



Instrument Number: 201612090169768

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Transaction Number: T20160080099

Document Type: CONDOMINIUM DECLARATION

Document Page Count: 63

Submitted By (Walk-In):

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Return To (Mailing Label):

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Mailing Label

First Grantor:

KENBROOK HILLS UNIT OWNERS ASSN

First Grantee:

KENBROOK HILLS CONDOMINIUM

Fees:

Document Recording Fee: \$28.00

Additional Pages Fee: \$488.00

Marginal Reference Fee: \$4.00

Total Fees: \$520.00

Amount Paid: \$520.00

Amount Due: \$0.00

Instrument Number: 201612090169768

Recorded Date: 12/09/2016 1:19:17 PM

OFFICIAL RECORDING COVER PAGE

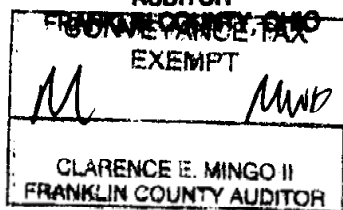
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DEC 09 2016

CLARENCE E. MINGO II
AUDITOR

AMENDED AND RESTATED DECLARATION AND BYLAWS
CREATING AND ESTABLISHING A PLAN FOR
CONDOMINIUM OWNERSHIP
UNDER CHAPTER 5311 OF THE REVISED CODE OF OHIO
FOR
KENBROOK HILLS CONDOMINIUM

CERTIFICATE OF AUDITOR

Dec. 9, 2016

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

Clarence E. Mingo II
Auditor
By: Michael D. Dison
Deputy Auditor

This instrument prepared by:
Charles T. Williams, Esq.
2 Miranova Place #380
Columbus, Ohio 43215-7047

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EXHIBIT A LEGAL DESCRIPTION

EXHIBIT B UNIT INFORMATION SHEET

EXHIBIT C AMENDED AND RESTATED BYLAWS

NOT A CERTIFIED COPY

AMENDED AND RESTATED DECLARATION AND BYLAWS

This Amendment and Restatement to the Declaration and Bylaws of Kenbrook Hills Condominium is made this 3rd day of Dec., 2016, pursuant to the provisions of Chapter 5311 of the Revised Code of Ohio.

Recitals

- A. Kenbrook Hills Condominium is a condominium created under Ohio's condominium law pursuant to the filing of a Declaration and Bylaws of condominium recorded on June 27, 1974, in Vol. 3418, page 831, *et seq.*, Franklin County Records.
- B. Whereas, the condominium Declaration and Bylaws and all amendments are in need of revision and restatement because of changes in the law and by virtue of practices which have taken place at the condominium since the establishment of the condominium, this Amended and Restated Declaration and Bylaws of Kenbrook Hills Condominium is hereby promulgated by the members of the Association and pursuant the Declaration and Bylaws now in effect.
- C. Whereas, this Amended and Restated Declaration and Bylaws affects only the administrative and operational provisions of the condominium and therefore does not affect the drawings as already recorded. It replaces in full the original Declaration and Bylaws of June 27, 1974, and all amendments thereto, but does not affect the drawings or plot plan in any way, nor does this Amended and Restated Declaration change the unit descriptions, common element descriptions, or percentage interests of the Unit Owners.
- D. Pursuant to Article IX of the Declaration and Article VI, Section 4., of the Bylaws of June 27, 1974, and the provisions of Ohio Revised Code Section 5311, the undersigned officers of the condominium hereby certify that the following amendment has been promulgated according to the above sections of said Declaration and Bylaws and that 75% of all Unit Owners, at a meeting called for such purpose, have affirmatively voted their consent, either in person or by proxy, to the following Amended and Restated Declaration and Bylaws.

Definitions

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

1. "Articles" and "Articles of Incorporation" mean the articles, filed with the Secretary of State of Ohio, incorporating Kenbrook Hills Unit Owners' Association as a corporation not-for-profit under the provisions of Chapter 1702 of the Revised Code of Ohio. (The State of Ohio's enabling non-profit corporation act.)
2. "Association" and "The Kenbrook Hills Unit Owners' Association" mean the corporation not-for-profit created by the filing of the Articles of Incorporation with the Ohio Secretary of State, and is also one and the same as the association created for the Condominium under the Condominium Act.
3. "Board" and "Board of Directors" mean those persons who, as a group, serve as the board of directors of the Association and are also one and the same as the board of managers of the Condominium established for the Condominium under the Condominium Act.
4. "Bylaws" mean the bylaws of the Association, created under and pursuant to the Condominium Act for the Condominium, and which also serve as the code of regulations of the Association under and pursuant to the provisions of Chapter 1702. A true copy of the Bylaws is attached hereto and made a part hereof.
5. "Common Elements" means all of the Condominium Property, except that portion described in this Declaration as constituting a Unit or Units.
6. "Common Assessments" means assessments that are charged proportionally against all units for common purposes.
7. "Condominium" and "Kenbrook Hills Condominium" mean the condominium regime for the Condominium Property created under and pursuant to the Condominium Act.
8. "Condominium Act" means Chapter 5311 of the Revised Code of Ohio.
9. "Condominium instruments" means this Declaration, the Bylaws, the Drawings, and, as provided by the Condominium Act, any contracts pertaining to the management of the Condominium Property, and any other documents, contracts, or instruments establishing ownership of or exerting control over a Condominium Property or unit.
10. "Condominium ownership interest" means a fee simple estate in a unit, together with an appurtenant undivided interest in the Common Elements.
11. "Condominium Property" means all real and personal property, including the land, hereinafter described as being submitted to the Condominium Act, all buildings, structures and improvements situated thereon, and all easements, rights and

appurtenances belonging thereto.

12. "Declarant" means whoever was designated in the Original Declaration of June 27, 1974, as creating the Condominium, and Declarant's successors and assigns, provided the rights specifically reserved to Declarant under the Condominium organizational documents shall accrue only to such successors and assigns as are designated in writing by Declarant as successors and assigns of such rights.
13. "Declaration" means this instrument, by which the Condominium Property is hereby submitted to the Condominium Act, and includes all amendments to that declaration.
14. "Directors" and "Directors" mean that person or those persons serving, at the time pertinent, as a director or directors of the Association, and mean that same person or those persons serving in the capacity of a member of the board of managers of the Association, as defined in the Condominium Act.
15. "Drawings" means the drawings for the Condominium, and are the Drawings required pursuant to the Condominium Act.
16. "Eligible mortgagees" means the holders of valid first mortgages on Units who have given written notice to the Association stating their names, addresses and Units subject to their mortgages.
17. "Limited Common Elements" means the Common Elements that are designated in the declaration as being reserved for use by a certain unit or units, to the exclusion of other units.
18. "Occupant" means a person lawfully residing in a Unit, regardless of whether or not that person is a Unit Owner.
19. "Person" means a natural individual, corporation, partnership, trustee, or other legal entity capable of holding title to real property.
20. "Unit" and "Units" mean that portion or portions of the Condominium Property described as a unit or units in this Declaration, and is that portion of the Condominium constituting a "unit" or "units" of the Condominium under the Condominium Act.
21. "Unit Owner" and "Unit Owners" mean that person or those persons owning a fee simple interest in a Unit or Units, each of whom is also a "member" of the Association, as defined in Chapter 1702 of the Revised Code of Ohio.
22. "Unit Owner Association" means the organization that administers the

Condominium Property and that consists of all the owners of units in a Condominium Property.

The Plan

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

ARTICLE I

THE LAND

A legal description of the land constituting the Condominium Property as it presently exists, located in the City of Upper Arlington, Franklin County, Ohio, and consisting of 7.8343 acres of land, more or less, and part of Lot No. 4 of Kenbrook Bluff, is attached hereto and marked as Exhibit A.

ARTICLE II

NAME

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

ARTICLE III

PURPOSES; RESTRICTIONS

Section 1. Purposes. This Declaration is being made to establish thirty (30) separate individual parcels from the Condominium Property to which fee simple interests may be conveyed; to establish a Unit Owners association to administer the Condominium; to provide for the preservation of the values of Units and the Common Elements; to provide for and promote the benefit, enjoyment and well being of Unit Owners and occupants; to administer and enforce the covenants, easements, charges and restrictions hereinafter set forth; and to raise funds through assessments to accomplish these purposes. No commercial facilities are to be a part of the Condominium.

Section 2. Restrictions. The Condominium and the Condominium Property shall be benefitted by and subject to the following restrictions. All or any of such restrictions and covenants may be modified or revoked as hereinafter provided in Article XVIII.

(A) Unit Uses. Except as otherwise specifically provided in this Declaration, no Unit shall be used for any purposes other than that of a residence for individuals living

together as a single housekeeping unit, and uses customarily incidental thereto, provided; however, that no Unit may be used as a rooming house. No Unit may be used for child or adult daycare (or for babysitting on a regular basis) except as approved by the Board. Except as provided herein below, no industry, business, trade, occupation or profession of any kind, commercial, religious, educational, or otherwise, designated for profit, altruism, exploration or otherwise, shall be conducted, maintained or permitted on any part of the Condominium Property. No Unit may be used for a group home, commercial foster home, fraternity or sorority house, or nursing home or such other treatment or care facility. Notwithstanding the foregoing, an occupant maintaining a personal or professional library, keeping personal business or professional records or accounts, conducting personal business (provided that such use does not involve customers, employees, licensees or invitees coming to the Unit), making professional telephone calls or corresponding, in or from a Unit, is engaging in a use expressly declared customarily incidental to residential use and is not in violation of these restrictions.

- (B) Common Element Uses. The Common Elements (except the Limited Common Elements) shall be used in common by Unit Owners and occupants and their agents, servants, customers, invitees and licensees, in accordance with the purposes for which they are intended, reasonably suited and capable, and as may be required for the purposes of access, ingress to, egress from, use, occupancy, and enjoyment of Units. Unless expressly provided otherwise herein, no Common Elements shall be used for any purpose other than the health, safety, welfare, convenience, comfort, recreation and enjoyment of Unit Owners and occupants.

No person may use the Common Elements in the following manner:

- (1) To keep any property on any sidewalk, entrance, parking area, or driveway that obstructs the use of the same for an unreasonable period of time;
- (2) To store personal property, except on the Limited Common Elements;
- (3) To divert utilities serving the Common Elements to an exclusively personal use;
- (4) To light fires on any part of the Common Elements and facilities except in outside cooking grills or devices and subject to any rules and regulations adopted by the Board.
- (5) To place or dump trash, garbage, refuse, debris, or excess materials, except in the common trash receptacle provided by the Association.

- (C) Limited Common Element Uses. Those portions of the Common Elements described herein shall be used and possessed exclusively by the Unit Owners and occupants of the Unit or Units served by the same, as specified in this Declaration, and shall be used only for the purposes intended. Trash or other waste material may not be dumped, placed or permitted to remain in any Limited Common Element, except as allowed by the Rules of the Association.

