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DECLARATION AND BYLAWS  
CREATING AND ESTABLISHING A PLAN FOR  
CONDOMINIUM OWNERSHIP  
UNDER CHAPTER 5311 OF THE REVISED CODE OF OHIO  
FOR  
GLENABBY CONDOMINIUM

CERTIFICATE OF AUDITOR

*February 17*, 2006

Receipt is hereby acknowledged of a copy of the Declaration, Bylaws, and Drawings of the above-named Condominium.

*Joseph W. Testa*  
Auditor

FOR REFERENCE PLEASE SEE  
CONDOMINIUM PLAT BOOK NO. 162 PAGE 83-90

This Instrument was prepared by:  
Daniel E. Bringardner  
Attorney at Law  
Wiles, Boyle, Burkholder & Bringardner Co., L.P.A.  
300 Spruce Street, Floor One  
Columbus, OH 43215-1173

TRANSFERRED

FEB 17 2006

JOSEPH W. TESTA  
AUDITOR  
FRANKLIN COUNTY, OHIO

GLENABBY CONDOMINIUM

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## DECLARATION

This is the Declaration of Glenabby Condominium made on or as of the \_\_\_\_\_ day of \_\_\_\_\_, 2006, pursuant to the provisions of chapter 5311 of the Revised Code of Ohio.

### Recitals

A. West Albany Condominium LLC, an Ohio limited liability company, "Declarant" is the owner in fee simple of all of the real property hereinafter described and the improvements thereon and appurtenances thereto.

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 Condominium Act.

### Definitions

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

1. "Additional Property" means the land, including surface and air rights, and improvements thereon, that may at a subsequent time be added to the Condominium Property and become a part of the Condominium.

2. "Articles" and "Articles of Incorporation" mean the articles, filed with the Secretary of State of Ohio, incorporating Glenabby Condominium Association as a corporation not-for-profit under the provisions of Chapter 1702 of the Revised Code of Ohio (the State of Ohio's enabling nonprofit corporation act).

3. "Association" and "Glenabby Condominium Association"; mean the corporation not-for-profit created by the filing of the Articles and is also one and the same as the association created for the Condominium under the Condominium Act.

4. "Assessments" mean all charges, of whatever nature, levied by the Association against a Unit and its Owners, and includes:

(a) "Operating Assessments";

(b) "Special Assessments for Capital Improvements"; and

(c) "Special Individual Unit Assessments", each of which is herein after defined in this Declaration.

5. "Association" and "Glenabby Condominium Association"; mean the corporation not-for-profit created by the filing of the Articles and is also one and the same as the association created for the Condominium under the Condominium Act.

6. "Board" and "Board of Directors" mean those persons who, as a group, serve as the board of Directors of the Association and are also one and the same as the board of managers of the condominium established for the Condominium under the Condominium Act.

7. "Bylaws" mean the bylaws of the Association, as the same may be lawfully amended from time to time, created under and pursuant to the provisions of the 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. A true copy of the Bylaws is attached hereto and made a part hereof.

8. "Common Elements" means all of the Condominium Property, except that portion described in this Declaration as constituting a Unit or Units.

9. "Condominium" and "Glenabby Condominium" mean the condominium regime for the Condominium Property created under and pursuant to the Condominium Act.

10. "Condominium Act" means the statutory law of the State of Ohio regulating the creation and operations of condominiums and is presently Chapter 5311 of the Revised Code of Ohio.

11. "Condominium Instruments" means this Declaration, the Bylaws, the Drawings, and, as provided by the Condominium Act, "all other documents, contracts, or instruments establishing ownership of or exerting control over a condominium property or unit".

12. "Condominium Organizational Documents" means the Articles, the Bylaws, the Drawings, and this Declaration, as the same may be lawfully amended from time to time.

13. "Condominium Property" means the tract of land hereinafter described as being submitted to the Condominium Act, all buildings, structures and improvements situated thereon, and all easements, rights and appurtenances belonging thereto.

14. "Convertible Unit" means a Unit that may be converted into one or more Units and Common Elements, including Limited Common Elements.

15. "Declarant" means whoever is designated in the recitals of the Declaration as creating the Condominium, and Declarant's successors and assigns, provided the rights specifically reserved to Declarant under the Condominium Organizational Documents shall accrue only to such successors and assigns as are designated in writing by Declarant as successors and assigns of such rights.

16. "Declaration" means this instrument, by which the Condominium Property is hereby submitted to the provisions of the Condominium Act, as this instrument may be lawfully amended from time to time.

17. "Director" and "Directors" mean that person or those persons serving, at the time pertinent, as a Director or Directors of the Association.

18. "Drawings" means the drawings for the Condominium, and are the Drawings required pursuant to the provisions of the Condominium Act, as the same may be lawfully amended from time to time. A set thereof is attached hereto, but the same may be detached and filed separately herefrom by the appropriate public authorities.

19. "Eligible Mortgagees" means the holders of valid first mortgages on Units who have give written notice to the Association stating their names, addresses and Units subject to their mortgages.

20. "Exclusive Use Area" means Common Elements that the Declaration reserves for delegation by the Board of Directors to the use of a certain Unit or Units, to the exclusion of other Units.

21. "Limited Common Elements" means those Common Elements serving exclusively one Unit or more than one but not 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.

22. "Occupant" means a person lawfully residing in a Unit, regardless of whether or not that person is a Unit Owner.

23. "Person" means a natural individual, corporation, partnership, limited liability

company, trustee, or other legal entity capable of holding title to real property.

24. "Unit" and "Units" mean that portion or portions of the Condominium Property described as a unit or units in this Declaration and designated by Unit Designation on the Drawings, and is that portion of the Condominium constituting a "Unit" or "Units" of the Condominium under the provisions of the Condominium Act.

25. "Unit Owner" and "Unit Owners" mean that person or those persons owning a fee simple interest in a Unit or Units each of whom is also a "member" of the Association, as defined in Chapter 1702 of the Revised Code of Ohio.

#### The Plan

NOW THEREFORE, Declarant hereby makes and establishes the following plan for condominium ownership of the below-described property under and pursuant to the provisions of the Condominium Act:

#### ARTICLE I

#### THE LAND

A legal description of the land constituting a part of the Condominium Property, located in the City of Columbus, Franklin County, Ohio, and consisting of 5.357 acres, more or less, is attached hereto and marked "Exhibit A", together with any appurtenant easements.

#### ARTICLE II

#### NAME

The name by which the Condominium shall be known is "Glenabby Condominium".

#### ARTICLE III

#### PURPOSES; RESTRICTIONS

Section 1. Purposes. This Declaration is being made to establish separate individual parcels from the Condominium Property to which fee simple interests may be conveyed; to create restrictions, covenants and easements providing for, promoting, and preserving the values of Units and the Common Elements and the well being of Unit Owners and Occupants; and to establish a unit owners' association to administer the Condominium and the Condominium Property 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 and the Condominium Property shall be benefited by and subject to the following restrictions:

(a) Unit Uses. Except as otherwise specifically provided in this Declaration, no Unit shall be used for any purpose other than that of a residence for individuals living together as a single housekeeping unit, and uses customarily incidental thereto, provided, however, that no Unit may be used as a rooming house, group home, commercial foster home, fraternity or sorority house, or any similar type of lodging, care or treatment facility. Notwithstanding the foregoing: (i) an Occupant maintaining a personal or professional library, keeping personal business or professional records or accounts, conducting personal business (provided that such use does not involve customers, employees, licensees or invitees coming to the Unit), making professional telephone calls or corresponding, in or from a Unit, is engaging in a use expressly declared customarily incidental to residential use and is not in violation of these restrictions; (ii) it shall be permissible for the Declarant to

maintain, during the period of its sale or rental of Units, one or more Units as sales and rental models and offices, and for storage and maintenance purposes; and (iii) one or more Units may be maintained for the use of the Association in fulfilling its responsibilities.

(b) Common Elements Uses. The Common Elements (except the Limited Common Elements) 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, reasonably suited and capable, and as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of Units. Unless expressly provided otherwise herein, no Common Elements shall be used for any purpose other than the health, safety, welfare, convenience, comfort, recreation or enjoyment of Unit Owners and Occupants.

(c) Limited Common Elements Uses. Those portions of the Common Elements described herein and shown on the Drawings as Limited Common Elements 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, and shall be used only for the purposes intended.

(d) Visible Areas. Nothing shall be caused or permitted to be hung or displayed on the outside or inside of windows (except interior inoffensive drapes, curtains, or louvered blinds which, from exterior observation, must be white, beige or gray, or as otherwise authorized by the Board) or placed on the outside walls of a building or otherwise outside of a building or otherwise outside of a Unit, or any part thereof. No 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 an exterior wall or roof or any part thereof, or the exterior of any door or window, or in, on, or over a patio, porch or balcony, visible to the exterior, unless authorized by the Board or required by applicable law to be permitted, but, in such case, subject to such lawful rules and regulations as the Board may adopt from time to time.

(e) Offensive Activities. No noxious or offensive activity shall be carried on in any Unit, or upon the Common or Limited Common Elements, nor shall any 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 rules and regulations restricting or prohibiting the parking of automobiles, vans, buses, inoperable vehicles, trucks, trailers, boats and recreational vehicles on the Common Elements, or parts thereof, and may enforce such regulations or restrictions by levying enforcement charges, having such vehicles towed away, or taking such other lawful actions 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 or a Unit only. No lease may be 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 tenant to comply with the terms of the Condominium Organizational Documents and lawful rules and regulations shall be a default under the lease. Prior to the commencement of the term of a lease the Unit Owner shall notify the Board, in writing, of the name or names of the tenant or tenants and the time during which the lease term shall be in effect.

(h) Signs; Commerical Devices. No sign, insignia, display, device, or form of



external evidence of commercial advertising or use of any kind shall be displayed to the public view on the Condominium Property except: (i) on the Common Elements, signs regarding and regulating the use of the Common Elements, provided they are approved by the Board; (ii) on the interior side of the window of a Unit, one professionally prepared sign not in excess of nine square feet in size, advertising the Unit for sale or rent; and (iii) on the Common Elements and model Units, signs advertising the sale and/or rental of Units by the Declarant during the period of its initial sale and rental of Units shall be permitted, provided, if these limitations on use of signs, or any part thereof, are determined to be unlawful, only the signs described in sub item (i), above, shall be permitted after Declarant's period of sales and rental of Units.

(i) Replacements. Any building erected to replace an existing building containing Units shall be of new construction, be of comparable structure type, 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.

(j) Structural Integrity. Nothing shall be done in any Unit, or in on or to the common or Limited Common Elements, which may impair the structural integrity of any improvement.

(k) Construction in Easements. No structure, planting or other material shall be placed or permitted to remain within any easements for the installation and maintenance of utilities and drainage facilities which may damage or interfere with the installation and maintenance of utility lines or which may change the direction of the flow of drainage channels in any easements or which may obstruct or retard the flow of water through drainage channels in any easement areas. The utility facilities within any easement areas shall be subject to the right of the Association to maintain the same, and its right to delegate that right to a public authority or utility.

(l) Animals. Except as hereinafter provided, no animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit or on the Common Elements. Notwithstanding the foregoing, household domestic pets, not bred or maintained for commercial purposes, may be maintained in a Unit, provided that: (i) the maintaining of animals 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 and type of such pets, and the right to levy enforcement charges against persons who do not clean up after their pets; and (ii) 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 or creates a detrimental effect on the condominium or other Units or Occupants. No provision herein shall discriminate against seeing eye dogs for the legally blind as defined by federal law.

(m) Conveyances. Each Unit shall be conveyed or transferred (voluntarily or involuntarily) 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. Any conveyance, encumbrance, judicial sale, or other transfer (voluntary or involuntary) of an interest in the Common Elements will be void unless the Unit to which that interest is allocated is also transferred to the same transferee. In any instrument of conveyance or creating an encumbrance, or in any other document legally describing a Unit, it shall be sufficient to lawfully describe a Unit and its interest in the Common Elements by referring to the Unit designation of the Unit and the appropriate recording references of the initial page of this Declaration and Drawings. 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, and any Unit Owner may transfer that Owner's Unit free of any such limitation. 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 days after an interest in that Owner's Unit has been transferred to another person. In addition, each Unit Owner agrees to provide to a purchaser of the Owner's Unit a copy of the Condominium Organizational Documents and all effective rules and regulations.

(n) Discrimination /Handicapped Accommodation. 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. In addition, notwithstanding any provision hereof, or any rule or regulation, the Board shall make reasonable accommodation if necessary to afford a handicapped person equal opportunity to use and enjoy the Condominium Property, provided, that nothing contained herein shall be construed to mean or imply that any such accommodation be at the cost of the Association, except as may be required by the Americans With Disabilities Act.

(o) Architectural Control. Except for improvements constructed by Declarant or its designee during the initial construction period, no building, fence, wall, sign or other structure or improvement 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 or representatives, in its, or their sole and unfettered discretion. Nothing visible to the exterior shall be permitted to be hung, placed, displayed or maintained in the Limited Common Elements unless approved, in writing, by the Board or its designated representative or representatives, in its or their sole and unfettered discretion, or unless the same is authorized by existing rule or regulation adopted by the Board. Notwithstanding any repair or maintenance provision contained herein to the contrary, the Board may require, as a condition to approval, that the responsibility for repairing and maintaining the addition or improvement shall be the responsibility of the requesting Unit Owner and all future Owners of that Unit.

(p) Rules and Regulations. In addition to adopting and enforcing rules and regulations in the instances specifically hereinbefore mentioned, the Board may, from time to time, adopt and enforce such further reasonable rules and regulations concerning use of the Condominium Property, or any part thereof, as it deems necessary or desirable to promote harmony, to serve the best interests of the Unit Owners, as a whole, and to protect and preserve the nature of the condominium and the Condominium Property. A copy of all rules and regulations shall be furnished by the Board to the Owners of each Unit prior to the time when the same shall become effective.

