

AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM AND BY-LAWS
FOR
Mariner's Pointe Condominium

_____, 2013

(Additional Common Elements added hereby)

This will certify that copies of this Amended and Restated Declaration and By-laws have been filed in the Office of the Fiscal Officer, Summit County, Ohio.

Fiscal Officer:

By_____

This instrument prepared by:
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AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
OF
MARINER'S POINTE CONDOMINIUM

This is the Amended and Restated Declaration of Mariner's Pointe Condominium made on or as of the _____ day of _____, 2013, pursuant to the provisions of Chapter 5311 of the Revised Code of Ohio.

Recitals

- A. Mariner's Pointe Condominium was formed by the filing of the Declaration of Mariner's Pointe Condominium on August 8, 1984 in Vol. 6925, Pg. 684 *et seq.* of the Summit County Records, which Declaration was amended by: (i) a First Amendment recorded December 27, 1984 in Vol. 7025, Pg. 561 *et seq.*; (ii) an Amendment and Restatement to Section 2 of Article VI of the Mariner's Pointe Declaration and By-laws recorded October 18, 1991 in Vol. 791, Pg. 211 *et seq.*; and (iii) a Second Amendment to Section 2 of Article VI of the Mariner's Point Condominium Declaration and Bylaws recorded April 23, 1992 in Vol. 943, Pg. 326, *et seq.* (collectively, the "Original Declaration");
- B. The Association is a corporation consisting of all Owners in Mariner's Pointe Condominium and as such is the representative of all Owners
- C. The Association desires to replace the Original Declaration in its entirety with this Amended and Restated Declaration of Mariner's Pointe Condominium in order to clarify, consolidate, update and enhance the covenants, restrictions, easements and conditions governing the Condominium and the Association.
- D. The Association further desires to submit an additional parcel of land to this Declaration, to be and constitute a part of the Common Elements, which parcel is described on Exhibit A attached hereto.
- E. Unit Owners exercising not less than 75% of the voting power of the Association have approved the adoption of this Amended and Restated Declaration, which consents are attached hereto as Exhibit D.

Definitions

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

1. **“Articles”** and **“Articles of Incorporation”** mean the articles, filed with the Secretary of State of Ohio, incorporating Mariner’s Pointe Condominium Association as a corporation not-for-profit under the provisions of Chapter 1702 of the Revised Code of Ohio, as the same may be lawfully amended from time to time.
2. **“Association”** and **“Mariner’s Pointe Condominium Association”** mean the corporation not-for-profit created by the filing of the Articles, which is one and the same as the association created for the Condominium pursuant to the provisions of the Condominium Act.
3. **“Board”** and **“Board of Directors”** mean those persons who, as a group, serve as the Board of Directors of the Association.
4. **“By-Laws”** mean the by-laws of the Association, as the same may be lawfully amended from time to time, created under and pursuant to the provisions of the Condominium 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 By-Laws is attached hereto as Exhibit B and made a part hereof.
5. **“Common Elements”** means all of the Condominium Property, except that portion thereof described in this Declaration as constituting a Unit or Units, and is that portion of the Condominium Property constituting “Common Elements” of the Condominium under the provisions of the Condominium Act.
6. **“Condominium”** and **“Mariner’s Pointe Condominium”** mean the condominium regime for the Condominium Property created under and pursuant to the provisions of the Condominium Act.
7. **“Condominium Act”** means the statutory law of the State of Ohio regulating the creation and operation of condominiums, presently Chapter 5311 of the Revised Code of Ohio, as the same may be amended from time to time.
8. **“Condominium Instruments”** means this Declaration, the By-Laws, the Drawings, the development disclosure statement provided to purchasers pursuant to § 5311.26 of the Ohio Revised Code, any contracts pertaining to the management of the Condominium Property and, as provided by the Condominium Act, “any other documents, contracts, or instruments establishing ownership of or exerting control over the Condominium Property or Unit.”
9. **“Condominium Organizational Documents”** means the Articles, the By-Laws, the Drawings, and this Declaration, as the same may lawfully be amended from time to time.
10. **“Condominium Property”** means the tract of land described in Exhibit A to the Original Declaration, all buildings, structures and improvements situated thereon, and all

easements, rights and appurtenances belonging thereto, in addition to the additional Common Elements parcel described on Exhibit A to this Declaration.

11. **“Declaration”** means this instrument by which the Condominium Property is governed, as this instrument may be lawfully amended from time to time.
12. **“Director”** and **“Directors”** mean that person or those persons serving, at the time pertinent, as a Director or Directors of the Association.
13. **“Drawings”** means the drawings for the Condominium, as defined in the Condominium Act, filed with the Original Declaration, as the same may be lawfully amended from time to time.
14. **“Eligible Holders of a First Mortgage”** means the holder of a valid, recorded first mortgage on a Unit, which holder has given written notice to the Association requesting notification of any proposed action that requires the consent of a specified percentage of Eligible Holders of a First Mortgage.
15. **“Exclusive Use Areas”** means those Common Elements reserved herein for delegation by the Board to the use of a certain Unit or Units, to the exclusion of other Units.
16. **“Limited Common Elements”** means those Common Elements serving exclusively one Unit or more than one but less than all Units, the enjoyment, benefit or use of which are reserved to the lawful occupants of that Unit or Units in this Declaration, and is that portion of the Condominium Property constituting “Limited Common Elements” of the Condominium under the provisions of the Condominium Act.
17. **“Member”** means a member of the Mariner’s Pointe Condominium Association.
18. **“Occupant”** means a person lawfully residing in a Unit, regardless of whether that person is a Unit Owner.
19. **“Person”** means a natural individual, corporation, partnership, trustee, or other legal entity capable of holding title to real property.
20. **“Rules and Regulations”** means those Rules and Regulations adopted by the Board of Directors pursuant to the Declaration or the Condominium Act, governing the use of the Common Elements or any other matter within the Board’s lawful authority, as amended from time to time.
21. **“Unit”** and **“Units”** mean that portion or portions of the Condominium Property described as a unit or units in this Declaration, and is that portion of the Condominium constituting a “unit” or “units” of the Condominium under the provisions of the Condominium Act.

22. **“Unit Owner”** and **“Owner”** 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 Ohio’s non-profit corporation statutory act.

The Plan

NOW, THEREFORE, the Association hereby adopts and establishes the following plan for condominium ownership of this property under and pursuant to the Condominium Act:

ARTICLE I: THE LAND

A legal description of the land constituting the Condominium Property, located in the Township of Coventry, Summit County, Ohio, is attached to the Original Declaration as Exhibit A and depicted in the Drawings. The additional land described in Exhibit A attached to this Declaration is hereby added to the Condominium Property as Common Elements.

ARTICLE II: NAME

The name by which the Condominium is and shall be known is “Mariner’s Pointe Condominium”.

ARTICLE III: PURPOSES; RESTRICTIONS

Section 1. Purposes. This Declaration is being made to amend and restate the covenants, conditions, restrictions and other terms and provisions forming and governing the Condominium Property.

Section 2. Restrictions. The Condominium Property shall be 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 and purposes customarily incidental thereto. Notwithstanding the foregoing, Occupants may use a Unit for business purposes provided that such use (i) complies in all respects with applicable zoning and other ordinances; (ii) is not visible from outside the Unit; and (iii) does not create a nuisance or disturbance for other Occupants or Unit Owners due to increased traffic or otherwise. Further, 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, and as may be required for the purposes of access, ingress to,

egress from, use, occupancy and enjoyment of Units, provided, however, that 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, subject to such Rules and Regulations as may from time to time be promulgated by the Board.

(c) Limited Common Elements Use. Those portions of the Common Elements described herein 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, subject to the restrictions on use of Common Elements and Limited Common Elements set forth in this Declaration and such Rules and Regulations as may from time to time be promulgated by the Board.

(d) Visible Areas. Nothing shall be caused or permitted to be hung or displayed on the outside or inside of windows (except inoffensive drapes, blinds, curtains or other window treatment) or doors, or placed on the outside walls of a building or otherwise outside of a Unit, or any part thereof, and no sign, awning, canopy, shutter or (to the extent that such limitation is not prohibited by law) television or citizens' band or other antenna, satellite dish, or transmitter, or any other device or ornament, shall be affixed to or placed upon the exterior walls or roof or any part thereof, or in or on a patio or balcony unless authorized by the Board, and subject to the Rules and Regulations. The Board may designate locations for antennae, and may require coverings for such devices, to the extent permitted by law.

(e) Nuisances. No noxious or offensive activity shall be carried on in any Unit, or upon the Common Elements, nor shall either be used in any way or for any purpose which may endanger the health of or unreasonably disturb any Occupant. The Board may, if it determines that a Unit Owner has allowed the Limited Common Elements appurtenant to a Unit to become unsightly, come on the Limited Common Elements to perform such cleaning, maintenance or other work as the Board deems necessary, and charge the Unit Owner the cost thereof (plus any other fees and penalties assessed pursuant to the Rules and Regulations of the Association in connection therewith), which shall become a special individual unit assessment against such Unit.