- (D) Visible Areas. All windows located in perimeter walls or in doors attached to perimeter walls shall contain clear glass or clear acrylic material. Nothing shall be caused or permitted to be hung or displayed on the outside or inside of windows (except drapes, curtains, or louvered blinds showing to the exterior) or placed on the outside walls of a building or otherwise outside of a Unit, or any part thereof, and no sign, awning, canopy, shutter, or television or citizens' band or other radio antenna or transmitter, or any other device or ornament, shall be affixed to or placed upon the exterior walls, doors, or roof or any part thereof, or in, on, or over a patio or balcony, unless authorized in writing by the Board or unless otherwise required by governmental regulation with regard to antenna placements. No clothes or clothesline or other laundry shall be hung or exposed in or on any of the Common Elements without prior written approval from the Board. Any approval given by the Board relating to the paragraph shall be subject to all rules adopted by the Board and may be revoked without cause.
- (E) Offensive Activities. No noxious or offensive activity shall be carried on in any Unit, or upon the Common Elements or Limited Common Elements, nor shall any be used in any way or for any purpose which may endanger the health of or unreasonably disturb any occupant or which may constitute a nuisance. These activities may include but are not limited to:
- (i) making unreasonably disturbing noise or using profanity;
 - (ii) playing any music or musical instrument in such manner to unreasonably disturb any occupant of the property;
 - (iii) operating any audio or sound equipment in such a manner as to unreasonably disturb any occupant of the property;
 - (iv) soliciting any person or distributing any circulars, pamphlets or other written materials, without prior written permission from the Board;
 - (v) performing any other act that may unreasonably endanger the health and safety of any occupant of the Condominium.
 - (vii) The performance of mechanical work on a vehicle or the parking of inoperative or unlicensed motor vehicles on the Common ElementsCommon Elements of the Condominium Property in violation of rules and regulations relating thereto shall constitute nuisance per se, and the Board shall have the authority to remove any such vehicle at the owner's expense at any time twenty-four (24) hours or more after a notice has been placed thereon demanding its removal.
- (F) Vehicles. The Board may promulgate rules and regulations restricting or prohibiting the parking of automobiles, buses, inoperable vehicles, commercial vehicles, trucks, motorcycles, trailers, boats and recreational vehicles on the Common Elements, or parts thereof, and may enforce such regulations or restrictions by levying enforcement charges, having such vehicles towed away, or

taking such other actions as it, in its sole discretions, deems appropriate. Parking of automobiles shall only be permitted in designated portions of the Common Elements and in the driveways serving each unit. No trucks, camping trailers or commercial trailers, and no recreational motor vehicles shall be permitted on the Condominium Property without the prior written consent of the Board.

All vehicles parked on the Common Elements or Limited Common Elements shall display a current vehicle license plate in the state for which it is licensed and registered. Any vehicle parked on the Common or Limited Common Elements for periods in excess of seven (7) continuous days may be removed by the Board at the expense of the vehicle's owner. The Board may levy a Special Individual Unit Assessment against the owner who violates such rules, including the owner's family members, guests, tenants or invitees. The Board shall have the power to assign parking spaces to Unit Owners.

- (G) Renting, Leasing and Occupancy. No Unit or part thereof shall be rented or leased, and all Units must be occupied by the owner of the Unit. As to corporate ownership of a Unit, occupancy by the owner shall mean occupancy by the principal shareholders of the corporation where all of the shareholders belong to the same family; any persons who are members of an LLC who are also members of the same family; the Trustee of a family trust, the beneficiaries of a family trust; the Grantor of a family Trust; and the persons who are partners of a partnership which consists of persons belonging to the same family. In addition, Units occupied by the parents or children of the Unit Owner shall be deemed to be owner occupants as defined herein.

If any Unit Owner or occupant fails to abide by these rules for occupancy of Units or the rules of the condominium and this Declaration and By-laws, in addition to any other enforcement powers under Ohio law which the Board may possess, the Board may commence an action for eviction in any Court of competent jurisdiction, in the name of the Unit Owner and as owner's agent for this sole purpose and shall charge all costs of such eviction and enforcement, including reasonable attorney fees, to the Unit Owner violating this provision. Any such costs so incurred shall be the subject of a special assessment against the offending unit and made a lien against the offending unit, which lien may be foreclosed in the same manner as provided by Ohio law and as herein set forth. Before initiating an eviction, the Board shall give the Unit Owner at least ten (10) days written notice of the intended eviction action.

- (H) Signs. No sign of any kind shall be displayed to the public view on the Condominium Property, including in or on any vehicle parked on the

Condominium Property, except:

- (i) On the Common Elements, signs regarding and regulating the use of the Common Elements, provided they are approved by the Board;
 - (ii) Street identification signs;
 - (iii) Signs, advertising the Unit for sale or rent, but only as approved in writing by the Board;
 - (iv) Any other sign approved by the Board in writing, or as allowed by Ohio law.
- (I) Replacements. Any building erected to replace an existing building containing Units shall be of new construction, be of comparable size, design and construction to that replaced, and shall contain a like number of Units of comparable size to the Units in the building replaced.
- (J) Structural Integrity. Nothing shall be done in any Unit, or in, on or to the Common Elements or Limited Common Elements, which may impair the structural integrity of any improvement.
- (K) Construction in Easements. No structure, planting or other material shall be placed or permitted to remain within the easements for the installation and maintenance of utilities and drainage facilities which may damage or interfere with the installation and maintenance of utility lines or which may change the direction of the flow of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easement areas. The utility facilities within the easement areas shall be subject to the right of the Association to maintain the same, and its right to delegate that right to a public authority or utility.
- (L) Animals. Household domestic pets, not bred or maintained for commercial purposes, may be maintained in a Unit, provided that: (i) the maintaining of animals shall be subject to such rules and regulations as the Board may from time to time promulgate, including, without limitation, the right to place limitations on the size, number and type of such pets, and the right to levy enforcement charges against persons who do not clean up after their pets; and (ii) the right of an occupant to maintain an animal in a Unit shall be subject to termination if the Board, in its sole and unfettered discretion, determines that maintenance of the animal constitutes a nuisance or creates a detrimental effect on the Condominium or other Units or occupants; (iii) the Board may charge any pet owner the costs of repairing any damage to the Condominium Property that is caused by the pet.

Each owner of a pet shall be exclusively liable for any damage, claim or loss of any kind arising from the pet. Each pet owner shall indemnify and save harmless the Association and all other Unit Owners from any such liability arising from keeping the pet on the Condominium Property.

- (M) Conveyances. Each Unit shall be conveyed as a separately designated and legally

described freehold estate subject to the terms, conditions and provisions hereof. The undivided interest of a Unit in the Common Elements shall be deemed to be conveyed or encumbered with the Unit even though that interest is not expressly mentioned or described in the deed, mortgage or other instrument of conveyance or encumbrance. In any instrument of conveyance or creating an encumbrance, or in any other document legally describing a Unit, it shall be sufficient to lawfully describe a Unit and its interest in the Common Elements by referring to the Unit designation of the Unit and the appropriate recording references of the initial page of this Declaration and the Drawings. The right of a Unit Owner to sell, transfer or otherwise convey that owner's Unit is not subject to any right of first refusal or similar restriction, and any Unit Owner may transfer that owner's Unit free of any such limitation. To enable the Association to maintain accurate records of the names and addresses of Unit Owners, each Unit Owner agrees to notify the Association, in writing, within 30 days after an interest in that Unit Owner's Unit has been transferred to another person and to provide the names, addresses and phone numbers for the owner, occupants and any managing agent, and provide such other information as required by Ohio law.

- (N) Discrimination/Handicapped Accommodation. No action shall at any time be taken by the Association or its Board which in any manner would discriminate unlawfully against any Unit Owner in favor of another. In addition, notwithstanding any provision hereof, any rule or regulation, the Board shall make reasonable accommodations if necessary to afford a handicapped person equal opportunity to use and enjoy the Condominium Property, provided, that nothing contained herein shall be construed to mean or imply that any such accommodation be at the cost of the Association.
- (O) Architectural Control. No building, fence, wall, sign, landscaping, planting or other structure/improvement shall be commenced, erected or maintained upon the Condominium Property, or any part thereof, nor shall any exterior addition or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by the Board or its designated representative or representatives, in its or their sole and unfettered discretion.

Nothing visible to the exterior shall be permitted to be hung, placed, displayed, or maintained in Limited Common Elements unless approved, in writing, by the Board or its designated representative(s), in its or their sole and unfettered discretion, or unless the same is authorized by existing rule or regulation adopted by the Board.

- (P) Rules and Regulations. In addition to adopting and enforcing rules and regulations in the instances specifically hereinbefore mentioned, the Board may, from time to time, adopt and enforce such further reasonable rules and regulations concerning use of the Condominium Property, or any part thereof, as it deems

necessary or desirable to promote harmony, to serve the best interests of the Unit Owners, as a whole, and to protect and preserve the nature of the Condominium and the Condominium Property. A copy of all rules and regulations shall be furnished by the Board to the owners of each Unit prior to the time when the same shall become effective.

- (Q) Disputes Between Owners. In the event of any dispute between Unit Owners as to the application of the foregoing restrictions or any rule or regulation promulgated pursuant thereto, the party aggrieved shall submit a complaint in writing to the Board specifying the dispute. The Board shall set a time, date and place for a hearing thereon within thirty (30) days thereafter, and give written notice to each party thereof no less than three days in advance of the hearing. The Board shall thereupon hear such evidence on the dispute as the Board deems proper and render a written decision on the matter to each party within thirty (30) days thereafter. No legal action of any type may be initiated by either party unless the dispute has first been submitted to and determined by the Board.
- (R) Sexual Offenders. No person who is adjudicated to be a Tier II sex offender/child-victim offender or Tier III sex offender/child-victim offender and required to register with a designated registering agency, thereby requiring notice to be given pursuant to Ohio Sex Offender Registration laws, or similar statute from another jurisdiction, as the same may from time to time be amended, may reside in or occupy a unit for any length of time.

The Association may enforce this provision by commencing an action and seeking an Order in any Court of competent jurisdiction, and in the name of the Unit Owner as the owner's agent for this sole purpose, to enjoin such person(s) from occupying or residing in a unit, from coming onto the Condominium Property, or to evict such person residing in, or occupying a unit, and shall charge all costs of such injunction, eviction and enforcement, including reasonable attorney fees, to the Unit Owner violating this provision. Any such costs so incurred shall be the subject of a special assessment against the offending unit and made a lien against the offending unit, which lien may be foreclosed in the same manner as provided by Ohio law and as herein set forth.

