

83-12779

EVOL 108 PAGE 109

DECLARATION OF CONDOMINIUM OWNERSHIP  
UNDER CHAPTER 5311 OF THE REVISED CODE OF OHIO  
FOR  
BELDEN PARK CONDOMINIUM

May 26<sup>TH</sup>, 1983

This is to certify that copies of the Declaration, By-Laws and Drawings for BELDEN PARK CONDOMINIUM have been filed this date with the Auditor of Stark County, Ohio

*Eugene M. Fellmeth*  
AUDITOR OF STARK COUNTY, OHIO

INDEX	<input checked="" type="checkbox"/>
DESCP	<input checked="" type="checkbox"/>
C-REF	<input type="checkbox"/>
COMPD	<input type="checkbox"/>

This Instrument Prepared by:

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W.J. ROSS CO., L.P.A.  
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RECEIVED FOR RECORD	
MAY 26 1983	
at	2:55 o'clock P.M.
RECORDED	MAY 26 1983
In Stark County Official Records	
Vol. 108	Page 109
EUGENE M. FELLMETH	RECORDER
FEE \$78.00	

RECORDER'S PARTNERSHIP CERTIFICATE  
*Eugene M. Fellmeth* hereby certify this 26<sup>th</sup> day of May, 1983, that the partnership of Belden Park Company has filed the certificate of partnership required by R.C. 177.02  
EUGENE M. FELLMETH, COUNTY RECORDER  
By *Charles A. Neiss*  
Deputy

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DECLARATION

This is the Declaration of BELDEN PARK CONDOMINIUM made on or as of the 25<sup>th</sup> day of May, 1983, pursuant to the provisions of Chapter 5311 of the Revised Code of Ohio.

RECITALS

A. BELDEN PARK COMPANY, A Partnership, "Declarant", is the owner in fee simple of all of the real property hereinafter described and the improvements thereon and appurtenances there-to.

B. The Declarant desires to create of this property a site of individually owned units, and commonly owned areas and facilities, and to these ends to submit this property to condominium ownership under the provisions of the condominium law.

DEFINITIONS

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

1. "Articles" and "Articles of Incorporation" mean the articles filed with the Secretary of the State of Ohio, incorporating Belden Park Condominium Unit Owners' Association as a corporation not-for-profit under the provisions of Chapter 1701 of the Revised Code of Ohio, as the same may be lawfully amended from time to time. (The State of Ohio's non-profit corporation statutory law.)

2. "Association" and "Unit Owners' Association" mean the corporation not for profit created by the filing of the Articles of Incorporation and is also one in the same as the Association created for the Condominium pursuant to the provisions of the condominium law.

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

4. "By-Laws" mean the By-Laws of the Association, as the same may be lawfully amended from time to time, created under and pursuant to the provisions of the condominium law for the Condominium, and which also serves as the Code of Regulations of the Association under and pursuant to the provisions of Chapter 1702.

5. "Condominium Instruments" means this Declaration, the By-Laws, the drawings, and, as provided by the Condominium Act, "All other documents, contracts, or instruments establishing ownership of or exerting control over the Condominium Property or Unit.", individual contracts for the sales of units, and attachments thereto, are condominium instruments.

6. "Common Areas" means all of the Condominium Property, except that portion thereof described in Article V hereof as constituting a Unit or Units, and is that portion of the Condominium Property constituting "common areas and facilities" of the Condominium under the provisions of the condominium law.

7. "Condominium" and "Belden Park Condominium" mean the condominium regime for the Condominium Property created under and pursuant to the provisions of the condominium law.

8. "Condominium Law" means the statutory laws of the State of Ohio regulating the creation and operation of condo-

miniums and which is presently set forth in Chapter 5311 of the Revised Code of Ohio.

9. "Condominium Property" means the tract of land described in Exhibit "A" hereto, all buildings, structures and improvements situated thereon, and all easements, rights and appurtenances belonging thereto.

10. "Declarant" means Belden Park Company, and its successors and assigns, provided the rights, if any, specifically reserved to the Declarant under the By-Laws or hereunder shall accrue only to such successors and assigns as are designated in writing by Declarant as successors and assigns of such rights.

11. "Declaration" means this instrument by which the Condominium Property is submitted to the condominium law, and as this instrument may be lawfully amended from time to time.

12. "Drawings" means the drawings for the Condominium, as defined in the condominium law, filed simultaneously with the submission of this Declaration for recording, as the same may be lawfully amended from time to time.

13. "Limited Common Areas" means those Common Areas serving exclusively one Unit, the enjoyment, benefit or use of which are reserved to the lawful Occupants of that Unit either in this Declaration, or by the Board, and is that portion of the Condominium Property constituting "limited common areas and facilities" of the Condominium under the provisions of the condominium law.

14. "Occupant" means a person or persons in possession of a Unit, regardless of whether that person is a Unit owner.

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

16. "Trustee" and "Trustees" mean that person or those persons serving, at the time pertinent, as the trustee or trustees of the Association, and mean that same person or those persons serving in the capacity of a manager or managers of the Association, as defined in the condominium law.

17. "Unit" and "Units" mean that portion or portions of the Condominium Property described as a unit or units under Article V of this Declaration, and is that portion of the Condominium constituting a "Unit" or "Units" of the Condominium under the provisions of the condominium law.

18. "Unit owner" and "Unit owners" mean that person or those persons owning a fee simple interest in a Unit or Units, except that any vendee or vendees under a duly recorded land installment contract for the purchase of a Unit, shall be considered the sole Unit owner or Unit owners of said Unit for the purposes of this Declaration and shall be entitled to any and all of the rights, privileges, and duties reserved to or granted to Unit owners herein. Each Unit owner shall also be a member of the Association as defined in Chapter 1702 of the Revised Code of Ohio.

19. "Garage" means the parking garage attached to each Unit.

#### THE PLAN

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

ARTICLE I

THE LAND

The land constituting Condominium Property, located in Jackson Township, Stark County, Ohio, is attached hereto and marked Exhibit "A".

ARTICLE II

NAME

The name by which the Condominium shall be known is Belden Park Condominium.

ARTICLE III

PURPOSES; RESTRICTIONS

Section 1. Purposes. This Declaration is being made to establish separate individual parcels from the Condominium Property, (Units), to which fee simple interest or interest under a recorded land installment contract may be conveyed, for the use for single family residential living; to establish a Unit Owners' Association (the Association) to administer the Condominium; to provide for the preservation of the values of Units and the Common Areas; to provide for and promote the benefit, enjoyment and well being of Unit owners and Occupants; to administer and enforce the covenants, easements, charges and restrictions hereinafter set forth; and to raise funds through assessments to accomplish these purposes.

Section 2. Restrictions. The Condominium Property shall be subject to the following restrictions:

(a) Unit Uses. The Association may, by properly enacted rules and regulations, make reasonable rules and regulations concerning the occupancy of Units in the Condominium. Except as otherwise specifically provided in this Declaration, no Unit shall be used for any purpose other than that of a residence and purposes customarily incidental thereto. Notwithstanding the foregoing an Occupant maintaining a personal or professional library, keeping personal business or professional records or accounts, or 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.

