AMENDMENT  
3 FMS 1981  
March 1997

H.

So that the exteriors of all units shall be uniformly decorated and maintained in an aesthetically pleasing manner as determined by the Association, no unit owner, occupant, person, or entity shall cause or permit the painting, discoloration, covering, alteration, removal or destruction of any window, screen, or any exterior door, doorsill, frame, jam, sash, or windowsill, unless authorized and directed by the Association in writing.

I.

Each unit is subject to the right of access and easement for the purpose of maintenance, repair, service, or replacement of any common area and facility located within its boundaries or access to which is through such unit by persons so authorized by the Association; provided, however, that the Association is hereby obligated in the event of the exercise of such right of access and easement for the purposes stated, to restore the unit to the condition that it was in at the time of the exercise by the Association of its right of access and easement for the purposes stated. No such maintenance, repair, service, or replacement shall be authorized however, unless the same shall be necessary in the opinion of the Association for public safety or in order to prevent damage to or destruction of any part of the Condominium Property.

J.

Each unit owner may use the common areas and facilities in accordance with the purposes for which they are intended. No unit owner may hinder or encroach upon the lawful rights of the other unit owners. Without the prior written consent of the Board of Managers, no unit owner shall have the right to perform work upon, paint, tile, wax, paper, or otherwise finish, refinish, or decorate any of the common areas and facilities, including the limited common areas and facilities reserved for the exclusive use of his unit, excepting as heretofore or hereafter permitted by the Declaration.

K.

In the event that Governmental regulations require the use of outside mail boxes to be located on the common areas of the Condominium Property, it shall be the responsibility of the Association to select and provide at the cost of the Unit Owner a uniform style of mailbox which will be required of all Unit Owners.

4. GENERAL DESCRIPTION OF BUILDINGS:

There are eight (8) buildings containing the living areas together with basements (except for the one-story units) of the thirty-one (31) units which are a part of the Condominium Property. Buildings A and B contain four (4) units each. Building C contains six (6) units. Building D and Building G contain two (2) units each. Building E contains three (3) units. Buildings F and H contain five (5) units each.

Each unit has its own garage which is an integral part of the respective buildings. Buildings A, C, F and H each have one (1) unit which is a single story unit in height above the ground. The balance of the buildings and the units therein are all two story in height above the ground.

101  
2 of 2  
1 of 3  
2 of 4  
2 of 5  
1 of 6

The principal matters of which the buildings are constructed are concrete, concrete block, wood, wood trusses, drywall, and asphalt shingles. Each unit has either brick veneer trim or aluminium siding on its exposed exteriors and either masonry walls or double studded insulated drywall separating the residential living areas of the unit from the residential living areas of adjacent units.

2 of 2, 4, + 5; 1 of 1, 3, + 6

5. DESCRIPTION AND DESIGNATION OF UNITS:

Each unit consists of a residential living area, including bath or baths, and a garage, all as shown on Exhibit "D" - 1 through D - 31, which is attached hereto and which graphically represents each of the units described herein, and made a part hereof and further shown in the table which is a part of this Paragraph 5.

The units are designated by the building letter they are in and by the unit number within said building with the lowest number running from right to left of each residential building. The four units in Building A are assigned numbers from right to left as one faces the front of such building of A-1, A-2, A-3 and A-4; the four units in Building B are assigned the numbers from right to left as one faces the front of such building of B-1, B-2, B-3, B-4; the six units in Building C are assigned the numbers from right to left as one faces the front of such building of C-1, C-2, C-3, C-4, C-5, and C-6; the two units in Building D are assigned the numbers from right to left as one faces the front of such building of D-1 and D-2; the three units in Building E are assigned the numbers from right to left as one faces the front of such building of E-1, E-2, and E-3; the five units in Building F are assigned the numbers from right to left as one faces the front of such building of F-1, F-2, F-3, F-4, and F-5; the two units in Building G are assigned the numbers from right to left as one faces

517100

the front of such building of G-1 and G-2; and the five units in Building H are assigned the numbers from right to left as one faces the front of such building of H-1, H-2, H-3, H-4 and H-5.

Building A is located at the northeast corner of the Land; Building B is located at the northern part of the Land generally in the middle of the northern boundary of the Land; Building C is located at the northwest corner of the Land; Building D is located to the south and east of Building C along the southern part of the Land; Building E is located in the center of the Land; Building F is located at the southern part of the Land in the middle portion; Building G is at the southeast corner of the Land on Paragon Road; and Building H is on the eastern boundary of the Land backing onto Paragon Road.

As shown graphically on Exhibit D-1 through D-31 and further as shown on the table which is made a part of this Paragraph 5, all of the thirty-one units are located wholly within a particular specified building. Within such building each unit includes, generally, everything bounded by the unfinished interior surface of the perimeter walls, the unfinished interior surface of the ceilings of the second floor, if a two story unit, or the first floor, if a one story unit, and with respect to the basement, if any, by the surface of the concrete slab floor of the basement and the interior surface of the concrete walls, and with respect to the one story unit without basements, by the surface of the concrete slab, projected, if necessary, in all cases, by reason of structural divisions such as interior walls, or doors and windows, to constitute a complete enclosure of space, and including also with respect to the garages, everything bounded by the unfinished interior surface of the perimeter walls, the unfinished interior surface of the ceiling, and the surface of the concrete slab, except insofar as the garages for the two bedroom units, A-2, B-2, C-3, E-2, F-2, and H-2 are concerned, the unit includes everything bounded by the interior surface of the rafters supporting the roof, the unfinished interior surface of the perimeter walls, and the surface of the concrete slab. Each unit also includes, but is not limited to, the following:

1. The drywall, paneling, and other materials attached to the structural parts of the perimeter walls and paint, lacquer, varnish, wallpaper, tile, and any other finishing materials applied to floors, ceilings, and walls;
2. All windows, windowsills, sashes, screens, doors, door-sills, frames and jams;
3. All immediately visible fixtures, appliances, utility and service lines, mechanical, electrical plumbing, heating and air cooling systems installed for the sole and exclusive use of the particular unit, lying within the bounds of the particular unit as defined herein.

4. All grills, dust covers, control knobs, switches, thermostats, base plugs, floor plugs, and connections affixed to or projecting from the walls, floors, and ceilings which serve either the unit or the fixtures located therein;

5. The space within all fixtures located within the bounds of a unit and the space occupied by the fixtures themselves;

6. All unenclosed space, if any, within or occupied by structural parts of the buildings which may project into the units, as defined above, from the concrete slab to the interior surfaces of the structural parts of the ceiling rafters and including by way of illustration, but not by way of limitation, the space between the shelves of built-in bookcases, if any, the space within built-in cabinets, if any, and the hearths lying within fireplaces, if any;

7. All space between interior walls, floors and ceilings, including the space occupied by structural and component parts of the buildings and by utility pipes, wires and conduits; but excepting therefrom all of the following items located within the bounds of the unit as defined above:

- a. The structural and component parts of all interior walls, floors and ceilings which support the building;
- b. All plumbing, electric, heating, cooling, and other utility or service fixtures, lines, pipes, wires, ducts, vents, chimneys, and conduits which serve any other unit or common area.

From each unit there is immediate access to patios, which are partially enclosed by privacy fences and to concrete stoops, and to concrete driveways located immediately adjacent to the garage portion of the unit, all of which are limited common areas and facilities for the exclusive use of the unit to which they are adjacent. There is immediate access from each unit or from the limited common areas and facilities reserved for the exclusive use of each unit to Paragon Road, a public street in the Township of Washington, Montgomery County, Ohio, via either the walkways or driveways which constitute the common areas of the Condominium Property.

All parts of the units, the buildings in which they are found, and the limited common areas and facilities are shown graphically on the drawings marked Exhibit D-1 through D -

31

The following table sets forth for each unit its designation,

the percentage of interest in the common areas and facilities (which percentage will be changed if units are added to the Condominium Property as authorized in Paragraph 8 hereof) appurtenant to such unit, the number of bedrooms, the number of baths, the total number of rooms exclusive of baths, and garages, and the approximate sizes in square feet of the residential living area of each unit and of the garage area of each unit.



Street Address      Percent (%) of Interest in Common Areas and Facilities      Approximate square footage of living area exclusive of basement      Approximate square footage of basement      Approximate square footage of garage      Number of rooms exclusive of baths and basement      Number of Baths

901	Windom Square	3.6%	2580	720	460	10	2-1/2
903	Windom Square	2.8%	1405	635	260	6	2-1/2
905	Windom Square	3.4%	2170	720	460	8	2-1/2
907	Windom Square	2.8%	1535	-	445	7	2
911	Windom Square	3.4%	2350	720	460	8	2-1/2
913	Windom Square	2.8%	1405	635	260	6	2-1/2
915	Windom Square	3.4%	2170	720	460	8	2-1/2
917	Windom Square	3.4%	2350	720	460	8	2-1/2
932	Windom Square	3.4%	2170	720	460	8	2-1/2
930	Windom Square	3.4%	2350	720	460	8	2-1/2
928	Windom Square	2.8%	1405	635	260	6	2-1/2
926	Windom Square	3.4%	2170	720	460	8	2-1/2
924	Windom Square	3.4%	2350	720	460	8	2-1/2
922	Windom Square	2.8%	1535	-	445	7	2
918	Windom Square	3.4%	2350	720	460	8	2-1/2
916	Windom Square	3.4%	2170	720	460	8	2-1/2
912	Windom Square	3.4%	2170	720	460	8	2-1/2
910	Windom Square	2.8%	1405	635	260	6	2-1/2
908	Windom Square	3.6%	2580	720	460	9	2-1/2
8707	Bayport Drive	3.4%	2350	720	460	8	2-1/2
8709	Bayport Drive	2.8%	1405	635	260	6	2-1/2
8711	Bayport Drive	3.4%	2170	720	460	8	2-1/2
8713	Bayport Drive	3.4%	2350	720	460	8	2-1/2
8715	Bayport Drive	2.8%	1535	-	445	7	2
8716	Bayport Drive	3.4%	2170	720	460	8	2-1/2
8714	Bayport Drive	3.4%	2350	720	460	8	2-1/2
8708	Bayport Drive	3.6%	2580	720	460	10	2-1/2
8706	Bayport Drive	2.8%	1405	635	260	6	2-1/2
8704	Bayport Drive	3.4%	2170	720	460	8	2-1/2
8702	Bayport Drive	3.4%	2350	720	460	8	2-1/2
8700	Bayport Drive	2.8%	1535	-	445	7	2

2.8 x 10 = 28  
3.4 x 10 = 34  
3.6 x 3 = 10.8

50 HAVING KAN'S CHURCH FOR BATHROOMS

4

31-TOWN

919 Pinewood Ave

?

H.L. 9

ADON

4 - 410 Ft<sup>2</sup> more than over (550)

RECEIVED AT THE OFFICE OF THE TOWN ENGINEER

# Assessment changes beginning 2003

Address	% of Ownership	2003	2004	2005	2006
<b>Bayport Drive</b>					
8700	2.73	\$1,310.40	\$1,310.40	\$1,310.40	\$819.00
8702	3.28	\$1,574.40	\$1,574.40	\$1,574.40	\$984.40
8704	3.28	\$1,574.40	\$1,574.40	\$1,574.40	\$984.40
8706	2.73	\$1,310.40	\$1,310.40	\$1,310.40	\$819.00
8707	3.28	\$1,574.40	\$1,574.40	\$1,574.40	\$984.40
8708	3.46	\$1,660.80	\$1,660.80	\$1,660.80	\$1,038.00
8709	2.73	\$1,310.40	\$1,310.40	\$1,310.40	\$819.00
8711	3.28	\$1,574.40	\$1,574.40	\$1,574.40	\$984.40
8713	3.28	\$1,574.40	\$1,574.40	\$1,574.40	\$984.40
8714	3.28	\$1,574.40	\$1,574.40	\$1,574.40	\$984.40
8715	2.73	\$1,310.40	\$1,310.40	\$1,310.40	\$819.00
8716	3.28	\$1,574.40	\$1,574.40	\$1,574.40	\$984.40
<b>Painewood Place</b>					
919	3.28	\$1,574.40	\$1,574.40	\$1,574.40	\$984.40
<b>Windom Square</b>					
901	3.46	\$1,660.80	\$1,660.80	\$1,660.80	\$1,038.00
903	2.73	\$1,310.40	\$1,310.40	\$1,310.40	\$819.00
905	3.28	\$1,574.40	\$1,574.40	\$1,574.40	\$984.40
907	2.73	\$1,310.40	\$1,310.40	\$1,310.40	\$819.00
908	3.46	\$1,660.80	\$1,660.80	\$1,660.80	\$1,038.00
910	2.73	\$1,310.40	\$1,310.40	\$1,310.40	\$819.00
911	3.28	\$1,574.40	\$1,574.40	\$1,574.40	\$984.40
912	3.28	\$1,574.40	\$1,574.40	\$1,574.40	\$984.40
913	2.73	\$1,310.40	\$1,310.40	\$1,310.40	\$819.00
915	3.28	\$1,574.40	\$1,574.40	\$1,574.40	\$984.40
916	3.28	\$1,574.40	\$1,574.40	\$1,574.40	\$984.40
917	3.28	\$1,574.40	\$1,574.40	\$1,574.40	\$984.40
918	3.28	\$1,574.40	\$1,574.40	\$1,574.40	\$984.40
922	2.73	\$1,310.40	\$1,310.40	\$1,310.40	\$819.00
924	3.28	\$1,574.40	\$1,574.40	\$1,574.40	\$984.40
926	3.28	\$1,574.40	\$1,574.40	\$1,574.40	\$984.40
928	2.73	\$1,310.40	\$1,310.40	\$1,310.40	\$819.00
930	3.28	\$1,574.40	\$1,574.40	\$1,574.40	\$984.40
932	3.28	\$1,574.40	\$1,574.40	\$1,574.40	\$984.40

=5707.60

Payment due the first Monday in September of each listed year. Assessment payments conclude with the September 2006 payment.

6. COMMON AREAS AND FACILITIES:

A. Description of Common Areas and Facilities.

The entire balance of the land and improvements thereon, including, but not limited to, all buildings, foundations, roofs, main and supporting walls, slate, patios, exterior parking spaces, storage spaces, trees, lawns, gardens, pavements, balconies, stoops, wires, conduits, utility lines and ducts now or hereafter situated on the Condominium Property, and in general all parts of the Condominium Property situated outside the boundary as hereinbefore defined of the individual units are hereby declared to be established as the common areas and facilities. In addition, the Common Area shall include in the future, the Amenity Land and the facilities thereon including the swimming pool, tennis court and maintenance building to be constructed on the Amenity Land at such time as said Amenity Land is subjected to the within Declaration.

B. Description of Limited Common Areas and Facilities

Included in the common areas and facilities described in Paragraph 6A above, but restricted to the use of the owners of the units to which such areas and facilities are appurtenant are all balconies, if any, designated or intended solely for the use of one or more of such units to the exclusion of the others, the stoops of each particular unit, the patio of each particular unit together with the combined privacy fence and storage area enclosing such patio, and that portion of the roof which is above the garage and is flat and referred to as a "sun deck" to which access is had from within the unit, and that portion of the driveway servicing the garage area of each unit between the interior line of the garage door and the side of the sidewalk and/or curb lying closest to the garage portion of the unit. In addition said limited common areas shall include where applicable the air conditioning units which are located on the common areas but which service a particular residential unit and also the hose connections and electrical connections which are located on the exterior of the building but which are intended for the sole use of a particular unit such as those located within the patio area, reserving, however, to the Association the right to use such hose connections for the purposes, if necessary, of watering the grass located on the common areas of the Condominium Property. Unless otherwise provided by the Association, however, the care, maintenance, repair replacement of said air conditioners and electrical

and hose connections so described shall be the responsibility of the unit owner who is benefitted thereby.

C. Use of Limited Common Areas

Subject to the restrictions set forth in Paragraph 3 above, each patio may be used by the owners and occupants of the unit which it is designed to serve, and their guests, solely as a recreation, entertainment, outdoor cooking, eating, garden, and planting area, and for those purposes permitted in Paragraphs 3(C) and 3(G); provided, however, that the planting referred to as being permitted in said patio areas shall be limited to planting which will not grow to a height in excess of the patio fences so as to prevent problems in excessive growth and result in damage to either the units or the Common Areas. The Association shall have the right to control such planting so as to facilitate the maintenance of the common areas and the protection from damage by such planting of the common areas. Subject to the restrictions set forth in Paragraph 3 above, each sun deck may be used by the owners and occupants of the unit which it is designed to serve, and their guests, solely as a recreation and entertainment area subject to reasonable regulation by the Association. The driveway area hereinbefore described as a portion of the limited common area shall be used solely for the purpose of the parking of an automobile by the owner and occupant of the unit which it is designed to serve, or for their guests.

D. Ownership Interest in Common Area.

Each owner of a unit shall own an undivided interest in the common areas and facilities as a tenant in common with all other such owners in such percentages as are expressed in the table set forth in Paragraph 5 above, (or as amended pursuant to Paragraph 8 below) and, except as otherwise limited in this Declaration and in the By-Laws which are attached hereto as Exhibit "E", shall have the right to use the common areas and facilities for all purposes incident to the use and occupancy of his family unit as a place of residence, and such other incidental uses permitted by this Declaration and the By-Laws, including the non-exclusive easement, together with other family unit owners to the use and enjoyment of the common areas and facilities and for ingress and egress to and from the respective units, which rights shall be appurtenant to and shall run with

his unit. The extent of such ownership in the common areas and facilities as hereinbefore expressed and deemed established by the percentage amount set forth in Paragraph 5 and such percentage amount shall remain constant and shall not be changed except by amendment to this Declaration as set forth in Paragraph 8 or Paragraph 12 herein.

7. ESTABLISHMENT, OPERATION AND CONTROL OF AND MEMBERSHIP IN A UNIT OWNERS' ASSOCIATION

The Developer shall cause to be formed an Ohio corporation not for profit to be called "The Whippoorwill Glen Condominium Owners' Association" hereinafter referred to as the Association which shall act as the manager of the Condominium Property. Each unit owner, upon acquisition of title to a unit, shall automatically become a member of the Association. Such membership shall terminate upon the sale or other disposition by such member of his unit ownership, at which time the new owner of such unit shall automatically become a member of the Association. The Board of Managers and the Officers of the Association elected as provided in the By-Laws of the Association attached hereto as Exhibit "E" shall exercise the powers, discharge the duties and be vested with the rights conferred by operation of law, by the By-Laws and by this Declaration upon the Association, except as otherwise specifically provided; provided, however, that in the event any such power, duty or right shall be deemed exercisable or dischargeable by, or vested in, an officer or member of the Board of Managers solely in his capacity as an officer or member of the Board of Managers, he shall be deemed to act in such capacity to the extent required to authenticate his acts and carry out the purposes of this Declaration and the By-Laws attached hereto as Exhibit "E". Members of the Board of Managers and Officers of the Association need not be unit owners if they are selected by the Developer in accordance with the provisions of the By-Laws of the Association. On all matters where voting is permitted, the owner or owners of each unit shall be entitled to exercise one vote.

Developer hereby retains the right to appoint all of the members of the Board of Managers of the Association in accordance with the terms of Section 1, Article II, of the By-Laws attached hereto as Exhibit "E" until one (1) year after the Developer itself is the owner of less than twenty-five (25) percent of the units subject at any time to the within Declaration, or until three (3) years from the date this declaration is filed for record, whichever event first occurs.

The administration of the Condominium Property shall be in accordance with the provisions of this Declaration and the By-Laws of the Association which are attached hereto as Exhibit "E". Each owner, tenant or occupant of a unit shall comply with the provisions of this Declaration, the By-Laws, decision and resolutions of the Association or its representatives, as lawfully amended from time to time and failure to comply with any such provisions, decisions

The person to receive service of process for the Association shall be the President of the Association. The President of the Association shall be a resident of the Condominium and an owner of one of its family units, except as hereinbefore provided. Until such time as a President is elected, service may be made upon William A. Rogers, Jr. whose address is 2260 Winters Bank Building, Dayton, Ohio, 45402. When and after the Association is lawfully constituted, the President thereof shall be the person to receive service of process, and his name and address (and that of each successor) shall be filed with the Ohio Secretary of State on such forms as are prescribed for the subsequent appointment of a statutory agent for an Ohio corporation not for profit.

8. ADDITIONS TO CONDOMINIUM PROPERTY AND RESERVATION OF RIGHTS:

Developer reserves the right to amend this Declaration from time to time, for a period of three years from the date it is filed for record, to add to and to include with the Condominium Property, all or any portion of the Additional Land as hereinbefore described on Exhibit "B" which is attached hereto and made a part hereof, and the buildings and improvements constructed thereon, and also to add to and to include with the Condominium Property the Amenity Land as hereinbefore described on Exhibit "C" which is attached hereto and made a part hereof and the building and improvements constructed thereon, and to change the percentage of interest of each unit owner in the common areas and facilities established by this Declaration or any amendments thereto or amended Declaration.

Developer covenants and agrees that all residential units to be constructed by it on the Additional Land and to be added to the Condominium Property shall be comparable in appearance, design, size, density with respect to the number of units compared to the amount of land, and quality to those which are subject to this Declaration.

Developer further covenants and agrees to include the swimming pool, tennis court, maintenance building, and the Amenity Land, as described in Exhibit "C" which is attached hereto and made a part hereof and hereinbefore referred to, upon which they are constructed, as a part of the common areas and facilities, not later than two years from the date this Declaration is filed for record.

Developer further covenants that the maximum amount of land which will be added to the Condominium Property in addition to the Amenity Land shall be 4.846 acres and further covenants that the maximum number of residential units to be constructed on such additional land shall be thirty-three (33).

For the benefit of the Additional Land and for the benefit of the Amenity Land, Developer hereby reserves for the owners

and occupants of residential units to be constructed on the Additional Land, and for itself, easements over the driveways and walkways of the Condominium Property for ingress to and egress from the swimming pool, tennis courts, maintenance building, Paragon pad, any and all portions of the Amenity Land and all or any part of the Additional Land. Developer also reserves easements to enter upon the Condominium Property to make connections with and extend any waterlines, sanitary or storm sewer lines, surface water drainage, or other utility lines or services for the benefit of the Additional Land and the Amenity Land. Provided, however, the use of any easements or reservations shall not unreasonably interfere with the use and enjoyment of the Condominium Property.