(q) Disputes Between Owners. In the event of any dispute between Unit Owners as to the application of the foregoing restrictions or any rule or regulation promulgated pursuant thereto, the party aggrieved shall submit a complaint in writing to the Board specifying the dispute. The Board shall set a time, date and place for a hearing thereon within sixty (60) days thereafter, and give written notice to each party thereof no less than three days in advance. The Board shall thereupon hear such evidence on the dispute as the Board deems proper and render a written decision on the matter to each party within thirty (30) days thereafter. No action of any type may be instituted by either party to such a dispute unless the dispute has first been submitted to and determined by the Board, as aforesaid.

#### ARTICLE IV

##### IMPROVEMENT DESCRIPTIONS

Section 1. Residential Buildings. There are six (6) residential buildings as part of the Condominium, each containing four-dwelling units, making a total of twenty-four (24)

dwelling units. The residential buildings are ranch style buildings built on concrete slabs, wood frame, with, asphalt shingle roofs and cultured stone and vinyl exteriors. Each dwelling unit has an attached two car garage and uncovered garden planting/patio areas. Dwelling units are separated by common walls or garages, and are built in contemporary style. The principal materials of which these buildings are constructed are wood, glass, concrete, concrete block, cultured stone, vinyl, asphalt shingle, and drywall. The residential buildings are located as shown in the Drawings.

Section 2. Other. Also as a part of the Condominium are private access roads, parking areas, green, landscaped and wooded areas, and a Community Building (Clubhouse), as shown in the Drawings.

## ARTICLE V

### UNITS

Section 1. Unit Designations. Each of the dwelling units, each of which is called "a Unit", is designated by a number corresponding with the building in which that Unit is located, a dash (-), and a number corresponding with the numerical portion of the street address of that Unit (the Unit's "Unit designation" and is shown on the Drawings where that Unit is located. An example of an appropriate Unit designation is Unit 1-6245. The location and designation of each Unit is also shown on the sketch plot plan attached hereto as "Exhibit B". Information concerning the Units, with a listing of proper Unit designations, is shown on the attached "Exhibit C".

### Section 2. Composition of Units.

(a) Unit Composition. Each Unit constitutes a single freehold estate and consists of the space in the building designated by that Unit's designation on the Drawings that is bounded by the undecorated interior surfaces of the perimeter walls, the unfinished surface of the floor at the lowest level, and the unfinished interior surface of the ceiling of the highest floor, all projected, if necessary by reason of structural divisions such as interior walls and partitions, to constitute complete enclosures of space, including but not limited to space in the garage, and all improvements within that space. Without limiting the generality of the foregoing, or, as appropriate, in addition, each Unit shall include:

(1) the decorated surfaces, including paint, lacquer, varnish, wall covering, tile and other finishing material applied to floors, ceilings, and interior and perimeter walls, carpeting, if any, and also the floors and ceilings themselves, and the drywall, paneling and other finishing wall material;

(2) all windows, skylights, if any, and screens and doors, including storm doors and windows, if any, and the frames, sashes and jambs, and the hardware therefore;

(3) all fixtures and appliances installed 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, stoves and hoods, television antennas and cables, furnaces, hot water heaters, heat pumps, air conditioning units (even though located outside the bounds of a Unit), and components of the foregoing, if any;

(4) all plumbing, electric, heating, cooling and other utility or service lines, pipes, wires, ducts, conduits and apparatus, wherever located, which serve only that Unit;

(5) 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;

(6) all interior walls that are not necessary for support of the structure, and all components thereof and all space encompassed thereby;

(7) the portion of fireplaces actually within the interior of a Unit and the vents and dampers therefor accessible from the Unit's interior, and

(8) the attic space or storage space above a Unit, and the crawl space below a Unit, if any, to which the Unit has direct and exclusive access; excluding therefrom, however, all of the following items, whether or not located within the bounds of that Unit:

(i) any supporting elements of the building contained in interior walls;

(ii) 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; and

(iii) fireplace stacks and chimneys, if any.

(b) Unit Types, Sizes, Locations and Components. The type, composition, and approximate interior area of each type of Unit are shown on the attached Exhibit D. The location, dimensions, type and composition of each Unit are also shown on the Drawings. Each Unit has direct access to Common Elements, which lead directly to Hamilton Road, a public street.

## ARTICLE VI

### COMMON AND LIMITED COMMON ELEMENTS

Section 1. Common Elements- 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 on the Drawings as a part of a Unit, are Common Elements.

Section 2. Limited Common Elements- Description. Those portions of the Common Elements that are labeled or designated "Limited Common Element" or "Garden Planting/Patio Limited Common Element" or Limited Common Area(s)" on the Drawings or herein are Limited Common Elements. In the case of each Unit these Limited Common Elements consist of an uncovered patio area, a landscape or garden planting area adjacent to the service walk, the service walk and any steps or stoops, and the parking area immediately in front of the garage. Each such Limited Common Element is reserved for the exclusive use and benefit of the Owners and Occupants of the Unit or Units it is described, designed or designated herein, or on the Drawings, or on Exhibits hereto, to serve. Use and maintenance of the landscape or garden planting limited common elements may be subject to rules and regulations of the Board at its sole discretion.

Section 3. Undivided Interests. The undivided interest in the Common Elements of each Unit is set out on the attached Exhibit C. The Common Elements 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 Elements. Further, the undivided interest in the Common Elements shall not be separated from the Unit to which it appertains. If at a later time the Condominium is expanded, as hereinafter provided, the undivided interest of Units in the Common Elements shall be uniformly reallocated as provided in Article XVI (16)(c).

## 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 or becomes a record Owner of a fee or undivided fee simple interest in a Unit is a Unit Owner and shall be 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. Voting rights of members are as set forth in the Bylaws.

Section 4. Board of Directors. The number and composition, and the authority, rights and responsibilities, of the Board of Directors shall be as provided in the Bylaws, provided that no member of the Board need be a Unit Owner, but shall meet the qualifications set forth in the Bylaws.

Section 5. Security. The Association may, from time to time, provide measures of security on or with respect to the Condominium Property and/or its Unit Owners, Occupants, invitees or licensees, and shall not be deemed to be a provider of security, shall have no duty to provide any security on the Condominium Property or with respect to its Owners, Occupants, invitees or licensees, and shall not be held liable for any loss, cost, or damage arising by failure of the Association to provide security or the effectiveness of security measures it undertakes, if any. The obligation to provide security lies solely with each Unit Owner and Occupant individually.

Section 6. Other Associations. There is no requirement that the Association or that any Unit Owners be members of a not-for-profit organization that provides facilities or recreation, education, or social services to Owners of property other than the Condominium Property.

## ARTICLE VIII

### AGENT FOR SERVICE

The name of the person to receive service of process for the Association, the Association's "Statutory Agent", and that person's residence or place of business is: Daniel E. Bringardner, 300 Spruce Street, Floor One, Columbus, Ohio 43215-1173. 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

### MAINTENANCE AND REPAIR

Section 1. Association Responsibility. The Association, to the extent and at such times as the Board, in its exercise of business judgment, determines to allocate funds therefore, shall maintain, repair and replace driveway approach areas outside of the Common Elements and all improvements constituting a part of the Common Elements, including the Limited Common Elements, and including but not limited to utility facilities serving more than one Unit, utility lines in the Common Elements, lakes and drainage areas, lawns, shrubs, trees, walkways, drives, parking areas, fireplace stacks, liners and chimneys, and the structural portions and exterior portions of all buildings and

improvements which are a part of the Common Elements, and that do not constitute part of a Unit, provided however, that the Association shall not be required to repair and maintain Limited Common Elements. Except to the extent, if any, that a loss is covered by insurance maintained by the Association, and then only to the extent the net proceeds, after deductibles, are available for that purpose, the Association shall not have responsibility to repair or maintain any Unit, or component thereof, or personal property within a Unit, or improvements made by Unit Owners hereafter.

Section 2. Individual Responsibility. Each Unit Owner shall repair and maintain the Unit or Units, and all components thereof, owned by that Unit Owner, and improvements made by Unit Owners thereafter, and perform cleaning and housekeeping with respect to Limited Common Elements appurtenant to that Owner's Unit. Without limiting the generality of the foregoing, this repair and maintenance responsibility of a Unit Owner shall include repair, maintenance and replacement of all windows, screens and doors, including the frames, sashes and jambs, and the hardware therefore. In the event a Unit Owner shall fail to make a repair or perform maintenance required of that Unit Owner, or in the event the need for maintenance or repair of any part of the Common Elements or Limited Common Elements is caused by the negligent or intentional act of any Unit Owner or Occupant, or is as a result of the failure of any Unit Owner that Unit Owner's predecessors in title to timely pursue to conclusion a claim under any warranty express, implied, or imposed by law, the Association may perform the same, and if the cost of such repair or maintenance is not covered by insurance, whether because of a deductible or otherwise, the cost thereof shall constitute a Special Individual Unit Assessment, as hereinafter defined, on the Unit owned by that Unit Owner and on that Unit Owner. The determination that such maintenance or repair is necessary, or has been so caused, shall be made by the Board.

## ARTICLE X

### UTILITY SERVICES

Each Unit Owner by acceptance of a deed to a Unit agrees to pay for utility services separately metered or separately charged by the utility company to the Unit, and to reimburse the Association for that Owner's Unit's share of any utility cost that the Board, or its designee, reasonably determines is attributable to use by that Owner's Unit. All other utility costs shall be common expenses and paid by the Association.

## ARTICLE XI

### INSURANCE; LOSSES; BONDS

Section 1. Special Broad Form Casualty Insurance. The Board shall have the authority to and shall obtain insurance for all buildings, structures, fixtures and equipment, and common personal property and supplies now or at any time hereafter constituting a part of the Common Elements, the Limited Common Elements, or common property of the Association, against loss or damage by fire, lightning, and such other perils as are ordinarily insured against under "special form" policies, or, if not available, or not available at competitive rates, a policy that includes the "broad form" covered causes of loss, in amounts at all times sufficient to prevent the Unit Owners from becoming co-insurers under the terms of any applicable coinsurance clause or provision and not less than one hundred percent (100%) of the current insurable replacement cost of such items (exclusive of land, foundations, footings, excavations, and other items normally excluded from coverage). This insurance shall also:

(a) provide coverage for built-in or installed improvements, fixtures and equipment that are part of a Unit, and shall provide for coverage of interior walls, wall and floor coverings, windows and doors and frames, sashes, jambs and hardware therefor, even though these improvements may be parts of Units;

(b) have (i) an agreed amount and inflation guard endorsement, when that can be

obtained, (ii) building ordinance or law endorsement, if any building, zoning, or land-use law will result in loss or damage, increased cost of repairs or reconstruction, or additional demolition and removal costs, providing for contingent liability from the operation of building laws, demolition costs, and increased costs of construction; and (iii) when applicable, a steam boiler and machinery coverage endorsement, which provides that the insurer's minimum liability per accident at least equals the lesser of two million dollars or the insurable value of the building or buildings housing the boiler or machinery (or a separate stand-alone boiler and machinery coverage policy);

(c) provide that no assessment may be made against a first mortgage lender or its insurer or guarantor, and that any assessment under such policy made against others may not become a lien on a Unit and its appurtenant interest superior to a first mortgage.

(d) be written in the name of the Association for the use and benefit of the Unit Owners or its authorized representative, including any insurance trustee with whom the Association has entered into an insurance trust agreement, or any successor to such trustee, for the use and benefit of the individual Unit Owners;

(e) contain or have attached the standard mortgagee clause commonly accepted by institutional first mortgage holders, insurers and guarantors, which (i) must provide that the carrier shall notify the named insured and each first mortgagee named in the mortgage clause at least ten days in advance of the effective date of any reduction in, cancellation of, or substantial change in the policy, and (ii) must be endorsed to provide that any loss shall be paid to the Association (or its insurance trustee), as a trustee for each Unit Owner and each such Unit Owner's mortgagee, and unless otherwise prohibited by a nationally recognized institutional first mortgage holder, insurer, or guarantor, to the holders of first mortgages on Units;

(f) have a deductible amount no greater than the lesser of ten thousand dollars or one percent of the policy face amount;

(g) be paid for by the Association, as a common expense;

(h) contain a waiver of transfer of recovery rights by the carrier as to the Association, its officers and Directors, and all Unit Owners;

(i) provide that the insurance shall not be prejudiced by any acts or omissions of individual Unit Owners who are not under the control of the Association; and

(j) be primary, even if a Unit Owner has other insurance that covers the same loss.

Section 2. Liability Insurance. The Association shall obtain and maintain, at the Association's cost and as a common expense, a commercial policy of general liability insurance covering all of the Common Elements, public ways and any other areas under the Association's supervision, and Units, if any owned by the Association, even if leased to others, insuring the Association, the Directors, and the Unit Owners and Occupants, with such limits as the Board may determine, but no less than the greater of (a) the amounts generally required by institutional first mortgage holders, insurers, and guarantors for projects similar in construction, location and use, and (b) one million dollars, for bodily injury, including deaths of persons, and property damage arising out of a single occurrence. This insurance shall contain a "severability of interest" provision, or, if it does not, an endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of the Association, the Board, or other Unit Owners, and shall include, without limitation, coverage for legal liability of the insureds for property damage, bodily injuries and deaths of persons resulting from the operation, maintenance or use of the Common Elements, and legal liability arising out of lawsuits related to employment contracts in which the Association is a party. Each such policy must provide that it may not be canceled or substantially modified, by any party, without at least ten

days' prior written notice to the Association and to each holder of a first mortgage on a Unit.

Section 3. Fidelity Coverage. The Board shall obtain and maintain, at the Association's cost and as a common expense, fidelity insurance providing coverage for the Association against dishonest acts on the part of Directors, managers, trustees, employees, agents and volunteers responsible for or handling funds belonging to or administered by the Association. The fidelity insurance policy must name the Association as the named insured and shall be written in an amount sufficient to provide protection, which is in no event less than the greater of (a) an amount equal to the Association's reserve funds plus three months' assessments on all Units, and (b) the maximum amount that will be in the custody of the Association or its managing agent at any time while the policy is in force. In connection with such coverage, an appropriate endorsement to the policy to cover any persons who serve without compensation shall be added if the policy would not otherwise cover volunteers. The policy shall provide that it shall not be canceled or substantially modified (including cancellation for non-payment of premium) without at least ten days' prior written notice to the Associations, and any insurance trustee, and any service on behalf of any holder, guarantor or insurer of any mortgage on a Unit who requires such rights.

