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KARL L. KEITH
AUDITOR

**AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM OWNERSHIP
FOR
DEER RUN CONDOMINIUM**

I hereby certify that copies of the within Amended and Restated Declaration, together with Drawings and By-Laws attached as Exhibits hereto, have been filed in the Office of the County Auditor, Montgomery County, Ohio.

By: _____
Date: June 19, 2009

This Instrument prepared by:
Amy Schott Ferguson, Esq.
Cuni, Ferguson & LeVay Co., L.P.A.
10655 Springfield Pike
Cincinnati, Ohio 45215
(513) 771-6768

**AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM
OF
DEER RUN CONDOMINIUM**

WHEREAS, on June 17, 1987, the original Declarant, John G. Black Communities, Inc., executed a Declaration of Condominium Ownership (hereinafter the "Declaration") for the submission of certain lands, buildings, and improvements to the provisions of the Ohio Condominium Act and thereby established the Condominium known as Deer Run Condominium; and

WHEREAS, the Declaration, including the Drawings attached to the Declaration as Exhibit C and the By-Laws attached to the Declaration as Exhibit E, was filed with the Deed Records of the Recorder of Montgomery County, Ohio on June 23, 1987, at Microfiche 87-0353A01, et seq.; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 2 by an amendment executed on August 11, 1987, filed for record August 14, 1987, at Microfiche 87-0474A02, et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 3 by an amendment executed on October 1, 1987, filed for record October 7, 1987, at Microfiche 87-0595 A02, et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 4 by an amendment executed on November 25, 1987, filed for record December 2, 1987, at Microfiche 87-0714A01, et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 5 by an amendment executed on January 19, 1988, filed for record January 29, 1988, at Microfiche 88-0048A01, et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 6 by an amendment executed on March 10, 1988, filed for record March 17, 1988, at Microfiche 88-0142 A01, et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 7 by an amendment executed on April 5, 1988, filed for record April 18, 1988, at Microfiche 88-0194 BO6, et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 8 by an amendment executed on June 7, 1988, filed for record June 14, 1988, at Microfiche 88-0333B12 et seq., of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 9 by an amendment executed on August 26, 1988, filed for record September 9, 1988, at Microfiche 88-0533A01 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 10 by an amendment executed on October 3, 1988, filed for record October 6, 1988, at Microfiche 88-0605 A01 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 11 by an amendment executed on January 3, 1989, filed for record January 6, 1989, at Microfiche 89-0013A01 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 12 by an amendment executed on March 30, 1989, filed for record April 4, 1989, at Microfiche 89-0171 A01 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 13 by an amendment executed on June 19, 1989, filed for record June 22, 1989, at Microfiche 89-0337B03 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 14 by an amendment executed on July 6, 1989, filed for record July 19, 1989, at Microfiche 89-386A01 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium Section 15 by an amendment executed on August 28, 1989, filed for record August 31, 1989, at Microfiche 89-0476B01 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 16 by an amendment executed on November 7, 1989, filed for record November 14, 1989, at Microfiche 89-0625A01 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 17 by an amendment executed on January 9, 1990, filed for record January 17, 1990, at Microfiche 90-0028D02 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 18 by an amendment executed on March 6, 1990, filed for record March 20, 1990, at Microfiche 90-0144 A01 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 19 by an amendment executed on June 4, 1990, filed for record June 11, 1990, at Microfiche 90-0309A01, et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 20 by an amendment executed on June 26, 1990, filed for record June 28, 1990, at Microfiche 90-0342 A03 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 21 by an amendment executed on August 22, 1990, filed for record August 30, 1990, at Microfiche 90-0471B10 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 22 by an amendment executed on November 5, 1990, filed for record November 9, 1990, at Microfiche 90-0615A06 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 23 by an amendment executed on January 30, 1991, filed for record February 8, 1991, at Microfiche 91-0065A10 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 24 by an amendment executed on March 27, 1991, filed for record April 4, 1991, at Microfiche 91-0166 D11 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 25 by an amendment executed on June 12, 1991, filed for record June 19, 1991, at Microfiche 91-0323 B09 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 26 by an amendment executed on July 23, 1991, filed for record July 25, 1991, at Microfiche 91-0406B01 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 27 by an amendment executed on September 25, 1991, filed for record October 2, 1991, at Microfiche 91-0550A01 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 28 by an amendment executed on December 16, 1991, filed for record December 23, 1991, at Microfiche 91-0701A01 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 29 by an amendment executed on January 31, 1992, filed for record February 5, 1992, at Microfiche 92-0064E06 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 30 by an amendment executed on March 23, 1992, filed for record April 2, 1992, at Microfiche 92-0179 A01 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 31 by an amendment executed on May 13, 1992, filed for record May 19, 1992, at Microfiche 92-0286C09 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 32 by an amendment executed on June 18, 1992, filed for record June 29, 1992, at Microfiche 92-0376 B10 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 33 by an amendment executed on July 31, 1992, filed for record August 10, 1992, at Microfiche 92-0466 A09 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 34 by an amendment executed on September 3, 1992, filed for record September 17, 1992, at Microfiche 92-0543 007 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium Section 35 by an amendment executed on October 23, 1992, filed for record November 17, 1992, as Microfiche 92-0543C07 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 36 by an amendment executed on January 19, 1993, filed for record January 25, 1993, at Microfiche 93-0046A06 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 37 by an amendment executed on March 23, 1993, filed for record March 30, 1993, at Microfiche 93-0182 B06 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 38 by an amendment executed on May 19, 1993, filed for record June 2, 1993, at Microfiche 93-033A01 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 39 by an amendment executed on August 20, 1993, filed for record August 31, 1993, at Microfiche 93-0554C01 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 40 by an amendment executed on October 27, 1993, filed for record November 2, 1993, at Microfiche 93-0698A01 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 41 by an amendment executed on December 15, 1993, filed for record December 23, 1993, at Microfiche 93-0817B06 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 42 by an amendment executed on July 27, 1994, filed for record August 10, 1994, at Microfiche 94-0503 C06 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 43 by an amendment executed on October 14, 1994, filed for record October 21, 1994, at Microfiche 94-0657A01 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 44 by an amendment executed on December 12, 1994, filed for record December 21, 1994, at Microfiche 94-0798C05 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 45 by an amendment executed on March 16, 1995, filed for record March 23, 1995, at Microfiche 95-0150 A03 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 46 by an amendment executed on May 10, 1995, filed for record May 19, 1995, at Microfiche 95-0282 B04 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 47 by an amendment executed on July 12, 1995, filed for record July 24, 1995, at Microfiche 95-0434C06 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 48 by an amendment executed on September 15, 1995, filed for record September 22, 1995, at Microfiche 95-0573E05 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 49 by an amendment executed on December 8, 1995, filed for record December 21, 1995, at Microfiche 95-0782A06 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 50 by an amendment executed on February 12, 1996, filed for record February 26, 1996, at Microfiche 96-127B04 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 51 by an amendment executed on April 3, 1996, filed for record April 19, 1996, at Microfiche 96-0252 A07 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 52 by an amendment executed on June 25, 1996, filed for record July 9, 1996, at Microfiche 96-0456A03 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 53 by an amendment executed on October 4, 1996, filed for record November 7, 1996, at Microfiche 96-0751D07 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 54 by an amendment executed on April 24, 1997, filed for record May 6, 1997, at Microfiche 97-0310A03 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 55 by an amendment executed on May 13, 1998, filed for record June 1, 1998, at Microfiche 98-0353C04 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 56 by an amendment executed on September 9, 1998, filed for record September 30, 1998, at Microfiche 98-0659C04 et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 57 by an amendment executed on August 3, 1999, filed for record August 23, 1999, at Deed Book 99-0574 A01, et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 58 by an amendment executed on January 13, 2000, filed for record January 28, 2000, at Deed Book 00-0054 A01, et seq. of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended to add Deer Run Condominium, Section 59, by an amendment executed on May 22, 2000, filed for record August 11, 2000, at Deed Book 00-080315, Plat Book 178, Page 54 of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended by the Fifty-Ninth Amendment executed on November 5, 2003, filed for record November 17, 2003, at SP-I-030172367 0014 of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended by the Sixtieth Amendment executed on November 5, 2004, filed for record November 17, 2004, at SP-I-04-130029 of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Declaration was amended by the Sixty-First Amendment executed on July 21, 2005, filed for record September 19, 2005, at SP-I-05-095310 0074 of the Deed Records of Montgomery County, Ohio; and

