

*406. -*  
*250.00*  
*425.00*  
*100.00*

DECLARATION OF CONDOMINIUM OWNERSHIP

993785

FOR

MACINTOSH FARMS CONDOMINIUM NO. 2

BROADVIEW HEIGHTS, OHIO  
An Expandable Condominium Development

AND

BYLAWS

OF

MACINTOSH FARMS CONDOMINIUM NO. 2  
OWNERS' ASSOCIATION, INC.

DEVELOPED AND BUILT BY:

MacIntosh Development Corporation  
c/o The Zaremba Company  
868 Corporate Way  
Westlake, Ohio 44145  
(216) 892-4544

This Instrument Prepared by:

Richard A. Rosner, Attorney at Law  
Kahn, Kleinman, Yanowitz & Amson Co., L.P.A.  
The Tower At Erieview  
1301 East Ninth Street  
Suite 2600  
Cleveland, Ohio 44114  
(216) 696-3311

U. S. TITLE AGENCY, INC.  
95-050

JNG/CAP/53596.1

RECORDED THIS DATE  
FRANK RUSSELL  
CUYAHOGA COUNTY, OHIO  
95 APR 10 PM 1:58

RECORDER NOTE:

FOR MAPS AND PLANNING THE FOLLOWING...  
BY LAWS SEE VOLUME...  
INCLUSIVE OF CONDOMINIUM...

TABLE OF CONTENTS

	<u>Pages</u>
<u>ARTICLE I</u> - Definitions .....	2
<u>ARTICLE II</u> - Establishment of Condominium Ownership and Division of Condominium Property .....	6
(A) Units .....	7
(B) Common Areas and Facilities .....	9
(C) Management, Maintenance, Repairs, Alterations and Improvements .....	13
<u>ARTICLE III</u> - Provisions as to Easements, Units, and Common Areas and Facilities .....	15
(A) Master Declaration of Covenants, Conditions, Easements and Restrictions of MacIntosh Farms, a Planned Residential Community (the "Master Declaration") .....	15
(B) Roadway, Utility and Other Easements .....	16
(C) Encroachments .....	16
(D) Maintenance Easements .....	17
(E) Easements through Units and Limited Common Areas .....	17
(F) Unit Owner's Right to Ingress and Egress and Support .....	17
(G) Association's Right to Use of Common Area .....	17
(H) Reservation by Declarant of Easements for Ingress and Egress, Utilities, Construction and Sales .....	17
(I) Future Easements to Others .....	18
(J) Easement Rights .....	18
(K) No Severance of Ownership .....	19
(L) Sharing of Expenses .....	19
<u>ARTICLE IV</u> - Unit Owners' Association of MacIntosh Farms Condominium No. 2 .....	20
(A) Membership .....	20
(B) Administration of Condominium Property .....	20
(C) Service of Process .....	20

	<u>Pages</u>
<u>ARTICLE V</u> - Assessments .....	21
(A) General .....	21
(B) Division of Common Expenses, Common Assessments, Common Surplus, Common Profits and Common Losses .....	21
(C) Non-Use of Facilities .....	22
(D) Lien of Association .....	22
(E) Priority of Association's Lien .....	22
(F) Dispute as to Common Expenses .....	22
(G) Non-Liability of Judicial Sale Purchaser for Past Due Common Expenses .....	23
(H) Liability for Assessments Upon Voluntary Conveyance .....	23
<u>ARTICLE VI</u> - Insurance and Reconstruction .....	23
(A) Insurance .....	23
(B) Responsibility for Reconstruction or Repair .....	27
(C) Procedure for Reconstruction or Repair .....	28
(D) Minor Repairs .....	29
(E) Negligence of Unit Owner .....	30
<u>ARTICLE VII</u> - Covenants and Restrictions as to Use and Occupancy .....	30
<u>ARTICLE VIII</u> - Rehabilitation of Existing Buildings, Structures and Other Improvements .....	33
<u>ARTICLE IX</u> - Sale of the Property .....	33
<u>ARTICLE X</u> - Remedies for Breach of Covenants, Restrictions and Regulations .....	34
(A) Abatement and Enjoyment .....	34
(B) Involuntary Sale .....	34
<u>ARTICLE XI</u> - Additions to Condominium Property .....	35

Pages

ARTICLE XII - Amendment of Declaration . . . . . 38

    (A) In General . . . . . 38

    (B) Special Amendment . . . . . 39

ARTICLE XIII - Subdivision or Combination of Units . . . . . 40

ARTICLE XIV - Condemnation . . . . . 42

ARTICLE XV - Rights of First Mortgagees . . . . . 43

ARTICLE XVI - Sale, Leasing or Other Alienation of Units . . . . . 46

ARTICLE XVII - Compliance and Non-Monetary Default . . . . . 47

    (A) Enforcement . . . . . 47

    (B) Fines . . . . . 48

    (C) Negligence . . . . . 49

    (D) Responsibility of Unit Owner for Tenants . . . . . 49

    (E) Costs and Attorney's and Paralegal's Fees . . . . . 49

    (F) No Waiver of Rights . . . . . 49

ARTICLE XVIII - Removal from Condominium Ownership . . . . . 49

ARTICLE XIX - Miscellaneous Provisions . . . . . 50

    (A) Interest on Deposits . . . . . 50

    (B) Non-Retention of Property Interest in Common  
        Areas and Facilities by Declarant . . . . . 50

    (C) Warranties . . . . . 50

    (D) Right of Declarant to act as Board of  
        Managers . . . . . 51

    (E) Record of Mortgagees of Units . . . . . 52

    (F) Rights of Mortgagees of Units to Receive  
        Notices . . . . . 52

    (G) Notices to Association . . . . . 52

    (H) Notices . . . . . 52

    (I) Title to Units Subject to Declaration . . . . . 52

    (J) Non-Liability of Declarant . . . . . 53

    (K) Declarant Assessments . . . . . 53

    (L) Non-Waiver . . . . . 53

Pages

(M) Saving Clause .....	53
(N) Rule Against Perpetuities .....	54
(O) Headings .....	54
(P) Gender .....	54
(Q) Liberal Interpretation .....	54

EXHIBITS TO DECLARATION

<u>Exhibit "1"</u>	-	Legal Description of Parcel No. 1
<u>Exhibit "2"</u>	-	Legal Description of the Additional Property
<u>Exhibit "A"</u>	-	Reference to Allotted Drawings
<u>Exhibit "B"</u>	-	Bylaws of MacIntosh Farms Condominium No. 2 Owners' Association, Inc.
<u>Exhibit "C"</u>	-	Property Management Agreement for MacIntosh Farms Condominium No. 2
<u>Exhibit "D"</u>	-	Narrative Description of Buildings and Units
<u>Exhibit "E"</u>	-	Designation of Unit Type, Unit Number and Address, and Percentage Interest

DECLARATION

Submitting the property known as MacIntosh Farms Condominium No. 2, Broadview Heights, Ohio, to the provisions of Chapter 5311 of the Ohio Revised Code.

(This will certify that copies of this Declaration, together with Drawings, Bylaws and Management Agreement attached or referred to as Exhibits thereto, have been filed in the Office of the County Auditor, Cuyahoga County, Ohio)

Date: \_\_\_\_\_, 1995.

Cuyahoga County Auditor

By: \_\_\_\_\_  
Deputy Auditor

DECLARATION OF CONDOMINIUM OWNERSHIP  
AND OF EASEMENTS, RESTRICTIONS AND COVENANTS  
FOR

MACINTOSH FARMS CONDOMINIUM NO. 2

This Declaration made at Cleveland, Ohio, by MacIntosh Development Corporation, a corporation organized and existing under Ohio law, hereinafter referred to as "Declarant",

W I T N E S S E T H: T H A T

WHEREAS, the Declarant is the owner of the real estate referred to herein as "Parcel No. 1" and described in Exhibit No. 1 attached hereto and made a part hereof; and

WHEREAS, Declarant is also the owner of the real estate contiguous to Parcel No. 1 referred to herein as the "Additional Property" and described in Exhibit No. 2 attached hereto and made a part hereof; and

WHEREAS, it is the desire and intention of the Declarant to enable Parcel No. 1 together with the buildings, structures, improvements and fixtures of whatsoever kind thereon, and all rights and privileges belonging or in anyway pertaining thereto, (hereinafter called the "Property") owned by Declarant and by each successor of the Declarant who stands in the same relation to the Property as the Declarant under that certain form of co-operative ownership commonly known as "CONDOMINIUM", and to submit the Property to the provisions of the "Condominium Property Act" of the State of Ohio, being Chapter 5311 of the Ohio Revised Code; and

WHEREAS, it is the desire and intention of the Declarant to provide for the submission of the Additional Property or any portion or portions thereof, together with all buildings, structures, improvements and fixtures of whatsoever kind thereon, and all rights and privileges belonging or in any way pertaining thereto, to be owned by Declarant and by each successor of the Declarant who stands in the same relation to the Additional Property as the Declarant to the Condominium form of ownership, and to submit the Additional Property, or any portion or portions thereof, to the provisions of the aforesaid "Condominium Property Act"; and

WHEREAS, the Declarant is further desirous of establishing for its own benefit and for the mutual benefit of all future owners or occupants of the Property, or any part thereof, which shall be known as "MacIntosh Farms Condominium No. 2" certain easements and rights in, over and upon the Property and certain mutually beneficial restrictions, reservations and obligations with respect to the proper use, conduct and maintenance thereof; and

WHEREAS, the Declarant desires and intends that the several owners, mortgagees, occupants, and other persons hereafter acquiring any interest in the Property shall at all times enjoy the benefits of, and shall hold their interests subject to the rights, easements, privileges, and restrictions hereinafter set forth, all of which are declared to be in furtherance of a plan to promote and protect the co-operative aspect of ownership and to facilitate the proper administration of the Property and are established for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property; and

WHEREAS, the Declarant hereby establishes by this Declaration a plan for the individual ownership of the Property consisting of the area or space contained in each of the Units, and the co-ownership by the individual and separate owners thereof, as tenants in common, of all of the remaining Property which is hereinafter defined and referred to herein as the "Common Areas and Facilities".

NOW, THEREFORE, Declarant hereby makes the following Declaration as to divisions, covenants, restrictions, limitations, conditions, easements, reservations and uses to which the Property may be put, hereby specifying that the provisions of this Declaration shall constitute covenants to run with the land and shall be binding on Declarant and each successor of Declarant who stands in the same relation to the Property or Additional Property as Declarant and its and their respective heirs, executors, administrators, successors and assigns, and all Unit Owners together with their grantees, successors, heirs, executors, administrators, devisees, successors and assigns.

#### ARTICLE I

#### DEFINITIONS

The following words and terms used in this Declaration are defined as set forth in Section 5311.01, of the Ohio Revised Code, except as otherwise herein provided.

(A) "Act" means the Ohio Condominium Act as contained in Chapter 5311 of the Ohio Revised Code, as the same may be amended or supplemented from time to time.



(B) "Additional Property" means the land or improvements or any portion or portions thereof that may be added in the future to the Condominium Property, legal descriptions of the parcels constituting the Additional Property are described in Exhibit "2" attached hereto and made a part hereof as if fully rewritten herein.

(C) "Additional Property Buildings" means the buildings, structures, improvements and fixtures constructed on all or a portion of the Additional Property.

(D) "Association" means the organization of all the owners of Units in the Condominium Property that administers the Condominium Property, the Association being known as MacIntosh Farms Condominium No. 2 Owners' Association, Inc. The Association is hereinafter sometimes called the "Unit Owners' Association".

(E) "Board" means the Board of Managers of the Unit Owners Association as the same may be constituted from time to time.

(F) "Buildings" means the structures that contain the Units.

(G) "Common Areas and Facilities" includes, unless otherwise provided in the Declaration, the following parts of the Condominium Property:

- (1) The real estate described in the Declaration.
- (2) All other areas, facilities, places, and structures that are not part of a Unit, including, but not limited to:
  - (a) The foundations, columns, girders, beams, supports, supporting walls and roofs;
  - (b) The roadways, driveways, sidewalks, yards, gardens and parking areas;
  - (c) Easements created for the benefit of the Condominium Property;
  - (d) Installations of central services such as power, light, gas, hot and cold water, heating, refrigeration, air-conditioning and incinerating;
  - (e) In general, all apparatus and installations existing for common use;

- (f) Such community facilities as may be provided for in the Declaration;
- (g) All other parts of the Condominium Property necessary or convenient to its existence, maintenance, and safety, or normally in common use, or that have been designated as Common Areas and Facilities in the Declaration or Drawings.

(H) "Common Assessments" means assessments charged proportionately against all Units for common purposes.

(I) "Common Expenses" means those expenses designated as such in the Act or in accordance with the provisions of this Declaration, or both.

(J) "Common Losses" means the amount by which the Common Expenses during any period of time exceeds Common Assessments and Common Profits during that period.

(K) "Common Profits" means the amount by which the total income received from assessments charged for special benefits to specific Units, rents received from rentals of equipment or space in Common Areas, and any other fee, charge or income other than Common Assessments exceeds expenses allocable to the income, rental, fee or charge.

(L) "Common Surplus" means the amount by which Common Assessments collected during any period exceed Common Expenses.

(M) "Condominium Development" means a Condominium Property in which two or more individual dwelling Units, together with undivided interests in the Common Areas and Facilities of the Property, are offered for sale pursuant to a common promotional plan.

(N) "Condominium Instruments" means this Declaration and accompanying Drawings, the Bylaws of the Association, any contracts pertaining to the management of the Condominium Property, and all other documents, contracts, or instruments establishing ownership of or exerting control over the Condominium Property or a Unit.

(O) "Condominium Ownership Interest" or "Ownership Interest" means a fee simple estate in a Unit, together with an appurtenant undivided interest in the Common Areas and Facilities.

(P) "Condominium Property" (and/or "Property") means Parcel No. 1, all Buildings, improvements and structures on Parcel No. 1, all easements, rights and

appurtenances belonging to Parcel No. 1, and all articles of personal property submitted to the provisions of the Act; provided, however, when the Additional Property or any portion or portions thereof, has been added to the Condominium Property pursuant to the provisions of Article XI, hereof, the term "Condominium Property" shall also include the Additional Property, or any portion or portions thereof, together with all buildings, improvements, and structures belonging to the Additional Property, all easements, rights, and appurtenances belonging to the Additional Property, and all articles of personal property, submitted to the provisions of the Act.

(Q) "Declaration" means the instrument by which the Property is submitted to Chapter 5311 of the Ohio Revised Code and any and all amendments to the Declaration.

(R) "Limited Common Areas and Facilities" means the Common Areas and Facilities designated in the Declaration as reserved for a certain Unit or Units to the exclusion of other Units.

(S) "Master Association" means MacIntosh Farms Community Association, Inc., a non-profit Ohio corporation.

(T) "Master Declaration" means Master Declaration of Covenants, Conditions, Easements and Restrictions of MacIntosh Farms, a Planned Residential Community, recorded August 6, 1986 in Volume 4890, Page 60 of Cuyahoga County Records. The Master Declaration creates rights, obligations, easements, covenants and restrictions that affect the Condominium Property, the Additional Property and other lands. The Master Declaration grants and reserves easements for access, maintenance, utility and other purposes for the benefit of said properties. The Master Declaration further provides for the creation of MacIntosh Farms Community Association, Inc., a Ohio not-for-profit corporation, for the ownership and operation of certain recreational facilities to serve the Condominium Development, Additional Property and other lands; and for the ownership, operation, maintenance and repair of lands intended to remain as open areas, roadways, utilities, security facilities and other amenities and facilities to be used in common by the Condominium Development, the Additional Property and other lands. The Condominium Development and the Additional Property and imposes assessments upon the Unit Owners of the Condominium Development and the Additional Property to provide sufficient funds for MacIntosh Farms Community Association, Inc. to carry out its responsibilities.

(U) "Occupant" means a person or persons, natural or artificial, in possession of a Unit.

(V) "Parcel No. 1" means the real estate described in Exhibit "1" attached hereto and made a part hereof.

(W) "Parcel No. 1 Buildings" means the buildings, structures, improvements and fixtures constructed on Parcel No. 1.

(X) "Purchaser" includes both an actual and prospective purchaser of a Condominium Ownership Interest.

(Y) "Rules" means such rules and regulations governing the operation and use of the Condominium Property or any portion thereof as may be adopted from time to time by the Association or the Board.

(Z) "Sale of a Condominium Ownership Interest" means the execution by both parties of an agreement for the conveyance or transfer for consideration of a Condominium Ownership Interest except Sale of a Condominium Ownership Interest for the purposes of this Declaration shall not include a transfer of two or more Units from the Declarant to another developer, a subsidiary of the Declarant, or a financial institution for the purpose of facilitating the sale of or the development of the remaining or unsold portion of the Property.

(AA) "Unit" means a part of the Condominium Property consisting of one or more rooms on one or more floors of a building and designated as a Unit in the Declaration and delineated on the Drawings provided for in Section 5311.07 of the Act. "Unit" is more fully defined in Article II(A) hereof.

(BB) "Unit Owner" means a person who owns a Condominium Ownership Interest in a Unit.

(CC) "Unit Owners' Association" means the organization of all the owners of Units in the Condominium Property that administers the Condominium Property. The Unit Owners' Association is MacIntosh Farms Condominium No. 2 Owners' Association, Inc. The Unit Owners' Association is hereinafter sometimes called the "Association".