Each owner by the acceptance of a deed conveying title to a unit, for himself and all those claiming under him, including mortgagees,

A. Irrevocably appoints Developer, acting through its duly authorized officers, as his attorney in fact, to amend this Declaration by adding to the Condominium Property the Amenity Land hereinbefore described on Exhibit "C" which is made a part hereof and also by adding units and the Additional Land upon which they are constructed to the Condominium Property and to determine and adjust the percentage of interest in the common areas and facilities appurtenant to such unit to the percentage which is the proportion that the fair value of such unit bears to the value of all units as of the date of such amendment, the power granted hereby being coupled with an interest.

B. Waives the right to contest the validity or legality of any amendment to this Declaration made in accordance with the terms of the within Declaration which shall increase the number of units and the size of the common areas and facilities and adjust and reallocate the percentage of the undivided interest of the owner or owners of each unit, in such common areas and facilities, as set forth in such amendment, and agrees that the percentage of interest in the common areas and facilities, an undivided interest in which is appurtenant to the unit of each owner, shall upon the recording of such amendment be automatically adjusted, by the partial divestment and release of a percentage of such interest, and shall be further adjusted by the conveyance and allocation of an interest in the Additional Land, together with any improvements thereon, so that the interest of any unit owner, or of the holder of the mortgage on a unit, shall be in, and attached to, only such unit owners' percentage of interest, as amended; provided, however, that any such amendment must be within the limitations imposed upon the Developer as herein set forth.

C. Agrees that this Declaration, and each amendment hereof, shall be deemed to be in all respects, in compliance with Section 5311.04 (C) and Section 5311.05 of the Ohio

Revised Code and that for purposes of this Declaration and Section 5311.04(C) any changes in the respective percentages of interest of unit owners in the common areas and facilities, as set forth in any amendment of this Declaration, shall be deemed to be made by the agreement of all unit owners.

D. Agrees that the Amenity Land and any portion of the Additional Land, described in each amendment hereof, shall be governed, in all respects, by the provisions of this Declaration, and Developer shall, to the extent necessary for the development of the then remaining Additional Land reserves such easements in and over the common areas of the Condominium Property, for ingress and egress, and for tapping into or connecting with sewer, water, surface water drainage, and utility lines as may be necessary for the development of the then remaining Additional Land, provided the same do not interfere with the use of such common areas and do not overburden the capacity of such lines.

E. Agrees that the percentage of interest of each unit owner of the common areas and facilities, following an amendment of this Declaration, as provided in this Paragraph 8, shall be in the proportion that the fair value of the unit owned bears to the fair value of all units, as determined by the Developer in such amendment.

The rights and interest of a holder of a deed to, or mortgage on, any unit and the interest of such holder, in the common areas and facilities, shall be subject to the reservation by the Developer of the rights and interests set forth in this Paragraph 8 which shall be deemed and construed to be covenants running with the land for a period of three years from the date this Declaration is filed for record. It shall be a condition that each unit owner at the time of the acquisition of title to his unit, shall execute and deliver a separate power of attorney from such unit owner to the Developer setting forth the provisions and conditions as hereinbefore set forth in the Paragraph 8 of this Declaration.

#### 9. USE OF COMMON AREAS AND FACILITIES

Each unit owner is entitled to exclusive ownership, use and possession of his unit, to ownership of an undivided interest in the common areas and facilities and such percentage as is hereinbefore expressed in this Declaration, as the same may be amended, and to exclusive use and possession of the limited common areas and facilities reserved for the exclusive use of his unit. Ownership of a unit includes the right to exclusive possession, use and enjoyment of that unit, as described in Paragraph 5 hereof, including the right to perform upon, paint, tile, wax, paper or otherwise finish, refinish or decorate the same, except as prohibited by Paragraph 3(H).



A. Regulation by Association.

No person shall use the common areas and facilities or any part thereof in any manner contrary to or not in accordance with such rules and regulations pertaining thereto as from time to time may be adopted by the Association. Without in any manner intending to limit the generality of the foregoing, the Association shall have the right, but not the obligation, to promulgate rules and regulations limiting the use of the common areas and facilities to members of the Association and their respective families, guests, invitees and servants, as well as to provide for the exclusive use by a family unit owner and his guests, for specific occasions, of the recreational areas or other similar facilities. Such use may be conditioned upon, among other things, the payment by the family unit owner of such assessment as may be established by the Association for the purpose of defraying costs thereof.

B. Management, Maintenance, Repairs, Alterations and Improvements.

Except as otherwise provided herein, management, repair, alteration and improvement of the common areas and facilities shall be the responsibility of the Association. The Association may delegate all or any portion of its authority to discharge such responsibility to a manager or managing agent. Such delegation shall be evidenced by a management contract (which shall not exceed one year in duration) which shall provide for reasonable compensation of said manager or managing agent. Upon the expiration of said one-year period, the Association may renew said management contract for an additional one-year period, or, with the approval of members entitled to exercise seventy-five percent of the voting power of the Association, designate a different manager for the property.

C. Use of Common Areas and Facilities.

Subject to the rules and regulations from time to time promulgated by the Association, all owners may use the common areas and facilities in such manner as will not restrict, interfere or impede with the use thereof by the other owners.

10. GENERAL PROVISIONS AS TO UNITS AND COMMON AREAS AND FACILITIES

A. Maintenance of Units.

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1. The Association shall be responsible for the maintenance, repair and replacement of those portions of each unit which contribute to the support of the building, excluding, however, interior wall, ceiling and floor surfaces. In addition, the Association shall maintain, repair, and replace all conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services which may be located within the unit boundaries exclusive of any portions of the foregoing which may be the responsibility of an individual family owner under any other provision of this Declaration. The Association shall further be responsible for the maintenance, repair and replacement of those portions of the concrete driveways servicing the garage area of each individual unit between the interior line of the garage door and the side of the sidewalk and/or curb lying closest to the garage portion of the unit and hereinbefore described as a limited common area for the benefit of the particular unit.

2. By the Unit Owner. The responsibility of each unit owner shall be as follows:

a. To maintain, repair and replace at his expense all portions of his unit, and all internal installations of such family unit such as appliances, heating, plumbing, electrical and air conditioning fixtures or installations, and any portion of any other utility service facilities located within the unit boundaries and installed for the exclusive use of this unit.

b. To maintain and repair the limited common areas appurtenant to his unit including, without limitation, responsibility for all breakage, damage, mal-functions and ordinary wear and tear of such limited common area appurtenant to his unit, except as otherwise provided in this Declaration.

c. To perform his responsibilities in such manner so as not unreasonably to disturb other persons residing within the building.

d. Not to paint or otherwise decorate so as to change the appearance of any portion of the building not within the walls of the unit, unless the written consent of the Association is obtained; provided, however, that the unit owner shall have the right to decorate that portion of the privacy fence (storage area) which

fronts upon the patio which is a limited common facility for such particular unit and adjacent thereto; provided, however, that such rights do not include the right to decorate any of the brick portion thereon.

e. To report promptly to the Association or its agency any defect or need for repairs, the responsibility for the remedying of which is with the Association.

f. Not to make any alterations in the portions of the unit or the building which are to be maintained by the Association or remove any portion thereof or make any additions thereto or do anything which would or might jeopardize or impair the safety or soundness of the building without first obtaining the written consent of the managers of the Association, nor shall any unit owner impair any easement without first obtaining the written consent of the Association and of the owner or owners for whose benefit such easement exists.

g. Nothing herein contained, however, shall be construed so as to impose a contractual liability upon the Association for maintenance, repair and replacement, of the individual units, but the Association's liability shall be limited to damages resulting from its negligence.

**B. REPAIRS TO COMMON AREAS AND FACILITIES NECESSITATED BY UNIT OWNERS ACTS.**

Each owner agrees to maintain, repair and replace at his expense all portions of the common areas and facilities which may be damaged or destroyed by reason of his own or any occupant's act or neglect, or by the act or neglect of any invitees, licensee or guest of such owner or occupant.

**C. CONSTRUCTION DEFECTS.**

The obligation of the association and of owners to repair, maintain and replace the portions of the property for which they are respectively responsible shall not be limited, discharged, or postponed by reason of the fact that any maintenance, repair or replacement may be necessary to cure any latent or patent defects in material or workmanship in the construction of the property.

D. EFFECT OF INSURANCE OR CONSTRUCTION GUARANTEES.

Notwithstanding the fact that the Association and/or any unit owner may be entitled to the benefit of any guarantee of material and workmanship furnished by any construction trade responsible for any construction defects, or to benefits under any policies of insurance providing coverage for loss or damage for which they are respectively responsible, the existence of construction guarantee or insurance coverage shall not excuse any delay by the Association or any unit owner in performing his obligation hereunder.

E. NO SEVERANCE OF OWNERSHIP

No owner shall execute any deed, mortgage, lease or other instrument affecting title to his unit ownership without including therein both his interest in the unit and his corresponding percentage of ownership in the common areas and facilities, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, lease or other instrument purporting to affect the one without including also the other shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein. For purposes of conveyance of title to a purchaser of a unit, description by unit number and reference to this declaration and to the attached drawings shall be adequate to convey the fee simple title thereto together with the percentage interest in and to the common areas and facilities.

F. EASEMENTS

1. Encroachments. In the event that, by reason of the construction, settlement or shifting of the building or by reason of the partial or total destruction and rebuilding of the building, any part of the common areas and facilities presently encroaches or shall hereafter encroach upon any part of a unit, or any part of a unit presently encroaches or shall hereafter encroach upon any part of the common areas and facilities, or if by reason of the design or construction of any unit it shall be necessary or advantageous to an owner to use or occupy, for formal uses and purposes any portion of the common areas and facilities, consisting of unoccupied space within the building and adjoining his unit, or, if by reason of the design or construction of utility systems,

any main pipes, ducts or conduits serving more than one unit presently encroaches or shall hereafter encroach upon any part of any unit, valid easements for the maintenance of such encroachment 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, so long as all or any part of the building containing such unit shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of the ownership of any unit or in favor of the common areas and facilities if such encroachment occurred due to the willful conduct of said owner.

2. Balconies. The owner of each unit which is adjacent to an adjoining balcony shall have for himself, his heirs, and assigns an exclusive easement for his use and enjoyment of such balcony; provided, however, that no unit owner shall decorate, landscape or adorn such balcony in any manner contrary to such rules and regulations as may be established therefor by the Association, unless he shall first obtain the written consent of the Association.

3. Maintenance Easements. The owner of each unit shall be subject to easements for access arising from necessity of maintenance or operation of the entire building; provided, however, that the Association having the right to use such easement for access arising from necessity of maintenance or operation of the entire building shall have the further obligation and the necessary easement therefor to restore the unit after such access to the same condition in which said unit was at the time of such access. The owner of each unit shall have the permanent right and easement to and through the common areas and facilities and walls to the use of water, sewer, power, television antenna, and other utilities now or hereafter existing within the walls, and further shall have an easement to hang pictures, mirrors and the like upon the walls of his family unit.

4. Easements for Certain Utilities. 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 hereby grants the Association an irrevocable power of attorney to execute, acknowledge and record, for and in the name of such unit owner, such instruments as may be necessary to effectuate the foregoing.

5. Easements Through Walls Within Units. Easements are hereby declared and granted to install, lay, maintain, repair and replace any pipes, wires, ducts, conduits, public utility lines or structural components running through the walls of the units, whether or not such walls lie in whole or in part within the unit boundaries. Easements are further granted and declared for purposes of the restoration of said walls within units subsequent to such repair or replacement having been completed for the purpose of restoring said walls to the same condition as existed prior to such repair or other change.

6. Easements to Run with Land. All easements and rights described herein are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any owner, purchaser, mortgagee and other person having an interest in said land, or any part or portion thereof.

7. Reference to Easements in Deeds. Reference in the respective deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Declaration, shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees of such parcels as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such document.

8. Easements During Expansion of Condominium. As set forth in Section 8 above there is reserved herein for the benefit of the Developer, all easements over the Condominium Property for the purpose of development of the Additional Land as hereinbefore described and as more fully set forth in Paragraph 8 referred to above.

9. Easements for the Amenity Land Development. Developer reserves for its benefit in accordance with the provisions of Paragraph 8 above, all necessary easements over the Condominium Property for the purposes of completing the development and construction of the improvements located on the Amenity Land as hereinbefore described.

G. Rights of First Mortgagees.

At any time the holders of first mortgages on at least fifty-one percent of the units subject to this Declaration, shall have the right to require the Association to hire or employ a manager for the Condominium Property at the expense of the Association, which such expense would be a common expense. In this event, or in the event that the Association has a

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manager pursuant to Section 9B, above, the first mortgagees of fifty-one percent of the units shall have the further right to review and approve the terms and condition of such management agreement and to approve the person or entity selected as such manager and any such management agreement either entered into pursuant to Section 9B or pursuant to the demand hereunder by the mortgagees with the Association shall be entered into subject to this condition, which condition can be exercised by the said mortgagees at any time. The Association on request of a first mortgagee of a unit shall deliver a copy of the then current management contract between the Association and any manager of the Condominium Property. The rights granted herein shall be solely for the benefit of the holders of first mortgages on the units located in the within Condominium.

11. INSURANCE

A. Fire and Extended Coverage Insurance.

The Association shall obtain and maintain for the benefit of all owners and mortgagees insurance on all buildings, structures or other improvements now or at any time hereafter constituting a part of the Condominium Property against loss or damage by fire, lightning and such perils as are at the time comprehended within the term "Extended coverage" in an amount not less than one hundred percent (100%) of the replacement value thereof. Such insurance shall be written in the name of, and the proceeds thereof shall be payable to, the Insurance Trustee, as hereinafter defined for each of the unit owners and mortgagees for the purpose set forth in this Declaration in accordance with the percentage ownership in the common areas and facilities set forth in Section 5 herein. Such policy shall provide coverage for built-in or installed fixtures and equipment in an amount not less than one hundred percent (100%) of the replacement value thereof and shall also provide that the insurer shall have no right to contribution from any insurance which may be purchased by any unit owner as hereinafter permitted. Such policy shall further provide that there shall not be more than a maximum of eighty percent co-insurance. Such policy further must provide that no mortgagee shall have any right to apply the proceeds thereof to the reduction of any mortgage debt. Such policy shall further provide that despite any clause that gives the insurer the right to restore damage in lieu of a cash settlement, such right shall not exist in case the Condominium Property is removed from the provisions of Chapter 5311 of the Ohio Revised Code pursuant to the provision of the Declaration.

Such insurance by the Association shall be without prejudice to the right of the owner of a unit to obtain individual contents or chattel property insurance, but no unit owner may at any time purchase an insurance policy which covers any

property which is required to be insured by the Association, and provided, further, that in the event any unit owner does obtain such type of insurance then they shall be responsible or liable to the Association for any and all losses or loss of funds or any damage incurred by the Association by virtue of such coverage and the Association shall have the right to assess the unit owner for any such loss or damage arising out of such overlap of coverage and enforce its liens for such assessment in accordance with the procedures and in the manner hereinafter set forth.

Such policy of insurance shall contain provisions requiring the issuance of certificates of coverage and the issuance of written notice not less than ten days prior to any expiration or cancellation of such coverage to any mortgagee or mortgagees of any unit.

Such policy shall also provide for the release by the issuer thereof of any and all rights of subrogation or assignment and all causes and rights of recovery against any unit owner, member of his family, his tenant, or other occupant of the Condominium Property for recovery against any one of them for any loss occurring to the insured property resulting from any of the perils insured against under such insurance policy.

If the required insurance coverage under this Subsection A of Article 11 ceases to exist for any reason whatsoever, any mortgagee of any portion of the Condominium Property may remedy that lack of insurance by purchasing policies to supply that insurance coverage. The funds so advanced shall be deemed to have been loaned to the Association shall bear interest at a per annum rate equal to the prime rate then being charged as determined by the average of the prime rate charged by national banking institutions located in the City of Dayton, Ohio; and shall be due and payable to the mortgagee by the Association immediately. The repayment of said obligation shall be secured by assessments against all unit owners under Article 17 of this Declaration and shall not require a vote of the members of the Association, anything to the contrary in this Declaration or in the attached By-Laws of the Whippoorwill Glen Condominium Owners Association notwithstanding.

All insurance policies under this Section A and any endorsements thereof shall be deposited with the Insurance Trustee (as hereinafter defined) who must first acknowledge that the policies and any proceeds thereof will be held in accordance with terms hereof. All such policies shall provide that all proceeds payable as a result of casualty losses shall be paid to any bank, as trustee, which is selected by the Association and located in Dayton, Ohio, with trust powers and total assets of more than Fifty Million Dollars (\$50,000,000) (herein referred to as the "Insurance Trustee"). The Insurance Trustee shall not be liable for payment of premiums nor for the renewal of the policies, nor for the form or contents of the policies, nor for the failure to collect any insurance proceeds. The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Grantor, the Association, the unit owners, and their respective mortgagees.



B. Public Liability Insurance.

The Association shall insure itself, the Board of Managers, all unit owners and members of their respective families and other persons residing with them in the Condominium Property, their tenants, and all persons lawfully in possession or control of any part of the Condominium Property, against liability for bodily injury, disease, illness or death and for injury to or destruction of property occurring upon, in or about, or arising from the common areas and facilities, such insurance to afford protection to a limit of not less than Five Hundred Thousand Dollars (\$500,000.00) in respect to bodily injury, disease, illness or death suffered by any one person, and to the limit of not less than One Million Dollars (\$1,000,000.00) in respect to any one occurrence, and to the limit of not less than One Hundred Thousand Dollars (\$100,000.00) in respect to damage to or destruction of property arising out of any one accident.

Such policy shall not insure against liability for personal injury or property damage arising out of or relating to the individual units, and their respective limited common areas.

C. Insurance Premiums. Insurance premiums for the policies referred to in Sections A and B of this article 11, and for such other insurance policies as the Board of Directors of the Association shall determine from time to time to be desirable, shall be a common expense but shall be separately assessed to the unit owners in accordance with a schedule to be provided by the Association.

12. DAMAGE OR DESTRUCTION AND RESTORATION OF BUILDINGS.

A. Sufficient Insurance.

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

The insurance proceeds in the sums deposited with the Insurance Trustee by the Association from collections of special assessments against

family unit owners on account of such casualty, shall constitute a construction fund which shall be disbursed to the Insurance Trustee and be applied by the Insurance Trustee to the payment of the cost of reconstruction and repair of the Condominium Property from time to time as the work progresses, but not more frequently than once in any calendar month. Said Trustee shall make such payments on the written request of the Association, accompanied by a certificate, dated not more than fifteen (15) days prior to such request, signed by a responsible officer of the Association and by an architect in charge of the work, who shall be selected by the Association, setting forth (1) that the sum then requested either has been paid by the Association or is justly due to the contractors, sub-contractors, material men, architect, 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, (2) 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 vendor's, mechanic's, material man's, or similar lien arising from such work, and (3) 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 does not exceed the amount of the construction fund remaining in the hands of the Insurance Trustee after the payment of the sum so requested. It shall be presumed that the first moneys 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 that fund is established, such balance shall be disbursed to the Association.

The Insurance Trustee may rely upon a certificate of the Association certifying as to whether or not the damaged property is to be reconstructed or repaired. The Association, upon request of the Insurance Trustee, shall deliver such certificate as soon as practical.

Each family unit owner shall be deemed to have delegated to the Board of Managers his right to

adjust with insurance companies all losses under the insurance policy referred to in Section A of Article 11 of this Declaration.

B. **Insufficient Insurance.** In the event that subsequent to a casualty causing damage to any portion of the Condominium Property, the detailed estimates of the cost to replace the damaged property in condition as good as that before the casualty as described in the preceding paragraph A indicates that the insurance proceeds are insufficient to cover the estimate of said cost, then the difference between said estimated cost and the insurance proceeds shall be contributed by the Association to the Insurance Trustee. The Association shall obtain such fund by way of a special assessment against all unit owners based on the percentage of ownership of the Condominium Property which each unit owner has. Should any unit owner refuse or fail after reasonable notice to pay his assessment for this purpose, then the amount thereof may be advanced by the Association and the amount so advanced by the Association shall be assessed to such owner and such assessment shall have the same force and effect, and if not paid, may be enforced in the same manner as hereinafter provided for the non-payment of assessments.

C. **Non-Restoration of Damage or Destruction.** In the event of substantial damage to or destruction of fifty percent (50%) or more of the units, the unit owners by the affirmative vote of those entitled to exercise not less than seventy-five (75) percent of the voting power may elect not to repair or restore such damage or destruction. Upon such election, all of the Condominium Property shall be subject to an action for sale as upon partition at the suit of any unit owner. In the event of any such sale or a sale of the Condominium Property after such election by agreement of all unit owners, the net proceeds of the sale together with the net proceeds of insurance, if any, and any other indemnity arising because of such damage or destruction, shall be considered as one fund and shall be distributed to all unit owners in proration 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.

### 13. REHABILITATION AND SUBSEQUENT IMPROVEMENTS

A. **Rehabilitation of Existing Buildings, Structures and Other Improvements.**

The Association may, by the affirmative vote of unit owners, entitled to exercise not less than seventy-five percent (75%) of the voting power, determine that the Condominium Property is obsolete in whole or in part, and elect to have the same renewed and rehabilitated. The Board of Managers of the Association 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 request in a writing served by him on the President of the Association within five (5) days after receiving notice of such vote, to receive the fair market value of his unit from the Association, less the amount of any liens and encumbrances thereon as of the date such vote is taken, in return for a conveyance by him of his unit, subject to such liens and encumbrances, to the President of the Association as trustee for all other unit owners. The Association shall have the option to either accept or reject such request and to determine what it considers to be the fair market value of said unit. In order for the Board of Managers of the Association to exercise this option to purchase such unit, the Board of Managers must act thereon unanimously. In the event that such request is granted by the Association and the unit owner and the Association have agreed on the fair market value of the unit, provided that said fair market value shall not be less than the balance due on the first mortgage, if any, encumbering said unit, then such conveyance on payment of the consideration therefor, if any, which shall be a common expense to the unit owners who have not so requested, shall be made within thirty (30) days thereafter. In the event that the Association does not exercise its option to acquire the unit from the unit owner requesting this privilege as hereinbefore described, then such unit owner shall remain responsible for his share of the cost of such renewal and rehabilitation as a common expense.