The Association shall not be liable to any Unit Owner or occupant, or to anyone visiting any Unit Owner or occupant or coming onto the Condominium Property, as a result of the Association's alleged failure, whether negligent, intentional or otherwise, to report the presence of such a person or to enforce the provisions of this subsection.

Notwithstanding the foregoing, all Unit Owners shall be bound by the provisions of Article XIX, Section 2., relating to arbitration prior to the filing of any legal action against the Association.

ARTICLE IV

IMPROVEMENT DESCRIPTIONS

Buildings. The Condominium Property shall consist of the real estate described herein and the buildings and other improvements located thereon, including without limitation, five (5) residential structures containing, in total thirty (30) residential units, all of which have an attached two-car garage, a patio area, a partial basement and crawl space and attic. The principal materials of which the buildings are constructed are wood, concrete block, with the exterior walls consisting of brick veneer, except breeze ways and dormers, and the exterior roof coverings being composition shingles. The location, layout and dimensions of the units and the Common Elements and Limited Common Elements are shown graphically on the Drawings.

ARTICLE V

UNITS

Section 1. Unit Designations, Size and Percentage Interests. The unit designation of

each unit submitted to the provisions of Chapter 5311, Revised Code, its location, approximate area, number of rooms and the immediate Common Element or Limited Common Element to which it has access, and the percentage interest in Common Element pertaining to each unit are set forth on the Drawings.

Section 2. Compositions of Units.

- (A) Unit Composition. Each unit shall consist of the areas bounded by the interior surfaces (whether plaster, dry wall, wood, concrete or other materials) of its perimeter walls, windows and doors, basement floor and roof sheathing; such interior surfaces shall be projected as may be necessary because of walls, floors, ceilings and other partitions to form a complete enclosure. Each unit shall also include all ducts, chimney flues, plumbing pipes and fixtures, electrical wires, fixtures and equipment, heating and air-conditioning systems (including condensers and control devices) and other utility service lines, pipes, wires and conduits (excepting those utility service lines, pipes, wires and conduits passing through a unit for the purpose of serving other units) located within the bounds of such unit and which serves only each unit. Supporting walls, floor structures, fixtures, and other parts of the building which are within the boundaries of a unit, but which are necessary for the existence, support, maintenance, safety, or comfort of any other part of the Condominium Property are not part of the unit. The exact layout and dimension of each unit are graphically illustrated on the Drawings.
- (B) Unit Access to Public Street. Each unit has immediate access to one or more concrete patios or decks, door stoops, porches, sidewalks, driveways and parking lots which in turn connect with and provide access to Kenny Road, a public street.

ARTICLE VI

COMMON AND LIMITED COMMON ELEMENTS

Section 1. Common Elements- Description. All of the Condominium Property, including all of the land and all improvements thereon and appurtenances thereto, except those portions labeled or described herein or on the Drawings as a part of a Unit, are Common Elements. The Common Elements consist of the exterior of each building, roofs of the buildings, green space, walkways.

Section 2. Limited Common Elements - Description. Each Unit Owner is hereby granted an exclusive and irrevocable license to use , and occupy the

Limited Common Elements and Facilities located within the bounds of his Unit or which serve only his Unit. The Limited Common Elements and Facilities with respect to each Unit shall consist of:

- (1) All interior walls, doors, floors and ceilings located within the bounds of such unit, excluding the structural and component parts thereof;
- (2) All windows, screens and doors within the perimeter walls of such unit, excluding the exterior trim and paint;
- (3) Balconies, patios, stoops, breeze ways, the "patio area", the driveways serving such unit, and other appurtenant improvements which serve only such unit. The "patio area" serving each unit is that portion of the Condominium Property yard area which is located adjacent to the rear of each unit, and which has width which is equal to the width of each unit and a depth of twenty (20) feet measured from the rear exterior wall of each unit. The "patio area" of each unit is shown on the Drawings.

Section 3. Undivided Interest. The undivided interest in the Common Elements of each Unit is shown on the attached Exhibit B. Each Unit has designated percentage ownership interest, with an undivided interest in the Common Elements. The Common Elements shall be owned by the Unit Owners in the proportions described as tenants in common, and ownership thereof shall remain undivided. No Unit Owner may waive or release any rights in the Common Elements. Further, the undivided interest in the Common Elements of a Unit shall not be separated from the Unit to which it appertains. No Unit Owner may, by partition, action or otherwise, separate his or her undivided interest from the Condominium.

ARTICLE VII UNIT OWNERS ASSOCIATION

Section 1. Establishment of Association. The Association has been created as a nonprofit corporation in the State of Ohio. The Association has been formed to be and to serve as the Unit Owners association of the Condominium. The Association shall be named Kenbrook Hills Unit Owners' Association.

Section 2. Membership. Membership in the Unit Owners Association shall be limited to the Unit Owners, and every person or entity who is or becomes a record owner of a fee or undivided fee simple interest in a Unit, is a Unit Owner and shall be a member of the Association. The foregoing is not

intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Unit, and transfer of a Unit shall automatically transfer membership to the transferee.

Within 30 days after a Unit Owner obtains a Unit, the Owner shall provide the Board with the following information: The home address, home and business mailing addresses, and home and business telephone numbers of the Unit Owner and all occupants of the unit; In addition, within 30 days after a change in any of the above information, a Unit Owner shall notify the association, through the Board, in writing of the change. When the Board requests, a Unit Owner shall verify or update the information.

Section 3. Voting Rights. Each Unit Owner shall be entitled to vote in proportion to the percentage interest in the Common Elements for each Unit owned and, in the case of a Unit owned by more than one person, a proportionate part of a vote for ownership of an undivided fee simple interest in that Unit, provided, that unless timely challenged by an owner of a fee simple interest in a Unit, any owner of a fee simple interest in that Unit may cast the entire vote with respect to that Unit. The Board, from time to time, may suspend the right of a member to vote with respect to his, her, or its Unit for failure to pay assessments when due, or for failure to observe other terms hereof, the Bylaws, or rules and regulations of the Association, pursuant to rules and regulations duly adopted by the Board from time to time.

Section 4. Board of Directors. The Board of Directors shall consist of five (5) members. Each director shall serve a three (3) year term. The terms of the five (5) Directors shall be staggered so that the terms of at least one-fifth of the Directors will expire and successors will be elected at each annual meeting of the Association. The qualifications, number, terms and manner of election of Board members shall be as provided in the Bylaws. Notwithstanding the foregoing, the Unit Owners, by the vote of Unit Owners exercising not less than a majority of the voting power of Unit Owners, may from time to time, change the number and terms of Directors; provided, that in any such event the terms of not less than one-fifth of the Directors shall expire annually.

Section 5. Authority. The Board shall have all authority to manage, maintain, repair, replace, alter and improve the Common Elements and assess and collect funds for the payment thereof, and do all things, and exercise all rights

provided by the Condominium organizational documents, or the Condominium Act, that are not specifically reserved to Unit Owners.

Section 6.

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

ARTICLE VIII

AGENT FOR SERVICE

The name of the person to receive service of process for the Association, and that person's residence or place of business, which is in Franklin County, Ohio, is the same as that registered for the Association with the Ohio Secretary of State, which may be changed from time to time as the Board directs.

ARTICLE IX

INDEMNIFICATION

Section 1.

General. The Association shall indemnify every person who is or has been a manager, officer, agent, or employee of the Association and those persons' respective heirs, legal representatives, successors and assigns, against expenses, including attorneys' fees, and judgments, decrees, fines, penalties, and amounts paid in settlement actually and reasonably incurred in connection with any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, and whether in an action or proceeding by or in the right of the Association, or otherwise, in which such person was or is a party or is threatened to be made a party by reason of the fact that person was a manager, officer, employee, or agent of the Association, or is or was serving in such capacity at the request of the Association, provided that person (a) acted in good faith and in a manner that person believed to be in or not opposed to the best interests of the Association, and (b) in any matter the subject of a criminal action or proceeding, had no reasonable cause to believe the questioned conduct was unlawful, but provided that in the case of any threatened, pending, or

completed action or suit against any such person by reason of that person serving in such capacity, no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for negligence if that person is the manager, or for gross negligence if that person is a Board member, or misconduct in the performance of a duty to the Association unless and only to the extent that the court in which such action was brought shall determine upon application that in view of all the circumstances of the case that person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

Section 2. Determination. Unless ordered by a court, the determination of indemnification, pursuant to the foregoing criteria, shall be made (a) by a majority vote of a quorum of Managers of the Association who were not and are not parties to or threatened with any such action, suit, or proceeding, or (b) if such a quorum is not obtainable, or if a majority of a quorum of disinterested Managers so direct, in a written opinion by independent legal counsel other than an attorney, or a firm having associated with it an attorney, who has been retained by or who has performed services for the Association or any person to be indemnified within the past five years, or (c) by the Unit Owners, or (d) by the court in which such action, suit, or proceeding was brought.

Section 3. Non-Exclusive Right. Any such indemnification shall not be deemed exclusive of any other rights to which such person may be entitled under law, any agreement, or any insurance purchased by the Association, or by vote of Unit Owners, or otherwise.

ARTICLE X MAINTENANCE AND REPAIR

Section 1. Association Responsibility. The Association, to the extent and at such times as the Board, in its exercise of business judgment, determines to allocate funds therefor, shall maintain, repair and replace all improvements constituting a part of the Common Elements, including but not limited to utility facilities serving more than one Unit, utility lines in the Common Elements, lawns, shrubs, trees, walkways, driveways, parking areas, the exterior fireplace stacks, chimney liners and chimneys extending above the roof or located outside of the building, exterior trim on exterior Unit doors and windows and the structural portions and exterior portions of buildings and improvements which are a part of the Common Elements that do not constitute part of a Unit, and the structural components of improvements constituting a part of the Limited Common Elements, but excluding

balconies, decks, and exterior stairways, patio area and patio fences, and excluding all interior Limited Common Elements located within the confines of the unit. . The Association shall not be responsible for the cleaning, housekeeping and routine maintenance of Limited Common Elements or components thereof. The Association shall maintain an adequate reserve fund for the periodic maintenance, repair and replacement of improvements a part of the Common Elements and structural components of improvements a part of the Limited Common Elements required to be maintained by it. Except to the extent, if any, that a loss is covered by insurance maintained by the Association, the Association shall not have responsibility to repair or maintain any Unit, or component thereof, or personal property within a Unit, or maintain or repair improvements made by Unit Owners hereafter. The deductible amount shall not be considered insurance provided by the Association, and shall be charged to the Unit Owner and Unit requiring repair in its proper proportion to the total damages to the Condominium Property.