## ARTICLE II

### ESTABLISHMENT OF CONDOMINIUM OWNERSHIP AND DIVISION OF CONDOMINIUM PROPERTY

Declarant, in order to establish a plan of condominium ownership for the Condominium Property, hereby submits the Condominium Property, hereinbefore described, to the provisions of Chapter 5311 of the Ohio Revised Code. The Condominium Property, including the structures thereon, containing an aggregate of three (3) separate Units, is hereby divided into three (3) separately designated and legally

described freehold estates, and one freehold estate hereinafter described and referred to as "Common Areas and Facilities".

Insofar as is possible, all the particulars of the land, Buildings, and other improvements, including but not limited to, the layout, location, designations and dimensions of each Unit, the layout, location and dimensions of the Common Areas and Facilities and Limited Common Areas and Facilities, and the location and dimensions of all appurtenant easements are shown graphically on the set of drawings incorporated herein by reference as Exhibit "A", prepared and bearing the certified statements of Donald G. Behning & Associates, Inc., Registered Surveyors, 7979 Hub Parkway, Valley View, Ohio 44125, and Ron Lloyd, Registered Architect, c/o The Zaremba Company, 868 Corporate Way, Westlake, Ohio 44145, as required by Section 5311.07, of the Ohio Revised Code. Such set of drawings is hereinafter referred to as the "Drawings" or "Allotted Drawings" and the separate drawings comprising the set are hereinafter referred to by reference to the exhibit designations thereon.

(A) Units. Each of the three (3) Units hereinbefore declared and established as a freehold estate shall consist of all the space bounded by the interior (un-drywalled) surfaces of the perimeter walls, floors and ceilings of each such Unit, including the vestibule, if any, immediately adjacent to each such Unit, projected, if necessary, by reason of structural divisions such as interior walls and other partitions, the layout, location, designation and dimensions of each such Unit being shown on the Allotted Drawings incorporated herein by reference as Exhibit "A", and including, without limitation:

All drywall or wood subfloor contiguous to the undecorated interior surfaces of the perimeter walls, floors and ceilings of a Unit;

The decorated surfaces, including paint, lacquer, varnish, wallpaper, tile and any other finishing materials applied to said perimeter walls, floors and ceilings, and also the aforesaid finishing materials applied to the interior walls, floors, and ceilings;

All window sashes and doors exclusive of door frames in perimeter walls and space occupied thereby;

The receptacle and switch plates and covers, grills, vent covers, registers, and other coverings of space, light fixtures, and control knobs, within the bounds of a Unit and which serve only the Unit;

The space within all fixtures located within the bounds of a Unit and the spaces occupied by the fixtures themselves;

All unenclosed space, if any, within or occupied by structural parts of the Building which may project into the Unit, as defined above, from the unfinished perimeter floor level to the unfinished perimeter ceiling level and including by way of illustration, but not by way of limitation, the space between the shelves of built-in bookcases, if any, the space within built-in cabinets, if any, and the hearth lying within fireplaces, if any;

All non-structural interior walls (other than walls separating Units) and all space between interior walls, floors and ceilings, including the space occupied by structural and component parts of the Building and by utility pipes, wires and conduits;

but excepting therefrom all of the following items located within the bounds of the Unit as described above, and, to the extent the following are Common Areas and Facilities or Limited Common Areas and Facilities as defined in this Declaration, are to be used and enjoyed by the Unit Owner or Occupant of the Unit in or to which they are appurtenant:

All walls, floors and ceilings separating or delineating Units, except the drywall or the wood subfloor contiguous to the undecorated interior surfaces of the perimeter walls, floors and ceilings of each Unit;

All doors, door frames, glass doors, skylights, if any, and windows (and the glass and frames constituting or included therein) and window sashes, affixed to the perimeter walls, floors and roofs or ceilings of a Unit, which are hereby declared to be parts of said walls, floors and roofs;

All structural portions of a building, lying within the bounds of a Unit;

All heating, cooling and ventilating equipment, units and installations even if located within and serving more than one Unit, and all parts, installations and appurtenances thereto, including the thermostats and control devices;

All plumbing, electric, heating, cooling, ventilating and other utility or service lines, pipes, ducts, wires, plugs, outlets, conduits and valves existing within a Unit to their place of connection to the toilets, sinks, valves, registers, grills, outlets, light fixtures, appliances and receptacles within a Unit and/or to their tap, plug or shutoff valve within a Unit, and all such lines, pipes, ducts, wires, plugs, outlets.

conduits, and valves which serve or may serve more than one Unit or the Common Areas and Facilities;

The valves, plugs and switches at the end of any lines, pipes and wires which constitute Common Areas and Facilities;

Without limiting the foregoing, all Common Areas and Facilities and Limited Common Areas and Facilities located within the bounds of a Unit.

The layout, location, designation and dimensions of all Units are shown on the Allotted Drawings in Exhibit "A" incorporated herein by reference. Each Unit has a direct exit to a public street or to a Common Area or Facility leading to a public street.

A narrative description of the Buildings and the Units contained therein is set forth in Exhibit "D" attached hereto and made a part hereof. Any inconsistencies between the narrative description of the Buildings and the Units and/or of the Common Areas on one hand, as set forth in Exhibit "D", and the Allotted Drawings on the other hand shall be resolved in favor of the Allotted Drawings.

(B) Common Areas and Facilities.

(1) Description of Common Areas and Facilities. The entire balance of the land and improvements thereon, including but not limited to, all Buildings, foundations, roofs, main and supporting walls, exterior parking spaces, sidewalks, roadways, drives, storage spaces, if any, the entrance improvements, including signage, community facilities, if any, pumps, trees, lawns, gardens, pavement, balconies, porches, stoops, wires, conduits, utility lines and ducts now or hereafter situated on the Condominium Property, all as hereinbefore more specifically described as "Common Areas and Facilities" in Article I hereof, are hereby declared and established as the Common Areas and Facilities. Specifically, all electric fixtures, utility pipes and lines, faucets, shower heads, plugs, connections, or fixtures as defined by the laws of the State of Ohio and all replacements thereof shall be a part of the Common Areas and Facilities. Unless otherwise provided by the Unit Owners' Association, however, the care, maintenance, repair and replacement of all or any portion of such elements or fixtures located within a Unit shall be the responsibility of the owner of such Unit.

(2) Limited Common Areas and Facilities. Each Unit Owner is hereby granted an exclusive and irrevocable license to use and occupy to the exclusion of all others the Limited Common Areas and Facilities which are located within the bounds of his Unit or which serve only his Unit. The Limited Common Areas and

Facilities with respect to each Unit (or group of Units) shall consist of such of the following as may be construed to be Common Areas:

(a) All structural interior walls and one-half of any wall separating one Unit from the other, doors (including 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 the individual air-conditioning compressor for each Unit which is located outside the bounds of the Unit but which serves only the particular Unit, all other heating, air-conditioning and ventilating equipment and systems 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 for any of the foregoing (and space thereof), if any, located outside such Unit containing equipment serving only such Unit;

(d) All gas, electric, television antennas, if any, 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) The communication, security, and smoke detector systems located within the bounds of a Unit and serving only that Unit;

(f) Balconies, decks, patios and porches, if any;

(g) The sidewalk serving each Unit;

(h) All other parts of the Common Area located within the bounds of such Unit and which serve only such Unit;

(i) An area (if any) adjacent to each Unit, and shown as a Limited Common Area on the Drawings. Subject to Board approval, such area may



be improved with a patio, planting (including shrubs and flowers), fencing and similar improvements.

(j) All flowerboxes attached to a Unit and the mail box serving a Unit.

(3) Use of Common Areas and Facilities. Each Unit Owner shall own an undivided interest in the Common Areas and Facilities as a tenant in common with all other Unit Owners, and, except as otherwise limited in this Declaration and in the Bylaws attached hereto as Exhibit "B", each Unit Owner shall have the right to use the Common Areas and Facilities for all purposes incident to the use and occupancy of his Unit as a place of residence and such other incidental uses permitted by this Declaration and the Bylaws, including the non-exclusive easement, together with other Unit Owners, to the use and enjoyment of the Common Areas and Facilities and for ingress and egress to and from the respective Units to a public street or highway, or to a Common Area and Facility leading to a public street or highway, which rights shall be appurtenant to and shall run with his Unit. The extent of such ownership in the Common Areas and Facilities is hereby deemed and expressed by the percentage amount hereinafter set forth; such percentage amount shall remain constant and shall not be changed except by an amendment to this Declaration unanimously approved by all Unit Owners affected, or except by amendment to this Declaration in the manner provided in Article XII herein for the purpose of adding to the Condominium Property pursuant to Article XI herein.

(4) Ownership of Common Areas and Facilities. The percentage of ownership of the Common Areas and Facilities attributable to the Ownership Interest in each Unit, together with the percentage of interest in the Association for the division of Common Expenses, Common Assessments, Common Surplus, Common Profits and Common Losses, as hereinafter described in Article V, Section (B), of this Declaration, shall be in accordance with the schedule set forth in Exhibit "E" attached hereto and made a part hereof.

The percentage of interest in the Common Areas and Facilities is computed in the proportion that the square footage of each Unit bears to the aggregate square footage of all Units. For purposes of conveyance of title to Purchasers of individual Units, description by Unit number and reference to this Declaration, any amendments hereto and the Drawings and any amendments to the Drawings shall be sufficient to convey the Unit and the Ownership Interest in the Common Areas and Facilities (including the Limited Common Areas and Facilities) appurtenant thereto.

(5) Partition. There shall be no partition of the Common Areas and Facilities through judicial proceedings or otherwise until this Declaration is terminated and the Condominium Property is withdrawn from its terms or from the terms of any statute applicable to Condominium Ownership; provided, however, that if any Unit shall be owned by two or more co-owners as tenants in common or as joint tenants, nothing herein contained shall be deemed to prohibit a voluntary or judicial partition of such Unit ownership as between such co-owners.

(6) Use of Common Areas and Facilities

(a) Regulation by Association. No person shall use the Common Areas and Facilities or any part thereof in any manner contrary to or not in accordance with such Rules pertaining thereto as from time to time may be adopted by the Association. Without in any manner intending to limit the generality of the foregoing, the Association shall have the right, but not the obligation, to promulgate Rules limiting the use of the Common Areas and Facilities to members of the Association and their respective families, guests, invitees, tenants, agents and servants. Subject to the Rules from time to time promulgated by the Association, all owners may use the Common Areas and Facilities in such manner as will not restrict, interfere with or impede the use thereof by other owners.

(b) Management Agreement. Except as otherwise provided herein, management, repair, alteration and improvement of the Common Areas and Facilities shall be the responsibility of the Association. The Association, upon its creation, shall enter into a management agreement with MacIntosh Development Corporation, the management agreement to be in the form of Exhibit "C" attached hereto and made a part hereof, delegating to Declarant the Association's primary authority and responsibility to manage, repair, alter and improve the Common Areas and Facilities. As stated in Exhibit "C", the management agreement shall be for a term of five (5) years and shall automatically renew itself for consecutive one (1) year additional terms unless either party elects to terminate the management agreement in accordance with the terms thereof. The initial five (5) year term shall commence on the date of filing for record of a deed following the first sale of a Condominium Ownership Interest in the Property. Notwithstanding the foregoing, (i) the Association shall not be obligated under the provisions of the management agreement for a period which exceeds more than one (1) year from and after the date of the meeting of Unit Owners following the earlier of five (5) years from the date of the establishment of the Association or thirty (30) days after the sale and conveyance of Condominium

Ownership Interests to Purchasers in good faith for value to which appertain seventy-five percent (75%) of the undivided interests in the Common Areas and Facilities calculated by comparing the number of Units sold and conveyed on Parcel No. 1 and the Additional Property to the maximum number of Units that may be created thereon pursuant to Article XI hereof; and (ii) either party may terminate the management agreement, without cause and without payment of a termination fee, upon ninety (90) days' written notice to the other party. In the event of termination pursuant to (i) above, the management agreement may thereafter be renewed with the approval of Unit Owners entitled to exercise a majority of the voting power of the Association.

(C) Management, Maintenance, Repairs, Alterations and Improvements.

(1) The Association. The Association shall manage the Common Areas and Facilities and shall maintain and keep the same in a state of good working order, condition and repair, in a clean, neat, safe and sanitary condition, and in conformity with all laws, ordinances and regulations applicable to the Common Areas and Facilities, by promptly, properly and in a good and workmanlike manner, making all repairs, replacements, alterations and other improvements necessary to comply with the foregoing. The Association shall also be responsible for repairing all damage to a Unit caused by the Association, including damage caused by performance by the Association of its obligations hereunder. As provided in Article II(B)(6)(b) hereof, the Association may delegate all or any portion of its authority to discharge such responsibility to a manager or management company.

(2) Unit Owner. Except as may otherwise be provided herein, the responsibility of each Unit Owner shall be as follows:

(a) To maintain, repair and replace at his expense all portions of his Unit, and all internal installations of such Unit such as appliances, plumbing, electrical and air conditioning fixtures or installations, and any portion of any other utility service facilities located within the Unit boundaries, other than such utility facilities serving other Units, and to assume the same responsibility with respect to the other Limited Common Areas and Facilities belonging to his Unit, including watering the yard areas adjacent to his Unit or making such water available to the Association, management company or their respective contractors, agents and employees. Each Unit Owner is responsible for maintenance and repair of the walks serving his Unit, including snow removal from his walks.

(b) Not to make any alterations in the portions of the Unit or the Common Areas and Facilities, including Limited Common Areas and Facilities, which are to be maintained by the Association or remove any portion thereof or make any additions thereto or do anything which would or might jeopardize or impair the safety or soundness of the Units or the Common Areas and Facilities without first obtaining the written consent of the Board, nor shall any Unit Owner impair any easement without first obtaining the written consents of the Association and of the person or persons for whose benefit such easement exists.

(c) Not to enclose, paint or otherwise decorate or change the appearance of any portion of the Condominium Property not within the walls of the Unit, unless the written consent of the Board of the Association is first obtained.

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

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

(f) To maintain, repair and replace at his expense all portions of the Condominium Property which may be damaged or destroyed by reason of his own act or neglect, the act or neglect of any Occupant of his Unit, or the willful or uninsured act or neglect of any invitee, licensee or guest of such Unit Owner or Occupant, to the extent such damage or destruction is not covered by insurance maintained by the Association. Notwithstanding the foregoing obligation of the Unit Owner, the Association (or other Unit Owner in respect to his own Unit) may, but shall not be obligated to, repair and replace the property damaged or destroyed by reason of the act or neglect of a Unit Owner, an Occupant, or their invitee, licensee or guest, and charge and collect from such Unit Owner the cost and expense paid or incurred in making any such repair or replacement. If the repair or replacement is made by the Association, the cost and expense thereof shall be a lien against the Unit Owner's Ownership Interest which the Association may assert and collect in the same manner as the Association may assert and collect a lien against a Unit Owner's Ownership Interest for non-payment of his share of assessments for Common Expenses. The right herein of the Association to assert and collect upon a lien shall not be exclusive, but shall be in addition to all other rights and remedies available to the Association, herein, in law and in equity for recovery of the cost and expense so incurred.

(g) To pay all costs for utility services (such as, without limitation, water, gas, electricity, sewage, rubbish and trash disposal or treatment and the like) furnished to his Unit or to the Limited Common Areas and Facilities designated for his use, unless any or all of such services are provided or paid for by the Association and charged to the Unit Owner as part of the Common Expenses, in which case all or any of such services so provided by the Association shall be paid for by the Unit Owner as part of his share of the Common Expenses.

(3) Rights Against Third Parties. The obligation of the Association and of Unit Owners to repair, maintain and replace the portions of the Condominium Property for which they are respectively responsible shall not be limited, discharged or postponed by reason of the fact that any maintenance, repair or replacement may be necessary to cure any latent or patent defects in material or workmanship in the construction, repair, alteration or improvement of the Condominium Property. The undertaking of repair, maintenance or replacement by the Association or Unit Owners shall not constitute a waiver of any rights against any warrantor but such rights shall be specifically reserved.

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

### ARTICLE III

#### PROVISIONS AS TO EASEMENTS, UNITS AND COMMON AREAS AND FACILITIES

Declarant hereby creates by grant or reservation, as the case may be, in perpetuity, for its benefit and for the benefit of each Unit Owner, each mortgagee in whose favor a mortgage shall be granted with respect to any Unit, the Association, and to any other person now having or hereafter having an interest in Parcel No. 1 and the Additional Property or any part thereof, and the respective heirs, devisees, executors, administrators, personal representatives, successors and assigns of the foregoing persons, the following non-exclusive rights and easements:

(A) Master Declaration of Covenants, Conditions, Easements and Restrictions of MacIntosh Farms, a Planned Residential Community (the "Master Declaration"). The Master Declaration creates rights, obligations, easements, covenants and restrictions set forth in the Master Declaration recorded in Volume 86-4890, Page 60 of Cuyahoga

County Records (including supplements and amendments thereto) affecting the Condominium Property, the Additional Property and other properties described therein. The Master Declaration grants and reserves easements for access, maintenance, utility and other purposes for the benefit of said properties. The Master Declaration further provides for the creation of MacIntosh Farms Community Association, Inc., an Ohio not-for-profit corporation, for the ownership and operation of certain recreational facilities to serve the Condominium Development, Additional Property and other properties described therein, and for the ownership, operation, maintenance and repair of properties intended to remain as open areas, roadways, utilities, security facilities and other amenities and facilities to be used in common by the Condominium Development, the Additional Property and other properties described therein. The Master Declaration further imposes covenants and restrictions upon the Condominium Development and the Additional Property and imposes assessments upon the Unit Owners of the Condominium Development, the Additional Property and other properties described therein, to provide sufficient funds for MacIntosh Farms Community Association, Inc. to carry out its responsibilities.