(f) Vehicles. The Board may promulgate Rules and Regulations restricting the parking of automobiles, trucks, boats, motorcycles, recreational and other vehicles on the Common Elements, (including, without limitation, Limited Common Elements), and may enforce such Rules and Regulations by levying fines or enforcement charges, having such vehicles towed away, or taking such other actions as it, in its sole discretion, deems appropriate.

(g) Renting and Leasing. No Unit or part thereof, unless the same is owned by the Association, shall be rented or used for transient or hotel purposes, which is defined as: (i) rental for any period less than 12 months; (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 less than an entire Unit. Any lease agreement shall be in writing, shall provide that the tenant shall be subject in all respects to the provisions hereof, and to the Rules and Regulations promulgated from time to time by the Board, and shall provide that the failure by the lessee to comply with the terms of the Condominium Organizational Documents and Rules and Regulations shall be a default under the lease. Whether or not such provisions are included in a lease of a Unit, any tenancy of a Unit shall be subject to termination for a violation by the Occupants of any covenant, condition or restriction contained in this Declaration, or the By-laws of the Association, or the Rules and Regulations of the Association. All such tenancies shall be subject to termination by legal proceedings in eviction brought by the Association pursuant to Ohio Revised Code Chapters 5321 and 1923, as agent for the and in the name of the Unit Owner, for any such violation, provided that the Association shall give the Unit Owner at least ten days' written notice of its intent to bring such an eviction proceeding. The costs of any eviction action brought by the Association, including reasonable attorney's fees, shall be a special individual unit assessment against the Unit, enforceable in the same manner as all other assessments.

(h) Signs. No sign of any kind shall be displayed to the public view on the Condominium Property except in accordance with the Rules and Regulations.

(i) Replacements. Any building erected to replace an existing building containing Units shall be of new construction, be of comparable size, design and construction to that replaced, and shall contain a like number of Units of comparable size to the Units in the building replaced.

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

(k) Building on Easements. Within the easements for the installation and maintenance of utilities and drainage facilities no structure, planting or other material (except such as exist at the time of this Declaration) shall be placed or permitted to remain 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 the easements or which may obstruct or retard the flow of water through drainage channels in the easement areas. The utility facilities within the 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 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 if approved by the Board, provided that (i) no animals shall

be permitted in any portion of the Common Elements except on a leash (not longer than six feet in length) maintained by a responsible person; (ii) the permitting of animals on the Common Elements shall be subject to such Rules and Regulations as the Board may from time to time promulgate, including, without limitation, the right to prohibit pets entirely, the right to place limitations on the size, number and type of such pets, and the right to levy fines and enforcement charges against persons who do not clean up after their pets; and (iii) the right of an Occupant to maintain an animal in a Unit shall be subject to termination if the Board, in its full and complete discretion, determines that maintenance of the animal constitutes a nuisance or creates a detrimental effect on the Condominium or other Units or Occupants.

(m) Conveyances. Each Unit shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof. The undivided interest of a Unit in the Common Elements shall be deemed to be conveyed or encumbered with the Unit even though that interest is not expressly mentioned or described in the deed, mortgage or other instrument of conveyance or encumbrance.

The right of a Unit Owner to sell, transfer or otherwise convey that Owner's Unit is not subject to any right of first refusal or similar restriction, and any Unit Owner may transfer that Owner's Unit free of any limitations. To enable the Association to maintain accurate records of the names and addresses of Unit Owners, each Unit Owner is required, at the following times, to provide the Association (by delivery to the office of the Association or to any member of the Board) written notice of the name, home and business mailing addresses, and the home and business telephone numbers of the Unit Owner and all Occupants of the Unit and the name, business address and business telephone number of any person who manages the Owner's Unit as an agent of that Owner:

- (1) within 30 days after the Unit Owner accepts delivery of a deed to a Unit;
- (2) within 30 days after a change in any of the above-described information; and
- (3) at any time that the Board requests verification or updating of the above-described information.

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

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

(o) Architectural Control. Except as specifically permitted herein, or as to approved construction existing on the date of this Declaration, no building, fence, wall, sign or other structure shall be commenced, erected or maintained upon the Condominium Property, or any part thereof, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by the Board or its designated representative, as to lawfulness and appropriateness, and as to harmony of external design, color and location in relation to surrounding structures and topography. If the Board, or its designated representative, fails to approve or disapprove such plans and specifications within 60 days after they have been submitted to it, the plans and specifications are deemed disapproved. The Board may condition such approval upon the requesting Unit Owner's agreement to maintain the same, and such agreement shall be binding upon the Unit Owner and the Unit Owner's successors in ownership of the Unit, notwithstanding any provision of the Condominium Organizational Documents to the contrary.

(p) Contractors. If a Unit Owner contracts for work to be performed upon the Condominium Property, including any improvements or alterations to the interior of a Unit, the Unit Owner shall provide the Association with a copy of the contractor's Summit County license, liability insurance certificate, and evidence of workers' compensation insurance prior to such work being performed.

ARTICLE IV: IMPROVEMENT DESCRIPTIONS

The Condominium consists of three buildings containing three side-by-side Units each, and one building containing two side-by-side Units, for a total of 11 Units. The buildings are primarily built of wood, vinyl siding, aluminum, brick, glass, drywall, and concrete. The buildings are located as shown on the Drawings, and each Unit has access to the Common Elements, which have direct access to a publicly dedicated right-of-way.

ARTICLE V: UNITS

Section 1. Unit Designations. The Unit designations are those designations shown on the Drawings. The Unit designations are also set forth in 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 floors, and the unfinished interior surface of the ceilings, all projected, if necessary by reason of structural divisions such as interior walls and partitions, to constitute complete enclosures of space, and all improvements within that space. Without limiting the generality of the foregoing, or, as appropriate, in addition, each Unit shall include the following:

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

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

(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 and air-conditioning units and heat pumps, and components thereof, if any, (even if located outside of the bounds of the Unit), serving only that Unit;

(4) all control knobs, switches, thermostats and electrical outlets (including but not limited to a Unit's exterior electrical outlets) and connections affixed to or projecting from the walls, floors and ceilings which service either the Unit or the fixtures located therein, together with the space occupied thereby;

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

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

(7) excluding from the above, however, all of the following items located within the bounds of that Unit:

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

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

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

(b) Unit Sizes: Locations and Components. The location of each part of each Unit and the number of rooms in each Unit are shown on the Drawings. The approximate size of each Unit's interior is set forth in the Drawings.

Section 3. Relocation of Boundaries of Units and Limited Common Elements.

(a) Right to Relocate Boundaries of Units and Limited Common Elements. Notwithstanding any provision in the Declaration to the contrary, to the extent not prohibited by Ohio law, the boundaries between adjoining Units and appurtenant Limited Common Elements may be relocated and the undivided interests in the Common Elements appurtenant to those Units may be reallocated by an amendment to the Declaration pursuant to the following procedures:

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

(2) In the application, the Owners of the adjoining Units may request a specific reallocation of their undivided interests in the Common Elements allocated to the adjoining Units.

(b) Board Approval of Relocation of Boundaries and Reallocation of Undivided Interests in Common Elements. Unless the Board finds any requested reallocation of the undivided interests in the Common Elements to be unreasonable, within 30 days after the Board receives the applications, the Association shall prepare, at the expense of the Owners of the adjoining Units, an amendment to the Declaration that is executed by the Owners of the affected Units and that includes all of the following:

(1) Identification of the affected Units;

(2) Words of conveyance between the Owners of the Units;

(3) A specification of the undivided interests in the Common Elements, the proportionate shares of common surplus and common expenses, and the voting power of each Unit resulting from the relocation and reallocation, the total of which shall equal the interests, shares, and powers of the former adjoining Units.

(c) Recordation of Amendment. At the expense of the Owners of the affected Units, the Association shall record the amendment to the Declaration together with both of the following:

(1) Any drawing, plat, or plans necessary to show the altered boundaries of the affected Units;

(2) The dimensions and identifying number of each Unit that results from the relocation and reallocation.

Existing liens automatically shall attach to each Unit that results from the relocation and reallocation.

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 in the Drawings as a part of a Unit, are Common Elements.

Section 2. Limited Common Elements - Description. The Limited Common Elements appurtenant to each Unit (or group of Units) shall consist of such of the following as may be construed to be Common Elements:

(a) all structural interior walls and one-half of any wall separating one Unit from the other, doors (including doors to patios, balconies, the entrance door to each Unit, and all hardware attached thereto), floors, ceilings, skylights, if any, and rafter ceilings located within the bounds of such Unit, excluding the structural and component parts thereof;

(b) all glass and screens within window and door frames within or attached to the perimeter walls of such Unit; and all doors, hinges, locks, latches and hardware within or on the perimeter walls of such Unit or on the Limited Common Areas and Facilities belonging to such Unit;

(c) all ducts and plumbing, electrical and other fixtures, equipment and appurtenances, including all heating, air-conditioning and ventilating equipment and systems, any fan coil unit located in a Unit, thermostats and control devices, if any, and sanitary and storm sewer cleanouts located within the bounds of such Unit or located outside the bounds of a Unit but serving a particular Unit, and the structure (and space thereof), if any, located outside such Unit containing equipment serving such Unit;

(d) all gas, electric, television antenna, telephone, intercom, water or other utility or service lines, pipes, wires, and conduits located within the bounds of such Unit and which serve only such Unit;

(e) all other parts of the Common Areas located within the bounds of such Unit and which serve only such Unit; and

(f) all wooden decks for all Units as they existed on the date of the Second Amendment to Section 2 of Article VI of the Original Declaration recorded at OR 943, PG 326 and dated April 15, 1992 ("Second Amendment"), including screened in enclosures, wood steps and fencing, and the areas enclosed therein and which areas serve such Unit, whether or not shown on the Drawings, as identified on the exhibits referenced in the Second Amendment.