(b) Common Areas Uses. The Common Areas (except the Limited Common Areas) shall be used in common by Unit owners and Occupants and their agents, servants, customers, invitees, and licensees, in accordance with the purposes for which they are intended and as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of Units, except as specifically otherwise provided herein, no Common Area shall be used for any purpose other than the health, safety, welfare, convenience, comfort, recreation or enjoyment of Unit owners and Occupants, subject to such rules and regulations as may from time to time be promulgated by the Board.

(c) Limited Common Areas Uses. Those portions of the Common Areas described herein and shown on the Drawings as Limited Common Areas shall be used and possessed exclusively by the Unit owners and Occupants of the Unit or Units served by the same, as specified in this Declaration, subject to the restrictions on use of Common Areas and Limited Common Areas set forth in this Declaration and such rules and regulations as may from time to time be promulgated by the Board.

(d) Visible Areas. Nothing shall be caused or permitted to be hung or displayed on the outside or inside of windows or placed on the outside walls of a building or otherwise outside of a Unit, or any part thereof, or in or on a patio or balcony, and no sign, awning, canopy, shutter or television or citizens' band or other radio antenna or transmitter, or any other device or ornament, shall be affixed to or placed upon the exterior walls or roof or any part thereof, unless authorized by the Board, and subject to such rules and regulations as the Board may adopt from time to time.

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

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

(g) Renting and Leasing. No Unit or part thereof shall be rented or used for transient or hotel purposes which is defined as: (i) rental for any period less than thirty (30) days, (ii) rental under which occupants are provided customary hotel services such as room service for food and beverages, maid service, the furnishing of laundry and linen, busboy service, and similar services, or (iii) rental to roomers or boarders, that is, rental to one or more persons of a portion of a Unit only. No lease may be of less than an entire Unit. Any lease agreement shall be in writing, shall provide that the lease shall be subject in all respects to the provisions hereof, and to the rules and regulations promulgated from time to time by the Board, and shall provide that the failure by the lessee to comply with the terms of these documents shall be a default under the lease. A copy of each lease of a Unit shall be provided to the Board prior to the date of the commencement of the tenancy under that lease.

(h) Signs. No sign of any kind shall be displayed to the public view on the Condominium Property except (a) on the Common Areas, signs regarding and regulating the use of the Common Areas, provided that they are approved by the Board; and (b) on the Common Areas and Units, signs advertising the rental or sale of Units by the Declarant or Unit owner for purposes of sale or rental of a Unit or Units.

(i) Replacements. Any building erected to replace an existing building containing Units shall be of new construction, be of comparable size, design and construction to that replaced, and shall contain a like number of Units of comparable size to the Units in the building replaced. Except as specifically otherwise provided herein, there shall not be constructed or maintained on any portion of the Common Areas not presently devoted to residential buildings anything other than facilities for the common use of all Units.

(j) Structural Integrity. Nothing shall be done in any Unit, or in, on or to the Common Areas and Limited Common Areas, which will impair or change the structural integrity of any improvement.

(k) Building on Easements. If any structure, planting or other material (except as exists at the time of this Declaration) is constructed or placed on any utility or drainage easements within a Unit or Limited Common Area and it is necessary to make repairs to said water, sewer or gas utilities within

said easement, said Unit owner where the repair is made shall be responsible for the cost of said repairs to the utility line and for repair of any structure within the Unit or Limited Common Area that is damaged as a result of repair of said utilities. In the event of repair to electric, telephone or television cable lines located within a Unit or Limited Common Area, the Association shall be responsible for the cost of repair of the line and damaged structure except to the extent that the damaged line serves only that particular Unit. In such case, the Unit owner of said Unit shall be responsible for repair and damage. If the Unit owner fails to make repairs, the Association shall make said repairs and assess the individual Unit owner as provided in Article XVI.

(l) Animals. No animals, livestock, or poultry of any kind shall be raised, bred or kept in any Unit or on the Common Areas, except one domestic pet, not bred or maintained for commercial purposes, may be maintained in a Unit, provided that (i) no dogs shall be permitted in any portion of the Common Areas except on a leash (not longer than six feet in length) maintained by a responsible person, (ii) the permitting of animals on the Common Areas shall be subject to such rules and regulations as the Board may from time to time promulgate, including, without limitation, the right to place limitations on the size, number, etc., of such pets and the right to levy fines against persons who do not clean up after their pets, and (iii) the right of an Occupant to maintain an animal in a Unit shall be subject to termination if the Board, in its full and complete discretion, determines that maintenance of the animal constitutes a nuisance.

(m) Conveyances. Each Unit shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof. The undivided interest of a Unit in the Common Areas shall be deemed to be conveyed or encumbered with the Unit even though that interest is not expressly mentioned or described in the deed, mortgage, land installment or other instrument of conveyance or encumbrance. The right of a Unit owner to sell, transfer or otherwise convey that owner's Unit is not subject to any right of first refusal or similar restriction, and any Unit owner may transfer that owner's Unit free of any such limitation, except as may be contracted for by the Unit owner. To enable the Association to maintain accurate records of the names and addresses of Unit owners, each Unit owner agrees to notify the Association, in writing, within five (5) days after an interest in that Unit owner's Unit has been transferred to another person.

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

(o) Architectural Control. No building, fence, wall, sign or other structure shall be commenced, erected or maintained upon the Condominium Property, or any part thereof, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing as to harmony of external design, color and location in relation to surrounding structures and topography by the Board, or its designated representative.

(p) Rubbish and Debris. No clothes, sheets, blankets, laundry of any kind, or other articles shall be hung out or exposed on any part of the Common Areas. The Common Areas and Limited Common Areas shall be kept free and clear of rubbish, debris and other unsightly materials.

(q) Arbitration. In the event of any dispute between Unit owners as to the application of these restrictions or any rule or regulation to any particular circumstance, each Board Member shall select one arbitrator, who shall be an attorney at law, licensed to practice in the State of Ohio. These two arbitrators shall select a mutually satisfactory third arbitrator, and the said three arbitrators shall thereupon hear such evidence as they deem proper and render a written decision acknowledged and signed by at least two of the three arbitrators. No action at law may be instituted by either party to such a dispute unless arbitration pursuant hereto has first been had.

#### ARTICLE IV

##### BUILDING DESCRIPTION

Section 1. Residential Building. There are to be four (4) residential buildings on the Condominium Property, each containing two (2) single-family residential units.

The basement of each building is to be constructed of concrete block with a cement floor, and the first and second floors are to be constructed of a wood frame with exterior aluminium siding or brick. The roof is to be constructed of plywood sheathing and asphalt shingles. The buildings are located as shown on the Drawings, attached as Exhibit "A".

Section 2. Garage. Each Unit will contain an attached garage built with the same materials as the dwelling to which it is attached.

#### ARTICLE V

##### UNITS

Section 1. Unit Designation. Each Unit is designated by a number on the Drawings where that Unit is located. Information concerning the Units, with a list of proper Unit designations, is shown on the attached Exhibit "A".