(B) Roadway, Utility and Other Easements. Subject to the Master Declaration referred to in (A) above, the right and easement to construct, install, repair, replace, relocate, operate and maintain roadways, driveways, sidewalks, water mains with service connections, storm and sanitary sewer lines, steam, electric, gas and telephone lines, conduits, and transmission and meter devices and other utilities, in, on, under and/or over the Condominium Property and Additional Property; the right and easement to construct, install, repair, replace, relocate, operate and maintain television cable lines and other television reception devices and security devices; the right and easement to construct, install, repair, replace, relocate, operate and maintain that portion of the heating, air-conditioning and other equipment and systems located outside of the bounds of a Unit but which serves only a particular Unit. There is further reserved for the Declarant, the Association, the Management Company or their respective contractors, agents and employees to use water from the outdoor faucets of Units for the purpose of watering the yard areas adjacent to such Unit.

(C) Encroachments. If by reason of the construction, repair, restoration, partial or total destruction and rebuilding, or settlement or shifting of any of the Buildings or improvements constituting a part of the Condominium Property, any part of the Common Areas and Facilities shall encroach upon any part of a Unit, or any part of a Unit shall encroach upon any part of the Common Areas and Facilities, or any part of a Unit shall encroach upon any part of any other Unit, or if by reason of the design or construction or rebuilding of the utility systems comprised within the Condominium Property any pipes, ducts or conduits serving a Unit shall encroach upon any other Unit, easements in favor of the Unit Owner or Association, as the case may be, for the maintenance of any such encroachment are hereby established: provided, however, in no event shall a valid

easement for any encroachment be created in favor of a Unit Owner if such encroachment occurred due to his willful conduct.

(D) Maintenance Easements. Easements in favor of the Association over the Units and Limited Common Areas and Facilities for access as may be necessary for the purpose of maintaining the Common Areas and Facilities and easements in favor of each Unit Owner over the Common Areas and Facilities for access to his Unit. Easements in favor of each Unit Owner to and through the Common Areas and Facilities as may be necessary for the use of water, gas, storm and sanitary sewers, electric and telephone lines, and other utilities now or hereafter existing within the walls; easements for the use of television cable lines and other television reception devices, subject to the provisions of Article VII(D) hereof; easements for the use of security alarms and other security devices; and easements in favor of each Unit Owner to hang pictures, mirrors and the like upon the walls of his Unit.

(E) Easements Through Units and Limited Common Areas. Easements in favor of the Association through the Units and the Limited Common Areas and Facilities for the purpose of installing, laying, maintaining, repairing and replacing any pipes, wires, ducts, conduits, public utility lines or structural components through the walls of the Units.

(F) Unit Owner's Right to Ingress and Egress and Support. Each Unit Owner shall have the right to ingress and egress over, upon and across the Common Areas necessary for access to his Unit, including the exclusive right to use the portion of the driveway area adjacent to the garage of each Unit that provides access from the garage to the roadway (the Unit Owner to have the exclusive right to park cars within said driveway area), and to any Limited Common Areas designated for use in connection with his Unit, and shall have the right to the horizontal and lateral support of his Unit, and such rights shall be appurtenant to and pass with the title to each Unit.

(G) Association's Right to Use of Common Area. The Declarant and the Association shall have a nonexclusive easement to make such use of the Common Areas as may be necessary or appropriate to perform the duties and functions required or permitted pursuant to this Declaration, including the right to construct and maintain in the Common Areas mechanical, maintenance and storage facilities for use by the Association.

(H) Reservation by Declarant of Easements for Ingress and Egress, Utilities, Construction and Sales. The Declarant herein hereby reserves unto itself for as long as the Declarant owns a Condominium Ownership Interest in the Condominium Property or Additional Property the easement and right for the benefit of and use by Declarant, and its agents, officers, directors, employees, licensees, servants, tenants, personal representatives, successors and assigns for ingress and egress by foot, automobile and

otherwise, for utility and facility purposes and for model, sales and display purposes, over, through and under the Condominium Property and any part thereof other than a Unit not owned by the Declarant. The Declarant further reserves easements over Condominium Property for the benefit of the Additional Property to establish the grade of the Additional Property and for necessary access to construct the Additional Property Buildings and other improvements upon the Additional Property.

(I) Future Easements to Others. Such easements as Declarant, or the Association if the same has been formed, from time to time may hereafter grant to others on behalf of the Condominium Property for roadway, access and utility purposes, including, but not limited to, the right to install, lay, maintain, repair and replace roadways, sidewalks, water mains and pipes, storm and sanitary sewer lines, drainage ditches, gas mains, telephone wires and equipment and television and electrical cables, conduits and wire over, under and along any portion of the Common Areas and Facilities (other than Limited Common Areas and Facilities), provided that it shall be a condition precedent to the use and enjoyment of any such easements that the owner or owners of land benefited thereby shall, at his, its or their expense, restore the Common Areas and Facilities to the same condition as existed just prior to the installation of any such utility improvements, and provided further that the owner or owners of such benefited land shall pay their fair share of the cost and expense of repairing, replacing, relocating and operating said improvements, said fair share to be determined in accordance with the provisions of the last section of this Article III. Each Unit Owner and his respective mortgagee by acceptance of a deed conveying such Condominium Ownership Interest or a mortgage encumbering such Condominium Ownership Interest, as the case may be, hereby irrevocably appoints the Declarant, or the Association if the same has been formed, his Attorney-in-Fact, coupled with an interest, and authorizes, directs and empowers such Attorney, at the option of the Attorney, to execute, acknowledge and record for and in the name of such Unit Owner and his mortgagee such easements or other instruments as may be necessary to effect the foregoing.

Each grantee of a Unit and each mortgagee in whose favor a mortgage with respect to any Unit is granted shall be subject to and have the benefit of (as the case may be) each of the easements herein provided in the same manner and to the same extent as though such easements were expressly provided for and fully set forth in the deed of conveyance or mortgage (as the case may be), notwithstanding the omission from such deed of conveyance or mortgage (as the case may be) of reference to such easements.

(J) Easement Rights. The easements set forth in this Article are to be enjoyed in common with the grantees, their heirs, executors, administrators, successors and assigns, with the right reserved in the Declarant, its successors and assigns, to grant, assign, or convey or assign to public use or dedicate to public use all or a portion of the easement



rights herein to one or more assignees or grantees as an appurtenance to the Condominium Property and Additional Property, without it being considered by the grantees, their heirs, executors, administrators, successors and assigns, as an additional burden on said easement and/or the Condominium Property. Any assignment, conveyance or dedication of said easement rights by the Declarant may be made at the same time or at successive times, and the residuary easement rights of the Declarant shall not cease or determine until the Declarant, its successors and assigns, has no remaining interest, of record, in the Condominium Development or Additional Property. However, the rights of all assignees or grantees in the reserved easements shall remain in full force and effect.

(K) No Severance of Ownership. No owner shall execute any deed, mortgage, lease, or other instrument affecting title to his Condominium Ownership Interest without including therein both his interest in the Unit and his corresponding percentage of ownership in the Common Areas and Facilities, it being the intention hereof to prevent any severance of such combined ownership. Any such deed, mortgage, lease or other instrument purporting to affect the one without including also the other shall be deemed and taken to include the interest so omitted even though the latter is not expressly mentioned or described therein.

(L) Sharing of Expenses. In the event all or any portion of the Additional Property is not added to the Condominium Property ("Non-Added Property"), and such Non-Added Property is subsequently developed and improved by the construction thereon of dwelling units, then the fair share of the cost and expense of repairing, replacing, relocating, operating and maintaining roadways, sidewalks, water mains and service connections, storm and sanitary sewer lines, retention basins, if any, and drainage thereto, steam, electric, gas and telephone lines, conduits, and transmission and meter devices, television cable lines and other television reception devices, and security lines and devices, signage and other utilities and facilities installed on, in, over or under the Condominium Property and/or the Additional Property and which are utilized in common by the Condominium Property and the Non-Added Property, shall be apportioned among all of the Unit Owners and/or the owner(s) of the Non-Added Property, based on the total number of Units situated within the Condominium Property plus the total number of dwelling units actually constructed on the Non-Added Property (e.g., the total number of condominium units, if the Non-Added Property submitted to condominium ownership; the total number of residences if the Non-Added Property is improved with single-family residences or zero lot line "fee simple" residences; the total number of rental units if the Non-Added Property are improved with rental units); such fair share of such expenses attributable to the Non-Added Property shall be determined by a fraction, the numerator of which shall be the number of dwelling units constructed on either or both of said properties and the denominator of which shall be the total number of dwelling units constructed on the Condominium Property, and the Non-Added Property. The owner(s) of

the Non-Added Property shall remit said share of such expenses to the Association within ten (10) days after being billed by the Association for the cost of the same. The Non-Added Property shall not be chargeable hereunder unless and until the same are improved by the construction thereon of dwelling Units and such dwelling Units utilize the above improvements.

#### ARTICLE IV

##### UNIT OWNERS' ASSOCIATION OF MACINTOSH FARMS CONDOMINIUM NO. 2

(A) Membership. Declarant has formed or shall cause to be formed an Ohio corporation not for profit to be called MACINTOSH FARMS CONDOMINIUM NO. 2 OWNERS' ASSOCIATION, INC. which shall administer the Condominium Property. Each Unit Owner, upon acquisition of title to a Unit, shall automatically become a member of the Association. Such membership shall terminate upon the sale or other disposition by such member of his Unit ownership, at which time the new owner of such Unit shall automatically become a member of the Association. The Board of Managers and officers of the Association elected as provided in the Bylaws of the Association, attached hereto as Exhibit "B", shall exercise the powers, discharge the duties and be vested with the rights conferred by operation of law, by the Bylaws and by this Declaration upon the Association, except as otherwise specifically provided; provided, however, that in the event any such power, duty or right shall be deemed exercisable or dischargeable by, or vested in, an officer or a member of the Board of Managers, solely in his capacity as an officer or a member of the Board of Managers, he shall be deemed to act in such capacity to the extent required to authenticate his acts and to carry out the purposes of this Declaration and the Bylaws attached hereto as Exhibit "B". The number of members constituting the Board of Managers and the terms of such members are set forth in the Bylaws attached hereto as Exhibit "B".

(B) Administration of Condominium Property. The administration of the Condominium Property shall be in accordance with the provisions of this Declaration and the Bylaws of the Association which are attached hereto as Exhibit "B", and each Unit Owner, tenant or occupant of a Unit shall comply with the provisions of this Declaration, the Bylaws, decisions, rules, regulations and resolutions of the Association or its representative, as lawfully amended from time to time, and failure to comply with any such provisions, decisions, rules, regulations, and resolutions, shall be grounds for an action to recover sums due for damages, or for injunctive relief.

(C) Service of Process. Service of summons or other process upon the Association may be made in accordance with the provisions of the Ohio Revised Code.

Sections 5311.05(B)(8) and 5311.20. The President, a Vice President, the Secretary or Treasurer of the Association shall be designated by the Board of Managers of the Association as its statutory agent and the statutory agent so designated shall be a resident of the Condominium and an owner of one of its Units. Until such time as a statutory agent is designated, service may be made upon John Kasmarcak, 868 Corporate Way, Westlake, Ohio 44145. When and after the Association is lawfully constituted the statutory agent thereof shall be the person to receive service of process, and his name and address (and that of each successor) shall be filed with the Ohio Secretary of State on such forms as are prescribed for the subsequent appointment of a statutory agent for an Ohio corporation not for profit. Notwithstanding the foregoing, the Declarant reserves the right of the Association to designate a statutory agent to the extent permitted by Sections 5311.08 and 5311.25 of the Act.

#### ARTICLE V

#### ASSESSMENTS

(A) General. Assessments for the management, maintenance, repair and insurance of the Common Areas and Facilities and amounts determined by the Board of Managers of the Association for the establishment and maintenance of the reserve fund to meet the cost and expense of repair and replacement of the Common Areas and Facilities together with the payment of the Common Expenses, shall be made in the manner provided herein, and in the manner provided in the Bylaws attached hereto as Exhibit "B".

(B) Division of Common Expenses, Common Assessments, Common Surplus, Common Profits and Common Losses. The proportionate shares of the separate owners of the respective Units in the Common Expenses, Common Assessments, Common Surplus, Common Profits and Common Losses of the operation of the Condominium Property is based upon the percentage of interest in the Common Areas and Facilities of such Units expressed in Article II (B)(4) hereof. The acquisition or occupancy of any Unit shall be conclusive evidence against the Unit Owner or Occupant thereof that the percentage set forth opposite each Unit in Exhibit "E" of this Declaration is in the proportion that the square footage of the Unit bears to the aggregate square footage of all Units on the date this Declaration is filed for record, or the date an amendment to this Declaration is filed for record pursuant to Article XI hereof, and the proportionate share of profits and expenses of each Unit Owner shall be in accordance with said percentages set forth in Article II, (B)(4) hereof. The obligation of an Owner to pay his proportionate share of Common Assessments shall commence upon such Owner's acquisition of his Unit.

(C) Non-Use of Facilities. No owner of a Unit may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of the Common Areas and Facilities, or by the abandonment of his Unit.

(D) Lien of Association. The Association shall have the right to place a lien upon the estate or interest in any Unit of the owner thereof and his percentage of interest in the Common Areas and Facilities for the payment of the portion of the Common Expenses chargeable against such Unit which remains unpaid for ten (10) days after such portion has become due and payable by filing a certificate therefor with the Recorder of Cuyahoga County, Ohio, pursuant to authorization given by the Board of Managers of the Association. The certificate shall contain a description of the Unit, the name or names of the record owner or owners, and the amount of the unpaid portion of the Common Expenses. The lien is valid for a period of five (5) years after the date of filing, unless sooner released or satisfied in the same manner provided by law for the release and satisfaction of mortgages on real property or discharged by the final judgment or order of a court in an action brought to discharge the lien as hereinafter provided. In addition, each Unit Owner shall be personally liable for all assessments levied by the Association against his Unit during the period he has an ownership interest therein, and any Common Assessment not paid within ten (10) days after the same shall become due and payable, shall bear interest at the maximum rate allowed by law until such time as the Common Assessment has been paid in full and the Association shall be entitled to levy against the delinquent Unit Owner a late fee or service charge of ten percent (10%) of the amount of the delinquent payment or Twenty-Five Dollars (\$25.00), whichever is greater ("Charge"), in order to defray the administrative costs of collection, and the Association shall be entitled to levy against the delinquent Unit Owner court costs and attorney and paraprofessional (paralegal) fees.

(E) Priority of Association's Lien. The lien provided for in Section (D) of this Article V is prior to any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of first mortgages that have been filed for record. The lien provided for in Section (D) of this Article V may be foreclosed in the same manner as a mortgage on real property in an action brought on behalf of the Association by its president or any other chief officer pursuant to authority given to him by the Board of Managers. In the foreclosure action, the Association, or its agent, duly authorized by action of the Board of Managers, is entitled to become a Purchaser at the foreclosure sale. Suit to recover for unpaid Common Expenses shall be maintainable without foreclosing or waiving the lien securing payment of the same.

(F) Dispute as to Common Expenses. A Unit Owner who believes that the portion of Common Expenses chargeable to his Unit, for which a certificate of lien has been filed by the Association, has been improperly charged against him or his Unit may

commence an action for the discharge of the lien in the Court of Common Pleas for Cuyahoga County, Ohio. In the action, if it is finally determined that the portion of Common Expenses has been improperly charged to the owner or his Unit, the court shall make an order as is just, which may provide for a discharge of record of all or a portion of the lien.

(G) Non-Liability of Judicial Sale Purchaser for Past Due Common Expenses.

Where the mortgagee of record or other Purchaser of a Unit acquires title to the Unit as a result of a judicial sale resulting from litigation, or where the mortgagee of a first mortgage of record in lieu of the foreclosure of its mortgage acquires title to the Unit by accepting a deed to the Unit, such acquirer of title, its successors and assigns, shall not be liable for the share of the Common Expenses or other assessments by the Association chargeable to such Unit which become due prior to the acquisition of title to such Unit by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from the owners of all of the Units, including the Unit of such acquirer, his heirs, executors, administrators, successors or assigns at the time the first assessment next following the acquisition of title to such Unit by such acquirer.

(H) Liability for Assessments Upon Voluntary Conveyance.