Any management agent who handles funds of the Association shall maintain a policy of fidelity insurance providing coverage no less than that required of the Association, which bond or insurance policy names the Association as an additional obligee.

Section 4. Hazard Insurance Carrier. Each policy of hazard insurance obtained pursuant hereto shall be obtained from an insurance company authorized to write such insurance in the State of Ohio which has a B or better general policyholder's rating or a 6 or better financial performance index rating in *Best's Insurance Reports*, or its successor guide, or an A or better general policyholder's rating and a financial size category of VIII or better in *Best's Insurance Reports – International Edition*, an A or better rating in Demotech's *Hazard Insurance Financial Stability Ratings*, a BBBq qualified solvency rating or a BBB or better claims-paying ability rating in Standard and Poor's *Insurer Solvency Review*, or a BBB or better claims-paying ability rating in Standard and Poor's *International Confidential Rating Service*. Insurance issued by a carrier that does not meet the foregoing rating requirements will be acceptable if the carrier is covered by reinsurance with a company that meets either one of the A. M. Best general policyholder's ratings or one of the Standard and Poor's claims-paying ability ratings mentioned above.

Section 5. Other Association Insurance. In addition, the Board may purchase and maintain, at the Association's cost and as a common expense, contractual liability insurance, Directors' and officers' liability insurance, and such other insurance as the Board may determine.

Section 6. Insurance Representative; Power of Attorney. There may be named, under any policy obtained by the Association, its authorized representative, including any trustee with whom the Association may enter into any insurance trust agreement, or any successor to such trustee, who shall have exclusive authority to negotiate losses under any such policy. Each Unit Owner by acceptance of a deed to a Unit, irrevocably appoints the Association or such designated representative, or such successor, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. The Association, or such designated representative, or such successor, shall receive, hold or otherwise properly dispose of any proceeds of insurance, in trust, for Unit Owners and their first mortgage holders, as their interests may appear. This power is for the benefit of each and every Unit Owner, and their respective first mortgage holders, and the Association, and the Condominium, runs with the land, and is coupled with an interest.

Section 7. 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 owned by the Unit Owner or Occupant, provided that if the Association obtains insurance for permanent improvements and built-in fixtures and equipment, then the insurance obtained by the Unit Owner with respect to improvements within the Unit shall be 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 Directors, and all other Unit Owners and Occupants.

Section 8. Sufficient Insurance. In the event the improvements forming a part of the Common Elements 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 used in payment therefor; provided, however, that in the event that within sixty (60) days after such damage or destruction the Unit Owners and Eligible Mortgagees, if they are entitled to do so pursuant to the provisions of this Declaration, shall elect to terminate the Condominium, then such repair, restoration or reconstruction shall not be undertaken.

Section 9. Insufficient Insurance. In the event the improvements forming a part of the Common Elements 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 Mortgagees if they are entitled to do 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 Elements so damaged or destroyed at the expense (to the extent not covered by insurance) of all Unit Owners in proportion to their respective undivided interests in the Common Elements. 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 10. Lender Requirements. Notwithstanding the foregoing provisions of this article, the Association shall at all times maintain hazard insurance, liability insurance, and fidelity insurance coverage conforming with the requirements then governing the making of a first mortgage loan, or the purchase, guaranty, or insurance of first mortgages, by national institutional lenders, guarantors or insurers of first mortgage loans on condominium units.

## ARTICLE XII

### DAMAGE; RESTORATION; TERMINATION

Section 1. Restoration of Substantial Damage or Destruction. In the event of substantial damage to or destruction of all Units in a residential building, or the taking of one or more Units in any condemnation or eminent domain proceedings, the Association shall promptly restore or replace the same, unless an election is made not to do so, as

hereinafter provided.

Section 2. Election Not to Restore; Termination. The Association may, with the consent of Unit Owners entitled to exercise not less than eighty percents (80%) of the voting power of Unit Owners, and the consent of eligible mortgagees hereinafter provided, both given within sixty (60) days after damage or destruction, determine not to repair or restore the damage or destruction, and to terminate the condominium. In any such an event, all of the Condominium Property shall be sold as upon partition. In the event of such an election not to repair or restore substantial damage or destruction or reconstruct such Unit or Units, the net proceeds of insurance paid by reason of such damage or destruction, or the net amount of any award or proceeds of settlement arising from such proceedings, together with the proceeds received from the sale as upon partition, or in the case of an election otherwise to terminate the Condominium, the net proceeds from the partition sale, shall be distributed among the Owners of the Units, and the holders of their respective first mortgage liens, (as their interests may appear), in the proportions of their undivided interests in the Common Elements.

## ARTICLE XIII

### CONDEMNATION

Section 1. Standing. Except as hereinafter provided, the Association, or its designated representative, or authorized successor, as trustee, shall represent the Unit Owners in any condemnation or eminent domain proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of all or any part of the Condominium Property, and shall have the sole and exclusive right to settle losses with the condemning authority and to receive the award or proceeds of settlement, for the use and benefit of the Unit Owners and their mortgagees as their interests may appear. Notwithstanding the foregoing, in the event that a Unit Owner may lawfully separately pursue and realize upon a claim for incidental and consequential losses or damage to that Unit Owner resulting from a taking under the power of eminent domain, such as for relocation and moving expenses, loss of favorable mortgage terms, and other such individual incidental or consequential losses, that Unit Owner may, at that Unit Owner's election, separately pursue such claim, provided, that the pursuing of the same, or the realization of an award thereof, neither jeopardizes, in any way, an action by the Association to recoup the losses incurred by it, or any other Unit Owner, or the direct loss with respect to the Unit itself, or with regard to the usability thereof, nor diminishes any award for any such loss.

Section 2. Use of Proceeds. The award or proceeds of settlement in any actual or threatened condemnation or eminent domain proceedings, after reduction by the costs, if any, incurred in obtaining the same, shall be applied first to the cost of restoring or replacing all damaged or taken improvements on the remaining Condominium Property in accordance with the Drawings, or in accordance with any new plans and specifications therefor approved by Unit Owners exercising no less than seventy-five percent (75%) of the voting power of Unit Owners, and the consent of eligible mortgagees hereinafter provided.

Section 3. Insufficient Proceeds. If the award or proceeds are insufficient for such purpose, the excess cost shall be paid by the Association and, to the extent funds of the Association are insufficient therefor, in the judgment of the Board, such excess cost shall be a common expense and assessed among the Units in the same manner as Special Assessments for Capital Improvements are assessed. Except as hereinafter provided, the balance of any such award or proceeds of settlement, if there is an excess, shall be allocated and disbursed to the Unit Owners, and their first mortgagees, as their interests may appear, in proportion to the relative undivided interests of the Units in the Common Elements.

Section 4. Non-Restorable Unit. Notwithstanding the foregoing, in the event that as a result of any such taking, and consequent restoration or replacement, any Unit could not

reasonably be restored to a condition comparable to that which existed prior to the taking, or could not be replaced prior to the allocation and disbursement of any sum to any other Unit Owner or that Unit Owner's mortgagee, there shall be allocated and disbursed from such award or proceeds, to each Unit Owner whose Unit cannot be so restored or replaced, and that Unit Owner's respective first mortgagee, as their interests may appear, such amount as is equal to the then fair market value of the Unit that cannot be so restored or replaced. Thereupon, such Unit or Units, and the Owners thereof, shall be immediately and automatically divested of any interest in the Condominium, the Condominium Property, and the Association, including, without limiting the generality of the foregoing, divestment of an undivided interest, vote, membership in the Association, and liability for common expenses. All such rights and interests shall be reallocated among all other Units and Unit Owners in the same relative proportions as those rights and interests were prior to such taking. To illustrate, upon a Unit being divested from the Condominium, (a) the voting right of that Unit will be equally allocated among all other Units, since each Unit prior thereto had an equal vote, and (b) the undivided interest of that Unit will be reallocated among all other Units in the proportions of their relative undivided interests prior to such taking.

Section 5. Power of Attorney. Each Unit Owner, by acceptance of a deed to a Unit, appoints the Association, or its designated representative, as that Unit Owner's attorney-in-fact to represent that Unit Owner, settle losses, receive and utilize the award or proceeds of settlement, and do all things necessary or desirable for such attorney-in-fact to exercise the rights and fulfill the responsibilities of the Association set forth in this Article with respect to condemnation or eminent domain proceedings. This power is for the benefit of each and every Unit Owner, each holder of a first mortgage on a Unit, the Association, and the real estate to which it is applicable, runs with land, is coupled with an interest, and is irrevocable.

#### ARTICLE XIV

##### 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 Elements and an unrestricted right of access to and from that Unit Owner's 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 Elements and the Limited Common Elements, provided that no such rule or regulation shall limit or prohibit the right of ingress and egress to a Unit, or any part thereof, or to that Unit's parking facilities. Each Unit Owner shall be deemed to have delegated that Unit Owner's right of enjoyment to the Common Elements and to ingress and egress to the Occupants of that Owner's Unit.

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 and the Limited Common Elements, 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. In the event of an emergency, the Association's right of entry to a Unit and its appurtenant Limited Common Elements may be exercised without notice; otherwise, the Association shall give the Owners or Occupants of a Unit no less than twenty-four hours advance notice prior to entering a Unit or its appurtenant Limited Common Elements.

Section 3. Easements for Encroachments. Each Unit and the Common Elements and Limited Common Elements shall be subject to and benefited by easements for encroachments on or by any other Unit and upon the Common Elements and Limited Common Elements created by reason of overhangs; or by reason of deviations in construction, reconstruction, repair, shifting, settlement, or other movement of any portion of the improvements; or by reason of errors on the Drawings. Valid easements for these encroachments and for the maintenance of same, as long as the physical boundaries of

the Units after the construction, reconstruction, repairs, etc. will be in substantial accord with the description of those boundaries that appears herein or on the Drawings, shall and do exist so long as the encroachments remain.

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 Proper Operations. Easements to the Association shall exist upon, over and under all of the Condominium Property for ingress to and egress from, and the installation, replacing, repairing and maintaining of, all utilities, including, but not limited to water, sewer, gas, telephone, electricity, security systems, master television antennas and cable television, and the road system and all walkways, and for all other purposes necessary for the proper operation of the Condominium Property. By these easements it shall be expressly permissible for the Association to grant to the appropriate public authorities and/or the providing companies and contractors permission to construct and maintain the necessary appurtenances and improvements on, above, across and under the Condominium Property, so long as such appurtenances and improvements do not unreasonably interfere with the use and enjoyment of the Condominium Property. Should any public authority or other company furnishing a service request a specific easement, permit, or license, the Board shall have the right to grant such easement, permit, or license without conflicting with the terms hereof. In addition, in the event the Board determines that the grant of easement rights to others is in the best interests of the Association, the Association shall have the right to grant the same, provided that use of the same would not, in the sole judgment of the Board, unreasonably interfere with the use and enjoyment of the Condominium Property by Owners and Occupants.

Section 6. Easement for Services. Non-exclusive easements are hereby granted to all police, firefighters, ambulance operators, mail carriers, delivery personnel, 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 Elements in the performance of their duties, subject to such reasonable rules and regulations as the Board may establish, from time to time.

Section 7. Easements Reserved to Declarant. Non-exclusive easements are hereby reserved to Declarant, its successors and assigns, over and upon the Common Elements and Limited Common Elements as follows:

(a) for a two year period of time from the date of the closing by Declarant of the first sale of a Unit to a bona fide purchaser, for access to and for the purpose of completing improvements for which provision is made in this Declaration, provided that such right of access shall be to the extent, but only to the extent, that access thereto is not otherwise reasonably available;

(b) for the periods provided for warranties hereunder or by law, for purposes of making repairs required pursuant to those warranties or pursuant to contracts of sale made with Unit purchasers; and

(c) for the initial sales and rental period, to maintain and utilize one or more Units and appurtenances thereto, for sales and management offices and for storage and maintenance, and model Units, parking areas for sales and rental purposes, and advertising signs.

(d) for so long as Declarant, its successors and assigns, have the right to expand the Condominium, to extend utility lines from the Common Elements onto the Additional Property, and thereafter to service the same; and

(e) unless and until, if ever, the Condominium has been expanded to encompass all

of the Additional Property, to Declarant, its successors and assigns, for their benefit and the benefit of future Owners and Occupants of all or any part of the Additional Property, for pedestrian and vehicular access over the streets and walkways that may from time to time be a part of the Condominium Property, for ingress to and egress from the Additional Property, and each part thereof, and a public or a private street, and to extend the same onto the Additional Property. In this connection, the Association, at all times, shall maintain an unimpeded route of vehicular and pedestrian ingress and egress over and upon the Condominium Property to and from the Additional Property and a public street. Additionally, Declarant, for itself and its successors and assigns, reserves the right to extend and tie into utility lines from the Common Elements onto the Additional Property, and thereafter to service and maintain the same.

The rights and easements reserved pursuant to this section, shall be exercised and utilized, as the case may be, in a reasonable manner, and in such way as not to unreasonably interfere with the operation of the Association and the rights of Owners and Occupants of Units.

In the event that residential units are built within the Additional Property and if the Additional Property is not added to the Condominium Property, the Declarant, its successors or assigns or any separate condominium association formed to serve units within the Additional Property, shall reimburse the Association for part of the blacktop maintenance, repair and replacement expenses for those portions of the private roadway area(s) within the Condominium Property used for ingress to or egress from the units in the Additional Property, but not as to other parking or driveway areas within the Condominium Property, based upon the number of units in the Additional Property not added to the Condominium Property, divided by the total number of Units or units served thereby.

Section 8. Power of Attorney. Each Unit Owner, by acceptance of a deed to a Unit, appoints the Association or its designated representative as 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, licenses, permits and other instruments as may be necessary or desirable, in the sole discretion of the Board, or its authorized representative, to further establish or effectuate the foregoing easements and rights. 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, is coupled with an interest, and is irrevocable.