14. REMOVAL FROM CONDOMINIUM OWNERSHIP

The unit owners, by unanimous vote may elect to remove the Condominium Property from the provisions of Chapter 5311, Ohio Revised Code. In the event of such election, all liens and encumbrances, except taxes and assessments not then due and payable, upon all or any part of the Condominium Property, shall be paid, released, or discharged, and a certificate setting forth that such election was made shall be filed with the Recorder of Montgomery County, Ohio, and by him recorded. Such certificate shall be signed by the President of the Board of Managers of the Association, who shall certify therein under oath that all liens and encumbrances, except taxes and assessments not then due and payable, upon all or any part of the common areas and facilities have been paid, released, or discharged, and shall also be signed by all of the unit owners, each of whom shall certify therein under oath that all such liens and encumbrances on his unit or units have been paid, released or discharged.

15. AMENDMENT OF DECLARATION AND BY-LAWS

- A. Until such time as all Additional Land and amenity land is included within the Condominium Property, or three (3) years from the date this Declaration is filed for record, whichever occurs first, this Declaration can be amended by the Developer in the manner authorized by Paragraph 8; provided, however, that the Developer reserves the right to amend this Declaration at any time during said three year period during which amendments to add additional property may be made in accordance with the terms of the within Declaration for the purpose of correcting clerical or typographical errors contained in the within Declaration, to make nominal changes herein, or to clarify the developer's original intent herein, provided, however, that no such amendment shall adversely affect any rights of any unit owner unless such unit owner and the first mortgagee of such unit owner shall have consented thereto in writing.
- B. This Declaration and the By-Laws attached hereto as Exhibit "E" may be amended upon the filing for record with the Recorder of Montgomery County, of an instrument in writing setting forth specifically the item or items to be amended and 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 must refer to the Microfiche in which 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 to all mortgagees having bona fide liens of record against any unit ownership. Provided, however, that if any amendment adversely affects the value of any mortgagee of record, the written consent of said mortgagee to that amendment shall be required and any amendment of language specifically referring to mortgagees shall require the written consent of all mortgagees of record. Such consents shall be retained by the Secretary of the Association and his certification in the instrument of an amendment as to the fact of such consents by the mortgagees by name of the various units shall be sufficient for reliance by the general public. Said affidavit by the Secretary of the Association or certification shall further set forth those mortgagees who did not consent to the proposed amendment. If less than all mortgagees consent to an amendment to the Declaration and/or the By-Laws attached hereto as Exhibit E, 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.

Provided, however, that until such time as all Additional Land and Amenity Land is included within the Condominium Property, or three (3) years from the date this Declaration is filed for record, whichever event occurs first, any such amendment herein described must also contain an affidavit that a copy of the amendment has been mailed by certified mail to the Developer; and if any such amendment affects the interest of the Developer or its rights or obligations, then written consent of said Developer shall be required and any amendment or language specifically referring to the Developer shall require the written consent of the Developer. Said written consent of the Developer must be made a part of such amendment in order for said amendment to be valid.

No provision in this Declaration or By-Laws attached hereto as Exhibit E may be changed, modified or rescinded, however, which, after such change, modification or rescission would conflict with the provisions of Chapter 5311, Ohio Revised Code.

A. Abatement and Enjoinment

The violation of any reasonable restriction or condition or regulation adopted by the Board of Managers of the Association or the breach of any covenant or provision contained in this Declaration or in the By-Laws of the Association attached hereto as Exhibit E, shall give the Board of Managers the right, in addition to the rights hereinafter set forth in this Article, (i) to enter upon the land or unit or portion thereof upon which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions of this Declaration and the By-Laws of the Association, and the Board of Managers, or its agents, shall not be thereby deemed guilty in any manner of trespass; or (ii) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach; provided, however, that in the exercise of any of the rights hereinbefore set forth, the Association shall have the obligation to restore any unit in which it enters to the condition existing prior to the time of entry except insofar as it relates to the matter or thing to be removed.

B. Involuntary Sale.

If any owner (either by his own conduct or by the conduct of any other occupant of his unit) shall violate any of the covenants or restrictions or provisions of this Declaration or of the By-Laws of the Association attached hereto as Exhibit E, or the reasonable regulations adopted by the Board of Managers of the Association, and such violation shall continue for thirty days after notice in writing from the Board of Managers, or shall occur repeatedly during any thirty-day period after written notice or request from the Board of Managers to cure such violation, then the Board of Managers shall have the power to issue to the defaulting owner a ten-day notice in writing to terminate the rights of the said defaulting owner to continue as an owner and to continue to occupy, use or control his unit and thereupon an action in equity may be filed by the Board of Managers against the defaulting owner for either a decree of mandatory injunction against the owner or occupant; or, subject to the prior consent in writing of any mortgagee having a security interest in the unit ownership of the defaulting owner, which consent shall not be unreasonably withheld, in the alternative a decree declaring the termination of the defaulting Owner's right to occupy, use or control the unit owned by him on account of the breach of covenant, and ordering that all the right, title and interest of the owner in the property shall be sold (subject to the lien of any existing mortgage) at a judicial sale upon such notice and terms as the court shall establish, except that the court shall enjoin and restrain the defaulting owner from reacquiring his interest at such judicial sale. The proceeds of any such judicial sa

shall first be paid to discharge court costs, master's or commissioner's fees, court reporter charges, reasonable attorney's fees, and all other expenses of the proceeding, and all such items shall be taxed against the defaulting owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder or any liens, may be paid to the Owner. Upon the confirmation of such sale, the purchaser thereat shall thereupon be entitled to a deed to the unit ownership and to immediate possession of the unit sold 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 the interest in the property sold subject to this declaration. The decision by the Board of Managers to proceed with an involuntary sale as hereinbefore described, shall be a unanimous one concurred in by all members of the Board of Managers in writing and made a permanent part of the records of the Association.

17. COMMON EXPENSES AND ASSESSMENTS

A. Common Expenses

Common expenses shall include all expenses required for the maintenance and repair and upkeep of the common areas of the Condominium Property and the administration thereof and for the maintenance and repair of the recreational facilities to be located on the Amenity Land at such time as such Amenity Land is subjected to the Declaration herein in accordance with the provisions herein, and shall further include prior to that time the rental fees to be paid by the Association pursuant to the lease hereinafter described between the Developer and the Association for said Amenity Land, the insurance premiums required to be paid hereunder, the assessments or expenses for repair and restoration of the improvements in the event that the insurance is insufficient to cover the loss thereof from casualty as hereinbefore described, the costs of rehabilitation as hereinbefore described, the costs of a manager, if any, for the association, and any and all other costs related to the operation of the Condominium Property by the Association in accordance with its By-Laws and in accordance with this Declaration together with any other expenses which hereinbefore or hereafter in this Declaration are referred to specifically as a common expense.

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of By-Laws



B. Assessments.

1. General. Assessments for the maintenance and repair of the common areas and for the recreational facilities and for the insurance of the Condominium Property, (all together herein referred to as the "common expenses") together with the payment of the common expenses, shall be made in the manner provided herein, and in the manner provided in the By-Laws.
2. Division of Common Surplus and Common Expenses. The proportionate share of the separate owners of the respective units in the common surplus and the common expenses of the operation of the Condominium Property as well as their proportionate interest in the common areas of the Condominium Property is based upon the proportionate estimated fair values that each of the units bears to the aggregate fair value of all of the units. Such proportionate share of surplus and expenses and proportionate interest in the common areas of each unit owner shall be in accordance with the percentages set forth in the table which is made a part of Section 5 hereof.
3. Late Charges. The Association may impose a charge against any unit owner who fails to pay any amount assessed by the Association against him or his unit within twenty (20) days after the date of such assessment and who fails to exercise his rights under this Declaration or under the laws of the State of Ohio to contest such assessment in an amount of One Dollar (\$1.00) per day for every day after the expiration of such twenty day period.
4. Non-use of Facilities. No owner of a unit may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the common areas and facilities including without limitation, the recreational facilities located on the Amenity Land either during the period of time during which said Amenity Land is leased from the Developer or thereafter when it becomes a part of the Condominium Property, or by the abandonment of his unit.

5. Lien of Association. The Association shall have a lien upon the estate or interest in any unit of the owner thereof and upon his percentage of interest in the common areas for the payment of the portion of the common expenses and late charges as described above chargeable against such unit which remain unpaid for ten days after the same have become due and payable from the time a certificate therefor, subscribed by the President of the Association, is filed with the Recorder of Montgomery County, Ohio, pursuant to authorization given by the Board of Managers of the Association. Such certificate shall contain a description of the unit, the name or names of the record owner or owners thereof and the amount of such unpaid portion of the common expenses. Such lien shall remain valid for a period of five (5) years from the time of filing thereof, unless sooner released or satisfied in the same manner provided by law for the release and satisfaction of mortgages on real property or discharged by the final judgment or order of the court in an action brought to discharge such lien as hereinafter provided. In addition, each unit owner shall be personally liable for all assessments levied by the Association against his unit while he is a unit owner.

6. Priority of Association's Lien. The lien provided for in the preceding section, sub-paragraph 5 of paragraph B of Section 17, shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of bona fide first mortgages which have been filed for record, and may be foreclosed in the same manner as a mortgage on real property in an action brought by the Association. In any such foreclosure action, the owner or owners of the unit affected shall be required to pay a reasonable rental for such unit during the pendency of such action, and the plaintiff in such action is entitled to the appointment of a receiver to collect the same. In any such foreclosure action, the association shall be entitled to become a purchaser at the foreclosure sale.

7. Dispute as to Common Expenses. Any unit owner who believes that the portion of

common expenses chargeable to his unit, for which a certificate of lien has been filed by the Association, has been improperly charged against him or his unit may, if he wishes, in lieu of bringing the action which he is entitled to bring under Section 5311.18 (c) of the Ohio Revised Code, submit the question to arbitration. Such arbitration shall be in accordance with the rules and procedures and the arbitrator shall be selected by the American Arbitration Association. The expenses of such arbitration shall be borne by the losing party or as otherwise directed by the arbitrator in his decision. Any costs required to be advanced to commence the arbitration proceeding shall be advanced by the Association. Any costs to be borne by the unit owner as a result of the decision of the arbitrator shall be an additional assessment against said unit owner.

8. Purchaser at Foreclosure Sale Subject to Declaration, By-Laws, Rules and Regulations of the Association.

Any purchaser of a unit at a foreclosure sale shall automatically become a member of the Association and shall be subject to all of the provisions of this Declaration, the By-Laws and the rules and regulations.

9. Non-Liability of Foreclosure Sale Purchaser for Past Due Common Expenses.

When the mortgagee of a first mortgage of record or other purchaser of a unit acquires title to the unit as a result of foreclosure of the first mortgage or deed in lieu of foreclosure, such acquirer of title, his successors and assigns, shall not be solely liable for the share of the common expenses or other assessments by the Association chargeable to such unit which became due prior to the acquisition of title to such unit by such acquirer. Such unpaid share of common expenses or assessments shall be deemed to be common expenses collectible from all of the units, including that of such acquirer, his successors or assigns.

10. Liability for Assessments upon Voluntary Conveyance

In a voluntary conveyance of a unit, other than a deed in lieu of foreclosure, the grantee of the unit shall be jointly and severally liable with the grantor for all unpaid assessments by the Association against the grantor and his unit for his share of common expenses up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amount paid by the grantee therefor. However, any such grantee or his first mortgagee shall be entitled to a statement from the Board of Managers of the Association setting forth the amount of all unpaid assessments (including current assessments) against the Grantor due the Association, and such grantee or first mortgagee shall not be liable for nor shall the unit conveyed be subject to, a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount set forth in such statement for the period reflected in such statement.

18. MISCELLANEOUS PROVISIONS

- A. Each grantee of the Developer, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights, and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such owner in like manner as though the provisions of the Declaration were recited and stipulated at length in each and every deed of conveyance.
- B. No covenants, restrictions, conditions, obligations, or provisions contained in this Declaration 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.

- C. The invalidity of any covenant, restriction, condition, limitation or any other provisions of this Declaration, or of any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration.
- D. If any of the privileges, covenants or rights created by this declaration shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints of alienation, or (c) any other statutory or common-law rules imposing time limits, then such provision shall continue only until twenty-one years after the death of the survivor of the now living descendants of William A. Rogers, Jr., and Richard G. Snell.
- E. That so long as said Developer, its successors and assigns, owns one or more of the units established and described herein, said Developer, its successors and assigns shall be subject to the provisions of this Declaration and of Exhibits E and F attached hereto; and said Developer covenants to take no action which would adversely affect the rights of the Association with respect to assurances against latent defects in the property or other right assigned to the Association by reason of the establishment of the condominium.
- F. Neither Developer nor its representatives, successors or assigns shall be liable for any claim whatsoever arising out of or by reason of any actions performed pursuant to any authorities granted or delegated to it by or pursuant to this declaration or the By-laws attached hereto as Exhibit E or in Developer's (or its representative's) capacity as developer, contractor, owner, manager or seller of the Condominium Property whether or not such claim (i) shall be asserted by any unit owner, occupant, the Association, or by any person or entity claiming through any of them; or (ii) shall be on account of injury to person or damage to or loss of property wherever located and however caused; or (iii) shall arise ex contractu or (except in the case of gross negligence) ex delictu. Without limiting the generality of the foregoing, the foregoing enumeration includes all claims for, or arising by reason of, the Condominium Property or any part thereof being or becoming out of repair or act or neglect of any unit owner, occupant, the Association, and their respective

agents, employees, guests, and invitees, or by reason of any neighboring property or personal property located on or about the Condominium Property, or by reason of the failure to function or disrepair of any utility services (heat, air conditioning, electricity, gas, water, sewage, etc.).

G. The headings to each article and to each section hereof are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Declaration nor in any way affect this Declaration.

H. The provision 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.

I. Whenever the context so permits or requires, the use of the plural shall include the singular, the use of the singular shall include the plural, and the use of any gender shall be deemed to include all genders.

J. The Developer hereby reserves to itself, its successors or assigns, the right to use the name "Whippoorwill Glen Condominium" associated with or together with an identifying mark or symbol such as "II" or "2" or such other identifying mark so as to distinguish it from the within Whippoorwill Glen Condominium for use in its developments on land other than the within Condominium Property or the Additional Land.

#### 19. AMENITY LAND AND IMPROVEMENTS LEASE

A. As hereinbefore set forth, the Developer is in the process of developing an amenity area located on the Amenity Land as described in Exhibit C including as improvements thereon a swimming pool, a tennis court and a maintenance building. For the period of time prior to the time when the Developer is obligated to amend the within Declaration so as to include thereunder the said Amenity Land as set forth in paragraph 8 above, the Developer agrees to lease to the Association the said Amenity Land and the improvements to be located thereon. A copy of said lease is attached hereto and made a part hereof and labeled Exhibit F. The general terms of said lease shall provide for a term not to exceed two years, an obligation on the Developer to subject the Amenity Land, free and unencumbered, to the Declaration within a period of two years from the date of the filing of the within Declaration, a rental based on Five Dollars (\$5,00) per unit not to commence until the improvements to be located thereon are completed and available for use, an obligation on the Developer to pay its share of the rental to the Association for any units owned by the Developer, an obligation on the Developer to pay any difference in the cost of operation and maintenance not covered by said rental charge, and to pay all real estate taxes until such time as said property is subjected to the within Declaration.

B. Each unit owner hereby agrees by accepting a deed to a unit in the Condominium Property to pay to the Association his pro rata share of the rental charge due hereunder to the Developer from the Association to commence at such time as the improvements described above are completed. This fee shall be separate and apart from any other monthly assessment to be levied by the Association for the benefit of the Condominium Property, but shall still be considered as a common expense for which the Association shall have the right to file a lien against a unit owner for failure to pay the same.

20. Gem City Savings Association (hereinafter referred to as the Mortgagee) is the holder of a certain mortgage deed to the Land (referred to herein as the Mortgaged Premises, described as Exhibit "A" which is attached to the within Declaration), dated the 26th day of September, 1973, and recorded on the 27th day of September, 1973, in Book 2869, page 60, Montgomery County Mortgage Records (hereinafter referred to as the "Mortgage"). It is contemplated that the Mortgagee will consent to the execution and filing for record of this Declaration, thereby subjecting its Mortgage to the provisions of this Declaration, but that its Mortgage will remain in effect as to the Mortgaged Premises, including the Condominium Units referred to in this Declaration, until such time as Condominium Units, or other parts of the Mortgaged Premises, are from time to time specifically released therefrom. For the further protection of the Mortgagee, and in consideration of its anticipated consent to the execution and filing for record of this Declaration, the following shall apply in the event that the Mortgagee becomes the owner of all or any part of the Mortgaged Premises as a result of purchase at foreclosure sale in a foreclosure of the Mortgage or a deed in lieu of foreclosure of the Mortgage.

A. The Mortgagee, at its option, but without any obligation to do so, shall succeed to and have the power to exercise all rights, options, and privileges granted or reserved in this Declaration to the Developer, on such terms and for such period of time as is provided for the Developer.

B. Exercise of any such rights, options or privileges shall not obligate the Mortgagee to subsequent exercise of such rights, options, or privileges, and the failure of the Mortgagee to exercise any such rights, options or privileges shall not constitute a waiver of its right to subsequent exercise of such rights, options or privileges.

C. Neither exercise of any rights, options or privileges of the Developer by the Mortgagee nor any such acquisition of ownership by the Mortgagee of any part of the Mortgaged Premises shall obligate the Mortgagee, or anyone acquiring from the Mortgagee, to perform any affirmative obligations imposed upon the Developer by this declaration or any other instrument referred to herein, and any part of the Mortgaged Premises so acquired shall be free of any such affirmative obligations.

D. In lieu of the provisions of Paragraph 7, or other applicable provisions of this declaration, wherein it is provided that the owner of each unit shall be entitled to exercise one vote, and for such period of time under Paragraph 7 as the Developer has the right to appoint the Board of Managers of the Association, there will be two classes of voting membership, who will consist of, and whose voting rights will be as follows:

1. Class A. Class A members shall be all unit owners with the exception of the Developer, and shall be entitled to one vote for each unit owned.

2. Class B. The sole Class B member shall be the Developer (to whose rights the Mortgagee may have succeeded, as otherwise provided in this paragraph) and it shall be entitled to three votes for each unit owned by it. The Class B membership shall cease and be converted to Class A membership when the total votes outstanding in the Class A membership equal the total votes outstanding in the Class B membership, provided, however, that if this declaration is amended to annex the Additional Land, as herein contemplated, the Developer's votes shall be increased to reflect the actual number of units owned after such annexation.

E. The Developer will execute, acknowledge and deliver to the Mortgagee and others all instruments necessary to carry out the purposes and intent of this paragraph 20, and, in furtherance thereof, the Developer hereby irrevocably appoints the Mortgagee its attorney in fact to execute on behalf, and in the name, of, the Developer, any and all such instruments.

F. In the event of any inconsistency between this paragraph 20 and any other provision of this Declaration, the By-Laws, or any other instruments which are exhibits hereto, the provisions of this paragraph will govern.

IN WITNESS WHEREOF the Developer, Oak Creek South, Inc., has caused this Declaration to be subscribed by John G. Black, its Executive Vice President, and by Stanley S. Swango, III, its Secretary, as of the day and year first above stated.

Signed and acknowledged  
in the presence of:

William A. Rogers

James D. ...

TRANSFERRED  
AL. OSWALD  
COUNTY AUDITOR

OAK CREEK SOUTH, INC.

By John G. Black  
John G. Black, Its  
Executive Vice President

By Stanley S. Swango, III  
Stanley S. Swango, III,  
its Secretary

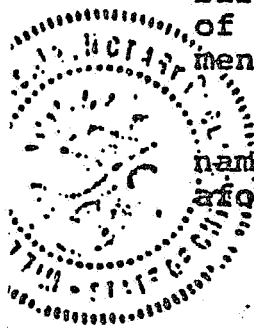
DEVELOPER



STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

BE IT REMEMBERED, that on this 22<sup>nd</sup> day of October, 1974, before me, the subscriber, a Notary Public in and for said County, personally came the above named Oak Creek South, Inc., an Ohio corporation, by John G. Black, its Executive Vice President, and Stanley S. Swango, III, its Secretary, each of whom, being first sworn, acknowledged the signing of the foregoing Declaration to be his free and voluntary act and deed as authorized by the Board of Directors of said corporation, for and as the act and deed of said corporation, and for the uses and purposes therein mentioned.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name, and affixed my official seal on the day and year last aforesaid.

  
*William A. Rogers, II*  
Notary Public  
William A. Rogers, II.,  
Attorney at Law  
Notary Public-State of Ohio  
Lifetime Commission - Section  
147.03 O.R.C.

NOV 6 1974  
TRANSFERRED  
AL. OSWALD  
COUNTY AUDITOR

547D08

CONSENT OF MORTGAGEE

The undersigned, Gem City Savings Association, the holder of a certain mortgage deed to the premises from Oak Creek South, Inc., an Ohio corporation, dated the 21st day of September, 1973, and recorded in the Mortgage Records of Montgomery County, Ohio, hereby consents to the execution and delivery of the foregoing Declaration of Condominium Ownership with Exhibits thereto and to the filing thereof in the office of the County Recorder of Montgomery County, Ohio, and further subjects the above described mortgage to the provisions of the foregoing Declaration of Condominium Ownership together with attached exhibits.

IN WITNESS WHEREOF, Gem City Savings Association, by its duly authorized officers, has caused the execution of the aforesaid consent this 4th day of November, 1974.