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

ARTICLE VI

INSURANCE AND RECONSTRUCTION

(A) Insurance. The insurance which shall be carried upon the Condominium Property shall be governed by the following provisions:

(i) Casualty Insurance. The Association shall carry casualty insurance on all insurable improvements comprising the Common Areas and Facilities and all personal property as may be owned by the Association and for which the

Association is responsible; and casualty insurance on all other structures and insurable improvements constituting a part of the Condominium Property, other than improvements located in the bounds of each Unit which have been placed therein by or on behalf of parties other than Declarant or the Association. That is, the Condominium policy shall insure the fixtures, installations, wall and floor coverings, plaster or plasterboard (drywall), cabinetry, sinks, dishwashers, disposals, toilets, partitions and other improvements which have been installed or shall in the future be installed by the Declarant, but the Association shall not insure any improvements within the bounds of a Unit placed therein by or on behalf of any one other than the Declarant or the Association. The burden shall be upon the Unit Owner to determine whether improvements located within the bounds of such Owner's Unit shall be insured under the Association policy. The casualty insurance to be purchased hereunder by the Association shall be in an amount not less than one hundred percent (100%) of the insurable replacement cost of such improvements, with a "Guaranteed Replacement Cost Endorsement" (excluding excavation and foundation costs and other items normally excluded from coverage), as determined by a qualified appraiser, the amount determined and the insurance to be reviewed annually and adjusted if necessary. The cost of the appraisal shall be a Common Expense. Such insurance shall include the following coverages:

(a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement;

(b) such policy shall include, if reasonably available, a "Construction Code Endorsement" or its equivalent, a "Demolition Cost Endorsement" or its equivalent, an "Increased Cost of Construction Endorsement" or the equivalent, a "Contingent Liability from Operation of Building Laws Endorsement", or its equivalent, and an "Agreed Amount and Inflation Guard Endorsement" or its equivalent; and

(c) such other risks (including flood insurance if such insurance is available) as from time to time customarily shall be covered with respect to buildings similar to the Buildings in construction, location and use, including, but not limited to, debris removal, vandalism, malicious mischief, windstorm and water damage, subject to such deductible amounts as the Board shall determine, provided, however, such deductible amounts shall not exceed the lesser of Five Thousand Dollars (\$5,000.00) or one percent (1%) of the policy amount. The deductible amounts shall be treated as a Common Expense. The policy or policies providing coverage (hereinafter called "Casualty Insurance") shall provide that notwithstanding any provision thereof which gives the carrier an option to restore damage in lieu of

making a cash settlement therefor, such option shall not be exercisable in the case of removal of the Condominium Property from the provisions of Chapter 5311 as provided for in this Declaration and shall further provide that the coverage thereof shall not be terminated for non-payment of premiums without at least ten (10) days' written notice to each Unit mortgagee. All Casualty Insurance policies shall be purchased by the Association for the benefit of the Declarant, the Association, the Unit Owners and their respective mortgagees, as their interests may appear, and shall provide (i) for the issuance of certificates of insurance with mortgagee endorsements to the holders of mortgages on the Units, if any; (ii) that the insurer waives its rights of subrogation against Unit Owners, Occupants of Units, and the Association; (iii) that the insurance will not be prejudiced by any acts or omissions of Unit Owners that are not under the control of the Association; and (iv) the policy is primary, even if a Unit Owner has other insurance that covers the same loss. The Casualty Insurance policies and any endorsements thereto shall be deposited with the Association or with the Insurance Trustee (as hereinafter defined), if one is appointed, who must first acknowledge that the policies and any proceeds thereof will be held in accordance with the provisions hereof. All Casualty Insurance policies shall provide that all proceeds payable as a result of casualty losses shall be paid to the Association as exclusive agent for each of the Unit Owners and each holder of a mortgage or other lien on any Unit unless the Board determines to appoint an Insurance Trustee in accordance with Subsection (6) of Section (A) of this Article VI.

(2) Liability Insurance. The Association shall insure itself, the members of the Board, the Unit Owners and Occupants of Units other than Unit Owners against liability for personal injury, disease, illness or death and for injury to or destruction of property occurring upon, in or about, or arising from or relating to the Common Areas and Facilities, including, without limitation, water damage, legal liability, hired automobile, non-owner automobile and off-premises employee coverage, such insurance to afford protection to a limit of not less than One Million Dollars (\$1,000,000.00) in respect to personal injury, disease, illness or death suffered by any one person, and to the limit of not less than One Million Dollars (\$1,000,000.00) in respect to any one occurrence, and to the limit of not less than One Million Dollars (\$1,000,000.00) in respect to damage to or destruction of property arising out of any one accident. All liability insurance shall contain cross-liability endorsements to cover liabilities of the Unit Owners as a group to a Unit Owner. In the event the insurance effected by the Association on behalf of the Unit Owners and Occupants of Units who are not Unit Owners against liability for personal injury or property damage arising from or relating to the Common Areas

and Facilities shall, for any reason, not fully cover any such liability, the amount of any deficit shall be a Common Expense to the Unit Owners, and any Unit Owner who shall have paid all or any portion of such deficiency in an amount exceeding his proportionate share thereof based on his percentage of interest in the Common Areas and Facilities shall have a right of contribution from the other Unit Owners according to their respective percentages of interest in the Common Areas and Facilities. The Association shall also obtain directors (Board of Managers) and officers liability coverage if reasonably available.

(3) Fidelity Bonds. A fidelity bond indemnifying the Association, the Board and the Unit Owners for loss of funds resulting from fraudulent or dishonest acts of any employee of the Association or of any other person handling the funds of the Association, the Board or the Unit Owners in such amount as the Board shall deem desirable, but in no event shall the amount of the bond be less than an amount equal to three (3) months' Common Assessments. The fidelity bond shall name the Association (or the Insurance Trustee) as the obligee, and the premium for such bond shall be a Common Expense. Such bond shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Such bond shall provide that it may not be cancelled for non-payment of any premiums or otherwise substantially modified without ten (10) days prior written notice to the Association and to all holders of first mortgages of record.

(4) Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association at least thirty (30) days prior to the expiration date of such policies and shall be assessed as Common Expenses.

(5) Unit Owner Insurance. Each Unit Owner may, at his own expense, obtain insurance covering his Unit (consisting of all space bounded by the interior [un-drywalled] surfaces of the perimeter walls, floors and ceilings as specified in Article 2[A] of this Declaration), the Limited Common Areas and Facilities that are attributable solely to his Unit, and the contents of his Unit, the foregoing including, but not limited to, all floor and wall coverings, furniture, fixtures and other betterments installed by each Unit Owner, and any personal property which he stores elsewhere on the Condominium Property, and each Unit Owner may, at his own expense, obtain public liability insurance for personal injuries or damage arising out of the use and occupancy of his Unit and Casualty Insurance affording coverage upon his Unit and property inasmuch as the same may not be insured by the Association, but such Casualty Insurance shall provide that it shall be without contribution as against the Casualty Insurance purchased by the Association or shall be written by the carrier of such Casualty Insurance and shall contain the same



waiver of subrogation as that referred to in subsection (1) above. The Association shall have the right, but not the obligation, to insure portions of a Unit pursuant to Section (A)(1) of this Article and the provisions of this subparagraph (5) shall not invalidate such provision.

(6) Insurance Trustee. At the direction of the Board, the Board may in writing designate and appoint an insurance trustee who shall be a bank in Cleveland, Ohio having trust powers and total assets of more than \$50,000,000. (Such trustee shall be herein referred to as the "Insurance Trustee".) The Insurance Trustee shall not be liable for payment of premiums nor for the renewal of the policies, nor for the sufficiency of coverage, nor for the form or contents of the policies, nor for the failure to collect any insurance proceeds. The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Association, the Unit Owners, and their respective mortgagees. The Insurance Trustee may rely upon a certificate of the Association certifying as to whether or not the damaged property is to be reconstructed or repaired which such certificate shall be delivered, upon request of the Insurance Trustee as soon as practicable.

(B) Responsibility for Reconstruction or Repair.

(1) If any portion of the Condominium Property shall be damaged by perils covered by the Casualty Insurance, the Association shall cause such damaged portion to be promptly reconstructed or repaired to the extent of the funds made available to the Association (or the Insurance Trustee if one has been appointed), as hereinafter provided, and any such reconstruction or repair shall be substantially in accordance with the Drawings; provided, however, if such damage renders one-half or more of the Units then comprised within the Condominium Property untenable, the Unit Owners may, by the vote of those entitled to exercise not less than seventy-five percent (75%) of the voting power, elect not to reconstruct or repair such damaged part at a meeting which shall be called within ninety (90) days after the occurrence of the casualty, or, if by such date the insurance loss has not been finally adjusted, then within thirty (30) days after such final adjustment. Upon such election, all of the Condominium Property shall be subject to an action for sale as upon partition at the suit of any Unit Owner. In the event of any such sale or a sale of the Condominium Property after such election by agreement of all Unit Owners, the net proceeds of the sale together with the net proceeds of insurance, if any, and any other indemnity arising because of such damage or destruction, shall be considered as one fund and shall be distributed to all Unit Owners in proportion to their respective percentages of interest in the Common Areas and Facilities. No Unit Owner, however, shall receive any portion of his

share of such proceeds until all liens and encumbrances on his Unit have been paid, released or discharged. Each Unit Owner and his respective mortgagee by acceptance of a deed conveying such Condominium Ownership Interest or a mortgage encumbering such Condominium Ownership Interest, as the case may be, hereby irrevocably appoints the Association his attorney-in-fact, coupled with an interest, and authorizes, directs and empowers such attorney, at the option of the attorney, to carry out the provisions of this Article VI.

(2) Each Unit Owner shall be responsible for the repair of his Unit (and the Limited Common Areas and Facilities attributable solely to his Unit) after casualty that are not covered by the Association's Casualty Insurance.

(C) Procedure for Reconstruction or Repair.

(1) Immediately after a casualty causing damage to any portion of the Common Areas and Facilities the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as the condition of the property before the casualty. Such costs may include professional fees of public adjuster firms and others and premiums for such bonds as the Board deems necessary.

(2) If the proceeds of the Casualty Insurance are not sufficient to defray the estimated costs of reconstruction and repair by the Association (including the aforesaid fees and premiums, if any,) one or more special assessments shall be made against all Unit Owners in sufficient amounts to provide funds for the payment of such costs, and the proceeds of such special assessments shall be deposited with the Association or the Insurance Trustee, as the case may be.

(3) The proceeds of the Casualty Insurance referred to in Subsection (1) of Section (A) of this Article VI and the sums deposited from collections of special assessments against Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed to the Insurance Trustee and be applied to the payment of the cost of reconstruction and repair of the portion of Condominium Property that is covered by the Association's Casualty Insurance policy from time to time as the work progresses, but not more frequently than once in any calendar month. The Association or the Insurance Trustee, as the case may be, shall make such payments upon receipt of a certificate, dated not more than fifteen (15) days prior to such request, signed by the architect or contractor in charge of the work, who shall be selected by the Association, setting forth (a) that the sum then requested is justly due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in

connection with the work, giving a brief description of the services and materials, and that the sum requested does not exceed the value of the services and materials described in the certificate, (b) that except for the amount stated in such certificates to be due as aforesaid less any prescribed holdback of funds, and for work subsequently performed, there is no outstanding indebtedness known to the person signing such certificate after due inquiry which might become the basis of a vendor's, mechanic's, materialmen's or similar lien arising from such work, and (c) that the cost as estimated by the person signing such certificate of the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining in the hands of the Association or the Insurance Trustee, as the case may be, after the payment of the sum so requested. It shall be presumed that the first monies disbursed in payment of such costs of reconstruction and repair shall be from insurance proceeds; and if there is a balance in any construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be disbursed to the Association.

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

(5) In the event the estimated cost of reconstruction and repair is less than the total of the annual assessments for Common Expenses made during the calendar year preceding that in which the casualty occurred, then, notwithstanding the appointment of any Insurance Trustee as herein provided, the construction fund may be disbursed upon the order of the Board; provided, however, that at the request of a mortgagee which is a beneficiary of an insurance policy, the proceeds of which are included in the construction fund, such proceeds shall be disbursed by the order of the Board; in the manner provided for disbursement in subsection (3) above.

(6) Each Unit Owner shall be deemed to have delegated to the Board his right to adjust with insurance companies all losses under the Casualty Insurance policies referred to in Subsection (1) of Section (A) of this Article VI.

(D) Minor Repairs.

(1) Notwithstanding the foregoing provisions of this Article, if the aggregate amount of the estimated costs of repairing any damage to the Common Areas and Facilities is less than Ten Thousand Dollars (\$10,000.00), the instrument

(or draft) by means of which any insurance proceeds are paid shall be endorsed by the Insurance Trustee and delivered to the Association and the damage shall be repaired in accordance with Article VI(D)(2) below.

(2) Such insurance proceeds shall be used by the Association to defray the cost of repairing the damage to the portions of the Condominium Property that are covered by the Association's Casualty Insurance policy. If the cost of such repairs is less than the amount of such insurance proceeds, the excess shall be retained by the Association or its duly authorized agent and placed in the maintenance fund or contingency fund as the Board in its sole discretion may determine. If the cost of such repairs exceeds the amount of such insurance proceeds, such excess may be provided either by means of a Common Assessment levied by the Board against all Unit Owners in proportion to their respective percentages of Ownership Interests in the Common Areas and Facilities or by means of an appropriation from the contingency fund or such other fund as may be established for the purpose of providing for the maintenance, repair and replacement of the Common Areas and Facilities, as the Board may determine.

(E) Negligence of Unit Owner. Each Unit Owner shall be liable for the expenses of any maintenance, repair or replacement rendered necessary by his negligence or by that of any member of his family or his or their guests, employees, agents or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Association. A Unit Owner shall pay the amount of any increase in insurance premiums occasioned by his use, misuse, occupancy or abandonment of his Unit or its appurtenances or of the Common Areas and Facilities or Limited Common Areas and Facilities.

## ARTICLE VII

### COVENANTS AND RESTRICTIONS AS TO USE AND OCCUPANCY

The Units and Common Areas and Facilities shall be occupied and used as follows:

(A) No part of the Condominium Property shall be used for other than housing and the related common purposes for which the Condominium Property was designed. Each Unit shall be used as a residence by the Unit Owner and his family, or by lessees or guests of the Unit Owner and his family, except for such limited professional or commercial use as the Declarant or the Board of Managers, upon application of a Unit Owner or Purchaser, from time to time may authorize as not being inconsistent with the residential character of the Condominium Property and not being in violation of the zoning ordinances of the City of Broadview Heights.

(B) There shall be no obstruction of the Common Areas and Facilities nor shall anything be stored in the Common Areas and Facilities without the prior consent of the Board except as hereinafter expressly provided. Each owner shall be obligated to maintain and keep in good order and repair his own Unit.

(C) Nothing shall be done or kept in any Unit or in the Common Areas and Facilities which will increase the rate of insurance on the Common Areas and Facilities without the prior written consent of the Board. No owner shall permit anything to be done or kept in his Unit or in the Common Areas and Facilities which will result in the cancellation of insurance on the building, or contents thereof, or which would be in violation of any law. No waste shall be committed in the Common Areas and Facilities.

(D) Unit Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside walls of a building and no sign, awning, canopy, shutter, radio or television antenna shall be affixed to or placed upon the exterior walls or roof or any part thereof, or exposed on, at or from any window, without the prior consent of the Board. Furthermore, no curtains, drapes, shades or blinds shall be displayed in or from any window or glass door of a building without the prior written consent of the Association unless the part thereof within view from the exterior of a building is white, near white or beige in color.

(E) No animals, rabbits, livestock, fowl, poultry or reptiles of any kind shall be raised, bred, or kept in any Unit or in the Common Areas and Facilities, or in the Limited Common Areas and Facilities, except that dogs, cats, or other normal household pets may be kept in Units, subject to rules and regulations adopted by the Board, including, without limitation, the right to levy fines and enforcement charges against persons who do not clean up after their pets. Furthermore, pets may not be kept, bred, or maintained for any commercial purpose; and provided further that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property upon three (3) days' notice from the Board.

(F) No noxious or offensive activity shall be carried on in any Unit or in the Common Areas and Facilities or Limited Common Areas and Facilities nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or Occupants.

(G) Nothing shall be done in any Unit or in, on or to the common elements which will impair the structural integrity of the building or which would structurally change the building except as is otherwise provided herein.

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

(I) There shall be no storage of baby carriages or playpens, bicycles, wagons, toys, benches or chairs, and there shall not be parking of motor vehicles on any part of the Common Areas and Facilities, except that motor vehicles may be parked during daylight hours in designated areas of the private streets; and that balcony and patio areas, if any, must be used for their intended purposes.

(J) No trucks (except two-axle trucks having no more than four tires), buses, boats, camper trailers, house trailers or other trailers shall be stored, kept or maintained in any driveway, roadway or any other Common Area or Facility, Limited Common Area and Facility or in any shed (excepting authorized vehicles of the Declarant, or the Board and their respective agents and contractors for construction or maintenance purposes, or other purposes that benefit the Condominium Property).

(K) Except as provided in Section (A) of this Article, no industry, business, trade, occupation or profession of any kind, commercial, religious, educational, or otherwise, designed for profit, altruism, exploration, or otherwise, shall be conducted, maintained, or permitted on any part of the Property, nor shall any "For Sale" or "For Rent" signs or other window displays or advertising be maintained or permitted on any part of the Property or in any Unit therein, except as otherwise set forth in this Declaration. Nothing in this Declaration or the Bylaws shall be construed to prohibit, and the right is hereby reserved by the Declarant and granted to the Association, to offer garage service, cable T.V. service, and coin-operated washers and dryers or vending machines, or other "commercial" enterprises in the Common Areas and Facilities, provided that such operation shall be primarily intended for the convenience and welfare of the Unit Owners of the Condominium Property notwithstanding that the enterprise(s) may produce a profit. The right is reserved by the Declarant, or its agent, to place "For Sale" or "For Rent" signs on any unsold or unoccupied Units, and the right is hereby given to any mortgagee, who may become the owner of any Unit, to place such signs on any Unit owned by such mortgagee. The right is reserved by the Declarant, or its agent, to use any unsold Unit or Units for office, sales, model or display purposes.

