

**AMENDED RESTATED DECLARATION OF CONDOMINIUM PROPERTY FOR
THE RESERVE AT THE FAIRWAYS CONDOMINIUM**

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ARTICLE I
DEFINITIONS

1.01 **General.** The following terms used in the Condominium Organizational Documents are defined as hereinafter set forth.

1.02 **Additional Property** shall mean adjacent or adjoining property which is described in Exhibit "D" and which, together with improvements thereon, may be added in the future to the Condominium, excepting therefrom any Property submitted hereby.

1.03 **Agent** shall mean any person who represents a Developer or who acts for or on behalf of a Developer in selling or offering to sell a Condominium Ownership Interest in a Condominium Development, but shall not include an attorney-at-law whose representation of a Developer consists solely of rendering legal services.

1.04 **Amendment and/or Amendments** shall mean an instrument executed with the same formalities of the Declaration and Recorded for the purpose of amending the Condominium Organizational Documents or any other Exhibits thereto.

1.05 **Articles and/or Articles of Incorporation** shall mean the articles, filed with the Secretary of State of Ohio, incorporating the Association as an Ohio not-for-profit corporation under the provisions of Chapter 1702 of the Ohio Revised Code, as the same may be lawfully amended from time to time.

1.06 **Association** shall mean The Reserve at the Fairways, Section One Condominium Association, Inc., an Ohio not-for-profit corporation, its successors and assigns.

1.07 **Board and/or Board of Directors** shall mean those Persons who as a group serve as the Board of Directors of the Association.

1.08 **Bylaws** shall mean the Bylaws of the Association, which are attached as Exhibit "C" as the same may be lawfully amended from time to time, created under and pursuant to the provisions of the Ohio Condominium Act for the Condominium, and which also serve as the code of regulations of the Association under and pursuant to the provisions of Chapter 1702 of the Ohio Revised Code.

1.10 **Common Assessments** shall mean assessments that are charged proportionately against all Units for common purposes.

1.11 **Common Elements** shall mean all of the Condominium Property except that portion thereof described in the Declaration as constituting a Unit or Units.

1.12 **Common Expenses** shall mean those expenses designated as such by the Ohio Condominium Act, or in accordance with the provisions of the Declaration, including Per Unit Expenses.

1.13 **Common Losses** shall mean the amount by which the Common Expenses during any period of time exceeds the Common Assessments and Common Profits during that period.

1.14 **Common Profits** shall mean the amount by which the total income received from any of the following exceeds expenses allocable to the particular income, rental, fee or charge:

- (a) Assessments charged for special benefits to specific Units;
- (b) Rents received from the rental of equipment or space in Common Elements;
- (c) Any other fee, charge or income other than common assessments.

1.15 **Common Surplus** shall mean the amount by which Common Assessments collected during any period exceeds Common Expenses.

1.16 **Condominium** shall mean The Reserve at the Fairways Condominium, the condominium regime for the Condominium Property created under and pursuant to the provisions of the Ohio Condominium Act.

1.17 **Condominium Development** shall mean a Condominium Property in which two (2) or more individual residential Units together with their undivided interests in the Common Elements are offered for sale pursuant to a common promotional plan.

1.18 **Condominium Instruments** shall mean the Declaration, the Drawings and By-Laws attached as Exhibits thereto, any contract pertaining to the management of the Condominium Property, and all other documents, contracts or instruments establishing ownership or exerting control over the Condominium Property or a Unit.

1.19 Condominium Organizational Documents shall mean the Declaration and Exhibits, as the same may be lawfully amended from time to time.

1.20 Condominium Ownership Interest shall mean a fee simple estate or a ninety- nine (99) year leasehold estate, renewable forever in a Unit, together with its appurtenant undivided interest in the Common Elements.

1.21 Condominium Property shall mean land, all buildings, improvements and structures on the land, all easements, rights and appurtenances belonging to the land, and all articles of personal property submitted to the provisions of the Ohio Condominium Act by this Declaration and any Amendment.

1.22 Control Period shall mean a period of time five (5) years from the date on which the Association is formed or a period of time sixty (60) days after seventy-five percent (75%) of the Condominium Ownership Interests have been sold and conveyed, whichever first occurs. For purposes hereof, the Percentages of Condominium Ownership Interests sold and conveyed by Declarant shall be determined by comparing the Condominium Ownership Interests sold and conveyed, to the total number of Condominium Ownership Interests created and which may be created pursuant to the provisions of the Declaration.

1.23 Declarant shall mean Trebein Limited ADK IV, an Ohio limited liability company, its successors and assigns; provided the rights specifically reserved to Declarant under the Condominium Organizational Documents shall accrue only to such successor and assigns as are designated in writing by Declarant as successors and assignees of such rights.

1.24 Declaration shall mean the instrument by which the property hereinafter described is submitted to the provisions of the Ohio Condominium Act and any and all Amendments thereto.

1.25 Developer shall mean the Declarant, any successor to the Declarant who stands in the same relation to the Condominium Property as the Declarant, and any person who directly or indirectly sells or offers for sale a Condominium Ownership Interest.

1.26 Director shall mean that Person serving at the time pertinent on the Board of Directors.

1.27 Drawings shall mean those drawings, as the same may be lawfully amended from time to time, which are attached as Exhibit "B".

1.28 Eligible Holder(s) shall mean the holder of a valid Recorded first mortgage on a Unit, which holder has given written notice to the Association requesting notification of any proposed action that requires the consent of a specified percentage of Eligible Holders.

1.29 Exclusive Use Areas shall mean Common Elements that the Declaration reserves for delegation by the Board to the use of a certain Unit or Units, to the exclusion of other Units.

1.30 Exhibit shall mean any document or instrument attached to the Declaration.

1.31 Insurance Trustee shall mean any bank located in Montgomery County, Ohio with trust powers and total assets in excess of Fifty Million Dollars (\$50,000,000.00) which has been selected by the Association pursuant to the provisions of the Declaration.

1.32 Limited Common Elements shall mean those Common Elements serving exclusively one (1) Unit or more than one (1) Unit but less than all Units, the enjoyment, benefit or use of which are reserved to the lawful Occupants of that Unit or Units either in this Declaration or by the Board.

1.33 Majority of Unit Owners shall mean those Unit Owners holding fifty-one percent (51%) of the voting power of the Association.

1.34 Managing Agent shall mean a manager or managing agent retained or employed by the Association pursuant to the provisions of the Declaration.

1.35 Master Association shall mean The Reserve at the Fairways "Condominium" Phase I Association, Inc., an Ohio not-for-profit corporation, its successors and assigns.

1.36 Master Declaration shall mean the Master Declaration of Covenants, Conditions and Restrictions for The Reserve at the Fairways "Condominium" Phase I, as Recorded at Microfiche SP-I-05-035097.

1.37 Member depending on its context, shall mean a Unit Owner that is subjected hereto and/or a member of the Association.

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

1.39 Ohio Condominium Act means Chapter 5311 of the Ohio Revised Code, the statutory law of the State of Ohio regulating the creation and operation of Condominiums.

1.40 Per Unit Expenses shall mean Common Expenses that arise out of the following, which are not allocated, on a Percentage of Ownership but on an equal per Unit basis:

(a) Expenses that arise out of the administration, operation, maintenance, repair and replacement of security, telecommunications, rubbish removal, roads, entrances, recreation facilities, if any, landscaping, and grounds care;

(b) Legal, accounting and management expenses.

1.41 Percentage of Ownership shall mean the undivided interest of each Unit in the Common Elements as set forth in this Declaration.

1.42 Person shall mean a natural individual, corporation, partnership, trustee, or other legal entity capable of holding title to real property.

1.43 Property shall mean the real property described in Exhibit "A" attached hereto.

1.44 Quorum is defined in Bylaws, Article I, Section 1.11. Ballots submitted via mail or by Electronic Voting Technology as defined in Bylaws Article I, Section 1.03, as amended, also will count that Unit towards the quorum.

1.45 Recorded shall mean the recording with the Recorder of Montgomery County, Ohio and the prior filing thereof with the Auditor of Montgomery County, Ohio, if required.

1.46 Rules and Regulations shall mean those rules and regulations as may be amended from time to time adopted by the Board.

1.47 Special Individual Unit Assessment shall mean an assessment levied or charged by the Board against a Unit or Units pursuant to the provisions of the Declaration which provides that a particular Unit or Units may be responsible for

expenses, charges or costs which are not chargeable or assessable against all Units in the Condominium.

1.48 The Reserve at the Fairways "Condominium" Phase I shall mean The Reserve at the Fairways "Condominium" Phase I, as recorded in Plat Book 195, Page 21 of the Plat Records of Montgomery County, Ohio.

1.49 Underwriter shall mean Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Governmental National Mortgage Association, Government Mortgage Guaranty Insurance Corporation, Department of Housing and Urban Development, the Veterans Administration or any such other organizations or agencies insuring or guaranteeing first mortgages on Units.

1.50 Unit shall mean a part of the Condominium Property consisting of one (1) or more rooms on one (1) or more floors of a building(s) that are designated a Unit by this Declaration or Amendment and are delineated on the Drawings and in the Drawings attached to an Amendment.

1.51 Unit Owner shall mean a Person who owns a Condominium Ownership Interest in a Unit.

ARTICLE II NAME, PURPOSE AND ADMINISTRATION

2.01 Name. The Condominium Property shall be known as The Reserve at the Fairways Condominium.

2.02 Purpose. The Condominium Property shall be used for single family residence purposes and common recreational purposes auxiliary thereto and for no other purpose; provided, however, (i) that consistent with applicable zoning, professional and quasi-professional Occupants may use a Unit as an auxiliary or secondary facility to an office established elsewhere; and (ii) an Occupant maintaining a personal or professional library, keeping personal, business or professional telephone calls or correspondence, in or from a Unit, is engaging in a use expressly declared customarily incidental to principal residential use and is not in violation of these restrictions.

2.03 Administration. The Condominium Property shall be administered in accordance with the provisions of the Condominium Organizational Documents and the Rules and Regulations, as the same may be amended from time to time. Each Unit Owner, tenant or Occupant shall comply with the provisions of the Condominium

Organizational Documents and the Rules and Regulations together with the decisions and resolutions of the Board.

2.04 The Reserve at the Fairways "Condominium" Phase I. The Condominium is part of and included in The Reserve at the "Fairways Condominium" Phase I and in addition to being a Member, each Unit Owner shall also be a member of the Master Association and subject to the restrictions and assessments set forth in the Master Declaration.

ARTICLE III **LEGAL DESCRIPTION OF PROPERTY**

3.01 Legal Description. The real property subject to this plan for condominium ownership is described in Exhibit "A" attached hereto.

ARTICLE IV **DESCRIPTION AND LOCATION OF BUILDING(S)**

4.01 General. Unless or until Amended, the following building(s) are located on the Condominium Property. These building(s) are generally described as follows:

- (a) Buildings 2 and 3 are partially one (1) and two (2) stories in height containing a total of four (4) Units per building.
- (b) Building 4 is two (2) stories in height, containing a total of four (4) Units.
- (c) Building 5 is two (2) stories in height, containing a total of four (4) Units.
- (d) Building 6 is two (2) stories in height, containing a total of eight (8) Units.
- (e) Building 7 is two (2) stories in height, containing a total of eight (8) Units.
- (f) Building 8 is one (1) story in height, containing a total of five (5) Units.
- (g) Building 9 is one (1) story in height, with a loft area, containing a total of two (2) Units.

(h) Building 10 is one (1) story in height, with a loft area, containing a total of two (2) Units.

(i) Building 11 is one (1) story in height, with a loft area, containing a total of two (2) Units.

(j) Building 12 is one (1) story in height, with a loft area, containing a total of two (2) Units.

(k) Building 13 is a one (1) story in height, with a loft area, containing one (1) Unit.

4.02 Specific. All of the building(s) are constructed on block or poured concrete walls, with frame exterior walls, some brick veneer, stucco and siding, windows, a wood truss roof with asphalt shingle or wood covering, wood floor joints, wall studs and drywall. A specific graphic description of the building(s) is set forth in the Drawings.

4.03 Location. The buildings have access to Brandt Pike (State Route 201), a public roadway, through Salon Circle, a private roadway.

ARTICLE V **DESCRIPTION OF UNITS**

5.01 General. Each of the Units within this Declaration, or any additional Units brought within the provisions of the Declaration by an Amendment shall consist of all of the space bounded by the undecorated surfaces of the perimeter walls, the unfinished surface of the lower floor, and the unfinished interior surface of the roof deck, all projected, if necessary by reason of structural divisions such as interior walls and partitions to constitute a complete enclosure of space, and all improvements within that space, the dimensions and descriptions of each such Unit being shown on the Drawings and in the Drawings attached to an Amendment and including without limitation:

(a) The decorated surfaces, including paint, lacquer, varnish, wallpaper, tile and other finishing material(s) applied to the interior surface of such perimeter walls, floors and ceilings;

(b) All windows, screens and doors, including the frames, sashes and jams and the space occupied thereby and as hardware therefore;

(c) All fixtures and appliances located within the bounds of a Unit, installed in and for the exclusive use of said Unit, commencing at the point of disconnection from the structural body of the building(s) or from the point of disconnection of utility pipes, lines or systems serving the entire building(s) or more than one Unit thereof, whichever may be applicable; including without limitation, built-in cabinets, dishwashers, garbage disposal units, and components thereof, if any, even if located outside the bounds of the Unit, serving only that Unit;

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

(e) All interior walls, floors and ceilings;

(f) All plumbing, electric, heating, security, alarm, vacuum, cooling and other utility lines, pipes, wires, ducts or conduits which exclusively serve either the Unit or the fixtures located therein, and which are located within the bounds of the Unit, or within the exterior walls of that Unit.

But excepting therefrom, any structural element of the building contained in interior walls and all plumbing, electric, heating, cooling and other utility service lines, pipes, wires, ducts or conduits which are located within the bounds of a Unit but which any other Unit.

5.02 **Type(s) of Unit.** Unless or until amended, there are different types of Units which are generally described as follows:

(a) Avalon is a two (2) story townhouse Unit containing approximately 1,987 square feet, which includes the garage.

(b) Biarritz is a garden Unit with a loft area containing approximately 2,732 square feet, which includes the loft and garage areas.