Section 9. General. Unless specifically limited herein otherwise, the foregoing easements shall run with the land and pass with the title to the benefited properties, shall be appurtenant to the properties benefited thereby, shall be enforceable by the Owners of the properties benefited thereby, and shall be perpetual. The easements and grants provided here in shall in no way affect any other recorded grant or easement. Failure to refer specifically to any or all of the easements and/or rights described in this Declaration in any deed of conveyance or in any mortgage or other evidence of obligation shall not defeat or fail to reserve said rights or easements but the same shall be deemed conveyed or encumbered, as the case may be, along with the Unit.

## ARTICLE XV

### ASSESSMENTS AND ASSESSMENT LIENS; RESERVE FUNDS

Section 1. Types of Assessments. The Declarant for each Unit within the Condominium hereby covenants and agrees, and each Unit Owner by acceptance of a deed to a Unit (whether or not it shall be so expressed in such deed) is deemed to covenant and agree, to pay to the Association: (a) Operating Assessments, (b) Special Assessments for Capital improvements, and (c) Special Individual Unit Assessments, 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 and provide for the health, safety and welfare of Unit Owners and Occupants and the best interests of the Condominium Property.

Section 3. Elements- Apportionment; Due Dates.

(a) Operating Assessments.

(i) Prior to the time any Unit Owner is to be charged assessments by the Association, the Board shall establish for the remainder of the Association's fiscal year, and prior to the beginning of each fiscal year of the Association thereafter, the Board shall estimate for the next fiscal year, and in each case, prorate among all Units and their Owners on the basis of the undivided interest of each Unit in the Common Elements, common expenses of the Association consisting of the following:

a. that period's estimated cost of the maintenance, repair, and other services to be provided by the Association;

b. that period's estimated costs for insurance premiums to be provided and paid for by the Association;

c. that period's estimated costs for utility services not separately metered or charged to Unit Owners;

d. the estimated amount required to be collected to maintain a working capital reserve fund, to assure availability of funds for normal operations of the Association, in an amount deemed adequate by the Board, but in no event less than an amount equal to two months' currently estimated assessments on all Units;

e. an amount deemed adequate by the Board, in its sole and unfettered discretion, and without vote of Unit Owners, to establish or augment an existing reserve for the cost of unexpected repairs and replacements of capital improvements and for the repair and replacement of major improvements for which cash reserves over a period of time in excess of one year ought to be maintained; and

f. that period's estimated costs for the operation, management and administration of the Association, including, but not limited to fees for property management, fees for legal and accounting services, costs of mailing, postage, supplies and materials for operating the Association, and the salaries, wages, payroll charges and other costs constituting common expenses not otherwise herein specifically excluded.

(ii) The Board shall thereupon allocate to each Unit that Unit's share of all of these items, prorated in accordance with each respective Unit's undivided interest in the Common Elements, and thereby establish the Operating Assessment for each separate Unit. For administrative convenience, any such Assessment may be rounded so that monthly installments will be in whole dollars.

(iii) The Operating Assessment shall be payable in advance, in equal monthly installments, provided that nothing contained herein shall prohibit any Unit Owner from prepaying assessments in annual, semiannual, or quarterly increments. The due dates of any such installments shall be established by the Board, or, if it fails to do so, an equal monthly pro rata share of the annual operating assessment for a Unit shall be due the first day of each month.

(iv) 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, provided, that if common expenses are incurred by the Association prior to the time the Association commences to levy assessments against Units, Declarant shall pay the same (subject to its right, if any, to reimbursement from Unit purchasers contained in individual contracts for the sale of a Unit or Units, or if not, from the Association).

(v) If Operating Assessments collected are in excess of the funds necessary to meet the anticipated expenses for which the same have been collected, the excess shall be retained as reserves, or as reductions in future Assessments, as determined by the Board, in its sole discretion, and shall in no event be deemed profits nor available, except on dissolution of the Association, for distribution to Unit Owners.

(vi) So long as the Declarant is in control of the Association, Declarant shall not use any part of the working capital reserve fund to defray Declarant's expenses, reserve contributions or construction costs, or to make up any budget deficits, and shall maintain the working capital reserve fund in a segregated account and transfer the same to the Association at or prior to the time Unit Owners other than Declarant control the Association. Each Unit's share of the working capital reserve fund shall be collected at the time the sale of the Unit is closed.

(b) Special Assessments for Capital Improvements.

(i) In addition to the Operating Assessments, the Board may levy, at any time, Special Assessments to construct, reconstruct or replace capital improvements on the Common Elements to the extent that reserves therefor are insufficient, provided that new capital improvements not replacing existing improvements (except new capital improvements required to comply with applicable law or governmental regulation, or to correct any deficiency or defect creating a safety or health hazard to Occupants) shall not be constructed nor funds assessed therefore, if the cost thereof in any fiscal year would exceed an amount equal to five percent (5%) or more of that fiscal year's budget, without the prior consent of Unit Owners exercising not less than seventy-five percent (75%) of the voting power of Unit Owners and the consent of Eligible Mortgagees hereinafter provided.

(ii) Any such Assessment shall be prorated among all Units in proportion to their respective undivided interests in the Common Elements, 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. Subject to the provisions of the Bylaws regarding procedures with respect thereto, the Board may levy Special Individual Unit Assessments against an individual Unit, or Units, and the Owner or Owners thereof, 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 to reimburse the Association for that Owner's Unit's share of any utility cost that the Board, or its designee, reasonably determines is attributable to that Owner's Unit, the portion of the cost of casualty and liability insurance provided by the Association that the Board determines is attributable to a particular use of a Unit or course of conduct by a Unit Owner or Occupant of that Owner's Unit, returned check charges and a Unit Owners' interest, late charges, collection costs and enforcement, and arbitration charges properly chargeable to a Unit and its Owners pursuant hereto). Each such Special Individual Unit 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 that Unit Owner's 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 Elements 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 if to be paid in installments, the due date of the first installment thereof. 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 installment or portion of any Assessment is not paid within at least ten (10) days after the same is due, the entire unpaid balance of the Assessment shall immediately become due and payable, without demand or notice, unless the Board, in its sole discretion, determines not to accelerate the installments.

(b) If any Assessment or installment of or portion of any Assessment is not paid within at least ten (10) days after the same is due, the Board, at its option, and without demand or notice, may (i) charge interest on the entire unpaid balance (including the accelerated portion thereof) at such rate as the Board from time to time, establishes by rule, or if the Board fails to establish a rate, by rule, at the rate of eight percent (8%) per annum, (ii) charge a reasonable, uniform, late fee, as established from time to time by the Board, by rule, and (iii) charge the cost of collection, including attorney fees and other out-of-pocket expenses.

(c) Operating and both types of Special Assessments, together with interest, late fees, and costs, including attorney fees, shall be a charge in favor of the Association upon the Unit against which each such assessment is made.

(d) At any time after any Assessment or an installment of 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 unpaid balance of that Assessment, including all future installments thereof, interest, late fees, collection costs and expenses, including attorney fees, court costs and filing fees ("collection costs"), may be filed with the recorder of the county in which the Condominium Property is located, pursuant to authorization given by the Board. The certificate shall contain a description or other sufficient legal identification 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 charges, and shall be signed by the president or other designated representative of the Association.

(e) The lien provided for herein shall become effective from the time a certificate of lien or renewal certificate was duly filed therefor, and shall



continue for a period of five (5) years 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.

(f) Any Unit Owner who believes that an assessment chargeable to that Unit Owner's 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 the county in which the Condominium Property is located for the discharge of that lien. In any such action, if it is finally determined that all 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.

(g) Each such Assessment together with collection costs, shall also be the joint and several personal obligation of the Unit Owners who owned the Unit at the time when the Assessment fell due. The obligation for delinquent Assessments, interest, late charges and costs shall not be the personal obligation of that Owner or Owners' successors in title unless expressly assumed by the successors, or required by applicable law, 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, late charges and costs, shall not be impaired or abridged by reason of the transfer, but shall continue unaffected thereby, except as provided in Section 6 of this Article.

(h) The Association, as authorized by the Board, may file a lien or liens to secure payment of collection costs, bring or join in an action at law against the Owner or Owners personally obligated to pay the same, and an action to foreclose a lien, or any one or more of these. In any foreclosure action, the Owner or Owners affected shall be required to pay a reasonable rental for that Unit during the pendency of such action. The Association in any such foreclosure action involving a Unit or Units shall be entitled to become a purchaser at the foreclosure sale. In any such foreclosure 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.

(i) No claim of the Association for Assessments and charges, whether in a collection action, foreclosure action, or otherwise, shall be subject to setoffs, off sets, counterclaims, or cross claims, including, without limiting the generality of the foregoing, claims that the Association has failed to provide the Unit Owner with any service, goods, work, or materials, or failed in any other duty.

(j) No Owner may waive or otherwise escape liability for the Assessments provided for in this Declaration by non-use of the Common Elements, or any part thereof, or by abandonment of that Owner's or those Owners' Unit.

(k) Assessments shall run with the land, are necessary to continue the care, repair and maintenance of Units and their undivided interests in the Condominium Property, and to continue to provide utility and security service, and, accordingly, Assessments accruing or becoming due during the pendency of bankruptcy proceedings shall constitute administrative expenses of the bankruptcy estate.

Section 6. Subordination of the Lien to First Mortgages. The lien of the assessments and charges provided for herein shall be subject and subordinate to the lien of any duly executed first mortgage on a Unit recorded prior to the date on which such lien of the Association arises, and any holder of such first mortgage which comes into

possession of a Unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale, shall take the property free of any claims for unpaid installments of assessments and charges against the mortgaged Unit which became due and payable prior, in the case of foreclosure, to the date of the sale, and, in all other cases, to the date legal title vested in the successful Owner. The foregoing will not relieve any successor Unit Owner from the obligation for assessments accruing thereafter. Notwithstanding the foregoing, rental payments a receiver collects during the pendency of a foreclosure action shall first be applied to the payment of the portion of common expenses chargeable to the Unit and its Owners during the foreclosure action.

Section 7. Certificate Regarding Assessments. The Board shall, upon demand, for a reasonable charge, furnish a certificate signed by the president, treasurer, secretary or other designated representative of the Association, setting forth whether the assessments on a specified Unit have been paid. This certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

## ARTICLE XVI

### EXPANSIONS

Section 1. Reservation of Expansion Option. Declarant expressly reserves the option to expand the Condominium Property but only within the limitations, and subject to the terms, set forth 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 otherwise so expressly limited, has the sole right, power, and authority to expand the Condominium Property without the consent of any Unit Owner or Owners.

Section 3. Maximum Expansion Time. Except as hereinafter provided, 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. Notwithstanding the foregoing, Declarant, with the consent of a majority of the Unit Owners other than Declarant, may extend its option to expand the Condominium Property for an additional seven years, if it exercises its right to so renew within six months prior to the expiration of that initial seven year period. Declarant shall have the right to waive its option to expand at any time. There are no other circumstances that will terminate the option prior to the expiration of the time limit.

Section 4. Legal Description. A legal description or descriptions of all of the property that is part of the Additional Property, and 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 are set forth in the exhibit attached hereto and marked "Exhibit E".

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 and provided, further, that all improvements in the Additional Property added to the Condominium Property shall be substantially completed prior to the addition. There are no limitations fixing the boundaries of portions added, or regulating the order in which portions are added.

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 limits previously described.

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 forty (40), provided that the foregoing shall neither limit nor restrict nor be so construed as to limit or restrict the number of dwelling units or other improvements that may be constructed on all or any portion of the Additional Property that is not 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. No Units may be created on the Additional Property or portions thereof and added to the Condominium Property that are not restricted exclusively to residential use.

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, but structures erected on all or any portion of the Additional Property need not be compatible with structures then on the Condominium Property in terms of principal materials to be used and architectural style and design, and may include or exclude attached or detached garages or carports.

Section 11. Improvements other than Structures. With respect to all improvements, other than structures, to all or any portion of the Additional Property and added to the Condominium Property, no other improvements are required to be made and there are no restrictions or limitations upon improvements that may be made.

Section 12. Types of Units. With respect to all Units created on all or any portion of the Additional Property and added to the Condominium Property, there is no requirement that all such Units must be substantially identical to any of the types of Units then on the Condominium Property and there are no limitations as to what type of Units may be created on the Additional Property.

Section 13. Limited Common Elements; Exclusive Use 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 Elements or Exclusive Use Areas therein similar or dissimilar to types, sizes or numbers as those Limited Common Elements or Exclusive Use Areas so designated as such in the Condominium Property including, without limiting the generality of the foregoing:

- (a) storage cabinets;
- (b) patios, decks and/or porches;
- (c) parking spaces;
- (d) attached or detached garages and/or carports.

The types, sizes and numbers of such newly created Limited Common Elements or Exclusive Use Areas cannot be ascertained precisely because those facts will depend upon how large each portion added may be, the size and locations of buildings and other improvements on each portion and other factors presently undetermined.

Section 14. Supplementary Drawings. Attached hereto and marked "Exhibit F" is a sketch drawing showing the location and relationship of the Condominium Property and the Additional Property. Declarant does not consider any other drawings or plans presently

appropriate. However, at such time as Declarant adds all or any portion of the Additional Property to the Condominium Property Declarant shall file drawings with respect to the Additional Property as required by the Condominium Act.

Section 15. Procedures for Expansion. All or any portion of the Additional Property shall be added to the Condominium Property by the execution and filing for record by the Declarant, or its successor as Owner of the portion added and as assignee of the right to expand the Condominium, in the manner provided by the Condominium Act, of an amendment to the Declaration that contains the information and drawings with respect to the Additional Property and improvements thereon added required by the Condominium Act.