(L) Nothing shall be altered or constructed in or removed from the Common Areas and Facilities except upon the prior written consent of the Board.

(M) These restrictions are in addition to the restrictions contained in the Master Declaration. Furthermore, if there is a conflict between the restrictions contained herein

and the restrictions contained in the Master Declaration, the more restrictive restrictions shall prevail.

ARTICLE VIII

REHABILITATION OF EXISTING BUILDINGS,  
STRUCTURES AND OTHER IMPROVEMENTS

The Association may, by the affirmative vote of Unit Owners entitled to exercise not less than seventy-five percent (75%) of the voting power, determine that the Condominium Property is obsolete in whole or in part, and elect to have the same renewed and rehabilitated. The Board shall thereupon proceed with such renewal and rehabilitation and the cost thereof shall be a Common Expense. In such event any Unit Owner who does not vote for such renewal and rehabilitation may elect, in a writing served by him on the President of the Association within thirty (30) days after receiving notice of such vote, to receive the fair market value of his Ownership Interest, less (a) the amount of any liens and encumbrances on this Unit as of the date such vote is taken and (b) the amount of any liens and encumbrances arising out of actions of said Unit Owner filed during the period from the date of such vote to the date of conveyance, in return for a conveyance of his Ownership Interest, subject to such liens and encumbrances, to the Board of Managers and their successors in office, or such nominee as they shall designate, for the benefit of all the owners. In the event of such election by a Unit Owner to receive the fair market value of his Ownership Interest, such conveyance and payment of the consideration therefor, which shall be a Common Expense to the Unit Owners who have elected to renew and rehabilitate, shall be made within ten (10) days thereafter, and, if such Unit Owner and majority of the Board cannot agree upon the fair market value of such Unit, such determination shall be made by the majority vote of three appraisers, one of whom shall be appointed by the Board, one of whom shall be appointed by such Unit Owner, and the third of whom shall be appointed by the first two appraisers.

ARTICLE IX

SALE OF THE PROPERTY

The Unit Owners by unanimous vote may elect to sell the Condominium Property as a whole. Upon such action, it shall become the duty of every Unit Owner to execute and deliver such instruments and to perform all acts as in manner and form may be necessary to effect such sale. If the Condominium Property is sold, the proceeds of sale shall be received and held by the Association in trust for the benefit of the Unit Owners and their respective mortgagees as their respective interests may appear, and such proceeds shall be disbursed as soon as possible to satisfy first mortgage liens, unpaid assessments

and other liens and encumbrances, with the balance to be distributed to the Unit Owners, in accordance with their interest in the Common Areas and Facilities of the Condominium Development.

#### ARTICLE X

##### REMEDIES FOR BREACH OF COVENANTS, RESTRICTIONS AND REGULATIONS

(A) Abatement and Enjoyment. If any Unit Owner (either by his own conduct or by the conduct of any other Occupant of his Unit) shall violate any restriction or condition or Rule adopted by the Board, or the breach of any covenant or provision contained in this Declaration or the Bylaws, the Association shall have the right, in addition to the rights hereinafter set forth in this Article X and those provided by law:

(1) to the extent permitted by law, enter upon the portion of the Condominium Development which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions of this Declaration or of the Bylaws or the Rules, and the Declarant, or its successors or assigns, or the Board, or its agents, shall not thereby be deemed guilty in any manner of trespass; or

(2) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach. The Association shall be entitled to be reimbursed for legal fees incurred in connection with any such action.

(B) Involuntary Sale. If any Unit Owner (either by his own conduct or by the conduct of any other Occupant of his Unit) shall violate any of the covenants or restrictions or provisions of this Declaration or the Rules adopted by the Board, and such violation shall continue for thirty (30) days after notice in writing from the Board, or shall occur repeatedly during any thirty (30) day period after written notice or request to cure such violation from the Board, then the Board shall have the right, upon the giving of at least ten (10) days' prior written notice, to terminate the rights of such Unit Owner to continue as an owner and continue to occupy, use or control his Unit and thereupon an action in equity may be filed by the members of the Board against the Unit Owner for a decree of mandatory injunction against the Unit Owner or Occupant or, in the alternative, a decree declaring the termination of the right of such Unit Owner to occupy, use or control the Unit owned by him, and ordering that all the right, title and interest of the Unit Owner in the Condominium Property shall be sold at a judicial sale upon such notice and terms as the court shall establish, except that the court shall enjoin and restrain such Unit



Owner from re-acquiring his interest at such judicial sale. The proceeds of any such judicial sale shall be paid to discharge court costs, mortgages and any other liens and encumbrances of record, in the order of their priority, and all such items shall be taxed against such Unit Owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments owing to the Association or any liens required to be discharged shall be paid to the Unit Owner. Upon the confirmation of such sale, the Purchaser thereat shall thereupon be entitled to a deed to the Unit ownership and to immediate possession of the Unit sold and may apply to the court for a writ for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the decree shall so provide, that the Purchaser shall take the interest in the Condominium Property sold subject to this Declaration.

#### ARTICLE XI

#### ADDITIONS TO CONDOMINIUM PROPERTY

Declarant contemplates constructing certain residential structures and other improvements on the Additional Property and submitting the Additional Property together with the buildings and other improvements to be constructed thereon (being hereinbefore defined as the "Additional Property Buildings") and all easements, rights and appurtenances belonging thereto, and all articles of personal property existing for the common use of the Unit Owners to the provisions of this Declaration and the Act, so the same will become in all respects part of the Condominium Property. Declarant's right to submit the Additional Property and the Additional Property Buildings to be constructed thereon to the provisions of this Declaration and the Act shall be in accordance with the following provisions:

(A) Declarant hereby reserves the right and option, but not the obligation, to submit the Additional Property, or any portion or portions thereof, in one (1) or more submissions, together with the Additional Property Buildings which may be constructed thereon, all easements, rights and appurtenances belonging thereto, and all articles of personal property existing for the common use of the Unit Owners to the provisions of this Declaration and the Act.

(B) Except as otherwise provided in this Article XI and the Act, there are no limitations on Declarant's right and option to expand the Condominium Property to include the Additional Property and there is no requirement for the consent of Unit Owners to such expansion.

(C) Declarant has a period of seven (7) years after the date the Declaration is filed for record to expand the Condominium Property to include the Additional Property.

The Declarant has the option to renew the initial seven (7) year period for an additional seven (7) year period, exercisable within six (6) months prior to expiration of the initial seven (7) year period, provided that a majority of the Unit Owners, other than the Declarant, consents to such a renewal. Other than the expiration of the time limits set forth above, there are no circumstances that will terminate the Declarant's right to expand the Condominium Property to include the Additional Property.

(D) A metes and bounds legal description of the Additional Property is set forth in Exhibit "2" hereof.

(E) The Declarant is not obligated to expand the Condominium Property to include all or any portion of the Additional Property.

(F) The Declarant has the right to expand the Condominium Property to include the Additional Property, or any portion thereof, in one (1) or more submissions. There are no limitations fixing the boundaries of the portions of the Additional Property that the Declarant may submit to the Condominium Property and there are no limitations on the order in which portions of the Additional Property may be submitted to the Condominium Property.

(G) Except for private deed restrictions, if any, and except for the requirements of the governmental authorities having jurisdiction over the same, including the zoning requirements of the City of Broadview Heights, there are no limitations as to the location of any improvements that may be made on any portion of the Additional Property.

(H) The Declarant anticipates constructing sixty-nine (69) Units on the Additional Property at the rate of approximately three and five tenths (3.5) Units per acre with a maximum on any given acre of 7.03 Units based on the zoning code of the City of Broadview Heights and Declaration of Restrictive Covenants recorded in Volume 15205, Page 305 of Cuyahoga County Records, for a total number of Units on Parcel No. 1 and the Additional Property of seventy-two (72) Units, which is the maximum number of Units that may be constructed on Parcel No. 1 and the Additional Property based on the foregoing zoning code and Declaration of Restrictive Covenants.

(I) The Units to be constructed on the Additional Property are restricted exclusively to residential use and related common purposes for which the Condominium Property was designed.

(J) Although the Declarant anticipates that the Additional Property Buildings shall be compatible with the Parcel No. 1 Buildings with respect to quality of construction, principal materials to be used and architectural style, the Additional Property

Buildings need not be compatible with the Parcel No. 1 Buildings with respect to the foregoing.

(K) The Declarant is not obligated to construct improvements on the Additional Property. Except for private deed restrictions, if any, and except for the requirements of the governmental authorities having jurisdiction over the same, including the zoning and building requirements of the City of Broadview Heights, there are no restrictions or limitations upon the improvements that may be made upon the Additional Property.

(L) Although the Declarant anticipates that the Units to be constructed on the Additional Property will be substantially identical to the Units constructed on Parcel No. 1, the Units to be constructed on the Additional Property need not be substantially identical to the Units constructed on Parcel No. 1. Except for private deed restrictions, if any, and except for the requirements of the governmental authorities having jurisdiction over the types of Units to be constructed on the Additional Property, including the zoning and building requirements of the City of Broadview Heights, there are no limitations on the types of Units that may be constructed on the Additional Property.

(M) The Declarant is not reserving any right to either create Limited Common Areas and Facilities within any portion of the Additional Property (except for the Limited Common Areas and Facilities referred to in Article II(B)(2) of this Declaration) or to designate Common Areas and Facilities within the Additional Property or any portion thereof that may subsequently be assigned as Limited Common Areas and Facilities.

(N) The Declarant reserves the right to assign its rights and options to expand the Condominium Property to include the Additional Property, or any portion thereof, to any successor of the Declarant who stands in the same relationship to the Condominium Development as the Declarant.

(O) At the time or times Declarant expands the Condominium Property to include the Additional Property, or any portion or portions thereof, the Declarant shall submit with the amendment to the Declaration expanding the Condominium Property such drawings of the Additional Property being submitted as are required by Section 5311.07 of the Act to show graphically, insofar as is possible, all the particulars of the land, buildings and other improvements, including, but not limited to, the layout, location and dimensions of the Common Areas and Facilities and Limited Common Areas and Facilities, for the Additional Property, or portion thereof, being submitted.

(P) The Declarant reserves the right to amend this Declaration in the manner provided in Article XII hereof, in such respects as the Declarant may deem advisable in

order to effectuate the provisions of this Article XI including, without limiting the generality of the foregoing, the right to amend this Declaration to do the following:

- (1) To include the Additional Property, or any portion or portions thereof, and the improvements constructed thereon as part of the Condominium Property;
- (2) To include descriptions of the Additional Property and the Additional Property Buildings in this Declaration and to add drawings of the Additional Property and Additional Property Buildings to Exhibit "1" hereto; and
- (3) To provide that the owners of Units in the Additional Property Buildings shall have an interest in the Common Areas and Facilities of the Condominium Property and to amend Article II (B)(4) hereof so as to establish the percentage of interest in the Common Areas and Facilities which the owners of all Units within the Buildings on the Condominium Property will have at the time of such amendment, which percentage shall be, with respect to each Unit, in the proportion that the square footage of each Unit on the date said amendment is filed for record bears to the then aggregate square footage of all the Units within the Buildings on the Condominium Property, which determination shall be made by Declarant and shall be conclusive and binding upon all Unit Owners.

## ARTICLE XII

### AMENDMENT OF DECLARATION

(A) In General. Except where otherwise provided in this Article XII or in any of the other Articles of this Declaration or by the Act, the provisions of this Declaration may be amended by an instrument in writing setting forth specifically the item or items to be amended and/or any new matter to be added, which instrument shall have been duly authorized by the affirmative vote of those Unit Owners having at least seventy-five percent (75%) of the voting power of the Association. Said instrument shall be signed and acknowledged by any two (2) officers of the Association and must contain the certification by the President or Secretary of the Association that a copy of the amendment has been mailed or hand delivered to all Unit Owners and all first mortgagees of Units and that Unit Owners having at least seventy-five percent (75%) of the voting power of the Association affirmatively approved the amendment. Except for an amendment for the purpose of adding to the Condominium Property pursuant to Article XI hereof, no amendment shall be made to the percentage interests of each Unit in the Common Areas and Facilities as set forth in Article II(B)(4) and Exhibit "E" of this Declaration except by an amendment to this Declaration unanimously approved by all Unit Owners affected. In the case of an amendment for the purpose of adding to the Condominium Property

pursuant to Article XI hereof, this Declaration may be amended by an instrument in writing signed by one (1) officer of Declarant. An amendment hereunder must be executed with the same formalities as this instrument and must refer to the volume and page in which this instrument and amendments hereto are recorded. Upon written request, the Declarant shall furnish a copy of an amendment for the purpose of adding to the Condominium Property pursuant to Article XI hereof to a Unit Owner and a first mortgagee of a Unit Owner. No amendment by the Board or Unit Owner shall have any effect, however, upon the Declarant, the rights of Declarant under this Declaration and upon the rights of bona fide mortgagees until the written consent of the Declarant and/or such mortgagees to such amendment has been secured. Such consents shall be retained by the Secretary of the Association or the Declarant, as the case may be, and the Secretary's certification in the instrument of amendment as to the consent or non-consent of Declarant and the names of the consenting and non-consenting mortgagees of the various Units may be relied upon by all persons for all purposes. An amendment hereunder shall be effective upon recordation of the amendment in the Office of the County Recorder of Cuyahoga County, Ohio; provided, however, that no provision in the Declaration may be amended so as to conflict with the obligatory provisions of the Act.

(B) Special Amendment. Prior to the formation of the Association, Declarant shall have the right and power, and after the formation of the Association either the Declarant and the Board shall each have the right and power, to record a special amendment ("Special Amendment") to this Declaration at any time, and from time to time, which amends this Declaration (1) to comply with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, Mortgage Guaranty Insurance Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasipublic or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, or (2) to induce any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages covering Condominium Ownership Interests, or (3) to bring this Declaration into compliance with the Act or (4) to correct clerical or typographical errors in this Declaration or any Exhibit hereto or any supplement or amendment hereto, or (5) to correct obvious factual errors or inconsistencies between the Declaration and other documents governing the Condominium Development, the correction of which would not impair the interest of any Unit Owner or mortgagee, or (6) to comply with the underwriting requirements of insurance companies providing casualty insurance, liability insurance and other insurance coverages for the Condominium Development, or (7) to bring any provision hereof into compliance with the provisions of any applicable governmental statute, rule or regulation or any judicial determination, or (8) to enable a title insurance company to issue title insurance with respect to the Condominium Development or any portion thereof. In furtherance of the

foregoing, a power coupled with an interest is hereby reserved and granted to Declarant and/or to the Board to vote in favor of, make, or consent to a Special Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting a Unit and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of the power to the Declarant and/or to the Board to vote in favor of, make and record Special Amendments.

ARTICLE XIII

SUBDIVISION OR COMBINATION OF UNITS

(A) A Unit may be divided by the Unit Owner thereof into two or more separate new Units; and/or a Unit or any portions thereof may be transferred by the Unit Owner thereof to the Unit Owner(s) of a Unit or Units adjacent thereto and combined with such adjacent Unit or Units, and made a part thereof, for use together with such adjacent Unit or Units thereby forming a new Unit, and the Common Areas and Facilities affected by such combination and/or division may be relocated as reasonably required to effect such combination and/or division. Any such change in Units is hereinafter referred to as a "Combination and/or Division". Any Combination and/or Division shall be done in conformity with the provisions of this Paragraph and shall be confirmed by an amendment to the Declaration and Drawings showing the Combination and/or Division.

Each Combination and/or Division shall comply with the following requirements:

- (1) All Unit Owners whose Units are involved in the Combination and/or Division and all mortgagees of such Units must approve, in writing, the Combination and/or Division and must execute the amendment to the Declaration confirming the same.
- (2) The Combination and/or Division shall comply with all building and zoning requirements of the City of Broadview Heights and any other governmental authorities having jurisdiction.
- (3) Any change in the percentage of ownership of Units in the Common Areas and Facilities shall not affect any Units except the Units involved in the Combination and/or Division.
- (4) No Combination and/or Division shall adversely affect the (a) support, maintenance and/or safety of the Common Areas and Facilities; (b) access to the

Common Areas and Facilities; and/or (c) any utility or service equipment, lines, pipes, wires, ducts or conduits serving the Condominium Property.