(c) Calais is a two (2) story townhouse Unit containing approximately 2,379 square feet, which includes the garage.

(d) Dijon is a two (2) story townhouse Unit containing approximately 2,612 square feet, which includes the garage.

(e) Parisian is a garden Unit, with a loft containing approximately 2,350 square feet.

(f) Biarritz II is a garden Unit, with a loft, containing approximately 2,562 square feet.

(g) Biarritz II Modified is a garden Unit, with a loft, containing approximately 2,997 square feet.

5.03
type:

Designation of Units by Type. The following is a listing of Units by their

Unit No.	Building	Type
2-8821	2	Biarritz
2-8823	2	Avalon
2-8825	2	Avalon
2-8827	2	Biarritz
3-8831	3	Avalon
3-8833	3	Avalon
3-8835	3	Calais
3-8837	3	Dijon
4-6989	4	Avalon
4-6991	4	Avalon
4-6993	4	Calais
4-6995	4	Dijon
5-8832	5	Dijon
5-8834	5	Calais
5-8836	5	Avalon
5-8838	5	Avalon
6-6988	6	Dijon
6-6990	6	Calais
6-6992	6	Dijon
6-6994	6	Calais
6-6996	6	Calais
6-6998	6	Dijon
7-6986	7	Dijon
7-6988	7	Calais

7-6990	7	Avalon
7-6992	7	Avalon
7-6994	7	Dijon
7-6996	7	Calais
7-6998	7	Calais
7-7000	7	Dijon
8-8833	8	Biarritz
8-8835	8	Parisian
8-8837	8	Parisian
8-8839	8	Parisian
8-8841	8	Biarritz
9-6978	9	Biarritz II
9-6982	9	Biarritz II
10-6970	10	Biarritz II
10-6976	10	Biarritz II
11-6962	11	Biarritz II
11-6966	11	Biarritz II
12-6954	12	Biarritz II
12-6958	12	Biarritz II
13-6950	13	Biarritz II Modified

ARTICLE VI
RELOCATION OF BOUNDARIES OF UNITS AND
LIMITED COMMON ELEMENTS

6.01 **General.** Notwithstanding any provision in this Declaration to the contrary, the boundaries between adjoining Units and appurtenant Limited Common Elements may be relocated and the Percentage of Ownership appurtenant to those Units may be reallocated by an Amendment pursuant to the following procedures.

(a) The Unit Owners of the adjoining Units shall submit to the Board a written application for the relocation and reallocation. The application shall be accompanied by the written consents of the holders of all liens on those Units, except liens for real estate taxes and assessments not yet due and payable.

(b) In the application the Unit Owners of the adjoining Units may request a specific reallocation of their Percentage of Ownership allocated to the adjoining Units.

6.02 Board Approval. Unless the Board finds any requested reallocation of the Percentage of Ownership to be unreasonable, within thirty (30) days after the Board receives the application the Association shall prepare, at the expense of the Unit Owners of the adjoining Units, an Amendment that is executed by the Unit Owner(s) of the affected Units and that includes all of the following:

- (a) Identification of the affected Units;
- (b) Words of conveyance between the Unit Owners of the Units; and
- (c) A specification of the Percentages of Ownership and the voting powers of each Unit resulting from the relocation and reallocation, the total of which shall equal the interests, shares and powers of the former adjoining Units.

6.03 Recordation of Amendment. At the expense of the Unit Owners of the affected Units the Association shall have the Amendment Recorded along with:

- (a) Any Drawing necessary to show the altered boundaries of the affected Units;
- (b) The dimensions and identifying number of each Unit that results from the relocation and reallocation.

6.04 Existing Liens. Existing liens automatically shall attach to each Unit those results from the relocation and reallocation.

ARTICLE VII

DESCRIPTION OF COMMON ELEMENTS

7.01 General. The entire balance of the land and improvements thereon, including but not limited to all buildings, foundations, roofs, main and supporting walls, patios, decks, balconies, driveways, recreational facilities, parking areas, trees, lawns, stoops, wires, conduits, utility lines and ducts, now or hereafter situated on the Condominium Property, are hereby declared and established as the Common Elements.

7.02 Easements. The Common Elements shall include and be subject to any easements granted or reserved on the Condominium Property.

7.03 Status. All Common Elements included in the Condominium subjected by the Declaration and any Amendment are fully installed, completed and in operation for the use of the Unit Owners.

ARTICLE VIII
DESCRIPTION OF LIMITED COMMON ELEMENTS

8.01 General Uses. All plumbing, electrical, heating, cooling and other utility service lines, pipes, wires, ducts and conduits which serve only one (1) Unit shall be Limited Common Elements for the exclusive use of the Unit served thereby.

8.02 Specific Uses. The areas hereinafter described, included within the Common Elements appurtenant to a Unit, are deemed Limited Common Elements designated as reserved for the exclusive use of the appurtenant Unit or Units as hereinafter set forth.

(a) The patios and decks are designated as Limited Common Elements for the Unit adjoining such patio and deck.

(b) The entranceways, stairways and stoops are designated as Limited Common Elements for the Unit(s) adjoining such entranceway, stairway and stoop.

(c) The air conditioning pad, compressor, duct and conduits thereto are designated as Limited Common Elements for the Unit being serviced by such equipment.

(d) The structural walls between the Units are designated as Limited Common Elements for such Units.

(e) Those additional areas shown, delineated and designated on the Drawings as Limited Common Elements for a particular Unit or building(s) are designated as Limited Common Elements for such Unit or Units within such building(s).

ARTICLE IX
REALLOCATION OF USE AND CONSTRUCTION ON LIMITED COMMON ELEMENTS

9.01 Reallocation. Notwithstanding any provision in this Declaration to the contrary, rights to the use of Limited Common Elements may be reallocated between

or among Units by an Amendment pursuant to the following procedures:

- (a) The Unit Owners of the affected Units shall prepare and execute at their expense an Amendment that identifies the affected Units and specifies the reallocated rights to the affected Limited Common Elements;
- (b) The Unit Owners of the affected Units shall submit to the Board the Amendment, accompanied by the written consents of the Unit Owners of all affected Units and the holders of all liens on those Units except liens for real estate taxes and assessments not yet due and payable; and
- (c) At the expense of the Unit Owners of the affected Units, the Association shall have the submitted Amendment Recorded.

9.02 **Construction of Improvements.** Notwithstanding any provision in this Declaration to the contrary, the Board may authorize the use of the Limited Common Elements appurtenant to a particular Unit to be used for the construction of open, unenclosed patios, hedges, decks, fences or similar improvements, provided that:

- (a) Such improvements comply with the use restrictions herein and have been approved pursuant to the architectural review provisions hereof;
- (b) All such improvements are insured and maintained by the Unit Owner to which such Limited Common Elements are appurtenant; and
- (c) The obligations to insure and maintain are memorialized in an agreement at the direction of the Board, but at the expense of the requesting Unit Owner, and Recorded in the chain of title to the Unit so that all successors in title shall have notice that the insurance and maintenance of such improvements are not the responsibility of the Association.

ARTICLE X
USE OF COMMON ELEMENTS

10.01 **General.** Each Unit Owner shall own an undivided interest in the Common Elements as a tenant in common with all other such Unit Owners and, except as otherwise limited in the Condominium Organizational Documents, shall have the

right to use the Common Elements for all purposes incident to the use and occupancy of his Unit as a place of residence and such other incidental uses as permitted by the Condominium Organizational Documents, including the non-exclusive, perpetual easement, together with other Unit Owners to the use and enjoyment of the Common Elements and for ingress and egress to and from their respective Units, which right shall be appurtenant to and shall run with his Unit.

ARTICLE XI
OWNERSHIP OF COMMON ELEMENTS

11.01 **Percentage of Ownership.** Unless or until amended, the Percentage of Ownership of the Common Elements attributable to the ownership interest in each Unit and for the division of Common Profits, Common Surplus and Common Expenses, is as follows:

Unit No.	Percentage of Ownership	Unit No.	Percentage of Ownership
2-8821	2.63%	7-6986	2.45%
2-8823	1.84%	7-6988	2.24%
2-8825	1.84%	7-6990	1.84%
2-8827	2.63%	7-6992	1.84%
3-8831	1.84%	7-6994	2.45%
3-8833	1.84%	7-6996	2.24%
3-8835	2.24%	7-6998	2.24%
3-8837	2.45%	7-7000	2.45%
4-6989	1.84%	8-8833	2.63%
4-6991	1.84%	8-8835	2.21%
4-6993	2.24%	8-8837	2.21%
4-6995	2.45%	8-8839	2.21%
5-8832	2.45%	8-8841	2.63%
5-8834	2.24%	9-6978	2.36%
5-8836	1.84%	9-6982	2.36%
5-8838	1.84%	10-6970	2.36%
6-6988	2.45%	10-6976	2.36%
6-6990	2.24%	11-6962	2.36%
6-6992	2.45%	11-6966	2.36%
6-6994	2.24%	12-6954	2.36%
6-6996	2.24%	12-6958	2.36%
6-6998	2.45%	13-6950	2.83%

11.02 Computation. Each Unit's Percentage of Ownership as herein set forth was determined and based on a par value approach utilizing the approximate square footage of a Unit as set forth in Section 5.02 and all amendments thereto. Each Unit's Percentage of Ownership as herein set forth was determined by comparing the approximate square footage of a Unit to the total approximate square footage of all of the Units on the date when the Declaration is Recorded, or stated in another way, the Percentage of Ownership of a particular Unit is equal to a fraction, the numerator of which is the approximate square footage of such Unit and the denominator of which is the total approximate square footage of all of the Units.

11.03 Amendment. Except as specifically provided for in this Declaration, the Percentage of Ownership as herein set forth shall not be altered except by an Amendment unanimously approved by all Unit Owners.

ARTICLE XII

REGULATION OF COMMON ELEMENTS

12.01 General. The Board may by majority vote adopt reasonable Rules and Regulations and may amend the same which the Board may deem advisable for the maintenance, conservation and beautification of the Condominium Property and for the health, comfort, safety and general welfare of the Unit Owners and Occupants. Written notice of the Rules and Regulations and copies thereof shall be made available to all Unit Owners and occupants of the Condominium Property.

12.02 Penalties and Fines. The Rules and Regulations may establish reasonable fines and penalties for violations of such Rules and Regulations. Any such fines and penalties shall be considered a Special Individual Unit Assessment against the Unit for which it is imposed or charged.

12.03 Conflict. In the event of any conflict between the Rules and Regulations and the provisions of the Condominium Organizational Documents, the provisions of the Condominium Organizational Documents shall govern.

ARTICLE XIII

RESTRICTIONS ON THE USE OF CONDOMINIUM PROPERTY

13.01 Obstruction of Common Elements. There shall be no obstruction of the Common Elements nor shall anything be stored in the Common Elements without the prior consent of the Board, except as hereinafter expressly provided.

13.02 Hazardous Uses and Waste. Nothing shall be done or kept in any Unit or in the Common Elements that will increase the rate of insurance on the building(s) or contents thereof applicable for residential use, without the prior written consent of the Board. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Elements which will result in the cancellation of insurance on the building(s) or contents thereof, or which would be in violation of any law. No waste will be committed in the Common Elements.

13.03 Exterior Surfaces of Building(s). Unit Owners shall not cause or permit anything to be hung or displayed on the outside or inside of windows or placed on the outside walls of a building, and no sign, awning, canopy, shutter, radio or television antenna or receiving dish or disk shall be affixed to or placed upon the exterior walls or roof or any part thereof, without the prior consent of the Board, other than those originally provided by Declarant.

13.04 Animals and Pets. No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred or kept in any Unit or in the Common Elements, except that dogs, cats or other household pets may be kept in Units subject to the Rules and Regulations, provided that they are not kept, bred or maintained for any commercial purpose, and provided further, that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Condominium Property subject to these restrictions upon three (3) days written notice from the Board.

13.05 Nuisances. No noxious or offensive activity shall be carried on in any Unit or in the Common Elements nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or Occupants.

13.06 Impairment of Structural Integrity of Building(s). Nothing shall be done in any Unit or in, on, or to the Common Elements that will impair the structural integrity of the building(s) or which would change the building(s).

13.07 Laundry or Rubbish in Common Elements. No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Common Elements. The Common Elements shall be kept free and clear of rubbish, debris and other unsightly materials.

13.08 Lounging or Storage in Common Elements. There shall be no playing, lounging, parking of campers or boats, inoperable vehicles, trucks, motorcycles, baby carriages, playpens, bicycles, wagons, toys, vehicles, benches or chairs on any part of

the Common Elements except in accordance with the Rules and Regulations.

13.09 **Prohibited Activities.** No industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise, designated for profit, altruism, exploration or otherwise, shall be conducted, maintained or permitted on any part of the Condominium Property. No signs, window displays or advertising may be maintained or permitted on any part of the Condominium Property without the prior, written consent from the Board of Directors and in accordance with any rules adopted by the Board. In addition, the right is hereby given to the Association or its representatives to place "For Sale" signs on any Unit or on the Condominium Property for the purpose of facilitating the disposal of Units by any Unit Owner, mortgagee or the Association.

Notwithstanding the foregoing, Unit Owners may place one (1) customary, professionally prepared "For Sale" sign on the inside the Unit's window, provided that such sign does not exceed the width and height as those customarily used by professional realtors. In addition, Unit Owners are also permitted to place one (1) professionally prepared security system identification sign in the landscape beds adjacent to the Unit.

13.10 **Alteration of Common Elements.** Nothing shall be altered, constructed in, or removed from the Common Elements except as herein provided.