Section 16. Effects of Expansion. Except as hereinafter specifically provided otherwise, upon the recording with the appropriate county recorder of an amendment to the Declaration adding all or any portion of the Additional Property to the Condominium Property to the Condominium Property:

(a) the added portion shall thereafter be subject to and benefited by 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, bind, and benefit 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, provided, that non-exclusive easements are reserved to Declarant, its successors and assigns over and upon the Common Elements and Limited common Elements in property added to the Condominium (i) for a two year period of time from the date of the closing by Declarant of the first sale of a Unit in that property added to a bona fide purchaser, for access to and for the purpose of completing improvements in that portion added, (ii) for the periods provided for warranties, or by law, for purposes of making repairs required pursuant to warranties, and (iii) for the initial sales and rental period for Units , to maintain and utilize one or more of those Units and appurtenances thereto, and/or a portion or portions of the Common Elements for sales and management offices and for storage and maintenance, and model Units, parking areas for sales and rental purposes, and advertising signs;

(b) the Owner or Owners of a Unit or Units in 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, including, without limiting the generality of the foregoing, one vote for each Unit owned by that Owner or Owners;

(c) the undivided interests of Units in the Common Elements, as so expanded, shall be reallocated on the basis that each Unit, including the newly added Units, has an equal value, and accordingly, as expanded each Unit will have an equal undivided interest;

(d) with respect to Units added, Operating Assessments shall commence the later of (i) the first day of the calendar month next following the date the documents adding the Units were duly recorded or (ii) the date established by the Association for the commencement of any Operating Assessment, and shall be prorated based on the number of full calendar months remaining in the year for which the Operating Assessments were levied; and

(e) 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 XVII

## NOTICES TO AND VOTING RIGHTS OF LENDING INSTITUTIONS

Section 1. Notices. Any Eligible Mortgagee, upon written request to the Association (which request states the name and address of such Eligible Mortgagee and the Unit designation), shall be entitled to timely written notice by the Association of:

(a) any proposed addition to, change in, or amendment of the Condominium Organizational Documents of a material nature, including any addition to, change in, or amendment of any provision establishing, providing for, governing, or regulating: (i) voting rights; (ii) increases in Assessments that raise the previously assessed amount by more than twenty-five percent (25%), Assessment liens, or priority of such liens; (iii) reductions in reserves for maintenance, repair, and replacement of Common Elements; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the Common Elements (including the Limited Common Elements), or rights to their use; (vi) redefinition of boundaries of any Unit; (vii) convertibility of Units into Common Elements or vice versa; (viii) expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium; (ix) hazard or fidelity insurance requirements; (x) imposition of any restrictions on the leasing of Units, (xi) imposition of any restrictions on a Unit Owner's right to sell or transfer that Owner's Unit; (xii) if the Condominium consists of fifty (50) or more Units, a decision by the Association to establish self-management if professional management had been required previously by the Condominium instruments or by an Eligible Mortgagee; (xiii) restoration or repair of the Condominium Property after damage or partial condemnation in a manner other than specified in the Condominium Instruments; (xiv) termination of the legal status of the Condominium after substantial destruction or condemnation occurs; or (xv) expressly benefiting mortgage holders, insurers, or guarantors. No addition to, change in, or amendment of the Condominium Organizational Documents shall be considered material if it is for the purpose of correcting technical errors, or for clarification only.

(b) any proposed decision or action that: (i) terminates professional management and establishes self-management when professional management has been required previously by an Eligible Mortgagee; (ii) causes restoration or repair of the Condominium Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium Organizational Documents; (iii) substantial damage or destruction not be restored; (iv) the Condominium Property be renewed or rehabilitated; (v) significant new capital improvements not replacing existing improvements be constructed; or (vi) would, without addition to, change in, or amendment of the Condominium Organizational Documents, make any change with respect to the items described in subparagraph (a) of Section 1 of this Article.

(c) (i) any condemnation or casualty loss that affects either a material portion of the Condominium Property or the Unit securing its mortgage; (ii) any delinquency for sixty (60) days in the payment of assessments or charges owed by the Owner of any Unit on which it holds the mortgage; (iii) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; and (iv) any proposed action that requires the consent of a specified percentage of Eligible Mortgagees. A holder, insurer or guarantor of a first mortgage lien on a Unit which has sent a written request to the Association stating both its name and address and the Unit Designation or address of the Unit on which it holds, insures or guarantees the mortgage shall be entitled to timely written notices of the events described in this subsection (c).

Section 2. Voting Rights. No action with respect to which eligible mortgagees are entitled to notice, as provided in subparagraphs (a) or (b) of Section 1 of this Article, may be taken without the consent of Eligible Mortgagees of Units to which at least fifty-one

percent (51%) of the votes of Units subject to mortgages held by Eligible Mortgagees appertain, provided, further, that no action to terminate the Condominium or that would have that effect other than by reason of substantial destruction or condemnation of the Condominium Property, shall be taken without the consent of Eligible Mortgagees of Units to which at least seventy-five percent (75%) of the votes of Units subject to mortgages held by Eligible Mortgagees appertain.

## ARTICLE XVIII

### AMENDMENTS

Section 1. Power to Amend. Except as otherwise specifically provided herein, additions to, changes in, or amendment of this Declaration (or the other Condominium Organizational Documents) or the taking of any of the actions which require the consent of Eligible Mortgagees exercising not less than fifty-one percent (51%) of the voting power of Units subject to mortgages held by Eligible Mortgagees, as provided elsewhere herein, shall, in addition to such consents of Eligible Mortgagees, require the consent of Unit Owners exercising not less than seventy-five percent (75%) of the voting power of Unit Owners. Notwithstanding the foregoing,

(a) the consent of all Unit Owners, including Declarant, so long as Declarant owns a Unit or has the right to expand the Condominium, shall be required for any amendment effecting a change in:

(i) the boundaries of any Unit;

(ii) the undivided interest in the Common Elements 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 Elements are restricted;

or to impose restrictions, limitations or prohibitions against or inhibiting the rental of any Unit or Units;

(b) The consent of Unit Owners exercising not less than eighty percent (80%) of the voting power of Unit Owners shall be required to terminate the Condominium; and

(c) in any event, each Unit Owner by acceptance of a deed to a Unit is deemed to and does give and grant a power of attorney, which right and power is coupled with an interest and runs with the title to a Unit and is irrevocable:

(i) to Declarant, for so long as Declarant owns any Unit, to amend the Condominium Organizational Documents, to the extent necessary to (A) conform to the requirements then governing the making of a mortgage loan or the purchase, guaranty, or insurance of mortgages by an institutional lender or an institutional guarantor or insurer of a mortgage on a Unit, provided that the appropriate percentage (as described elsewhere herein) of Eligible Mortgagees is obtained (if required), or (B) correct typographical errors or obvious factual errors or omission the correction of which would not impair the interest of any Unit Owner, mortgagee, insurer, or guarantor, provided, further, that if there is a Unit Owner other than the Declarant, the Declaration shall not be amended to increase the scope or the period of control of the Declarant; and

(ii) to the Board, without a vote of Unit Owners, to amend the Declaration in any manner necessary for any of the following purposes:

- a. to meet the requirements of institutional mortgagees, guarantors and insurers of first mortgage loans, or the requirements of insurance underwriters;
- b. to bring the Declaration into compliance with requirements of the Condominium Act;
- c. to correct clerical or typographical errors in this Declaration or an exhibit hereto; and
- d. to designate a successor to the Person named to receive service of process for the Association, provided, the naming of a successor need not be by amendment hereto if the change of statutory agent is appropriately filed with the Ohio Secretary of State;

but for no other purpose.

An Eligible Mortgagee of a Unit who receives a written request to approve changes, additions, or amendments sent by certified or registered mail, return receipt requested, and who does not deliver or post to the requesting party a negative response within thirty (30) days after receipt of the same, shall be deemed to have approved such request.

Section 2. Method to Amend. An amendment to this Declaration (or the Drawings or the Bylaws), adopted with the consents of Unit Owners and Eligible Mortgagees hereinbefore required, or by the Board, shall be executed with the same formalities as to execution as this Declaration by two officers of the Association and shall contain their certification that such amendment was duly adopted in accordance with the foregoing provisions. Any amendment adopted by the Declarant or a duly empowered successor Declarant pursuant to authority granted it pursuant to the Declaration shall be duly executed by it with the same formalities as to execution as this Declaration and shall contain the certification of such signor or signors that such amendment is made pursuant to authority vested in Declarant or any duly empowered successor Declarant by the Declaration. Any amendment duly adopted and executed in accordance with the foregoing provisions shall be effective upon the filing of the same with the auditor and recorder of the county in which the Condominium Property is located.

## ARTICLE XIX

### GENERAL PROVISIONS

Section 1. Covenants Running With the Land. The covenants, conditions, restrictions, easement, 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 interest in or to all or any part of the Condominium Property, and the Association, and their respective heirs, executors, administrators, successors and assigns.

Section 2. Actions. In addition to any other remedies provided in this Declaration, Declarant, (only with respect to those rights directly benefiting the Declarant), the Association, and each Unit Owner, shall have the right to enforce, by any proceeding at law or in equity, but not the duty, all restrictions, conditions, covenants, easements, reservations, liens and charges set forth herein or in the Bylaws or now or hereafter imposed by or throughout 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 violation or a subsequent violation, nor shall the doctrine of laches nor any statute of limitations 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 Condominium Organizational Documents, rules and regulations, and applicable law, and with respect to decisions made pursuant to authority granted thereunder, provided, the Association shall have the right to assess reasonable charges against a Unit Owner who fails to comply with the same, including the right to assess charges for the costs of enforcement and arbitration, and, further, that neither the Association nor its Directors, officers, or other representatives, shall be liable to any Unit Owner or Occupant, or their invitees, for damage to any Unit or any part thereof, or any personal property of such Unit Owner, Occupant or invitee, or for injury to such person, unless the damage or injury was proximately caused by the gross negligence or the intentional tortious act of the Association or such Director, officer or other representative. Notwithstanding the foregoing, in the event of any dispute between the Association, its Directors, officers, or other representatives, and any Unit Owner or Occupant, that cannot be settled by agreement between them, no Unit Owner or Unit Owners shall institute legal proceedings against the Association, its Directors, officers, or other representatives, without first submitting the dispute 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 a single independent arbitrator selected by the Board. In addition to all other remedies available by law, the Association may use summary abatement or similar means to enforce any provisions hereof or restrictions against the Unit or its use, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished by summary means.

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 provisions shall remain in full force and effect. In the event any language of this Declaration conflicts with mandatory provisions of the Condominium Act, the latter's requirements shall prevail and the conflicting language shall be deemed to be invalid and void, provided that such invalidity shall in no wise affect any other provisions of the Declaration, which provisions shall remain in full force and effect.

Section 4. Successor Owner. A successor owner of Condominium Property or any part thereof, or of Additional Property added to the Condominium Property, who is not an affiliate of Declarant and who is a bona fide purchaser of the property for value, or a purchaser who acquires the property at a sheriff's sale or by deed in lieu of foreclosure, shall not be liable in damages for harm caused by an action or omission of Declarant or a breach of an obligation of Declarant.

Section 5. 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, limited liability companies, men or women, shall in all cases be assumed as though in such case fully expressed.

Section 6. 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 has executed this instrument this 15<sup>th</sup> day of February, 2006.

WEST ALBANY CONDOMINIUM LLC

By: Rockford Homes, Inc., its Manager

By: 

(Print Name) Robert E. Yorkman Jr.

Its: MANAGING member



STATE OF OHIO  
COUNTY OF Franklin, SS:

This instrument was acknowledged before me this 15<sup>th</sup> day of February,  
2006, by Robert E. YAKAM, JR., the  
President, of Rockford Homes, Inc., an Ohio corporation, the Manager  
of West Albany Condominium LLC, an Ohio limited liability company, on behalf of the  
corporation and limited liability company.

Kimberly J. Curtiss  
Notary Public



KIMBERLY J. CURTISS  
Notary Public, State of Ohio  
My Commission Expires 12-06-07

**EXHIBIT "A"**  
**GLENABBY CONDOMINIUM**

Situated in the State of Ohio, County of Franklin, City of Columbus, lying in Quarter Township 3, Township 2, Range 16, United States Military Lands, and being part of that 13.675 acre tract conveyed to New Albany Condominium, LLC by deed of record in Instrument Number 200503070041302, (all references are to the records of the Recorder's Office, Franklin County, Ohio) and being more particularly described as follows:

Beginning, for reference, at Franklin County Geodetic Survey Monument Number 1207 in the centerline of Warner Road;

Thence South 86° 17' 30" East, with the centerline of said Warner Road, a distance of 699.55 feet to a PK nail found marking the centerline intersection of Hamilton Road and Warner Road;

Thence South 03° 42' 30" West, with the centerline of said Hamilton Road, a distance of 64.12 feet to a PK nail found at a point of curvature;

Thence continuing with said centerline of Hamilton Road and with the arc of said curve to the right, having a central angle of 24° 21' 10", a radius of 1000.00 feet, an arc length of 425.04 feet and a chord bearing South 15° 53' 05" West, a chord distance of 421.84 feet, to a point;

Thence South 61° 56' 20" East, across the right-of-way of said Hamilton Road, a distance of 50.00 feet to an iron pin set in the easterly right-of-way line of said Hamilton Road being the south westerly corner of that 0.588 acre tract conveyed to Cardinal Title Holding Company by deed of record in Instrument Number 200507080134440, said point being the TRUE POINT OF BEGINNING;

Thence South 85° 47' 30" East, with the southerly line of said 0.588 acre tract, a distance of 19.03 feet, to an iron pin set;

Thence across said 13.675 acre tract, the following courses and distances:

South 11° 42' 09" East, a distance of 166.08 feet to a point;

South 30° 14' 33" East, a distance of 56.60 feet to a point;

South 42° 49' 25" East, a distance of 39.47 feet to a point;

South 38° 49' 49" West, a distance of 136.19 feet to a point;

South 43° 23' 57" East, a distance of 67.16 feet to a point;

South 32° 41' 52" East, a distance of 271.70 feet to a point;

South 35° 00' 00" West, a distance of 95.76 feet to a point; and

South 55° 00' 00" East, a distance of 164.36 feet to an iron pin set in a westerly line of that 21.952 acre tract conveyed to Cardinal Title Holding Company by deed of record in Instrument Number 200008220168922;