All such Limited Common Elements are reserved for the exclusive use of the Unit Owners and Occupants of the Unit(s) intended to be served by the same.

Section 3. Undivided Interest. The par value undivided interest in the Common Elements of each Unit, as established by the original developer, is shown on 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 of a Unit shall not be separated from the Unit to which it appertains. Any attempted conveyance, encumbrance, judicial sale or other transfer of a Unit Owner's fee interest in Common Elements will be void unless the Unit to which such interest is allocated is also transferred.

Section 4. Limited Common Elements - Reallocation. Rights to the use of Limited Common Elements may be reallocated between or among Units with the prior written consent of the Board by an amendment to the Declaration pursuant to the following procedures:

(a) The Owners of the affected Units shall prepare and execute at their own expense an amendment to the Declaration that identifies the affected Units and specifies the reallocated rights to the affected Limited Common Elements.

(b) The Owners of the affected Units shall submit to the Board of Directors of the Association the amendment, accompanied by the written consents of the Owners of all affected Units and the holders of all liens on those Units except liens for real estate taxes and easements not due and payable.

(c) At the expense of the Owners of the affected Units, the Association shall record the submitted amendment to the Declaration.

Section 5. Construction of Improvements in Limited Common Elements. Notwithstanding any provision in this Declaration to the contrary, to the extent not prohibited by Ohio law and subject to the Rules and Regulations, the Board may authorize the use of the Limited Common Elements appurtenant to a particular Unit to be used by the Owner for the construction of open, unenclosed patios, hedges, decks, fences or similar improvements provided that:

(a) All requirements of subsection (o) of Article III, Section 2, above, are complied with;

(b) All such improvements are insured and maintained by the Unit Owner of the Unit to which such Limited Common Elements are appurtenant; and

(c) Such obligations to insure and maintain are memorialized in a written agreement prepared at the direction of the Board (but at the expense of the requesting Unit Owner) and recorded in the chain of title to the Unit so that all successors in title shall have notice that the insurance of such improvements are not the responsibility of the Association.

Section 6. Exclusive Use Areas. The boat docks, in addition to those Common Elements, if any, designated on the Drawings as Exclusive Use Areas, are reserved for delegation by the Board of Directors to the use of a certain Unit or Units, to the exclusion of other Units, in the Board's sole discretion, except as otherwise provided herein. The Exclusive Use Areas are subject to the Rules and Regulations governing the Common Elements in addition to any additional Rules and Regulations the Board may enact with respect to the Exclusive Use Areas.

ARTICLE VII: UNIT OWNERS' ASSOCIATION

Section 1. Establishment of Association. The Association has been formed by the filing of Articles of Incorporation with the Ohio Secretary of State to be and to serve as the Unit Owners' Association of the Condominium.

Section 2. Membership. Membership in the Association shall be limited to the Unit Owners, and every person or entity who is or becomes a record owner of a Unit is a Member of the Association, except that entities who hold an interest merely as security for the performance of an obligation shall not be Members. Membership shall be appurtenant to and may not be separated from ownership of any Unit, and transfer of a Unit shall automatically transfer membership to the transferee.

Section 3. Voting Rights. Each Unit Owner shall be entitled to one vote for each Unit owned in fee simple, and a proportionate part of a vote for ownership of an undivided fee-simple interest in a Unit, 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 cast the entire vote with respect to that Unit.

Section 4. Board of Directors. At each annual meeting of the Association, the Owners shall elect a Director or Directors to replace the Director or Directors whose terms are then expiring. As soon as reasonably possible following the end of the annual meeting, the Directors shall elect officers. The persons so elected shall take office as of the first day of January next following the annual meeting. Directors shall be elected to serve three-year terms, with not less

than one-fifth of the terms expiring annually. Nothing herein prohibits the reelection of a prior Director who is otherwise qualified to serve on the Board.

Section 5. Authority. The Board shall have all authority to manage, maintain, repair, replace, alter and improve the Common Elements and assess and collect funds for the payment thereof, and do all things, and exercise all rights provided by the Condominium Organizational Documents, or the Condominium Act, that are not specifically reserved to the Unit Owners, including, without limitation:

- (a) Hire and fire managing agents, attorneys, accountants and other independent contractors and employees that the Board determines are necessary or desirable in the management of the Condominium Property and the Association;
- (b) Commence, defend, intervene in, settle, or compromise any civil, criminal or administrative action or proceeding that is in the name of, or threatened against, the Association, the Board or the Condominium Property, or that involves two or more Unit Owners and relates to matters affecting the Condominium Property;
- (c) Enter into contracts and incur liabilities relating to the operation of the Condominium Property;
- (d) Regulate the use, maintenance, repair, replacement, modification and appearance of the Condominium Property;
- (e) Adopt Rules and Regulations for the use or occupancy of Units, the maintenance, repair, replacement, modification, and appearance of Units, Common Elements, and Limited Common elements when the actions regulated by those Rules and Regulations affect Common Elements or other Units;
- (f) Cause additional improvements to be made as part of the Common Elements;
- (g) Purchase, encumber, and convey Units, and, with the approval of not less than 75% of the voting power of the Association and the authorization of the Board of Directors, acquire an interest in other real property and encumber or convey that interest. All expenses incurred in connection with the acquisition, encumbrance, use, and operation of that interest are common expenses;
- (h) Acquire, encumber, and convey or otherwise transfer personal property;
- (i) Hold in the name of the Association the real property and personal property acquired pursuant to subsections (g) and (h) of this section;

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

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

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

(m) Promulgate and, pursuant to section 6 of this Article VII, impose reasonable enforcement assessments for violations of the Declaration, the By-Laws, and the Rules and Regulations, and reasonable charges for damage to the Common Elements or other property;

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

(o) Impose reasonable charges for preparing, recording, or copying amendments to the Declaration, resale certificates, or statements of unpaid assessments;

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

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

(r) Suspend the voting privileges of a Unit Owner who is delinquent in the payment of assessments for more than 30 days;

(s) Purchase insurance and fidelity bonds the Directors consider appropriate or necessary;

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

(u) Exercise powers that are:

(1) conferred by this Declaration or the By-laws, or Ohio law;

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

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

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

Section 6. Procedures for Enforcement of Violations.

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

(1) a description of the property damaged or the violation;

(2) the amount of the proposed charge or assessment;

(3) a statement that the Owner has a right to a hearing before the Board to contest the proposed charge or assessment;

(4) a statement setting forth the procedures to request a hearing pursuant to subsection 6(b) of this Article; and

(5) a reasonable date by which the Unit Owner must cure the violation to avoid the proposed charge or assessment.

(b) Hearing. A Unit Owner may request a hearing by delivering written notice of such request no later than the tenth day after receiving the notice provided in Subsection 6(a) of this Article. If the Unit Owner fails to make a timely request for a hearing, the right to such hearing shall be considered waived, and the Board may immediately impose the charge for damages or enforcement assessment referenced in the notice provided in Subsection 6(a) of this Article, or may allow a reasonable time to cure the violation before imposing a charge or assessment. If a Unit Owner requests a hearing, the Board shall not levy the charge or assessment before holding a hearing, and will, at least seven days prior to the hearing, provide the Unit Owner with a written notice of the date, time and location of the hearing. Within 30 days following a hearing at which the Board imposes a charge or assessment, the Board shall deliver a written notice of the charge or assessment to the Unit Owner.

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

(1) upon the Unit Owner shall be delivered personally to the Owner or Occupant at the Unit, or mailed (by certified mail, return receipt requested) to the

Owners at the address of the Unit, provided that if the Owner has provided the Association with an alternate address, all such notices shall be mailed (by certified mail, return receipt requested) to the Owner at such alternative address.

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

Section 7. Delegation of Authority: Professional Management. The Board may delegate all or any portion of its authority to discharge its responsibilities to a managing agent. This delegation of authority and responsibility to a managing agent may be evidenced by one or more management contracts which may provide for the payment of reasonable compensation to such managing agent as a common expense, provided, however, that any agreement for professional management: shall be terminable by the Association for cause on 30 days' written notice; shall be terminable by either party, without penalty, on 90 days' written notice; and shall not exceed three years.