13.11 **Rental and Leasing.** To create a community of resident Unit Owners and to remain within mortgagee Unit Owner-occupancy limitations, no Unit can be leased, let, or rented, whether for monetary compensation or not, by a Unit Owner to others for business, speculative, investment, or any other purpose, subject to the following:

- (a) The above prohibition does not apply to:
 - (i) Units that are occupied by the parent(s) or child(ren) of the Unit Owner; or,
 - (ii) Units that are leased or rented to a third party by the Unit Owner of the Unit as of the date this amendment is recorded with the Montgomery County Recorder's Office, and which the Unit Owner has registered with the Association as a "leased Unit" (referred to as "Grandfathered Units") within 90 days of the recording of this amendment; a Grandfathered Unit may continue to be leased until titled Unit Ownership of the Unit is transferred

to a subsequent Unit Owner; upon the date of title transfer, the Unit is no longer a Grandfathered Unit and is no longer excepted from this lease prohibition; or,

(iii) Units that meet a special situation and to avoid a practical difficulty or other undue hardship, each Unit Owner has the right to lease their Unit to a specified renter/tenant for a one-time period of no more than 24 consecutive calendar months, subject to the restrictions and requirements as identified in subparagraphs (b), (c), and (d) below (referred to as "Hardship Units"). To exercise this right:

(1) The Unit Owner must provide the Board with prior, written notice of the lease at least 10 business days prior to its commencement;

(2) The Unit Owner may not be more than 60 days delinquent in payment of any assessment or other amount due to the Association. If the Unit Owner is more than 60 days past due in any payment, the Unit Owner will request from the Board a one-time hardship exception and will not lease the Unit until the Board approves the request.

(b) Grandfathered Units or Hardship Units are subject to the following conditions and restrictions:

(i) Lease terms must be for 24 full, consecutive calendar months;

(ii) Leases must be provided to the Board at least 10 days prior to the commencement of the lease term;

(iii) No Unit may be leased, let, or rented to any business or corporate entity for the purpose of corporate housing or similar use;

(iv) No Unit may be sub-leased, sublet, or rented by a tenant;

(v) No individual room, part, or sub-part of any Unit may be leased, let, or rented;

(vi) The Association has at all times a limited power-of-attorney from and on behalf of any Unit Owner who is more than 60 days past due in the payment of any assessment or other amounts due to the Association. The limited power-of-attorney permits the Association to collect the lease or rent payments directly from the lessee, tenant, or renter until the amount owed to the Association is paid in full;

(vii) The lessee, tenant, or renter must abide by the terms of the Declaration, Bylaws, and rules and regulations;

(viii) When a Unit Owner leases their Unit, the Unit Owner relinquishes all amenity privileges, but continues to be responsible for all obligations of Unit Ownership of their Unit and is jointly and severally liable with the lessee, tenant, or renter to the Association for the conduct of the lessee, tenant, or renter and any damage to Association property;

(ix) In accordance with Ohio law, the Association may initiate eviction proceedings to evict any lessee, tenant, or renter for violation of the Declaration, Bylaws, rules, or applicable laws, by any occupant of the Unit, or the Unit Owner of the Unit. The action will be brought by the Association, as the Unit Owner's agent, in the name of the Unit Owner. In addition to any procedures required by State law, the Association will give the Unit Owner at least 10 days written notice of the intended eviction action. The costs of any eviction action, including reasonable attorneys' fees, will be assessed to the Unit Owner and the Unit's account and is a lien against that Unit.

(c) Any land contract must be recorded with the Montgomery County Recorder's Office and a recorded copy of the land contract must be delivered to the Board within 30 days of such recording. Any land contract not meeting the requirements of this subparagraph (c) is an impermissible lease. The buyer of a Unit on a land contract meeting the requirements of this subparagraph (c) is considered the Unit Owner of the Unit for all purposes and obligations under this Declaration, the Bylaws, and the rules, except only and specifically to the extent otherwise provided in the land contract between the buyer and seller.

(d) The Board may adopt and enforce rules and definitions in furtherance, but not in contradiction of the above provisions, including, rules to address and eliminate attempts to circumvent the meaning or intent of this Article XIII, Section 13.11 and in furtherance of the preservation of the Reserve at the Fairways as a Unit Owner-occupied community and against the leasing of Units for investment or other purposes. The Board has full power and authority to deny the occupancy of any Unit by any person or family if the Board, in its sole discretion, determines that the Unit Owner of such Unit is intending or seeking to circumvent the meaning, purpose, or intent of this Article XIII, Section 13.11.

13.12 Master Declaration. The Units and Common Elements are also subject to certain restrictions set forth in the Master Declaration and, in the event of any conflict, the more stringent shall apply.

13.13 Occupancy Restriction. A person who is classified as a sex offender/child-victim offender and for whom the County sheriff or other government entity must provide community notice of the sex offender's residential address, is prohibited from residing in or occupying a Unit and from remaining in or on the Condominium Property for any length of time. The classification of a sex offender/child-victim offender and the determination of whether notice is required is made by a court of law in accordance with the Ohio Sex Offenders Act, or similar statute from another jurisdiction as either may be amended or renamed from time to time. The Association is not liable to any Unit Owner, Occupant, or visitor of any Unit Owner, or of the Association, as a result of the Association's alleged failure, whether negligent, intentional, or otherwise, to enforce any provision of this Occupancy Restriction.

ARTICLE XIV **CONVEYANCES**

14.01 General. Each Unit shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof. The undivided interest of a Unit in the Common Elements shall be deemed to be conveyed or encumbered with the Unit even though that interest is not expressly mentioned or described in the deed, mortgage or other instrument of conveyance or encumbrance. The right of a Unit Owner to sell, transfer or otherwise convey that Unit Owner's Unit is not subject to any right of first refusal or similar restrictions, and any Unit Owner may transfer that Unit Owner's Unit free of any limitations.

14.02 Records. To enable the Association to maintain accurate records of the names and address of Unit Owners, each Unit Owner is required, at the following times, to provide the Association, by delivery to the office of the Association or to any member of the Board, written notice of the name, home address, home and business mailing addresses, and the home and business telephone numbers of the Unit Owner and all Occupants and the name, business address and business telephone number of any person who manages the Unit Owner's Unit as an agent of that Unit Owner:

- (a) Within thirty (30) days after the Unit Owner accepts delivery of a deed to a Unit;
- (b) Within thirty (30) days after a change in any of the above-described information; and
- (c) At any time that the Board requests verification or updating of the above-described information.

14.03 Documents. Each Unit Owner shall provide to a purchaser of that Unit Owner's Unit a copy of the Condominium Organization Documents and all effective Rules and Regulations in such Unit Owner's possession.

ARTICLE XV
UNIT OWNER'S ASSOCIATION

15.01 General. The Association has been formed to administer the Condominium Property. The Association shall be governed by the Condominium Organizational Documents. A Board and the officers of the Association elected as provided in the By-laws shall exercise the powers and rights set forth in the Condominium Organizational Documents and the Ohio Condominium Act that are not specifically reserved to Unit Owners.

15.02 Membership in the Association. Membership in the Association is limited to Unit Owners. Each Unit Owner, upon acquisition of title to a Unit, shall automatically become a Member. The foregoing is not intended to include persons or entities that hold an interest merely as security of an obligation. Such membership shall terminate upon the sale or other disposition by such Member of his Condominium Ownership Interest, at which time the new Unit Owner shall automatically become a Member.

15.03 Voting Rights. There shall be one (1) vote for each of the Units comprising the Condominium Property. The Unit Owner or Unit Owners of each Unit shall be entitled to one (1) vote for their Unit. In the event a Unit has been acquired by the Association in its own name or in the name of its agent, designee or nominee on behalf of all Unit Owners, the voting rights of such Unit shall not be exercised so long as it continues to be so held. If two (2) or more persons, whether fiduciaries, tenants in common or otherwise own individual interests in a Unit, each may exercise the proportion of the voting power of all of the owners of the Unit that is equivalent to his proportionate interest in the Unit; provided, however that unless timely challenged by a Unit Owner of a fee simple interest in a Unit, any Unit Owner of a fee simple interest in that Unit may cast the entire vote with respect to that Unit.

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

15.05 Contract Limitations. Any contract entered into by the Declarant during the Control Period shall terminate when the Declarant releases or relinquishes such control unless such contract is renewed by a vote of the Unit Owners at the meeting called for turning over control of the Association.

ARTICLE XVI
AMENDMENTS OF CONDOMINIUM ORGANIZATIONAL DOCUMENTS

16.01 General. Unless otherwise specifically provided for herein, the Condominium Organizational Documents may be amended only upon the written consent of the Unit Owners entitled to exercise at least seventy-five percent (75%) of the voting power of the Association.

16.02 Seventy-Five Percent (75%) of Eligible Holders. The following Amendments shall require the consent of Eligible Holders on Units to which at least seventy-five percent (75%) of the votes of Units subject to mortgages held by Eligible Holders appertain:

- (a) The boundaries of any Unit or the convertibility of Units into Common Elements or visa versa;
- (b) The construction of an addition to or an expansion of a Unit into Limited Common Elements or Common Elements;
- (c) The Percentage of Ownership of a Unit or the liability for

Common Expenses appertaining thereto or the right to use Common Elements and Limited Common Elements;

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

(e) The fundamental purposes to which any Unit or the Common Elements are restricted.

16.03 Fifty-One Percent (51%) of Eligible Holders. The following Amendments shall require the consent of Eligible Holders on Units to which at least fifty-one percent (51%) of the votes of Units subject to mortgages held by Eligible Holders appertain:

(a) A change to any of the provisions governing voting rights;

(b) A change to any of the provisions governing the increasing of assessments that raise the previously assessed amount by more than twenty-five percent (25%);

(c) A change to any of the provisions governing assessment basis, assessment liens, or the priority of assessment liens;

(d) A change to any of the provisions governing reserves for maintenance, repair or replacement of Common Elements improvements;

(e) A change to any of the provisions governing maintenance obligations or the responsibility for maintenance and repairs;

(f) A change to any of the provisions governing: (a) the method of expansion or contraction of the Condominium; or (b) the method of addition, annexation or withdrawal of land to or from the Condominium;

(g) A change to any of the provisions governing hazard, fidelity or other insurance requirements;

(h) A change to any of the provisions governing restrictions affecting the leasing of a Unit;

(i) A change to any of the provisions governing restrictions affecting

the sale of a Unit;

(j) A change to any of the provisions governing the method of determining whether professional management shall be established or discontinued;

(k) A change to any of the provisions governing restoration or repair of improvements in the Condominium;

(l) A change to any of the provisions which provision is for the express benefit or mortgagees;

(m) A change to any of the provisions which affect the scheme of regulation or enforcement of standards for maintenance, architectural design or exterior appearance of improvements on Units;

(n) A change to any of the provisions governing dissolution of the Association except pursuant to a consolidation or merger; or

(o) A change to any of the provisions governing the conveyance of any or all of the Common Elements.

16.04 Presumed Consent. Any Eligible Holder shall be presumed to have consented to an Amendment or any action requiring their consent if a notice of the proposed Amendment or action is sent to such Eligible Holder, or its successors or assigns as appearing of public record at the address listed in the mortgage by certified mail and no objection thereto is received by the Association within thirty (30) days after the receipt by the Eligible Holder. Such notice shall be retained by the Secretary of the Association and his certification as to the names of the consenting and non-consenting Eligible Holders of the various Units shall be sufficient for reliance by the general public. If less than all Eligible Holders consent to such Amendment or action, said Amendment or action shall be valid among the Unit Owners, provided that the rights of a non-consenting Eligible Holder shall not be derogated thereby.

16.05 Amendments Not Requiring Consent of Unit Owners or Eligible Holders. Notwithstanding any provision in this Declaration to the contrary, the following Amendments to the Condominium Organizational Documents shall not require the consent of the Unit Owners or Eligible Holders.

(a) Amendments by Board Pursuant to Statutory Authority. The Board may amend the Condominium Organizational Documents in any

manner necessary for any of the following:

- (i) To meet the requirements of institutional mortgagees, the Underwriters and similar institutions;
- (ii) To meet the requirements of insurance underwriters;
- (iii) To bring the Condominium Organizational Documents into compliance with the Ohio Condominium Act;
- (iv) To correct clerical or typographical errors or obvious factual errors in the Condominium Organizational Documents;
- (v) To designate a successor to the person named to receive service of process for the Association; or
- (vi) Pursuant to Article VI and IX of the Declaration.

(b) Obsolete Language. The Board of Directors, without further vote of the Unit Owners, may amend the Declaration and Bylaws to eliminate any provisions that are no longer substantively applicable, such as elimination of provisions that applied to the original development of the Condominium Property, references to the Declarant, the Declarant control period, the Master Association, and to re-number or re-letter sections and paragraphs throughout to account for the eliminated provisions. Any amendment made by the Board pursuant to this section must be recorded with the Montgomery County Recorder's Office to be effective. No amendment made by the Board pursuant to this section may substantively change, alter, delete, or in any way modify any rights, responsibilities, or powers of the Association, the Board of Directors, or the Unit Owners.

16.06 Method to Amend. An Amendment adopted with the consents hereinbefore provided shall be executed with the same formalities as this Declaration by two (2) officers of the Association and shall contain their certification that the Amendment was duly adopted in accordance with the foregoing provisions Any Amendment duly adopted and executed in accordance with the foregoing provisions shall reference the recording references of the Declaration and shall be effective upon its being Recorded.

ARTICLE XVII
MANAGEMENT, MAINTENANCE, REPAIRS, ALTERATIONS AND
IMPROVEMENTS

17.01 **Association.** Except as otherwise provided herein, management, maintenance, repairs, alterations and improvements of the Common Elements shall be the responsibility of the Association.

17.02 **Delegation of Authority; Professional Management.** The Board may delegate all or any portion of its authority to discharge its responsibilities to a Managing Agent. This delegation of authority and responsibility to a Managing Agent may be evidenced by one or more management contracts which may provide for the payment of reasonable compensation to such Managing Agent as a common expense, provided, however, that any agreement for professional management: shall be terminable by the Association for cause on thirty (30) days written notice; shall terminate by either party, without penalty, on ninety (90) days written notice; shall not exceed one (1) year unless renewed by agreement of the parties for successive one (1) year periods; and shall be bona fide and commercially reasonable at the time entered into under the circumstances then prevailing. .

17.03 **Rights of Eligible Holders and Unit Owners.** The decision by the Board not to have professional management, or to terminate professional management and assume self-management, shall not be made without the consent of Eligible Holders to which at least fifty-one percent (51%) of votes of Units subject to such mortgages appertain and the prior written consent of Unit Owners entitled to exercise not less than sixty-seven percent (67%) of the voting power of Unit Owners, including the consent of Unit Owners who hold a majority of the voting power of Units owned by Unit Owners. Eligible Holders on at least fifty-one percent (51%) of Units subject to such mortgages held by Eligible Holders may require the Association to employ professional management.