##### Section 2. Description of Units.

(a) Units. Each Unit consists of all the space within that building designated on the Drawings as being that Unit, that is bounded by the undecorated interior surfaces of the perimeter walls, the unfinished surface of the basement or lowest level floor, and the unfinished interior surface of the ceiling, all projected, if necessary by reason of structural divisions such as interior walls and partitions, to constitute a complete enclosure of space, and all improvements within that space. Without limiting the generality of the foregoing, a Unit shall include:

(1) the decorated surfaces, including paint, lacquer, varnish, wallpaper, tile and other finishing material applied to basement floors, roof decks, and interior and perimeter walls, carpet, and also the floors themselves;

(2) all windows, screens and doors, including storm doors and windows, if any, and including the frames, sashes and jambs and the space occupied thereby, and the hardware therefor;

(3) all fixtures and appliances located within the bounds of a Unit installed in and for the exclusive use of that Unit, commencing at the point of disconnection from the structural body of the building and from utility pipes, lines or systems serving the entire building or more than one Unit thereof, including, without limiting the generality hereof,

built-in cabinets, dishwashers, garbage disposal units, refrigerators, and stoves and hoods;

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

(5) all space within interior walls, including the space occupied by structural and component parts of the building and by utility pipes, wires, ducts and conduits;

(6) all plumbing, electric, heating, cooling, television cables, and other utility or service lines, pipes, wires, ducts or conduits which serve either the Unit or the fixtures located therein, and which are located within the bounds of the Unit; excluding therefrom, however, all of the following items located within the bounds of that Unit;

(i) any structural element of the building contained in all interior walls;

(ii) all vent covers, grills, plate covers, and other coverings of space which are not a part of a Unit as heretofore defined; and

(iii) all plumbing, electric, heating, cooling and other utility or service lines, pipes, sump pumps and accessories thereto, wires, ducts and conduits which serve any other Unit.

(b) Unit Locations. The location of each part of each Unit is shown on the Drawings.

#### ARTICLE VI

##### COMMON AND LIMITED COMMON AREAS

Section 1. Common Areas - Description. All of the Condominium Property including all of the land and all improvements thereon, and appurtenances thereto, except those portions labeled or described herein or in the Drawings as a part of a Unit, are Common Areas.

Section 2. Limited Common Areas - Description. Those portions of the Common Areas that are labeled or designated "LCA" or "Limited Common Areas" on the Drawings, are Limited Common Areas and consist, in each case, of areas for patios adjacent to each structure, and driveways leading to the respective Unit's garages serving the Unit so designated, and in each case they are reserved for the exclusive use of the respective Units which they are designated to serve.

Section 3. Percentage of Ownership. The Owner or Owners of each Unit in the Condominium Property shall have a percentage of interest in the Common Areas equal to an undivided one eighth (1/8) interest in all said Common Areas. The Common Areas shall be owned by the Unit owners as tenants in common, and ownership thereof shall remain undivided. No Unit owner may waive or release any rights in the Common Areas. Further, the undivided interest in the Common Areas shall not be separated from the Unit to which it appertains.

If at a later time the Condominium is expanded, as herein-after provided, the undivided interests of Units in the Common Areas shall be uniformly reallocated so that the undivided interest of each Unit of each type added shall be the same as each other Unit of that type, and so that the undivided interest of a Unit of one type to one of another type is in the same ratio as those interests are with respect to the Units initially a part of the Condominium.



Section 4. Assumption of Control of Common Areas. The owners of condominium ownership interests that have been sold by the Developer or his agents will assume control of the Common Areas and of the Unit Owners' Association as prescribed in Section 5311.08, Ohio Revised Code.

Except in his capacity as a Unit owner of unsold condominium interests, the Developer or Agent will not retain a property interest in any of the Common Areas and Facilities after control of the condominium development is assumed by the Unit Owners' Association, except that in the case of a leasehold condominium development, he may retain the same interest in the Common Areas and Facilities as he retains in the entire condominium development.

The Developer will assume the rights and obligations of a Unit owner in his capacity as owner of condominium ownership interests not yet sold, including, without limitation, the obligation to pay common expenses attaching to such interests, from the date the Declaration is filed for record.

#### ARTICLE VII

##### UNIT OWNERS' ASSOCIATION

Section 1. Establishment of Association. The Association has been formed to be and to serve as the Unit Owners' Association of the Condominium. The Declarant is presently the sole member of the Association.

Section 2. Membership. Membership in the Unit Owners' Association shall be limited to the Unit owners and every person or entity who is a record owner of a fee or undivided fee simple interest in a Unit is a Unit owner and a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Unit, and transfer of a Unit shall automatically transfer membership to the transferee.

Section 3. Voting Rights. Each Unit owner shall be entitled to one vote for each Unit owned fee simple and a proportionate part of a vote for ownership of and undivided fee simple interest in a Unit.

Section 4. Board of Trustees. The Board initially shall be those three persons named as the initial Trustees pursuant to the provisions of the Articles, or such other person or persons as may from time to time be substituted by Declarant. No later than the time that Units to which twenty-five percent (25%) of the undivided interest in the common areas appertain have been sold and conveyed by the Declarant, the Unit owners shall meet, and from and after that date there shall be six (6) trustees. The Unit owners, other than the Declarant shall elect one third (2) of the trustees at such meeting and the Declarant shall designate the other two-thirds (4) of the trustees, which six trustees shall serve until the meeting described in the next paragraph. For purposes of computing the undivided interest referred to in this paragraph, those interests shall be computed by comparing the number of units sold and conveyed to the maximum number of units that may be created (8).

Within thirty (30) days after the earlier of (a) five (5) years from the date of the establishment of the Association, and (b) the sale and conveyance, to purchasers in good faith and for value, of Units to which seventy-five percent (75%) of the undivided interest in the common areas appertain, the Association shall meet and all Unit owners, including the Declarant, shall elect six (6) trustees to replace all of those

trustees earlier elected or designated by the Unit owners or Declarant, respectively, and elect new officers of the Association. The terms of the six trustees shall be staggered so that the terms of one-third of the trustees will expire and successors be elected at each annual meeting of the Association. Thereafter, at such annual meetings, successors to the two trustees whose terms then expired shall be elected and serve three (3) year terms.

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

Section 4. Authority. The Board shall have all authority to manage, maintain, repair, replace, alter and improve the Common Areas and assess and collect funds for the payment thereof, and do all things, and exercise all rights provided by law for a condominium association, this Declaration, the By-Laws, or the Articles, not specifically reserved to the Unit owners.

Section 5. Delegation of Authority; Professional Management. The Board may delegate all or any portion of its authority to discharge its responsibilities to a managing agent. This delegation of authority and responsibility to a managing agent may be evidenced by one or more management contracts which may provide for the payment of reasonable compensation to such managing agent as a common expense, provided, however, that any agreement for professional management shall be terminable by the Association for cause on thirty (30) days written notice; shall be terminable by either party, without cause and without penalty, on ninety (90) days written notice; shall not exceed one year unless renewed by agreement of the parties for successive one-year periods; and shall be bona fide and commercially reasonable to the Unit owners at the time entered into under the circumstances then prevailing.