(B) The Unit Owner or Unit Owners desiring to make such Combination and/or Division shall make written application to the Board acting on behalf of the Association requesting an amendment to the Declaration (including the Drawings), the application to be accompanied by: (1) an architect's drawing of the proposed alterations of the affected Unit or Units and the affected Common Areas and Facilities; and (2) a calculation of the reallocation of the percentage of interest in the Common Areas and Facilities appurtenant to such Units affected by such proposed Combination and/or Division. If the Unit Owner or Unit Owners making application to the Board for approval of the Combination and/or Division has complied with the requirements of this Section, the Board by at least a majority vote of its members, shall give its approval of the Combination and/or Division and an officer of the Association shall indicate said approval on the amendment to the Declaration effecting the Combination and/or Division. If the Board, within fifteen (15) days after the submission of such request fails to respond to the application, the application shall be deemed approved, and any one (1) owner of a Unit involved in the Combination and/or Division is hereby irrevocably empowered to execute the same as attorney-in-fact for the Board, this power being coupled with an interest. If an owner of a Unit so executes such amendment on behalf of the Board, such owner shall prepare and file with such amendment a notarized certificate stating that he submitted the amendment to the Board for approval; that the Board failed to approve the amendment within the aforesaid fifteen (15) day period; that the amendment complies with the requirements of this Section; and that he is executing the amendment pursuant to the provisions of this Section. The Combination and/or Division shall be effective upon the recording of an amendment to the Declaration (including the Drawings), consistent with and reflecting said Combination and/or Division, and executed by the Board (including an owner of a Unit acting on behalf of the Board pursuant to the power-of-attorney granted above) and by the Unit Owner or Unit Owners of the affected Unit or Units. Every other Unit Owner shall be deemed to have consented to any such amendment and no action or consent by or from the Board or the Association, shall be necessary to make any such amendment effective. Such amendment shall also specify the resultant reapportionment of the percentages of interest in the Common Areas and Facilities, the proportionate share of the Common Profits and Common Expenses and the voting power of the Unit or Units resulting from the Combination and/or Division, the total of which, in each case, shall equal the interest, share and voting power of the former Unit or Units involved in the Combination and/or Division. Any expenses incurred in connection with accomplishing the Combination and/or Division, including without limitation, engineering, surveying, architectural, legal and recording fees and expenses, shall be paid by the Unit Owner or Unit Owners of the Unit or Units involved, and such Unit Owner or Unit Owners shall be jointly and severally liable for the payment thereof.

(C) The part of the Common Areas and Facilities separating and located between and exclusively serving two or more adjacent Units used together (including without limitation, portions of any hallway and any walls) may be altered to afford ingress and egress to and from such Units and to afford privacy to the Occupants of such Units when using such Common Areas and Facilities, and that part of the Common Areas and Facilities so altered may be used by the Unit Owner or owners of such Units, provided that (1) the expense of such alterations shall be paid in full by the Unit Owner or owners making such alteration; and (2) such alteration shall not interfere with the use and enjoyment of the Common Areas and Facilities (other than the aforesaid part of the Common Areas and Facilities, separating such adjacent Units) by other Unit Owners.

(D) In addition to the foregoing, if the Combination and/or Division is made in connection with the condemnation or substantial damage or destruction of the Units and/or Common Areas and Facilities, the prior written approval of at least two-thirds (2/3rds) of first mortgagees (based on one vote for each first mortgage owned), or at least two-thirds (2/3rds) of the voting power of Unit Owners (other than the Declarant) shall be required for the Combination and/or Division.

#### ARTICLE XIV

#### CONDEMNATION

(A) In the event that the entire Condominium Property is taken by eminent domain or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Condominium shall terminate. The condemnation award shall be apportioned among the Unit Owners in accordance with their respective percentage interests in the Common Areas and Facilities. The Association shall as soon as practicable determine the share of the condemnation award to which each Unit Owner is entitled and each such share shall be paid into separate accounts and disbursed as soon as practicable to the Unit Owners entitled to same. No Unit Owner, however, shall receive any portion of his share of such award until all liens and encumbrances on his Unit have been paid, released or discharged.

(B) In the event that less than the entire Condominium Property is taken or condemned, or sold or otherwise disposed of in lieu of or in avoidance thereof, the Condominium Property hereunder shall not terminate. Each Unit Owner shall be entitled to a share of the condemnation award to be determined in the following manner: As soon as practicable the Association shall, reasonably and in good faith, allocate the condemnation award between compensation, damages, or other proceeds, and shall apportion the amounts so allocated among the Unit Owners, as follows: (1) the total amount allocated to taking of or injury to the Common Areas and Facilities shall be apportioned among Unit Owners in proportion to their respective percentages of interest



in the Common Areas and Facilities; (2) the total amount allocated to severance damages shall be apportioned to those Units which were not taken or condemned; (3) the respective amounts allocated to the taking of or injury to a particular Unit and/or improvements a Unit Owner has made within his own Unit shall be apportioned to the particular Unit involved, and (4) the total amount allocated to consequential damages and any other takings or injuries shall be apportioned as the Association determines to be equitable under the circumstances. If an allocation of the condemnation award is already established in negotiation, judicial decree, or otherwise, then in allocating the condemnation award the Association shall employ such allocation to the extent it is relevant and applicable. Distribution of apportioned proceeds shall be made by checks payable jointly to the respective Unit Owners and their respective first mortgagees.

(C) In the event a partial taking results in the taking of a complete Unit, the Unit Owner thereof automatically shall cease to be a member of the Association. Thereafter the Board shall reallocate the ownership, voting rights, assessment ratio and other rights determined in accordance with this Declaration according to the same principles employed in this Declaration at its inception and shall file an amendment of this Declaration evidencing such reallocation, which amendment need only be approved by the Board and by all Unit Owners whose percentage interests in the Common Areas and Facilities are affected.

(D) Any reconstruction and repair necessitated by condemnation shall be governed by the procedures specified in Article VI hereof (Insurance and Reconstruction).

(E) Each Unit Owner and his respective mortgagee by acceptance of a deed conveying such Condominium Ownership Interest or a mortgage encumbering such Condominium Ownership Interest, as the case may be, hereby irrevocably appoints the Association his attorney-in-fact, coupled with an interest, and authorizes, directs and empowers such attorney, at the option of the attorney, to carry out the provisions of this Article XIV.

(F) The holder, insurer or guarantor of a first mortgage on a Unit shall receive timely written notice of any condemnation that affects either a material portion of the Condominium Development or the Unit securing its mortgage.

#### ARTICLE XV

#### RIGHTS OF FIRST MORTGAGEES

The following provisions inure to the benefit of each holder, insurer or guarantor of a first mortgage encumbering a Unit:

(A) Default By Unit Owner. The holder of any first mortgage encumbering a Unit in respect of which the Unit Owner shall be in default for a period of sixty (60) days in the performance of his obligations under this Declaration, the Bylaws and/or the Rules shall be provided with notice of said default by the Association. Within sixty (60) days after receiving said notice from the Association, the holder of the mortgage encumbering said Unit may (but shall not be obligated to do so) cure said default. If, however, said default is not curable within said sixty (60) day period by reason of delay(s) beyond the reasonable control of said mortgagee, then, providing said mortgagee has commenced to cure said default within said sixty (60) day period and has continued thereafter with due diligence to complete the curing of said default, the time within which said mortgagee shall be permitted to cure said default shall be extended for a period co-extensive with said delay(s).

(B) Statement of Default. A first mortgagee, upon written request to the Board, shall be given a written statement by the Board of the number of Unit Owners who are more than one (1) month delinquent in the payment of monthly Common Assessments at the time said written request is received by the Board.

(C) Compliance With Mortgage Insurance Regulations. In general, and in order to facilitate the marketability of the Units, the Board shall comply, to the best of its ability, with requests by first mortgagees for information required by regulations of the Federal Home Loan Bank Board, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association, Mortgage Guaranty Insurance Corporation, the Department of Housing and Urban Development, the Federal Housing Corporation and the Veteran's Administration (or other private mortgage insurance company), or required by any other secondary mortgage market lender, or by any governmental insurer or guarantor of the first mortgage of any Unit.

(D) Notices to Mortgagees. Upon written request to the Association, each mortgagee shall have the right to receive notices of all meetings of the Association and to designate a representative to attend any such meeting. Furthermore, the holder, insurer or guarantor of a first mortgage on a Unit shall receive timely written notice from the Association of: (1) a lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; (2) any condemnation or casualty loss that affects either a material portion of the Condominium Development or the Unit securing its mortgage; and (3) any proposed action that requires the consent of a specified percentage of first mortgage holders.

(E) Special Federal Home Loan Mortgage Corporation Provisions.

(1) Unless Unit Owners exercising at least seventy-five percent (75%) of the voting power of the Association (and first mortgagees holding at least fifty-one percent [51%] of the first mortgages on Units) give their consent, the Association shall not effect amendments to the Condominium Instruments that would change:

- (a) voting rights;
- (b) Common Assessments, liens for Common Assessments or the priority of liens for Common Assessments;
- (c) reserves for maintenance, repair and replacement of Common Areas and Facilities;
- (d) responsibility for maintenance and repairs;
- (e) allocation of interests in the Common Areas or Limited Common Areas or rights to their use;
- (f) redefinition of any Unit boundaries;
- (g) convertibility of Units into Common Areas or vice versa;
- (h) expansion or contraction of the Condominium Development, or addition, annexation or withdrawal of the Property to or from the Condominium Development;
- (i) requirements for insurance policies or fidelity bonds;
- (j) leasing of Units;
- (k) imposition of any restrictions on a Unit Owner's right to sell or transfer his or her Unit;
- (l) a decision of the Association to establish self-management when professional management had been required previously by the Condominium Instruments or by an eligible mortgage holder;

- (m) restoration or repair of the Condominium Development (after a hazard, damage or partial condemnation) in a manner other than that specified in the Condominium Instruments;
- (n) any action to determine the legal status of the Condominium Development after substantial destruction or condemnation occurs;
- (o) any provisions that expressly benefit mortgage holders, insurers or guarantors.

(2) The provisions of this Section shall not be construed to reduce the percentage vote that must be obtained from mortgagees or Unit Owners or a larger percentage vote as otherwise required for any of the actions contained in this Declaration or required by the Act.

(3) First mortgagees may, jointly or singularly, pay taxes or other charges which are in default or which may or have become a charge against the Common Areas and Facilities and may pay overdue premiums of casualty insurance policies or secure new casualty insurance coverage upon the lapse of a policy, for the Common Areas and Facilities and first mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

(4) The implied approval of a first mortgagee may be assumed when such first mortgagee fails to submit a response to any written proposal for an amendment within thirty (30) days after it receives proper notice of the proposal, provided the notice was delivered by certified or registered mail, with a return receipt requested.

#### ARTICLE XVI

##### SALE, LEASING OR OTHER ALIENATION OF UNITS

(A) Unit Owner's Right of Transfer. The Association shall have no right of first refusal with respect to the purchase or lease of a Unit, and a Unit Owner shall be able to transfer his Unit freely by sale, gift, devise, lease or otherwise without restriction except as provided in Article XVI(B).

(B) Unit Owner's Right to Lease Unit. Any Unit Owner shall have the right to lease all (but not less than all) of his Unit upon such terms and conditions as the Unit Owner may deem advisable, except that no Unit shall be leased or sub-leased for transient or hotel purposes. Any lease or sublease of a Unit for a period of less than six (6) months shall be deemed to be a lease or sublease for transient or hotel purposes. (1) Any lease

or sublease of a Unit shall be in writing and shall provide: (a) that the lease or sublease shall be subject to the terms of this Declaration, the Bylaws and Rules and that any failure of a lessee to comply with the terms of this Declaration, the Bylaws and Rules shall be in default under the lease or sublease; (b) that the Association shall have the right to require the Unit Owner to deposit with the Association such amount as the Association shall consider appropriate as security to provide funds for repairs and to assure compliance with this Declaration, the Bylaws and Rules; (2) the limitations with respect to the leasing of Units shall not apply to the: (a) Declarant; or (b) a first mortgagee of a Unit in connection with a mortgage foreclosure (or acceptance of a deed in lieu of foreclosure), or with respect to any sale or transfer by the first mortgagee or any other party who acquired the Unit in connection with the foreclosure or deed-in-lieu.

(C) Names of Owners and Occupants of Units. To enable the Association to maintain accurate records of the names, addresses and phone numbers of Unit Owners and other Occupants of Units, each Unit Owner agrees to notify the Association in writing, within five (5) days after such Unit Owner's Unit has been transferred or leased to another person. In addition, each Unit Owner agrees to provide to a Purchaser or lessee of such Unit Owner's Unit a copy of this Declaration (including amendments thereto), the Bylaws (including amendments thereto), the Rules and other relevant documents.

## ARTICLE XVII

### COMPLIANCE AND NON-MONETARY DEFAULT

(A) Enforcement. In the event of a violation by any Unit Owner or any tenant of a Unit Owner (other than the nonpayment of Common Assessments or other charge, which is governed by Article V of this Declaration) of any of the provisions of this Declaration, the Bylaws or the Rules, the Association shall notify the Unit Owner and any tenant or other Occupant of the violation, by written notice. If such violation is not cured as soon as is reasonably practical and in any event within seven (7) days after such written notice, or if the violation is not capable of being cured within such seven (7) day period, if the Unit Owner or tenant or other Occupant fails to commence and diligently proceed to completely cure such violation as soon as is reasonably practical within seven (7) days after written demand by the Association, or if any similar violation is thereafter repeated, the Association may, at its option:

- (1) Impose a fine against the Unit Owner or tenant or other Occupant as provided in Subsection (B) of this Article; and/or
- (2) Commence an action to enforce performance on the part of the Unit Owner or tenant or other Occupant, and to require the Unit Owner to correct such

failure, or for such other relief as may be necessary under the circumstances, including injunctive relief; and/or

(3) The Association may itself perform any act or work required to correct such failure and, either prior to or after doing so, may charge the Unit Owner with all reasonable costs incurred or to be incurred by the Association in connection therewith, plus a service fee equal to fifteen percent (15%) of such costs. In connection with the foregoing, the Association may perform any maintenance or repairs required to be performed, may remove any change, alteration, addition or improvement which is unauthorized or not maintained in accordance with the provisions of this Declaration, and may take any and all other action reasonably necessary to correct the applicable failure; and/or

(4) Commence an action to recover damages.

(B) **Fines.** The amount of any fine shall be a reasonable amount as determined by the Board. Prior to imposing any fine, the Unit Owner or tenant or other Occupant shall be afforded an opportunity for a hearing after reasonable notice to the Unit Owner or tenant or other Occupant of not less than 14 days, which notice shall include (1) a statement of the date, time and place of the hearing, (2) a statement of the provisions of this Declaration, Bylaws or Rules which have allegedly been violated, and (3) a short and plain statement of the matters asserted by the Association. The Unit Owner or tenant or other Occupant shall have an opportunity to respond, to present evidence, and to provide written and oral argument on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association. At the hearing, the Board shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred, and if the Board so determines, it may impose such fine as it deems appropriate by written notice to the Unit Owner or tenant or other Occupant. If the Unit Owner or tenant or other Occupant fails to attend the hearing as set by the Board, the Unit Owner or tenant or other Occupant shall be deemed to have admitted the allegations contained in the notice to the Unit Owner or tenant or other Occupant. Any fine imposed by the Board shall be due and payable within ten (10) days after written notice of the imposition of the fine, or if a hearing is, timely requested within ten (10) days after written notice of the decision of the Board at the hearing. Any fine levied against a Unit Owner shall be deemed a Charge and if not paid when due all of the provisions of this Declaration relating to the late payment of Common Assessments shall be applicable except as otherwise provided by the Act. If any fine is levied against a tenant or other Occupant and is not paid within ten (10) days after same is due, the Association shall have the right to evict the tenant or other Occupant as hereinafter provided.

(C) Negligence. A Unit Owner shall be liable and may be charged by the Association for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a Unit or its appurtenances or of the Common Areas and Facilities.

(D) Responsibility of Unit Owner for Tenants. Each Unit Owner shall be responsible for the acts and omissions, whether negligent or willful, of any tenant of his Unit, and for all employees, agents and invitees of the Unit Owner or any such tenant, and in the event the acts or omissions of any of the foregoing shall result in any damage to the Condominium Property, or any liability to the Association, the Unit Owner shall be charged for same, limited where applicable to the extent that the expense or liability is not met by the proceeds of insurance carried by the Association. Furthermore, any violation of any of the provisions of this Declaration, the Bylaws or any Rule, by any tenant of any Unit, or any employees, agents or invitees of a Unit Owner or any tenant of a Unit, shall also be deemed a violation by the Unit Owner, and shall subject the Unit Owner to the same liability as if such violation was that of the Unit Owner.

(E) Costs and Attorney's and Paralegal's Fees. In any legal proceedings commenced by the Association to enforce this Declaration, the Bylaws, and/or the Rules, as said documents may be amended from time to time, the prevailing party shall, be entitled to recover the costs of the proceeding and reasonable attorney's and paralegal's fees. Any such cost or attorney's and paralegal's fees awarded to the Association in connection with any action against any Unit Owner shall be charged to the Unit Owner.

(F) No Waiver of Rights. The failure of the Association or any Unit Owner to enforce any covenant, restriction or any other provision of this Declaration, the Bylaws, or the Rules, as the said documents may be amended from time to time, shall not constitute a waiver of the right to do so thereafter.

#### ARTICLE XVIII

#### REMOVAL FROM CONDOMINIUM OWNERSHIP

For reasons other than substantial destruction of the Condominium Development (in which event the provisions of Article IV would apply) or condemnation of the Condominium Development (in which event the provisions of Article XIV would apply), the Unit Owners exercising all of the voting power of the Association (and with the vote of at least 67% of the holders of first mortgages) may elect to remove the Condominium Property from the provisions of the Act. In the event of such election, all liens and

encumbrances, except taxes and assessments not then due and payable, upon all or any part of the Condominium Property, shall be paid, released, or discharged, and a certificate setting forth that such election was made shall be filed with the Recorder of Cuyahoga County, Ohio, and by him recorded. Such certificate shall certify therein under oath that all liens and encumbrances, except taxes and assessments not then due and payable, upon all or part of the Common Areas and Facilities have been paid, released or discharged; and, shall also be signed by the Unit Owners, each of whom shall certify therein under oath that all such liens and encumbrances on his Unit or Units have been paid, released or discharged.