17.04 **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 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 which exclusively serve such Unit.

(b) To maintain, repair and replace, at his expense those areas or

items which are designated by this Declaration as Limited Common Elements for the exclusive use of such Unit Owner.

(c) To maintain, repair and replace the springs, tracks or any other mechanism relating to the garage doors, including without limitation, any garage door opener and the mechanisms associated therewith whether installed by the Declarant or Unit Owner.

(d) To maintain, repair and replace, at his expense, all portions of the Common Elements which may be damaged or destroyed by reason of the willful or uninsured negligent act or neglect of himself, or by the willful or uninsured negligent act or neglect of any invitee, licensee or guest of such Unit Owner.

(e) To perform his responsibilities in such a manner so as not to unreasonably disturb other persons residing within the Condominium Property.

(f) To promptly report to the Association or its Managing Agent any defect or need for repairs, the responsibility of which is with the Association.

(g) Not to make any alterations in the portions of the Unit or the building(s) which are to be maintained by the Association or remove any portion thereof or make any addition thereto, or do anything which would or might jeopardize or impair the safety or soundness of the building, without first obtaining the written consent of the Board and of the Unit Owner or Unit Owners of whose benefit such easement exists.

17.05 Exterior Surfaces. Any exterior maintenance, repair or replacements to be performed by a Unit Owner shall be subject to the prior architectural review and approval of the Board or its delegated committee.

17.06 Failure to Maintain. In the event a Unit Owner shall fail to maintain his Limited Common Element to such extent that in the opinion of the Board the conditions require maintenance, repair or service for purposes of protecting the public safety or residents in or visitors to the Condominium, or in order to prevent or avoid damage or destruction of any part, portion or aspect of the value thereof, the Association shall have the right, upon approval of the majority of the Board, to enter upon that Limited Common Element and maintain, repair or service the same. The cost of such maintenance, repair or service shall be added to and become a Special

Individual Unit Assessment chargeable to such Unit.

17.07 Construction Defects. The obligation of the Association and of the Unit 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 Condominium Property. The undertaking of repair, maintenance or replacement by the Association or the Unit Owners shall not constitute a waiver of any rights against any warrantor, but such rights shall be specifically reserved.

17.08 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 a construction guarantee or insurance coverage shall not excuse any delay by the Association or any Unit Owner in performing his obligations hereunder.

ARTICLE XVIII **ARCHITECTURAL REVIEW**

18.01 General. Except for improvements constructed by the Declarant, or as specifically permitted herein, no building, fence, wall, sign or other structure shall be commenced, erected or maintained upon the Condominium Property, or any part thereof, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by the Board or its designated representative, as to lawfulness and appropriateness, and as to harmony of external design, color and location in relation to surrounding structures and topography. In the event the Board, or its designated representative, fails to approve or disapprove such plans and specifications within sixty (60) days after they have been submitted to it, approval will not be required and these provisions will be deemed to have been fully complied with. The Board may condition such approval upon the requesting Unit Owner's agreement to maintain the same, and such agreement shall be binding upon the Unit Owner and the Unit Owner's successors in ownership of the Unit, notwithstanding any provision of the Condominium Organizational Documents to the contrary.

ARTICLE XIX
EASEMENTS

19.01 **Encroachments.** In the event that by reason of the construction, settlement or shifting of a building(s) or by reason of the partial or total destruction and rebuilding of a building, any part of a building(s) presently encroaches or shall hereafter encroach upon any part of the Common Elements, or if by reason of the design or construction of any Unit it shall be necessary or advantageous to a Unit Owner to use or occupy for formal uses and purposes any portions of the Common Elements consisting of unoccupied space within a building(s) and adjoining his Unit, or if by reason of the design or construction of utility systems, any main pipes, ducts or conduits serving either any other Unit or more than one Unit, presently encroaches or shall hereafter encroach upon any part of any Unit, then 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 Elements as the case may be, so long as all or any part of a building(s) containing such Unit shall remain standing; provided however, that no valid easement for any encroachment shall be created in favor of the Unit Owner of any Unit or in favor of the Common Elements, if such encroachment is caused by the willful conduct of said Unit Owner.

19.02 **Easements for Repair, Maintenance and Restoration.** The Association shall have a right of access and an easement to, over and through all of the Condominium Property, including each Unit, for ingress and egress and all other purposes which enable the Association to perform its obligations, rights and duties with regard to maintenance, repair and restoration, provided that exercise of this easement, as it affects the individual Units, shall be at reasonable times with reasonable notice to the individual Unit Owners. Any damage resulting to a particular Unit through the provisions of this Article shall be repaired by the Association, the cost of which will be a Common Expense to all of the Unit Owners.

19.03 **Easements Through Walls Within Units.** Easements are hereby declared and granted to the Association to install, lay, maintain, repair and replace the pipes, wires, ducts, conduits, public utility lines, or structural components running through the walls of the Units, whether or not such walls be in whole or in part within the Unit boundaries. The Unit Owner shall have the permanent right and easement to and through the Common Elements and walls for 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 the Unit. Any damage resulting to a particular Unit as a result of the easement herein granted to the Association, shall be repaired by the Association, the cost of which will be a Common Expense to all of the Unit Owners.

19.04 **Easements for Certain Utilities and Cable Television.** The Association may hereafter grant easements on behalf of Unit Owners to entities for utility and cable television purposes for the benefit of the Condominium Property.

19.05 **Easements for Construction.** Declarant hereby reserves for itself a right and easement to enter upon the Common Elements to do all things necessary to complete construction and to complete development of the Condominium Property, including the Additional Property.

19.06 **Service Easements.** An easement is hereby granted to all police, firemen, ambulance operators, mailmen, deliverymen, garbage and trash removal personnel, and all other similar persons and to the local governmental authorities, but not the public in general, to enter upon the Common Elements in the performance of their duties.

19.07 **Water Easement.** The Association shall have a right and easement to the exterior water taps or faucets of any Unit for the purpose of watering any Common Element landscaping; provided however, that such use shall be reasonable and the Association shall reimburse the Unit Owner for any excessive use of water.

19.08 **Emergency Easement.** The Association and its Managing Agent shall have a right of entry and easement to any Unit in the case of an emergency originating in or threatening such Unit, whether the Unit Owner is present at the time or not.

19.09 **Additional Property Easement.** Declarant hereby reserves a right to grant and/or reserve an easement for ingress and egress over and through the Common Elements for itself and for the benefit of any subsequent owner or owners or part of all of the Additional Property.

19.10 **Master Association Easement(s).** An easement is hereby granted to the Master Association or their members, guests and invitees, for ingress and egress over and across those access easements depicted on The Reserve at the Fairway "Condominium," Phase I.

19.11 **Power of Attorney and Consent to Easements.** Each Unit Owner hereby grants and the transfer of title to a Unit Owner shall be deemed to grant the Declarant or Association, whichever applicable, an irrevocable power of attorney to execute, acknowledge and record for and in the name of such Unit Owner, and his mortgagee or mortgagees, such instruments as may be necessary to effectuate any easements granted or reserved in this Article.

19.12 **Easements Shall Run With Land.** All easements and rights herein described 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 Declarant, its successors and assigns and any Unit Owner, purchaser, mortgagee and any other Person having an interest in the Condominium Property or any part or portion thereof. Failure to refer specifically to any or all of the easements described in this Declaration in any deed or in any mortgage or other evidence of obligation shall not defeat or fail to reserve said easements, but same shall be deemed conveyed or encumbered along with the Unit.

ARTICLE XX
HAZARD INSURANCE

20.01 **Fire and Extended Coverage Insurance.** The Association shall obtain and maintain for the benefit of all Unit Owners and mortgagees, insurance on all building(s), structures, supplies, machinery, fixtures and equipment, common personal property or other improvements now or at any time hereafter constituting a part of the Common Elements against loss or damage by fire, lightning and such perils as are at this time comprehended within the term "extended coverage", with no co-insurance and in an amount not less than one hundred percent (100%) of the replacement value thereof. In the event such policy contains co-insurance provisions, such policy shall contain an agreed amount endorsement. Such insurance shall be written in the name of and the proceeds thereof shall be payable to the Association for each of the Unit Owners and mortgagees for the purposes set forth herein, in accordance with the Percentage of Ownership. Said policy shall be issued by a generally acceptable carrier acceptable to lenders, first mortgagees and their insurers or guarantors. The policy providing such coverage shall provide that no mortgagee shall have any right to apply the proceeds thereof to the reduction of any mortgage debt. Said policy shall also 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 the Ohio Condominium Act pursuant to the provisions of this Declaration. Such policy shall provide coverage for built-in 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.

20.02 **Qualifications.** The insurance hereunder shall be obtained from an insurance company authorized to write such insurance in the State of Ohio which has a current rating of Class A/VIII or better as determined by the then latest edition of

Best's Insurance Reports, or its successor guide, or comparable rating by a nationally recognized rating agency, or such higher rating as may, from time to time, be required by any Underwriter or if the insurer does not satisfy these rating requirements, that insurer is reinsured by a company that has a Class A/VIII or comparable rating or better.

20.03 **Prohibition.** No Unit Owner may purchase an individual policy of fire and extended coverage insurance for his Unit or his interest in the Common Elements as real property. If irrespective of this prohibition a Unit Owner purchases and individual policy insuring such Unit or interest, said Unit Owner shall be responsible to the Association for any loss or expense that such policy may cause in adjusting the Association's insurance and such amount of loss shall be a lien on his Unit and enforced in the manner provided for in the Declaration.

20.04 **Certificates and Notice of Cancellation.** Such policy of insurance shall contain provisions requiring the issuance of certificates of coverage and the issuance of written notice not less than thirty (30) days prior to any expiration or cancellation of such coverage to any mortgagee or mortgagees of any Unit.

20.05 **Subrogation.** 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.

20.06 **Mortgagee's Rights.** If the required insurance coverage under this Article 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 two percent (2%) higher than the basic interest rate in any note secured by the mortgagee's mortgage against a portion of the Condominium Property, and shall be due and payable to the mortgagee by the Association immediately. The repayment of said obligation shall be secured by an assessment against all Unit Owners and shall not require a vote of the Members, anything to the contrary in this Declaration notwithstanding.

20.07 **Sufficient Insurance.** In the event the improvements forming a part of the Condominium Property or any portion thereof shall suffer damage or destruction from any cause or peril insured against and the proceeds of any policy or policies insuring against such loss or damage and payable by reason thereof shall be sufficient

to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken by the Association and the insurance proceeds shall be applied by the Association in payment therefor; provided however, that in the event, within thirty (30) days after such damage or destruction, the Unit Owners, if they are entitled to do so pursuant to the provisions of the Declaration, shall elect to sell the Condominium Property or to withdraw the same from the provisions of this Declaration, then such repair, restoration or reconstruction shall not be undertaken.

20.08 **Insufficient Insurance.** In the event the improvements forming a part of the Condominium Property or any portion thereof shall suffer damage or destruction from any cause or peril which is not insured against, or if insured against the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction thereof, unless the Unit Owners shall within ninety (90) days after such damage or destruction, if they are entitled to do so pursuant to the provisions of the Declaration, elect to withdraw the property from the provisions of this Declaration, such repair, restoration or reconstruction of the Units so damaged or destroyed shall be undertaken by the Association at the expense of all the Unit Owners in the same proportions in which they shall own the Common Elements. Should any Unit Owner refuse or fail, after reasonable notice, to pay his share of such cost in excess of available insurance proceeds, the excess shall be assessed to such Unit Owner and such assessments shall have the same force and effect and, if not paid, may be enforced in the same manner as hereinbefore provided for the non-payment of assessments.

20.09 **Procedure for Reconstruction or Repair.** 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.

20.10 **Construction Funds.** The insurance proceeds and the sums received by the Association from the collection of assessments against Unit Owners on account of such casualty shall be considered a special construction fund to be disbursed by the Association to the payment of the cost of reconstruction and repair of Condominium Property from time to time as the work progresses. It shall be presumed that the first monies disbursed in payment of such costs of reconstruction and repair shall be from insurance funds.

20.11 **Adjustment.** Each Unit Owner shall be deemed to have delegated to the Board his right to adjust with insurance companies all losses under the insurance policies referred to in the Declaration.

20.12 **Non-Restoration of Damage or Destruction.** In the event of substantial damage to or destruction of two-thirds (2/3) or more of the Units, the Unit Owners, by the affirmative vote of those entitled to exercise not less than seventy-five percent (75%) of the voting power, may elect not to repair or restore such damage or destruction; provided the consent of the Eligible Holders and Underwriters of first mortgages on over fifty-one percent (51%) of the Units has been first obtained. Upon such election, all of the Condominium Property shall be subject to an action for sale as upon partition by any Unit Owner. In the event of any such sale or a sale of the Condominium Property after such election by agreement of all Unit Owners, the net proceeds of the sale, together with the net proceeds of insurance, if any, and any other indemnity arising because of such damage or destruction, shall be considered as one fund and shall be distributed to all Unit Owners in proportion to their respective Percentage of Ownership. No Unit Owner shall receive any portion of his share of such proceeds until all liens and encumbrances on his Unit have been paid, released or discharged.

20.13 **Deductible.** Any amounts paid by the Association on the account of any insurance claim shall be a Special Individual Unit Assessment against the Unit for which such claim was presented.

ARTICLE XXI

INSURANCE TRUSTEE

21.01 **General.** Upon the written request by any Eligible Holders on over fifty-one percent (51%) of the Units, or by any group of Eligible Holders who in the aggregate hold mortgages on over fifty-one percent (51%) of the Units, the Association shall select an Insurance Trustee for the purposes herein set forth.

21.02 **Selection Prior to a Loss.** If such selection is prior to any loss, the Association shall make all insurance policies under the Declaration payable to such Insurance Trustee for and on behalf of each of the Unit Owners and mortgagees for the purposes set forth in the Declaration in accordance with the Percentage of Ownership. All insurance policies shall be deposited with the Insurance Trustee who must first acknowledge that the policies and any proceeds thereof will be held in accordance with the terms hereof.