Neither the Unit Owners' Association nor the Unit owners will be subject to any management contract or agreement executed prior to the assumption of control required by Section 5311.25(c), Ohio Revised Code, for more than one year subsequent to that assumption of control unless such a contract or agreement is renewed by a vote of the Unit owners pursuant to the By-Laws of the Association.

Subject to the foregoing, nothing contained herein shall preclude Declarant, or any other entity designated by Declarant, from being employed as managing agent. The managing agent or the Board, if there is no managing agent, shall have the authority to enter into contracts with Declarant or one or more other firms or corporations affiliated with Declarant for the providing of management, maintenance and repair services, provided the same are bona fide and commercially reasonable to the Unit owners at the time entered into under the circumstances then prevailing and are terminable by the Association, without cause and without penalty, on ninety (90) days written notice.

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

ARTICLE VIII

AGENT FOR SERVICE

The name of the person to receive service of process for the Association, and that person's residence or place of business, which is Stark County, Ohio, where the Condominium is situated, is:

William J. Ross, Esq.  
507 Belden Tower  
4450 Belden Village Street N.W.  
Canton, Ohio 44718

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

ARTICLE IX

AMENDMENTS

Section 1. Power to Amend. Except as hereinafter provided, amendment to this Declaration or the Drawings, the By-Laws, or Articles) shall require (a) the consent of Unit owners exercising not less than seventy-five percent (75%) of the voting power of Unit owners, and (b) the consent of eligible holders of first mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to mortgages held by eligible holders of mortgages appertain. Notwithstanding the foregoing:

(a) the consent of all Unit owners shall be required for any amendment effecting a change in:

- (i) the boundaries of any Unit;
- (ii) the undivided interest in the Common Areas appertaining to a Unit or the liability for common expenses appertaining thereto;
- (iii) the number of votes in the Association appertaining to any Unit; or
- (iv) the fundamental purposes to which any Unit or the Common Areas are restricted;

(b) the consent of Unit owners exercising not less than seventy-five percent (75%) of the voting power of the Unit owners and the consent of eligible holders of first mortgages on units to which at least seventy-five percent (75%) of the votes of Units subject to mortgages held by eligible holders of first mortgage liens appertain shall be required to terminate the Condominium and,

(c) in any event, Declarant reserves the right and power, and each Unit owner by acceptance of a deed to a Unit is deemed to and does give and grant to Declarant a power of attorney, which right and power is coupled with an interest and runs with the title to a Unit and is irrevocable (except by Declarant), for a period of three (3) years from the date hereof, to amend this Declaration (and the By-Laws and Articles), to the extent necessary to conform to the requirements then governing the purchase or insurance of mortgages by the Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association, Mortgage Guaranty Insurance Corporation, the Federal Housing Administration, the Veterans Administration, or any other such agency; provided that the appropriate percentage (as described else-

where herein) of eligible holders of first mortgage liens is obtained.

Section 2. Method to Amend. An amendment to this Declaration (or the Drawings or the By-Laws), adopted with the consents hereinbefore provided, in a writing executed with the same formalities as this Declaration by two officers of the Association and containing a certification that the amendment was duly adopted in accordance with the foregoing provisions, shall be effective upon the filing of the same with the Auditor and Recorder of Stark County, Ohio.

#### ARTICLE X

##### MANAGEMENT, MAINTENANCE AND REPAIR

Section 1. Association Responsibility. The Association shall maintain and repair the Common Areas, including and not limited to utility facilities serving more than one Unit, utility lines in the Common Areas, lawns, shrubs, trees, walkways, the patio areas, and all buildings which are a part of the Common Areas, provided, however, that the Association shall not be required to perform cleaning of the driveway and patio areas.

Section 2. Individual Responsibility. Each Unit owner shall repair and maintain the Unit or Units, and all components thereof, owned by that Unit owner, including the patio area, driveway, and garage appurtenant to a Unit to the extent not the obligation of the Association. Without limiting the generality of the foregoing, this repair and maintenance responsibility shall include repair and maintenance of all windows, screens and doors, including the frame, sashes and jams, and the hardware therefor; and cleaning of the patio and driveway. In the event a Unit owner shall fail to make any such repair or perform such maintenance, or in the event the need for maintenance or repair of any part of the Common Area or Limited Common Areas is caused by the negligent or intentional act of any Unit owner or Occupant, and the cost of repair is not covered by insurance, the cost of such maintenance and repair shall constitute a special individual Unit Assessment, as hereinafter defined, on the Unit owned by such Unit owner. The determination that such maintenance or repair is necessary, or has been so caused, shall be made by the Board.

#### ARTICLE XI

##### UTILITY SERVICES

Each Unit owner by acceptance of a deed or land installment contract to a Unit agrees to pay for utility services separately metered or separately charged by the utility company to that Unit. In the event any utility service is not separately metered the cost thereof shall be prorated among the Unit owners in proportion to their respective interests in the Common Areas.

#### ARTICLE XII

##### INSURANCE; LOSSES; BONDS

Section 1. Fire and Extended Coverage Insurance. The Board shall have the authority to and shall obtain insurance for all buildings and structures now or at any time hereafter constituting a part of the Common Areas against loss or damage by fire, lightning, vandalism, and such other hazards as are ordinarily insured against in fire and extended coverage policies issued in the locale of the Condominium Property, in amounts at all times sufficient to prevent the Unit owners from becoming co-insurers under the terms of any applicable co-insurance clause or provision and not less than the actual replacement

cost of such buildings and structures, exclusive of the cost of foundations, footings and excavations, as determined from time to time by the insurer. This insurance will provide for windows, doors and similar items enumerated in subsection 2 of Article V, and may provide for built-in or installed fixtures and equipment.

This insurance shall be written in the name of the Association for the use and benefit of the Unit owners and their mortgagees as their interests may appear. The Board and/or its authorized representatives shall have the exclusive right to negotiate and adjust all losses. Unless the Board determines otherwise, all such insurance shall contain a waiver of subrogation of rights by the carrier as to the Association, its Officers and Trustees, and all Unit owners and Occupants.

The cost of this insurance shall be a common expense, payable by the Association. A Unit owner's share shall be determined by multiplying the premium being apportioned by that Unit owner's Unit's respective percentage interest in the Common Areas. If such premium is not paid by the Unit owner, it shall constitute a special individual Unit assessment, as hereinafter defined.

Section 2. Liability Insurance. The Association shall obtain and maintain a comprehensive policy of public liability insurance covering all of the Common Area, insuring the Association, the Trustees, and the Unit owners and members of the respective families and Occupants, with such limits as the Board may determine, but not less than \$300,000.00 per person for injury or death and \$500,000.00, per any one occurrence and not less than \$100,000.00 in respect to damage to property arising out of one accident, covering claims for personal injury and/or property damage. This insurance shall include protection against such risks as are customarily covered with respect to developments similar in construction, location and use, as determined by the Board; provided, however, that 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 Areas and Facilities. This insurance shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit owner or Occupant because of negligent acts of the Association, the Board, or other Unit owners or Occupants.

Section 3. Unit Owners' Insurance. Any Unit owner or Occupant may carry such insurance in addition to that provided by the Association pursuant hereto as that Unit owner or Occupant may determine, subject to the provisions hereof, and provided that no Unit owner or Occupant may at any time purchase individual policies of insurance against loss by fire or other casualty covered by the insurance carried pursuant hereto by the Association.