Signed and Acknowledged  
in the Presence of:

Robert E. Ficus  
Jay Michael Fox

GEM CITY SAVINGS ASSOCIATION

By Warren R. Ross  
WARREN R. ROSS, PRESIDENT

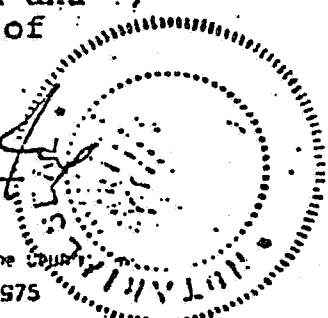
By James D. Ardery  
JAMES D. ARDERY, SECRETARY

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

Before me, a Notary Public in and for said County and State, personally appeared WARREN R. ROSS and JAMES D. ARDERY, known to me to be PRESIDENT and SECRETARY, respectively of Gem City Savings Association, who acknowledged that they did execute the aforesaid Consent of Mortgagee and that such execution was their free act and deed individually and as such officers of Gem City Savings Association and the free act and deed of said Gem City Savings Association.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at Dayton, Ohio, this 4th day of November, 1974.

Jay Michael Fox  
Notary Public  
JAY MICHAEL FOX, Notary Public  
in and for Montgomery, Hamilton & Greene Counties  
My Commission Expires July 5, 1975



This Instrument Prepared by:

William A. Rogers, Jr.  
Iddings, Jeffrey & Donnelly  
2260 Winters Bank Tower  
Dayton, Ohio 45402

TRANSFERRED  
AL. OSWALD  
COUNTY AUDITOR

-74 547D09 -

MARK

REMOVED FROM MOUNTAIN  
BY 3:00 P.M.  
31 MAY 90

51,36  
CHANGES FROM 31 UNITS  
TO 32 UNITS

#1  
AMENDMENT TO DECLARATION OF CONDOMINIUM OWNERSHIP OF THE  
WHIPPOORWILL GLEN CONDOMINIUM BY OAK CREEK SOUTH, INC.

Amendment made to the Declaration of Condominium this  
10th day of December, 1975, by Oak Creek South, Inc.,  
hereinafter referred to as the "Developer",

WITNESSETH:

WHEREAS, the Declaration of Condominium Ownership for  
Whippoorwill Glen Condominium was filed for record with  
the Montgomery County Recorder on November 6, 1974 and recorded  
in Microfiche 74 547A01 through Microfiche 74 548E01 (the  
plan and map of which are recorded at Plat Book 98, Pages  
1, 1A and 1B); and

WHEREAS, Developer in Section 8 of said Declaration  
of Condominium Ownership reserves the right under said Declar-  
ation to amend said Declaration from time to time, for a  
period of three (3) years from the date said Declaration  
was filed for record and thereby add all or a portion of  
certain land described therein as "Additional Land" and  
more specifically described on Exhibit "B" which is attached  
to said Declaration of Condominium Ownership, and to construct  
thereon improvements and further to add and include with  
the Condominium Property the "Amenity Land" as described  
in said Declaration and as more specifically described on  
Exhibit "C" which is attached to said Declaration, and further  
reservest to itself the right to change the percentage of  
interest of each unit owner in the common areas and facilities;  
and

WHEREAS, the Grantees of twelve (12) units heretofore  
conveyed by Developer, namely John E. Dorn and Melita D.  
Dorn, Unit A-1; James F. Grimshaw, Unit A-2; George L. Bunnell  
and Mildred L. Bunnell, Unit 8-4; Judson A. Hess, Unit D-  
2; Wayne D. Norris and Carolyn A. Norris, Unit C-2; James  
R. George and Kay L. George, Unit C-5; Gerald W. Oller and  
Jeanette A. Oller, Unit C-6; Raymond V. Meyer and Pauline  
Meyer, Unit F-5; John C. Barton and Patricia H. Barton,  
Unit G-2; Floyd Soule and Nancy Soule, Unit H-1; Lewis O.  
Frederick and Eleanor J. Frederick, Unit H-5; and Donald  
L. Gable and Patricia Gable, Unit D-1, by accepting deeds  
in which the developer retained the right to add units on  
the "Additional Land" and to add the "Amenity Land" to the  
Condominium Property and to change the percentage of interest  
in the common areas and facilities of the units, have therefore  
consented to this amendment; and

JOE D. PEGG  
RECORDER

DEC 23 11 44 AM '75

DEC 23 11 44 AM '75  
MONTGOMERY CO. OHIO  
RECORDED # 59 31

REC'D  
COUNTY RECORDER  
ROBERT J. GARDNER

For Plat map see Plat Book 99 page 70, 70A, 70B

U U U U U

WHEREAS, the said same named persons as set forth in the preceding paragraph, being persons to whom units have heretofore been conveyed by the Developer, have also given to the Developer their respective irrevocable powers of attorney, which are in full force and effect, therein authorizing the Developer to act as their attorney-in-fact, for the purpose of amending the Declaration by adding units and the "Additional Land" or part thereof, upon which they are constructed, and also by adding the "Amenity Land" to the Condominium Property, and by changing each unit owner's percentage of interest in the common areas and facilities; and

WHEREAS, the Developer, as the attorney-in-fact for the owners of the twelve (12) units named above, and as the owner of the remaining nineteen (19) of the thirty-one (31) residential units forming a part of the Condominium Property, desires to add one (1) unit to the Condominium Property to be located on .555 acres of land, said area of .555 acres being a part of the "Additional Land" described on Exhibit "B" of said Declaration and further desires to add the "Amenity Land" as described on Exhibit "C" of said Declaration, to the Condominium Property, and further desires to change the percentage interest of the unit owners in the common areas and facilities;

NOW, THEREFORE, the Developer, for the purpose of adding one unit constructed on .555 acres adjacent to the land described in said Declaration on Exhibit "A" thereof, said acreage being a part of the "Additional Land" as described on Exhibit "B" thereof, and for the further purpose of adding the "Amenity Land" as described on Exhibit "C" thereof, to the Condominium Property hereby amends said Declaration in the following respects:

1. The number "thirty-one (31)" contained in the first "Whereas" clause on Page 1 (Microfiche 74 547A05) is hereby changed to "thirty-two (32)".
2. The figure "4.347" contained in the first "Whereas" clause on Page 1 (Microfiche 74 547A05) is hereby changed to "5.425".
3. The figure "4.846" contained in the second "Whereas" clause, on Page 1 (Microfiche 74 547A05) is hereby changed to "4.291".
4. Add the following phrase to the end of the third "Whereas" clause on Page 1 (Microfiche 74 547A05):  
"said Amenity Land is included in the description of 'land' contained in the first paragraph above; and".
5. The number "thirty-three (33)" contained in the fourth "Whereas" clause on Page 1 (Microfiche 74 547A05) is hereby changed to "thirty-two (32)".

6. Paragraph 1 (A) on Pages 1 and 2 (Microfiche 74 547A05 and Microfiche 74 547A06) is hereby deleted and the following is substituted therefore:

"The land containing 5.425 acres, more or less, is located in Section Thirty-six (36), Town 3, Range 5 M.R.S., Washington Township, Montgomery County, Ohio, and being Lot No. 436 in Oak Creek South, Section 9, as recorded in Plat Book 94, Page 22, of the Plat Records of Montgomery County, Ohio, together with part lot No. 437 in Oak Creek South, Section 10, as recorded in Plat Book 95, Page 29, of the Plat Records of Montgomery County, Ohio, together with an additional tract of land containing .523 acres, all of which are more particularly described on Exhibit "A" which is attached hereto and made a part hereof."

7. Exhibit "A" to the Declaration (Microfiche 74 547D10) is hereby deleted, and Exhibit "A" of this amendment is substituted therefore.

8. Paragraph 1 (B) is hereby deleted and the following substituted therefore:

"The Additional Land, containing 4.291 acres, more or less, a part or all of which may hereafter be submitted under this Declaration and become a part of the Condominium Property, is located in Section 36, Town 3, Range 5, M.R.S., Washington Township, Montgomery County, State of Ohio, and more particularly described on Exhibit "B" which is attached hereto and made a part hereof."

9. Exhibit "B" to the Declaration is hereby amended by excepting from said legal description of the additional land the .555 acres therefrom which is described in Exhibit "B" which is attached hereto.

10. The first sentence of the first paragraph of Paragraph 4 of the Declaration on Page 5 (74 547A09) is deleted and the following substituted therefore:

"There are nine (9) buildings containing the living areas together with basements (except for the one-story units) of the thirty-two (32) units which are a part of the Condominium Property."

11. The following sentence is added to the end of the first paragraph of Paragraph No. 4 on Page 5 (74 547A09):

"Building I contains one unit only."

12. The following sentence is inserted after the second sentence of the second paragraph of Paragraph No. 4 of the Declaration on Page 5 (74 547A09):

"Building I is a single story unit in height above the ground."

13. The following paragraph shall be added at the end of the paragraph which ends on Page 8 of the Declaration (74 547A12):

"The unit contained in Building I is graphically represented by Exhibit D-32 which is attached to this amendment. The only unit contained in Building I is assigned the number of I-1. Building I is located at the south edge of the Condominium Property facing on Painewood Place and east of the swimming pool and maintenance building.

14. Page 8-A (Microfiche 74 547B01) of the Declaration containing a schedule is hereby deleted and the following page in the within amendment described as the same page (8-A) attached hereto is substituted therefore;

15. The last sentence of Paragraph 6(A) on Page 9 (74 547B02) is hereby deleted and the following substituted therefore:

"In addition, the common area includes the land formerly described as "Amenity Land" and the facilities thereon including the swimming pool, tennis court and maintenance building, located thereon, and all other improvements located thereon, the location of which on the Condominium Property is set forth on Exhibit "G" which is attached to the within amendment."

16. The fourth paragraph of Section No. 8 on Page 12 of the Declaration (74 547B05) is deleted and the following substituted therefore:

"Developer further covenants that the maximum amount of land which will be added to the Condominium Property shall be 4,291 acres and further covenants that the maximum number of residential units to be constructed on such additional land shall be thirty-two (32)."

17. The foregoing amendment shall be effective as of the time it is delivered to the recorder for record.

IN WITNESS WHEREOF, the Developer, Oak Creek South, Inc. has caused this amendment to the Declaration to be subscribed by John G. Black, its Executive Vice President, and Stanley S. Swango, III, its Secretary, as of the day and year first above stated.

Signed and acknowledged in the presence of:

OAK CREEK SOUTH, INC.

William A. Raper

By John G. Black  
John G. Black, its Executive Vice President

Betty H. Birdseye

By Stanley S. Swango, III  
Stanley S. Swango, III, its Secretary

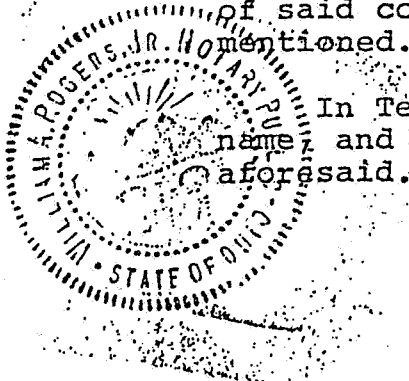
Developer

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

Be it Remembered that on this 10<sup>th</sup> day of December, 1975, before me, the Subscriber, a Notary Public in and for said County, personally came the above named Oak Creek South, Inc., an Ohio corporation, by John G. Black, its Executive Vice President, and Stanley S. Swango, III, its

Secretary, each of whom, being first sworn, acknowledged the signing of the foregoing declaration to be his free and voluntary act and deed as authorized by the Board of Directors of said corporation, for and as the act and deed of said corporation, and for the uses and purposes therein mentioned.

In Testimony Whereof, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.



*William A. Rogers, Jr.*  
Notary Public

William A. Rogers, Jr.,  
Attorney at Law  
Notary Public - State of Ohio  
Lifetime Commission - Section 147.03  
Ohio Revised Code



CONSENT OF MORTGAGEE

The undersigned, Gem City Savings Association, the holder of a certain mortgage deed to the premises from Oak Creek South, Inc., an Ohio corporation, dated the 21st day of September, 1973, and recorded in the Mortgage Records of Montgomery County, Ohio, hereby consents to the execution and delivery of the foregoing amendment to the Declaration of Condominium Ownership with Exhibits thereto and to the filing thereof in the office of the County Recorder of Montgomery County, Ohio, and further subjects the above described mortgage to the provisions of the foregoing amendment to the Declaration of Condominium Ownership together with the attached Exhibits.

In Witness Whereof, Gem City Savings Association, by its duly authorized officers, has caused the execution of the aforesaid consent this 11th day of December, 1975.

Signed and acknowledged in the Presence of:

GEM CITY SAVINGS ASSOCIATION

Oliver E. Lewis

By Warren R. Ross  
WARREN R. ROSS, its President

Thomas H. Gray

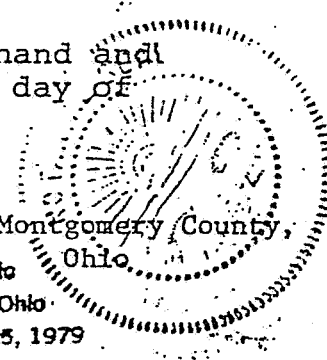
By H. E. Dohse  
H. E. DOHSE, its Vice President

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

Before me, a notary public in and for said county and state, personally appeared WARREN R. ROSS and H. E. DOHSE, known to me to be PRESIDENT and VICE PRESIDENT, respectively of Gem City Savings Association, who acknowledged that they did execute the said consent of mortgagee and that said execution was their free act and deed individually and as such officers of Gem City Savings Association and the free act and deed of said Gem City Savings Association.

In Testimony Whereof, I have hereunto set my hand and affixed my official seal at Dayton, Ohio, this 11th day of December, 1975.

Thomas H. Gray  
Notary Public in and for Montgomery County, Ohio.  
THOMAS H. GRAY, Notary Public  
In and for Montgomery County, Ohio  
My Commission Expires March 25, 1979



This Instrument Prepared by:  
William A. Rogers, Jr.  
Attorney at Law  
2260 Winters Bank Tower  
Dayton, Ohio 45402

CONSULTING ENGINEERS AND PLANNERS  
2324 STANLEY AVENUE  
DAYTON, OHIO 45404

CIVIL ENGINEERS  
SANITARY ENGINEERS  
CITY PLANNERS  
REGIONAL PLANNERS  
PHOTOGRAMMETRISTS  
LAND PLANNERS

813/461-8800

RALPH L. WOOLPERT (1916-1970)  
A.M. FRIEND (1938-1960)

PARCEL #1 of Exhibit "A" of  
December 10, 1975 Amendment  
to Declaration of Condominium

ES H. BLACK  
IS ADRAHOVITZ  
E. ESCHLIMAN  
PHILLIP H. SCHAEFFER  
ROBERT F. ARCHDEACON  
ROBERT L. BARNETT  
DALE L. FLAHERTY  
MARK LAWNER

June 25, 1974

Description of Lot No. 436  
Oak Creek South, Section Nine

DONALD E. ERNST  
JAMES A. HERMAN  
WALLACE E. SMITH  
HERBERT W. STARICK  
(CONSULTANT)

Located in Section 36, Town 3, Range 5 M.R.S., Washington Township, Montgomery County, State of Ohio and being Lot No. 436 in Oak Creek South, Section Nine as recorded in Book 94, Page 22 in the Plat Records of Montgomery County, Ohio, described as follows: beginning on the west line of Paragon Road at the southeast corner of said Lot No. 436, said corner being also the northeast corner of Lot No. 437 in Oak Creek South, Section Ten as recorded in Book 95, Page 29 in the Plat Records of Montgomery County, Ohio; thence with the south line of said Lot No. 436 and the north line of said Lot No. 437 for the following five courses: North sixty-five degrees thirty minutes forty seconds (65° 30' 40") West for two hundred eighty-three and 48/100 (283.48) feet; thence North twenty-four degrees twenty-nine minutes twenty seconds (24° 29' 20") East for one hundred forty-four and 00/100 (144.00) feet; thence North sixty-five degrees thirty minutes forty seconds (65° 30' 40") West for ninety and 00/100 (90.00) feet; thence North twenty-four degrees twenty-nine minutes twenty seconds (24° 29' 20") East for sixty-one and 00/100 (61.00) feet; thence North sixty-five degrees thirty minutes forty seconds (65° 30' 40") West for one hundred seven and 00/100 (107.00) feet to the southwest corner of said Lot No. 436, the northwest corner of said Lot No. 437, and a point on the east line of Oak Creek South, Section Four as recorded in Book 94, Page 11 in the Plat Records of Montgomery County, Ohio; thence with the east line of said Oak Creek South, Section Four and the west line of said Lot No. 436, North twenty-four degrees twenty-nine minutes twenty seconds (24° 29' 20") East for two hundred sixty and 00/100 (260.00) feet to a point on the south line of Oak Creek South, Section Three as recorded in Book 91, Pages 83 and 84 in the Plat Records of Montgomery County, Ohio and the northwest corner of said Lot No. 436; thence with the north line of said Lot No. 436 and the south line of said Oak Creek South, Section Three, South sixty-nine degrees fifty minutes fourteen seconds (69° 50' 14") East for twenty-three and 47/100 (23.47) feet; thence continuing with the north line of said Lot No. 436 and the south line of said Oak Creek South, Section Three, South sixty-five degrees thirty minutes forty seconds (65° 30' 40") East for four hundred fifty-seven and 08/100 (457.08) feet to the northeast corner of said Lot No. 436 and the west line of Paragon Road; thence with the west line of Paragon Road and the east line of said Lot No. 436, South twenty-four degrees twenty-nine minutes twenty seconds (24° 29' 20") West for four hundred sixty-six and 77/100 (466.77) feet to the point of beginning, containing four and 347/1000 (4.347) acres, more or less, subject however, to all easements of record.

PRG:wn-#9322

BRANCH OFFICE: 640 NORTHLAND ROAD, CINCINNATI, OHIO 45240

RALPH L. WOOLPERT COMPANY

CONSULTING ENGINEERS, PLANNERS AND PHOTOGRAMMETRISTS

2324 STANLEY AVENUE

DAYTON, OHIO 45404

513/461-5660

JAMES H. BOGGS  
WILLIAM L. DENLINGER  
MICHAEL J. FOLEY  
FRANCIS K. LEIGHTY  
WILLIAM R. LOVE, JR.  
ROY B. McQUILLAN  
ROBERT J. MAXMAN  
EDWIN L. POLLARD  
ELLIS O. WEST  
FRANKLIN K. WRIGHT III

RALPH L. WOOLPERT (1916-1970)  
C. H. BLACK  
CHAS. ABRAMOVITZ  
JOHN E. ESCHLIMAN  
PHILLIP N. SCHAEFFER  
ROBERT F. ARCHDEACON  
ROBERT L. BARNETT  
MARK LAWNER  
DALE L. FLAHERTY  
JAMES A. HERMAN  
DONALD E. ERNST  
WALLACE E. SMITH  
GEORGE E. REINKE  
HERBERT W. STARICK  
(CONSULTANT)

November 28, 1975

PARCEL #2 of Exhibit "A" of December 10,  
1975 Amendment to Declaration of Condominium

Description of  
Whippoorwill Glen Condominium  
Section Two, Excluding the Area  
Designated for the Oak Creek South Community Center

Located in Section 36, Town 3, Range 5, M.R.S., Washington Township, Montgomery County, State of Ohio, and being part of lot number 437 of Oak Creek South, Section 10, as recorded in Book 95, Page 29, in the plat records of Montgomery County, Ohio, and more particularly described as follows: beginning at a point on the North line of said Lot No. 437 and the South line of Whippoorwill Glen, Condominiums, as recorded in Book 98, Page 1, in the plat records of Montgomery County, Ohio; said point being located North sixty-five degrees thirty minutes forty seconds (65 30' 40") West, a distance of seventy-seven and 8/100 (77.48) feet from the northeast corner of said Lot No. 437 and the southeast corner of said Whippoorwill Glen Condominiums, and the West line of Paragon Road; thence leaving the South line of said Whippoorwill Glen Condominiums, South twenty-four degrees twenty-nine minutes twenty seconds (24 29' 20") West for twenty-five and no/100 (25.00) feet; thence North sixty-five degrees thirty minutes forty seconds (65 30' 40") West for two hundred six and no/100 (206.00) feet; thence North eighty-five degrees thirty-eight minutes fifty seconds (85 38' 50") West for thirty-one and 95/100 (31.95) feet; thence North sixty-five degrees thirty minutes forty seconds (65 30' 40") West for one hundred sixty-seven and no/100 (167.00) feet to the West line of said Lot No. 437 and the East line of Lot No. 198 of Oak Creek South, Section 4, as recorded in Book 94, Page 11, in the plat records of Montgomery County, Ohio; thence with the West line of said Lot No. 437, and the East line of said Lot No. 198, North twenty-four degrees twenty-nine minutes twenty seconds (24 29' 20") East for twenty-eight and no/100 (28.00) feet to the Southwest corner of the parcel of land designated as the Oak Creek South Community Center; thence with the South line of the Oak Creek South Community Center parcel, South sixty-five degrees thirty minutes forty seconds

-75 603A10-

65 30' 40") East for one hundred seven and no/100 (107.00) feet  
the Southeast corner of the Oak Creek South Community Center parcel;  
thence with the East line of the Oak Creek South Community Center  
parcel, North twenty-four degrees twenty-nine minutes twenty seconds  
(24 29' 20") East for one hundred fifty-two and no/100 (152.00) feet  
to the South line of said Whippoorwill Glen Condominiums and the North  
line of said Lot No. 437; thence in an easterly direction with the  
South line of said Whippoorwill Glen Condominiums and the North line  
of said Lot No. 437, South sixty-five degrees thirty minutes forty  
seconds (65 30' 40") East for ninety and no/100 (90.00) feet; thence  
in a southerly direction with the South line of said Whippoorwill Glen  
Condominiums and the North line of said Lot No. 437, South twenty-four  
degrees twenty-nine minutes twenty seconds (24 29' 20") West for  
one hundred forty-four and no/100 (144.00) feet; thence in an easterly  
direction with the South line of said Whippoorwill Glen Condominiums  
and the North line of said Lot No. 437, South sixty-five degrees  
thirty minutes forty seconds (65 30' 40") East for two hundred six  
and no/100 (206.00) feet to the point of beginning containing no and  
555/1000 (0.555) acres, more or less, subject however, to all easements  
of record.