21.03 **Selection After a Loss.** If such selection of an Insurance Trustee is after a loss, the Association shall pay over to the Insurance Trustee any funds received under such insurance policies and resulting from any assessments against the Unit

Owners. Said funds are to be held by the Insurance Trustee in accordance with the provisions hereof.

21.04 Non-Liability. 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 Association, the Unit Owners and their respective mortgagees.

21.05 Procedure for Reconstruction or Repair if an Insurance Trustee Has Been Selected. The insurance proceeds and the sums deposited with the Insurance Trustee by the Association from collections of assessments against 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 Insurance Trustee shall make such payments upon 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: (a) that the sum then requested either has been paid by the Association or is justly due to contractors, subcontractors, materialmen, architects or other persons who have rendered services or furnished materials in connection with the work, giving a brief description of the services and materials, and that the sum requested does not exceed the value of the services and materials described in the certificate; (b) that except for the amount stated in such 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, materialman's or similar lien arising from such work; and (c) 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 monies disbursed in payment of such costs of reconstruction and repair shall be from insurance proceeds and if there is a balance in any construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be disbursed to the Association.

21.06 **Reliance.** 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.

ARTICLE XXII
LIABILITY AND OTHER INSURANCE

22.01 **Liability Insurance.** As a Common Expense, the Association shall insure itself, the Board, all Unit Owners and Occupants and all other persons lawfully in the 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 Elements: such insurance to afford protection to a limit of not less than One Million Dollars (\$1,000,000.00) 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 (1) accident.

22.02 **Prohibition.** Such policy shall not insure against liability for personal injury or property damage arising out of or relating to the individual Units or Limited Common Elements appertaining thereto.

22.03 **Insufficient Liability Insurance.** In the event that the proceeds of any liability policy be insufficient, any deficit shall be charged to all Unit Owners as a Special Individual Unit Assessment.

22.04 **Other Insurance.** The Association shall also obtain such additional insurance as the Board considers necessary, including without limitation, fidelity bonds for anyone who either handles or is responsible for funds held or administered by the Association.

22.05 **Amount of Fidelity Coverage.** The amount of such fidelity bond shall be equal to, at a minimum, the maximum funds that will be in the custody of the Association at any time such bond is in effect. In addition, such fidelity bond coverage must equal the sum of three (3) months Common Assessments, together with the reserve funds, if any.

22.06 **Notice of Cancellation or Substantial Changes.** Any insurance coverage obtained by the Association shall contain a provision requiring the insurer to notify

the Association and any mortgagee named in the mortgage clause, if applicable, in writing of the cancellation or a substantial change of coverage at least thirty (30) days prior to such cancellation or substantial change.

22.07 **Annual Review.** The amounts and coverage of each insurance policy obtained by the Association shall be reviewed annually by the Board.

ARTICLE XXIII
REMEDIES FOR BREACH OF COVENANTS AND RESTRICTIONS

23.01 **Abatement and Enjoyment.** The violation of any restriction or condition or regulation adopted by the Board, or the breach of any covenant or provision contained in the Condominium Organizational Documents shall give the Board the right, in addition to the rights hereinafter set forth in this section: (a) to enter upon the land or Unit 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 Unit Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions of the Condominium Organizational Documents and the Board, or its Managing Agent, shall not be thereby deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

23.02 **Procedures for Enforcement of Violations.**

(a) **Notice.** Prior to imposing charges for damages to the Common Elements or other property, or assessments for the enforcement of violations of the provisions of the Condominium Organizational Documents or Rules and Regulations of the Association, the Board shall give the Unit Owner of the Unit written notice containing:

- (i) A description of the property damages or the violation;
- (ii) The amount of the proposed charge or assessment;
- (iii) A statement that the Unit Owner has a right to a hearing before the Board to contest the proposed charge or assessment;
- (iv) A statement setting forth the procedures to request a hearing pursuant to subsection 24.02(b) of this Article; and
- (v) A reasonable date by which the Unit Owner must cure the

violation to avoid the proposed charge or assessment.

(b) Hearing. A Unit Owner may request a hearing by delivering written notice of such request no later than the tenth day after receiving the notice provided in Subsection 24.02(a) of this Article. If the Unit Owner fails to make a timely request for a hearing, the right to such hearing shall be considered waived, and the Board may immediately impose the charge for damages or enforcement assessment referenced in the notice provided in Subsection 24.02(a) of this Article, or may allow a reasonable time to cure the violation before imposing a charge or assessment. If a Unit Owner requests a hearing, the Board shall not levy the charge or assessment before holding a hearing, and will, at least seven (7) days prior to the hearing, provide the Unit Owner with a written notice of the date, time and location of the hearing. Within thirty (30) days following a hearing at which the Board imposes a charge or assessment, the Board shall deliver a written notice of the charge or assessment to the Unit Owner.

(c) Manner of Notice. Any notice required under this Section to be served:

(i) Upon the Unit Owner, shall be delivered personally to the Unit Owner or Occupant at the Unit, or mailed, by certified mail, return receipt requested, to the Unit Owners at the address of the unit, provided that if the Unit Owners have provided the Association with an alternate address, all such notices shall be mailed (by certified mail, return receipt requested) to the Unit Owner at such alternative address;

(ii) Upon the Association, shall be delivered personally to any officer of the Association or to any on-site representative of any professional management company hired by the Association; or mailed, by certified mail, return receipt requested, to any officer of the Association or to the management company hired by the Association.

23.03 Civil Action. Declarant, Developer, Agent, Unit Owner or Occupant are liable in a civil action for damages caused to any person by his failure to comply with any lawful provision of the Condominium Instruments. Any interested Person may commence an action for a declaratory judgment to determine his legal relations under the Condominium Instruments or to obtain an injunction against a Declarant,

Developer, Agent, Unit Owner, or Person entitled to occupy a Unit who refuses to comply, or threatens to refuse to comply, with any provision of the instruments. One (1) or more Unit Owners may bring a class action on behalf of all Unit Owners. The lawful provisions of the Condominium Instruments may, if necessary to carry out their purposes, be enforced against the Condominium Property or any Person who owns or has previously owned any interest in the Condominium Property.

23.04 Proper Party. An action by the Association under this article may be commenced by the Association in its own name or in the name of its Board or in the name of its Managing Agent.

ARTICLE XXIV **ASSESSMENTS AND LIEN OF ASSOCIATION**

24.01 General. Assessments for the maintenance, repair and insurance of the Common Elements and for the insurance of the Units, 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. Such assessments are the personal obligation of a Unit Owner together with any costs and/or expenses, including reasonable attorney's fees incurred by the Association in any foreclosure or collection action.

24.02 Division of Common Profits and Common Expenses. The proportionate shares of the Unit Owners for the Common Profits and Common Expenses of the operation of the Condominium Property shall be in accordance with their Percentage of Ownership or as a Per Unit Expense as set forth in the By-Laws.

24.03 Non-Use of Facilities. No Unit Owner may be exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by the abandonment of his Unit.

24.04 Special Assessments for Capital Improvements.

(a) In addition to the annual operating assessments, the Board may levy, in any fiscal year, special assessments to construct, reconstruct or replace capital improvements on the Common Elements to the extent that reserves therefore are insufficient, provided that new capital improvements not replacing existing improvements, except new capital improvements required by governmental regulation or to correct any deficiency or defect creating a safety or health hazard, shall not be constructed nor funds assessed therefore, if the cost thereof in any twelve (12) consecutive month period would exceed an amount equal to five

percent (5%) of that fiscal year's budget, without the prior consent of Unit Owners exercising no less than seventy-five percent (75%) of the voting power of Unit Owners, including the consent of Unit Owners other than the Declarant who hold a majority of the voting power of Units owned by Unit Owners other than the Declarant, and the consent of Eligible Holders on Units to which at least fifty-one percent (51%) of the votes of Units subject to mortgages held by Eligible Holders.

(b) Any such assessment shall be pro-rated among all Units on the basis of Percentage of Ownership, and shall become due and payable on such date or dates as the Board determines following written notice to the Unit Owners.

24.05 Special Individual Unit Assessment. Notwithstanding anything to the contrary herein, if the Association shall incur any cost or expense, including without limitation filing fees and/or attorney's fees, for or on account of any item of maintenance, repair or other matter directly or indirectly occasioned or made necessary by any wrongful or negligent act or omission or failure to pay assessments or comply with the provisions of the Condominium Organizational Documents or Rules and Regulations of and by any Unit Owner or his invites or lessees, such cost of expense shall be borne by such Unit Owner and not by the Association, and if paid by the Association, shall be paid or reimbursed to the Association by such Unit Owner as a Special Individual Unit Assessment forthwith upon the Association's demand.

24.06 Non-Payment of Assessment; Remedies of the Association. If any assessment, or any installment or portion of any assessment is not paid within ten (10) days after the same has become due, the entire unpaid balance shall immediately, without notice or demand, become due and payable, and the Board, at its option, without notice or demand, may charge additional amounts for:

(a) Reasonable, uniform administrative late fees as determined by the Board from time to time;

(b) Enforcement charges and collection costs (including, without limitation, attorney and paralegal fees) the Association incurs or estimates that it will incur in connection with the collection of the delinquency;

(c) Interest on the entire unpaid balance of assessments and costs incurred by the Association in connection with such collection, at the rate of eight percent (8%) per annum or at such other rate as the Board may,

from time to time, determine; and

(d) Any other charges authorized by the Condominium Organizational Documents or the Rules and Regulations.

24.07 Application of Payments. Payments made by a Unit Owner for assessments shall be applied:

(a) First, for the payment of interest accrued on the delinquent installments or portions of unpaid assessments and on costs incurred by the Association in connection with such collection, at the rate of eight percent (8%) per annum or at such other rate as the Board may, from time to time, have otherwise determined;

(b) Second, for the payment of administrative late fees charges with respect to the delinquency applicable to the Unit;

(c) Third, to reimburse the Association for enforcement charges and collection costs, including, without limitation, attorney and paralegal fees incurred by the Association in connection with the delinquency; and

(d) Fourth, to the payment of delinquent installments or portions of assessments which remain unpaid.

24.08 Lien of Association. The Association shall have a lien upon the estate or interest in any Unit and its Percentage of Ownership for the payment of any delinquent assessments chargeable against such Unit. At any time after such delinquency, a certificate of lien for all or any part of the unpaid assessments, including late charges, interest and if monthly assessments are delinquent, then the remaining unpaid monthly assessments under the then current budget may be Recorded pursuant to authorization given by the Board. The certificate shall contain a description of the Unit against which the lien exists, the name or names of the record Unit Owner(s) thereof, and the amount of the delinquency, and shall be signed by the President of the Association.

24.09 Term and Validity of Lien. The lien provided for in the preceding Section shall remain valid for a period of five (5) years from the date filing, unless sooner released or satisfied, in the same manner provided by law in the state of Ohio for the release and satisfaction of mortgages or real property, or discharged by the final judgment or order of a court in an action brought to discharge the lien.

24.10 Priority of Association's Lien. The lien provided for in the preceding Section is prior to any lien or encumbrance subsequently arising or created except liens for real estate taxes and assessments and liens of bona fide first mortgages that have been filed for record, and may be foreclosed in the same manner as a mortgage on real property in an action brought on behalf of the Association by its President, pursuant to authority given to him by the Board.

24.11 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 commence an action for the discharge of such lien in the Court of Common Pleas for Montgomery County, Ohio.

24.12 Non-Liability of Mortgagee for Past Due Common Expenses. When the mortgagee of a first mortgage of record acquires title to the Unit as a result of the remedies provided in such mortgage or a foreclosure of the first mortgage, such mortgagee, its successors and assigns shall not be liable for the share of 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 mortgagee. 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 mortgagee, its successors or assigns.

24.13 Liability for Assessments Upon Voluntary Conveyance. In a voluntary conveyance of a Unit 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 amounts paid by the grantee therefor. Such grantee hereby expressly assumes and agrees to pay such assessments. However, upon request any such grantee and his mortgagee shall be entitled to a statement from the Board setting forth the amount of all unpaid and current assessments against the grantor due the Association, and such grantee 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.

24.14 Legal Actions. In addition to the lien permitted by this Article, the Association, as authorized by the Board, may bring an action at law against the Unit Owner or Unit Owners personally obligated to pay the same, an action to foreclose a lien, or any other action permitted by law. In any foreclosure action, the Unit Owner or Unit Owners affected shall be required to pay a reasonable rental for that Unit

during the pendency of such action, and the Association shall be entitled to the appointment of a receiver to collect rental. Rental collected by a receiver during the pendency of a foreclosure action shall be applied first to the payment of the portion of the Common Expenses chargeable to the Unit during the pendency of the foreclosure action. The Association shall be entitled to become a purchaser at any foreclosure sale.

ARTICLE XXV
EMINENT DOMAIN

25.01 **General.** If all or any part of the Condominium Property is taken, injured or destroyed by the exercise of the power of eminent domain, each affected Unit Owner and mortgagee shall be entitled to notice of the taking and to participate in the proceedings.

25.02 **Common Elements.** To the extent that an eminent domain taking affects the Common Elements, the Association shall represent the Unit Owners in such condemnation or in negotiations, settlements and agreements with the condemning authority for any acquisition of any part or all of the Common Elements, and each Unit Owner shall be deemed to have appointed the Association as his attorney-in-fact for such purpose.

25.03 **Damages.** Any damages for the taking, injury or destruction of the Common Elements shall be considered as a whole and shall be collected by the Association and distributed among the Unit Owners and among any mortgagees as their interests may appear in proportion to their Percentage of Ownership.

25.04 **Reallocation.** Any reallocation of the Percentage of Ownership after a partial taking shall be effected by an Amendment which shall require the approval of all Unit Owners affected by such reallocation and their mortgagees.

ARTICLE XXVI
MISCELLANEOUS PROVISIONS

26.01 **Grantees and Incorporation Into Deeds.** Each grantee of Declarant, 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 Unit Owner in like manner as though

the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

26.02 Removal. Upon the removal of the Condominium Property from the provisions of the Ohio Condominium Act, all easements, covenants and other rights, benefits, privileges, impositions and obligations declared herein to run with the land or any Unit, shall terminate and be of no further force nor effect.

26.03 Non-Waiver. 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.

26.04 Invalidity. The invalidity of any covenant, restriction, condition, limitation or any other provision 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.