**EXHIBIT "A"**  
**GLENABBY CONDOMINIUM**  
-Page 2-

Thence South 35° 00' 00" West, with the westerly line of said 21.952 acre tract, a distance of 155.49 feet to an iron pin set in the northerly line of that 40.271 acre tract conveyed to Daniel J. Kerschner, Trustee by deed of record in Instrument Number 199806100142753;

Thence North 85° 49' 27" West, with the northerly line of said 40.271 acre tract, a distance of 154.13 feet to an iron pin set;

Thence North 86° 00' 49" West, continuing with said northerly line, a distance of 125.27 feet to an iron pin set;

Thence across said 13.675 acre tract, the following courses and distances:

North 03° 59' 11" East, a distance of 200.52 feet to a point;

South 86° 00' 49" East, a distance of 22.56 feet to a point;

North 45° 02' 52" East, a distance of 45.36 feet to a point in the arc of a curve to the right;

With the arc of said curve, having a central angle of 09° 43' 28", a radius of 1012.00 feet, an arc length of 171.76 feet, and a chord which bears North 27° 58' 30" West, a chord distance of 171.56 feet to a point;

North 32° 34' 36" West, a distance of 20.37 feet to a point; and

South 48° 45' 22" West, a distance of 84.88 feet to an iron pin set in the northeasterly corner of that 33.918 acre tract conveyed to Cardinal Title Holding Company by deed of record in Instrument Number 200507080134440;

Thence North 41° 14' 45" West, with an easterly line of said 33.918 acre tract, a distance of 250.00 feet to an iron pin set in the easterly right-of-way line of said Hamilton Road;

Thence North 48° 45' 15" East, with the easterly right-of-way line of said Hamilton Road, a distance of 119.52 feet to an iron pin set at a point of curvature;

Thence continuing with said easterly right-of-way line of Hamilton Road and with the arc of said curve to the left, having a central angle of 20° 41' 35", a radius of 1050.00 feet, an arc length of 379.22 feet and a chord bearing North 38° 24' 28" East, a chord distance of 377.16 feet, to the TRUE POINT OF BEGINNING. Containing 5.357 acres, more or less.

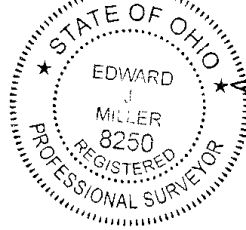
Subject, however, to all legal rights-of-way and/or easements, if any, of previous record.

This survey is based upon an actual field survey performed by EMH&T, Inc. in Spring of 2005.

Iron pins set, where indicated, are iron pipes, thirteen sixteenths (13/16) inch inside diameter, thirty (30) inches long with a plastic plug placed in the top bearing the initials EMHT INC.

EXHIBIT "A"  
GLENABBY CONDOMINIUM  
-Page 3-

The bearings in the above description are based on the Ohio State Plane Coordinate System as per NAD83. Control for bearings was from coordinates of monuments 8824 & 8825, having a bearing of North 86° 29' 28" West, established by the Franklin County Engineering Department, using Global Positioning System procedures and equipment.



EVANS, MECHWART, HAMBLETON & TILTON, INC.

*[Handwritten Signature]*  
Edward J. Miller  
Registered Surveyor No. 8250



EXHIBIT C

DECLARATION OF CONDOMINIUM  
 GLENABBY CONDOMINIUM  
 UNIT INFORMATION SHEET

PHASE 1

MAILING ADDRESS	UNIT DESIGNATION	BLDG. NUMBER	UNDIVIDED INTEREST
6245 Glenabby Drive	1-6245	1	4.166
6249 Glenabby Drive	1-6249	1	4.166
5295 Abby Gate Avenue	1-5295	1	4.166
5299 Abby Gate Avenue	1-5299	1	4.166
6250 Glenabby Drive	2-6250	2	4.166
6254 Glenabby Drive	2-6254	2	4.166
5327 Abby Gate Avenue	2-5327	2	4.166
5323 Abby Gate Avenue	2-5323	2	4.166
5292 Abby Gate Avenue	16-5292	16	4.166
5288 Abby Gate Avenue	16-5288	16	4.166
5280 Abby Gate Avenue	16-5280	16	4.166
5284 Abby Gate Avenue	16-5284	16	4.166
5257 Bridwell Lane	15-5257	15	4.166
5261 Bridwell Lane	15-5261	15	4.166
5268 Abby Gate Avenue	15-5268	15	4.166
5272 Abby Gate Avenue	15-5272	15	4.166
5246 Bridwell Lane	10-5246	10	4.166
5242 Bridwell Lane	10-5242	10	4.166
5234 Bridwell Lane	10-5234	10	4.166
5238 Bridwell Lane	10-5238	10	4.166
5226 Bridwell Lane	11-5226	11	4.166
5222 Bridwell Lane	11-5222	11	4.166
6287 Abby Gate Court	11-6287	11	4.166
6291 Abby Gate Court	11-6291	11	<u>4.182</u>
TOTAL			100.000%

EXHIBIT D

DECLARATION OF CONDOMINIUM  
GLENABBY CONDOMINIUM

TYPE INFORMATION

<u>TYPE</u>	<u>DESCRIPTION</u>
Buildings 1, 2, 16, 15, 10 and 11 A, B, C & D	Each Unit contains a great room, dining room, fully finished four season room, three bedrooms, three full bathrooms, kitchen, laundry room, a two car garage and optional unfinished storage area. Each Unit contains approximately 1,819± gross interior square feet, plus 285 square feet in the unfinished storage area, and 479± square fee in the garage.

Each Unit has forced air gas heat with electric central air conditioning, a fireplace, and dishwasher.

Each Unit also has appurtenant Limited Common Elements of parking immediately in front of the garage, an uncovered Patio Area, and a landscape or garden planting area adjacent to the service walk, and as show on the Drawings.

Elevation Types:

Option A is the standard elevation without stone, as shown on the Drawings.

Option B is the optional elevation with stone, transom windows and shutters, as shown on the Drawings.

Buildings 1, 2 and 16 have Option B on both ends.

Building 10 has Option B on the North/West end only.

Building 11 has Option B on the North end only.

Building 15 has Option B on the North/East end only.

EXHIBIT "E" 1/2

ADDITIONAL PROPERTY  
6.297 ACRES

Situated in the State of Ohio, County of Franklin, City of Columbus, lying in Quarter Township 3, Township 2, Range 16, United States Military Lands, and being part of that 13.675 acre tract conveyed to New Albany Condominium, LLC by deed of record in Instrument Number 200503070041302, (all references are to the records of the Recorder's Office, Franklin County, Ohio) and being more particularly described as follows:

Beginning, for reference, at Franklin County Geodetic Survey Monument Number 1207 in the centerline of Warner Road;

Thence South 86° 17' 30" East, with the centerline of said Warner Road, a distance of 699.55 feet to a PK nail found marking the centerline intersection of Hamilton Road and Warner Road;

Thence South 03° 42' 30" West, with the centerline of said Hamilton Road, a distance of 64.12 feet to a PK nail found at a point of curvature;

Thence continuing with said centerline of Hamilton Road and with the arc of said curve to the right, having a central angle of 24° 21' 10", a radius of 1000.00 feet, an arc length of 425.04 feet and a chord bearing South 15° 53' 05" West, a chord distance of 421.84 feet, to a point;

Thence South 61° 56' 20" East, across the right-of-way of said Hamilton Road, a distance of 50.00 feet, to an iron pin set in the easterly right-of-way line of said Hamilton Road, a southwesterly corner of that 0.588 acre tract conveyed to Cardinal Title Holding Company by deed of record in Instrument Number 200507080134440;

Thence South 85° 47' 30" East, with the southerly line of said 0.588 acre tract, a distance of 19.03 feet to an iron pin set at the True Point of Beginning;

Thence South 85° 47' 30" East, continuing with said southerly line, with the southerly line of that 2.350 acre tract conveyed to Cardinal Title Holding Company by deed of record in Instrument Number 200008220168922 and partly with the southerly line of that 3.530 acre tract conveyed to Townsend Construction Company by deed of record in Instrument Number 200512160205155, a distance of 371.52 feet, to an iron pin set;

Thence with a southerly perimeter of said 3.530 acre tract, the following courses and distances;

South 10° 46' 12" East, a distance of 255.68 feet, to an iron pin set;

North 79° 16' 15" East, a distance of 125.00 feet, to an iron pin set in the westerly line of that 21.952 acre tract conveyed to cardinal Title Holding Company by deed of record in Instrument Number 200008220168922;

Thence with a westerly perimeter of said 21.952 acre tract the following courses and distance;

South 10° 46' 12" East, a distance of 277.13 feet, to an iron pin set;

South 79° 16' 15" West, a distance of 150.29 feet, to an iron pin set; and

South 35° 00' 00" West, a distance of 294.60 feet, to an iron pin set;

Thence across said 13.675 acre tract, the following courses and distances:

North 55° 00' 00" West, a distance of 164.36 feet to a point;



EXHIBIT "E" 1/2

ADDITIONAL PROPERTY

6.297 ACRES

-Page 2-

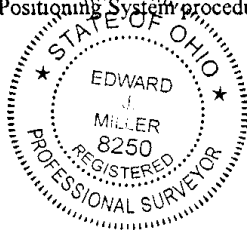
North 35° 00' 00" East, a distance of 95.76 feet to a point;  
North 32° 41' 52" West, a distance of 271.70 feet to a point;  
North 43° 23' 57" West, a distance of 67.16 feet to a point;  
North 38° 49' 49" East, a distance of 136.19 feet to a point;  
North 42° 49' 25" West, a distance of 39.47 feet to a point;  
North 30° 14' 33" West, a distance of 56.60 feet to a point; and

North 11° 42' 09" West, a distance of 166.08 feet to the TRUE POINT OF BEGINNING.  
Containing 6.297 acres, more or less.

Subject, however, to all legal rights-of-way and/or easements, if any, of previous record.

Iron pins set, where indicated, are iron pipes, thirteen sixteenths (13/16) inch inside diameter, thirty (30) inches long with a plastic plug placed in the top bearing the initials EMHT INC.

The bearings in the above description are based on the Ohio State Plane Coordinate System as per NAD83. Control for bearings was from coordinates of monuments 8824 & 8825, having a bearing of North 86° 29' 28" West, established by the Franklin County Engineering Department, using Global Positioning System procedures and equipment.



EVANS, MECHWART, HAMBLETON & TILTON, INC.  
2/2/06  
Edward J. Miller  
Registered Surveyor No. 8250

EXHIBIT "E" 2/2

ADDITIONAL PROPERTY  
2.021 ACRES

Situated in the State of Ohio, County of Franklin, City of Columbus, lying in Quarter Township 3, Township 2, Range 16, United States Military Lands, and being part of that 13.675 acre tract conveyed to New Albany Condominium, LLC tract by deed of record in Instrument Number 200503070041302 (all references are to the records of the Recorder's Office, Franklin County, Ohio) and being more particularly described as follows:

Beginning, for reference, at Franklin County Geodetic Survey Monument Number 1207 in the centerline of Warner Road;

Thence South  $86^{\circ} 17' 30''$  East, with the centerline of said Warner Road, a distance of 699.55 feet to a PK nail found marking the centerline intersection of Hamilton Road and Warner Road;

Thence South  $03^{\circ} 42' 30''$  West, with the centerline of said Hamilton Road, a distance of 64.12 feet to a PK nail found at a point of curvature;

Thence continuing with said centerline of Hamilton Road and with the arc of said curve to the right, having a central angle of  $24^{\circ} 21' 10''$ , a radius of 1000.00 feet, an arc length of 425.04 feet and a chord bearing South  $15^{\circ} 53' 05''$  West, a chord distance of 421.84 feet, to a point;

Thence South  $61^{\circ} 56' 20''$  East, across the right-of-way of said Hamilton Road, a distance of 50.00 feet, to an iron pin set in the easterly right-of-way line of said Hamilton Road;

Thence with the easterly right-of-way line of said Hamilton Road and the arc of a curve to the left, having a central angle of  $20^{\circ} 41' 35''$ , a radius of 1050.00 feet, an arc length of 379.22 feet, and a chord which bears South  $38^{\circ} 24' 28''$  West, a chord distance of 377.16 feet to a point;

Thence South  $48^{\circ} 45' 15''$  West, continuing with said easterly right-of-way line, a distance of 119.52 feet to a point in the northeasterly corner of that 33.918 acre (original) tract conveyed to Cardinal Title Holding Company by deed of record in Instrument Number 200507080134440;

Thence South  $41^{\circ} 14' 45''$  East, with the easterly line of said 33.918 acre (original) tract, a distance of 250.00 feet to the TRUE POINT OF BEGINNING;

Thence across said 13.675 acre tract, the following courses and distances:

North  $48^{\circ} 45' 22''$  East, a distance of 84.88 feet to a point;

South  $32^{\circ} 34' 36''$  East, a distance of 20.37 feet to a point in the arc of a curve to the left;

With the arc of said curve, having a central angle of  $09^{\circ} 43' 28''$ , a radius of 1012.00 feet, an arc length of 171.76 feet, and a chord which bears South  $27^{\circ} 58' 30''$  East, a chord distance of 171.56 feet to a point of tangency;

South  $45^{\circ} 02' 52''$  West, a distance of 45.36 feet to a point;

North  $86^{\circ} 00' 49''$  West, a distance of 22.56 feet to a point; and

South  $03^{\circ} 59' 11''$  West, a distance of 200.52 feet to a point in the northerly line of that 40.271 acre tract conveyed to Daniel J. Kerschner, Trustee by deed of record in Instrument Number 199806100142753;

Thence North  $86^{\circ} 00' 49''$  West, with said northerly line, a distance of 295.16 feet to an iron pin set at the southeasterly corner of that 1.536 acre tract conveyed to Stephen L. Harper, Trustee by deed of record in Instrument Number 200408190194828;

EXHIBIT "E" 2/2

ADDITIONAL PROPERTY

2.021 ACRES

-Page 2-

Thence North 04° 05' 45" East, with the easterly line of said 1.530 and 33.918 acre (original) tracts, a distance of 150.36 feet to an iron pin set;

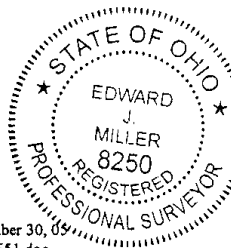
Thence North 48° 45' 14" East, continuing with an easterly line of said 33.918 acre (original) tract, a distance of 262.00 feet to the TRUE POINT OF BEGINNING and containing 2.021 acres of land, more or less.