#10081

CONSULTING ENGINEERS  
2324 STANLEY AVENUE  
DAYTON, OHIO 45404

CIVIL ENGINEERS  
SANITARY ENGINEERS  
CITY PLANNERS  
REGIONAL PLANNERS  
PHOTOGRAMMETRISTS  
LAND PLANNERS  
813/461-8000

ALPH L. WOOLPERT (1918-1970)  
-M. FRIEND (1938-1999)

HARLES M. BLACK  
HARRIS BRAHOVITZ  
O'DONOHUE  
HILL CHACOFFER  
OBERG ARCHDEACON  
ROBERT L. BARNETT  
ALEX L. FLAHERTY  
ARR. LAWYER

RONALD E. ERNST  
JAMES A. HERMAN  
ALLACE E. SMITH  
ROBERT W. STARICK  
(CONSULTANT)

PARCEL #3 of Exhibit "A" of  
December 10, 1975 Amendment to  
Declaration of Condominium

June 25, 1974  
July 11, 1974

Revised  
Description of Part of Lot No. 437  
Oak Creek South, Section Ten  
to be Used for Community Center

Located in Section 36, Town 3, Range 5 M.R.S., Washington Township, Montgomery County, State of Ohio and being part of Lot No. 437 in Oak Creek South, Section Ten as recorded in Book 95, Page 29 in the Plat Records of Montgomery County, Ohio, and more particularly described as follows: beginning at the southwest corner of Lot No. 436 in Oak Creek South, Section Nine as recorded in Book 94, Page 22 in the Plat Records of Montgomery County, Ohio, said corner also being the northwest corner of said Lot No. 437, said corner also being in the east line of Oak Creek South, Section Four as recorded in Book 94, Page 11 in the Plat Records of Montgomery County, Ohio; thence with the south line of said Lot No. 436 and the north line of said Lot No. 437, South sixty-five degrees thirty minutes forty seconds (65° 30' 40") East for one hundred seven and 00/100 (107.00) feet; thence continuing with the south line of said Lot No. 436 and the north line of said Lot No. 437 and its southwardly extension, South twenty-four degrees twenty minutes twenty seconds (24° 29' 20") West for two hundred thirteen and 00/100 (213.00) feet; thence North sixty-five degrees thirty minutes forty seconds (65° 30' 40") West for one hundred seven and 00/100 (107.00) feet to a point on the east line of said Oak Creek South, Section Four and the west line of said Lot No. 437; thence with the east line of said Oak Creek South, Section Four and the west line of said Lot No. 437, North twenty-four degrees twenty-nine minutes twenty seconds (24° 29' 20") East for two hundred thirteen and 00/100 (213.00) feet to the point of beginning, containing no and 523/1000 (0.523) acres, more or less, subject, however, to all easements of record.

-75 603A12-

G:wn-#9322

RALPH L. WOOLPERT COMPANY

CONSULTING ENGINEERS, PLANNERS AND PHOTOGRAMMETRISTS

2324 STANLEY AVENUE

DAYTON, OHIO 45404

513/461-5660

JAMES H. BOGGS  
WILLIAM L. DENLINGER  
MICHAEL J. FOLEY  
FRANCIS X. LEIGHTY  
WILLIAM R. LOVE, JR.  
ROY B. MCQUILLAN  
ROBERT J. MAXMAN  
EDWIN L. POLLARD  
ELLIS G. WEST  
FRANKLIN K. WRIGHT III

RALPH L. WOOLPERT (1910-1970)  
CHARLES BLACK  
CHARLES BRANOVITZ  
JOHN E. ESCHLIMAN  
WILLIAM N. SCHAEFFER  
ROBERT F. ARCHDEACON  
ROBERT L. BARNETT  
MARK LAWNER  
ALEX L. FLAHERTY  
AMES A. HERMAN  
DONALD E. ERNST  
WALLACE E. SMITH  
GEORGE E. REINKE  
ROBERT W. STARICK  
(CONSULTANT)

November 28, 1975

Exhibit "B" to December 10, 1975 Amendment  
to Declaration of Condominium

Description of

Whippoorwill Glen Condominium

Section Two, Excluding the Area

Designated for the Oak Creek South Community Center

located in Section 36, Town 3, Range 5, M.R.S., Washington Township,  
Montgomery County, State of Ohio, and being part of lot number 437  
of Oak Creek South, Section 10, as recorded in Book 95, Page 29, in  
the plat records of Montgomery County, Ohio, and more particularly  
described as follows: beginning at a point on the North line of said  
lot No. 437 and the South line of Whippoorwill Glen, Condominiums,  
as recorded in Book 98, Page 1, in the plat records of Montgomery  
County, Ohio; said point being located North sixty-five degrees thirty  
minutes forty seconds (65 30' 40") West, a distance of seventy-seven  
and 48/100 (77.48) feet from the northeast corner of said Lot No.  
437 and the southeast corner of said Whippoorwill Glen Condominiums,  
and the West line of Paragon Road; thence leaving the South line of  
said Whippoorwill Glen Condominiums, South twenty-four degrees twenty-  
nine minutes twenty seconds (24 29' 20") West for twenty-five and  
0/100 (25.00) feet; thence North sixty-five degrees thirty minutes  
forty seconds (65 30' 40") West for two hundred six and no/100 (206.00)  
feet; thence North eighty-five degrees thirty-eight minutes fifty  
seconds (85 38' 50") West for thirty-one and 95/100 (31.95) feet;  
thence North sixty-five degrees thirty minutes forty seconds (65  
30' 40") West for one hundred sixty-seven and no/100 (167.00) feet  
to the West line of said Lot No. 437 and the East line of Lot No.  
198 of Oak Creek South, Section 4, as recorded in Book 94, Page 11,  
in the plat records of Montgomery County, Ohio; thence with the West  
line of said Lot No. 437, and the East line of said Lot No. 198, North  
twenty-four degrees twenty-nine minutes twenty seconds (24 29' 20")  
West for twenty-eight and no/100 (28.00) feet to the Southwest corner  
of the parcel of land designated as the Oak Creek South Community  
Center; thence with the South line of the Oak Creek South Community  
Center parcel, South sixty-five degrees thirty minutes forty seconds

-25 603B01-

30' 40") East for one hundred seven and no/100 (107.00) feet  
thence with the East line of the Oak Creek South Community Center parcel;  
thence with the East line of the Oak Creek South Community Center  
parcel, North twenty-four degrees twenty-nine minutes twenty seconds  
(24 29' 20") East for one hundred fifty-two and no/100 (152.00) feet  
to the South line of said Whippoorwill Glen Condominiums and the North  
line of said Lot No. 437; thence in an easterly direction with the  
South line of said Whippoorwill Glen Condominiums and the North line  
of said Lot No. 437, South sixty-five degrees thirty minutes forty  
seconds (65 30' 40") East for ninety and no/100 (90.00) feet; thence  
in a southerly direction with the South line of said Whippoorwill Glen  
Condominiums and the North line of said Lot No. 437, South twenty-four  
degrees twenty-nine minutes twenty seconds (24 29' 20") West for  
one hundred forty-four and no/100 (144.00) feet; thence in an easterly  
direction with the South line of said Whippoorwill Glen Condominiums  
and the North line of said Lot No. 437, South sixty-five degrees  
thirty minutes forty seconds (65 30' 40") East for two hundred six  
and no/100 (206.00) feet to the point of beginning containing no and  
555/1000 (0.555) acres, more or less, subject however, to all easements  
of record.

#10081

DEC 23 75

THOMAS L. HODGNER  
COUNTY AUDITOR  
ROBERT L. HODGNER

-75 603R02-

0022317



#4  
AMENDMENT OF THE DECLARATION OF CONDOMINIUM OWNERSHIP  
OF WHIPPOORWILL GLEN CONDOMINIUM

93 OCT 14 PM 2:27

This amendment to the Declaration of Condominium Ownership of Whippoorwill Glen Condominium is made this 7th day of July, 1993 by Whippoorwill Glen Condominium Owner's Association, Inc., for the purpose of amending certain Articles contained in said document which is filed for record in Microfiche Numbers 74-547A01 through 74-548E01 (the plan and map of which are recorded at Plat Book 98, Pages 1, 1A and 1B) and in Microfiche Numbers 75-603A01 through 75-603B02 (the plan and map of which are recorded at Plat Bood 99, Pages 70, 70A and 70B) of the Deed Records of Montgomery County, Ohio.

WITNESSETH

THAT WHEREAS, Section 15(B) of the original Declaration contemplates amendments to the Declaration by the unit owners entitled to exercise at least seventy-five percent (75%) of the voting power of the Association; and,

WHEREAS, not less than seventy-five percent (75%) of those unit owners entitled to voting power of the Association have duly signed this Amendment; and,

WHEREAS, the President of the Owner's Association of Whippoorwill Glen has attached hereto her Affidavit that a copy of the within Amendments has been mailed by certified mail to all mortgagees having bona fide liens of record against any unit ownership; and,

WHEREAS, an attorney on behalf of the Association has attached hereto his Affidavit that a copy of the within Amendments has been mailed by certified mail to all mortgagees having bona fide liens of record against any unit ownership.

NOW THEREFORE, this Amendment of the Declaration of Condominium Ownership is hereby made as follows:

1. Section 10, Paragraph A, Subparagraphs 1 and 2 at pages 15, 16, and 17 of the Declaration, recorded in Deed Record 74-547A07 be and hereby are amended to read as follows:

10. GENERAL PROVISIONS AS TO UNITS AND COMMON AREAS AND FACILITIES

A. Maintenance of Units.

1. By the Association. The Association, at its expense, shall be responsible for the maintenance, repair and replacement of those portions of each unit which contribute to the support of the building, excluding, however, interior wall, ceiling and floor surfaces. In addition, the Association shall maintain, repair, and replace all conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services which may be located within the



unit boundaries exclusive of any portions of the foregoing which may be the responsibility of an individual family owner under any other provision of this Declaration. The Association shall further be responsible for the maintenance, repair and replacement of those portions of the concrete driveways servicing the garage area of each individual unit between the interior line of the garage door and the side of the sidewalk and/or curb lying closest to the garage portion of the unit and hereinbefore described as a limited common area for the benefit of the particular unit. The Association shall also be responsible for the maintenance, repair and replacement of the following limited common areas: a) The rear stoop, storage buildings and brick and metal privacy fences enclosing the patios of each unit; b) The balcony of each unit that has a balcony and that portion of the roof which is above the garage and is flat and referred to as a sun deck to which access is had from within the unit; c) Front stoop and brick and metal privacy fences where applicable.

2. By the Unit Owner. The responsibility of each unit owner shall be as follows:

a. To maintain, repair and replace at this expense all portions of his unit, and all internal installations of such family unit such as appliances, heating, plumbing, electrical and air conditioning fixtures or installations, and any portion of any other utility service facilities located within the unit boundaries and installed for the exclusive use of this unit.

b. To perform his responsibilities in such manner so as not unreasonably to disturb other persons residing within the building.

c. Not to paint or otherwise decorate so as to change the appearance of any portion of the building not within the walls of the unit, unless the written consent of the Association is obtained; provided, however, that the unit owner shall have the right to decorate that portion of the privacy fence (storage area) which fronts upon the patio which is a limited common facility for such particular unit and adjacent thereto; provided, however, that such rights do not include the right to decorate any of the brick portion thereon.

d. To report promptly to the Association or its agency any defect or need for repairs, the responsibility for the remedying of which is with the Association.

e. Not to make any alterations in the portions of the unit or the building which are to be maintained by the Association or remove any portion thereof or make any

additions thereto or do anything which would or might jeopardize or impair the safety or soundness of the building without first obtaining the written consent of the managers of the Association, nor shall any unit owner impair any easement without first obtaining the written consent of the Association and of the owner or owners for whose benefit such easement exists.

2. The rest and residue of the Declaration shall remain in full force and effect.

IN WITNESS WHEREOF, not less than seventy-five percent (75%) of the voting power of the Association, has hereunto set their hands this 7<sup>th</sup> day of JULY, 1993.

Signed and acknowledged  
in the presence of:

Page & Dill

Joann Dill

As to all signatures on pages  
3, 4, and 5.

WHIPPOORWILL GLEN CONDOMINIUM  
OWNER'S ASSOCIATION, INC.

By Walter A. Lane  
Unit # J-1, Owner

By Patricia Lane  
Unit # D-1, Owner

By David Starnoff  
Unit # H-1, Owner

By John W. Barnes  
Unit # G-2, Owner

By Jail A. Mueller  
Unit # H-2, Owner

By Kathleen Kitchener  
Unit # C-1, Owner

By Jaqueline Dellen  
Unit # A-3, Owner

By Frank Ernest  
Unit # A-1, Owner

By Kathy M. Kitchener  
UNIT # E-2, Owner

VICKI D. PEE  
RECORDER  
93 OCT 14 46 R PM 2:38  
MONTGOMERY CO OHIO  
RECORDED

Unit # H-3

By Walter J. Klose, Owner

Unit # C-5

By Malia C. Oswald, Owner

Unit # D-3

By Shirley P. Hayes, Owner

Unit # C-4

By V. Richard Hochstadt, Owner

Unit # B-4

By R. K. Monjell, Owner

Unit # E-3

By Lee C. Falke, Owner

Unit # H-4

By Jean Eick, Owner

Unit # I-1

By Edmund McKeel, Owner

Unit # B-1

By W. J. Smith, Owner

Unit # F-5

By Wanda J. Jones, Owner

Unit # A-13 (F-4)

By John M. Martin, Owner

Unit # ~~C-1~~ H-1

By W. S. Gilliam, Owner

Unit # D-2

By Ann L. Haege, Owner

Unit # B-2

By Linda Howland, Owner

Unit # H-5

By Marjorie D. Arvey, Owner

Unit # F-1

By Donald Zimmerman, Owner

Unit # E-1

By Albert Goldman, Owner

Unit # \_\_\_\_\_

By \_\_\_\_\_, Owner

Unit # \_\_\_\_\_

By \_\_\_\_\_, Owner

Unit # \_\_\_\_\_

By \_\_\_\_\_, Owner

Unit # \_\_\_\_\_

By \_\_\_\_\_, Owner

Unit # \_\_\_\_\_

By \_\_\_\_\_, Owner

Unit # \_\_\_\_\_

By \_\_\_\_\_, Owner

Unit # \_\_\_\_\_

AFFIDAVIT OF PRESIDENT

STATE OF OHIO )  
COUNTY OF MONTGOMERY )

SS:

Joann Dill, being first duly sworn, deposes and says that she is the President of the Whippoorwill Glen Condominium Owner's Association, Inc., and that, upon information and belief, L. Christopher Carson, Attorney for Whippoorwill Glen Condominium Owner's Association Inc., pursuant to the Declaration of Condominium Ownership for Whippoorwill Glen Condominium, has mailed, by certified mail, a true copy of the foregoing Amendment to the Declaration of Condominium Ownership and By-Laws of Whippoorwill Glen Condominium to all mortgagees having bona fide liens of record against any unit ownership.

FURTHER AFFIANT SAYETH NAUGHT.

Joann Dill  
Joann Dill

Sworn to and subscribed before me a Notary Public by the said Joann Dill this 1<sup>st</sup> day of August, 1993.

Lee C. Falke  
Notary Public

Lee C. Falke, Attorney At Law  
Notary Public, State of Ohio  
My commission has no expiration date  
Section 147.03 R.C.

Prepared by:

Lee C. Falke  
Lee C. Falke & Associates  
102 Wyoming Street  
Dayton, OH 45409  
(513) 222-3000

AFFIDAVIT OF ATTORNEY

STATE OF OHIO                     )  
  ) SS:  
COUNTY OF MONTGOMERY        )

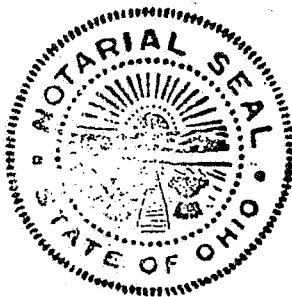
L. Christopher Carson, being first duly sworn, deposes and says that he is Attorney for Whippoorwill Glen Condominium Owner's Association, Inc., and that in said capacity he has personally mailed, by certified mail, a true and correct copy of the foregoing Amendment of the Declaration of Condominium Ownership and By-Laws of Whippoorwill Glen Condominium to all mortgagees having bona fide liens of record against any unit ownership.

FURTHER AFFIANT SAYETH NAUGHT.

L. Christopher Carson  
L. Christopher Carson

Sworn to and subscribed before me a Notary Public by the said L. Christopher Carson on this 30th day of July, 1993.

Virginia M. Deters  
Notary Public



VIRGINIA M. DETERS  
Notary Public, State of Ohio  
My Commission Expires April 5, 1998  
Recorded In Montgomery County

Prepared By:

Lee C. Falke  
Lee C. Falke & Associates  
102 Wyoming Street  
Dayton, OH 45409  
(513) 222-3000

AFFIDAVIT OF SECRETARY

STATE OF OHIO )

SS:

COUNTY OF MONTGOMERY )

Dick Moorefield, being first duly sworn, deposes and says that he is the Secretary of the Whippoorwill Glen Condominium Owner's Association, Inc., and that in said capacity he has received and retained consents from the following:

<u>Mortgagee of Record</u>	<u>Mortgagor</u>	<u>Condominium</u>
Standard Federal Savings Bank Society Bank, N.A.	Albert Goldman	Unit E-1
	Marjorie N. Arvay	Unit H-5
Society Bank, N.A.	Laura J. Arvay	Unit H-5
	Steven Pfarrer	Unit F-4
Society Bank, N.A.	Sharon Felkley	Unit F-4
Society Bank, N.A.	John Barnes	Unit G-2
Society Bank, N.A.	Ann E. Hall	Unit D-2
Society Bank, N.A.	Lee C. Falke	Unit E-3
Liberty Savings Bank FSB	Ron Matthews	Unit A-2
Citfed Mortgage Company	Thalia C. Oswald	Unit C-5
Citfed Mortgage Company	Gail Moeller	Unit H-2
Citfed Mortgage Company	Chris Somerlot	Unit B-1
	Rita Somerlot	Unit B-1
Citfed Mortgage Company	Ann E. Hall	Unit D-2
Citfed Mortgage Company	Karen C. Button	Unit C-2
Citfed Mortgage Company	Linda Howland	Unit B-2
National City Mortgage Co.	Roger Berardinis	Unit C-3
Norwest Mortgage, Inc.	Jacqueline Faye Williams	Unit A-3

Dick Moorefield further deposes and says that he has not yet received consents from the following mortgagees: The Prudential Home Mortgage, Inc.; BancOklahoma Mortgage Corp.; Chemical Mortgage Co.; Bank One, N.A.; Fifth-Third Bank; Nationsbank of Georgia, N.A.; Citizens Heritage Bank, N.A.; First Federal Savings & Loan Association of Lima; Bankers Trust Company of California, N.A.; First National Bank of Dayton; Mayflower

Mortgage, Inc.; and Charter 1 Bank.

FURTHER AFFIANT SAYETH NAUGHT.

*Dick Moorefield Secretary*  
Dick Moorefield, Secretary

Sworn to and subscribed before me a Notary Public by the said  
Dick Moorefield this 4<sup>th</sup> day of October, 1993.

*Lee C. Falke*  
Notary Public

Prepared by:

*M.A.I.V.*  
*ENJ*  
Lee C. Falke  
Lee C. Falke & Associates  
102 Wyoming Street  
Dayton, OH 45409  
(513) 222-3000

Lee C. Falke, Attorney At Law  
Notary Public, State of Ohio  
My commission has no expiration date  
Section 147.03 R.C.





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42

FIFTH AMENDMENT TO THE DECLARATION OF CONDOMINIUM WHICH ESTABLISHED THE CONDOMINIUM PROJECT KNOWN AS WHIPPOORWILL GLEN CONDOMINIUM

This amendment of the Declaration of Condominium Ownership of Whippoorwill Glen Condominium is made this 19th day of March, 1997, by Whippoorwill Glen Condominium Owner's Association, Inc., for the purpose of amending certain Articles contained in said document which is filed for record in Microfiche Numbers 74-547A01, through No. 74-548E01 (the plan and map of which are recorded at Plat Book 98, Page 1, 1a & 1b) and in Microfiche Nos. 75-603A01 through 75-603B02 (the plan and map of which are recorded at Plat Book 99, Pages 70, 70a & 70b) of the Deed Records of Montgomery County, Ohio.

Previous Recording Information. The original Condominium documents and subsequent amendments to those documents, have been recorded in the Deed and Plat Records of Montgomery County, Ohio, as follows:

<u>Item Recorded</u>	<u>Date</u>	<u>Microfiche Number</u>
Declaration of Condominium, By-Laws and other original documents	11/06/74	74-547A01-D09 74-548B09-D11
First Amendment	12/23/75	75-603A01-08
Second Amendment	09/15/78	78-516B02-C03
Third Amendment	2/3/81	not filed (incorporated in Fifth Amendment)
Fourth Amendment	10/14/93	93-0656B04-C01

NO TRANSFER NEEDED  
97 MAY 3 AM 11:40  
WAGNER  
AUDITOR

JOY A. CLARK  
RECORDER  
97 MAY 13 AM 11:44

MONTGOMERY CO. OHIO  
RECORDED

WITNESSETH

THAT WHEREAS, Section 15(B) of the original Declaration contemplates amendments of the Declaration and By-Laws by the unit owners entitled to exercise at least seventy-five percent (75%) of the voting power of the Association; and,

WHEREAS, not less than seventy-five percent (75%) of those unit owners entitled to voting power of the Association have duly signed this Amendment; and,

WHEREAS, the President of the Owners' Association of Whippoorwill Glen has attached hereto, his affidavit that a copy of the within Amendments have been mailed by certified mail to all mortgagees having bona fide liens of record against any unit ownership.