Section 2. Individual Responsibility. Each Unit Owner shall repair and maintain the Unit or Units, and all components thereof, owned by that Unit Owner. In addition, each Unit Owner shall be responsible for the expense of maintenance, cleanliness, repair and replacement of any plantings and landscaping installed by the Unit Owner and all portions of their exterior balconies, decks and stairways. However, a Unit Owner must first obtain the approval of the Board as to design, size, and materials for any alteration or replacement of the balcony, deck, or stairway. In order to maintain the uniformity, aesthetics, and safety of the balconies, decks, and stairways, the Board shall cause the same to be inspected on a regular basis and shall, in consultation with the Unit Owner, determine what action, if any, should be taken and cause it to be appropriately accomplished at the most reasonable cost, which shall be paid by the Unit Owner. If the expense is not promptly paid by the Unit Owner, the Association shall do so and such expense shall be subject to the lien provisions specified in this Declaration. Unit Owner

In the event a Unit Owner shall fail to make a repair or perform maintenance required of that Unit Owner, or in the event the need for maintenance or repair of any part of the Common Elements or Limited Common Elements is caused by the negligent or intentional act of any Unit Owner or occupant, or is as a result of the failure of any Unit Owner or his her or its predecessors in title to timely pursue to conclusion a claim under any warranty, express, implied, or imposed by law, the Association may perform the same, and if the cost of such repair or maintenance is not covered by insurance, whether because of a deductible or otherwise, the

cost thereof shall constitute a special individual Unit assessment, as hereinafter defined, on the Unit owned by such Unit Owner. The deductible shall not be considered insurance provided by the Association and shall be charged to the unit and Unit Owner requiring repair. The determination that such maintenance or repair is necessary, or has been so caused, shall be made by the Board.

ARTICLE XI UTILITY SERVICES

Each Unit Owner by acceptance of a deed to a Unit agrees to pay for utility services separately metered or charged by the utility company attributable to that Unit, whether separately metered or submetered, and to reimburse the Association for that owner's Unit's share of any utility costs that the Board reasonably determines is attributable to use by the owner's Unit. All other utility costs shall be common expenses and paid by the Association. The Association may choose to install separate utility meters or not, as the Board shall determine in its sole discretion. In the event a Unit Owner is determined by the Board to be using any utility charged to the Unit Owners as a common expense in an unreasonable or wasteful manner, the Association will charge that Unit Owner all costs attributable to the unreasonable or wasteful use of the utility as a special individual Unit assessment. The board shall determine in its sole discretion as to what is unreasonable or wasteful use of a utility and the costs attributable to that Unit Owner.

ARTICLE XII INSURANCE; LOSSES, BONDS

Section 1.

Fire and Extended Coverage Insurance. The Board shall have the authority to and shall obtain insurance for all buildings, structures, fixtures and equipment, and common personal property and supplies now and at any time hereafter constituting a part of the Common Elements, the Limited Common Elements, or common property of the Association, against loss or damage by fire, lightning, and such other perils as are ordinarily insured against by standard Special Form (CP 1030) endorsements, and all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard Special Form (CP 1030) endorsement, where such is available, issued in the locale of the Condominium Property, in amounts at all times sufficient to prevent the Unit Owners from becoming co-insurers under the terms of any applicable coinsurance clause or provision and not less than one hundred percent (100%) of the current replacement cost of such items (exclusive of land,

foundations, footing, excavations, and other items normally excluded from coverage), as determined from time to time by the insurer. This insurance:

- (A) shall provide coverage for built-in or installed improvements, fixtures and equipment that are originally installed or as may have been upgraded as part of a Unit, and shall provide coverage of interior walls, windows and doors and the frames, sashes, jambs and hardware therefor, even though these improvements may be parts of Units;
- (B) shall have an agreed amount and inflation guard endorsement when that can be obtained, construction code endorsements, if there is a construction code provision that requires changes to undamaged portions of building even when only part of the Condominium Property is destroyed by an insured hazard, such as demolition cost, contingent liability from operation of building laws and increased cost of construction endorsements, and, when applicable, a steam boiler and machinery coverage endorsement, which provides that the insurer's minimum liability per accident at least equals the lesser of two million dollars or the insurable value of the building or buildings housing the boiler or machinery;
- (C) shall provide that no assessment may be made against a first mortgage lender, or its insurer or guarantor, and that any assessment under such policy made against others may not become a lien on a Unit and its appurtenant interests superior to a first mortgage.
- (D) shall be written in the name of the Association for the use and benefit of the Unit Owners, or its authorized representative, including any insurance trustee with whom the Association has entered into an insurance trust agreement, or any successor to such trustee, for the use and benefit of the individual Unit Owners;
- (E) shall contain or have attached the standard mortgagee clause commonly accepted by institutional first mortgage holders, insurers, and guarantors which (i) must provide that the carrier shall notify the named insured and each first mortgagee named in the mortgage clause at least ten days in advance of the effective date of any reduction in,

- cancellation of, or substantial change in the policy, and (ii) must be endorsed to provide that any loss shall be paid to the Association (or its insurance trustee), as a trustee for each Unit Owner and each such Unit Owner's mortgagee, and, unless otherwise prohibited by a nationally recognized institutional first mortgage holder, insurer, or guarantor, to the holders of first mortgages on Units;
- (F) shall have a deductible amount no greater than the lesser of ten thousand dollars or one percent of the policy face amount;
- (G) shall be paid for by the Association, as a common expense;
- (H) shall contain a waiver of subrogation of rights by the carrier as to the Association, its officers and Trustees, and all Unit Owners;
- (I) shall provide that the insurance shall not be prejudiced by any acts or omissions of individual Unit Owners who are not under the control of the Association; and
- (J) shall be primary, even if a Unit Owner has other insurance that covers the same loss.

Section 2.

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

and legal liability arising out of lawsuits related to employment contracts in which the Association is a party. Each such policy must provide that it may not be canceled or substantially modified, by any party, without at least ten days' prior written notice to the Association and to each holder of a first mortgage on a Unit.

Section 3.

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

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

Section 4.

Hazard Insurance Carrier. Each policy of hazard insurance obtained pursuant hereto shall be obtained from an insurance company authorized to write such insurance in the State of Ohio which has B general policyholder's rating and a III financial size category (or as an alternative an A general policyholder's rating), as determined by the then latest edition of Best's Insurance Reports, or its successor guide or the insurer is reinsured by a company that meets those rating requirements and the insurer and reinsurer execute an assumption of liability agreement or a similar

endorsement providing for 100 percent reinsurance of the insurer's policy and requiring the reinsurer to give the Unit Owner, the first mortgage lender, and the insurer 90 days' written notice before canceling or otherwise terminating the reinsurance, or the coverage is underwritten by Lloyd's of London.

Section 5.

Other Association Insurance. In addition, the Board may purchase and maintain contractual liability insurance, Directors' and Officers' liability insurance, and such other insurance as the Board may determine.

Section 6.

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

Section 7.

Unit Owners Insurance. Any Unit Owner or occupant may carry such insurance in addition to that provided by the Association pursuant hereto as that Unit Owner or occupant may determine, subject to the provisions hereof, and provided that no Unit Owner or occupant may at any time purchase individual policies of insurance against loss by fire or other casualty covered by the insurance carried pursuant hereto by the Association. In the event any Unit Owner or occupant violates this provision, any diminution in insurance proceeds resulting from the existence of such other

insurance shall be chargeable to the Unit Owner who acquired or whose occupant acquired such other insurance, who shall be liable to the Association to the extent of any diminution and/or loss of proceeds. Without limiting the foregoing, a Unit Owner or occupancy may obtain insurance against liability for events occurring within a Unit, losses with respect to personal property and furnishings, and losses to improvements owned by the Unit Owner or occupant, provided that if the Association obtains insurance for permanent improvements and built-in fixtures and equipment, then the insurance obtained by the Unit Owner with respect to improvements within the Unit shall be limited to the type and nature of coverage commonly referred to as "tenants' improvements and betterments".

Section 8.

Sufficient Insurance. In the event the improvements forming a part of the Common Elements or any portion thereof shall suffer damage or destruction from any cause or peril insured against and the proceeds of any policy or policies insuring against such loss or damage and payable by reason thereof shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken by the Association and the insurance process shall be used in payment therefor; provided, however, that in the event that within sixty (60) days after such damage or destruction the Unit Owners and eligible mortgagees, if they are entitled to do so pursuant to the provisions of this Declaration, shall elect to terminate the Condominium, then such repair, restoration or reconstruction shall not be undertaken.

Section 9.

Insufficient Insurance. In the event the improvements forming a part of the Common Elements or any portion thereof shall suffer damage or destruction from any cause or peril which is not insured against, or, if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction, then, unless the Unit Owners and eligible mortgagees if they are entitled to do so pursuant to the provisions of this Declaration, shall elect within sixty (60) days after such damage or destruction not to make such repair, restoration or reconstruction, the Association shall make repairs, restoration or reconstruction of the Common Elements so damaged or of all Unit Owners in proportion to their respective undivided interests in the Common Elements. Should any Unit Owner refuse or fail after reasonable

notice to pay that Unit Owner's share of such cost in excess of available insurance proceeds, the amount so advanced by the Association shall be assessed against the Unit of such Unit Owner and that assessment shall have the same force and effect, and, if not paid, may be enforced in the same manner as herein provided for the nonpayment of assessments.

Section 10.

Lender Requirements. Notwithstanding the foregoing provisions of this Article, the Association shall at all times maintain hazard insurance, liability insurance, and fidelity bond coverage conforming with the requirements then governing the making of a first mortgage loan or the purchase, guaranty, or insurance of first mortgages by national institutional lenders, guarantors or insurers of first mortgage loans on condominium units.

ARTICLE XIII

DAMAGE: RESTORATION, REHABILITATION AND RENEWAL

Section 1.

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

Section 2.

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

Section 3.

Rehabilitation and Renewal. The Association, with the consent of Unit Owners entitled to exercise not less than seventy-five percent (75%) of the voting power of Unit Owners, and the consent of eligible mortgagees hereinafter provided, may determine that the Condominium is obsolete in whole or in part and elect to have the same renewed and rehabilitated. The Board shall thereupon proceed with such renewal and rehabilitation and the cost thereof shall be a common expense. The condominium shall not be deemed obsolete merely because of the necessity to make major repairs or replacements, such as, but not limited to, replacing roofs, replacing the infrastructure, or repaving, items which shall be determined solely by the Board.

ARTICLE XIV

CONDEMNATIONSection 1.