WHEREAS, the Sixty-First Amendment was amended by an instrument entitled a Scrivener's Affidavit, executed on October 17, 2005, filed for record October 18, 2005, at AFDV-05-106147 of the Deed Records of Montgomery County, Ohio, which attached Exhibit E, the By-Laws, which had not been attached to the Sixty-First Amendment; and

WHEREAS, the Declaration, By-Laws and all amendments thereto are binding on all owners of the properties described in Exhibit "A", attached hereto; and

WHEREAS, a legal description of the land submitted to this condominium form of ownership was attached as an exhibit to the Declaration and each and every one of the amendments recited in this Amended and Restated Declaration pursuant to Ohio Revised Code Section 5311.05(B)(1) and is attached hereto as Exhibit "B"; and

WHEREAS, Deer Run Owners Association, Inc. (the "Association") is an Ohio non-profit corporation, whose members are all of the Unit Owners of Units in Deer Run Condominium and, as such, the Association is the representative of all Unit Owners;

WHEREAS, the Association wishes to amend and restate the provisions of the Declaration, all of its aforementioned amendments, and the By-Laws in accordance with amendments to the Condominium Act effective July 20, 2004 and with the authority of O.R.C. 5311.05(E)(1) in order to "bring the Declaration into compliance" with the Condominium Act and correct clerical and typographical errors and obvious factual errors in the Declaration and the exhibits to the Declaration;

WHEREAS, this Amended and Restated Declaration (hereinafter "Amended Declaration") has received the affirmative vote of at least a majority of the Board of Directors of the Association and, pursuant to O.R.C. 5311.05(E)(1), a vote of the Unit Owners is not necessary;

NOW THEREFORE, the Declaration, all of its amendments, and the By-Laws are hereby amended and restated by the Board of Directors, as follows.

**AMENDED AND RESTATED
DECLARATION OF CONDOMINIUM OWNERSHIP
FOR
DEER RUN CONDOMINIUM**

**ARTICLE I.
NAME**

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

**ARTICLE II.
DEFINITIONS**

The terms used in this Amended Declaration shall have the following meanings, unless the context requires otherwise:

- A. **"Amended Declaration"** means this instrument by which the Condominium Property is submitted to the Condominium Act, as may be lawfully amended from time to time.
- B. **"Articles"** and **"Articles of Incorporation"** mean the Articles, filed with the Secretary of State of Ohio, incorporating Deer Run Owners Association as a non-profit corporation under the provisions of Chapter 1702 of the Revised Code of Ohio (the State of Ohio's non-profit corporation statutory act), as the same may be lawfully amended from time to time.
- C. **"Association"** shall mean and refer to the organization of all of the Unit Owners in the Deer Run Condominium and shall be an Ohio non-profit corporation known as Deer Run Owners Association, its successors and assigns. The Association has been created pursuant to the Condominium Act with such power and responsibilities as contained in the Condominium Instruments.
- D. **"Board"** and **"Board of Directors"** mean those Persons, who, as a group, serve as the Board of Directors of the Association established for the Condominium pursuant to the provisions of the Condominium Act.
- E. **"By-Laws"** mean the By-Laws of the Association, as the same may be lawfully amended from time to time, created under and pursuant to the provisions of the Condominium Act for the Condominium and which also serve as the Code of Regulations of the Association under and pursuant to the provisions of Ohio Revised Code Chapter 1702. A true copy of the By-Laws is attached hereto as Exhibit "E" and made a part hereof.
- F. **"Common Elements"** shall mean all portions of the Condominium Property except what is specifically defined, delineated and described as a Unit. The Common Element is more fully described in Article VIII.