Section 8. Limitation of Authority: Capital Additions and Improvements. The Association's power to make expenditures of Association funds shall be limited in that the Association shall have no authority to expend the Association's funds for any capital additions or improvements (other than for purposes of replacing, restoring or repainting existing portions of the Common Elements, subject to all the provisions of the Declaration) if the cost thereof in any twelve consecutive month period would exceed \$5,000.00 (which amount shall automatically increase on an annual basis by a percentage equal to the percentage increase in the Consumer Price Index for All Urban Consumers, U.S. City Average, All Items (1982-1984 = 100)), without the prior consent of Unit Owners exercising no less than seventy-five percent (75%) of the voting power of Unit Owners.

ARTICLE VIII: AGENT FOR SERVICE

The name of the person to receive service of process for the Association, and that person's residence or place of business, is:

Dr. Lynn J. DeFreest
660 Isle View Dr.
Akron, OH 44319

If 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. To the extent that the Board, in the exercise of its duty to use ordinary care and prudence in the management of the property and financial affairs of the Condominium, allocates funds therefore, the Association shall maintain and repair the Common Elements, including and not limited to utility facilities serving more than one Unit, utility lines in the Common Elements, lawns, shrubs, trees, drives, walkways, docks and all buildings which are a part of the Common Elements, provided, however, that the Association shall not be required to maintain or repair the Limited Common Elements appurtenant to a single Unit. The Association shall be responsible to maintain and repair Limited Common Elements appurtenant to more than one Unit, including, but not limited to, septic systems, and the cost of such maintenance or repair shall be a common expense payable by the Association. The Association shall also maintain and repair the light fixtures on exterior Unit walls.

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 the Limited Common Elements appurtenant to that Owner's Unit. Without limiting the generality of the foregoing, this repair and maintenance responsibility shall include repair and maintenance of all windows, screens and doors, including the frames, sashes and jambs, and the hardware therefor; and the deck, patio, or other Limited Common Elements appurtenant to an Owner's Unit and any improvements therein, and replacement of exterior light bulbs. If a Unit Owner shall fail to make any such repair or perform such maintenance, or if 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 or his, her or its predecessors in title to timely pursue to conclusion a claim under any warranty, express, implied, or imposed by law, then in any such event, the Association may perform such repair or maintenance and, to the extent that the cost is not covered by insurance proceeds collected by the Association, the costs not recovered by the Association shall constitute a special individual Unit assessment, as hereinafter defined, on the Unit owned by such Unit Owner. The determination that such maintenance or repair is necessary, or has been so caused, shall be made by the Board.

ARTICLE X: UTILITY SERVICES

Each Unit Owner by acceptance of a deed to a Unit agrees to pay for utility services separately metered or sub-metered or separately charged by the utility company or the Association to that Unit. If any utility service is not separately metered, the cost thereof shall be a common expense and paid by the Association.

ARTICLE XI: INSURANCE; LOSSES; BONDS

Section 1. Special Form Coverage Insurance. The Board shall have the authority to and shall obtain insurance for all buildings, structures, supplies, machinery, fixtures and equipment and common personal property and supplies now or at any time hereafter constituting a part of the Common Elements or common property of the Association, against loss or damage by fire,

lightning, and such other perils as are ordinarily insured against by standard “special form” coverage, in amounts at all times sufficient to prevent the Unit Owners from becoming co-insurers under the terms of any applicable co-insurance clause or provision and not less than 100% of the current replacement cost of such items (exclusive of land, foundations, footings, excavations, and other items normally excluded from coverage), as determined from time to time by the insurer, with guaranteed replacement cost endorsement or replacement cost endorsement, and if there is a co-insurance provision, with agreed amount endorsement, and with a reasonable deductible determined by the Board. This insurance:

(a) shall provide coverage for fixtures and equipment located within Units, interior walls, windows and doors and the frames, sashes, jambs and hardware thereof, all as originally built or constructed, even though these improvements may be parts of Units; and any other items of personal property for which coverage is required by institutional mortgagees, guarantors and insurers of first mortgage loans, the federal national mortgage association, the federal home loan mortgage corporation, the federal housing administration, the veterans administration, and similar institutions;

(b) shall provide that no assessment may be made against a first mortgage lender or its insurer or guarantor, or any designee of the foregoing, and that any assessment under such policy made against others may not become a lien on a Unit and its appurtenant interests superior to a first mortgage. The carrier’s charter, by-laws or policy may not make loss payments contingent upon action by the carrier’s board of directors, policyholders or members, nor may the policy include any limiting clause (other than insurance conditions) which could prevent any Unit Owner or holder, insurer or guarantor of a first mortgage on a Unit, from collecting insurance proceeds;

(c) shall be obtained from an insurance company authorized to write such insurance in the state of Ohio that has a Financial Strength Rating of “A”, or better, as determined by the then latest edition of *Best’s Insurance Reports*, or its successor guide, or comparable rating by a nationally recognized rating agency, or such higher rating as may, from time to time, be required by institutional mortgagees, guarantors and insurers of first mortgage loans, the federal national mortgage association, the federal home loan mortgage corporation, the federal housing administration, the veterans administration, and similar institutions;

(d) shall provide that its coverage is primary, and be written in the name of the Association for the use and benefit of the individual Unit Owners and their mortgage holders, 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 and their mortgage holders, as their interests may appear. Each Unit Owner and each Unit Owner’s mortgagee, if any, shall be the beneficiaries of the policy in proportion to the undivided interest in Common Elements appurtenant to each respective Unit;

(e) shall contain or have attached the insurance industry's standard mortgagee clause (without contribution) commonly accepted by institutional mortgage investors in the area in which the Condominium Property is located, and require the insurer to provide a certificate of insurance to a mortgagee or Unit Owner upon request;

(f) shall, if available, contain a waiver of subrogation of rights by the carrier as to the Association, its officers and Directors, and all Unit Owners, and the rights of the various parties to collect pursuant to such insurance shall not be prejudiced by the acts or failure to act of any Unit Owner, Director or Officer of the Association, or any person under the control of the Association; and

(g) shall contain provisions recognizing any Insurance Trust Agreement and such other endorsements and meet such other requirements as are standard for similar projects in the area, including, without limitation and where available without excessive cost, inflation guard endorsement, building ordinance and law endorsement, and boiler (at not less than \$50,000 per accident per location, if applicable) and machinery endorsement if applicable, and such other endorsements as are, from time to time, required by institutional mortgagees, guarantors and insurers of first mortgage loans, the federal national mortgage association, the federal home loan mortgage corporation, the federal housing administration, the veterans administration, and similar institutions;

The cost of this insurance shall be a common expense, payable by the Association. Certificates of insurance shall be issued to each Unit Owner and mortgagee upon request.

Section 2. Liability Insurance. The Association shall obtain and maintain a comprehensive commercial general liability insurance policy written on a per-occurrence basis, covering all of the Common Elements and any other areas under the Association's supervision, insuring the Association, the Directors, and the Unit Owners, with such limits as the Board may determine, but no less than the greater of (a) the amounts generally required by private institutional mortgage investors for projects similar in construction, location and use, and (b) \$1,000,000, for bodily injury, including deaths of persons, and property damage, arising out of a single occurrence. This insurance shall have the insurance industry's standard mortgagee clause, shall contain a "severability of interest" 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 such additional coverages commonly required by private mortgage investors for developments similar in construction, location and use including, without limitation, contractual liability, coverage for legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Elements and arising out of lawsuits related to employment contracts of the Association, if any, and such additional coverages as are required by institutional mortgagees, guarantors and insurers of first mortgage loans, the federal national mortgage association, the federal home loan mortgage corporation, the federal housing administration, the veterans administration, and similar institutions. Each such policy must provide that it may not be

canceled or substantially modified by any party, without at least 30 days' prior written notice to the Association.

Section 3. Fidelity Coverage. The Board may, to the extent such coverage is available, obtain and maintain fidelity coverage for the Association, and shall require professional management to carry such insurance, against dishonest or fraudulent acts on the part of the officers, directors, trustees and employees of the Association and all agents or volunteers responsible for handling funds belonging to or administered by the Association. The fidelity bond or insurance shall name the Association as the named obligee or insured and shall be written in an amount sufficient to provide protection, which is in no event less than the greater of: (i) the maximum funds (including reserves) that will be in the custody of the Association or its agent at any time; or (ii) the sum of three months worth of assessments plus the Association's reserves. 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 bond or policy shall provide that it shall not be canceled or substantially modified (including cancellation for non-payment of premium) without at least 30 days' prior written notice to the Association, any insurance trustee, and any holder, insurer, guarantor or servicer on behalf of any holder of any mortgage on a Unit who requires such rights. Any managing agent that handles funds for the Association shall be required to obtain its own fidelity bond providing similar coverage.

Section 4. Other Association Insurance. In addition, the Board may purchase and maintain such other insurance as the Board may determine, or as may be required by law (including, without limitation, workers' compensation and similar insurance where applicable) or as may be required by institutional mortgagees, guarantors and insurers of first mortgage loans, the federal national mortgage association, the federal home loan mortgage corporation, the federal housing administration, the veterans administration, and similar institutions. All insurance shall be obtained from generally acceptable insurance carriers.