26.05 Additional Consent Provisions. In addition to any consent provisions set forth in the Condominium Organizational Documents, the consent of Eligible Holders on Units to which at least fifty-one percent (51%) of the votes of Units subject to mortgages held by Eligible Holders appertains shall be required for the following:

- (a) An increase in assessments that raise the previously assessed amount by more than twenty-five percent (25%);
- (b) A reduction in the reserves for maintenance, repair or replacement of Common Element Improvements;
- (c) The imposition of any new restrictions affecting the leasing of a Unit;
- (d) The imposition of any new restrictions affecting the sale of a Unit;
- (e) The decision by the Association not to restore or repair any portion of the Condominium Property after damage or destruction or partial condemnation, or not to restore or repair such property in a manner specified by the Condominium Organizational Documents;

(f) A substantial relaxation in the regulation or enforcement of standards for maintenance, architectural design or exterior appearance of improvements on Units;

(g) A decision by the Association to establish self-management if the professional management has been required previously by the Condominium Organizational Documents or by an Eligible Holder or by a Majority of Unit Owners.

26.06 Additional Notice Provisions. In addition to any notice provision set forth in the Condominium Organizational Documents, an Eligible Holder shall be provided with copies of the following related to the Unit secured by such first mortgage or to the Condominium in general:

(a) A copy of any and all notices and other documents permitted or required by the Condominium Organizational Documents to be given to the Unit Owner;

(b) A copy of any lien filed by the Association against a Unit;

(c) Any proposed Amendment affecting a change in the boundaries of the Unit or in its exclusive easement rights appertaining thereto; in the interests of a Unit to the Common Element or its liability for the Common Expenses; the voting rights of a Unit or Unit Owner; or to the purposes to which any Unit or the Common Elements are restricted;

(d) Any proposed termination of the Condominium;

(e) Any condemnation loss or any casualty loss affecting a material portion of the Condominium or affecting a Unit;

(f) Any delinquency in the payment of assessments exceeding sixty (60) days for a Unit;

(g) Any lapse, cancellation or material modification of insurance coverage.

26.07 Availability of Condominium Instruments and Financial Statements. Upon request and at reasonable charge, the Association shall make available to any Unit Owner, lenders, first mortgage holders, and prospective purchasers, copies of the Condominium Instruments and the most recent audited financial statements of the

Association if the latter has been prepared.

26.08 **Headings.** The heading of each Article and to each Section hereof is inserted only as a matter of convenience and for reference, and in no way defines, limits or describes the scope or intent of this Declaration nor in any way affects this Declaration.

26.09 **Liberal Construction.** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the establishment and operation of a first class condominium development.

26.10 **References.** Unless otherwise specified, all references to a particular Article or Section shall refer to such Article or Section of the Declaration.

26.11 **Full Compliance.** The Condominium has been created and exists in full compliance with the requirements of the Ohio Condominium Act, and all other applicable law.

26.12 **Gender and Grammar.** Any necessary grammatical changes required to make the provisions hereof apply either to corporations, limited liability companies, partnerships, trusts, individuals, male or female, shall in all cases be assumed as in each case fully expressed herein.

26.13 **Notices and Other Actions and Communications.** For all notices to be sent to the Association, the Board, or the Unit Owners, the following provisions apply:

(a) **Service of Notices on the Association and Board.** All notices required or permitted by the Declaration or Bylaws, to the Association or the Board, must be made in writing and sent either:

(i) by regular U.S. mail, first-class postage prepaid, or

(ii) delivered in accordance with subparagraph (c) below, to the Board President, to any two other Directors, to the Association at the address of the Condominium Property, to the Association's manager or management company, if any, the Association's statutory agent registered with the Ohio Secretary of State, or to any other address as the Board may designate by written notice to all Unit Owners.

(b) Service of Notices on Unit Owners. All notices required or permitted by the Declaration or Bylaws to any Unit Owner will be in writing and is deemed effectively given if it has been sent by one of the following methods:

- (i) personally delivered to the Unit Owner;
- (ii) placed under or attached to the front or main entry door of the Unit Owner's Unit;
- (iii) sent by regular U.S. mail, first-class postage prepaid, to the Unit Owner's Unit address or to another address the Unit Owner designates in writing to the Board; or
- (iv) delivered in accordance with subparagraph (c) below. If there is more than one person owning a single Unit, a notice given to any one of those several persons is deemed to have been given personally to all of the persons owning an interest in the Unit.

(c) New Communication Technologies.

(i) Due to the ongoing development of new technologies and corresponding changes in business practices, to the extent permitted or approved by the Board, as well as by Ohio and federal law, now or in the future, in addition to the methods described in subparagraphs (a) and (b) above, the following may be accomplished using electronic mail or other transmission technology available at that time that is a generally accepted business practice:

- (1) any notice required in the Declaration or Bylaws to be sent or received;
- (2) any signature, vote, consent, or approval required to be obtained; and
- (3) any payment required to be made by the Declaration or Bylaws.

(ii) The use of electronic mail or other transmission technology is subject to the following:

(1) The Association may use electronic mail or other transmission technology to send any required notice only to Unit Owners, individually or collectively, who have given the Association written consent to the use of electronic mail or other transmission technology. Any Unit Owner who has not given the Association written consent to use of electronic mail or other transmission technology will receive notices, including any notice of delinquency of any payment due, by either of the methods identified in subparagraph (b)(i)-(iii) above.

(2) For voting on matters, the Association may provide for voting by electronic mail or other electronic voting technology. However, voting for the election of Directors can be conducted by electronic mail or other electronic voting technology only to the extent, if any, as explicitly permitted and provided for in the Bylaws.

(3) An electronic mail or transmission technology to a Unit Owner is not considered delivered and effective if the Association's transmission to the Unit Owner fails two consecutive times, e.g. the Association receives an "undeliverable" or similar message, or the inability to deliver the transmission to the Unit Owner becomes known to the person responsible for sending the transmission. If the electronic mail or transmission is not delivered or effective, the Association will deliver the notice or other communication to the Unit Owner by either of the methods identified in subparagraph (b)(i)-(iii) above.

EXHIBIT "C"

THE RESERVE AT THE FAIRWAYS, SECTION
ONE CONDOMINIUM ASSOCIATION, INC.

AMENDED AND RESTATED CONDOMINIUM
ASSOCIATION BY-LAWS

AMENDED AND RESTATED BY-LAWS

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AMENDED AND RESTATED CONDOMINIUM ASSOCIATION BY-LAWS

The within By-Laws are executed and attached to the Declaration pursuant to the Ohio Condominium Act. Their purpose is to provide for the establishment of a Unit Owner's association for the administration 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, and any other person who might use the facilities of the Condominium Property in any manner shall be subject to any restrictions, conditions or regulations hereafter adopted by the Board. The mere acquisition or rental of any of the 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. The terms used herein shall have the same meaning as defined in the Declaration.

ARTICLE I **THE ASSOCIATION**

1.01 Name of Association. The Association shall be an Ohio corporation, not-for-profit, and shall be called **THE RESERVE AT THE FAIRWAYS, SECTION ONE CONDOMINIUM ASSOCIATION, INC.**

1.02 Membership and Voting Rights. Membership requirements and the voting rights of its Members are set forth in the Declaration.

1.03 Voting Methods. Prior to sending the notice for any meeting, as required by Bylaws Article I, Section 1.07, as amended, and depending on the conduct of the meeting as determined by the Board in accordance with Bylaws Article I, Section 1.10, as amended, voting will be conducted via one of the following methods:

(a) **Voting in Person or by Proxy.** For meetings that are held in person and provide for physical attendance, Unit Owners may vote in person or by proxy. The Person appointed as proxy need not be a member of the Association. Each proxy will be executed in writing by the Unit Owner entitled to vote and must be returned to the Association by regular mail, hand delivery, electronic mail, or other method of delivery provided for or permitted by the Board. Every proxy will automatically cease upon conveyance of the Unit by the Unit Owner.

(b) Voting by Mail and Electronic Voting Technology. For meetings that are held via Authorized Communications Equipment, voting will be conducted by mail, through the use of Electronic Voting Technology that is approved by the Board, or both. "Authorized Communications Equipment," as used in these Bylaws, means any communications equipment that is selected by the Board, in its sole discretion, that provides an electronic communication transmission, including but not limited to, by telephone, video conference, or any electronic means, from which it can be determined that the transmission was authorized by, and accurately reflects the intention and participation of the Unit Owner. "Electronic Voting Technology" as used in these Bylaws, means an electronic voting system that accurately and securely records the voting Unit Owner's intent to cast a ballot on a matter in the way identified by the Unit Owner, and provides for the counting of electronic votes submitted, including by means of internet, application, web, virtual, or other electronic technology.

All matters to be voted on at a meeting utilizing Authorized Communications Equipment must be sent to the Unit Owners no later than the date the meeting notice is sent to the Unit Owners in accordance with Bylaws Article I, Section 1.07 as amended. Voting via mail or by use of Electronic Voting Technology is considered to be voting at the meeting, as if the Unit Owner were physically present.

(c) Voting in Person, by Proxy, by Mail, and by Electronic Voting Technology. For meetings that are held in person and provide for physical attendance, voting may be conducted in person or by proxy, as provided for in this Bylaws Article I, Section 1.03(a) above, and in addition the Board may authorize the Unit Owners to vote by mail or Electronic Voting Technology as provided for in this Bylaws Article I, Section 1.03(b) above.

Any ballots, regardless of method, received subsequent to the date and time the Board sets for ballots to be turned in will be held invalid. Any costs associated with voting, including mailing costs, printing, Authorized Communications Equipment and Electronic Voting Technology costs and subscriptions, are Common Expenses. The Board may adopt any additional regulations, procedures, or rules as may be necessary to effectuate the intent and purpose of this voting provision to provide for the use of the desired voting method.

1.04 Place of Meetings. Meetings of the Association shall be held at such place upon the Condominium Property or at such other place as may be designated by the Board and specified in the notice of the meeting at 8:00 p.m., or at such other time as may be designated by the Board and specified in the notice of the meeting.

1.05 Annual Meetings. For the election of the Board of Directors, the presentation of reports, and the transaction of such other business as is set forth in the meeting notice, the Association's annual meeting will be held at such time, at such place, and on such date during the fourth quarter of each calendar year as the Board of Directors determines and as stated in the meeting notice.

1.06 Special Meetings. It shall be the duty of the President of the Association to call a special meeting of the Unit Owners as directed by resolution of the Board or upon a petition signed by a majority of the Unit Owners and having been presented to the Secretary. The notice of any special meeting shall state the time and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice unless by consent of four-fifths (4/5) of the Unit Owners present, either in person or by proxy.

1.07 Notice of Meetings. Written notice of each meeting of the Unit Owners will be given by, or at the direction of, the secretary or Person authorized to call the meeting, delivered in accordance with Declaration Article XXIX, Section 29.17, at least fifteen days before the meeting, to each Unit Owner entitled to vote at the meeting. The notice will specify the place, day and hour of the meeting.

If the meeting is held via Authorized Communications Equipment, the meeting notice must include any applicable links, access codes, password, telephone numbers, and/or other pertinent information that is necessary to allow the Unit Owner to participate at the meeting via the Authorized Communications Equipment. "Authorized Communications Equipment," as used in these Bylaws, means any communications equipment that is selected by the Board, in its sole discretion, that provides an electronic communication transmission, including but not limited to, by telephone, video conference, or any electronic means, from which it can be determined that the transmission was authorized by, and accurately reflects the intention and participation of the Unit Owner.

1.08 Waiver of Notice. Notice of the time, place and purpose of any meeting of Members may be waived in writing, either before or at the commencement of such meeting by any Members which writing shall be filed with or entered upon the records of the meeting. The attendance of any Members 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.

1.09 Action Without a Meeting. All actions, except removal of a Director, which may be taken at a meeting of the Association may be taken without a meeting in accordance with the voting methods in Bylaws Article I, Section 1.03, as amended. The voting records will be filed with the Association's records.

1.10 Conduct of Meetings. Prior to the meeting notice being sent to the Unit Owners in accordance with Bylaws Article I, Section 1.07, as amended, the Board will determine whether the meeting will be conducted physically so that the Unit Owners may attend in person, or by the use of Authorized Communications Equipment. If it is determined that the meeting will be held via Authorized Communications Equipment, the Board may also decide if the owners have the option to attend in person or via Authorized Communications Equipment or both.

If Authorized Communications Equipment is used, the persons utilizing the Authorized Communications Equipment must have the ability to communicate with the other participants to indicate their motion, vote, or statement, provided that the president, chair, or other person designated by the Board moderating the meeting, may silence or mute the Authorized Communications Equipment utilized by Unit Owners to attend the meeting, unless the Unit Owner is voting or has been recognized by the meeting chair or moderator to participate in the meeting. The meeting chair or moderator has the authority to decide and determine all procedural motions or other procedural matters to be decided at the meeting, including points of order and adjournment. The Board's purpose or reason for not conducting an in person meeting and instead having a meeting via Authorized Communications Equipment must be documented in the Board's meeting minutes.

1.11 Quorum. The Unit Owners in good standing who are present, in person or by proxy, constitute a quorum for any Association meeting. For purposes of quorum, a Unit Owner in good standing is defined as being a Unit Owner that is 1) not engaged in litigation with the Association or with any Director in their capacity as a Director and 2) current in payment of any amount owed to the Association as of the date of the meeting.