**NOW THEREFORE**, this Amendment of the Declaration and Amendments thereto and By-Laws of the Association is hereby made as follows:

1. Section 10, Paragraph A, Subparagraph 1 at page 2 of the Fourth Amendment of the Declaration of Condominium Ownership of Whippoorwill Glen Condominium, recorded in Deed Record 93-0656 B04& B05 be and hereby is amended to read as follows:

**10. GENERAL PROVISIONS AS TO UNITS AND COMMON AREAS AND FACILITIES:**

**A. MAINTENANCE OF UNITS.**

1. By the Association. The Association, at its expense, shall be responsible for the maintenance, repair and replacement of those portions of each unit which contribute to the support of the building, excluding, however, interior walls, ceiling and floor surfaces [or coverings]. In addition, the Association shall maintain, repair, and replace all conduits, duct, plumbing, wiring and other facilities for the furnishing of utility services which may be located within the unit boundaries exclusive of any portions of the foregoing which may be the responsibility of an individual family owner under any other provision of this declaration. The Association shall further be responsible for the maintenance, repair and replacement of those portions of the concrete driveways servicing the garage area of each individual unit between the interior line of the garage door and the side of the sidewalk and/or curb lying closest to the garage portion of the unit and hereinbefore described as a limited common area for the benefit of the particular unit. The Association shall also be responsible for the maintenance, repair and replacement of the following limited common areas: a) The rear stoop, storage buildings, [unless storage buildings have been removed with the written consent of the Board of Managers], and brick and metal privacy fences enclosing the patios of each unit; b) The balcony of each unit that has a balcony and that portion of the roof which is above the garage and is flat and referred to as a sun deck to which access is had from within the unit; c) The front stoop and brick and metal privacy fences where applicable.

2. Section 11, Paragraph A, at Pages 21 and 22 of the Declaration, recorded in Deed Record 74-547C02 & 03 be and hereby is amended to read as follows:

**11. INSURANCE:**

**~~A. FIRE AND EXTENDED COVERAGE INSURANCE.~~**

~~The Association shall obtain and maintain for the benefit of all owners and~~

~~mortgagees insurance on all buildings, structures or other improvements now or at any time hereafter constituting a part of the Condominium Property against loss or damage by fire, lightning and such perils as are at the time comprehended within the term "Extended coverage" in an amount not less than one hundred percent (100%) of the replacement value thereof. Such insurance shall be written in the name of, and the proceeds thereof shall be payable to, the "Insurance Trustee", as hereinafter defined for each of the unit owners and mortgagees for the purpose set forth in this Declaration in accordance with the percentage ownership in the common areas and facilities set forth in Section 5 herein. Such policy shall provide coverage for build-in or installed fixtures and equipment in an amount not less than one hundred percent (100%) of the replacement value thereof and shall also provide that the insurer shall have no right to contribution from any insurance which may be purchased by any unit owner as hereinafter permitted. Such policy shall further provide that there shall not be more than a maximum of eighty percent co-insurance. Such policy further must provide that no mortgagee shall have any right to apply the proceeds thereof to the reduction of any mortgage debt. Such policy shall further provide that despite any clause that gives the insurer the right to restore damage in lieu of cash settlement, such right shall not exist in case the Condominium Property is removed from the provisions of Chapter 5311 of the Ohio Revised Code pursuant to the provision of the Declaration.~~

~~Such insurance by the Association shall be without prejudice to the right of the owner of a unit to obtain individual contents or chattel property insurance, but not unit owner may at any time purchase an insurance policy which covers any property which is required to be insured by the Association, and provided, further, that in the event any unit owner does obtain such type of insurance then they shall be responsible or liable to the Association for any and all losses or loss of funds or any damage incurred by the Association by virtue of such coverage and the Association shall have the right to assess the unit owner for any such loss or damage arising out of such overlap of coverage and enforce its liens for such assessment in accordance with the procedures and in the manner hereinafter set forth.~~

~~Such policy of insurance shall contain provisions requiring the issuance of certificates of coverage and the issuance of written notice not less than ten days prior to any expiration or cancellation of such coverage to any mortgagee or mortgagees of any unit.~~

~~Such policy shall also provide for the release by the issuer thereof of any and all rights of subrogation or assignment and all causes and rights of recovery against any unit owner, member of his family, his tenant, or other occupant of the Condominium Property for recovery against any one of them for any loss occurring to the insured property resulting from any of the perils insured against under such insurance policy.~~

~~If the required insurance coverage under this Subsection A of Article 11 ceases to exist for any reason whatsoever, any mortgagee of any portion of the Condominium Property may remedy that lack of insurance by purchasing policies to supply that insurance coverage. The funds so advanced shall be deemed to have been loaned to the Association shall bear interest at a per annum rate equal to the prime rate then being charged as determined by the average of the prime rate charged by national banking institutions located in the City of Dayton, Ohio, and shall be due and payable to the mortgagee by the Association immediately. The repayment of said obligation shall be secured by assessments against all unit owners under Article 17 of this Declaration and shall not require a vote of the members of the Association, anything to the contrary in this Declaration or in the attached By-Laws of the Whippoorwill Glen Condominium Owners Association notwithstanding.~~

~~All insurance policies under this Section A and any endorsements thereto shall be deposited with the Insurance Trustee (as hereinafter defined) who must first acknowledge that the policies and any proceeds thereof will be held in accordance with terms hereof. All such policies shall provide that all proceeds payable as a result of casualty losses shall be paid to any bank, as trustee, which is selected by the Association and located in Dayton, Ohio, with trust powers and total assets of more than Fifty Million Dollars (\$50,000,000) (herein referred to as the "Insurance Trustee"). The Insurance Trustee shall not be liable for payment of premiums nor for the renewal of the policies, nor for the form or contents of the policies, nor for the failure to collect any insurance proceeds. The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Grantor, the Association, the unit owners, and their respective mortgagees.~~

**A. FIRE AND EXTENDED COVERAGE INSURANCE.** The Condominium Property shall be insured against fire and other hazards covered by standard extended coverage endorsement in an amount equal to one-hundred percent (100%) of the replacement value of all of the buildings and structures of the Condominium Property. The cost of such insurance, as well as any other insurance purchased by the Board pursuant to its authority, shall be a Common Expense.

Such policy of insurance shall also include interior walls, and ceilings within units, and the pipes and wires, conduits and ducts contained therein. In no event, however, shall such insurance cover furniture, furnishings, floor coverings or finishes, wall coverings or paint, ceiling finishes or paint, or other personal property supplied or installed or owned by the Unit Owners.

- a. Such policy of insurance shall be written in the name of, and the proceeds thereof shall be payable to the Association.**
- b. Such policy of insurance shall provide that the insurer shall have no right to contribution from any insurance which may be purchased by any unit owner as herein permitted.**
- c. Such policy of insurance shall provide that no mortgagee shall have any right to apply the proceeds thereof to the reduction of any mortgage debt.**
- d. Such policy of insurance shall provide that despite any clause that gives the insurer the right to restore damage in lieu of a cash settlement, such right shall not exist in the event the Condominium Property is removed from the provisions of Chapter 5311 of the Ohio Revised Code in accordance with the provisions of the Declaration.**
- e.. Such policy of insurance shall be so written so as to provide for the issuance of certificates of insurance to the mortgagee of individual Units and to provide such mortgagees at least ten (10) days notice prior to any cancellation of insurance.**
- f. If the insurance coverage required under Paragraph Subsection A of Article 11 herein ceases to exist for any reason whatsoever, any mortgagee of any portion of the Condominium Property may remedy that lack of insurance by advancing premiums per annum to keep the insurance in effect or obtain new insurance policies in place thereof. The funds so advanced shall be deemed to have been loaned to the Association and shall bear interest at the per annum rate equal to the prime rate then being charged as determined by the average of the prime rate charged by national banking institutions located in the City of Dayton, Ohio; and shall be due and payable to the mortgagee by the Association immediately. The repayment of said obligation shall be secured by assessments, pursuant to Article 17 of this Declaration, against all Unit Owners until paid, without any necessity of any vote of Unit Owners or the approval of the Association to establish the assessments.**
- g. Such policy of insurance shall also provide for the release by the insurer thereof of any and all rights of the subrogation or assignment and all causes and rights of recovery against any Unit Owner, members of his family, his tenant, or other occupant of the Condominium Property or recovery against any one of them for any loss occurring to the Condominium Property from any of the perils insured against by such insurance coverage.**

h. Unless provided otherwise in this Declaration, damage to or destruction of all or any part of the Common Areas and Facilities of a Condominium Property shall be promptly repaired and restored by the Board of Managers. The cost of such repairs and restoration shall be paid from the proceeds of insurance, if any, payable because of such damage or destruction and the balance of such cost shall be a Common Expense.

I. It shall be the responsibility of each Unit Owner to obtain individual contracts for insurance for his personal property located within the Unit or elsewhere in the Condominium Property, including but not limited to, wall and ceiling coverings or paint, floor coverings or finishes, as well as, any betterments or improvements that such Owner may make to his Unit even though such betterments or improvements may be classified as a fixture. No Unit Owner may purchase an individual policy on his Unit or his interest in the Common Areas and Facilities as real property. If, irrespective of this prohibition, a Unit Owner purchases an individual policy insuring real property, said owner shall be responsible to the Association for loss or expense that such policy may cause in adjusting the Association's insurance.

Furthermore, any insurance deductible payable as a result of a loss incurred in accordance with this section shall be split 50/50 between the Association and the Unit Owner whose Unit is so affected.

B. ASSOCIATION TO ACT FOR UNIT OWNER. Each Unit Owner, by ownership of a Unit in the Condominium, shall be deemed to appoint the Association as his true and lawful attorney-in-fact to act in connection with all matters concerning the maintenance of fire and extended coverage, vandalism and maliciousness, liability insurance and workmen's compensation insurance, if applicable, pertinent to the Condominium Property, his Unit and his interest in the Common Areas and Facilities with such insurer as may, from time to time provide such insurance for the Condominium Property. Without limitation of the generality of the foregoing, the Association, as said attorney-in-fact, shall have the full power and authority to purchase and maintain such insurance, to collect and remit premiums therefor, to collect proceeds and distribute the same to the Association, the Unit Owners and respective mortgagees, as their interest may appear, to execute releases of liability and to execute all documents and to do all things on behalf of such Unit Owners and Condominium as shall be necessary or convenient in dealing with any insurance purchase by the Association.

3. Section 12, Paragraph A & B at pages 23, 24 & 25 of the Declaration, recorded in Deed Record 74-547C04, 05 & 06 be an hereby is amended as follows:

12. Damage or Destruction and Restoration of Buildings

A. Sufficient Insurance.

Immediately after a casualty causing damage to any portion of the Condominium Property, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include ~~[code update costs,]~~ professional fees and premiums for such bonds as the Board deems necessary.

The insurance proceeds in the sums deposited with the ~~Insurance Trustee~~ by the Association or from collections of special assessments against family unit owners on account of such casualty, shall constitute a construction fund which shall be ~~disbursed to the Insurance Trustee and~~ applied by the ~~Insurance Trustee~~ **[Association]** to the payment of the cost of reconstruction and repair of the Condominium Property from time to time as the work progresses, but not more frequently than once in any calendar month. ~~Said Trustee shall made such payments on the written request of the Association, accompanied by a certificate, dated not more than fifteen (15) days prior to such request, signed by a responsible officer of the Association and by an architect in charge of the work, who shall be selected by the Association, setting forth (1) that the sum then requested either has been paid by the Association or is~~ **[These funds shall be disbursed only when they are]** justly due to the contractors, sub-contractors, material men, architect, or other persons who have rendered services of 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, ~~(2) that except for the amount stated in such certificate to be due as aforesaid and for work subsequently performed~~ **[and]** 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, material man's, or similar lien arising from such work. and ~~(3) 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 does not exceed the amount of the construction fund remaining in the hands of the Insurance Trustee after the payment of the sum so requested. It shall be presumed that the first moneys 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 that fund is established, such balance shall be disbursed to the Association. [The Association may, at the discretion of the Board of Managers, use an escrow account at a local F.D.I.C. insured financial institution for this purpose.]~~

~~The Insurance Trustee may rely upon a certificate of the Association certifying as to whether or not the damaged property is to be reconstructed or repaired. The Association, upon request of the Insurance Trustee, shall deliver such certificate as soon as practical. Each family unit owner shall be deemed to have delegated to the Board of Managers his right to adjust with insurance companies all losses under the insurance policy referred to in Section A of Article 11 of this Declaration.~~

- B. ~~Insufficient Insurance. In the event that subsequent to a casualty causing damage to any portion of the Condominium property, the detailed estimates of the cost to replace the damaged property in condition as good as that before the casualty as described in the preceding paragraph A indicates that the insurance proceeds are insufficient to cover the estimate of said cost, then the difference between said estimated cost and the insurance proceeds shall be~~ **borne by the Unit Owners.] contributed by the Association to the Insurance Trustee.** The Association shall obtain such funds by way of a special assessment against all Unit Owners based on the percentage of ownership of the Condominium Property which each unit owner has: **[ in proportion to their respective percentages of interest in the Common Areas and Facilities.]** Should any Unit Owner refuse or fail after reasonable notice to pay his assessment for this purpose, then the amount thereof may be advanced by the Association and the amount so advanced by the Association shall be assessed to such owner and such assessment shall have the same force and effect, and if not paid, may be enforced in the same manner as hereinafter provided for the non-payment of assessment.

4. Section 5, Paragraph (a) at Page 2 of the By-Laws, recorded in Deed Record 74-548C02, be and hereby are amended to read as follows:

5. **MEETINGS OF MEMBERS:**

**(a) Annual Meetings.**

The Annual Meeting of Members of the Association for the election of members of the Board of Managers, consideration of reports to be laid before such meeting, and the transaction of such other business as may properly be brought before such meetings shall be held at the office of the Association or at such other place and at such time as may be designated by the Board of Managers and specified in the notice of such meetings.

~~The first Annual Meeting of Members of the Association shall be held not more than six (6) months from the date the Declaration is filed for record. There after, the Annual Meeting of Members of the Association shall be held on the First Tuesday of February in each succeeding year.~~

**[ The Annual Meeting of Members of the Association shall be held in May of each year]**

5. Section 2, Subparagraph (a), at Page 12 & 13 of the By-Laws, recorded at Deed Record 74-548C12 & 13, be and hereby is Amended to read as follows:

**SECTION 2. RULES AND REGULATIONS:**

The Association, by vote of the Board of Managers, may adopt rules and regulations and from time to time amend the same supplementing the rules and regulations set forth in the Declaration and in these By-Laws as it may deem advisable for the maintenance, conservation and beautification of the Condominium Property, and for the health, comfort, safety and general welfare of the owners and occupants of the Condominium Property. Written notice of such rules and regulations shall be given to all owners and occupants and the Condominium Property shall at all times be maintained subject to such rules and regulations. In the event such supplemental rules and regulations shall conflict with any provisions of the Declaration or of these By-Laws, the provisions of the Declaration and of these By-Laws shall govern.

(a) Said rules and regulations shall include regulations prohibiting any storage in the open areas on the outside of any privacy fences located on the individual units. ~~so as to prevent such storage being visible on the public roadways through the~~

development.

[ The Board shall exercise all powers and authority, under law, and under the provisions of the Declaration and these by-Laws, that are not specifically and exclusively reserved to the Unit Owners by law or by other provisions thereof, and without limiting the generality of the foregoing, the Board shall have the right, power and authority to:

Adopt, publish and administer rules and regulations governing the use of Common Areas and the personal conduct of Unit Owners, occupants and their guests thereon, and establish reasonable penalties and/or schedule of fines for the infraction thereof.]

6. Section 9, at page 16 of the By-Laws, recorded at Deed Record 74-548D04, be and hereby is Amended as follows:

**SECTION 9. ANNUAL AUDIT:**

~~The books of the Association shall be audited once a year by an outside accountant, and such audit shall be completed prior to each annual meeting. Provided, however, that the requirement for the use of an outside accountant shall not commence until such time as the unit owners elect all of the members of the Board of Managers. If requested either by the owners of twenty-five percent (25%) or more of the units (including Developer) or by two members of the Board of Managers, such annual audit shall be made by a certified public accountant at the Association's expense. If at any other time it is requested by the owners of twenty-five percent (25%) or more of the units, including the Developer to have an additional audit during the year, the Board of Managers shall cause such additional audit to be paid, provided that the entire expense of such additional audit shall be paid solely by those owners, including Developer, who requested it. In addition, at any other time requested by the holders of first mortgages on twenty-five (25%) or more of the units, the Board of Managers shall provide a similar audit and further provide that the entire expense of such audit be paid by the Association.~~

[Upon written request to the Association by institutional holders of first mortgages on twenty-five percent (25%) or more of the units, or its insurer, or by vote of the holders of a majority of the voting power of Unit Owners, or by two (2) members of the Board of Managers, the Board shall cause the preparation and furnishing to those requesting it an audited financial statement of the Association for the preceding fiscal year, provided that no such statement

need be furnished earlier than ninety (90) days following the end of such fiscal year. Any such request for audit made by either a majority of the voting power of the Unit Owners, or by two (2) members of the Board shall be performed by a certified public accountant at the Association's expense. Any such request for audit made by institutional holders of first mortgages on twenty-five percent (25%) or more of the units, or the Association's insurer shall be performed by a certified public accountant at the expense of the party so requesting said audit.

Notwithstanding the Audit provisions set forth in this section, the financial records and/or books of the Association shall be reviewed once a year by an outside accountant, who is not an Unit Owner, and such review shall be completed prior to each annual meeting. Such review shall include, but is not limited to the following:

a) Review of receipts and expenditures relating to the Common Areas and other common receipts and expenses, together with records showing the allocation, distribution and collection of the common profits, losses, and expenses among and from the Unit Owners.

b) Review of accounts, receipts and expenditures relating to adherence to the Association's Annual Budget.]

**REAFFIRMATION & INCORPORATION OF THIRD AMENDMENT :**

The Association hereby reaffirms and incorporates herein the Third Amendment to the Condominium Declaration And Bylaws as set forth below, having been duly executed by the Association on February 3, 1981. As a result of inadvertence, the previously executed Third Amendment was not recorded in the Deed Records of Montgomery County, Ohio.

7. Section 3 (D) at page 3 of the Declaration, recorded in Deed Record 74-547A07 be and hereby is amended to read as follows:

D. ~~No commercial activity, other than that carried on by developer in the buying, selling, or leasing of units and operating, maintaining, repairing, and replacing the common areas and facilities, shall be conducted in or upon any part of the Condominium Property.~~

~~No unit shall be used for hotel or transient purposes.~~

No commercial activity, other than that carried on by the developer in the buying, selling, or leasing of units and operating, maintaining,

repairing, and replacing the common areas and facilities, shall be conducted in or upon a part of the Condominium Property.

No unit shall be used for hotel or transient purposes. For the purposes of this provision, a "Transient or hotel purpose" shall be defined as a rental for a period less than twelve (12) months or rental to an occupant wherein customary hotel service such as furnishing of laundry and linens and room service is maintained. Other than the foregoing and the provisions hereinafter contained, Unit Owners shall have the right to lease their respective Units provided that said lease is made subject to the covenants and restrictions of this Declaration and the By-Laws and Rules and any occupant shall be subject to all of said Regulations and Rules as though the occupant were the Unit Owner. All leases executed by Unit Owners shall be submitted to and subject to the Board of Managers review and approval, which approval shall not be unreasonably withheld.

Any such lease submitted to the Board of Managers shall contain a clause which shall empower the Board of Managers to fully institute and prosecute an eviction proceeding on behalf of the Unit Owner against any such occupant of the leased premises upon a violation of any of the terms of the rental agreement, including but not limited to a violation, by occupant, of the covenants and restrictions in this Declaration and the By-Laws and Rules and Regulations. Said eviction proceeding, if instituted by the Board of managers, shall be paid for, including court costs and reasonable attorney fees, by the Unit Owner.

Provided, however, that no such eviction proceeding may be instituted by the Board of Managers until such time as the following conditions are met:

- A) The Unit Owner shall first be contacted by the Board of Managers and advised of the violation for which the eviction proceeding is being sought;
- B) The Unit Owner shall then be given ten (10) days within which to institute an eviction proceeding against the tenant;
- C) If the Unit Owner within said ten (10) days fails to institute said eviction proceeding, the Board of Managers, upon written approval of the majority of the remaining Unit Owners, shall then be empowered to proceed with said eviction action as hereinbefore provided.

Nothing herein contained shall permit a Unit Owner to be relieved from any duties or responsibilities or obligations hereunder because his Unit is occupied by a third party.

8. Section 3 (F) at page 3 of the Declaration, recorded in Deed Record 74-547A07 be and hereby is amended to read as follows:

~~F. No sign of any kind shall be displayed to public view on any part of the Condominium Property except street name signs, directional signs, signs regulating the use of the common areas and facilities, and one sign, not more than five (5) square feet, for each unit advertising it for sale or lease, provided, however, that this shall not apply to the developer at the location of the model units.~~

F. No sign of any kind shall be displayed to the public view on any part of the Condominium Property except street name signs, directional signs and signs regulating the use of the common areas and facilities. No "For Sale" or "For Rent" signs or other displays or advertising shall be maintained or permitted on any part of the Common or Limited Common Areas and Facilities or on or about any Unit. Provided, however, each unit owner whose property is for sale shall be permitted to place a maximum two (2) "For Sale" signs on the common area of the Condominium Property on each day that an open house is being held for the purpose of selling said unit, and then, only for a maximum period of six (6) hours and only on the day of said open house. Said signs shall not exceed a total square footage of eight (8).

9. Article 5, Section 3 at page 14 of the By-Laws, recorded in Deed Record 74-548D02 be and hereby is amended to read as follows:

~~Section 3. Reserve for Contingencies and Replacements.~~

~~The Association shall build up and maintain a reasonable reserve for contingencies and replacement. Extraordinary expenditures not originally included in the annual estimate which may be necessary for the year, shall be charged first against such reserve. If said "Estimated Cash Requirement" proves inadequate for any reason other than non-payment of any Owners assessment, said extraordinary expenditures shall be assessed to the Owners according to each Owners percentage of ownership in the common areas and facilities. The Association shall serve notice of such further assessment on all Owners by a statement in writing giving the amount, reasons therefore, and such further assessment shall become effective~~

~~with the next maintenance payment which is due more than ten (10) days after the delivery or mailing of such notice of further assessments. All Owners shall be obligated to pay the adjusted amount.~~

Section 3. Reserve for Contingencies and Replacements.