In the event any Unit owner or Occupant violates this provision, any diminution in insurance proceeds resulting from the existence of such other insurance shall be chargeable to the Unit owner who acquired or whose Occupant acquired such other insurance, who shall be liable to the Association to the extent of any diminution and/or loss of proceeds. Without limiting the foregoing, a Unit owner or Occupant may obtain insurance against liability for events occurring within a Unit, losses with respect to personal property and furnishings, and losses to improvements within a Unit owned by the Unit owner or Occupant provided the latter is limited to the type and nature of coverage commonly referred to as "tenants' improvements and betterments." All such insurance separately carried shall contain a waiver of subrogation rights by the carrier as to the Association, its officers and Trustees, and all other Unit owners and Occupants.

Section 4. Sufficient Insurance. In the event the improvements forming a part of the Common Areas and other items to be covered by such insurance pursuant to this Declaration, 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, then, unless the Unit owners and eligible holders of first mortgages shall, within sixty (60) days after such damage or destruction, if they are entitled to do so pursuant to the provisions of Article XIII hereof, elect not to make such repair, restoration or reconstruction, the Association shall make such repairs, restoration or reconstruction of the Common Areas and other items to be covered by such insurance pursuant to this Declaration, which have been so damaged or destroyed, at the expense (to the extent not covered by insurance) of all Unit owners in proportion to their respective interests in the Common Areas. Should any Unit owner refuse or fail after reasonable notice to pay that Unit owner's share of such cost in excess of available insurance proceeds, the amount so advanced by the Association shall be assessed 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 herein provided for the nonpayment of assessments.

Section 5. Insufficient Insurance. In the event the improvements forming a part of the Common Areas or any portion thereof shall suffer damage or destruction from any cause 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, then, unless the Unit owners and eligible holders of first mortgages, if they are entitled to do so pursuant to the provisions of this Declaration shall elect, within sixty (60) days after such damage or destruction not to make such repair, restoration or reconstruction, the Association shall make repairs, restoration or reconstruction of the Common Areas so damaged or destroyed at the expense (to the extent not covered by insurance) of all Unit owners in proportion to their respective undivided interest in the Common Areas. Should any Unit owner refuse or fail, after reasonable notice, to pay that Unit owner's share of such cost in excess of available insurance proceeds, the amount so advanced by the Association shall be assessed against the Unit of such Unit owner and that assessment shall have the same force and effect, and, if not paid, may be enforced in the same manner as herein provided for the nonpayment of assessments.

Section 6. Fidelity Bonds. The Board shall obtain fidelity bond coverage with respect to persons handling Association funds in amounts deemed reasonably necessary by the Board to protect against substantial losses.

#### ARTICLE XIII

##### DAMAGE; RESTORATION; REHABILITATION AND RENEWAL

Section 1. Restoration of Substantial Damage or Destruction. In the event of substantial damage to or destruction of all Units in a building, the Association may, with the consent of the Unit owners entitled to exercise not less than seventy-five percent (75%) of the voting power of Unit owners, and the consent of eligible holders of first mortgages on Units to which at least seventy-five percent (75%) of the votes of Units subject to mortgages held by eligible holders of mortgages appertain, determine not to repair or restore such damage or destruction. In such an event, all of the Condominium Property shall be sold as upon partition.

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

Section 2. Rehabilitation and Renewal. The Association, with the consent of Unit owners entitled to exercise not less than seventy-five percent (75%) of the voting power of Unit owners, and the consent of eligible holders of first mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to mortgages held by eligible holders of mortgages appertain, may determine that the Condominium is obsolete in whole or in part and elect to have the same renewed and rehabilitated. The Board shall thereupon proceed with such renewal and rehabilitation and the cost thereof shall be a common expense.

#### ARTICLE XIV

##### CONDEMNATION

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

#### ARTICLE XV

##### GRANTS AND RESERVATIONS OF RIGHTS AND EASEMENTS

Section 1. Easements of Enjoyment; Limitations. Every Unit owner shall have a right and easement of enjoyment in, over and upon the Common Areas and a right of access to and from his, her or its Unit, which rights and easements shall be appurtenant to and shall pass with the title to a Unit, subject to the right of the Board to make reasonable rules and regulations concerning the use and management of the Common Areas, provided that no such rule or regulation shall limit or prohibit the right of ingress and egress to a Unit. Any Unit owner may delegate that Unit owner's right of enjoyment to the Common Areas and to ingress to and egress from a Unit to the members of that Unit owner's family and to Occupants.

Section 2. Right of Entry for Repair, Maintenance and Restoration. The Association shall have a right of entry and access to, over, upon and through all of the Condominium Property, including each Unit, to enable the Association to perform its obligations, rights and duties pursuant hereto with regard to maintenance, repair, restoration and/or servicing of any items, things or areas of or in the Condominium Property.

Section 3. Easements for Encroachments. Each Unit and the Common Areas shall be subject to easements for encroachments on any other Unit and upon the Common Areas created or arising by reason of overhangs; or by reason of deviations in construction, reconstruction, or repair, or by reason of shifting, settlement, or movement of the structures; or by reason of errors in the Drawings. Valid easements for these encroachments and for the maintenance of same, so long as the encroaching structures remain, shall and do exist.

Section 4. Easement for Support. Every portion of a building or utility line or any improvement on any portion of the Condominium Property contributing to the support of another building, utility line or improvement on another portion of the Condominium Property shall be burdened with an easement of support for the benefit of all other such buildings, utility lines, improvements and other portions of the Condominium Property.

Section 5. Easements for Utilities and Storm Sewers. There is hereby created within, upon, over and under all of the Condominium Property easements to the Association for ingress and egress to, and the installation, replacing, repairing and maintaining of all utilities and storm sewers, including, but not limited to water, sewers, gas, wells, telephone, electricity and television cable. By this easement it shall be expressly permissible for the providing utility company to construct and maintain the necessary poles and equipment, wires, circuits, pipelines and conduits within, on, above, across and under the Condominium Property, so long as such poles, equipment, wires, circuits, pipelines and conduits do not unreasonably interfere with the use and enjoyment of the Condominium Property. Should any utility company furnishing a service request a specific easement by separate recordable document, the Board shall have the right to grant such easement without conflicting with the terms hereof.

Section 6. Easement for Services. A non-exclusive easement is hereby granted to all police, firemen, ambulance operators, mailmen, delivermen, garbage and trash removal personnel, and all similar persons, and to the local governmental authorities and the Association, but not to the public in general, to enter upon the Common Areas in the performance of their duties.

Section 7. Power of Attorney. Each Unit owner, by acceptance of a deed to a Unit, hereby irrevocably appoints Declarant his, her or its attorney-in-fact, to execute, deliver, acknowledge and record, for and in the name of such Unit owner, such deeds of easement and other instruments as may be necessary or desirable, in the sole discretion of the Board's authorized representative, to further establish or effectuate the foregoing easements. This power is for the benefit of each and every Unit owner, the association and the real estate to which it is applicable, runs with the land, and is coupled with an interest.