ARTICLE II

GENERAL POWERS OF THE ASSOCIATION

2.01 General. The Association shall have the following authority and power:

- (a) Hire and fire managing agents, attorneys, accountants and other independent contractors and employees that the Board determines are necessary or desirable in the management of the Condominium Property and the Association;
- (b) Commence, defend, intervene in, settle or compromise any civil, criminal or administrative action or proceeding that is in the name of, or

threatened against, the Association, the Board, or the Condominium Property, or that involves two (2) or more Unit Owners and relates to matters affecting the Condominium Property;

(c) Enter into contracts and incur liabilities relating to the operation of the Condominium Property;

(d) Regulate the use, maintenance, repair, replacement, modification, and appearance of the Condominium Property;

(e) Adopt Rules and Regulations that regulate the use or occupancy of Units, the maintenance, repair, replacement, modification and appearance of the Units, Common Elements and Limited Common Elements when the actions regulated by those rules affect Common Elements or other Units;

(f) Cause additional improvements to be made as part of the Common Elements;

(g) Purchase, encumber, and convey Units and, subject to the requirements set forth in this Declaration, acquire an interest in other real property and encumber or convey that interest. All expenses incurred in connection with the acquisition, encumbrance, use and operation of that interest are Common Expenses;

(h) Acquire, encumber and convey or otherwise transfer personal property;

(i) Hold in the name of the Association the real property and personal property acquired pursuant to subsections (g) and (h) of this Section;

(j) Grant easements, leases, licenses and concessions through or over the Common Elements;

(k) Impose and collect fees or other charges for the use, rental or operation of the Common Elements or for services provided to Unit Owners;

(l) Impose interest and late charges for the late payment of assessments and impose returned check charges;

(m) Promulgate and, pursuant to the provisions of the Condominium Organizational Documents, impose reasonable enforcement assessments for violations of the Condominium Organizational Documents and Rules and Regulations, and reasonable charges for damage to the Common Elements or

other property;

(n) Adopt and amend rules that regulate the collection of delinquent assessments and the application of payments of delinquent assessments;

(o) Impose reasonable charges for preparing, recording or copying Amendments, resale certificates or statements of unpaid assessments;

(p) Enter into a Unit for bona fide purposes when conditions exist that involve an imminent risk of damage or harm to Common Elements, another Unit, or to the health or safety of the occupants of that Unit or another Unit;

(q) To borrow funds, as needed, and pledge such security and rights of the Association as may be necessary or desirable to obtain any such loan including, without limitation, the pledge or assignment of the Association's right to future income and the Association's right to levy assessments upon the Members;

(r) Suspend the voting privileges and use of recreational facilities of a Unit Owner or the Occupants, the Owners of which are delinquent in the payment of assessments for more than thirty (30) days;

(s) Purchase insurance and fidelity bonds required by the Underwriters, or such other insurance and fidelity bonds as the directors consider appropriate or necessary;

(t) Invest excess funds in investments that meet standards for fiduciary investments under Ohio law;

(u) Exercise powers that are:

(1) Conferred by the Condominium Organizational Documents, or Ohio law;

(2) Necessary to incorporate or reincorporate the Association as an Ohio not-for-profit corporation;

(3) Permitted to be exercised in Ohio by a not-for-profit corporation;

(4) Necessary and proper for the government and operation of the Association.

ARTICLE III
BOARD OF DIRECTORS

3.01 Number and Qualification. The affairs of the Association will be governed by a Board consisting of three (3) or five (5) persons, all of whom must be Unit Owners or the spouse of a Unit Owner. If an owner is not an individual, that owner may nominate for the Board of Directors any principal, member of a limited liability company, partner, director, officer, or employee of that owner. No Unit may be represented by more than one (1) Person on the Board at any one time.

Directors must also be in good standing. Good standing requires the Director not be an adverse party in any litigation involving one (1) or more of the following parties: the Association, the Board or any Director (in that member's capacity as a Director). Good standing also requires that the Director not be more than 60 days delinquent in the payment of any fees or assessments owed to the Association. In addition to the provisions of Bylaws Article III, Section 3.05, as amended, a majority of the remaining Directors may remove any Director who ceases to meet such good standing qualifications during their term. Any current Director not in good standing, as defined above, at the time this amendment is recorded with the Montgomery County Recorder, has 60 days to become in good standing, otherwise they may be removed by a majority vote of the remaining Directors.

A majority of the Unit Owners present in person or by proxy at any Association meeting held for the purpose of election of Directors may approve of a motion, made prior to the election of Directors, to either increase or reduce the number of Directors to five (5) or three (3) Persons (the number always being an odd number), as the case may be. In the alternative, the Board may submit a written ballot to Unit Owners to vote on the proposed increase or reduction in the number of Directors, in which case a majority of the Association's total voting power must affirmatively consent to approve the proposal. The approval of a motion or consent to the proposal to change the number of Directors will in no event act to decrease the length of the term of any Director whose term is not expiring as of the meeting date at which the motion is approved or approval of the proposal is reached.

At the annual meeting following the passage of this amendment, the Unit Owners will vote for either three (3) or five (5) Directors to be elected. The candidates receiving the greatest number of votes will be elected to serve a two (2) year term. The candidate(s) receiving the least number of votes will be elected to serve a one (1) year term. This is to establish staggered elections with rotating terms. Upon the expiration of the terms of each Director as elected pursuant to this Section, a successor, and all future Directors, will be elected for a two (2) year term with staggered elections to facilitate either a 2-1 or 3-2 rotation, depending on the number of Directors.

3.02 Nominations; Election of Directors. For the nomination and election of Directors, the following apply:

(a) **Nominations.** Nominations for the election of Directors to be elected by the Unit Owners will be made by a nominating committee appointed by the Board or, if a committee is not appointed, by the Board itself. The nominating committee, or Board, will make as many nominations for election to the Board as it, in its discretion, determines, but no fewer than the number of vacancies that are to be filled and will verify that the nominees satisfy all qualification requirements of Bylaws Article III, Section 3.01, as amended. Prior to the meeting, the nominating committee will establish a process and deadlines by which any Unit Owner may submit their name to the nominating committee as a candidate, and the nominating committee must nominate that Unit Owner if that Unit Owner satisfies all the qualifications to be a Director as further provided for in Bylaws Article III, Section 3.01, as amended. If there are fewer nominees than vacancies, the nominating committee must nominate additional Unit Owners(s) to be elected prior to the ballots being sent to the Unit Owners so that there are, at all times, a sufficient number of nominees to fill all Board vacancies that are up for election. Nominations must be made prior to the notice of any meeting where Directors are to be elected is sent in accordance with Bylaws Article I, Section 1.07, as amended, so that the voting information containing all the candidates' names and an informational sheet, within size limitations determined by the Board, containing their biographical information and affirming their candidacy, can be transmitted to the Unit Owners no later than the sending of the meeting notice.

(b) **Election of Directors.** Unless there are no more nominees than vacancies, election to the Board by the Unit Owners is by secret ballot, submitted either in person, by proxy, by mail, or by Electronic Voting Technology, as determined by the Board pursuant to Bylaws Article I, Section 1.03, as amended. The Association is not required to send ballots to the Unit Owners via any method if there are an equal number of nominations as there are candidates, and the terms for all open positions are equal; in which case the nominated candidates will automatically be elected to the Board of Directors at the election meeting.

Regardless of the voting method, the Board must adopt rules and safeguards to determine a method by which the secrecy of the ballots are maintained for those Unit Owners while also maintaining the integrity of the voting process to ensure each Unit Owner has only exercised their allotted vote once so that any other individuals can only identify that a Unit has voted, and not how a

Unit has voted. The ballots, whether electronic or written, will list the number of open seats for Directors up for election and list the names of all of the nominated candidates.

If voting by mail, ballots must be submitted within dual envelopes. One (1) of the two (2) envelopes must contain the ballot itself, the "Ballot Envelope." The Ballot Envelope need not be signed. The second envelope must contain the Ballot Envelope and the ballot, the "Signature Envelope." The Signature Envelope must be signed by the Unit Owner(s) voting, and will be used as a record of receipt of the Unit Owners' ballot as well as to determine quorum. If the Signature Envelope is not signed by the Unit Owner(s), the ballot in the Ballot Envelope will not be counted.

For the election of Directors, the Unit Owners, or their proxies, may cast, in respect to each vacancy, as many votes as they are entitled to exercise under the provisions of the Declaration and these Bylaws. The Persons receiving the largest number of votes will be elected. Ties, including if there are an equal number of nominees as there are positions with different terms, will be determined by lot or flip of a coin by the chair or moderator of the meeting. Cumulative voting is not permitted.

The nominating committee, or if the Board fails to appoint a nominating committee, the Board itself (excluding any incumbent Directors who are running for re-election), is responsible for (i) confirming all nominated candidates meet the qualifications to serve as a Director, (ii) receiving and verifying any ballots that are cast in person or by mail, (iii) receiving and verifying any ballots cast using Electronic Voting Technology, (iv) counting each ballot submitted through any voting method, and (v) verifying the results of the election by providing the ballots and results to the chair or moderator of the meeting.

The chair or moderator will announce the election results at the meeting to be reflected in the meeting minutes and ensuring the election results are provided to all Unit Owners no later than fifteen (15) days after the meeting.

3.03 Vacancies During the Term. In the event of the occurrence of any vacancy or vacancies on the Board during the term of such director(s), the remaining directors, though less than a majority of the whole authorized number of directors, 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 an Eligible Holder, if any, shall be filled by such Eligible Holder.

3.04 Term of Office; Resignation. Each director shall hold office until his term expires or until his earlier resignation, removal from office or death. Any director may resign at any time by oral statement to that effect made at a meeting of the Board 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 director may specify.

3.05 Removal of Directors. At any regular or special meeting duly called, any one (1) or more of the directors 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, except that a director, if any, acting as a representative of a lending institution may not be removed by such vote. Any director whose removal has been proposed by the Members shall be given an opportunity to be heard at such meeting. In the event that a director is removed by vote, his successor shall then and there be elected to fill the vacancy thus created.

In addition, the Board, by a majority vote, may remove any individual Director and create a vacancy on the Board, if:

- (a) by order of court, the Director has been found to be of unsound mind,
- (b) the Director files for bankruptcy or has been adjudicated bankrupt,
- (c) the Director is or has been convicted of a felony for theft or other theft related crime, including larceny, forgery, false pretenses, fraud, embezzlement, conversion, or any conspiracy related to any such theft related crime, at any time in the past, or convicted of a felony for any other type of crime within the last 10 years,
- (d) the Director is no longer a member in good standing as defined in Declaration Article III, Section 3.01, as amended,
- (e) the Director is physically incapacitated in such a manner that prohibits the Director for voting or participating in Board meetings, or
- (f) the Director fails to attend three (3) consecutive meetings.

3.06 Organization Meeting. Immediately after each annual meeting of the Members the newly elected directors and those directors whose terms hold over shall hold an organization meeting for the purpose of electing officers and transacting any other business. Notice of such meeting need not be given.

3.07 Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined by a majority of the directors, but at least four (4) such meetings shall be held during each year.

3.08 Special Meetings. Special Meetings of the Board may be held at any time upon call by the President or any two (2) directors. Written notice of the time and place of each such meeting shall be given to each director either by personal delivery, mail, telegram or telephone, at least two (2) days before the meeting, which notice shall specify the purpose of the meeting; provided, however that attendance of any director 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 at the commencement of such meeting. If all the directors are present at any meeting of the board, no notice shall be required and any business may be transacted at such meeting.

3.09 Boards' Quorum. At all meetings of the Board a majority of the directors shall constitute a quorum for the transaction of business and the acts of the majority of the directors present at a meeting at which a quorum is present shall be the acts of the Board. If at any meeting of the Board there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At the continuation of any such adjourned meeting any business which might have been transacted at the meeting as originally called may be transacted without further notice.

3.10 Electronic Communication. Meetings of the Board may be held by any method of communication, including electronic or telephonic communications, provided that each director can hear, participate and respond to every other member.

3.11 Action by Unanimous Written Consent of the Board. Any action which may be authorized to be taken at a meeting of the Board may be taken or authorized without a meeting in a writing or writings signed by all of the members of the Board. The writing or writings evidencing such action taken by the unanimous written consent of the Board shall be filed with the records of the Association.

3.12 Fidelity Bonds. The Board shall require that all officers and employees of the Association handling or responsible for the Association funds shall furnish adequate fidelity bonds. The premiums for such bonds shall be paid by the Association.

ARTICLE IV
POWERS OF THE BOARD

4.01 General. The Board shall exercise all powers and authority, under law, and under the provisions of the Condominium Organizational Documents, 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:

- (a) take all actions deemed necessary or desirable to comply with all requirements of law, and the Condominium Organizational Documents;
- (b) obtain insurance coverage no less than that required pursuant to the Declaration;
- (c) enforce the covenants, conditions and restrictions set forth in the Declaration;
- (d) repair, maintain and improve the Common Elements;
- (e) establish, enforce, levy and collect assessments as provided in the Declaration;
- (f) adopt and publish Rules and Regulations:
 - (i) governing the use of the Common Elements and the personal conduct of Unit Owners, Occupants and their guests thereon;
 - (ii) detailing the procedures for discharging the Association's responsibilities with regard to the administration of the Condominium Property;
 - (iii) governing any aspect of the Condominium Property that is not required by statute to be governed by the Condominium Organizational Documents; and
 - (iv) establishing penalties for the infraction thereof;
- (g) suspend the voting rights of a Unit Owner during any period in which such Unit Owner shall be in default in the payment of any assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for each infraction of

published Rules and Regulations or of any provisions of the Condominium Organizational Documents;

(h) declare the office of a member of the Board to be vacant in the event such Director shall be absent from three (3) consecutive regular meetings of the Board;

(i) authorize the officers to enter into one (1) or more agreements necessary or desirable to fulfill the purposes and objectives of the Association and to facilitate the efficient operation of the property. It shall be the primary purpose of such management agreements to provide for administration, management, repair and maintenance as provided in the Declaration. and the receipt and disbursement of funds as may be authorized by the Board. The terms of any management agreements shall be as determined by the Board to be in the best interest of the Association, subject, in all respects, to the provisions of the Condominium Organizational Documents;

(j) cause funds of the Association to be invested in such reasonable investments as the Board may, from time to time, determine;

(k) borrow funds, as needed, and pledge such security and rights of the Association as might be necessary or desirable to obtain any such loan including, without limitation, the pledge of the Association's right to levy assessments upon the members; and

(l) do all things and take all actions permitted to be taken by the Association by law, or the Condominium Organizational Documents not specifically reserved thereby to others.