Subject, however, to all legal rights-of-way and/or easements, if any, of previous record.

This survey is based upon an actual field survey performed by EMH&T, Inc. in Spring, 2005.

Iron pins set, where indicated, are iron pipes, thirteen sixteenths (13/16) inch inside diameter, thirty (30) inches long with a plastic plug placed in the top bearing the initials EMHT INC.

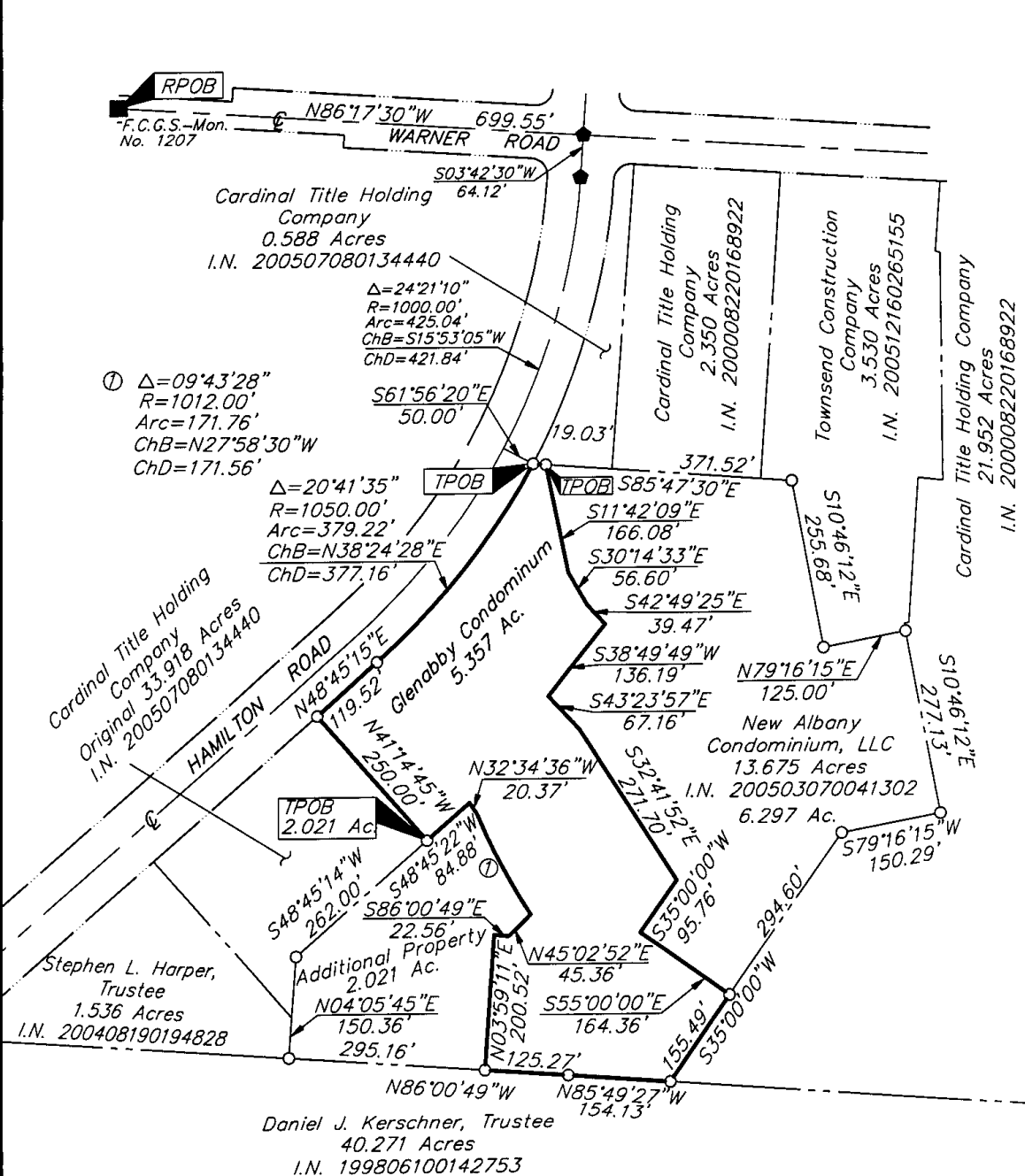
The bearings in the above description are based on the Ohio State Plane Coordinate System as per NAD83. Control for bearings was from coordinates of monuments 8824 & 8825, having a bearing of North 86° 29' 28" West, established by the Franklin County Engineering Department, using Global Positioning System procedures and equipment.



EVANS, MECHWART, HAMBLETON & TILTON, INC.

*2/2/06*  
Edward J. Miller  
Registered Surveyor No. 8250

I:\CH\DATA1\SURVEY\PROJECT\20052651\DWG\52651CD1.DWG-EXHIBIT C PORTRAIT - NO XREFS - LAST SAVED BY TBAXTER (2/14/2006 7:20:27 AM)



- LEGEND**
- = Stone Found
  - = Monument Found
  - = Iron Pin Found
  - = Iron Pin Set
  - = Mag. Nail Found
  - = Mag. Nail Set
  - ▲ = Railroad Spike Found
  - △ = Railroad Spike Set
  - ◆ = P.K. Nail Found
- I.P. Set are 13/16" I.D. iron pipe with cap inscribed EMHT INC



GRAPHIC SCALE  
(IN FEET)

**BASIS OF BEARINGS:** Bearings are based on the Ohio State Plane Coordinate System as per NAD 83 (1986 Adjustment). Control for bearings was from coordinates of monuments 8824 and 8825, having a bearing of North  $86^{\circ}29'28''$  West, established by the Franklin County Engineering Department, using Global Positioning System procedures and equipment.

BYLAWS  
(CODE OF REGULATIONS)  
OF  
GLENABBY CONDOMINIUM ASSOCIATION

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BYLAWS  
(Code of Regulations)  
OF  
GLENABBY CONDOMINIUM ASSOCIATION

ARTICLE I

NAME AND LOCATION

The name of the Association is Glenabby Condominium Association, ("the Association"), which corporation, not-for-profit, is created pursuant to the provisions of Chapter 1702 of the Revised Code of Ohio, and which Association is also created pursuant to the provisions of Chapter 5311 of the Revised Code of Ohio as the Unit Owners' association for Glenabby Condominium. The principal office of the Association shall be as set forth in its Articles of Incorporation ("the Articles"), and the place of meetings of Unit Owners (members) and of the Board of Directors ("the Board") of the Association shall be at such place in the county in which the Condominium Property is located as the Board, may from time to time designate.

ARTICLE II

DEFINITIONS

All of the terms used herein shall have the same meanings as set forth in the Declaration of Condominium, ("the Declaration"), recorded simultaneously herewith with the Recorder of the county in which the Condominium Property is located.

ARTICLE III

UNIT OWNERS (MEMBERS)

Section 1. Composition. Each Unit Owner, as defined in the Declaration, is a member of the Association.

Section 2. Annual Meetings. Regular annual meetings of the Unit Owners shall be held in the second calendar quarter of each year hereafter, on a date and at an hour established from time to time by the Board, provided that in any event, there shall be no more than fourteen (14) months between annual meetings of the members.

Section 3. Special Meetings. Special meetings of the Unit Owners may be called at any time by the president or by the Board, or upon written request of Unit Owners entitled to exercise one-fourth (1/4) or more of the voting power of Unit Owners, and when required by the Condominium Act.

Section 4. Notice of Meetings. Written notice of each meeting of Unit Owners shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least five days before such meeting, to each Unit Owner entitled to vote at such meeting, addressed to the Unit Owner's address last appearing on the books of the Association, or supplied by such Unit Owner to the Association for the purpose of notice, or by delivering a copy of that notice at such address at least five (5) days before the meeting. The notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purposes of the meeting, and in the case of special meetings called by the petition and written request of Unit Owners, the specific motion or motions (other than procedural) to be voted upon. Attendance by a Unit Owner, either in person or by proxy, at a meeting of Unit Owners without protesting prior to

or at the commencement of the meeting, the lack of property notice shall be deemed to be a waiver by the Unit Owner of notice of such meeting.

Section 5. Conduct of Meetings. All meetings of the Unit Owners shall be conducted by the Board, and presided over by the president of the Association, or as otherwise directed by the Board.

Section 6. Participation at Meetings. Meetings of the Unit Owners shall be open to all Unit Owners unless specified by direction of the Board otherwise in the notice of meeting. The Board, in its sole discretion, may exclude from attendance at a meeting of the Unit Owners, Unit Owners and their agents and representatives (other than Declarant and its successors and assigns so long as Declarant owns a Unit or Units in the Condominium or has the right to expand the Condominium) in these instances:

(a) A determination by the Board that the Unit Owner has a threatened or pending adverse interest to the interests of the Association, or the Board, or any member of the Board, or any officer, employee, committee member, or agent of the Association, in such Person's capacity as such, if a subject of the meeting will be a discussion of a vote with regard to such adverse interest; or

(b) for any other reason deemed by the Board, from the standpoint of the Association's best interests, to be of sufficient merit that attendance and participation at a meeting by such Unit Owner would not be in the Association's best interests;

provided, that nothing contained in this Section shall preclude or exclude a Unit Owner from voting by proxy, on any matter properly voted upon at that meeting by Unit Owners.

Section 7. Quorum; Adjournment. The Unit Owners present, in person or by proxy, at any duly called and noticed meeting of Unit Owners, shall constitute a quorum for such meeting. Unit Owners entitled to exercise a majority of the voting power of Unit Owners represented at a meeting in person or by proxy, may, at anytime, adjourn such meeting. If any meeting is so adjourned, notice of such adjournment need not be given if the time and place to which such meeting is adjourned are fixed and announced at such meeting.

Section 8. Voting Rights. One vote on matters upon which Unit Owners are entitled to vote shall be allocated to each Unit, exercisable as the Owners of the undivided fee simple interests in that Unit may from time to time determine. If the Owners of the fee simple interests in a Unit are unable with respect to a particular matter to agree among themselves as to the vote to be cast with respect to that Unit, no vote shall be cast with respect to that Unit or that particular matter, provided, that unless timely challenged by an Owner of a fee simple interest in a Unit, any Owner of a fee simple interest in that Unit may case the entire vote with respect to that Unit. The Board, from time to time, may suspend the right of the Owner or Owners of a Unit to case a vote with respect to that Unit if Assessments with respect to that Unit are overdue, or there is at that time, with respect to the Owners or Occupants of that Unit, a failure to observe any of the terms hereof, or rules and regulations duly adopted by the Board and then in effect.

Section 9. Voting Power. Except as otherwise provided in the Condominium Organizational Documents, or by law, a majority of the voting power of Unit Owners voting on any matter that may be determined by the Unit Owners at a duly called and noticed meeting shall be sufficient to determine that matter. The rules of Roberts Rules of Order shall apply to the conduct of all meetings of Unit Owners except as otherwise specifically provided in the Condominium Organizational Documents or by law.

Section 10. Proxies. At any meeting of Unit Owners, a Unit Owner may vote in person or by proxy. All proxies shall be in writing and filed with secretary prior to the meeting. A telegram or cablegram appearing to have been transmitted by a Unit Owner, or a photographic, photostatic, or equivalent reproduction of a writing, appointing a proxy, is a

sufficient writing. Every proxy shall be revocable and shall automatically cease upon conveyance by a Unit Owner of that Owner's fee simple interest in that Unit, and, in any event, shall not be valid after the expiration of eleven months after it is made unless it specifies the date on which it is to expire or the length of time it is to continue in force.

Section 11. Action in Writing Without Meeting. Any action that could be taken by Unit Owners at a meeting may be taken without a meeting with the affirmative vote or approval, in a writing or writings, of Unit Owners having not less than seventy five percent (75%) of the voting power of Unit Owners, or such greater proportion of the voting power as may be required by the Condominium Organizational Documents, or by law.

#### ARTICLE IV

#### BOARD OF DIRECTORS

Section 1. Initial Directors. The initial directors and their business addresses are as set forth in the Articles, or such other person or persons as may from time to time be substituted by the Declarant.

Section 2. Successor Directors. No later than sixty (60) days after Declarant has sold and conveyed Units to which twenty-five percent (25%) of the undivided interests in the Common Elements appertain, the Unit Owners shall meet, and the Unit Owners other than Declarant shall elect one Director at such meeting to replace whichever Director Declarant designates. Within the earlier of (a) five years from the date of the establishment of the Association, and (b) sixty (60) days after the sale and conveyance, to purchasers in good faith and for value, of Units to which seventy-five percent (75%) of the undivided interests in the Common Elements appertain, the Association shall meet and all Unit Owners, including Declarant, shall elect three Directors, whose terms shall commence at the end of the meeting during which they are elected, to replace all of those Directors earlier elected or designated by the Unit Owners or Declarant, respectively. The terms of the three Directors shall be staggered so that the terms of one-third (one) of the Directors will expire and a successor will be elected at each annual meeting of the Association. Thereafter, at such annual meetings, a successor to the Director whose term then expires shall be elected to serve a three-year term. Notwithstanding the foregoing, the Unit Owners, by the vote of Unit Owners exercising not less than a majority of the voting power of Unit Owners, may, from time to time, change the number and terms of Directors, provided, that in any such event the terms of not less than one-third of the Directors shall expire annually. For purposes of computing undivided interests pursuant to the foregoing, those interests shall be computed by comparing the number of Units sold and conveyed to the maximum number of Units, sixty-four (4) that may be in the Condominium. Notwithstanding the foregoing, Declarant shall have the right at any time to waive its right to select one or more Directors or to vote in an election of Directors. In addition, notwithstanding any requirement as to the maximum time period during which Directors appointed by Declarant may serve, Declarant reserves the right, at any time prior thereto to have the Unit Owners elect Directors and for Declarant to turn over the functions of operation of the Association to those elected Directors.