Section 8. General. The easements and grants provided herein shall in no way affect any other recorded grant or easement.

#### ARTICLE XVI

##### ASSESSMENTS AND ASSESSMENT LIENS

Section 1. Types of Assessments. The Declarant for each Unit within the Condominium hereby covenants, and each Unit owner by acceptance of a deed to a Unit or land installment contract (whether or not it shall be so expressed in such instrument), is deemed to covenant and agree to pay to the Association: (1) annual operating assessments, (2) special assessments for capital improvements, and (3) all of such assessments to be established and collected as hereinafter provided.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of Unit owners and Occupants.

Section 3. Elements-Appportionment: Due Dates.

##### (a) Annual Operating Assessments.

(1) Prior to the beginning of each fiscal year of the Association, the Board shall estimate, and prorate equally



among the Unit owners the common expenses of the Association, consisting of the following:

a. the estimated next fiscal year's cost of the maintenance, repair and other services described in Article X, Section 1, hereof;

b. the estimated next fiscal year's costs for insurance and bond premiums to be provided pursuant hereto and to be paid by the Association;

c. the estimated next fiscal year's costs for utility services not separately metered;

d. commencing with the year during which the Declarant commences sales of the Units, an amount not less than that necessary to maintain in a reserve fund the estimated amount required in the next fiscal year in order to make all desirable or necessary repairs and replacements of capital improvements a part of the Common Areas; and

e. the estimated next fiscal year's costs for the operation, management and administration of the Association, including, but not limited to, fees for property management.

(2) The Board shall thereupon allocate to each Unit owner his, her or its respective shares of all of these items, prorated as hereinbefore set forth, and thereby establish the annual operating assessment for each separate Unit. For administrative convenience, any such assessment may be rounded to the nearest whole dollar.

(3) The annual operating assessment shall be due and payable in advance, at such times and in such amounts as the Board shall, from time to time, determine. However, said payments shall not be made less than semi-annually.

(4) If the amounts so collected are, at any time, insufficient to meet all obligations for which those funds are to be used, the deficiency shall be assessed by the Board among the Units on the same basis as heretofore set forth.

(5) If assessments collected during any fiscal year are in excess of the funds necessary to meet the anticipated expenses for which the same have been collected, the excess shall be allocated and paid into the reserve fund applicable to that type of expense, and shall in no event be deemed profits nor available, except on dissolution of the Association, for distribution to Unit owners.

**(b) Special Assessments for Capital Improvements.**

(1) In addition to the annual operating assessments hereinbefore authorized, the Board of Trustees may levy, in any fiscal year, special assessments to construct, reconstruct or replace capital improvements on the Common Areas to the extent that reserves therefore are insufficient, provided that new capital improvements not replacing existing improvements shall not be constructed nor funds assessed therefor without the prior consent of Unit owners exercising no less than seventy-five percent (75%) of the voting power of Unit owners and the consent of eligible holders of first mortgages on Units to which at least fifty-one percent (51%) of the votes of Units subject to mortgages held by eligible holders of mortgages appertain.

(2) Any such assessment shall be prorated among all Units in proportion to such Units' respective percentage interests in the Common Areas, and shall become due and payable on

such date or dates as the Board determines following written notice to the Unit owners.

(c) Special Individual Unit Assessments. The Board may levy an assessment against an individual Unit, or Units, to reimburse the Association for those costs incurred in connection with that Unit or Units properly chargeable by the terms hereof to a particular Unit (such as, but not limited to, the cost of making repairs the responsibility of a Unit owner, the cost of insurance premiums separately billed to a Unit owner, and a Unit owner's enforcement and arbitration charges). Any such assessment shall become due and payable on such date as the Board determines, and gives written notice to the Unit owners subject thereto. Additionally, during the first years of the Condominium's existence, and until such time as real estate taxes and assessments are split into separate tax bills for each Unit, the Association shall have the right to pay the real estate taxes and assessments attributable to the Condominium Property in the event the same have not been paid, when due, and assess each Unit owner for his, her or its share of such real estate taxes and assessments as a special individual Unit assessment. The share of those taxes and assessments attributable to a Unit shall be computed by multiplying the total taxes and assessments for all of the Condominium Property by the undivided interest in Common Areas attributable to that Unit. The calculation by the Association of the Units' shares of taxes and assessments shall be binding upon all Unit owners.

Section 4. Effective Date of Assessment. Any assessment created pursuant hereto shall be effective provided it is created as provided herein, if written notice of the amount thereof is sent by the Board to the Unit owner subject thereto at least ten (10) days prior to the due date thereof, or the due date of the first installment thereof, if to be paid in installments. Written notice mailed or delivered to a Unit owner's Unit shall constitute notice to that Unit owner, unless the Unit owner has delivered written notice to the Board of a different address for such notices, in which event the mailing of the same to that last designated address shall constitute notice to that Unit owner.

Section 5. Effect of Nonpayment of Assessment; Remedies of the Association.

(a) If any assessment or any installment of any assessment is not paid within ten (10) days after the same has become due, the entire unpaid balance of the assessment shall, without demand or notice, forthwith become due and payable, and bear interest thereafter at the rate of ten percent (10%) per annum.

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

(c) At any time after an assessment levied pursuant hereto remains unpaid for ten (10) or more days after the same has become due and payable, a certificate of lien for the entire unpaid balance of that assessment, interest and costs, may be filed with the Recorder of Stark County, Ohio, pursuant to authorization given by the Board. The certificate shall contain a description of the Unit against which the lien exists, the name or names of the record owner or owners thereof, and the amount of the unpaid portion of the assessments, and shall be signed by the President of the Association.

(d) The lien provided for herein shall remain valid for a period of five (5) years from the date a certificate of lien was duly filed therefor, unless sooner released or satisfied in the same manner provided by law in the State of Ohio for the release and satisfaction of mortgages on real property, or discharged by the final judgment or order of a court in an action brought to discharge the lien.

(e) Any Unit owner who believes that an assessment chargeable to his, her or its Unit (for which a certificate of lien has been filed by the Association) has been improperly charged against that Unit, may bring an action in the Court of Common Pleas of Stark County, Ohio, for the discharge of that or a portion of the assessment has been improperly charged to that Unit, the court shall make such order as is just, which may provide for a discharge of record of all or a portion of that lien.

(f) Each such assessment together with interest and costs shall also be the joint and several personal obligation of the Unit owner who owned the Unit at the time when the assessment fell due. The obligation for delinquent assessments, interest and costs shall not be the personal obligation of that owner or owner's successors in title unless expressly assumed by the successor, provided, however, that the right of the Association to a lien against that Unit, or to foreclose any lien thereon for these delinquent assessments, interest and costs, shall not be impaired or abridged by reason of the transfer, but shall continue unaffected thereby.

(g) The Association, as authorized by the Board, may file a lien to secure payment of the entire unpaid balance of a delinquent assessment, interest and costs, and bring an action at law against the owner or owners personally obligated to pay the same, or an action to foreclose the lien, or any one or more of these. In any such foreclosure action, the owner or owners affected shall be required to pay a reasonable rental for that Unit during the pendency of such action, and the Association as plaintiff in any such action shall be entitled to become a purchaser at the foreclosure. In any such action, interest and costs of such action (including attorneys fees) shall be added to the amount of any such assessment, to the extent permitted by Ohio law.