#### ARTICLE XIX

##### MISCELLANEOUS PROVISIONS

(A) Interest on Deposits. Any deposit or down payment made in connection with the sale of a Condominium Ownership Interest by the Declarant shall be held in trust or escrow until delivered at settlement or returned to or otherwise credited to the Purchaser of such Unit or forfeited to the Declarant, and if a deposit or down payment of Two Thousand Dollars (\$2,000.00) or more is held for more than ninety (90) days, interest at the rate of not less than four percent (4%) per annum for any period exceeding ninety (90) days shall be credited to the Purchaser of such Unit at settlement or upon return or other credit made to the Purchaser, or added to any forfeiture to the Declarant. Deposits and down payments held in trust or escrow pursuant to this Article shall not be subject to attachment by creditors of the Declarant or a Purchaser of a Condominium Ownership Interest.

(B) Non-Retention of Property Interest in Common Areas and Facilities by Declarant. Notwithstanding any of the other provisions contained herein, the Declarant shall not retain a property interest in any of the Common Areas and Facilities after control of the Condominium Development is assumed by the Association except in the Declarant's capacity as a Unit Owner of unsold Condominium Ownership Interests and except as permitted by Section 5311.25(B) of the Act.

(C) Warranties. Solely and only to the extent such warranties are or may be required by the provisions of Section 5311.25(E) of the Act, and solely in connection with the sale of a Condominium Ownership Interest(s) by Declarant:

- (1) The Declarant shall furnish a two (2) year warranty covering the full cost of labor and materials for any repair or replacement of roof and structural components, and mechanical, electrical, plumbing and common service elements serving the Condominium Development as a whole occasioned or necessitated by



a defect in material or workmanship and shall furnish a one (1) year warranty covering the full cost of labor and materials for any repair or replacement of structural, mechanical and other elements pertaining to each Unit occasioned or necessitated by a defect in material or workmanship.

(2) The two (2) year warranty shall commence: (a) for property submitted by the original Declaration on the date the deed or other evidence of ownership is filed for record following the sale of the first Condominium Ownership Interest in the Condominium Development to a Purchaser in good faith for value of a Unit; and (b) for Additional Property submitted by amendment to the Declaration pursuant to Article XI hereof, on the date the deed or other evidence of ownership is filed for record following the sale of the first Condominium Ownership Interest in such phase for the Additional Property to a good faith Purchaser for value of a Unit.

(3) The one (1) year warranty shall commence on the date the deed or other evidence of ownership is filed for record following the first sale of a Condominium Ownership Interest to a Purchaser in good faith for value.

(4) With respect to appliances installed and furnished as a part of a Unit by the Declarant, the Declarant shall assign to each Purchaser of a Unit the express and implied warranties of the manufacturers of such appliances in satisfaction of the Declarant's warranty of such appliances, except the Declarant's warranty of each Unit hereunder includes the warranty that the appliances are properly installed.

(5) All warranties made to the Declarant that exceed the time periods specified above with respect to any part of the Units or Common Areas and Facilities shall be assigned to the Purchasers of Units. Furthermore, the Declarant reserves the right, but not the obligation, to grant warranties in excess of the warranties set forth above.

(6) None of the foregoing warranties shall cover repairs or replacements necessitated or occasioned by ordinary wear and tear or by the negligent or wanton acts of any Unit Owner or any tenant, guest or invitee of a Unit Owner or occasioned or necessitated for any reason whatsoever except by defects in materials and workmanship.

(D) Right of Declarant to act as Board of Managers. Declarant reserves unto itself the right to manage, control and exercise all of the rights of the Association in accordance with and to the extent permitted by the provisions of Sections 5311.08 and 5311.25 of the Act.

(E) Record of Mortgagees of Units. Any Unit Owner who mortgages his Ownership Interest shall notify the Association in such manner as the Association may direct, of the name and address of his mortgagee and thereafter shall notify the Association of the payment, cancellation or other alteration in the status of such mortgage. The Association shall maintain such information in a record entitled "Mortgagees of Units".

(F) Rights of Mortgagees of Units to Receive Notices. Upon written request to the Board, the holder of any duly recorded mortgage or trust deed against any Unit ownership shall be given a copy of any and all notices permitted or required by this Declaration to be given to the owner or owners whose Unit ownership is subject to such mortgage or trust deed.

(G) Notices to Association. Notices required to be given to the Board or the Association may be delivered to any member of the Board or officer of the Association either personally or by mail to such member or officer at his Unit.

(H) Notices. All notices required or permitted hereunder, and under the Bylaws and the Act, to the Declarant, the Association, the Board of Managers and its delegates shall be in writing and shall be sent by registered or certified mail, return receipt requested, to the Board of Managers or its delegates at the address of the Condominium Property or to such other address as the Board may designate from time to time by notice in writing to all Unit Owners. All notices to the Declarant shall be sent by registered or certified mail, return receipt requested, to: John Kasmarcak, The Zaremba Company, 868 Corporate Way, Westlake, Ohio 44145, with a copy of same to Richard A. Rosner, Esq., Kahn, Kleinman, Yanowitz & Arnsen Co., L.P.A., The Tower At Erieview, Suite 2600, 1301 East Ninth Street, Cleveland, Ohio 44114, or to such other address as the Declarant or its counsel may designate from time to time by notice in writing to all Unit Owners. All notices to any Unit Owner shall be sent by registered or certified mail to such Unit Owner's Unit address or to such other address as may be designated by him from time to time, in writing, to the Board of Managers. All notices shall be deemed to have been given and therefore effective not later than forty-eight (48) hours after the date that such notice is deposited in the U.S. Mail, except notices of change of address which shall be deemed to have been given when received, and except as otherwise provided herein. Any notice required or permitted to be given to any Occupant of a Unit other than a Unit Owner shall effectively be given if hand delivered to such Occupant or placed in his mail box or placed under the door to such Occupant's Unit.

(I) Title to Units Subject to Declaration. Each grantee of the Declarant, by the acceptance of a deed of conveyance, accepts the same subject to all easements, restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction.

rights, and powers created or reserved by this Declaration and in the documents referred to in this Declaration, and all rights, benefits and privileges of every nature hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in the Condominium Property, and shall inure to the benefit of such owner in like manner as though the provisions of the Declaration were recited and stipulated at length in each and every deed of conveyance.

(J) Non-Liability of Declarant. Except as otherwise provided in the Condominium Property Act, neither Declarant nor its representatives, successors or assigns shall be liable for any claim whatsoever arising out of or by reason of any actions performed pursuant to any authorities granted or delegated to it by or pursuant to this Declaration or the Bylaws in Declarant's (or its representative's) capacity as owner, manager or seller of the Condominium Property whether or not such claim (1) shall be asserted by any Unit Owner, an Occupant of a Unit, the Association, or by any person or entity claiming through any of them; or (2) shall be on account of injury to person or damage to or loss of property wherever located and however caused; or (3) shall arise ex contractu or (except in the case of gross negligence) ex delictu. Without limiting the generality of the foregoing, the foregoing enumeration includes all claims for, or arising by reason of, the Condominium Property or any part thereof being or becoming out of repair or containing any patent or latent defects, or by reason of any act or neglect of any Unit Owner, an Occupant of a Unit, the Association, and their respective agents, employees, guests and invitees, or by reason of any neighboring property or personal property located on or about the Condominium Property, or by reason of the failure to function or disrepair of any utility services (heat, air-conditioning, electricity, gas, telephone, water or sewage).

(K) Declarant Assessments. Except as otherwise provided in the Act, the Declarant shall not be required to pay any assessments or monies to finance any claim or litigation against the Declarant.

(L) Non-Waiver. No covenants, restrictions, conditions, obligations, or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

(M) Saving Clause. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration, or of any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration.

(N) Rule Against Perpetuities. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful or void for violation of (1) the rule against perpetuities or some analogous statutory provision, (2) the rule restricting restraints on alienation, or (3) any other statutory or common-law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of William Jefferson Clinton, President of the United States of America, and Albert Gore, Jr., Vice President of the United States of America.

(O) Headings. The heading of each Article and of each such paragraph in this Declaration and in the Bylaws is inserted only as a matter of convenience and for reference and in no way defines, limits or describes the scope or intent of this Declaration or the Bylaws nor in any way affects this Declaration or the Bylaws.

(P) Gender. The use of the masculine gender herein or in the Bylaws shall be deemed to include the feminine and the neuter genders, as the case may be, and the use of the singular shall be deemed to include the plural, whenever the context so requires.

(Q) Liberal Interpretation. The provisions of this Declaration shall be liberally interpreted to effectuate its purpose of creating a uniform plan for the development and operation of a first-class Condominium Development.

IN WITNESS WHEREOF, the said MacIntosh Development Corporation, as Declarant, as aforesaid, has caused its name to be signed to these presents as of this 31<sup>st</sup> day of March, 1995.

Witnessed by:  
(Witnesses as to both signatures)

D. A. Foster  
Print Name DEBORAH FOSTER

Michele A. Swartz  
Print Name MICHELE A. SWARTZ

MACINTOSH DEVELOPMENT  
CORPORATION, an Ohio corporation

By: [Signature]  
Nathan Zarembo, President

By: [Signature]  
Timothy Zarembo, Secretary

STATE OF OHIO )  
 ) SS:  
COUNTY OF CUYAHOGA )

Before me, a Notary Public in and for said County and State aforesaid, personally appeared Macintosh Development Corporation, by NATHAN ZAREMBA, its PRESIDENT, and TIMOTHY ZAREMBA, its V.P., Sec., who acknowledged that they did sign the foregoing instrument and that the same was their free act and deed individually and as such officers and the free act and deed of said corporation.

GIVEN, under my hand and Notarial Seal this 31st day of MARCH, 1995.

Kathy D. Hummelbeiger  
NOTARY PUBLIC  
KATHY D. HUMMELBEIGER  
Notary Public in and for the State of Ohio  
My Commission Expires Aug. 21, 1999

This instrument prepared by:

Richard A. Rosner, Attorney at Law  
Kahn, Kleinman, Yanowitz & Arnson Co., L.P.A.  
The Tower At Erieview  
1301 East Ninth Street  
Suite 2600  
Cleveland, Ohio 44114-1824  
(216) 696-3311

EXHIBIT "1"

TO DECLARATION OF CONDOMINIUM OWNERSHIP  
FOR MACINTOSH FARMS CONDOMINIUM NO. 2



**DONALD G. BOHNING & ASSOCIATES, INC.**  
CIVIL ENGINEERING & SURVEYING  
7979 HUB PARKWAY - VALLEY VIEW, OHIO 44125 - (216) 642-1130  
FAX - (216) 642-1132

MacIntosh Farms  
Condominium No. 2  
Phase I

March, 1995

LEGAL DESCRIPTION

Situated in the City of Broadview Heights, County of Cuyahoga, and State of Ohio, and known as being part of Original Royalton Township Lot 25, and bounded and described as follows:

Beginning at a nail found in the centerline of MacIntosh Lane, 60 feet wide, at its intersection with the centerline of McClaren Lane, 60 feet wide;

Thence South 41 degrees 15 minutes 17 seconds West along the centerline of MacIntosh Lane, 23.68 feet to a nail found at a point of curvature, therein;

Thence South 48 degrees 44 minutes 43 seconds East, 30.00 feet to a point of curvature in the southeasterly line of MacIntosh Lane;

Thence southwesterly along the curved southeasterly line of MacIntosh Lane, being the arc of a curve deflecting to the left, 216.05 feet to its intersection with the southerly line of MacIntosh Farms Condominium No. One, Phase 15, as shown by the recorded plat in Volume 80, Pages 30 thru 59 of Cuyahoga County Records, and the principal place of beginning of the parcel herein described, said arc having a radius of 375.11 feet and a chord which bears South 24 degrees 45 minutes 17 seconds West, 213.07 feet;

Thence South 84 degrees 33 minutes 41 seconds East along the southerly line of said Phase 15, 112.47 feet to a point in the westerly curved line of MacIntosh Farms Condominium No. One, Phase 14, as shown by the recorded plat in Volume 79, Pages 32B thru 75 of Cuyahoga County Records;

Thence southeasterly along the curved westerly line of said Phase 14, being the arc of a curve deflecting to the left, 72.19 feet to a point, said arc having a radius of 65.00 feet and a chord which bears South 66 degrees 02 minutes 18 seconds East, 68.54 feet;

Thence southwesterly along the curved westerly line of said Phase 14, being the arc of a curve deflecting to the right, 35.60 feet to a point of reverse curvature, therein, said arc having a radius of 65.00 feet and a chord which bears South 30 degrees 27 minutes 21 seconds West, 35.16 feet;



MacIntosh Farms  
Condominium No. 2  
Phase I

Thence southwesterly along the curved westerly line of said Phase 14, being the arc of a curve deflecting to the left, 81.18 feet to a point, said arc having a radius of 120.00 feet and a chord which bears South 26 degrees 45 minutes 59 seconds West, 79.64 feet;

Thence South 77 degrees 08 minutes 58 seconds West along the westerly line of said Phase 14, 104.32 feet to a point in the easterly curved line of MacIntosh Lane;

Thence northerly along the curved easterly line of MacIntosh Lane, being the arc of a curve deflecting to the right, 112.48 feet to a point of compound curvature, said arc having a radius of 270.00 feet and a chord which bears North 11 degrees 56 minutes 03 seconds West, 111.66 feet;

Thence northerly along the curved easterly line of MacIntosh Lane, being the arc of a curve deflecting to the right, 54.05 feet to the principal place of beginning, said arc having a radius of 375.11 feet and a chord which bears North 4 degrees 07 minutes 40 seconds East, 54.00 feet and containing 0.4611 acres of land as described by Donald G. Bohning & Associates, Inc., in March, 1995, and based upon a survey dated June, 1994.

The courses used in this description are referenced to an assumed meridian and are used to indicate angles only.

Kenneth L. Bohning  
Registered Surveyor No. 6720

2100-G

d:\winword\legals\private\macintosh\2100-GR

**TO DECLARATION OF CONDOMINIUM OWNERSHIP  
FOR MACINTOSH FARMS CONDOMINIUM NO. 2**



**DONALD G. BOHNING & ASSOCIATES, INC.**

CIVIL ENGINEERING & SURVEYING  
7979 HUB PARKWAY • VALLEY VIEW, OHIO 44125 • (216) 642-1130  
FAX • (216) 642-1132

MacIntosh  
Condominium No. 2  
Additional Property  
14.2162 Acres

March, 1995

LEGAL DESCRIPTION

Situated in the City of Broadview Heights, County of Cuyahoga, and State of Ohio, and known as being part of Original Royalton Township Lot 25, and bounded and described as follows:

Beginning at a nail found in the centerline of MacIntosh Lane, 60 feet wide, at its intersection with the centerline of McClaren Lane, 60 feet wide;

Thence North 41 degrees 15 minutes 17 seconds East along the centerline of MacIntosh Lane, 78.00 feet to a point;

Thence South 48 degrees 44 minutes 43 seconds East, 30.00 feet to a point in the southeasterly line of MacIntosh Lane;

Thence northeasterly along the curved southeasterly line of MacIntosh Lane, being the arc of a curve deflecting to the left, 58.82 feet to a point, and the principal place of beginning of the parcel herein described, said arc having a radius of 630.00 feet and a chord which bears North 38 degrees 34 minutes 47 seconds East, 58.80 feet;

Thence northeasterly along the curved southeasterly line of MacIntosh Lane, being the arc of a curve deflecting to the left, 151.19 feet to a point of compound curvature, said arc having a radius of 630.00 feet and a chord which bears North 29 degrees 01 minute 49 seconds East, 150.82 feet;

Thence northerly along the curved easterly line of MacIntosh Lane, being the arc of a curve deflecting to the left, 516.66 feet to an iron pin set, said arc having a radius of 930.00 feet and a chord which bears North 6 degrees 14 minutes 27 seconds East, 510.04 feet;

Thence North 46 degrees 57 minutes 36 seconds East, 135.00 feet to an iron pin set;

Thence North 76 degrees 57 minutes 36 seconds East, 104.00 feet to an iron pin set;

Thence South 78 degrees 32 minutes 24 seconds East, 214.82 feet to an iron pin set;

Thence North 76 degrees 00 minutes 15 seconds East, 145.09 feet to an iron pin set;





MacIntosh  
Condominium No. 2  
Additional Property  
14.2162 Acres

Thence South 45 degrees 59 minutes 45 seconds East, 180.00  
feet to an iron pin set;

Thence South 12 degrees 00 minutes 15 seconds West, 172.00  
feet to an iron pin set;

Thence South 58 degrees 59 minutes 45 seconds East, 130.00  
feet to an iron pin set;


Thence North 89 degrees 00 minutes 15 seconds East, 130.00  
feet to an iron pin set;

Thence South 44 degrees 50 minutes 51 seconds East, 176.00  
feet to an iron pin set;

Thence South 6 degrees 09 minutes 09 seconds West, 270.11  
feet to an iron pin set in the northerly line of MacIntosh  
Farms Condominium Phase 6;

Thence North 89 degrees 46 minutes 20 seconds West along the  
northerly line of said Phase 6 and its westerly  
prolongation, 1110.23 feet to the principal place of  
beginning, and containing 14.2162 acres of land as described  
by Donald G. Bohning & Associates, Inc. in March 1995, and  
based upon a survey dated June, 1994.

The courses used in this description are referenced to an  
assumed meridian and are used to indicate angles only.