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

- Section 2. Use of Proceeds. The award or proceeds of settlement in any actual or threatened condemnation or eminent domain proceedings after reduction by the costs, if any, incurred in obtaining the same, shall be applied first to the cost of restoring or replacing all damaged or taken improvements on the remaining Condominium Property in accordance with the Drawings, or in accordance with any new plans and specifications therefor approved by Unit Owners exercising not less than seventy-five percent (75%) of the voting power of Unit Owners, and the consent of eligible mortgagees hereinafter provided.
- Section 3. Insufficient Proceeds. If the award or proceeds are insufficient for such purpose, the excess cost shall be paid by the Association and, to the extent funds of the Association are insufficient therefor, in the judgment of the Board, such excess cost shall be a common expense and assessed among the Units in the same manner as special assessments for capital improvements are assessed. Except as hereinafter provided, the balance of any such award or proceeds of settlement, if there is an excess, shall be allocated beyond disbursed to the Unit Owners, and their first mortgagees, as their interests may appear, in proportion to the relative undivided interests of the Units in the Common Elements.
- Section 4. Non-Restorable Unit. Notwithstanding the foregoing, in the event that as a result of any such taking, and consequent restoration or replacement, any Unit could not reasonably be restored to a condition comparable to that which existed prior to the taking, or could not be replaced, prior to the allocation and disbursement of any sum to any other Unit Owner or his, her or its mortgagee, there shall be allocated and disbursed from such award or proceeds, to each Unit Owner whose Unit cannot be so restored or replaced, and his, her or its respective first mortgagee, as their interests may appear, such amount as is equal to the then fair market value of the Unit that cannot be so restored or replaced. Thereupon, such Unit or Units, and the owners thereof, shall be immediately and automatically divested of any interest in the Condominium, the Condominium Property, and the Association, including, without limiting the generality of the foregoing divestment of an undivided interest, vote, membership in the Association, and liability for common expenses. All such rights and interests shall be reallocated among all other Units and Unit Owners in the same

relative proportions as those rights and interests were prior to such taking. To illustrate, upon a Unit being divested from the Condominium, (a) the voting right of that Unit will be equally allocated among all other Units, since each Unit prior thereto had an equal vote, and (b) the undivided interest of that Unit will be reallocated among all other Units in the proportions of their relative undivided interests prior to such taking.

Section 5.

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

ARTICLE XV

GRANTS AND RESERVATIONS OF RIGHTS AND EASEMENTS

Section 1.

Easements of Enjoyment; Limitations. Every Unit Owner shall have a right and easement of enjoyment in, over and upon the Common Elements, other than the Limited Common Elements, and an unrestricted right of access to and from his, her or its Unit, which rights and easements shall be appurtenant to and shall pass with the title to a Unit, subject to the right of the Board to make reasonable rules and regulations concerning the use and management of the Common Elements and the Limited Common Elements, provided that no such rule or regulation shall limit or prohibit the right of ingress and egress to a Unit, or any part thereof, or to that Unit's driveway. Any Unit Owner may delegate that Unit Owner's right of enjoyment to the Common Elements and to ingress and egress to the occupants of that owner's Unit.

Section 2.

Right of Entry for Repair, Maintenance and Restoration. The Association shall have a right of entry and access to, over, upon and through all of the Condominium Property, including each Unit and the Limited Common Elements, to enable the Association to

perform its obligations, rights and duties pursuant hereto with regard to maintenance repair, restoration and/or servicing of any items, things or Elements of or in the Condominium Property. In the event of an emergency, the Association's right of entry to a Unit and its appurtenant Limited Common Elements may be exercised without notice; otherwise, the Association shall give the owners or occupant of a Unit no less than twenty four hours advance notice prior to entering a Unit or its appurtenant Limited Common Elements.

Section 3.

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

Section 4.

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

Section 5.

Easements for Proper Operations. Easements to the Association shall exist upon, over and under all of the Condominium Property for ingress to and egress from, and the installation, replacing, repairing and maintaining of, all utilities, including, but not limited to water, sewer, gas, telephone, electricity, security systems, master television antennas and cable television, and the road system and all walkways, and for all other purposes necessary for the proper operation of the Condominium Property. By these easements it shall be expressly permissible for the Association to grant to the appropriate public authorities and/or the providing companies and contractors permission to construct and maintain the necessary appurtenances and improvements on, above, across and under the Condominium Property, so long as such appurtenances and

improvements do not unreasonably interfere with the use and enjoyment of the Condominium Property. Should any public authority or other company furnishing a service request a specific easement, permit or license, the Board shall have the right to grant such easement, permit, or license without conflicting with the terms hereof. In addition, in the event the Board determines that the grant of easement rights to others is in the best interests of the Association, the Association shall have the right to grant the same, provided that use of the same would not unreasonably interfere with the use and enjoyment of the Condominium Property by owners and occupants, in the judgment of the Board.

Section 6.

Easement for Services. Non-exclusive easements are hereby granted to all police, firemen, ambulance operators, mailmen, deliverymen, garbage and trash removal personnel, and all similar persons and to the local governmental authorities and the Association, but not to the public in general, to enter upon the Common Elements in the performance of their duties.

Section 7.

Existing Easements. The Association assumes all responsibility for any existing easements for the operation, maintenance, repair, and replacement of ground telephone cabinets, telephone equipment, pads, fixtures, closures, and appurtenances thereto which service more than one Unit.

Section 8.

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

Section 9.

General. The easements and grants provided herein shall in no way affect any other recorded grant or easement. Failure to refer specifically to any or all of the easements and/or rights described in this Declaration in any deed of conveyance or in any mortgage or other evidence of obligation shall not defeat or fail to reserve said

rights or easements but the same shall be deemed, conveyed or encumbered, as the case may be, along with the Unit.

ARTICLE XVI

ASSESSMENTS AND ASSESSMENT LIENS

Section 1.

Types of Assessments. Each Unit Owner by acceptance of a deed to a Unit (whether or not it shall be so expressed in such deed) is deemed to covenant and agree, to pay the to the Association: (1) annual operating assessments, (2) additional operating assessments, (3) special assessments for capital improvements, and (4) special individual Unit Assessments, all of such assessments to be established and collected as hereinafter provided.

Section 2.

Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of Unit Owners and occupants and the best interests of the Condominium Property.

Section 3.

Elements- Apportionment: Due Dates.

(A) Annual Operating Assessments.

(1) Prior to the time any Unit Owner is to be charged assessments by the Association, and prior to the beginning of each fiscal year of the Association the Board shall estimate, and prorate among all Units on the basis of the undivided interest of each Unit in the Common Elements, common expenses of the Association consisting of the following:

- (a) the estimated next fiscal year's cost of the maintenance, repair, and other services to be provided by the Association;
- (b) the estimated next fiscal year's costs for insurance and bond premiums to be provided and paid for by the Association;
- (c) the estimated next fiscal year's costs for utility services not separately metered or charged to Unit Owners;
- (d) the estimated amount required to be collected to maintain a general operating reserve to assure availability of funds for normal operations of the Association in an amount deemed adequate by the Board, but in no event less than an amount equal to two

- months' currently estimated assessments on all Units;
- (e) an amount deemed adequate by the Board to maintain a reserve for the cost of unexpected repairs and replacements of capital improvements and for the repair and replacement of major improvements for which cash reserves over a period of time in excess of one year ought to be maintained; provided that the amount set aside annually for reserves shall not be less than ten percent of the budget for that year unless the reserve requirement is waived annually by the Unit Owners exercising not less than a majority of the voting power of the Unit Owners association;
 - (f) the estimated next fiscal year's costs for the operation, management and administration of the Association, including, but not limited to, fees for property management, fees for legal and accounting services, costs of mailing, postage, supplies and materials for operating the Association, and the salaries, wages, payroll charges, and other costs to perform these services, and any other costs constituting common expenses not otherwise herein specifically excluded.
- (2) The Board shall thereupon allocate to each Unit that Unit's share of all of these items, prorated in accordance with each respective Unit's undivided interest in the Common Elements, and thereby establish the annual operating assessment for each separate Unit. For administrative convenience, any such assessment may be rounded so that monthly installments will be in whole dollars.
 - (3) The annual operating assessment shall be payable in advance, in equal monthly installments, provided that nothing contained herein shall prohibit any Unit Owner from prepaying assessments in annual,

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

At the closing of a purchase of a Unit, each purchaser shall pay a portion of one monthly installment of the Annual Operating Assessment, prorated from the date of closing to the end of the calendar month in which the closing occurs. After the purchaser of a Unit prepays the prorated portion of the monthly installment at closing, the annual operating assessment shall be due and payable thereafter beginning on the first day of the month following the month of the date of closing.

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

- (B) Additional Operating Assessments. In the event the Board determines at any time that the aggregate annual assessments required to fund any annual operating budget shall be insufficient to satisfy all of the Common Expenses to be incurred in such fiscal year, the Board shall deliver to the Unit Owners written notice describing the deficiency, allocating the deficiency among the Units in proportion to the Percentage Interest of each Unit, and establishing the date for payment and the means of payment of such allocated amounts. Such notice shall be delivered to the Unit Owners at least 30 days prior to the date established in the notice for payment of the Additional Operating Assessment. Notwithstanding the above, if Unit Owners

entitled to exercise 75% of the voting power of the Association object in writing to the Additional Operating Assessment within 15 days after the delivery of such notice, such assessment may not be charged or enforced until the Association approves such assessment in a special or regularly called meeting of the Association.

(C) Special Assessments for Capital Improvements.

- (1) In addition to the annual operating assessments, the Board may levy, in any fiscal year, special assessments to construct, reconstruct or replace capital improvements on the Common Elements to the extent that reserves therefor are insufficient, provided that new capital improvements not replacing existing improvements shall not be constructed nor funds assessed therefor, if the costs thereof in any fiscal year would exceed an amount equal to fifteen percent (15%) of that fiscal year's budget, without the prior consent of Unit Owners exercising no less than seventy-five percent (75%) of the voting power of Unit Owners and the consent of eligible mortgagees hereinafter provided.
- (2) Any such assessment shall be prorated among all owners in proportion to their respective undivided interests in the Common Elements, and shall become due and payable on such date or dates as the Board determines following written notice to the Unit Owners.

- (D) Special Individual Unit Assessments. The Board shall levy assessments against an individual Unit, or Units, to reimburse the Association for those costs incurred in connection with that Unit or Units properly chargeable by the terms hereof to a particular Unit or Units (such as, but not limited to, the cost of making repairs the responsibility of a Unit Owner, and a Unit Owner's enforcement and arbitration charges, including reasonable attorney fees). Any such assessment shall become due and payable on such date as the Board determines, and gives written notice to the Unit Owners subject thereto. Unit Owner

The Board may levy a Special Individual Unit Assessment against the Unit of any Unit Owner who violates any rule established by the Board for regulation of the Condominium Property, or who permits his family members, invitees, or tenants to violate such Rule.

Section 4.

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

Section 5.

Effect on Nonpayment of Assessment; Remedies of the Association.