(h) No owner may waive or otherwise escape liability for the assessments provided for in this Declaration by non-use of the Common Areas, or by abandonment of his, her or its Unit.

#### ARTICLE XVII

##### NOTICES TO MORTGAGEES

Any holder or insurer of a first mortgage, upon written request to the Association (which request states the name and address of such holder or insurer and the Unit designation), shall be entitled to timely written notice by the Association of:

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

2. any proposed termination of the Condominium as a condominium regime;

3. any condemnation or eminent domain proceeding affecting the Condominium Property or any part thereof, of which the Board obtains notice;
4. any significant damage or destruction to the Common Areas;
5. any decision by the Association not to restore substantial damage or destruction;
6. any decision by the Association to renew or rehabilitate the Condominium Property;
7. any decision by the Association to construct new capital improvements not replacing existing improvements.
8. times and places of Unit owners' meetings; and
9. any default under the Condominium organizational documents which gives rise to a cause of action against a Unit owner whose Unit is subject to the mortgage of such holder or insurer, where the default has not been cured in sixty (60) days.

#### ARTICLE XVIII

##### CONDOMINIUM INSTRUMENT REQUIREMENTS

Section 1. General. The Condominium act requires that certain information be provided in the Condominium instruments. Much of this is provided elsewhere in the Condominium organizational documents and in other documents, but in order that all such information be provided in this Declaration, various items of that information are set forth in the following sections of this article.

Section 2. Deposits. Any deposit or down payment made in connection with a sale of a Unit by Declarant or its agent will be held in trust or escrow until delivered at the time of the closing of the sale or returned to or otherwise credited to the buyer, or forfeited to the Declarant. If, in the case of any such sale, a deposit or down payment of two thousand dollars (\$2,000.00) or more is held for more than ninety (90) days, interest at the rate of at least four percent (4%) per annum for any period exceeding ninety (90) days shall be credited to the buyer at the time of the closing of the sale or upon return or other credit made to the buyer, or added to any forfeiture to the Declarant. Deposits held in trust or escrow pursuant to sales by Declarant or its agent shall not be subject to attachment by creditors of Declarant or the buyer.

Section 3. Association Control. Except in its capacity as a Unit owner of unsold Units, the Declarant or its agent will not retain a property interest in any of the Common Areas after control of the Association is assumed by the Association. The owners of Units that have been sold by the Declarant or its agent will assume control of the Association and the Common Areas, as elsewhere provided herein, in compliance with the requirements of the Condominium act. Neither the Association nor the Unit owners will be subject to any management contract or agreement executed prior to the assumption of control of the Association by Unit owners other than Declarant for more than one year subsequent to that assumption of control unless such a contract or agreement is renewed by a vote of the Unit owners pursuant to the provisions of the By-Laws.

Section 4. Limited Warranty. Following are the limited warranties (and limitations thereon) which the Declarant gives to the buyers of a Unit from it, which are not enforceable by the buyers unless and until the sale of the Unit to the buyers is closed.

(a) Units. Except as provided in subparagraph C, below, the Declarant warrants to provide and pay for the full cost of labor and materials for any repair or replacement of structural, mechanical, and other elements pertaining to the Unit, occasioned or necessitated by a defect in material or workmanship, that arise within a period of one year from the date the deed to the buyers for that Unit is filed for record.

(b) Common Areas and Facilities. The Declarant warrants to provide and pay for the full cost of labor and materials for any repair or replacement of the roof and structural components, and mechanical, electrical, plumbing, and common service elements serving the Condominium as a whole, occasioned or necessitated by defects in material or workmanship, that arise within a period of two (2) years from the date the deed is filed for record following the sale of the first unit in the Condominium to a purchaser in good faith for value.

(c) Appliances, etc. In the case of ranges, refrigerators, washing machines, clothes dryers, hot water heaters and other similar appliances, if any, installed and furnished by the Declarant as part of the Unit, the Declarant assigns to the buyers all express and implied warranties of the manufacturer, and the Declarant's warranty with respect to such items is limited to the Declarant's warranty that the same have been properly installed.

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

(e) Limitations.

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

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

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

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

(5) Any request for service must be sent in writing to the Declarant at 507 Belden Tower, 4450 Belden Village Street, N.W., Canton, Ohio 44718, or at such other address as the Declarant may designate, from time to time, in writing to the buyers. The Declarant or the Declarant's designated representative will commence performance of the Declarant's obligations under this warranty within thirty (30) days after receipt of the buyers' request for service, and complete the same as soon as reasonably possible. All repairs and adjustments will be made Monday through Friday, 8:00 a.m. to 5:00 p.m.

(f) Other Rights. This written limited warranty gives the buyers specific legal rights and the buyers may also have other legal rights under law.

Section 5. Declarant's Obligations. Declarant will assume the rights and obligations of a Unit owner in its capacity as owner of Units not yet sold, including, without limitation, the obli-

gation to pay common expenses attaching to such Units, from the date this Declaration is filed for record.

Section 6. Tenants Options and Notice. If this is a conversion condominium, all tenants were or are being offered an option, exercisable within not less than 90 days after notice, to purchase a Unit in the Condominium, and such tenants were or are being given written notice not less than 120 days prior to being required to vacate their rented premises to facilitate the conversion.

#### ARTICLE XIX

##### EXPANSIONS

Section 1. Reservation of Expansion Option. Declarant expressly reserves the option to expand the Condominium Property as provided in this article.

Section 2. Limitations on Option. Declarant has no limitations on its option to expand the Condominium Property except as provided in this article, or elsewhere in this Declaration, and except as provided in this article, or elsewhere in this Declaration, and except as otherwise so expressly limited, has the sole right, power, and authority to expand the Condominium Property. No Unit owner's consent is required to enable Declarant to expand the Condominium Property.

Section 3. Maximum Expansion Time. Declarant's option to expand the Condominium Property shall expire and terminate at the end of seven years from the date this Declaration is filed for record, unless Declarant, by written notice to the Association, elects to waive that option effective at a time prior to the expiration of that five year period. There are no other circumstances that will terminate that option prior to the expiration of that five year period.

Section 4. Legal Description. A legal description, by metes and bounds, of all additional property that, through exercise of Declarant's option, may be added to the Condominium Property by submission to the Condominium act as part of this condominium, is attached hereto and marked "Exhibit AA", and referred to herein as "the additional property".

Section 5. Composition of Portions Added. Neither all nor any portion of the additional property must be added to the Condominium Property, nor, if any of the additional property is added, shall it be required that a particular portion of the additional property must be added, provided that portions added meet all other requirements set forth in this article. Except as expressly provided in this article, there are no limitations on the portions of the additional property that may be added to the Condominium Property.

Section 6. Time for Adding Portions. Portions of the additional property may be added to the Condominium Property from time to time, and at different times, within the time limit previously described. There are no limitations fixing the boundaries of portions added, or regulating the order in which portions are added, excepting, however, that each portion added shall be contiguous, at some point, to what then constitutes the Condominium Property, so that at all times the entire Condominium Property shall be an integral and contiguous development.