- G. **“Common Expenses”** shall mean expenses designated as Common Expenses in the Declaration.
- H. **“Condominium”** and **“Deer Run Condominium”** mean the condominium regime for the Condominium Property created under and pursuant to the provisions of the Condominium Act.
- I. **“Condominium Act”** means the statutory law of the State of Ohio regulating the creation and operation of the Condominium, presently Ohio Revised Code Chapter 5311.
- J. **“Condominium Instruments”** means this Amended Declaration, the By-Laws, the Drawings, and, as provided by the Condominium Act, “any other documents, contracts or instruments establishing ownership of or exerting control over a Condominium Property or unit.” Individual contracts for the sale of Units and attachments thereto are Condominium Instruments.
- K. **“Condominium Property”** means the real property hereinafter described as being submitted to the Condominium Act, all buildings, structures, and improvements situated thereon, and all easements, rights, and appurtenances belonging thereto and all articles of personal property thereon for the common use of the Unit Owners.
- L. **“Director”** and **“Directors”** mean that Person or those Persons serving, at the time pertinent, as a Director or Directors of the Association.
- M. **“Drawings”** means the drawings depicting the land, buildings and improvements, which have been prepared and filed pursuant to the provisions of the Condominium Act, and as may be lawfully amended from time to time. The recording references to the Drawings are set forth in Exhibit “C”, and all prior recorded drawings are incorporated herein by reference.
- N. **“Limited Common Elements”** means those Common Elements serving exclusively one Unit or more than one but less than all Units, the enjoyment, benefit or use of which are reserved by this Amended Declaration to the lawful Occupants of the Unit or Units served.
- O. **“Occupant”** means a Person lawfully residing in a Unit, regardless of whether that Person is a Unit Owner.
- P. **“Person”** means a natural individual, corporation, partnership, trustee, or other legal entity capable of holding title to real property.
- Q. **“Unit”** shall mean a part of the Condominium Property consisting of all of the interior of a building as more fully described in Article VII and as delineated by the Drawings referenced in Exhibit “C”.
- R. **“Unit Owner”** or **“Owner”** shall mean the Person or Persons owning the fee simple estate in a Unit together with an undivided interest in the Common Elements.

**ARTICLE III.
PURPOSES**

This Amended Declaration is being made to establish separate individual parcels to which fee simple interests may be conveyed; for use for single family residential living; 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.

**ARTICLE IV.
THE LAND**

A legal description of the land constituting the Condominium Property, located in the City of Centerville, Montgomery County, Ohio, was attached as Exhibit "E" to the Declaration and to each and every one of the amendments recited in this Amended and Restated Declaration pursuant to Ohio Revised Code Section 5311.05(B)(1). A legal description of the land made subject to this Amended and Restated Declaration is attached as Exhibit "B". A legal description of the Units bound by the terms of this Amended and Restated Declaration is attached hereto as Exhibit "A" and made a part hereof by reference.

**ARTICLE V.
BUILDING DESCRIPTIONS AND DESIGNATIONS**

- A. Descriptions.** A general description of the buildings submitted to the Condominium, stating the number of stories, number of Units, and the principal construction materials, is as follows:

There are currently one hundred ninety-five (195) buildings containing one hundred ninety-four (194) Units, each building except for the clubhouse containing one (1) detached condominium Unit. The buildings are described in addition on the Drawings and contain variations in the number of stories as indicated on the exhibits to the amendments to the Declaration. The principal materials of which the Units have been constructed are as follows: concrete, concrete block, wood, wood trusses, drywall, and asphalt shingles. Each Unit has either brick veneer trim, wood staccato board siding, or stone trim on its exposed exteriors and either masonry walls or double studded insulated drywall.

- B. Designations.** The Unit designation of each Unit submitted to this Amended Declaration and a statement of its location, approximate area, the immediate Common Element or Limited Common Element to which it has access, and any other information necessary for its proper identification are summarized in the Drawings and incorporated herein.

ARTICLE VI.
ARCHITECTURAL REVIEW

A. Creation. An Architectural Review Committee is hereby created and charged with the following:

1. Approving, modifying or rejecting plans for all new construction or improvement proposed for any Unit or in relation to permissible construction upon any Limited Common Element by any Unit Owner. For purposes hereof, "construction or improvement" includes the building, which shall contain the Unit, and also grading, drainage, landscaping and any other matter affecting the exterior appearance of the building or any structures in relation thereto;
2. Approving, modifying or rejecting plans for all alterations or additions to previously existing construction or improvements;
3. Adopting and monitoring compliance with Architectural Guidelines;
4. Monitoring compliance with plans approved by the Architectural Review Committee;
5. Adopting and monitoring compliance with maintenance standards set out in this Amended Declaration.

B. Architectural Guidelines. The Architectural Review Committee shall adopt written standards on which to base approval or rejection of plans for construction, improvement, alteration or addition. The standards shall be maintained by the Association and may be amended from time to time. Copies at reasonable charges shall be available to a Unit Owner.

C. Process for Approval or Rejection; Prohibition. No new construction or improvement which affects the exterior appearance of the Condominium Property, any building thereon, or any improvement or addition thereto, and no exterior alteration of or addition to any previously existing construction or improvement, including changes in elevation, shall be commenced, constructed, continued, or maintained until and unless scale drawings, plans and specifications showing the nature, kind, size, shape, color, topographical change, materials, and the exact location and elevation of the same have been submitted to and approved in accordance with the specifications provided in Architectural Guidelines created by the Architectural Review Committee. The plans and specifications shall be submitted in such manner, style, and detail as may be required to include, among other things:

1. A grading and drainage plan.
2. Exterior lighting plan.
3. Location or identification of grading or other above ground improvements.

4. A tree survey and landscaping plan.

“**Exterior alteration**” as used herein shall include painting and any matter whatsoever that alters exterior appearance.