Section 5. Insurance Representative; Power of Attorney. Notwithstanding any of the foregoing provisions of this Article, or any requirement relating to property or liability insurance herein, there may be named, under any policy obtained by the Association, as an insured on behalf of the Association, its authorized representative, including any trustee with whom the Association may enter into an insurance trust agreement, or any successor to such trustee, who shall have exclusive authority to negotiate losses under any such policy and to perform such other functions as are necessary to accomplish this purpose. 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 6. Unit Owners' Insurance. Each Unit Owner must carry insurance on his or her Unit against loss or damage by fire, lightning or other casualty and may carry such other 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. If 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. Each Unit Owner shall provide to the Association, within five days after request by the Association, a copy of a current insurance policy or certificate evidencing the insurance required under this Section.

Section 7. Sufficient Insurance. If 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 applied by the Board in payment therefor; provided, however, that if within 60 days after such damage or destruction the Unit Owners and Eligible Holders of a First Mortgage, 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 8. Insufficient Insurance. If 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 Holders of a First Mortgage if they are entitled to do so pursuant to the provisions of this Declaration shall elect within 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 9. Compliance with Institutional Requirements. Notwithstanding any provision to the contrary contained herein, the Association shall maintain such insurance coverage as is required to be obtained by any national institutional holder, purchaser, guarantor, insurer or servicer of a first mortgage secured by a Unit in the Condominium.

ARTICLE XII: RESTORATION OF DAMAGE OR DESTRUCTION

Section 1. Obligation to Restore. In the event of damage to or destruction of all or any part of a building, structures or fixtures constituting a part of the Condominium Property, or the taking of all or any part of a building, structures or fixtures constituting a part of the Condominium Property in any condemnation or eminent domain proceeding, the Association shall promptly restore or replace the same, unless an election is made in accordance with the requirements of this Article, not to do so.

Section 2. Election not to Restore. The Association may, with the consent (obtained within 60 days after such damage, destruction or taking) of Unit Owners entitled to exercise not less than eighty percent (80%) of the voting power of Unit Owners and the consent of Eligible Holders of a First Mortgage on Units to which at least seventy-five percent (75%) of the votes of Units subject to mortgages held by Eligible Holders of a First Mortgage appertain, determine not to repair or restore such damage, destruction or taking. In the event of such election not to repair or restore such damage, destruction or taking, the Condominium Property shall either be sold as upon partition (and the Condominium regime terminated and dissolved) pursuant to subsection (a) of this section, or the Association shall distribute the proceeds among the Owners (and their mortgagees and other lien holders as their interests may appear) pursuant to subsection (b) of this section, in proportion to the damage done to their interests by the failure of such damage, destruction or taking to be repaired or restored.

(a) Dissolution of Condominium and Partition Sale. Upon an election not to repair or restore all damage, destruction or taking pursuant to Section 2 of this Article, Owners of Units exercising a majority of the voting power of the Unit Owners may bring an action in partition for the sale of the entire Condominium Property, in which event the net proceeds of such sale, along with the net proceeds of insurance and any other indemnity arising because of the damage or destruction, shall be distributed among all Unit Owners in proportion to the undivided interests in the Common Elements appurtenant to their respective Units. No Owner shall be entitled to receive any portion of those proceeds until all liens and encumbrances on the Owner's Unit (except taxes and assessments of political subdivisions not then due and payable) are paid, released or discharged.

(b) No Partition Sale/Dissolution. Upon an election not to repair or restore all damage, destruction or taking pursuant to Section 2 of this Article, if the Unit Owners do not elect to bring an action in partition pursuant to Section 2(a) of this Article, the net proceeds of insurance or awards paid by reason of such damage or destruction or such taking shall (after payment to damaged Unit Owners in accordance with the balance of this subsection (b)) be added to the Association's reserves, to be used by the Association for future capital improvements, repair or replacements.

If part of the buildings, structures and fixtures not restored or replaced are part of one or more Units, then there shall be allocated and disbursed from the insurance and condemnation proceeds and awards, to each Unit Owner whose Unit cannot be so restored or replaced, and his, her or its respective first mortgagee, as their interests may appear, either:

(1) such amount as would be required for the Unit Owner to restore or repair such damage or taking, if the repair or restoration would return the Unit to tenantable condition equal to the size and condition thereof existing immediately prior to such damage, destruction or taking. No Owner shall be entitled to receive any portion of those proceeds until all liens and encumbrances on the Owner's Unit (except taxes and assessments of political subdivisions not then due and payable) are paid, released or discharged; or

(2) if such restoration is not possible, an amount equal to the fair market value of the Unit immediately prior to such damage, destruction or taking. In that event, upon such distribution, such Unit or Units, and the owners thereof, shall be immediately and automatically divested of any interest in the unrestored Unit 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, (x) the voting right of that Unit will be allocated among all other Units in proportion to their respective voting powers in the Association, and (y) 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. No Owner shall be entitled to receive any portion of those proceeds until all liens and encumbrances on the Owner's Unit (except taxes and assessments of political subdivisions not then due and payable) are paid, released or discharged.

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 the loss with the condemning authority and to receive the award or proceeds of settlement, in trust, for the use and benefit of the Unit Owners and their mortgagees as their interests may appear. Notwithstanding the foregoing, if 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 loss, that Unit Owner may, at his, her or its 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, 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 such 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 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 Eligible Holders of a First Mortgage on Units to which at least fifty-one percent (51%) of the votes of Units subject to mortgages held by Eligible Holders of a First Mortgage appertain. 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 distributed 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. Notwithstanding the foregoing, if 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 his, her or its 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 his, her or its 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.

Section 3. Power of Attorney. Each Unit Owner, by acceptance of a deed to a Unit, appoints the Association, or its designated representative, or authorized successor, as his, her or its 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 the 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 a right and easement for access to and from his, her or its Unit, and a right and easement for utilities serving that 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, provided that no such rule or regulation shall limit or prohibit the right to utility services or the right of ingress and egress to a Unit, or any part thereof, or to that Unit's Limited Common Elements. Any Unit Owner may delegate that Unit Owner's right of enjoyment to the Common Elements and to ingress to and egress to the members of that Unit Owner's family and to Occupants.

Section 2. Right of Entry for Repair, Maintenance and Restoration. The Association shall have a right of necessary entry and access to, over, upon and through all of the Condominium Property, including each Unit (but only with the Unit Owner's prior consent, except in cases of emergency), 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 and prior consent; otherwise, the Association shall give the Unit Owners or Occupants of a Unit no less than 24-hours' advance notice and obtain the Unit Owners' or Occupants' consent prior to entering a Unit or its appurtenant Limited Common Elements.

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

Section 4. Easement for Support. Every portion of a building or utility line or any improvement on any portion of the Condominium Property contributing to the support of another building, utility line or improvement on another portion of the Condominium Property shall be

burdened with an easement of support for the benefit of all other such buildings, utility lines, improvements and other portions of the Condominium Property.

Section 5. Easements for Utilities and Operation of the Condominium Property. There is hereby created upon, over and under all of the Condominium Property easements to the Association for ingress and egress to, and the installation, replacing, repairing and maintaining of all utilities, including, but not limited to water, sewer, gas, telephone, communication lines, electricity, security systems, master television antennas and cable television. By this easement it shall be expressly permissible for the Association to grant to the providing company and/or contractors permission to construct and maintain the necessary poles and equipment, wires, circuits, conduits and other appurtenances and improvements on, above, across and under the Condominium Property, so long as such poles, equipment, wires, circuits, conduits, appurtenances and improvements do not unreasonably interfere with the use and enjoyment of the Condominium Property. Should any utility or other company furnishing a service request a specific easement by separate recordable document, the Board shall have the right to grant such easement without conflicting with the terms hereof. Additionally, to the extent that such grant does not unreasonably interfere with the use and enjoyment of the Condominium Property, the Association shall have the authority, on behalf of the Association and the Unit Owners, to grant permits, licenses and easements on, above, across and under the Condominium Property for utilities, roads and other purposes necessary, in the sole opinion of the Board, for the proper operation of the Condominium.

Section 6. Easement for Services. A non-exclusive easement is hereby granted to all police, fire, ambulance, postal, delivery, and garbage 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.

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

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

ARTICLE XV: ASSESSMENTS AND ASSESSMENT LIENS

Section 1. Types of Assessments. 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: (1) annual operating assessments, (2) special assessments for capital

improvements, and (3) 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 the health, safety and welfare of Unit Owners and Occupants and the best interests of the Condominium Property.

Section 3. Elements-Appportionment; Due Dates.

(a) Annual Operating Assessments.

(1) Prior to the beginning of each fiscal year of the Association, the Board shall estimate, and prorate among the Units on the basis of the undivided interest of each Unit in the Common Elements, common expenses of the Association consisting of the following:

A. the estimated next fiscal year's cost of the maintenance, repair, and other services to be provided by the Association;

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

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

D. the estimated amount required to be collected to maintain a working capital reserve fund in an amount deemed reasonable by the Board for normal operations of the Association;

E. an amount deemed adequate by the Board to maintain a reserve for the cost of unexpected repairs and replacements and periodic maintenance, repair and replacement of 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 for the funding of insurance deductibles in the event of casualty loss, which amount shall not be less than ten per cent of the budget for that year unless the reserve requirement is waived annually by the Unit Owners exercising not less than a majority of the voting power of the Association; and

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

perform these services, and any other costs constituting common expenses not otherwise herein specifically excluded.