Section 7. Improvement Location Limitations. There are no established or defined limitations as to the location of any improvements that may be made on any portion of the additional property added to the Condominium Property except such limitations as may then be in effect by reason of the laws and lawful

rules and regulations of the appropriate governmental bodies and authorities having jurisdiction.

Section 8. Maximum Number of Units. The maximum total number of Units that may be created on the additional property and added to the Condominium Property is eighty-four (84), provided, that the foregoing shall neither limit nor restrict nor be so construed as to limit or restrict the number of dwelling units that may be constructed on all or any portion of the additional property that is not added to the Condominium Property. Subject to the foregoing total maximum of Units that may be added to the Condominium Property there is no limit as to the maximum number of units per acre that may be created on any portion of the additional property added to the Condominium Property other than as may, from time to time, be imposed by law.

Section 9. Non-Residential Uses. The maximum percentage of the aggregate land and floor area of all Units that may be created on the additional property or portions thereof and added to the Condominium Property that are not restricted exclusively to residential use is zero, since no such Unit may be so created and added.

Section 10. Compatibility of Structures. All structures erected on all or any portion of the additional property and added to the Condominium Property will be compatible with structures then on the Condominium Property in terms of quality of construction, the principal materials to be used, and architectural style and design. Comparable style and design shall be deemed to exist if the exterior appearance of the structures on the additional property is compatible and harmonious with those then on the Condominium Property. Design shall not be deemed to be incompatible or not comparable because of changes in the number of dwelling units in a building, or variances in setbacks or locations of structures in relation to other improvements.

Section 11. Improvements other than Structures. If all or a portion of the additional property is added to the Condominium Property, drives, sidewalks, yard areas, and other improvements similar to those then on the Condominium Property shall be constructed on that additional property, and no other non-structural improvements. Improvements other than structures added to the Condominium Property shall not include improvements except of substantially the same kind, style, design and quality as those improvements then on the Condominium Property.

Section 12. Types of Units. All Units that are created on all or any portion of the additional property and added to the Condominium Property shall be substantially identical to and of the types of Units then on the Condominium Property, provided, however, that any such Units shall be deemed substantially identical notwithstanding changes in the interior layout of the Units.

Section 13. Limited Common Areas. Declarant reserves the right with respect to all or any portion of the additional property added to the Condominium Property to create Limited Common Areas therein of substantially the same type, size, and number as those areas then so designated as such in the Condominium Property, including, without limiting the generality of the foregoing:

- (a) a garage for the exclusive use and benefit of the Unit owners and occupants of the Unit served by the same;
- (b) (patios)
- (c) (parking spaces)

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

Section 14. Supplementary Drawings. Attached hereto and marked "Exhibit AA" is a plot plan showing the location and dimensions of the Condominium Property and the additional property. Declarant does not consider any other drawings or plans, other than the Drawings, presently appropriate in supplementing the foregoing provisions of this article. However, at such time as Declarant adds all or any portion of the additional property to the Condominium Property it shall file drawings and plans with respect to the additional property as required by the Condominium act.

Section 15. Procedures for Expansion. All of any portion of the additional property shall be added to the Condominium Property by the execution and filing for record by the Declarant and all owners and lessees of the land so added, in the manner provided by the Condominium act, of an amendment to the Declaration that contains the information, drawings and plans with respect to the additional property and improvements thereon added required by the Condominium act.

Section 16. Effects of Expansion. Upon the filing for record of an amendment to the Declaration adding all or any portion of the additional property to the Condominium Property:

(a) the added portion shall thereafter be subject to all of the terms and provisions hereof, to the same extent and with the same effect as if that added portion had been provided herein as constituting part of the Condominium Property, that is, the rights, easements, covenants, restrictions and assessment plan set forth herein shall run with and bind the added portion in the same manner, to the same extent, and with the same force and effect as the terms of this Declaration apply to the Condominium Property;

(b) the owner or owners of the added portion shall thereupon become members, to the same extent, with the same effect, subject to the same obligations, and imbued with the same rights, as all other members; and

(c) the undivided interests of Units in the Common Areas, as so expanded, shall be reallocated as hereinbefore provided; and

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

#### ARTICLE XVIII

##### GENERAL PROVISIONS

Section 1. Covenants Running with the Land. The covenants, conditions, restrictions, easements, reservations, liens and charges created hereunder or hereby shall run with and bind the land, and each part thereof, and shall be binding upon and inure to the benefit of all parties having any right, title or

Section 2. Enforcement. In addition to any other remedies provided in this Declaration, Declarant, the Association and



each Unit owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens and charges set forth herein or in the By-Laws, Partnership Agreement or now or hereafter imposed by or through the Association's rules and regulations. Failure by Declarant, the Association or by any Unit owner to proceed with such enforcement shall in no event be deemed a waiver of the right to enforce at a later date the original violations or a subsequent violation, nor bar the enforcement of any such restriction, condition, covenant, reservation, easement, lien or charge. Further, the Association and each Unit owner shall have rights of action against each other for failure to comply with the provisions of the Declaration, By-Laws, Partnership Agreement, rules and regulations, or applicable law, or with respect to decisions made pursuant to authority granted thereunder, and the Association shall have the right to assess reasonable charges against a Unit owner who fails to comply with the same. Notwithstanding the foregoing, in the event of any dispute between the Association and any unit owner or Occupant, other than with regard to assessments, that cannot be settled by an agreement between them, the matter shall first be submitted to arbitration in accordance with and pursuant to the arbitration law of Ohio then in effect (presently Chapter 2711 of the Revised Code of Ohio), by arbitration as set forth in Article III, Section 2(q), herein.

**Section 3. Severability.** Invalidation of any one or more of these covenants, conditions, restrictions or easements by judgment or court order shall in no way affect any other provisions which shall remain in full force and effect. In the event any language of this Declaration conflicts with mandatory provisions of Ohio statutory law, the statutory requirements shall prevail and the conflicting language shall be deemed to be invalid and void, provided such invalidity shall in no way affect any other provisions of this Declaration which shall remain in full force and effect.

**Section 4. Gender and Grammar.** The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations, partnerships, men or women, shall in all cases be assumed as though in such case fully expressed.

**Section 5. Captions.** The captions of the various provisions of this Declaration are not part of the context hereof, but are merely labels to assist in locating the various provisions hereof.

IN WITNESS WHEREOF, the undersigned have executed this instrument this 25<sup>th</sup> day of May, 1983.

Signed and acknowledged in the presence of:

DECLARANT

BELDEN PARK COMPANY

*[Signature]*  
*[Signature]*

*[Signature]* Sec.  
BEXCO DEVELOPMENT CO.  
By: William H. Blackert, Sec.

Sworn to before me and subscribed in my presence by the said William H. Blackert, of Belden Park Company, this 25<sup>th</sup> day of May, 1983.

*[Signature]*  
NOTARY PUBLIC

JANE L. KAMMER  
NOTARY PUBLIC, STATE OF OHIO  
MY COMMISSION EXPIRES NOV. 3, 1986