- D. **Members of Architectural Review Committee.** The members of the Architectural Review Committee shall consist of at least five (5) persons, or such other number as may be specified in the Architectural Guidelines. The Committee shall be appointed by the Board of Directors. The Board of Directors shall determine qualifications, if any, for such positions and determine the length of term, not to exceed two (2) years, for such member. Such terms shall be staggered to provide for continuity of the Committee.
- E. **Time for Approval or Rejection.** The failure of the Architectural Review Committee to approve any plans and specifications within forty-five (45) days after their submission shall constitute and be deemed as a rejection and disapproval of such plans and specifications. As used herein, the term “submission” shall mean actual receipt by the Architectural Review Committee.
- F. **Removal of Nonapproved Construction and Improvements.** The Association shall have the right to remove any construction or improvements if such construction or improvements have been commenced without necessary approval or are not being constructed in accordance with approved plans and specifications. Such removal shall be at the expense of the Owner or agent of the Owner. Prior to such removal, the Architectural Review Committee shall notify the offending Person of the violation in writing and permit a period not to exceed thirty (30) days for compliance. Upon failure to cure within such period, the Architectural Review Committee shall effect such removal, the cost of which shall be a Special Individual Unit Assessment against such noncomplying Owner.
- G. **Penalties.** The Architectural Guidelines may establish penalties for violation of its provisions. Violations shall be deemed a violation of the covenants contained herein and shall entitle the Association to the rights specified in Articles XVIII or VII.

ARTICLE VII.

UNITS AND UNIT OWNERS' ASSOCIATION

- A. **Composition.** Each of the Units described in Exhibit “A” to this Declaration shall consist of all the space bounded by the undecorated surfaces of the perimeter walls, floors, and ceilings of each Unit to constitute a complete enclosure of space. The dimensions, layouts, and descriptions of each Unit are shown on the Drawings and include without limitation:
 1. The decorated surfaces, including paint, lacquer, varnish, wallpaper, tile and any other finishing materials applied to the interior surface of the perimeter walls, floors, and ceilings;
 2. All windows, screens, and doors, including the frames, sashes, and jambs and the space occupied thereby;

3. All fixtures located within the bounds of a Unit, installed in and for the exclusive use of the Unit, beginning at the point of disconnection from the structural body of the building or from the point of disconnection of utility pipes, lines or systems serving more than one Unit;
4. All grills, dustcovers, control knobs, switches, thermostats, base plugs, floor plugs, and connections affixed to or projecting from the walls, floors, and ceilings which service either the Unit or the fixtures therein;
5. All interior walls, floors, and ceilings;
6. All plumbing, electrical, heating, cooling and other utility service lines, pipes, wires, ducts, or conduits which exclusively service either the Unit or the fixtures located therein and which are located within the bounds of the Unit, including chimneys.

However, structural parts of all interior walls, floors, and ceilings which support the building are not part of the Unit.

The table included in Exhibit "D" sets forth for each Unit its designation, the percentage of interest in the Common Element, total number of rooms, and the approximate square footage contained in each Unit.

- B. Unit Designation.** Each of the Deer Run Condominium Units is designated by numbers on the Drawings where that Unit is located.

Information concerning the Units, with a listing of proper Unit designations, is shown on the attached Exhibit "D". The location and designation of each Unit is also shown on the Drawings.

C. Unit Uses and Specific Restrictions.

1. Ownership of a Unit includes the right to exclusive possession, use, and enjoyment of the interior surfaces of the perimeter walls, floors, and ceilings and of the supporting walls, fixtures, and other parts of the building within its boundaries, including the right to paint, tile, wax, paper, or otherwise finish, refinish, or decorate the Unit.
2. Unit Uses. Except as otherwise specifically provided in this Amended Declaration, no Unit shall be used for any purpose other than that of a residence and purposes customarily incidental thereto. Notwithstanding the foregoing:
 - a. An Occupant maintaining a personal or professional library, keeping personal business or professional records or accounts, or making personal business or professional telephone calls or correspondence in or from a Unit, is engaging in a use expressly declared customarily incidental to a principal residential use and is not in violation of these restrictions. Such use shall not constitute a commercial use;

- b. One or more Units may be maintained for the use of the Association in fulfilling its responsibilities.
3. **Rental.** Unit Owners shall have the right to lease their respective Units, provided such lease arrangements are made for a term of no less than six (6) months and made subject to the covenants and restrictions in this Amended Declaration, the By-Laws, and Rules of the Association. All such lease agreements must be submitted to the Association. Any and all Occupants of the Units under such lease arrangements shall be subject to all Regulations and Rules as though the Occupant were the Unit Owner. It is the obligation of the Unit Owner to inform the lessee of the Unit as to the restrictions set forth in this Amended Declaration, the By-Laws, and Rules and Regulations of the Association. No terms or conditions contained herein shall release or relieve the Unit Owner from any duties, responsibilities, or obligations of the Unit Owner because of the occupancy of his Unit by a third party.
4. **Conveyance.** 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. 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 who wishes to sell his Unit agrees to give the Association not less than thirty (30) days prior written notice of the terms of a contemplated sale, together with the name and address of the proposed purchaser.
5. **Additional Restrictions.** The enumeration of the restrictions above is not intended to limit the applicability of any other restriction which may pertain to a Unit and which is contained within this Amended Declaration or By-Laws insofar as such may pertain to any particular Unit.

D. Maintenance and Repairs.

1. **Individual Responsibility.** The responsibility of each Unit Owner shall be as follows:
 - a. To maintain, repair and replace at his expense:
 - i. all portions of his Unit;
 - ii. all utility installations of the Unit such as appliances, heating, plumbing, electrical and air conditioning fixtures or installations;
 - iii. any portion of any other utility service facilities located within the Unit boundaries, or which exclusively serve such Unit, which are designated Limited Common Elements, except in-ground service lines for electric, water, sewer and gas.