(2) 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 annual operating assessment for each separate Unit. For administrative convenience, any such assessment may be rounded so that monthly installments will be in whole dollars.

(3) The annual 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, semi-annual, quarterly or monthly increments. The due dates of any such installments shall be established by the Board, and, unless otherwise provided, the Association shall collect on or before the first day of each month from those who own the Unit an equal monthly pro-rata share of the annual operating assessment for that Unit.

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

(5) If assessments collected during any fiscal year are in excess of the funds necessary to meet the anticipated expenses for which the same have been collected, the excess shall be deemed to be retained by the Board as reserves, and shall in no event be deemed profits nor available, except on dissolution of the Association, for distribution to Unit Owners.

(b) Special Assessments for Capital Improvements.

(1) In addition to the annual operating assessments, the Board may levy, in any fiscal year, special assessments to construct, reconstruct or replace capital improvements on the Common Elements to the extent that reserves therefor are insufficient, provided that new capital improvements not replacing existing improvements (except new capital improvements required by governmental regulation or to correct any deficiency or defect creating a safety or health hazard) shall not be constructed nor funds assessed therefor without the prior consent of Unit Owners exercising no less than seventy-five percent (75%) of the voting power of Unit Owners.

(2) 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. The Board may levy an assessment against an individual Unit, or Units, to reimburse the Association for those costs incurred in connection with that Unit or Units properly chargeable by the terms hereof to a particular Unit such as, but not limited to, the cost of making repairs the responsibility of a Unit Owner; the cost of insurance premiums separately billed to a Unit Owner; the cost of cleaning, maintaining or repairing the Unit's Limited Common Elements where, in the opinion of the Board, the Owner has allowed the same to become unsightly or unsafe; penalties and charges imposed pursuant to Rules and Regulations of the Board for violations of the Declaration, By-Laws and Rules and Regulations; and a Unit Owner's enforcement and arbitration charges including, without limitation, the costs and attorneys' fees involved in bringing actions to enforce the terms of the Declaration, By-Laws, and Rules and Regulations. Any such assessment shall become due and payable on such date as the Board determines, and gives written notice to the Unit Owners subject thereto.

Section 4. Effective Date of Assessments. 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 days prior to the due date thereof, or the due date of the first installment thereof, if to be paid in installments. Written notice mailed or delivered to a Unit Owner's Unit shall constitute notice to that Unit Owner, unless the Unit Owner has delivered written notice to the Board of a different address for such notices, in which event the mailing of the same to that last designated address shall constitute notice to that Unit Owner.

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

(a) Interest, Fees and Costs. If any assessment, or any installment or portion of any assessment is not paid within ten days after the same has become due, the entire unpaid balance shall immediately, without notice or demand, become due and payable, and the Board, at its option, without notice or demand, may charge additional amounts for:

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

(2) enforcement charges and collection costs (including, without limitation, attorneys' and paralegal fees) the Association incurs or estimates that it will incur in connection with the collection of the delinquency;

(3) interest on the entire unpaid balance of assessments and costs incurred by the Association in connection with such collection, at the rate of 8% per annum or at such other rate as the Board may from time to time determine; and

(4) any other charges authorized by the Declaration, By-Laws or the Rules and Regulations promulgated by the Board, (collectively referred to herein as the “interest, fees and costs”), all to the extent not prohibited by Ohio law.

(b) Application of Payments. Payments made by a Unit Owner for assessments shall be applied in the following order:

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

(2) for the payment of administrative late fees charged with respect to the delinquency applicable to the Unit;

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

(4) to the payment of delinquent installments or portions of assessments which remain unpaid;

(5) to the payment of current assessments.

(c) Certificate of Lien. Annual operating and both types of special assessments, together with interest, fees and costs, shall be a charge and a continuing lien in favor of the Association upon the Unit against which each such assessment is made, from the effective date thereof. At any time after an installment or portion of an assessment levied pursuant hereto remains unpaid for ten or more days after the same has become due and payable, a certificate of lien for all or any part of the unpaid balance of that assessment, with interest, fees and costs, may be filed with the recorder of county in which the Condominium Property is located, pursuant to authorization given by the Board. The certificate, and thereafter, renewal certificates as necessary to keep the lien in effect, shall contain a description of the Unit against which the lien exists, the name or names of the record owner or owners thereof, and the amount of the unpaid balance of the assessment with interest, fees and costs, and shall be signed by the president or other chief officer of the Association.

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

(e) Action to Discharge Lien. Any Unit Owner who believes that an assessment chargeable to his, her or its Unit (for which a certificate of lien has been filed by the Association) has been improperly charged against that Unit, may bring an action in the court of common pleas of 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.

(f) Personal Obligation of Owners. Each such assessment together with interest, fees and 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, fees and costs shall not be the personal obligation of that Owner or Owners' successors in title unless expressly assumed by the successors, provided, however, that the right of the Association to obtain a lien against that Unit, or to foreclose any lien thereon for these delinquent assessments, interest, fees and costs shall not be impaired or abridged by reason of the transfer, but shall continue unaffected thereby.

(g) Legal Actions. In addition to the lien permitted by this Section, the Association, as authorized by the Board, may bring an action at law against the owner or owners personally obligated to pay the same, an action to foreclose a lien, or any other action permitted by law. In any foreclosure action, the owner or owners affected shall be required to pay a reasonable rental for that Unit during the pendency of such action, and the Association shall be entitled to the appointment of a receiver to collect rental. Rental collected by a receiver during the pendency of a foreclosure action shall be applied first to the payment of the portion of the common expenses chargeable to the Unit during the pendency of the foreclosure action. The Association shall be entitled to become a purchaser at any foreclosure sale.

(h) No Waiver. 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 his, her or its Unit.

Section 6. Priority of Lien. The lien described in this section is prior to any lien or encumbrance subsequently arising or created except liens for real estate taxes and assessments of political subdivisions and liens of first mortgages that have been filed for record and may be foreclosed in the same manner as a mortgage on real property in an action brought on behalf of the Association by the president or other chief officer of the Association pursuant to authority given to that individual by the Board of Directors.

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: NOTICES TO MORTGAGEES

Any holder, insurer, guarantor or servicer of a first mortgage, upon written request to the Association (which request states the name and address of such holder, insurer, guarantor or servicer and the Unit designation or address), shall have the right to inspect Association documents and records on the same terms as the Members and shall be entitled to timely written notice by the Association of the following:

- (a) any proposed amendment pursuant to Article XVII of this Declaration effecting a change in (i) the boundaries of any Unit; (ii) the undivided interest of any Unit; or (iii) the purposes to which any Unit or the Common Elements are restricted;
- (b) any proposed termination of the Condominium as a condominium regime (which notice must be given at least 30 days before any action is taken);
- (c) any condemnation, eminent domain proceeding, or casualty loss which may affect a material portion of the Condominium Property (including, without limitation, any such event resulting in losses greater than ten percent (10%) of the annual budget) or any Unit on which there is a first mortgage held, insured or guaranteed by such eligible holder;
- (d) any decision by the Association not to restore or repair any portion of the Condominium Property (after damage or destruction or partial condemnation), or not to restore or repair such property in a manner specified by the Condominium Organizational Documents;
- (e) any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- (f) any decision by the Association to renew or rehabilitate the Condominium Property;
- (g) any decision by the Association to construct significant new capital improvements not replacing existing improvements;
- (h) times and places of Unit Owners' meetings;
- (i) any default under the Condominium Organizational Documents which gives rise to a cause of action against a Unit Owner whose Unit is subject to the

mortgage of such holder, insurer, guarantor or insurer where the default has not been cured in 60 days; and

(j) any proposed action which requires the consent of a specified percentage of Eligible Holders of a First Mortgage;

ARTICLE XVII: 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) shall require the consent of Unit owners exercising not less than seventy-five percent (75%) of the voting power of Unit owners. Eligible Holders of a First Mortgage who receive a written request to approve changes, additions, or amendments sent by certified or registered mail, return receipt requested, and who do not deliver or post to the requesting party a negative response within thirty (30) days after receipt of same, shall be deemed to have approved such request. Notwithstanding the foregoing:

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

(i) the boundaries of any Unit;

(ii) the undivided interest in the Common 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;

(b) the consent of all Unit owners shall be required to terminate the Condominium; and

(c) Without a vote of the Unit owners, the Board of Directors may amend the Declaration in any manner necessary for any of the following purposes:

(i) To meet the requirements of institutional mortgagees, guarantors and insurers of first mortgage loans, the federal national mortgage association, the federal home loan mortgage corporation, the federal housing administration, the veterans administration, and similar institutions;

(ii) To meet the requirements of insurance underwriters;

(iii) To bring the Declaration into compliance with the Condominium

Act;

(iv) To correct clerical or typographical errors or obvious factual errors in the Declaration or an exhibit to the Declaration;

(v) To designate a successor to the person named to receive service of process for the unit owners association. If the association is incorporated Ohio, this may be accomplished by filing with the secretary of state an appropriate change of statutory agent designation.