The Association shall build up and maintain a reasonable reserve for contingencies and replacement. Said reserve shall be considered reasonable so long as no less than twenty percent (20%) of each years budget is set aside for placement into the reserve account and the Board of Managers is hereby authorized to place said twenty percent (20%) sum into said reserve account, as received, through Owner assessment. Extraordinary expenditures not originally included in the annual estimate which may be necessary for the year shall be charged first against such reserve. If said estimated cash requirement proves inadequate for any reason, including non-payment of any Owners assessment, the same shall be assessed to the Owners according to each Owners percentage of ownership in the common areas. The Association shall serve notice of such further assessment on all Owners by a statement in writing giving the amount and reasons therefore, and such further assessment shall become effective with the first monthly maintenance payment which occurs more than ten (10) days after the delivery or mailing of such notice of further assessment. All Owners shall be obligated to pay the adjusted monthly amount.

10. The rest and residue of the Declaration and By-Laws shall remain in full force and effect.

IN WITNESS WHEREOF, this FIFTH AMENDMENT to the aforesaid Declaration and Bylaws has been executed by the owners representing not less than seventy-five percent (75%) of the voting power of the Whippoorwill Glen Condominium Owner's Association, Inc., on the date set forth by each such signature.

Signed and acknowledged  
in the presence of:

James H. Jolley  
J. Scardino

As to all signatures on pages  
14, 15, 16 and 17.

**WHIPPOORWILL GLEN CONDOMINIUM  
OWNER'S ASSOCIATION, INC.**

By Stamm M. [Signature], Owner  
Unit # F4 Date 4/23/97

By Walt [Signature], Owner  
Unit # G-1 Date 4/24/97

By J. Scardino, Owner  
Unit # A-4 Date 3/30/97

By Joan M. Scardino  
Unit # A-4 Date April 23, 1997

By Jaqueline M. Jolley or James H. Jolley, Owner  
Unit # F-5 Date 23 Apr 97

By Myra B..., Owner  
Unit # H-1 Date 4-23-97

By Paul Smith, Owner  
Unit # F-2 Date 4-23-97

By Jaqueline Williams, Owner  
Unit # A-3 Date 23 Apr 97

By Brenda J. Earnest, Owner  
Unit # A-2 Date 4-23-97

By Robert L. Leonard, Owner  
Unit # B-4 Date 4-23-97

By Walter G. Schoe, Owner  
Unit # H-3 Date 24 Apr 97

By Kerilyn L. Buckley, Owner  
Unit # C #1 Date 4/24/97

By Les S. Falls, Owner  
Unit # E-3 Date 4-24-97

By Doris Zimmerman, Owner  
Unit # F-1 Date 4-24-97

By Kathy M. Mitchell, Owner  
Unit # E-2 Date 4/24/97



By John L. Keller, Owner  
Unit # C-2 Date April 24, 1997

By Spada E. M. Pflak, Owner  
Unit # C-3 Date April 24, 1997

By [Signature], Owner  
Unit # D-1 Date 4/24/97

By Raymond W. Kelser, Owner  
Unit # I-1 Date 4/25/97

By Evelyn J. Jernick, Owner  
Unit # C-6 Date 4/29/97

By Maymie N. Croy, Owner  
Unit # H-5 Date 4-25-97

By Albert Friedman, Owner  
Unit # E-1 Date 4-26-97

By Gail A. Mueller, Owner  
Unit # H-2 Date 4/27/97

By James L. Rhoads, Owner  
Unit # B-1 Date \_\_\_\_\_

By Ann E. Hall, Owner  
Unit # D-2 Date 4/27/97

By Stephen M. Maddox, Owner  
Unit # G-2 Date 27 Apr 97

By [Signature], Owner  
Unit # H-4 Date 5/4/97

By \_\_\_\_\_, Owner  
Unit # \_\_\_\_\_ Date \_\_\_\_\_

By \_\_\_\_\_, Owner  
Unit # \_\_\_\_\_ Date \_\_\_\_\_

By \_\_\_\_\_, Owner  
Unit # \_\_\_\_\_ Date \_\_\_\_\_

By \_\_\_\_\_, Owner  
Unit # \_\_\_\_\_ Date \_\_\_\_\_

By \_\_\_\_\_, Owner  
Unit # \_\_\_\_\_ Date \_\_\_\_\_

By \_\_\_\_\_, Owner  
Unit # \_\_\_\_\_ Date \_\_\_\_\_

This instrument prepared by:

Gregory P. Spears (0009002)  
Attorney at Law  
Lee C. Falke & Associates  
102 Wyoming St.  
Dayton, Ohio 45409  
(937) 222-3000

~~with the next maintenance payment which is due more than ten (10) days after the delivery or mailing of such notice of further assessments. All Owners shall be obligated to pay the adjusted amount.~~

Section 3. Reserve for Contingencies and Replacements.

The Association shall build up and maintain a reasonable reserve for contingencies and replacement. Said reserve shall be considered reasonable so long as no less than twenty percent (20%) of each years budget is set aside for placement into the reserve account and the Board of Managers is hereby authorized to place said twenty percent (20%) sum into said reserve account, as received, through Owner assessment. Extraordinary expenditures not originally included in the annual estimate which may be necessary for the year shall be charged first against such reserve. If said estimated cash requirement proves inadequate for any reason, including non-payment of any Owners assessment, the same shall be assessed to the Owners according to each Owners percentage of ownership in the common areas. The Association shall serve notice of such further assessment on all Owners by a statement in writing giving the amount and reasons therefore, and such further assessment shall become effective with the first monthly maintenance payment which occurs more than ten (10) days after the delivery or mailing of such notice of further assessment. All Owners shall be obligated to pay the adjusted monthly amount.

10. The rest and residue of the Declaration and By-Laws shall remain in full force and effect.

IN WITNESS WHEREOF, this FIFTH AMENDMENT to the aforesaid Declaration and Bylaws has been executed by the owners representing not less than seventy-five percent (75%) of the voting power of the Whippoorwill Glen Condominium Owner's Association, Inc., on the date set forth by each such signature

Signed and acknowledged  
in the presence of:

WHIPPOORWILL GLEN CONDOMINIUM  
OWNER'S ASSOCIATION, INC.

Robert J Kelly  
Elizabeth K Kelly  
As to all signatures on pages  
14, 15, 16 and 17.

By Elizabeth K. Hochstetler, Owner  
Unit # 9260 Date 4-30-99

By \_\_\_\_\_, Owner  
Unit # \_\_\_\_\_ Date \_\_\_\_\_

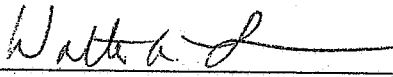
By \_\_\_\_\_, Owner  
Unit # \_\_\_\_\_ Date \_\_\_\_\_

**AFFIDAVIT OF PRESIDENT**

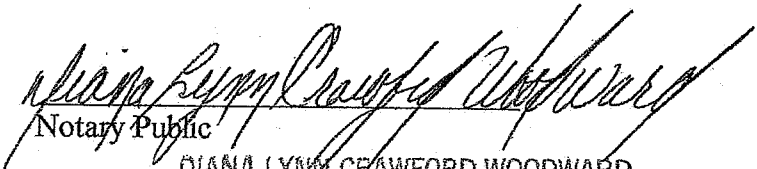
STATE OF OHIO ) SS:  
COUNTY OF MONTGOMERY )

Walt Larson, being first duly sworn, deposes and says that he is the President of the Whippoorwill Glen Condominium Owner's Association, Inc., and that, pursuant to the Declaration of Condominium Ownership for Whippoorwill Glen Condominium, has mailed, by certified mail, a true copy of the foregoing Fifth Amendment to the Declaration of Condominium Ownership and By-Laws of Whippoorwill Glen Condominium to all mortgagees having bona fide liens of record against any unit ownership.

FURTHER AFFIANT SAYETH NAUGHT.

  
\_\_\_\_\_  
Walt Larson

Sworn to and subscribed before me a Notary Public by the said  
Walt Larson this 22<sup>nd</sup> day of May, 1997.

  
\_\_\_\_\_  
Notary Public  
DIANA LYNN CRAWFORD WOODWARD  
NOTARY PUBLIC  
In and for the State of Ohio  
My Commission Expires 2 Jan 2000

*NOV. 63 1974*

*725 St. 1-*

EXHIBIT "E"

WHIPPOORWILL GLEN CONDOMINIUM

BY-LAWS OF

WHIPPOORWILL GLEN CONDOMINIUM

OWNERS ASSOCIATION

*(A Change in name was made)*

8/16 Sent

This Instrument prepared by:  
Iddings, Jeffrey & Donnelly  
2260 Winters Bank Tower  
Dayton, Ohio 45402

NOV 6 1974

TRANSFERRER  
AL. OSWALD  
COUNTY AUDITOR

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BY-LAWS OF WHIPPOORWILL GLEN  
CONDOMINIUM OWNERS' ASSOCIATION

The within By-Laws are executed and attached to the Declaration of Whippoorwill Glen Condominium pursuant to Chapter 5311, Ohio Revised Code. Their purpose is to provide for the establishment of a Unit Owners Association for the government of the Condominium Property in the manner provided by the Declaration and by these By-Laws. All present or future owners or tenants or their employees, or any other person who might use the facilities of the Condominium Property in any manner shall be subject to the covenants, provisions or regulations contained in the Declaration and these By-Laws and shall be subject to any restriction, condition or regulation hereafter adopted by the Board of Managers of the Association. The mere acquisition or rental of any of the family units (hereinafter referred to as "units") located within the Condominium Property described in the Declaration, or the mere act of occupancy of any of the units will constitute acceptance and ratification of the Declaration and of these By-Laws.

ARTICLE I

THE ASSOCIATION

Section 1. Name and Nature of Association. The Association shall be an Ohio corporation not for profit and shall be called Whippoorwill Glen Condominium Owners' Association.

Section 2. Membership. Each unit owner upon acquisition of title to a unit, shall automatically become a member of the Association. Such membership shall terminate upon the sale or other disposition by such member of his unit ownership, at which time the new owner of such unit shall automatically become a member of the Association.

Section 3. Voting Rights. There shall be one voting member for each unit ownership. Such voting member may be the owner or the group composed of all the owners of a unit membership. The total number of votes of all voting members shall be thirty-one (31) and each owner or group of owners shall be entitled to one (1) vote; provided, however, that in the event that additional property is subjected to the Declaration as provided for in Section 8 of the Declaration, the number of voting members shall be increased so as to include such additional units; provided, further, that in any such event, the number of voting members shall not exceed sixty-four (64).

Only owners in good standing shall be entitled to vote in the affairs of the Association at any annual or special meeting thereof. An owner shall be deemed to be in "good standing" and "entitled to vote" if, and only if, he shall have fully paid all assessments made or levied against him and his Family Unit or Units by the Association as hereinbefore provided, together with all interest, costs, attorney fees, penalties and other expenses, if any, properly chargeable to him and against his Family Unit or Units, at least three (3) days prior to the date fixed for such annual or special meetings.

A Family Unit which has been acquired by the Association in its own name or in the name of its agent, designee or nominee on behalf of all the Family Unit owners shall not be entitled to vote so long as it continues to be so held.

Unless otherwise expressly set forth in the Declaration or in these By-Laws all decisions of the members of the Association, shall require for passage the affirmative vote of the Family Unit owners or their voting representatives representing a majority of the total voting power represented at any given meeting of the Association.

Section 4. Proxies. Members may vote or act in person or by proxy. The person appointed as proxy need not be a member of the Association. Designation by a member or members of a proxy to vote or act on his or their behalf shall be made in writing to the Board of Managers of the Association and shall be revocable at any time by actual notice to the Board of Managers by the members or member making such designation. Notice to the Board of Managers in writing or in open meeting of the revocation of the designation of a proxy shall not affect any vote or act previously taken or authorized. In the event that a unit owner has granted his proxy to the holder of the first mortgage on his unit, then such proxy shall be recognized by the Board of Managers at any meeting on presentation by the mortgagee of a copy of the instrument granting such proxy from the unit owner to the mortgagee and such proxy shall not be subject to revocation as hereinbefore set forth.

Section 5. Meetings of Members.

(a) Annual Meetings. The annual meeting of members of the Association for the election of members of the Board of Managers, the consideration of reports to be laid before such meeting, and the transactions of such other business as may properly be brought before such meeting shall be held at the office of the Association or at such other place and at such time as may be designated by the Board of Managers and specified in the notice of such meeting. The first annual meeting of members of the Association shall be held not more than six (6) months from the date the Declaration is filed for record. Thereafter, the annual meeting of members of the Association shall be held on the first Tuesday of February in each succeeding year.

(b) Special Meetings. Special meetings of the members of the Association may be held on any business day when called by the President of the Association or by the Board of Managers of the Association or by members entitled to exercise at least twenty-five percent (25%) of the voting power of the Association in writing delivered either in person or by certified mail to the President or the Secretary of the Association by any persons entitled to call a meeting of members, such officer shall forthwith cause to be given to the members entitled thereto notice of a meeting to be held on a date not less than seven (7) or more than sixty (60) days after the receipt of such request as such officer may fix. If such notice is not given within thirty (30) days after the delivery or mailing of such request, the persons calling the meeting may fix the time of the meeting and give notice thereof. Each special meeting shall be called to convene at the office of the Association or at such other place and at such time as shall be specified in the notice of the meeting.

(c) Notices of Meetings. Not less than seven (7) nor more than sixty (60) days before the day fixed for a meeting of the members of the Association, written notice stating the time, place and purpose of such meeting shall be given by or at the direction of the Secretary of the Association or any other person or persons required or permitted by these By-Laws to give such notice. The notice shall be given by personal delivery or by mail to each member of the Association who is an owner of a unit of record as of the day next preceding the day on which notice is given. If mailed, the notice shall be addressed to the members of the Association at their respective addresses as they appear on the records of the Association. Notice of the time, place and purpose of any meeting of members of the Association may be waived in writing, either before or after the holding of such meeting, by any members of the Association, which writing shall be filed with or entered upon the records of the meeting. Provided, however, that notice shall always be mailed to mortgagees requesting to be notified of Association meetings and this requirement shall not be waived by any action of the unit owners. The attendance of any member of the Association at any such meeting without protesting prior to or at the commencement of the meeting, the lack of proper notice shall be deemed to be a waiver by him of notice of such meeting.

(d) Quorum; Adjournment. Except as may be otherwise provided by law or by the Declaration, at any meeting of the members of the Association, the members of the Association entitled to exercise a majority of the voting power of the Association present in person or by proxy shall constitute a quorum for such meeting; provided, however, that no action required by law, by the Declaration, or by these By-Laws to be authorized or taken by a designated percentage of the voting power of the Association may be authorized or taken by a lesser percentage; and provided

further, that the members of the Association entitled to exercise a majority of the voting power represented at a meeting of members, whether or not a quorum is present, may adjourn such meeting from time to time; if any meeting is adjourned, notice of such adjournment need not be given if the time and place to which such meeting is adjourned are fixed and announced at such meeting.

Section 6. Order of Business. The order of business at all meetings of members of the Association shall be as follows:

- (1) Calling of meeting to order
- (2) Roll-call
- (3) Proof of notice of meeting or waiver of notice
- (4) Reading of minutes of preceding meeting
- (5) Reports of officers
- (6) Reports of Committees
- (7) Election of Managers  
(when appropriate)
- (8) Unfinished and/or old business
- (9) New business
- (10) Adjournment

Section 7. Action by Association Members Without a Meeting. Any action which may be authorized or taken at a meeting of the members of the Association may be authorized or taken without a meeting in writing or writings signed by all the members who would be entitled to notice of a meeting of members held for such purposes, which writing or writings shall be filed with the records of the Association. Such action must be approved in writing by any mortgagee who has requested to be notified of such meetings in accordance with Article I, Section 5, Paragraph (c).

## ARTICLE II

### BOARD OF MANAGERS

Section 1. Number and Qualification. The Board of Managers shall consist of five persons, all of whom must be owners and occupiers of a unit except as hereinafter provided. The Developer (as designated in the Declaration) shall appoint said five (5) persons (subject to the terms of this Section 1) until one (1) year after the Developer itself is the owner of less than twenty-five percent (25%) of the units subject at any time to the within Declaration or until three (3) years from the date this Declaration is filed for record, whichever event first occurs. By way of example, if the Developer owns five (5) of the thirty-one (31) units originally subject to the within declaration in November 1974, then in the event of no further changes, its right to appoint the Board of Managers shall expire in November of 1975. However, if in October of 1975 the Developer would subject twenty (20) additional units to the Declaration and in November of 1975 is still

the owner of twenty (20) of the total of fifty-one (51) units then subject to the Declaration, it would retain the right to appoint the Board of Managers until one (1) year from such time as it owned less than twenty-five percent (25%) of said units. This process would be a continuous one until either one (1) year from a given date at which time the Developer owned less than twenty-five percent (25%) of the units subject to the Declaration, as adjusted from time to time, or three (3) years from the date the Declaration is filed for record, whichever event first occurs. Said appointees need not be owners or occupiers of Family Units. After such date, the positions occupied by said appointees shall be filled by persons duly elected at the next annual meeting of members of the Association as provided in Section 2 of this Article II. If at any time, one bank, savings and loan association, insurance company or other lending institution shall hold a first mortgage or first mortgages upon more than fifty percent (50%) of the units, such lending institution may designate its representative who shall be a sixth member of the Board of Managers. Such representative need not be an owner or occupier of a Family Unit.

After the filing of the Declaration with the Recorder of Montgomery County, and prior to the sale by the Developer of fifteen (15) of the original thirty-one (31) units, the Developer shall appoint all members of the Board of Directors without regard to ownership of units. After the sale of fifteen (15) of said units, the Developer shall replace two (2) members of the Board so appointed with new appointments of members who shall be resident owners of units in Whipoorwill Glen Condominium. Their respective terms of appointment shall expire at the first annual election taking place subsequent to their appointment as hereinafter set forth at which time their successors shall be elected by the resident unit owners. The purpose of the within provisions are to insure resident unit owners participation in the Board of Managers during the period of time that the Developer retains the power of appointment of a majority of said Board of Managers once a significant number of units have been sold by the Developer.

Section 2. Election of Managers; Vacancies. The Managers not appointed pursuant to Section 1 of this Article II shall be elected at each annual meeting of members of the Association or at a special meeting called for the purpose of electing managers. At a meeting of members of the Association at which Managers are to be elected only persons nominated from the floor as candidates shall be eligible for election as Managers and the candidates receiving the greatest number of votes shall be elected. In the event of the occurrence of any vacancy or vacancies in positions on the Board of Managers occupied by people elected pursuant to this Section 2, however caused, the remaining Managers, though less than a majority of the whole authorized number of Managers, may, by the vote of a majority of their number, fill any such vacancy for the unexpired term; provided, however, that a vacancy in the position of a representative of a lending institution or in the position of a representative appointed by the Developer as provided in Section 1 of this Article II, if any, shall be filled by such lending institution and by the Developer, respectively.

Section 3. Term of Office; Resignations. Except as otherwise provided in this Section 3, each Manager shall hold office until the next annual meeting of the members of the Association and until his successor is appointed or elected, or until his earlier resignation, removal from office or death. Any Manager may be re-elected or re-appointed for additional terms of one (1) year each. Any Manager may resign at any time by oral statement to that effect made at a meeting of the Board of Managers or in a writing to that effect delivered to the Secretary of the Association, such resignation to take effect immediately or at such other time as the Manager may specify. Members of the Board of Managers shall serve without compensation.

Section 4. Organization Meeting. Immediately after each annual meeting of members of the Association, the Board of Managers shall hold an organization meeting for the purpose of electing officers and transacting any other business. Notice of such meeting need not be given.

Section 5. Regular Meetings. Regular meetings of the Board of Managers may be held at such times and places as shall be determined by a majority of the Members, but at least four such meetings shall be held during each fiscal year.

Section 6. Special Meetings. Special meetings of the Board of Managers may be held at any time upon call by the President or any two Managers. Written notice of the time and place of each such meeting shall be given to each Manager either by personal delivery or by mail, telegram or telephone at least two days before the meeting, which notice need not specify the purposes of the meeting; provided, however, that attendance of any Manager at any such meeting without protesting, prior to or at the commencement of the meeting, the lack of proper notice shall be deemed to be a waiver by him of notice of such meeting and such notice may be waived in writing either before

or after the holding of such meeting, by any Manager, which writing shall be filed with or entered upon the records of the meeting. Unless otherwise indicated in the notice thereof, any business may be transacted at any organization, regular or special meeting.

Section 7. Action by Board of Managers Without a Meeting. Any action which may be authorized or taken at a meeting of the Board of Managers may be authorized or taken without a meeting in a writing or writings signed by all the managers who would be entitled to notice of a meeting of managers held for such purpose, which writing or writings shall be filed with the records of the Board of Managers.

Section 8. Quorum; Adjournment. A quorum of the Board of Managers shall consist of a majority of the Managers then in office; provided that a majority of the Managers present at a meeting duly held, whether or not a quorum is present, may adjourn such meeting from time to time; if any meeting is adjourned, notice of such adjournment need not be given if the time and place to which such meeting is adjourned are fixed and announced at such meeting. At each meeting of the Board of Managers at which a quorum is present, all questions and business shall be determined by a majority vote of those present, except as may be otherwise expressly provided in the Declaration or in these By-Laws. In the event of any tie vote on any matter pending before the Board of Managers, the President of the Association shall have the power to cast an additional vote to break such tie.