- b. To maintain, repair, and replace the air conditioning pad, compressor and lines, conduit, and accessories to the air conditioner which are designated as Limited Common Elements for the exclusive use of such Unit Owner;
- c. To maintain, repair, and replace the stoops, patios, decks, balconies, exterior building surfaces, verandas or stairs to the foregoing, and the Roof Systems and Skylights, as Limited Common Elements;
- d. To maintain and repair all windows and doors of the Unit and associated structures and fixtures related thereto, which are appurtenances to the Unit. The foregoing individual responsibility includes all breakage, damage, malfunctions, and ordinary wear and tear of such appurtenances;
- e. To perform his responsibilities in such a manner so as not unreasonably to disturb other Persons residing within the Condominium Property;
- f. Not to paint or otherwise decorate so as to change the appearance of any portion of the building not within the walls of the Unit, unless the written consent of the Architectural Review Committee or the Board of Directors of the Association, as appropriate, is obtained;
- g. To promptly report to the Association or its agent any defect or need for repairs which are the Association's responsibility;
- h. Not to make any alterations in the portions of the Unit or the building which are to be maintained by the Association, remove any portion thereof, make any addition thereto, or do anything which would or might jeopardize or impair the safety or soundness of the building without first obtaining the written consent of the Architectural Review Committee or the Board of Directors of the Association, as appropriate. No Owner shall impair any easement without first obtaining the written consent of the Board of Directors of the Association and of the Unit Owner or Owners for whose benefit such easement exists;
- i. To use all Common Elements in a manner as will not restrict, interfere, or impede the use thereof by the other Unit Owners;
- j. To operate in a manner consistent with the Rules and Regulations promulgated by the Association.

E. Unit Owners Association.

1. Establishment of Association. The Association has been formed to be and serve as the unit owners association of the Condominium.
2. Membership. Membership in the Association shall be limited to the Unit Owners. 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. Membership 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.

3. Voting Rights. Each Unit Owner shall be entitled to one vote for each Unit owned in fee simple and a proportionate part of a vote for ownership of an undivided fee simple interest in a Unit.
4. Board of Directors. There shall be seven Directors. All Directors elected by the Unit Owners shall be either Unit Owners or spouses of Unit Owners.

The term of office of three (3) Directors shall be fixed so that such term will expire one (1) year from and after the date of the next following annual meeting of the members of the Association. The term of office of the remaining four (4) Directors shall be fixed so that such term will expire at the date of the next following annual meeting of members of the Association. At the expiration of such initial term of office of each respective Director, his successor shall be elected to serve for a term of two (2) years.

5. Authority. The Board shall have all authority to manage, maintain, repair, replace, alter and improve the Common Elements, including such Limited Common Elements that the Association has an obligation to repair. The Board shall assess and collect funds for the payment of its obligations. The Board shall do all things, and exercise all rights provided by the Condominium Instruments or the Condominium Act, that are not specifically reserved to Unit Owners.
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. Any agreement for professional management shall:
 - a. be terminable by the Association for cause on thirty (30) days written notice;
 - b. be terminable by either party, without penalty, on ninety (90) days written notice;
 - c. not exceed one year unless renewed by agreement of the parties for successive one-year periods;
 - d. be bona fide and commercially reasonable at the time entered into under the circumstances then prevailing.

7. By-Laws. In addition to the provisions set out in this Amended Declaration, the administration of the Condominium Property shall be in accordance with the By-Laws.

**ARTICLE VIII.
COMMON AND LIMITED COMMON ELEMENTS**

A. Description.

1. Common Elements. All property not defined as a Unit shall be part of the Common Elements, including, but not limited to:
 - a. all buildings;
 - b. foundations;
 - c. main and supporting walls;
 - d. trees, lawns, gardens, and shrubbery;
 - e. pavement, including walking pathways, except for those portions which are defined as Limited Common Element or owned and maintained by the City of Centerville;
 - f. fences;
 - g. common walks and walk lights, not to include the Unit entrance walks which are defined as Limited Common Element;
 - h. common driveways and parking areas, except for driveways leading to the garages, which are defined as Limited Common Element;
 - i. wires, conduits, utility lines and ducts now or hereinafter situated on the Condominium Property;
 - j. in general, all parts of the Condominium Property situated outside the boundary of the individual Units.
2. Limited Common Elements. The following, included within the Common Elements and appurtenant to a Unit, are deemed Limited Common Elements designated as reserved for the exclusive use of the appurtenant Unit or Units:
 - a. Areas marked as patio, deck, balcony or veranda areas on the Drawings and fixtures located thereon are designated as Limited Common Elements for the Unit adjoining such patio, deck, balcony, or veranda area.
 - b. The entranceways and stoops are designated as Limited Common Elements for the Unit adjoining such entranceway and stoop. Unit

entrance walks leading from the driveway to the front door of the Unit are also Limited Common Element.

- c. The driveways leading to the garages are designated as Limited Common Elements for the Unit to which the driveway leads.
- d. The air conditioning pad, compressor and lines, ducts, conduits, and accessories thereto are designated as Limited Common Elements for the Unit being serviced by such air conditioning equipment.
- e. The portion of the open area surrounding the building in which a Unit is contained and as indicated on the Drawings and the fixtures thereon.
- f. The installations and fixtures of utility service facilities for heating, plumbing, electric, sewage or air conditioning and which exclusively serve a Unit to which they are attached or affixed, excluding in-ground main service lines for gas, sewer, water or electric facilities.
- g. The exterior surface of the building containing a Unit is designated as a Limited Common Element for the Unit within the building. In all determinations pertaining to Roof Systems and skylights, the intention of the Association that repair and replacement of same shall be the obligation of the Unit Owner shall be the guiding principle including instances in the Amended Declaration or By-Laws relevant to such issue but not specifically referred to herein.
- h. "Roof System," defined to include all components on the building above the roof rafters, as well as the drainage provisions, including the following:
 - i. Wood deck;
 - ii. Shingle underlayments - felt and ice guard;
 - iii. Shingles;
 - iv. Attic ventilation components;
 - v. Flashings and counter flashings;
 - vi. Edge metal;
 - vii. Gutter and downspouts.
- i. "Skylights," defined as roof-mounted Units consisting of metal curbs, glass and glazing, sealants, flashings, and counter flashings.

- B. Ownership.** Each Unit's undivided interest in the Common Elements is shown on the attached Exhibit "D" and in each case is based on the proportion that the size (square footage) of the Unit bears to the aggregate size (square footage) of all Units.