  
Kenneth L. Bohning  
Registered Surveyor No. 6720

d:\winword\legals\private\macintosh\2100GCD2.DOC

EXHIBIT "A"

TO DECLARATION OF CONDOMINIUM OWNERSHIP FOR  
MACINTOSH FARMS CONDOMINIUM NO. 2

REFERENCE TO ALLOTTED DRAWINGS

The particulars of the land, buildings and other improvements, including, but not limited to, the layout, location, designation, dimensions of each Unit, the layout, locations and dimensions of the Common Areas and Facilities and the location and dimensions of all appurtenant easements or encroachments are shown graphically on the set of Allotted Drawings incorporated in the Declaration of Condominium Ownership for MacIntosh Farms Condominium No. 2, by reference as Exhibit "A", prepared and bearing the certified statements of Donald G. Bohning & Associates, Inc., Registered Surveyors, 7979 Hub Parkway, Valley View, Ohio 44125 and Ron Lloyd, Registered Architect, c/o The Zaremba Company, 868 Corporate Way, Westlake, Ohio 44145, as required by the Condominium Act of the State of Ohio. Such set of Allotted Drawings will be filed in the Condominium Map Records of the Office of the Recorder of Cuyahoga County, Ohio, simultaneously with the recording of the Declaration.

2. Management Company's Duties.

The Management Company shall act as the agent of the Association in the operation and management of the Common Areas and Facilities by performing and furnishing the services of its organization to perform the following duties:

A. Physical Management

(i) Building Maintenance

The Management Company shall assume operational control of the Common Areas and Facilities, including buildings, equipment and improvements, and shall be responsible for supervising their upkeep and maintenance. The Management Company shall direct, supervise and order to be done those things requested by the Association or which are, in the Management Company's judgment, necessary to preserve and protect the Common Areas and Facilities.

(ii) Contracted Services

The Management Company is authorized, on behalf of the Association, to hire, discharge and supervise employees and/or independent contractors required by the operation and maintenance of the Common Areas and Facilities, including, but not limited to, snow removal and landscaping, and to make all payments for the same from the maintenance fund of the Association. Unless otherwise specified in writing, an employee so hired shall be deemed to be the employee of the Association. Compensation for such employee shall be paid by the Association.

(iii) Inspections

The Management Company shall make regular inspections of the Common Areas and Facilities and render reports and make recommendations concerning same.

B. Administrative Management

(i) Meetings of Association

The Management Company shall organize the initial meeting of the members of the Association, including the preparation and delivery of notices of the meeting, and the preparation of proxy forms. The Management Company shall prepare the agenda for the initial meeting, conduct the meeting and oversee the election of the initial Board of Managers of the Association.

(ii) Meeting Notices, Agenda and Minutes

After the initial meeting of the Association, the Management Company, at the direction of the Board of Managers of the Association, shall send notices of Association meetings, shall prepare the agenda therefore, shall circulate minutes of any such meetings as prepared by the secretary of the Association, and shall effect instructions as directed by the Board of Managers of the Association.

(iii) Association Records

The Management Company shall keep a file of all records of the affairs of the Association, furnished to it by the Association, including, but not limited to, minutes of meetings, correspondence, modifications of the Declaration, Bylaws, Rules and Regulations, etc.

(iv) Insurance

At the Association's discretion and under its control, purchase or renew all Association insurance policies for the various coverages enumerated in the Declaration. The Management Company will recommend the types and amounts of insurance coverages for Board's approval but assume no liability for the adequacy or types of coverage.

C. Fiscal Management

(i) Assessments

The Management Company shall collect all assessments as prescribed by the Association, set up a checking, savings or other account or accounts with any federally insured institution or institutions as is customary with other condominium associations, as the Management Company in its discretion or at the written direction of the Board of Managers deems necessary. The Management Company shall keep accounting records to reflect the status of Association's interest in any such account or accounts.

(ii) Delinquent Accounts

The Management Company shall mail notices of any delinquency to the delinquent Unit Owner. The Management Company shall use every effort to collect delinquent accounts, including the sending of notices and letters, the making of telephone calls, and effecting personal contact when possible. In the event such efforts fail, however, the Management Company shall refer the account to the Board of Managers for disposition.

(iii) Disbursement Authorization

The Management Company shall make all disbursements from assessments collected for normal recurring expenses as provided in a budget, which shall be approved in advance annually by the Association. The Management Company is hereby granted authority to make any non-budget expenditures up to One Thousand Dollars (\$1,000.00) at its own discretion. In addition, the Management Company shall have the authority to make expenditures in excess of said amount with the approval of the president of the Association. In cases of emergency requiring prompt action to avoid further loss, the Management Company shall have discretion to expend whatever is necessary.

(iv) Governmental Reports

The Management Company shall compute and pay from the funds it collects on behalf of the Association, payroll taxes and the Management Company shall file necessary government returns and reports when due with respect to such taxes. Individual Unit Owners or the Association, as the case may be, are responsible for the preparation and filing of any and all other government returns and reports when due.

(v) Financial Statement

The Management Company shall furnish copies to the Association of a monthly financial statement, prepared on a cash basis, of all receipts and disbursements, showing assessments and other cash receipts, the grouping by category of all disbursements, net cash gain or loss, cash on hand and reserve accounts.

(vi) Annual Budget

On or about the first day of December of each year during the term of this Agreement, the Management Company shall prepare and submit to the Association for approval an annual budget to be used for the determination of assessments for the ensuing year.

(vii) Bonding of Employees

Those employees of the Management Company who handle or who are responsible for handling the Association's monies shall, without expense to the Association, be bonded by a fidelity bond, in an amount not less than an amount equal to three (3) months' assessments, evidence of which shall be furnished to the satisfaction of the Association.

D. Miscellaneous

(i) The Management Company shall perform all duties incidental and reasonably necessary or desirable to accomplishment of the above listed duties.

(ii) The Management Company is authorized to take such action as may be necessary to comply promptly with any and all orders or requirements affecting the Common Areas and Facilities placed thereon by any Federal, state, county or municipal authority having jurisdiction thereover, subject to the same limitation contained in Section 2.C.3. hereof in connection with the making of repairs and alterations. The Management Company, however, shall not take any action under this paragraph so long as the Association is contesting or has affirmed its intention to contest any such order or requirement. The Management Company shall promptly and in no event later than 72 hours from the time of their receipt, notify the Board of Managers of the Association in writing of all such orders and notices of requirements.

3. Association's Obligations.

The Association shall:

A. Assume liability for all obligations and costs incurred by the Management Company within the scope of its employment in operating and managing the Common Areas and Facilities, excluding, however, liability for salaries of the Management Company's executive employees or office staff, and any other costs of the Management Company not directly related to the operation and management of the Common Areas and Facilities.

B. Carry, at its own expense, public liability insurance in an amount satisfactory to the Management Company written to protect the Management Company in the same manner and to the same extent as it protects the Association, and workmen's compensation insurance covering its own employees, if any.

C. Forthwith upon the Management Company's written demand make funds available to pay the deficiency arising in the event that obligations for the management and operation of the Common Areas and Facilities to be paid at any time exceed receipts available for disbursement.

D. Cooperate in every reasonable manner with the Management Company in its operation and management of the Common Areas and Facilities.

4. Management Company's Compensation.

As compensation for its services in managing the property the Management Company shall be paid each month during the term of this Agreement, and is authorized to pay to itself from the funds collected and held on behalf of the Association, a fee of Nine Dollars (\$9.00) per

Unit per month, commencing on the date the deed or other evidence of ownership is filed for record following the first sale of a Unit in the Condominium Development. After the first year, the Management Company may increase its compensation in an amount not to exceed a five percent (5%) increase per year.

5. Indemnification.

The Association agrees to save the Management Company harmless from all damage suits in connection with the management of the Common Areas and Facilities and from liability from injuries suffered by any employee or other person whomsoever. The Management Company also shall not be liable for any error of judgment or for any mistake of fact of law, or for anything which it may do or refrain from doing, except in cases of willful misconduct or gross negligence.

6. Notices.

Any notice, request, or other document or demand required or desired to be given to the Association or Management Company shall be in writing and shall be deemed given:

(a) to the Association when delivered in person or when deposited in the United States mail, first-class, postage prepaid, addressed to the Association at:

c/o The Zaremba Company  
868 Corporate Way  
Westlake, Ohio 44145

(b) to the Management Company when delivered personally to an officer of the manager or when deposited in the United States mail, first-class postage prepaid, addressed to the Management Company at:

c/o The Zaremba Company  
868 Corporate Way  
Westlake, Ohio 44145

Either party may from time to time change the address at which, or the person to whom such written notices, requests, or other documents or demands are to be given or mailed by giving the other party written notice thereof.

7. Definitions.

The words referred to herein which are defined in Article I of Declaration of Condominium Ownership of MacIntosh Farms Condominium No. 2 shall have the same meaning as contained in said Article.

8. Agreement Binding.

This agreement shall inure to the benefit of and be binding upon the respective successors and assigns of each of the Association and the Management Company.

9. Captions.

The captions of the several sections hereof are not a part hereof, but are merely labels to assist in reading the various provisions hereof.

IN WITNESS WHEREOF, the parties hereto have executed or caused to be duly executed duplicate original counterparts hereof this \_\_\_\_\_ day of \_\_\_\_\_, 1994.

MACINTOSH FARMS CONDOMINIUM  
NO. 2 OWNERS' ASSOCIATION, INC.,  
an Ohio not-for-profit corporation

By: \_\_\_\_\_

By: \_\_\_\_\_

"Association"

MACINTOSH DEVELOPMENT  
CORPORATION, an Ohio corporation

By: \_\_\_\_\_

"Management Company"



EXHIBIT "D"

TO DECLARATION OF CONDOMINIUM OWNERSHIP FOR  
MACINTOSH FARMS CONDOMINIUM NO. 2

Narrative Description of Buildings and Units

The Condominium Development is situated off of MacIntosh Lane, a duly dedicated public street, in the City of Broadview Heights, Cuyahoga County, Ohio. Phase I consists of one (1) Building containing three (3) Units, designated as Unit Nos. 15-41, 15-42 and 15-43.

The Building is principally of conventional wood frame construction with dry wall finish on the interior walls and vinyl siding on the exterior walls. The roof is asphalt/fiberglass shingle. The Units are separated by common walls. The common walls are of masonry construction. The Units do not have basements.

Three (3) Unit types are being submitted by this Declaration. The Unit types are known as the "Gables A Unit", the "Gables B Unit" and the "Gables C Unit". Unit No. 15-43 is a "Gables A Unit" type Unit, Unit No. 15-42 is a "Gables B Unit" type Unit, and Unit No. 15-41 is a "Gables C Unit" type Unit.

The "Gables A Unit" is a two-story Unit containing approximately 1,711 square feet of living area, exclusive of the garage area. The first floor contains a foyer, living room, dining room, kitchen, master bedroom, a full bath and an optional half bath, mechanical/laundry room, covered porch and an attached two car garage. The second floor contains two bedrooms and a full bath.

The "Gables B Unit" is a two-story Unit containing approximately 2,295 square feet of living area, exclusive of the garage area. The first floor contains a foyer, living room with a dining area, kitchen with a breakfast room, master bedroom, one and one-half baths, mechanical room, laundry room, two porches and an attached two car garage. The second floor contains two bedrooms, a full bath, loft and storage room.

The "Gables C Unit" is a two-story Unit containing approximately 1,838 square feet of living area, exclusive of the garage area. The first floor contains a foyer, living room, dining room, kitchen with laundry area, two bedrooms, two full baths, mechanical room, storage room, covered porch and an attached two car garage. The second floor contains an optional loft and dormer.

Any inconsistencies between the narrative descriptions of Units and the Drawings shall be resolved in favor of the Drawings.

EXHIBIT "E"TO DECLARATION OF CONDOMINIUM OWNERSHIP FOR  
MACINTOSH FARMS CONDOMINIUM NO. 2

<u>UNIT NO.</u>	<u>PHASE NO.</u>	<u>UNIT ADDRESS</u>	<u>UNIT TYPE</u>	<u>SQUARE FOOTAGE</u>	<u>PERCENTAGE OR FRAC- TIONAL INTEREST IN COMMON AREAS AND FACILITIES AND PER- CENTAGE OR FRAC- TIONAL INTEREST IN COMMON EXPENSES, COMMON ASSESSMENTS, COMMON SURPLUS, COMMON PROFITS AND COMMON LOSSES</u>
15-41	I	1755 Cortland Lane	Gables C	1,838	31.45%
15-42	I	1765 Cortland Lane	Gables B	2,295	39.27%
15-43	I	1775 Cortland Lane	Gables A	1,711	<u>29.28%</u>
				TOTAL:	100.00%

CONSENT OF MORTGAGEE TO DECLARATION OF  
CONDOMINIUM OWNERSHIP FOR MACINTOSH FARMS  
CONDOMINIUM NO. 2

The undersigned, BANK ONE, AKRON, N.A., is mortgagee of premises described in the within Declaration of Condominium Ownership for Macintosh Farms Condominium No. 2, Broadview Heights, Ohio, by virtue of the following mortgages: (a) mortgage filed for record on July 14, 1994 in Volume 94-6855, Page 19 et seq. of Cuyahoga County Records, and (b) mortgage filed for record on July 14, 1994 in Volume 94-6855, Page 58 et seq. of Cuyahoga County Records ("Mortgages"), (c) mortgage filed for record on August 11, 1993 in Volume 93-08496, Page 6 et seq. of Cuyahoga County Records.

The undersigned hereby consents to the execution and delivery of the foregoing Declaration of Condominium Ownership, with the Bylaws, Drawings and other exhibits thereto ("Condominium Documents"), and to the filing thereof in the Office of the County Recorder of Cuyahoga County, Ohio, and further, subjects and subordinates the Mortgages to the Condominium Documents, and to the provisions of Chapter 5311 of the Ohio Revised Code.

VOL. 95-02548 PAGE 31

SIGNED AND ACKNOWLEDGED  
IN THE PRESENCE OF:  
(witnesses as to both signatures)

Leann M. Justice  
Print Name Leann M. Justice

Kateca S. Walters  
Print Name Kateca S. Walters

BANK ONE, AKRON, N.A., a national  
banking association

By: Linda A. Cornell  
Linda A. Cornell, Vice President

By: Ruth G. Bradley  
Ruth G. Bradley, Commercial Real Estate Officer

STATE OF OHIO            )  
  ) SS.  
COUNTY OF Summit    )

BEFORE ME, a Notary Public, in and for said County and State, personally appeared the above-named BANK ONE, AKRON, N.A., a national banking association, by Linda A. Cornell, its Vice President, and by Ruth G. Bradley, its Commercial Real Estate Officer, having been first duly sworn acknowledged that they did execute the foregoing instrument and that the same was their free act and deed individually and as such officers and the free act and deed of the said Association.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at Akron, Ohio, this 24th day of March, 1995.

Leann M. Justice  
Notary Public

THIS INSTRUMENT PREPARED BY:  
Richard A. Rosner, Attorney at Law  
Kahn, Kleinman, Yanowitz & Arnsen Co., L.P.A.  
Suite 2600, The Tower At Erieview  
1301 East Ninth Street  
Cleveland, Ohio 44114  
(216) 696-3311

LEANN M. JUSTICE  
Notary Public for State of Ohio  
My Commission Expires Nov. 27, 1997

CONSENT OF MORTGAGEE TO DECLARATION OF  
CONDOMINIUM OWNERSHIP FOR MACINTOSH FARMS  
CONDOMINIUM NO. 2

The undersigned, THE ZAREMBA COMPANY, is mortgagee of premises described in the within Declaration of Condominium Ownership for MacIntosh Farms Condominium No. 2, Broadview Heights, Ohio, by virtue of mortgage recorded on June 26, 1990 in Volume 90-3702, Page 21 of Cuyahoga County Records ("Mortgage").

The undersigned hereby consents to the execution and delivery of the foregoing Declaration of Condominium Ownership, with the Bylaws, Drawings and other exhibits thereto ("Condominium Documents"), and to the filing thereof in the Office of the County Recorder of Cuyahoga County, Ohio, and further, subjects and subordinates the Mortgage to the Condominium Documents, and to the provisions of Chapter 5311 of the Ohio Revised Code.

SIGNED AND ACKNOWLEDGED  
IN THE PRESENCE OF:

D.A. Foster  
Print Name D A FOSTER

Michele R. Juwiler  
Print Name MICHELE R. JUWILER

THE ZAREMBA COMPANY

By: Nathan Zarembo  
Nathan Zarembo, Vice President

STATE OF OHIO                    )  
  ) SS.  
COUNTY OF CUYAHOGA        )

BEFORE ME, a Notary Public, in and for said County and State, personally appeared the above-named THE ZAREMBA COMPANY, by NATHAN ZAREMBO, its V.P., who, having been first duly sworn acknowledged that he did execute the foregoing instrument and that the same was his free act and deed individually and as such officer and the free act and deed of the said Corporation.

IN TESTIMONY WHEREOF, I have hereunto set my hand and affixed my official seal at WILSON, Ohio, this 31st day of MARCH, 1995.

Katherine J. Hammerberg  
Notary Public

THIS INSTRUMENT PREPARED BY:  
Richard A. Rosner, Attorney at Law  
Kahn, Kleinman, Yanowitz & Arnsen Co., L.P.A.  
Suite 2600, The Tower At Erievue  
1301 East Ninth Street  
Cleveland, Ohio 44114  
(216) 696-3311

VOL. 95-02548 PAGE 32