- (A) If any assessment or any installment of any assessment is not paid within ten (10) days after the same has become due, the Board, at its option, without demand or notice, may (i) declare the entire unpaid balance of the assessment immediately due and payable, (ii) charge interest on the entire unpaid balance (or on an overdue installment, alone, if it has not exercised its option to declare the entire unpaid balance due and payable), at the highest rate of interest then permitted by law, or at such lower rate as the Board may from time to time determine, and (iii) charge a reasonable, uniform, late fee, as determined from time to time by the Board.

The Association shall credit all payments received by a Unit Owner in the following priority: 1. To interest, 2. To administrative late fees, 3. To collection costs, attorney fees, and paralegal fees, 4. To the principal amounts owed to the Association for common assessments, enforcement assessments, penalty assessments or any other charges owed to the Association.

- (B) Both types of annual operating and special assessments, together with interest, late fees, and costs, including attorney

- fees, shall be a charge in favor of the Association upon the Unit against which each such assessment is made.
- (C) At any time after any assessment or an installment of an assessment levied pursuant hereto remains unpaid for ten (10) or more days after the same has become due and payable, a certificate of lien for all or any part of the unpaid balance of that assessment, interest, late fees, and costs, including attorney fees, may be filed with the recorder of the county in which the Condominium Property is located, pursuant to authorization given by the Board. The certificate shall contain a description of the Unit against which the lien exists, the name or names of the record owner or owners thereof, and the amount of the unpaid portion of the assessments and charges, and shall be signed by the president or other chief officer of the Association.
- (D) The lien provided for herein shall become effective from the time a certificate of lien or renewal certificate was duly filed therefor, and shall continue for a period of five (5) years unless sooner released or satisfied in the same manner provided by law in the State of Ohio for the release and satisfaction of mortgages on real property or discharged by the final judgment or order of a court in an action brought to discharge the lien.
- The lien amount may include all assessments chargeable against the unit, interest, administrative late fees, enforcement assessments, collection costs, attorney fees, and paralegal fees.
- (E) Any Unit Owner who believes that an assessment chargeable to his, her or its Unit (for which a certificate of lien has been filed by the Association) has been improperly charged against that Unit, may bring an action in the court of common pleas of the county in which the Condominium Property is located for the discharge of that lien. In any such action, if it is finally determined that all or a portion of the assessment has been improperly charged to that Unit, the court shall make such order as is just, which may provide for a discharge of record of all or a portion of that lien.
- (F) Each such assessment together with interest, late fees, and costs, including attorney fees, shall also be the joint and

several personal obligation of the Unit Owners who owned the Unit at the time when the assessment fell due. The obligation for delinquent assessments, interest, late charges and costs shall not be the personal obligation of that owner or owner successors in title unless expressly assumed by the successors, or required by applicable law, provided, however, that the right of the Association to a lien against that Unit, or to foreclose any lien thereon for these delinquent assessments, interest, late charges and costs, shall not be impaired or abridged by reason of the transfer, but shall continue unaffected thereby.

- (G) The Association, as authorized by the Board, may file a lien or liens to secure payment of delinquent assessments, interest, late fees, and costs, including attorney fees, bring an action at law against the owner or owners personally obligated to pay the same, and an action to foreclose a lien, or any one or more of these. In any foreclosure action, the owner or owners affected shall be required to pay a reasonable rental for that Unit during the pendency of such action, and the Association as plaintiff in any such foreclosure action shall be entitled to become a purchaser at the foreclosure sale. In any such foreclosure action, interest and costs of such action (including reasonable attorneys' fees) shall be added to the amount of any such assessment.
- (H) No owner may waive or otherwise escape liability for the assessments provided for in this Declaration by non-use of the Common Elements, or any part thereof, or by abandonment of his, her or its Unit.
- (I) No claim of the Association for assessments and charges shall be subject to setoffs, off sets, or counterclaims.
- (J) Assessments shall run with the land, which are necessary to continue the care, maintenance and repair of Units and their undivided interests in the Condominium Property, and to continue to provide utility and security service, and accordingly, assessments accruing or becoming due during the pendency of bankruptcy proceedings shall constitute administrative expenses of the bankrupt estate.
- (K) If any assessment against a Unit shall remain unpaid for a period exceeding thirty (30) days after the same shall

become due, the Board may suspend the Unit Owner's voting rights for a period beginning on the thirtieth (30) day after the assessment became due and ending on the date such delinquent assessment(s) is paid in full. Any Unit Owner who is delinquent in payment of any assessment shall not be a candidate for the Board.

Section 6.

Subordination of the Lien to First Mortgages. The lien of the assessments and charges provided for herein shall be subject and subordinate to the lien of any duly executed first mortgage on a Unit recorded prior to the date on which such lien of the Association arises, and any holder of such first mortgage which comes into possession of a Unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale, shall take the property free of any claims for unpaid installments of assessments and charges against the mortgaged Unit which became due and payable prior, in the case of foreclosure, to the date of the sale, and, in all other cases, to the date legal title vested in the successor owner.

Section 7.

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

ARTICLE XVII

NOTICES TO AND VOTING RIGHTS OF LENDING INSTITUTIONS

Section 1.

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

- (A) any proposed addition to, change in, or amendment of the Condominium organizational documents of a material nature, including any addition to, change in, or amendment of any provision establishing, providing for, governing, or regulating: (i) voting rights; (ii) assessments (if increased over 25%), assessment liens, or priority of such liens; (iii)

reserves for maintenance, repair, and replacement of Common Elements; (iv) responsibility for maintenance and repairs; (v) reallocation of interests in the Common Elements (including the Limited Common Elements), or rights to their use; (vi) boundaries of any Unit; (vii) convertibility of Units into Common Elements or vice versa; (viii) expansion or contraction of the Condominium or the addition, annexation or withdrawal of property to or from the Condominium; (ix) insurance or fidelity bonds; (x) leasing of Units, (xi) imposition of any restrictions on a Unit Owner's right to sell or transfer that owner's Unit; (xii) professional management; (xiii) restoration or repair of the Condominium Property; (xiv) termination of the legal status of the Condominium after substantial destruction or condemnation occurs; or (xv) expressly benefitting mortgage holders, insurers, or guarantors. No addition to, change in, or amendment of the Condominium organizational documents shall be considered material if it is for the purpose of correcting technical errors, or for clarification only.

- (B) any proposed decision or action that: (i) terminates professional management and establishes self management when professional management has been required previously by an eligible holder of a first mortgage lien; (ii) caused restoration or repair of the Condominium Property (after a hazard damage or partial condemnation) in a manner other than that specified in the Condominium organizational documents; (iii) substantial damage or destruction not be restored; (iv) the Condominium Property be renewed or rehabilitated; (v) significant new capital improvements not replacing existing improvements be constructed; or (vi) would, without addition to, change in, or amendment of the Condominium organizational documents, make any change with respect to the items described in subparagraph (A) of Section 1 of this Article.
- (C) (i) any condemnation or casualty loss that affects either a material portion of the Condominium Property or the Unit securing its mortgage; (ii) any default under the Condominium organizational documents which gives rise to

a cause of action against a Unit Owner whose Unit is subject to its mortgage, when the default remains uncured for a period for sixty (60) days; (iii) any delinquency for sixty (60) days in the payment of assessments or charges owed by the owner of any Unit on which it holds the mortgage; (iv) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; and (v) times and places of Unit Owners meetings. An insurer or guarantor of a first mortgage lien on a Unit which has sent a written request to the Association stating both its name and address and the Unit designation or address of the Unit on which it insures or guarantees the mortgage shall be entitled to timely written notices of the events described in this subsection (C) and of any proposed action that requires the consent of a specified percentage of eligible mortgagees.

- (D) any inspection of the books and records of the Association during regular business hours within forty-eight (48) hours of written notice received by the Board. If requested in writing by an eligible mortgagee, the Board shall provide within a reasonable time a copy of the most recent and available financial statement.

Section 2.

Voting Rights. No action with respect to which eligible mortgagees are entitled to notice, as provided in subparagraphs (A) or (B) of Section 1 of this Article, may be taken without the consent of the eligible mortgagees of Units to which at least fifty-one percent (51%) of the votes of Units subject to mortgages held by eligible mortgagees appertain, provided further, that no action to terminate the Condominium or that would have that effect shall be taken without the consent of eligible mortgagees of Units to which at least seventy-five percent (75%) of the votes of Units subject to mortgages held by eligible mortgagees appertain.

ARTICLE XVIII

AMENDMENTS

Section 1.

Power to Amend. Except as otherwise specifically provided herein, additions to, changes in, or amendment of this Declaration

(or the other Condominium organizational documents) shall in addition to the consents required of eligible mortgagees, if any, as hereinbefore provided, require the consent of Unit Owners exercising not less than seventy-five percent (75%) of the voting power of Unit Owners or may be adopted by written approval without a meeting of the Unit Owners entitled to exercise seventy-five percent (75%) of the voting power of all Unit Owners. Notwithstanding the foregoing:

- (A) the consent of all Unit Owners shall be required for any amendment effecting a change in:
 - (i) the boundaries of any Unit;
 - (ii) the undivided interest in the Common Elements appertaining to a Unit or the liability for common expenses appertaining thereto other than allowed by law for the equal apportionment of common expenses under ORC 5311.041(B);
 - (iii) the number of votes in the Association appertaining to any Unit; or
 - (iv) the fundamental purposes to which any Unit or the Common Elements are restricted.
- (B) the consent of Unit Owners exercising not less than 80% of the voting power of Unit Owners shall be required to terminate the condominium.
- (C) there is reserved to the Association, through its Board, the right and power, and each Unit Owner by acceptance of a deed to a Unit is deemed to and does give and grant to the Association, through its board, a power of attorney, which right and power is coupled with an interest and runs with the title to a Unit and is irrevocable (except by the Board), to amend the condominium organizational documents to the extent necessary to correct typographical or factual errors or omissions the correction of which would not impair the interest of any Unit Owner, mortgagee, insurer, or guarantor.

An eligible mortgagee of a Unit who receives a written request to approve changes, additions, or amendments sent by certified or registered mail, return receipt requested, and who does not deliver or post to the requesting party a negative response within sixty (60)

days after receipt of the same, shall be deemed to have approved such request.

Section 2.

Method to Amend. An amendment to this Declaration (or the Drawings or the Bylaws), adopted with the consents of Unit Owners and eligible mortgagees hereinbefore required, shall be executed with the same formalities as to execution as this Declaration by two officers of the Association and shall contain their certification that such amendment was duly adopted in accordance with the foregoing provisions. Any amendment duly adopted and executed in accordance with the foregoing provisions shall be effective upon the filing of the same with the auditor and recorder of the county in which the Condominium Property is located.

ARTICLE XIX
GENERAL PROVISIONS

Section 1.

Covenants Running with the Land. The covenants, conditions, restrictions, easements, reservations, liens and charges created hereunder or hereby shall run with and bind the land, and each part thereof and shall be binding upon and inure to the benefit of all parties having any right, title or interest in or to all or any part of the Condominium Property, and the Association, and their respective heirs, executors, administrators, successors and assigns.