ARTICLE V **DUTIES OF THE BOARD**

5.01 General. It shall be the duty of the Board to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Unit Owners at each annual meeting of Unit Owners, or at any special meeting when such statement is requested in writing by Unit Owners representing a Majority of the Unit Owners;

(b) supervise all officers, agents and employees of the Association and see

that their duties are properly performed;

- (c) as more fully provided in the Declaration, to:
 - (i) fix the amount of assessments against each Unit;
 - (ii) give written notice of each assessment to every Unit Owner subject thereto within the time limits set forth therein; and
 - (iii) foreclose the lien against any property for which assessments are not paid within a reasonable time after they are authorized by the Declaration to do so, or bring an action at law against the Unit Owner(s) personally obligated to pay the same, or both;
- (d) issue, or to cause an appropriate representative to issue, upon demand by any Person, a certificate setting forth whether or not any assessment has been paid;
- (e) procure and maintain insurance and bonds as provided in the Declaration, and as the Board deems advisable;
- (f) cause the property subject to the Association's jurisdiction to be maintained within the scope of authority provided in the Declaration;
- (g) cause the restrictions created by the Declaration to be enforced; and
- (h) take all other actions required to comply with all requirements of law and the Condominium Organizational Documents.

ARTICLE VI **OFFICERS**

6.01 Designation. The principal officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by and from the Board. The offices of Treasurer and Secretary may be filled by the same Person.

6.02 Term of Office: Vacancies. The officers of the Association shall hold office until the next organization meeting of the Board and until their successors are elected, except in case of resignation, removal from office or death. The Board may remove any officer at any time, with or without cause, by a majority vote of the directors then

in office. Any vacancy in any office may be filled by the Board.

6.03 President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board. Subject to directions of the Board, 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 or otherwise provided for in the Condominium Organizational Documents.

6.04 Secretary. The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association. He shall have charge of such books and papers as the Board may direct. He shall be in charge of sending any notices and he shall, in general, perform all the duties incident to the office of Secretary.

6.05 Treasurer. The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may, from time to time, be designated by the Board.

ARTICLE VII BOOKS

7.01 General. The Association shall maintain correct and complete books, records and financial statements of the Association, including, without limitation, the Condominium Organizational Documents; current Rules and Regulations; names and addresses of the Unit Owners and their respective Percentage of Ownership; actions and Board resolutions, minutes of all meetings of Members and the Board, documents relating to its financial condition, all receipts and expenditures, budget, financial statements showing the allocation, distribution and collection of the Common Profits, Common Losses and Common Expenses among and from the Unit Owners and annual audited financial statements when such are prepared.

7.02 Availability. Any Unit Owner, duly authorized agent of any Unit Owner, duly authorized prospective purchaser, Eligible Holder, insurer or guarantor of a first mortgage on a Unit, may examine and copy any of the foregoing books, records and financial statements pursuant to reasonable standards established in the Condominium Organizational Documents or by Rules and Regulations which may include, without limitation, standards governing the type of documents that are

subject to examination and copying, the times and locations at which those documents may be examined or copies, and the specification of a reasonable fee for copying the documents.

7.03 Limitations. Notwithstanding the foregoing section, the Association shall not be required to permit the examination and copying of any of the following:

- (a) information that pertains to Condominium Property related personnel matters;
- (b) communications with legal counsel or attorney work product pertaining to pending litigation or other Condominium Property related matters;
- (c) information that pertains to contracts or transactions currently under negotiation, or information that is contained in a contract or other agreement containing confidentiality requirements and that is subject to those requirements;
- (d) information that relates to the enforcement of the Condominium Organizational Documents or Rules and Regulations of the Association against Unit Owners; or
- (e) information the disclosure of which is prohibited by state or federal law.

ARTICLE VIII

PURPOSE OF ASSESSMENTS

8.01 Payments from Maintenance Funds. The Association shall establish and shall pay for out of the maintenance funds, the following:

- (a) Utility Services for Common Elements and to Units when Measured by Common Meter. The cost of water, sewer services, waste removal, electricity, telephone, heat, power or any other necessary utility service to or for the Common Elements, plus the costs or charges for any utility service to individual Units which are being serviced by a common meter, i.e., water and sewer services which are being supplied to all of the Units of a building and measured through one (1) meter. The Association reserves the right to levy additional assessments against any Unit Owner to reimburse it for excessive use, as shall be determined by the Board, by such Unit Owner of any utility service having been charged against or to the maintenance fund.

(b) Care of Common Elements. The cost of landscaping, gardening, snow removal, painting, cleaning, maintenance, decorating, repair and replacement of the Common Elements.

(c) Certain Maintenance of Limited Common Elements. The cost of the maintenance and repair of any Limited Common Elements if such maintenance or repair is necessary in the discretion of the Association to protect the Common Elements or any other portion of a building, and the Unit Owner or Unit 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 Unit Owner or Unit Owners, provided the Association shall levy a Special Individual Unit Assessment against such Unit Owner for the cost of said maintenance or repair.

(d) Casualty Insurance. The premium upon a policy or policies of fire insurance with extended coverage, vandalism and malicious endorsements, as provided in the Declaration, the amount of which insurance shall be reviewed annually.

(e) Liability Insurance. The premium upon a policy or policies insuring the Association, the members of the Board and the Unit Owners against any liability to the public or to the Unit Owners, their invites or tenants, incident to the ownership and/or use of the Common Elements, as provided in the Declaration, the limits of which policy shall be reviewed annually.

(f) Wages and Fees for Services. The fees for services of any person or firm employed by the Association, including but not limited to, the services of a person or firm to act as a Managing Agent and legal and/or accounting services necessary or proper in the operation of the Condominium Property or the enforcement of the Condominium Organizational Documents and for the organization, operation and enforcement of the rights of the Association.

(g) Workmen's Compensation. The costs of workmen's compensation insurance to the extent necessary to comply with any applicable law.

(h) 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 may in the opinion of the Association constitute a lien against the entire Condominium Property rather than merely

against the interests therein of particular Unit Owners, it being understood however, that the foregoing authority shall not be in limitation to any statutory provisions relating to the same subject matter. Where one (1) or more Unit Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it. Any costs incurred by the Association because of said lien or liens shall be specifically assessed to said Unit Owners.

(i) Additional Expenses. The cost of any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, common expenses or assessments which the Association is required to secure to pay for pursuant to the terms of the Condominium Organizational Documents, 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 enforcement of the Condominium Organizational Documents.

8.02 Delegation of Duties. The Association, through its Board and officers, has the authority to delegate to persons, firms or corporations of its choice, such duties and responsibilities of the Association as the Board shall from time to time specify, and to provide for reasonable compensation for the performance of such duties and responsibilities.

ARTICLE IX

DETERMINATION AND PAYMENT OF ASSESSMENTS

9.01 Obligation of Owners to Pay Assessments. Each Unit Owner shall have the duty and obligation to pay his proportionate share of the expenses of administration, maintenance and repair of the Common Elements and of other expenses provided for herein. Unless otherwise provided for and designated as a Per Unit Expense by the Board on the budget, such proportionate share shall be based on his Percentage of Ownership. Payment thereof shall be in such amounts and at such times as may be determined by the Board as hereinafter provided.

9.02 Preparation of Estimated Budget. The Association shall, on or before December 1st of every year, prepare an estimate of the total amounts necessary to pay the cost of wages, materials, insurance, services and supplies which will be required during the ensuing calendar year for the rendering of all services, together with a reserve for contingencies and replacements. On or before December 15th, each Unit Owner shall be notified in writing as to the amount of such estimate, with reasonable itemization thereto. On or before January 1st. of the ensuing year and the 1st. of each and every

month of said year each Unit 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 Section. On or before the date of the annual meeting in each calendar year the Association shall supply to all Unit Owners an itemized accounting of the maintenance expenses actually incurred for the preceding calendar year, together with a tabulation of the amounts collected pursuant to the estimate provided, and showing the net amount over or short of the actual expenditures plus reserves.

9.03 Reserve for Contingencies and Replacements. The Association shall build up and maintain a reasonable reserve for contingencies and replacements. 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 Unit Owner's assessment, the same shall be assessed to the Unit Owners according to each Unit Owner's Percentage of Ownership or as otherwise stated herein. The Association shall serve notice of such further assessment on all Unit Owners by a statement in writing giving the reasons therefor, the amounts and the date or dates when such further assessment may be payable in a lump sum or in installments.

9.04 Periodic Assessments. Notwithstanding any provision in this Article, the Board may, at its option, elect that certain expenses such as insurance, water and sewer be paid by periodic assessments based on the billing date of such expenses. If the Board so elects such expenses shall be separately stated in the budget specifying the amount and due date thereof.

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

9.06 Assessments. Monthly assessments shall begin when the Declaration is Recorded. These assessments shall be paid by every Unit Owner of record.

9.07 Audit. Upon the written request of any Eligible Holder on over fifty-one percent (51%) of the Units, or by any group of Eligible Holders who in the aggregate hold mortgages on over fifty-one percent (51%) of the Units, or upon written request

executed by a Majority of Unit Owners, the books of the Association shall be audited, but not more than once every three (3) years by an independent registered or Certified Public Accountant, the results of which shall be sent to every Unit Owner of record, and the holder of any duly recorded mortgage against any Unit ownership who requests a copy thereof in writing.

9.08 Remedies for Failure to Pay Assessments. If a Unit Owner is in default in the monthly payment of the aforesaid charges, the Members of the Board may avail themselves of the lien rights and other rights provided for in the Declaration.

ARTICLE X

GENERAL PROVISIONS

10.01 Copies of Notices to Eligible Holders. Upon written request to the Board, Eligible Holders shall be given a copy of any and all notices and other documents permitted or required by the Condominium Organizational Documents to be given to the Unit Owner or Unit Owners whose Unit ownership is subject to such mortgage, and a copy of any lien filed by the Association.

10.02 Notices and Other Actions and Communications. All notices required or permitted under the Declaration or Bylaws, to the Association, the Board, or Unit Owners must be delivered in accordance with Declaration Article XXIX, Section 29.17, as amended.

10.03 Non-Waiver of Covenants. No covenants, restrictions, conditions, obligations, or provisions contained in the Condominium Organizational Documents 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.

10.04 Agreements Binding. All agreements and determinations lawfully made by the Association in accordance with the procedures established in the Condominium Organizational Documents shall be deemed to be binding on all Unit Owners, their successors, heirs and assigns.

10.05 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 rest of these By-laws.

10.06 Amendment. The provisions hereof may be amended pursuant to the requirements set forth in the Declaration.

10.07 Gender and Grammar. Any necessary grammatical changes required to make the provisions hereof apply either to corporations, limited liability companies, partnerships, trusts, individuals, male or female, shall in all cases be assumed as in each case fully expressed herein.

ARTICLE XI **INDEMNIFICATION**

11.01 Indemnification of Directors, Officers, and Committee Members. The Association must indemnify and defend (as provided below): (1) any current or former Association Director, (2) any current or former Association officer, (3) any current or former Association committee member, or (4) any of said Director's, officer's, or committee member's respective heirs, executors, and administrators; against reasonable expenses, including attorneys' fees, judgments, decrees, fines, penalties, or amounts paid in settlement, actually and necessarily incurred by them in connection with the defense of any pending or threatened action, suit, or proceeding, criminal or civil, derivative or third party, to which they are or may be made a party by reason of being or having been such Director, officer, or committee member provided it is determined, in the manner set forth below, that (i) such Director, officer, or committee member was not and is not adjudicated to have been grossly negligent or guilty of misconduct in the performance of their duty(ies) to the Association; (ii) such Director, officer, or committee member acted in good faith in what they reasonably believed to be in, or not opposed to, the Association's best interest; (iii) in any criminal action, suit, or proceeding, such Director, officer, or committee member had no reasonable cause to believe that their conduct was unlawful and is not convicted of theft or other theft related crime including but not limited to larceny, forgery, false pretenses, fraud, embezzlement, conversion, or any conspiracy related to any such theft related crime; and (iv) in case of settlement, the amount paid in the settlement was reasonable.

The above determination required will be made by written opinion of independent legal counsel whom the Board will choose. Notwithstanding the opinion of independent legal counsel, to the extent that a Director, officer, or committee member is successful in defense of any action, suit, or proceeding, or in the defense of any claim, issue, or matter, as the Board so verifies, they must, in that event, be indemnified and reimbursed for any costs and expenses, including legal fees, incurred in such defense. Any defense the Association provides will be by legal counsel the Association's insurance carrier selects or, if not selected by the Association's

insurance carrier, a majority of the Directors excluding the accused or threatened Director(s). If a majority of the Directors cannot agree on legal counsel or if all the Directors are accused or threatened in any such action, the Board will appoint a special committee of three (3) Unit Owners to select legal counsel to defend the Directors.

11.02 Advance of Expenses. The Association may advance funds to cover expenses, including attorneys' fees, with respect to any pending or threatened action, suit, or proceeding prior to the final disposition upon receipt of a request to repay such amounts.

11.03 Indemnification Not Exclusive; Insurance. The indemnification provided for in this Article is not exclusive, but is in addition to any other rights to which any person may be entitled under the Articles of Incorporation, the Declaration, these Bylaws, or rules and regulations of the Association, any agreement, any insurance provided by the Association, the provisions of Ohio Revised Code Section 1702.12(E) and its successor statutes, or otherwise. The Association must purchase and maintain insurance on behalf of any Person who is or was a Director, officer, or committee member against any liability asserted against them or incurred by them in such capacity or arising out of their status as a Director, officer, or committee member.

11.04 Directors, Officers, and Committee Members Liability. The Association's Directors, officers, and committee members are not personally liable to the Unit Owners for any mistake of judgment, negligence, or otherwise, except for their own willful misconduct or bad faith. The Association's and owners' indemnification includes, but is not limited to, all contractual liabilities to third parties arising out of contracts made on the Association's behalf, except with respect to any such contracts made in bad faith or contrary to the provisions of the Declaration or these Bylaws. Every contract or agreement approved by the Board and made by any Director, officer, or committee member is made only in such Director's, officer's, or committee member's capacity as a representative of the Association and has no personal liability under such contract or agreement (except as a Member).

11.05 Cost of Indemnification. Any sum paid or advanced by the Association under this Article constitutes a common expense. The Board has the power and the responsibility to raise, by special assessment or otherwise, any sums required to discharge the Association's obligations under this Article; provided, however, that the liability of any Unit Owners arising out of the contract made by any Director, officer, or committee member or out of the aforesaid indemnity in favor of such Director, officer, or committee member is limited to such proportion of the total liability as said Unit Owner's pro rata share bears to the total percentage interest of all the Unit Owners as Association Unit Owners.