Section 2. Method to Amend. An amendment to this Declaration (or the Drawings or Bylaws), adopted with the consents of Unit Owners hereinbefore required, 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 duly adopted and executed in accordance with the foregoing provisions shall be effective upon the filing of the same with the Summit County Fiscal Officer.

ARTICLE XVIII: GENERAL PROVISIONS

Section 1. Covenants Running with the Land. The covenants, conditions, restrictions, easements, reservations, liens and charges created hereunder or hereby shall run with and bind the land, and each part thereof, and shall be binding upon and inure to the benefit of all parties having any right, title or 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. Enforcement. In addition to any other remedies provided in this Declaration, the Association, and each Unit Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens and charges set forth herein or in the By-Laws or now or hereafter imposed by or through the Association's Rules and Regulations. Failure by 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, and 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. Notwithstanding the foregoing, in the event of any dispute between the Association and any Unit Owner or Occupant, other than with regard to assessments, that cannot be settled by an agreement between them, the matter shall first be submitted to arbitration in accordance with and pursuant to the arbitration

law of Ohio then in effect (presently Chapter 2711 of the Revised Code of Ohio), by a single independent arbitrator selected by the Board.

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. If 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 way affect any other provisions of this Declaration, which provisions shall remain in full force and effect.

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

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

STATE OF OHIO)
)SS
SUMMIT COUNTY)

BEFORE ME a notary public in and for said county and state, personally appeared _____, the _____ of Mariner's Pointe Condominium Association who acknowledged that he/she did sign the foregoing instrument and that the same is his/her free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at _____, Ohio this ____ day of _____, 2013.

Notary Public
My commission expires:_____

This instrument prepared by:
David J. Lindner, Esq.
BUCKINGHAM, DOOLITTLE & BURROUGHS, LLP
1375 East Ninth Street, Suite 1700
Cleveland, Ohio 44114
(216) 621-5300

«CL2:409354_v1»

Exhibit A

Legal Description of Additional Common Element Property Added

Situated in the Township of Coventry, County of Summit and State of Ohio and known as being a part of Tract No. 13 in said Township and more fully described as follows:

Beginning at the intersection of the tangent centerline of State Mill Road (County Highway No. 74) and the Southeasterly line of Triple Shores Allotment as recorded in Plat Book 31, Page 72, of the Summit County Record of Plats; thence N 87° 57' 40" E along the tangent centerline of said State Mill Road 63.05 feet to an iron pipe at the P.I. of a 24 degree curve; thence continuing along the tangent centerline and the centerline of said State Hill Road, N 50° 32' 40" E, 258.23 feet to a point in said centerline; thence N 53° 10' 40" E, along said centerline, 94.02 feet to a railroad spike and the true place of beginning:

Thence continuing N. 53° 10' 40" E along said centerline 50.00 feet to a point:

Thence S 27° 39' 16" E, 126.52 feet to a point;

Thence S 19° 43' 00" W, 50.00 feet to a point;

Thence S 14° 47' 00" E, 15.00 feet to a point;

Thence S 48° 51' 14" W, 27.93 feet to a point;

Thence S 32° 02' 00" W, 25.00 feet to a point;

Thence N 55° 28' 30" W, 8.00 feet to an iron pipe;

Thence N 08° 24' 30" E, 79.28 feet to an iron pipe;

Thence N 19° 22' 00" W, 57.45 feet to an iron pipe;

Thence N 39° 02' 00" W, 59.33 feet to the true place of beginning and containing 0.1759 acres of land as determined by Charles J. Messmore, Registered Surveyor in June 1983, but subject to all legal roads, highways and easements of record.

Parcel No. 1908734 – Alt ID CO0031305002001

Exhibit B

BY-LAWS (Code of Regulations)

of

MARINER'S POINTE CONDOMINIUM ASSOCIATION

ARTICLE I: NAME AND LOCATION

The name of the Association is Mariner's Pointe 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 Mariner's Pointe 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 Directors of the Association shall be at such place in Summit County, Ohio as the Board of Directors ("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 Mariner's Pointe Condominium, ("the Declaration"), recorded simultaneously herewith with the Summit County Recorder.

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 each year, on a date and at an hour established, from time to time, by the Board.

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 or emailing a copy of such notice at least seven days before such meeting, to each Unit Owner entitled to vote thereat, addressed to the Unit Owner's Unit or email 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 hand-delivering a copy of that notice to such Unit address at least seven 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 purpose of the meeting.

Section 5. Quorum. Those present in person or by proxy when action is taken during a meeting of the Association constitute a sufficient quorum.

Section 6. 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 the secretary prior to the meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by a Unit Owner of his, her or its Unit.

Section 7. 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 or such other procedural rules as the Board may establish shall govern the conduct of all meetings of Unit Owners except as otherwise specifically provided in the Condominium Organizational Documents or by law.

Section 8. 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 a majority 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. Current Directors. The Directors shall be those three persons serving as the Directors of the Association at the time of this Declaration.

Section 2. Successor Directors. The number, times of election, and terms of office of those who will serve as Directors of the Association to succeed the current Directors, shall be as provided in the Declaration and these By-Laws. Directors shall be elected from among the Unit Owners or the spouses of Unit Owners. If a Unit Owner is not an individual, that Unit Owner may nominate for the Board of Directors any principal, member of a limited liability company, partner, director, officer, or employee of that Unit Owner.

Section 3. Removal. Any Director may be removed from the Board with or without cause, by the vote of Unit Owners holding at least 67% of the voting power of the Unit Owners. In the event of the death, resignation or removal of a Director, that Director's successor shall be selected by the remaining Directors to 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.

Section 4. Nomination. Nominations shall be made from the floor at the meetings or as the Board may otherwise determine.

Section 5. Election. Election to the Board by the Unit Owners shall be by secret written ballot if requested by any Owner. At such elections, the Unit Owners or their proxies may cast, in respect to each vacancy, such voting power as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 6. 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 his or her actual expenses incurred in the performance of duties.

Section 7. Regular Meetings. Regular meetings of the Board shall be held no less than quarterly, without notice, on such date and at such place and hour as may be fixed from time to time by resolution of the Board.

Section 8. Special Meetings. Special meetings of the Board shall be held when called by the president of the Board, or by any two Directors, after not less than three days notice to each Director.

Section 9. Quorum. The presence at any duly called and noticed meeting, in person or by proxy, of Directors entitled to cast a majority of the voting power of Directors shall constitute a quorum for such meeting.

Section 10. Voting Power. Except as otherwise provided in the Condominium Organizational Documents, or by law, the 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 shall be sufficient to determine that matter.

Section 11. Deadlocks. If the Board becomes deadlocked on any issue requiring a vote of the Board, the dispute will be resolved as follows: if those Members voting for and against the subject issue creating deadlock are able to agree on a single provisional Director, such Director will be appointed and his vote on the issue will be final and binding on all parties. Such provisional director will not serve as a Director or otherwise as a Member except with respect to the deadlocked issues or issues. If the Members are unable to agree on a provisional Director, the dispute shall be submitted to arbitration pursuant to the arbitration law of Ohio then in effect (presently Chapter 2711 of the Revised Code of Ohio), by a single independent arbitrator agreed upon by the Directors or, if such agreement cannot be reached, selected by the court of common pleas.

Section 12. Conduct of Meetings. Unless otherwise determined by the Board, meetings of the Board shall be open to all Unit Owners. The Board shall have the prerogative to close their

meetings to all non-Board members whenever the same is necessary or convenient to the efficient administration of the Board's affairs. A meeting of the Board may be held by any method of communication, including electronic or telephonic communication provided that each member of the Board can hear (in the case of telephonic) or view (in the case of other electronic methods), participate and respond to every other member of the Board.

Section 13. 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 affirmative vote or approval, in a writing or writings, of all of the Directors.