Section 2.

Actions. In addition to any other remedies provided in this Declaration, the Association, and each Unit Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens and charges set forth herein or in the Bylaws or now or hereafter imposed by or through the Association's rules and regulations. Failure by the Association or by any Unit Owner to proceed with such enforcement shall in no event be deemed a waiver of the right to enforce at a later date the original violation or a subsequent violation, nor shall the doctrine of laches or any statute of limitations, bar the enforcement of any such restriction, condition, covenant, reservation, easement, lien or charge. Further, the Association and each Unit Owner shall have rights of action against each other for failure to comply with the provisions of the Condominium organizational documents, rules and regulations, and applicable law, and with respect to decisions made pursuant to

authority granted thereunder, and the Association shall have the right to assess reasonable charges against a Unit Owner who fails to comply with the same, including the right to assess charges for the costs of enforcement and arbitration. Notwithstanding the foregoing, in the event of any claim or dispute by a Unit Owner against the Association, that cannot be settled by agreement between them, the Unit Owner shall first submit the matter to arbitration in accordance with and pursuant to the arbitration law of Ohio then in effect (presently Chapter 2711 of the Revised Code of Ohio), by a single independent arbitrator selected by the Board, prior to the Unit Owner commencing any legal action against the Association. Nothing contained herein shall prevent or prohibit the Association from using summary abatement or similar means to enforce any provisions hereof or restrictions against the Unit or its use, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished by summary means.

Section 3.

Severability. Invalidity of any one or more of these covenants, conditions, restrictions or easements by judgment or court order shall in no way affect any other provisions, which provisions shall remain in full force and effect. In the event any language of this Declaration conflicts with mandatory provisions of the Condominium Act, the latter's requirements shall prevail and the conflicting language shall be deemed to be invalid and void, provided that such invalidity shall in no way affect any other provisions of this Declaration, which provisions shall remain in full force and effect.

Section 4.

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

Section 5.

Captions. The captions of the various provisions of this Declaration are on the part of the context hereof, but are merely labels to assist in locating the various provisions hereof.

IN WITNESS WHEREOF, the undersigned have executed this instrument this 31 day of December, 2016.

The Kenbrook Hills Unit Owners' Association

By: *Steven R. Manger*

President

Steven R. Manger
Printed

By: *Kathryn K. Minn*

Secretary

Kathryn K. Minn
Printed

ACKNOWLEDGMENT

STATE OF OHIO

COUNTY OF FRANKLIN ss:

Before me, a Notary Public, personally appeared the above-named
Steven R. Manger and *Kathryn K. Minn*
, President and Secretary respectively and swore the signing hereof to be of their own free and
voluntary act and that the same is true this 3rd day
of December, 20 16.

Donald B. Leach, Jr.
NOTARY PUBLIC



Donald B. Leach, Jr.
Attorney At Law
Notary Public, State of Ohio
My commission has no expiration date
Sec. 147.03 R.C.

Exhibit A.

Situated in the County of Franklin, State of Ohio,
City of Upper Arlington, and bounded as follows:

TRACT ONE:

Being part of Quarter Township No. 1, Township 1, Range 19, U.S. Military Lands, City of Upper Arlington, Franklin County, Ohio, and being part of that certain tract of land conveyed to Roger D. Kennedy, Trustee, by deeds of record in Deed Book 2105, page 398 and Deed Book 2295, page 203, Recorder's Office, Franklin County, Ohio, said part being more particularly described as follows:

Beginning at a point marking the northwest corner of Lot No. 4, of KENNYBROOK BLUFF, as the same is shown of record in Plat Book 43, page 2, Recorder's Office, Franklin County, Ohio; thence and with the westerly line of said Lot No. 4 and with a westerly line of Lot No. 3 of said KENNYBROOK BLUFF, South $5^{\circ} 10' 35''$ West, 180.00 feet to a point marking an angle in the northerly line of Lot No. 8 of KENNYBROOK TERRACE, as the same is shown of record in Plat Book 42, Page 3, Recorder's Office, Franklin County, Ohio; thence and with the northerly line of said Lot No. 8, and with the northerly line of Lot No. 7, of said KENNYBROOK TERRACE, North $87^{\circ} 51'$ West, 237.20 feet to a point marking the northwest corner of said Lot No. 7, and the northeast corner of the ADVENT EVANGELICAL LUTHERAN CHURCH 4.7229 Acre Tract; thence and with part of the northerly line of said 4.7229 Acre Tract, North $73^{\circ} 11' 25''$ West, 244.71 feet to an angle point; thence and continuing with said northerly line, South $63^{\circ} 55'$ West, 291.27 feet to a point in the easterly line of KENNY ROAD at the southeast corner of the City of Upper Arlington 1.225 Acre Tract, as shown of record in Deed Book 3045, page 444, Recorder's Office, Franklin County, Ohio; thence and with said easterly line of both KENNY ROAD and said 1.225 Acre Tract, 45.00 feet distance from the center line thereof, measured at

right angles thereto, North $03^{\circ} 08' 16''$ East, 701.13 feet to a point; thence South $55^{\circ} 50'$ East 204.48 feet to an angle point; thence North $78^{\circ} 47' 27''$ East, 228.97 feet to an angle point; thence South $33^{\circ} 15'$ East, 512.00 feet to the place of beginning, containing 7.8343 Acres, more or less, and subject to various deeds of easements and/or right of way.

TRACT TWO

Being a part of Lot Number Four (4) of KENNYBROOK BLUFF, City of Upper Arlington, Ohio, as the same is numbered and delineated upon the recorded plat thereof, of record in Plat Book 43, page 2, Recorder's Office, Franklin County, Ohio, and being more particularly described as follows:

Beginning at an iron pin marking the southwesterly corner of said Lot No. 4, thence North $5^{\circ} 10' 35''$ East, 140.00 feet to an iron pin marking the northwesterly corner of said Lot No. 4; thence and with a northerly line of said Lot No. 4, South $87^{\circ} 15'$ East, 33.00 feet to an iron pin marking the northwesterly corner of Lot No. 5, of said KENNYBROOK BLUFF; thence South $18^{\circ} 18'$ West, 145.19 feet to the point of beginning.

Exhibit B

Building No.	Unit No.	Percentage of Interest in Common Areas	Approximate Living Area Exclusive of Basement (square feet)	Approximate Area of Basement (square feet)	Number of Stories Including Basement	Number of Rooms Excluding Basement and Porch	Number of Baths Full/Half
1	1	2.794	1807	832	3	6	2 1
	2	3.798	2870	1146	3	8	2 1
	3	2.940	1752	1586	2	7	2 0
	4	2.602	1480	779	3	5	2 1
	5	3.845	2870	1146	3	8	2 1
	6	3.179	1968	832	3	7	3 1
2	7	3.184	1968	832	3	7	2 2
	8	3.097	1752	1586	2	7	2 1
	9	2.927	1968	832	3	7	2 2
	10	2.830	1968	832	3	7	2 1
	11	3.204	1968	832	3	7	3 1
	12	4.103	2870	1146	3	8	3 2
	13	3.126	1752	1586	2	7	2 1
3	14	4.037	2870	1146	3	8	3 2
	15	3.028	1968	832	3	7	3 1
	16	3.034	1968	832	3	7	3 2
	17	3.978	2870	1146	3	8	3 1
4	18	4.508	2381	2062	2	7	3 1
	19	2.849	1807	832	3	6	2 2
	20	3.060	1752	1586	2	6	2 1
	21	2.987	1807	832	3	6	3 2
	22	4.017	2890	1666	3	10	2 3
5	23	4.357	2381	2062	2	7	3 0
	24	4.059	2870	1146	3	8	3 1
	25	2.538	1480	779	3	5	2 1
	26	3.065	1752	1586	2	7	2 1
	27	2.953	1968	832	3	7	2 2
	28	3.141	1752	1586	2	6	3 0
	29	3.855	2870	1146	3	8	2 1
	30	2.902	1968	832	3	7	2 1

EXHIBIT C

AMENDED AND RESTATED BYLAWS

(CODE OF REGULATIONS)

OF

KENBROOK HILLS UNIT OWNERS' ASSOCIATION

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**AMENDED AND RESTATED BYLAWS
(CODE OF REGULATIONS)**

OF

KENBROOK HILLS UNIT OWNERS' ASSOCIATION

ARTICLE I

NAME AND LOCATION

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

ARTICLE II

DEFINITIONS

All of the terms used herein shall have the same meanings as set forth in the Amended and Restated Declaration of Kenbrook Hills Condominium, ("the Declaration"), recorded simultaneously herewith with the Recorder of Franklin County, Ohio.

ARTICLE III

UNIT OWNERS (MEMBERS)

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

Section 2. Annual Meetings. Regular annual meetings of the Unit Owners shall be held no later than the fourth Wednesday of November of each year, or on such other a date and at an hour established, from time to time, by the Board.

- Section 3. Special Meetings. Special meetings of the Unit Owners may be called at any time by the president or by the Board, upon written request of Unit Owners entitled to exercise 1/4 of the voting power of Unit Owners, and when required by the Condominium Act.
- Section 4. Conduct of Meetings. All meetings of members shall be conducted by the Board, and presided over by the President of the Association, or as otherwise directed by the Board.
- Section 5. Notice of Meetings. Written notice of each meeting of Unit Owners shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by electronic transmission or by mailing a copy of such notice, postage prepaid, at least 14 days nor more than 28 days before such meeting, to each Unit Owner entitled to vote at such meeting, addressed to the Unit Owner's address last appearing on the books of the Association, or supplied by such Unit Owner to the Association for the purpose of notice, or by delivering a copy of that notice at such address at least five (5) days before the meeting. The notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.
- Section 6. Quorum; Adjournment. The Unit Owners present, in person or by proxy, constituting a majority of the voting power of the Unit Owners, at any duly called and noticed meeting of Unit Owners, shall constitute a quorum for such meeting. Unit Owners entitled to exercise a majority of the voting power of Unit Owners represented at a meeting may, at any time, adjourn such meeting. If any meeting is so adjourned, notice of such adjournment need not be given if the time and place to which such meeting is adjourned are fixed and announced at such meeting.
- Section 7. Proxies. At any meeting of Unit Owners, a Unit Owner may vote in person or by proxy. All proxies shall be in writing and filed with the secretary prior to the meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by a Unit Owner of his, her or its Unit, and shall not be valid after the expiration of eleven (11) months, unless it specifies a date on which it expires or the length of time it is to continue in force.
- Section 8. Voting Power. Except as otherwise provided in the Condominium organizational documents, or by law, a majority of the voting power of Unit Owners voting on any matter that may be determined by the Unit Owners at a duly called and noticed meeting shall be sufficient to determine that matter. The rules of Roberts Rules of Order shall apply to the conduct of all meetings of Unit Owners except as otherwise specifically provided in the Condominium organizational documents or by law or by the Board at the Board's discretion.