Section 3. Removal. Excepting only Directors named in the Articles or selected by Declarant, any Director may be removed from the Board with or without cause, by the holders of seventy-five percent (75%) of the voting power of Unit Owners. In the event of the death, resignation or removal of a Director other than one named in the Articles or a substitute selected by the Declarant, that Director's successor shall be selected by the remaining members of the Board and shall serve until the next annual meeting of Unit Owners, when a Director shall be elected to complete the term of such deceased, resigned or removed Director. In the event of removal of all Directors, the Unit Owners shall, at a meeting at which all Directors are removed, elect Directors to complete the terms of the removed Directors. Declarant shall have the sole right to remove, with or without cause, any Director designated in the Articles or a substitute selected by Declarant and the selected successor of any Director so selected who dies, resigns, is removed or leaves office for any reason before the election of Directors by all of the Unit Owners as provided



in the Declaration.

Section 4. Qualification. To qualify for nomination, election or appointment as a Director (other than by Declarant), the prospect must be an individual who is a Unit Owner or Co-Owner of a Unit, the spouse of a Unit Owner, or Co-Owner of a Unit, or a designated principal, member of a limited liability company, partner, director, officer or employee of an entity or other organization that is a Unit Owner, and such Unit Owner or Co-Owner of a Unit or the Unit Owner of such spouse must not then be delinquent in the payment of any obligation to the Association, or then be an adverse party to the Association, or its Board or any member thereof (in that member's capacity as a Board member) in any litigation involving one or more of those parties.

Section 5. Nomination. Nominations for the election of Directors to be elected by the Unit Owners shall be made by a nominating committee appointed by the Board, or if the Board fails to appoint a nominating committee, by the Board itself. Nominations may also be made from the floor at the meetings. The nominating committee or Board shall make as many nominations for election to the Board as it shall, in its discretion, determine, but no less than the number of vacancies that are to be filled.

Section 6. Election. Unless there are no more nominees than vacancies, election to the Board by the Unit Owners or their proxies shall be by secret written ballot. At such elections, the Unit Owners or their proxies may cast, in respect to each vacancy, such number of votes as they are entitled to under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected, and likewise, those receiving the largest number of votes shall be elected to the longest terms. In cases of ties, the winner shall be determined by lot. Cumulative voting is not permitted.

Section 7. Compensation. Unless otherwise determined by the Unit Owners at a meeting duly called and noticed for such purpose, no Director shall receive compensation for any service rendered to the Association as a Director. However, any Director may be reimbursed for actual expenses incurred in the performance of duties as a Director.

Section 8. Regular Meetings. Regular meetings of the Board shall be held on such dates and at such places and times as may be fixed from time to time by resolution of the Board, but not less than quarterly.

Section 9. Special Meetings. Special meetings of the Board shall be held when called by the president of the Board, or by a majority of the Directors, after not less than three days notice to each Director.

Section 10. Quorum. The presence at any duly called and noticed meeting of Directors entitled to cast a majority of the power of Directors, in person and/or by participating by means of communications equipment if all persons participating can hear each other, participate, and respond to every other participating member of the Board, shall constitute a quorum for such meeting.

Section 11. Voting Power. Each Director shall be entitled to a single vote, and, except as otherwise provided in the Condominium Organizational Documents, or by law, vote of a majority of the Directors voting on any matter that may be determined by the Board at a duly called and noticed meeting at which a quorum is present, in person or by participation as provided in Section 10, above, shall be sufficient to determine that matter.

Section 12. Action In Writing Without Meeting. Any action that could be taken by the Board at a meeting may be taken without a meeting with the written consent, in a writing or writings, of all of the Directors.

Section 13. Powers and Authority. The Board shall exercise all powers and have all 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 and bonds the Directors consider appropriate or necessary, provided that the insurance coverage and bonds are required pursuant to the provisions of the Declaration in amounts no less than that required pursuant to the Declaration shall be obtained and maintained;
- (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, late fees, delinquent interest, and such other charges as are provided for in the Declaration and adopt, publish and enforce rules and regulations covering the same;
- (f) adopt and publish rules and regulations governing the use of the Common Elements and the personal conduct of Unit Owners, occupants and their guests thereon, and establish and levy enforcement charges 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 charge 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 consecutive regular meetings of the Board;
- (i) subject to such approvals, if any, as may be required pursuant to the provisions of Condominium Organizational Documents, authorize the officers to enter into one or more agreements necessary or desirable to fulfill the purposes and objectives of the Association, including, without limitation, management agreements, purchase agreements and loan documents, all on such terms and conditions as the Board in its sole and absolute discretion may determine;
- (j) cause funds of the Association to be invested in such reasonable investments that meet standards for fiduciary investments under Ohio law as the Board may from time to time determine;
- (k) borrow funds, as needed, and pledge such security and rights of the Association including rights to Association assessments or other future income, as might be necessary or desirable in the judgment of the Board to obtain any such loan;
- (l) purchase, cause the Association to hold title to, and sell real property not declared to be part of the Condominium Property, provided that (i) if any such transaction takes place prior to the time Unit Owners other than the Declarant assume control of the Association, approval of the transaction must be obtained from Declarant and Unit Owners other than Declarant exercising not less than seventy-five (75%) of the voting power of the members of the Association, as well as the Board, and (ii) if after Unit Owners other than Declarant assume control of the Association, the approval

of Unit Owners exercising not less than seventy-five percent (75%) of the voting power of members of the Association, as well as the Board; and

- (m) 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.

Section 14. Duties. It shall be the duty of the Board to:

- (a) cause to be kept a complete record of all its acts and corporate affairs, including correct and complete books and records of account that specify receipts and expenditures relating to Common Elements and other common receipts and expenses, records showing the allocation, distribution and collection of common profits, losses, and expenses among and from Unit Owners, minutes of meetings of the members and meetings of the Board, and records of the names and addresses of Unit Owners and their respective undivided interests in the Common Elements;
- (b) present the latest available financial statement of the Association to the Unit Owners at each annual meeting of Unit Owners, or at any special meeting when requested in writing by Unit Owners representing a majority of the voting power of Unit Owners;
- (c) cause to be enforced the legal requirement that each Person who obtains a fee simply interest in a Unit provide to the Association, in writing, within thirty (30) days after acquiring such interest:
  - (i) the home address, home and business mailing addresses, and the home and business telephone numbers of the Unit Owner and all Occupants of the Unit; and
  - (ii) the name, business address, and business telephone number of any Person who manages the Owner's Unit as an agent of that Owner;any the requirement that each Unit Owner notify the Association in writing of any change in the foregoing information within thirty (30) days of the change;
- (d) supervise all officers, agents and employees of the Association and see that their duties are properly performed;
- (e) cause an annual budget to be prepared and amendments thereto as needed;
- (f) as more fully provided in the Declaration, to establish, levy, enforce and collect Assessments;
- (g) 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;
- (h) procure and maintain insurance and bonds as provided in the Declaration, and as the Board deems advisable;
- (i) cause the property subject to the Association's jurisdiction to be maintained within the scope of authority provided in the Declaration;
- (j) take all other actions required to comply with all requirements of law; and the Condominium Organizational Documents.

Except in the case of Special Individual Unit Assessments for utility charges, interest, late charges, returned check charges, court costs, arbitration costs, and/or

attorney fees, prior to levying a Special Individual Unit Assessment, as provided in the Declaration, the Board shall give the unit Owner or Owners written notice of the proposed Assessment that includes:

- (i) a statement of the facts giving rise to the proposed Special Individual Unit Assessment, including, if applicable, a description of the property, damaged, or the violation, of the restriction, rule or regulation allegedly violated;
- (ii) the amount of the proposed Special Individual Unit Assessment;
- (iii) a statement that the unit Owner has a right to a hearing before the Board to contest the proposed Special Individual Unit Assessment by delivering to the Board a written notice requesting a hearing within ten days after the Unit Owner receives written notice of the proposed Special Individual Unit Assessment; and
- (iv) in the case of a charge for violation of a restriction, rule or regulation, a reasonable date by which the Unit Owner must cure the alleged violation to avoid the proposed Special Individual Unit Assessment.

The notice by the Board given pursuant to the foregoing maybe delivered personally to the Unit Owner to whom a Special Individual Unit Assessment is proposed to be charged, an Occupant of that Owner's Unit, by certified mail, return receipt requested, or by regular mail. In the event after such hearing the Board determines to levy the Special Individual Unit Assessment proposed, the Board shall deliver to the Unit Owner written notice thereof within thirty (30) days of the date of that hearing.

Section 15. Delegation of Authority; Management; Contracts. 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 written notice of ninety (90) days or less; and shall be bona fide and commercially reasonable at the time entered into under the circumstances then prevailing, provided that, in the case of any professional management contract entered into before control of the Association is vested in Unit Owners other than Declarant, the contract must give the Association the right to terminate it without cause and without penalty at any time after control of the Association has been transferred to or assumed by Unit Owners other than Declarant. 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 an affiliate of Declarant, as defined by an institutional first mortgagee or an agency or organization which purchases, insures, or guarantees first mortgages, for goods, services, or for any other thing, including, without limiting the generality of the foregoing, contracts for the providing of 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. In any case, no management contract or agreement by the Association executed prior to the assumption of control of the Association by Unit Owners other than Declarant shall extend more than ninety (90) days, and no other contract, except for necessary utility services, shall extend more than one year, subsequent to that assumption of control unless renewed by vote of Unit Owners pursuant to the provisions of these Bylaws.

## ARTICLE V

## OFFICERS

Section 1. Enumeration of Officers. The officers of this Association shall be a president, a secretary, a treasurer and such other officers as the Board may from time to time determine. No officer need be a Unit Owner or Director of the Association. The same person may hold more than one office.

Section 2. Election and Term. Except as otherwise specifically provided in the Declaration or by law, the officers of the Association shall be elected by the Board, from time to time, to serve until the Board selects their successors.

Section 3. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 4. Resignation and Removal. Any officer may be removed from office, with or without cause, by the Board. Any officer may resign at any time by giving written notice to the Board, the president, or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Duties. The duties of the officers shall be as the Board may from time to time determine. Unless the Board otherwise determines, the duties of the officers shall be as follows:

(a) President. The president shall preside at all meetings of the Board and the Unit Owners, shall have the authority to see that orders and resolutions of the Board are carried out, and shall sign all legal instruments on behalf of the Association.

(b) Secretary. The secretary shall record the votes and keep the minutes and proceedings of meetings of the Board and of the Unit Owners, serve notice of meetings of the Board and of the Unit Owners, keep appropriate current records showing the names of Unit Owners of the Association together with their addresses, and shall act in the place and stead of the president in the event of the president's absence or refusal to act.

(c) Treasurer. The treasurer shall assume responsibility for the receipt and deposit in such bank accounts, and investment of funds in such vehicles, as the Board directs, the disbursement of such funds as directed by the Board, the keeping of proper books of account, the preparation of a proposed annual budget and a statement of income and expenditures to be presented to the Unit Owners at annual meetings, and the delivery or mailing of a copy of each to each of the Unit Owners.

## ARTICLE VI

### COMMITTEES

The Board shall appoint a nominating committee and may appoint such other committees as it deems appropriate in carrying out its purposes.

## ARTICLE VII

### BOOKS AND RECORDS

The books, records and financial statements of the Association, including current copies of the Declaration, Bylaws and effective rules and regulations, shall be available during normal business hours or under other reasonable circumstances, upon request to the Association, for inspection by Unit Owners, lenders, and the holders, insurers and guarantors of first mortgages on Units, pursuant to reasonable standards established from time to time by the Board by rule, including, but not limited to 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 copied, and the specification of a reasonable fee for copying the documents; provided, further, the Board shall not be required to permit the examination and copying of materials and information permitted to be excluded from examination and copying under the Condominium Act or the disclosure of which is prohibited by the laws of the State of Ohio or other the United States of America. During normal business hours or under other reasonable circumstances, the Association shall make available to prospective purchasers current copies of the Declaration, Bylaws, effective rules and regulations, and the most recent annual audited financial statement, if such is prepared.

## ARTICLE VIII

### AUDITS

The Board shall cause the preparation and furnishing of an audited financial statement of the Association for the immediately preceding fiscal year, in the following circumstances:

(a) to each requesting Unit Owner within a reasonable time after request, at the expense of the Association, upon the affirmative vote of Unit Owners;

(b) to each holder, insurer, or guarantor of a first mortgage upon a Unit which requests the same, in writing, within a reasonable time thereafter, provided the audit, if an audited statement is not already available, shall be prepared at the expense of such requesting party; and

(c) during such time, if any, as the Condominium contains fifty (50) or more Units, to each holder, insurer or guarantor of a first mortgage on a Unit who makes written request therefor, within one hundred twenty (120) days of the Association's fiscal year end, at the expense of the Association.

## ARTICLE IX

### FISCAL YEAR

Unless otherwise changed by the Board, the fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation of this Association and terminate at the end of the next following 31<sup>st</sup> day of December.

## ARTICLE X


### AMENDMENTS

Any modification or amendment of these Bylaws shall be made only by means of an amendment to the Declaration, in the manner and subject to the approvals, terms and conditions set forth therein, and shall be effective from the time a certificate setting forth such modification or amendment is delivered for recording to the Recorder of the county in which the Condominium is located.

IN TESTIMONY WHEREOF, the undersigned, the sole member of the Association, has caused these Bylaws to be duly adopted on or as of the 15<sup>th</sup> day of February, 2006.

WEST ALBANY CONDOMINIUM LLC

By: Rockford Homes, Inc., its Manager

By: 

(Print Name) Robert E. Yankam Jr.

Its: Managing member