The Common Elements shall be owned by the Unit Owners as tenants in common, and the ownership shall remain undivided. No Unit Owner may waive or release any rights in the Common Elements. Further, the Unit's undivided interest in the Common Elements shall not be separated from the Unit to which it appertains and is deemed 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.

C. Use.

1. **Common Elements.** Each Owner of a Unit shall own an undivided interest in the Common Elements as a tenant in common with all other Unit Owners, and except as otherwise limited in this Amended Declaration and in the By-Laws, shall have the right to use the Common Elements for all purposes incident to the use and occupancy of his Unit as a place of residence and such other incidences as permitted by this Amended Declaration and the By-Laws. Such rights include a non-exclusive easement together with the other Unit Owners to the use and enjoyment of the Common Elements and for the ingress and egress to and from the respective Units, which rights shall be appurtenant to and shall run with the Unit. The extent of ownership in the Common Elements is hereby deemed and expressed by the percentage amount which shall remain constant and shall not be changed except by an amendment to this Amended Declaration pursuant to the provisions of Article XIX.
2. **Limited Common Elements.** Subject to the restrictions set forth in this Article and Article IX of this Amended Declaration, each Unit Owner may use that Limited Common Element adjacent to such Unit which is so designated to serve for their use and that of their Occupants, guests, or invitees as a recreation, entertainment, outdoor cooking, or eating area and for those purposes permitted herein, including gardening, landscaping or improvement upon approval of the Architectural Review Committee.

Subject to rules the Board of Directors adopts pursuant to the By-Laws, the Board may authorize the use of Limited Common Elements, as distinguished from the Common Elements, for the construction of open, unenclosed patios, hedges, decks, fences, or similar improvements, provided that the improvements are maintained and insured by the Owner of the Unit to which the Limited Common Element is appurtenant. The construction of an addition to or an expansion of a Unit into Limited Common Elements or Common Elements may not be authorized without the consent of all Unit Owners.

Each Unit is subject to the right of access for the purpose of maintenance, repair, or service of any Common Element located within its boundaries or of any portion of the Unit itself by persons authorized by the Board of Directors of the

Association. No maintenance, repair, or service of any portion of a Unit shall be authorized, however, unless it is necessary in the opinion of the Board of Directors for public safety or in order to prevent damage to or destruction of any other part of the Condominium Property.

D. Maintenance and Repair.

1. **Association Responsibility.** The Association shall maintain and repair the Common Elements and the Limited Common Elements, other than as set out in the previous Article as to Unit Owners' responsibility. The Association's responsibility shall include, but not be limited to, the driveways, utility facilities serving more than one Unit, utility lines in the Common Elements, lawns, shrubs, trees, and walkways.
2. **Neglect.** In the event that a Unit Owner fails to make any repair or perform such maintenance as required, or the need for maintenance 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, their guests or invitees, and the cost of repair is not covered by insurance, the cost of such maintenance and repair shall constitute a Special Individual Unit Assessment. The determination that the need for such maintenance has been so caused shall be made by the Board. Such an assessment shall be deemed an Enforcement Assessment subject to the due process provisions of Article XVIII, Section B(4) and enforceable by lien under Article XI, Section C(8).

**ARTICLE IX.
GENERAL RESTRICTIONS**

- A. **Animals.** No animals, reptiles, livestock, fowl, or poultry of any kind shall be raised, bred, or kept in any Unit or in the Common Element except household pets such as dogs and cats. A Unit Owner or Occupant may keep one dog or one cat or one other household pet in a Unit, not to exceed 30 pounds in weight, subject to the Rules and Regulations adopted by the Board of Directors of the Association. No animal may be kept, bred, or maintained for any commercial purposes. Any household pet on the Condominium Property outside a Unit shall be restrained by the Unit Owner by the use of a leash, a cage, or other device for such purpose. No pet shall be chained, tethered, staked or otherwise restrained in the area around the buildings which constitutes other than Limited Common Element. Each Unit Owner harboring a pet is to be responsible for maintaining the area last described free from waste of such Unit Owner's pet. Any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Condominium Property upon three (3) days written notice from the Board of Directors of the Association.
- B. **Architectural Control.** No building, fence, wall, sign or other structure shall be commenced, erected, or maintained upon the Condominium Property or any part thereof, nor shall any exterior addition to or change or alteration therein be made until compliance is made with Article VI.

C. Building on Easements. Within the easements for the installation and maintenance of utilities and drainage facilities, no structure, planting or other material (except such as existed on June 23, 1987) shall be placed or permitted to remain which may:

1. damage or interfere with the installation and maintenance of utility lines; or
2. change the direction of the flow of drainage channels in the easements; or
3. 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 them and its right to delegate that right to a public authority or utility.

D. Commercial Activity. No commercial activity other than that carried on in the operating, maintaining, repairing, or replacing the Common Elements shall be conducted in or upon any part of the Condominium Property. There shall be no commodities or services sold or dispensed upon an individual Unit or from the Common Elements. No mechanical or electrical equipment is to be used except as is permissible for and customarily found in a purely domestic residence for the family residing therein.

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

F. Nuisance. No noxious or offensive activity shall be carried on in any Unit or upon the Common Elements. No area shall be used in any way or for any purpose which may endanger the health of or unreasonably disturb any Occupant.

G. Replacements. Any building erected to replace an existing building containing a Unit shall:

1. be of new construction;
2. be of comparable size, design, and construction to that replaced; and
3. contain a like number of Units of comparable size to the Unit in the building replaced.

H. Signs. No sign of any kind shall be displayed to the public view on any part of the Condominium Property or through the window of a Unit without approval of the Board of Directors, except street name signs, directional signs, and signs regulating the use of Common Elements. Specifically prohibited are signs advertising Condominium Units for sale, rent, or lease.

I. Structural Integrity. Nothing shall be done in any Unit, or in, on, or to the Common Elements which may impair the structural integrity of any improvements.