Section 9. Removal of Managers. At any regular or special meeting of members of the Association duly called, at which a quorum shall be present, any one or more of the Managers, except the Manager, if any, acting as a representative of a lending institution or the representatives appointed by the Developer as provided in Section 1 of this Article II, may be removed with or without cause by the vote of members entitled to exercise at least seventy-five percent (75%) of the voting power of the Association, and a successor or successors to such Manager or Managers so removed shall then and there be elected to fill the vacancy or vacancies thus created. Any Manager whose removal has been proposed by the members of the Association shall be given an opportunity to be heard at such meeting.

Section 10. Fidelity Bonds. The Board of Managers shall require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate Fidelity Bonds. The premiums on such bonds shall be paid by the Association and shall be a common expense.

## ARTICLE III

### OFFICERS

Section 1. Election and Designation of Officers.  
The Board of Managers shall elect a President, a Secretary and a Treasurer each of whom shall be a member of the Board of Managers. The Board of Managers may also appoint an Assistant Secretary and such other officers as in their judgment may be necessary who are not members of the Board of Managers, but who are members of the Association.

Section 2. Term of Office; Vacancies. The officers of the Association shall hold office until the next organization meeting of the Board of Managers and until their successors are elected, except in case of resignation, removal from office or death. The Board of Managers may remove any officer at any time with or without cause by a majority vote of the Managers then in office. Any vacancies in any office may be filled by the Board of Managers unless otherwise herein provided.

Section 3. President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of members of the Association and shall preside at all meetings of the Board of Managers. Subject to directions of the Board of Managers, the President shall have general executive supervision over the business and affairs of the Association. He may execute all authorized deeds, contracts and other obligations of the Association and shall have such other authority and shall perform such other duties as may be determined by the Board of Managers or otherwise provided for in the Declaration or in these By-Laws.

Section 4. Vice President. The Vice President shall perform the duties of the President whenever the President is unable to act and shall have such other authority and perform such other duties as may be determined by the Board of Managers.

Section 5. Secretary. The Secretary shall keep the minutes of meetings of the members of the Association and of the Board of Managers. He shall keep such books as may be required by the Board of Managers, shall give notices of meetings of members of the Association and of the Board of Managers required by law, or by these By-Laws or otherwise, and shall have such authority and shall perform such other duties as may be determined by the Board of Managers.

Section 6. Treasurer. The Treasurer shall receive and have in charge all money, bills, notes and similar property belonging to the Association, and shall do with the same as may be directed by the Board of Managers. He shall keep accurate financial accounts and hold the same open for the inspection and examination of the Managers and shall have such authority -



and shall perform such other duties as may be determined by the Board of Managers.

Section 7. Other Officers. The Assistant Secretaries and Assistant Treasurers, if any, and any other officers whom the Board of Managers may appoint shall, respectively, have such authority and perform such duties as may be determined by the Board of Managers.

Section 8. Delegation of Authority and Duties. The Board of Managers is authorized to delegate the authority and duties of any officer to any other officer and generally to control the action of the officers and to require the performance of duties in addition to those mentioned herein.

Section 9. Indemnification of Managers and Officers. The members of the Board of Managers and the officers shall not be liable to the Family Unit owners for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The Association shall indemnify every Board member and officer, his heirs, executors and administrators, against all loss, costs and expenses, including counsel fees, reasonably incurred by him in connection with any action, suit or proceeding to which he may be made a party by reason of his being or having been a Board member or officer of the Association except as to matters as to which he shall be finally adjudged in such action, suit or proceeding to be liable for willful misconduct or bad faith. In the event of a settlement, indemnification shall be provided only in connection with such matters covered by the settlement as to which the Association is advised by counsel that the person to be indemnified had not been guilty of willful misconduct or bad faith in the performance of his duty as such Board member or officer in relation to the matter involved. The foregoing rights shall not be exclusive of other rights to which such Board member or officer may be entitled. All liability, loss, damage, cost and expenses incurred or suffered by the Association by reason or arising out of or in connection with the foregoing indemnification provisions shall be treated by the Association as Common Expenses, provided, however, that nothing in this Article contained shall be deemed to obligate the Association to indemnify any member or Family Unit Owner, who is or has been a Board member or officer of the Association, with respect to any duties or obligations assumed or liabilities incurred by him under and by virtue of his membership in the Association or as a Family Unit owner.

#### ARTICLE IV

##### GENERAL POWERS OF THE ASSOCIATION

Section 1. Payments From Maintenance Funds. The Association, for the benefit of all the owners, shall acquire, and shall pay for out of the maintenance fund hereinafter provided for, the following:

(a) Utility Service for Common Areas and Facilities. Water, waste removal, electricity telephone, heat, power or any other necessary utility service for the common areas and facilities.

(b) Casualty Insurance. A policy or policies of fire insurance, with extended coverage, as provided in the Declaration, the amount of which insurance shall be reviewed annually.

(c) Liability Insurance. A policy or policies insuring the Association, the members of the Board, and the owners against any liability to the public or to the owners (of units and of the common areas and facilities, and their invitees, or tenants), incident to the ownership and/or use of the common areas and facilities and units, as provided in the Declaration the limits of which policy shall be reviewed annually;

(d) Wages and Fees for Services. The services of any person or firm employed by the Association including, without limitation, the services of a person or firm to act as a manager or managing agent for the Condominium Property, the services of any person or persons required for the maintenance or operation of the Condominium Property (including a recreation director, if any) and legal and/or accounting services necessary or proper in the operation of the Condominium Property or the enforcement of the Declaration and these By-Laws and for the organization, operation and enforcement of the rights of the Association;

(e) Care of Common Areas and Facilities. Such maintenance, operational and recreational services as the Association shall determine are necessary and proper, or as required by the Declaration, and specifically including the maintenance and repair of all private streets and the maintenance and repair of all drainage systems within the Condominium Property.

(f) Additional Expenses. Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance or assessments which the Association is required to secure or pay for pursuant

to the terms of the Declaration and these By-Laws or by law or which in its opinion shall be necessary or proper for the maintenance and operation of the Condominium Property as a first class Condominium Project or for the enforcements of the Declaration and these By-Laws.

(g) Discharge of Mechanic's Liens. Any amount necessary to discharge any mechanic's lien or other encumbrance levied against the entire Condominium Property or any part thereof which in the opinion of the Association constitute a lien against the Condominium Property or against the Common Areas and Facilities, rather than merely against the interests therein of particular owners; it being understood, however, that the foregoing authority shall not be in limitation of any statutory provisions relating to the same subject matter. Where one or more owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Association by reason of said lien or liens shall be specifically assessed to said owners;

(h) Certain Maintenance of Units. Maintenance and repair of any unit, or to the limited common area which is the obligation of a particular unit owner to maintain and repair, if such maintenance or repair is necessary, in the discretion of the Association, to protect the Common Areas and facilities, or any other portion of a building, and the owner or owners of said unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Association to said owner or owners, provided that the Association shall levy special assessment against such unit owner for the cost of said maintenance or repair.

(i) Association's Right to Enter Unit. The Association or its agent may enter any unit when necessary in connection with any maintenance or construction for which the Association is responsible. It may likewise enter any balcony for maintenance, repairs, construction or painting. Such entry shall be made with as little inconvenience to the Owners as practicable, and any damage caused thereby shall be repaired by the Association, at the expense of the maintenance fund. The Association reserves the right to retain a pass key to each unit and no locks or other devices shall be placed on

the doors to the units to obstruct entry through the use of such pass key at such time as the unit owner is not occupying his unit; provided, further, however, that such right of access and use of said pass key shall only take place in the event of a real emergency affecting the Condominium Property or an individual unit as determined in good faith by the Association or its agents. In the event of any such emergency originating in or threatening any unit or at any time when required alterations or repairs are scheduled, the management agent or his representative or any other person designated by the Board of Managers, may enter the unit immediately, whether the owner is present or not. Violation of the limitations as hereinbefore set forth on the right of access and the use of said pass key by or on behalf of the association shall be grounds for removal from the Board of Managers of an individual in such violation and shall constitute an invasion of the unit owners' privacy by the Association.

(j) Capital Additions and Improvements. The Association's powers hereinabove enumerated shall be limited in that the Association shall have no authority to acquire and pay for out of the maintenance fund any capital additions and improvements (other than for purposes of replacing or restoring portions of the common areas and facilities, subject to all the provisions of the Declaration and these By-Laws) having a total cost in excess of One Thousand Dollars (\$1,000.00) nor shall the Association authorize any structural alterations, capital additions to, or capital improvements of the common areas and facilities requiring an expenditure in excess of One Thousand Dollars (\$1,000) without in each case the prior approval of the members of the Association entitled to exercise two-thirds (2/3) of the voting power of the Association.

(k) Miscellaneous. The Association shall pay such other costs and expenses designated as "common expenses" in the Declaration and in these By-Laws.

Section 2. Rules and Regulations. The Association, by vote of the Board of Managers, may adopt rules and regulations and from time to time amend the same supplementing the rules and regulations set forth in the Declaration and in these By-Laws as it may deem advisable for the maintenance, conservation and beautification of the Condominium Property, and for the health, comfort, safety and general welfare of the owners and occupants of the Condominium Property. Written notice of such rules and regulations shall be given to all owners and occupants and the Condominium Property shall at all times be maintained subject to such rules and regulations. In the event such supplemental rules and regulations shall conflict with any provisions of the Declaration or of these By-Laws, the provisions of the Declaration and of these By-Laws shall govern.

(a) Said rules and regulations shall include regulations prohibiting any storage in the open areas on the outside of any privacy fences located on the individual units so as to prevent such storage being visible on the public roadways through the development.

Section 3. No Active Business to be Conducted for Profit. Nothing herein contained shall be construed to give the Association authority to conduct an active business for profit on behalf of all the owners or any of them.

Section 4. Special Services. The Association may arrange for the provision of any special services and facilities for the benefit of such owners and/or occupants as may desire to pay for the same, including, without limitation, cleaning, repair and maintenance of units and provisions of special recreational or medical facilities. Fees for such special services and facilities shall be determined by the Board of Managers and may be charged directly to participating owners, or paid from the maintenance fund and levied as a special assessment due from the participants.

Section 5. Delegation of Duties. Nothing herein contained shall be construed so as to preclude the Association, through its Board of Managers and officers, from delegating to persons, firms or corporations of its choice, including any manager or managing agent, such duties and responsibilities of the Association as the Managers of the Association shall from time to time specify, and to provide for reasonable compensation for the performance of such duties and responsibilities, all in accordance with Section Nine of the Declaration.

Section 6. Applicable Laws. The Association shall be subject to and governed by the provisions of any statute adopted at any time and applicable to property submitted to the Condominium form of ownership (including, without limitation, Chapter 5311, Ohio Revised Code); provided, however, that all inconsistencies between or among the permissive provisions of any statute and any provision of the Declaration and these By-Laws, shall be resolved in favor of the Declaration and these By-Laws, and any inconsistencies between any statute applicable to associations formed to administer property submitted to the Condominium form of ownership, shall be resolved in favor of the latter statute. In the event of any conflict or inconsistency between the provisions of the Declaration and the Articles or By-Laws, of the Association, the terms and provisions of the Declaration shall prevail, and the owners and all persons claiming under them covenant to vote in favor of such amendments in the Articles or By-Laws as will remove such conflicts or inconsistencies.

ARTICLE V

DETERMINATION AND PAYMENT OF ASSESSMENTS

Section 1. Obligation of Owners to Pay Assessments.

It shall be the duty of every unit owner to pay his proportionate share of the expenses of administration, maintenance and repair of the common areas and facilities and of the other expenses provided for herein. Such proportionate share shall be in the same ratio as his percentage of ownership in the common areas and facilities as set forth in the Declaration. Payment thereof shall be in such amounts and at such times as may be determined by the Board of Managers of the Association, as hereinafter provided.

Section 2. Preparation of Estimated Budget. Each

year on or before December 1, the Association shall estimate the total amount necessary to pay the cost of wages, materials, insurance, services and supplies which will be required during the ensuing calendar year for all services to be rendered by the Association together with a reasonable amount considered by the Association to be necessary for a reserve for contingencies and replacements, and shall on or before December 15 notify each owner in writing as to the amount of such estimate, with reasonable itemization thereof. Said "estimated cash requirement" shall be assessed to the owners according to each owner's percentage of ownership in the Common Areas and Facilities as set forth in the Declaration. On or before the first day of each month of the ensuing year, each owner shall be obligated to pay to the association or as it may direct one-twelfth (1/12) of the assessment made pursuant to this paragraph. On or before the date of the annual meeting of each calendar year, the Association shall supply to all owners an itemized accounting of the maintenance expenses for the preceding calendar year actually incurred and paid together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited according to each owner's percentage of ownership in the common areas and facilities to the next installment due from owners under the current year's estimate, until exhausted, and any net shortage shall be added according to each owner's percentage of ownership in the Common Areas and Facilities to the next installment due after rendering of the accounting.

Section 3. Reserve for Contingencies and Replacements.

The Association shall build up and maintain a reasonable reserve for contingencies and replacement. Extraordinary expenditures not originally included in the annual estimate which may be necessary for the year, shall be charged first against such reserve. If said "estimated cash requirement" proves inadequate for any reason other than non-payment of any owner's assessment, said extraordinary expenditures shall be assessed to the owners according to each owner's percentage of ownership in the Common

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Areas and Facilities. The Association shall serve notice of such further assessment on all owners by a statement in writing giving the amount and reasons therefor, and such further assessment shall become effective with the next maintenance payment which is due more than ten (10) days after the delivery or mailing of such notice of further assessment. All owners shall be obligated to pay the adjusted amount.

Section 4. Budget for First Year. When the first Board of Managers takes office, the Association shall determine the "estimated cash requirement" as hereinabove defined, for the period commencing thirty (30) days after said election and ending on December 31, of the calendar year in which said Board first takes office. Assessments shall be levied against the owners during said period as provided in Section 2 of this Article. V.

Section 5. Failure to Prepare Annual Budget. The failure or delay of the Association to prepare or serve the annual or adjusted estimate on the owner shall not constitute a waiver or release in any manner of such owner's obligation to pay the maintenance costs and necessary reserves, as herein provided, whenever the same shall be determined, and in the absence of any annual estimate or adjusted estimate, the owner shall continue to pay the quarterly maintenance charge at the existing rate established for the previous period until the maintenance payment which is due more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

Section 6. Books and Records of Association. The Association shall keep full and correct books of account and the same shall be open for inspection by any owner or any representative of an owner duly authorized in writing, at such reasonable time or times during normal business hours as may be required by the owner. Upon ten (10) days' notice to the Board of Managers, any unit owner shall be furnished a statement for his account setting forth the amount of any unpaid assessments or other charges due and owing from such owner.

Section 7. Status of Funds Collected by Association. All funds collected hereunder shall be held and expended solely for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all of the owners, and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the use, benefit and account of all of the owners in proportion to each owner's percentage ownership in the Common Areas and Facilities as provided in the Declaration.

Section 8. Rights of Mortgagees. At any time the holder of a first mortgagee on any unit shall have the right to request and have delivered to it a copy of the current proposed budget or other relevant material to the budget together with any financial statements of the Association or any tax returns of the Association for the immediate year or the immediately preceding

year together with any projections for budget expenses and related matters which may have been prepared by the Board of Managers.

Section 9. Annual Audit. The books of the Association shall be audited once a year by an outside accountant, and such audit shall be completed prior to each annual meeting. Provided, however, that the requirement for the use of an outside accountant shall not commence until such time as the unit owners elect all of the members of the Board of Managers. If requested either by the owners of twenty-five percent (25%) or more of the units (including Developer) or by two members of the Board of Managers, such annual audit shall be made by a certified public accountant at the Association's expense. If at any other time it is requested by the owners of twenty-five percent (25%) or more of the units, including the Developer) to have an additional audit during the year, the Board of Managers shall cause such additional audit to be paid, provided that the entire expense of such additional audit shall be paid solely by those owners, including Developer, who requested it. In addition, at any other time requested by the holders of first mortgages on twenty-five percent (25%) or more of the units, the Board of Managers shall provide a similar audit and further provide that the entire expense of such audit shall be paid for by the Association.

Section 10. Remedies for Failure to Pay Assessments. If any owner is in default in the payment of the aforesaid charges or assessments for thirty (30) days, the members of the Board of Managers may bring suit for and on behalf of themselves and as representatives of all owners, to enforce collection thereof or to foreclose the lien therefor as provided in the Declaration; and there shall be added to the amount due the costs of said suit, together with legal interest, late charges as provided in the Declaration, and reasonable attorney's fees to be fixed by the Court. To the extent permitted by the Declaration, any decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments, and interest, late charges, costs and fees as above provided, shall be and become a lien or charge against the unit ownership of the owner involved when payable, and may be foreclosed by an action brought in the name of the Board of Managers as in the case of foreclosures of liens against real estate, as provided in the Declaration. As provided in the Declaration, the members of the Board of Managers and their successors in office, acting on behalf of the other unit owners, shall have the power to bid in the interest so foreclosed at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Any encumbrancer may from time to time request in writing a written statement from the Board of Managers setting forth the unpaid common expenses with respect to the unit covered by his encumbrance and unless the request shall be complied with within twenty (20) days, all unpaid common expenses which became due prior to the date of the making of such request shall be subordinate to the lien of such encumbrance. Any encumbrancer holding a lien on a unit may pay any unpaid common

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expenses payable with respect to such unit and upon such payment such encumbrancer shall have a lien on such unit for the amounts paid at the same rank as the lien of his encumbrance.

Section 11. Security Deposits from Certain Owners.

In the event that any owner of a unit consistently fails to promptly pay in accordance with the rules and regulations of the Association the assessments levied thereunder, by the Association, in accordance with the terms of these By-Laws or in accordance with the terms of the Declaration, the Association shall have the right to require a security deposit from such unit owner in an amount not to exceed the estimated total annual assessment to be levied against such unit owner. Consistently late in the payment of assessments levied by the Association shall mean such lateness as will inconvenience the smooth operation of the Association and require the Association to obtain funds from other sources in order to meet its obligations due to the fact that the particular unit owner fails to promptly pay his share of the expenses.

ARTICLE VI

GENERAL PROVISIONS

Section 1. Copies of Notice to Mortgage Lenders.

Upon written request to the Board of Managers, the holder of any duly recorded mortgage or trust deed against any unit ownership shall be given a copy of any and all notices permitted or required by the Declaration or these By-Laws to be given to the owner or owners whose unit ownership is subject to such mortgage or trust deed.

Section 2. Service of Notices on the Board of Managers. Notices required to be given to the Board of Managers or to the Association may be delivered to any member of the Board of Managers or officer of the Association either personally or by certified mail addressed to such member or officer at his unit.

Section 3. Service of Notices on Devisees and Personal Representatives. Notices required to be given any devisee or personal representative of a deceased owner may be delivered either personally or by certified mail to such party at his, or her or its address appearing on the records of the Court wherein the estate of such deceased owner is being administered.

Section 4. Non-Waiver of Covenants. No covenants, restrictions, conditions, obligations or provisions contained in the Declaration or these By-Laws 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.

Section 5. Agreements Binding. All agreements and determinations lawfully made by the Association in accordance with the procedures established in the Declaration and these By-Laws shall be deemed to be binding on all unit owners, their successors and assigns.

Section 6. Notices of Mortgages. Any owner who mortgages his unit shall notify the Association in such manner as the Association may direct of the name and address of his mortgagee and thereafter shall notify the Association of the payment, cancellation or other alteration in the status of such mortgage. The Association shall maintain such information in a book entitled "Mortgagees of Units."

Section 7. Severability. The invalidity of any covenant, restriction, condition, limitation or any other provision of these By-Laws, or of any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the Declaration or of the rest of these By-Laws.

Section 8. Perpetuities and Restraints on Alienation. If any of the options, privileges, covenants or rights created by these By-Laws shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of William A. Rogers, Jr. and Richard G. Snell.

Section 9. Non-discrimination. No owner (including the Developer) or any employee, agent or representative thereof, shall discriminate upon the basis of sex, race, color, creed or national origin in the sale, lease or rental of any Family Unit nor in the use of the Common Areas and Facilities.

Section 10. Singular, Plural, Gender. Whenever the context so permits or requires, the use of the plural shall include the singular, the use of the singular shall include the plural, and the use of any gender shall be deemed to include all genders.

Section 11. Reservation of Name to Developer. The Developer has reserved the right to the use of the name "Whippoorwill Glen Condominium" together with an identifying mark such as "II" or "2" etc. so as to distinguish it from the within Whippoorwill Glen Condominium for any future developments on land other than the Condominium Property herein or on the Additional Land that may be developed by the Developer. The Association agrees at any time in the future on request of the Developer to execute and deliver to the Secretary of State any necessary consent to the use of said name as herein limited of "Whippoorwill Glen Condominium".

Section 12. It shall be the obligation of the Association as part of its function of management of the Condominium Property to arrange for and provide for services for the hauling, collection and disposition of trash and garbage from the Condominium Property for the benefit of the unit owners. This expense shall be a common expense and be charged to the unit owners as part of the monthly assessment.

Section 13. During the period of time that the Developer owns units in the Condominium Property, the Developer shall not be responsible for those portions of the monthly assessments which relate to expenses of the Association directly related to occupancy of the unit for residential purposes. Such items shall be deducted from the assessments due from the Developer as the owner of such unit. An example would be the cost of trash collection.

Section 14. The Declaration of Condominium prohibits the installation of T.V. or similar antenna on the exterior portions of the buildings constituting the Condominium Property. It is contemplated that the Developer will provide one antenna for each building in the Condominium project to be used by all units of the particular building and that said antenna will be located within the rafter or crawl space in the common area beneath the roof and above the ceilings of a particular unit to be designated by the Developer. In the event that satisfactory reception cannot be obtained in such manner, then the Association shall have the right to approve the installation of an antenna on the exterior of the buildings in the Condominium Property for use by all units in that building.

IN WITNESS WHEREOF, Oak Creek South, Inc. as the Developer and Grantor of the Declaration of Condominium Property, has caused the execution of this instrument this 22 day of October, 1974.

Signed in the Presence of:

William A. Ragan

OAK CREEK SOUTH, INC.

BY John G. Black  
John G. Black, its  
Executive Vice President

Grace Ann Lynch

BY Stanley S. Swango, III  
Stanley S. Swango, III,  
Its Secretary