Section 9. Action in Writing Without Meeting. Any action that could be taken by Unit Owners at a meeting may be taken without a meeting with the affirmative vote or approval, in a writing or writings, in the same percentage as would have been required had a meeting been held for such purpose.

Section 10. Voting Rights. Each Unit Owner shall be entitled to vote based on their percentage interest in the Common Elements, for each Unit owned in fee simple, and as outlined in Article VII, Section 3. Voting Rights, of the Declaration.

ARTICLE IV

BOARD OF DIRECTORS

Section 1. Directors. The Board of Directors shall consist of five (5) members. Each director shall serve a three (3) year term. The terms of the five (5) Directors shall be staggered so that the terms of at least one-fifth of the Directors will expire and successors will be elected at each annual meeting of the Association.

Section 2. Removal. Any Director may be removed from the Board with or without cause, by a 75% vote of the Unit Owners. In the event of the death, resignation or removal of a Director, that Director's successor shall be selected by the remaining members of the Board and shall serve until the next annual meeting of Unit Owners, when a Director shall be elected to complete the term of such deceased, resigned, or removed director. In the event all Directors are removed, the members shall, at the meeting in which all Directors are removed, elect Directors to complete the terms of the removed Directors.

Section 3. Nomination. Nominations for the election of Directors to be elected by the Unit Owners shall be made by the Board and by nominations from the floor at the meetings. All nominees shall be Unit Owners or spouses of Unit Owners. No Unit Owner is eligible to serve on the Board who is delinquent in payment of assessments or other charges for more than thirty (30) days prior to the election. If a spouse of a Unit Owner is nominated to run for the Board, the spouse is not eligible to serve on the Board if the Unit Owner is delinquent in payment of assessments as set forth above.

Section 4. Election. Election to the Board by the Unit Owners shall be by secret written ballot. At such elections, the Unit Owners or their proxies may cast, in respect to each vacancy, such number of votes as they are entitled to

under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected, and, likewise, those receiving the largest number of votes shall be elected to the longest terms. In cases of ties, the winner shall be determined by lot. Cumulative voting is not permitted.

If the Unit Owner is not an individual, that Unit Owner may nominate for the Board any principal, member of a limited liability company, partner, director, officer, or employee of that Unit Owner.

Section 5. Compensation. Unless otherwise determined by the Unit Owners at a meeting duly called and noticed for such purpose, no director shall receive compensation for any service rendered to the Association as a Director. However, any Director may be reimbursed for his or her actual expenses incurred in the performance of duties.

Section 6. Regular Meetings. Four quarterly meetings of the Board shall be held on such dates and at such places and times as may be fixed from time to time by resolution of the Board.

Section 7. Special Meetings. Special meetings of the Board shall be held when called by the president of the Board, or by a majority of the directors, after not less than three days notice to each director.

Board meetings may be conducted by any method of communication, including electronic, telephonic, by computer, or otherwise, as long as each member of the Board can hear, participate, and respond.

Section 8. Quorum. The presence at any duly called and noticed meeting, in person or by proxy, of directors entitled to cast a majority of the voting power of directors shall constitute a quorum for such meeting.

Section 9. Voting Power. Each director shall be entitled to a single vote, and, except as otherwise provided in the Condominium organizational documents, or by law, the vote of a majority of the directors voting on any matter that may be determined by the Board at a duly called and noticed meeting at which a quorum is present shall be sufficient to determine that matter.

Section 10. Action in Writing Without Meeting. Any action that could be taken by the Board at a meeting may be taken without a meeting with the affirmative vote or approval, in a writing or writings, of all of the Directors.

Section 11. Powers. The Board shall exercise all powers and authority, under law, and under the provisions of the Condominium organizational documents, that are not specifically and exclusively reserved to the Unit Owners by law or by other provisions thereof, and without limiting the generality to the

foregoing, the Board shall have the right, power and authority to:

- (A) take all actions deemed necessary or desirable to comply with all requirements of law, and the Condominium organizational documents;
- (B) obtain insurance coverage no less than that required pursuant to the Declaration;
- (C) enforce the covenants, conditions and restrictions set forth in the Declaration;
- (D) repair, maintain and improve the Common Elements;
- (E) establish, enforce, levy and collect assessments, late fees, delinquent interest, and such other charges as are provided for in the Declaration;
- (F) adopt and publish rules and regulations governing the use of the Common Elements and the personal conduct of Unit Owners, occupants and their guests thereon, and establish and levy enforcement charges for the infraction thereof;

Prior to imposing a charge for damages or an enforcement assessment as allowed by Ohio law [ORC 5311.081(B)(12)], the Board shall provide the Unit Owner a written notice that includes all of the following: 1. A description of the property damage or violation, 2. The amount of the proposed charge or assessment, 3. A statement that the owner has a right to a hearing before the board of directors to contest the proposed charge or assessment, 4. A statement setting forth the procedures to request a hearing, and 5. A reasonable date by which the Unit Owner must cure the violation to avoid the proposed charge or assessment.

To request a hearing, the Unit Owner must deliver a written notice to the Board not later than the 10th day after receiving the notice required by the above provision. If the owner fails to make a timely request for a hearing, the right to that hearing is waived, and the Board may immediately impose a charge for damages or an enforcement assessment pursuant to the above provisions.

The Board shall not levy a charge or assessment before holding any hearing requested pursuant to this rule. The Board may, as part of its decision, allow a reasonable time to cure the violation, before imposing the charge or assessment.

After a hearing under this rule, the Board shall deliver to the Unit Owner a written notice of the charge or assessment within 30 days of the date of the hearing.

Any written notice under this rule may be delivered to the Unit Owner or any occupant of the unit by personal delivery, by certified mail, return receipt requested, or by regular mail.

- (G) The Board may suspend the voting privileges of a Unit Owner who is delinquent in the payment of assessments for more than thirty (30) days.
- (H) declare the office of a member of the Board to be vacant in the event such Director shall be absent from three consecutive regular meetings of the Board;
- (I) subject to such approvals, if any, as may be required pursuant to the provisions of Condominium organizational documents, authorize the officers to enter into one or more agreements necessary or desirable to fulfill the purposes and objectives of the Association, including, without limitation, management agreements, purchase agreements and loan documents, all on such terms and conditions as the Board in its sole and absolute discretion may determine;
- (J) cause funds of the Association to be invested in such reasonable investments as the Board may from time to time determine;
- (K) borrow funds, as needed, and pledge such security and rights of the Association, including the Association's right to receive present or future assessments, as might be necessary or desirable to obtain any such loan; and
- (L) do all things and take all actions permitted to be taken by the Association by law, or the Condominium organizational documents not specifically reserved thereby to others.
- (M) The Board may impose reasonable charges for preparing, recording or copying amendments to the Declaration, resale certificates, or statements of unpaid assessments.

Section 12. Duties. It shall be the duty of the Board to:

- (A) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Unit Owners at each

annual meeting of Unit Owners, or at any special meeting when such statement is requested in writing by Unit Owners representing one-half (1/2) or more of the voting power of Unit Owners;

- (B) supervise all officers, agents and employees of the Association and see that their duties are properly performed;
- (C) as more fully provided in the Declaration, to establish, levy, enforce, and collect assessments;
- (D) issue, or to cause an appropriate representative to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid;
- (E) procure and maintain insurance and bonds as provided in the Declaration, and as the Board deems advisable;
- (F) cause the property subject to the Association's jurisdiction to be maintained within the scope of authority provided in the Declaration;
- (G) cause the restrictions created by the Declaration to be enforced; and
- (H) take all other actions required to comply with all requirements of law and the Condominium organizational documents.
- (I) cause an annual budget to be prepared.

ARTICLE V

OFFICERS

Section 1. Enumeration of Officers. The officers of this Association shall be a president, vice president, a secretary, a treasurer and such other officers as the Board may from time to time determine. All officers, other than the Treasurer and Secretary, must be members of the Board. The same person may hold more than one office.

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

Section 3. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for

such period, have such authority, and perform such duties as the Board may, from time to time, determine.

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

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

- (A) President. The president shall preside at all meetings of the Board, shall have the authority to see that orders and resolutions of the Board are carried out, and shall sign all legal instruments on behalf of the Association.
- (B) Vice President. The Vice President shall act in the place and stead of the President in the event of his absence, inability, or refusal to act, and exercise and discharge such other duties as may be required of him by the Board of Directors or the President.
- (C) Secretary. The secretary shall record the votes and keep the minutes and proceedings of meetings of the Board and of the Unit Owners, serve notice of meetings of the Board and of the Unit Owners, and keep appropriate current records showing the names of Unit Owners of the Association together with their addresses.
- (D) Treasurer. The treasurer shall assume responsibility for all the receipt and deposit in such bank accounts, and investment of funds in such vehicles, as the Board directs, the disbursement of such funds as directed by the Board, the keeping of proper book of account, the preparation of an annual budget and a statement of income and expenditures to be presented to the Unit Owners at annual meetings and the delivery or mailing of a copy of each to each of the Unit Owners.

ARTICLE VI

COMMITTEES

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

ARTICLE VII

BOOKS AND RECORDS

The books, records, and financial statements of the Association shall be available during normal business hours or under other reasonable circumstances, upon request to the Association, for inspection by Unit Owners and the holders, insurers and guarantors of first mortgages on Units. Likewise, during normal business hours or under other reasonable circumstances, the Association shall have available for inspection by Unit Owners, holders, insurers, and guarantors of first mortgages on Units, and prospective purchasers, current copies of the Condominium organizational documents and the rules and regulations governing operation of the Condominium.

ARTICLE VIII

AUDITS

After each fiscal year of the Association, the Board at its discretion may cause a review audit to be prepared by the Board and a financial statement provided to each Unit Owner. In addition, the Board shall cause the preparation and furnishing of an audited financial statement for the immediately preceding fiscal year, within a reasonable time following request (provided that no such statement need be furnished earlier than 120 days following the end of such fiscal year), in the following circumstances:

1. to each requesting Unit Owner, at the expense of the Association, upon the affirmative vote at a meeting held for such purpose, of Unit Owners exercising a majority of the voting power of Unit Owners;
2. to each holder, insurer, or guarantor of a first mortgage upon a Unit who requests the same, in writing, provided the audit, if an audited statement is not already available, shall be prepared at the expense, paid in advance, of such requesting party.

ARTICLE IX

FISCAL YEAR

Unless otherwise changed by the Board, the fiscal year of the Association shall begin on the first day of January and end of the 31st day of December of every year.

ARTICLE X

AMENDMENTS

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

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