- J. Vehicles.** The Board may promulgate regulations restricting the parking of automobiles, inoperable vehicles, trucks, boats and recreational vehicles on the Common Elements. The Board may enforce such regulations by levying fines, having such vehicles towed away, or taking such other actions as it, in its sole discretion, deems appropriate. There shall be no obstruction of the Common Elements nor storage of any boats, canoes, campers or other recreational vehicles, trucks, trailers, pickup trucks, or inoperable vehicles of any kind on the Common Elements.
- K. Visible Areas.** Nothing shall be caused or permitted to be hung or displayed on the outside or inside of windows or placed on the outside walls of a building or otherwise outside of a Unit or any part thereof. No sign, awning, canopy, shutter, or television or citizens band or other radio antenna or transmitter, lighting, or any other device or ornament shall be affixed to or placed upon the exterior walls or roof or any part thereof, unless authorized by the Board and subject to such Rules and Regulations as the Board may adopt from time to time. Further, there shall be no obstruction of the Common Elements by bicycles, wagons, toys, baby carriages, playpens, benches, chairs, clothes, tents, laundry, clotheslines, awnings, antenna or any unsightly articles except as may be provided by Rules and Regulations adopted by the Board.
- L. Waste.** Trash, garbage or other waste shall not be dumped, deposited or permitted to remain on the Common Elements except in covered sanitary containers placed in the appropriate place for pickup next to the driveway on the particular days set aside for refuse collection by refuse haulers. No open fire shall be permitted in the Common Elements excepting in cooking grills.
- M. Disputes and Remedy.** In the event of any dispute between Unit Owners as to the application of these restrictions or any Rule or Regulation to any particular circumstance, 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 within sixty (60) days thereafter and give written notice to each party no less than three (3) days in advance. The Board shall hear evidence on the dispute as the Board deems proper and render a written decision on the matter to each party within thirty (30) days thereafter. No action at law may be instituted by either party to such a dispute unless such arbitration has first been had. Any Unit Owner disputing the Board's application of these restrictions or any Rule or Regulation shall have the right to initiate an action at law only after attempting to resolve the matter through meetings with the Board or through special meetings of the Unit Owners as provided in the By-Laws.

ARTICLE X. GRANTS AND RESERVATIONS OF RIGHTS AND EASEMENTS

The following easements and grants are to be easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on any Unit Owner, purchaser, mortgagee and other Person having an interest in the Condominium Property or any part or portion thereof. Failure to refer specifically to any or all of the easements or rights described in this Amended Declaration in any deed of conveyance or in a mortgage or other evidence of Ownership or obligation shall not defeat or fail to reserve said right of

easement but shall be deemed conveyed or encumbered along with the Unit. Provided, however, that the easements and grants provided herein shall in no way affect any other recorded grant of easement.

- A. Easement of Access and Enjoyment.** Every Unit Owner shall have a right and easement of enjoyment in, over, and upon the Common Elements and a right of access to and from the Unit, which rights and easements shall be appurtenant to and shall pass with the title to a Unit. These rights are subject to the right of the Board to make reasonable Rules and Regulations concerning the use and management of the Common Elements, provided that no such Rule or Regulation shall limit or prohibit the right of ingress or egress to a Unit, or any part thereof, or the parking facilities. Any Unit Owner may delegate that Unit Owner's right of enjoyment to the Common Elements and to ingress and egress to the members of that Unit Owner's family and to Occupants, guests, and invitees. Any roadway or private street shown on the Drawings shall be for the general public that has a need to use the roadway or private street as a means of access to his property, and a valid easement shall exist for the benefit of those having a need for such access and government agencies and authorities to provide police and fire protection and other services to the Condominium Property. Any public agency exercising a right as last set out shall have the duty to restore the areas and facilities used to a condition as good as or better than those existing prior to the use of the easement.
- B. Right of Entry for Repair.** The Association shall have the right of entry and access to, over, upon, and through all of the Condominium Property, including each Unit, to enable the Association to perform its obligations, rights, and duties with regard to maintenance, repair, restoration and/or servicing of any items, things, or areas of or in the Condominium Property. Any damage resulting to a particular Unit as a result of the Association's maintenance or operation shall be repaired by the Association, the cost of which shall be a Common Expense.
- C. Easement for Encroachments.** Each Unit and the Common Elements shall be subject to easements for encroachments on any other Unit and upon the Common Elements created or arising by reason of:
1. overhangs;
 2. deviations in construction, reconstruction or repair;
 3. shifting, settlement or movement of the structures;
 4. errors in the Drawings.

Valid easements for these encroachments and for the maintenance of same, so long as the encroaching structures remain, shall and do exist. Provided, however, that no valid easement for any encroachment shall be created in favor of the Owner of any Unit or in favor of the Common Elements if such encroachment is caused by the willful conduct of the Owner.

- D. Easement for Support.** Every portion of a building or utility line or any improvement on any portion of the Condominium Property contributing to the support of another building, utility line, or improvement on another portion of the Condominium Property shall be burdened with an easement of support for the benefit of all other such buildings, utility lines, improvements, and other portions of the Condominium Property.
- E. Easement for Utilities.** The Association may hereafter grant easements on behalf of the Unit Owners to entities for utility purposes for the benefit of the Condominium Property. Each Unit Owner hereby grants to the Association an irrevocable power of attorney to execute, acknowledge, and record for, and in the name of, such Unit Owner, such instruments as may be necessary to effectuate the foregoing, including, but not limited to, water, sewer, gas, telephone, electrical, master television, and cable television. Companies providing utilities shall be permitted to construct and maintain necessary related equipment so long as it does not unreasonably interfere with the use and enjoyment of the Condominium Property.
- F. Easement for Public Services.** A non-exclusive easement is 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.
- G. Power of Attorney.** Each Unit Owner, by acceptance of a deed to a Unit, hereby irrevocably appoints the Association his, her or its attorney-in-fact to execute, deliver, acknowledge, and record, for and in the name of such Unit Owner, such deeds of easement and other instruments as may be necessary or desirable, in the sole discretion of the Board as the authorized representative, to further establish or effectuate the foregoing easements. This power is for the benefit of each and every Unit Owner, the Association, and the real estate to which it is applicable, runs with the land, and is coupled with an interest.