Section 14. Powers. The Board shall exercise all powers and authority, under law, and under the provisions of the Condominium Organizational Documents, that are not specifically and exclusively reserved to the Unit Owners by law or by other provisions thereof, and without limiting the generality of the foregoing, the Board shall have the right, power and authority to:

- (a) take all actions deemed necessary or desirable to comply with all requirements of law, and the Condominium Organizational Documents;

- (b) obtain insurance coverage no less than that required pursuant to the Declaration;

- (c) enforce the covenants, conditions and restrictions set forth in the Declaration;

- (d) repair, maintain and improve the Common Elements;

- (e) establish, enforce, levy and collect assessments as provided in the Declaration;

- (f) adopt and publish Rules and Regulations:

- (i) governing the use of the Common Elements and the personal conduct of Unit Owners, Occupants and their guests thereon;

- (ii) detailing the procedures for discharging the Association's responsibilities with regard to the administration of the Condominium Property;

- (iii) governing any aspect of the Condominium Property that is not required by statute to be governed by the Declaration or By-Laws; and

- (iv) establishing penalties for the infraction thereof;

- (g) suspend the voting rights of a Unit Owner during any period in which such Unit Owner shall be in default in the payment of any assessment levied by the Association (such rights may also be suspended after notice and hearing, for a period not

to exceed 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 if such Director shall be absent from three consecutive regular meetings of the Board;

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

(j) invest excess funds in investments that meet standards for fiduciary investments under Ohio law;

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

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

Section 15. 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 and to present a statement thereof to the Unit Owners at each annual meeting of Unit Owners, or at any special meeting when such statement is requested in writing by Unit Owners representing one-half (1/2) or more of the voting power of Unit Owners;

(b) supervise all officers, agents and employees of the Association and see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(i) fix the amount of assessments against each Unit;

(ii) give written notice of each assessment to every Unit Owner subject thereto within the time limits set forth therein; and

(iii) foreclose the lien against any property for which assessments are not paid, or bring an action at law against the Unit Owner(s) personally obligated to pay the same, or both;

(iv) 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;

(d) procure and maintain insurance as provided in the Declaration and as the Board deems advisable;

(e) cause the property subject to the Association's jurisdiction to be maintained within the scope of authority provided in the Declaration;

(f) cause the restrictions created by the Declaration to be enforced; and

(g) take all other actions required to comply with all requirements of law and the Condominium Organizational Documents.

ARTICLE V: OFFICERS

Section 1. Enumeration of Offices. 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 member of the Association nor need any officer be a Director. The same person may hold more than one office.

Section 2. Selection and Term. Except as otherwise specifically provided in the Declaration or by law, the officers of the Association shall be selected 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, 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 an 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, or, alternatively, the electronic delivery of such documents to Unit Owners by email or by posting to the Association's website.

ARTICLE VI: COMMITTEES

The Board may appoint such committees as it deems appropriate in carrying out its purposes.

ARTICLE VII: BOOKS AND RECORDS

The Association shall maintain correct and complete books, records and financial statements of the Association, including, without limitation, its governing documents (current copies of the Declaration, By-Laws and Articles); current Rules and Regulations; names and addresses of the Unit Owners and their respective undivided interests in the Common Elements; actions (Board resolutions, minutes of all meetings of Members and the Board, etc.); documents relating to its financial condition (all receipts and expenditures, budget, financial statements showing the allocation, distribution and collection of the common profits, losses and expenses among and from the Unit Owners, etc.) and audited financial statements when such are required.

Any Unit Owner, duly authorized agent of any Unit Owner, duly authorized prospective purchaser, lender or the holder, insurer or guarantor of a first mortgages on a Unit, may examine and copy any of the foregoing books, records and financial statements pursuant to reasonable standards established in the Declaration, these By-Laws, or by Rules and Regulations promulgated by the Board, which may include, without limitation, standards governing the type of documents that are subject to examination and copying, the times and locations at which those documents may be examined or copied, and the specification of a reasonable fee for copying the documents. Notwithstanding the foregoing, the Association shall not be required to permit the examination and copying of any of the following:

- (1) information that pertains to Condominium Property-related personnel matters;
- (2) communications with legal counsel or attorney work product pertaining to pending litigation or other Condominium Property-related matters;
- (3) information that pertains to contracts or transactions currently under negotiation, or information that is contained in a contract or other agreement containing confidentiality requirements and that is subject to those requirements;
- (4) information that relates to the enforcement of the Declaration, By- Laws, or Rules and Regulations of the Association against Unit Owners;
- (5) information that relates to the enforcement of the Declaration, By-Laws, or Rules and Regulations against Unit Owners; or
- (6) Information the disclosure of which is prohibited by state or federal law.

ARTICLE VIII: AUDITS

The Board shall cause the preparation and furnishing of audited financial statements for the immediately preceding fiscal year within a reasonable time following request (provided that no such statement need be furnished earlier than 90 days following the end of such fiscal year), in the following circumstances:

- (a) to each requesting Unit Owner, at the expense of the Association, upon the affirmative vote of Unit Owners exercising a majority of the voting power of Unit Owners; and
- (b) upon the request of a holder or insurer or guarantor of any first mortgage on a Unit, at the requesting party's expense.

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.

ARTICLE X: INDEMNIFICATION

The Association shall indemnify any officer or Director of the Association or any former officer or Director of the Association or any current or former committee member of the Association and/or his, her or their respective heirs, executors and administrators, against reasonable expenses, including attorneys' fees, judgments, decrees, fines, penalties or amounts paid in settlement, actually and necessarily incurred by him or her in connection with the defense of any pending or threatened action, suit, or proceeding, criminal or civil, to which he or she is or may be made a party by reason of being or having been such officer or Director of the

Association, provided it is determined in the manner hereinafter set forth that (i) such officer or Director of the Association was not and is not adjudicated to have been grossly negligent or guilty of misconduct in the performance of his or her duty to the Association; and (ii) such officer or Director acted in good faith in what he or she reasonably believed to be in, or not opposed to, the best interest of the Association; and (iii) in any criminal action, suit or proceeding, such officer or Director had no cause to believe that his or her conduct was unlawful; and (iv) in case of settlement, the amount paid in the settlement was reasonable.

The determination hereinabove required shall be made by written opinion of independent legal counsel selected by the Board. Notwithstanding the opinion of legal counsel, to the extent that an officer or Director has been successful in defense of any action, suit or proceeding, or in the defense of any claim, issue or matter he or she shall, in that event, be indemnified as set forth herein.

(a) Advance of Expenses. Funds to cover expenses, including attorneys' fees, with respect to any pending or threatened action, suit, or proceeding may be advanced by the Association prior to the final disposition thereof upon receipt of a request to advance such amounts.

(b) Indemnification Not Exclusive; Insurance. The indemnification provided for in this Article shall not be exclusive, but shall be in addition to any other rights to which any person may be entitled under the Articles of Incorporation, the Declaration, the By-Laws, or the rules and regulations of the Association, any insurance provided by the Association, the provisions of Section 1702.12(e) of the Ohio Revised Code, or otherwise.

(c) Indemnification by Owners. The officers and Directors of the Association shall not be personally liable to the Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Owners shall indemnify, defend and hold harmless each of the Directors and officers of the Association against all contractual liabilities to third parties arising out of contracts made on behalf of the Association, except with respect to any such contracts made in bad faith or contrary to the provisions of the Declaration or By-Laws. Every agreement made by any officer or Director of the Association shall provide that such officer or Director is acting only as a representative of the Association and shall have no personal liability thereunder (except as an Owner).

(d) Cost of Indemnification. Any sum paid or advanced by the Association under this Section shall constitute a Common Expense. The Board shall have the power and the responsibility to raise, by special assessment or otherwise, any sums required to discharge the Association's obligations under this Section; provided, however, that the liability of any Owner arising out of the contract made by any officer or Director of the Association, or out of the aforesaid indemnity in favor of such officer or Director of the Association, shall be limited to such proportion of the total liability hereunder as such Owner's rate of assessment for Common Expenses bears to the total Common Expenses of the Association.

ARTICLE XI: AMENDMENTS

Any modification or amendment of these By-Laws shall be made only by means of an amendment to the Declaration, in the same 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.

«CL2:409354_v1»

Exhibit C

Unit Information

| <u>Unit Designation</u> | <u>Unit Address</u> | <u>Undivided Interest</u> |
|--------------------------------|--------------------------------------|----------------------------------|
| 643 | 643 Isle View Drive, Akron, OH 44319 | 1/11 |
| 645 | 645 Isle View Drive, Akron, OH 44319 | 1/11 |
| 649 | 649 Isle View Drive, Akron, OH 44319 | 1/11 |
| 650 | 650 Isle View Drive, Akron, OH 44319 | 1/11 |
| 652 | 652 Isle View Drive, Akron, OH 44319 | 1/11 |
| 655 | 655 Isle View Drive, Akron, OH 44319 | 1/11 |
| 656 | 656 Isle View Drive, Akron, OH 44319 | 1/11 |
| 657 | 657 Isle View Drive, Akron, OH 44319 | 1/11 |
| 658 | 658 Isle View Drive, Akron, OH 44319 | 1/11 |
| 659 | 659 Isle View Drive, Akron, OH 44319 | 1/11 |
| 660 | 660 Isle View Drive, Akron, OH 44319 | 1/11 |

Exhibit D-
Consent of Unit Owner

The undersigned, _____ (print name), being the Owner(s) of _____ (print address/unit number), of Mariner's Pointe Condominium, hereby approves this Amended and Restated Declaration of Mariner's Pointe Condominium ("Declaration").

If only one Owner signs below, he or she represents that he or she has authority to sign this consent on behalf of all Owners of the Unit. An individual signing on behalf of a corporate Owner represents that he or she has the authority to sign this consent on behalf of such corporation.

Signature(s):_____

Print Name: _____

Address/Unit Number: _____

Name and Address of First Mortgage Holder (write “none” if none): _____

STATE OF OHIO)
)SS
SUMMIT COUNTY)

BEFORE ME a notary public in and for said county and state, personally appeared _____, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at _____, Ohio this ____ day of _____, 2013.

Notary Public
My commission expires:_____