ARTICLE XI. ASSESSMENTS AND ASSESSMENT LIENS

- A. Purpose and Obligation.** The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of Unit Owners and Occupants in the best interest of the Condominium Property. 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 assessments to the Association. These assessments shall be paid on a monthly basis by the Owner of each Unit. No Owner of a Unit may exempt himself from liability for his contribution toward Common Expenses by waiver of the use or enjoyment of any of the Common Elements or by the abandonment of his Unit.

The Association, through the Board of Directors, shall:

1. Adopt and amend budgets for revenues, expenditures, and reserves in an amount adequate to repair and replace major capital items in the normal course of

operations without the necessity of special assessments, provided that the amount set aside annually for reserves shall not be less than ten per cent of the budget for that year unless the reserve requirement is waived annually by the Unit Owners exercising not less than a majority of the voting power of the Association;

2. Collect assessments for Common Expenses from Unit Owners.

3. Operating Assessments.

- a. At the time of the filing of this Amended Declaration, and prior to the beginning of each fiscal year of the Association thereafter, which fiscal year shall coincide with the calendar year, the Board shall estimate and prorate among the Units on the basis of the percentage interest of each Unit in the Common Elements, Common Expenses of the Association consisting of the following:
- i. the estimated next fiscal year's cost of the maintenance, repair, and other services to be provided by the Association;
 - ii. the estimated next fiscal year's cost for taxes, insurance and bond premiums to be provided and paid for by the Association;
 - iii. the estimated next fiscal year's cost for utility services not separately metered;
 - iv. 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;
 - v. 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; and
 - vi. 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; legal and accounting services; costs for mailing, postage, supplies and materials for operating the Association; the salaries, wages, payroll charges and other costs to perform these services; and any other costs constituting common expenses not otherwise herein specifically excluded.
- b. The Board shall thereupon allocate to each Unit that Unit's share of all of the Common Expenses on the basis of the percentage interest of each Unit in the Common Elements and thereby establish the annual operating

assessment for each separate Unit. For administrative convenience, any such assessment may be rounded to the nearest whole dollar.

- c. The annual operating assessment shall be payable in advance in equal monthly installments, provided that no Unit Owner shall be prohibited from prepaying assessments in annual, semi-annual, quarterly or monthly increments. The due dates of any such installments shall be established by the Board, and, unless otherwise provided, the Association shall collect on or before the first day of each month from the Owner an equal monthly prorata share of the annual operating assessment for that Unit.
 - d. If the amounts so collected are, at any time, insufficient to meet all obligations for which those funds are to be used, the deficiency shall be assessed by the Board among the Units on the same basis as heretofore set forth. The monthly assessment for each Unit may be increased by the Association at any time, and from time to time, in the calendar year. The increased amount will be based upon a percent increase to be determined by the Association and will be applied to the existing monthly assessment. Any increase by the Association as authorized herein shall become effective on the first day of the next calendar month.
 - e. 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.
4. Special Assessments for Capital Improvements. 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. However, new capital improvements not replacing existing improvements shall not be constructed nor funds assessed therefor without the prior consent of Unit Owners exercising no less than seventy-five percent (75%) of the voting power of the Unit Owners. Any such assessment shall be prorated among all Units on the basis of each Owner's percentage of interest in the Common Elements as set forth in Exhibit "D" and shall become due and payable on such date or dates as the Board determines following written notice to the Unit Owners.
5. Special Individual Unit Assessments. In addition to the foregoing, the Board may levy an assessment against an individual Unit or Units to reimburse the Association for those costs incurred in connection with that Unit or Units properly chargeable by the Amended Declaration to a particular Unit (such as, but not limited to, the cost of making repairs the responsibility of a Unit Owner, removal of non-compliant construction or improvements, the cost of insurance premiums billed to a Unit Owner, and a Unit Owner's enforcement and arbitration charges).

Any such assessment shall become due and payable on such date as the Board determines and gives written notice to the Unit Owners subject thereto.

B. Effective Date. Any assessment 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 at least ten (10) days prior to the due date or the due date of the first installment, if the assessment is 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.

C. Remedies of Association for Non-Payment.

1. If any assessment or any installment of any assessment is not paid within ten (10) days after the same has become due, a late charge of Five Dollars (\$5.00) or ten percent (10%) of the assessment due, whichever is greater, will be charged. The amount of such late charge may be altered by the Board in the future.
2. Option to Accelerate. 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, and (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 rate of ten percent (10%) per annum.
3. Lien. The Association shall have a lien upon the estate or interest of the Unit Owner in any Unit and the Unit Owner's percentage of interest in the Common Elements for the payment of any of the following expenses that are chargeable against the Unit which remains unpaid for ten (10) days after the same has become due and payable:
 - a. The portion of the Common Expenses chargeable against the Unit;
 - b. Interest, administrative late fees, Enforcement Assessments, and collection costs, attorney's fees, and paralegal fees the Association incurs.

The lien is valid from the time a certificate therefor, subscribed by the President or other designated representative of the Association, is filed with the Recorder of Montgomery County, Ohio, pursuant to authorization given by the Board of Directors of the Association. 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 Common Expense and, subject to subsequent adjustments, any unpaid interest, administrative late fees, Enforcement Assessments, collection costs, attorney's fees, and paralegal fees.

4. Duration. The lien provided for herein shall remain valid for a period of five (5) years from the date of filing, unless sooner released or satisfied in the same manner provided by law for the release and satisfaction of mortgages on real property or discharged by the final judgment or order of a court in an action brought to discharge the lien.
5. Priority. The lien provided herein is prior to any lien or encumbrance subsequently arising or created except liens for real estate taxes and assessments of political subdivisions and liens of first mortgages that have been filed for record and may be foreclosed in the same manner as a mortgage on real property in an action brought on behalf of the Association by the president or other chief officer of the Association pursuant to authority given to that individual by the Board of Directors. 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 or charges against the mortgaged Unit which become due and payable prior to the time such holder or purchaser took title to the Unit.
6. Application of Payments. The Association shall credit payments made by a Unit Owner for the Common Expenses in the following order of priority:
 - a. First, to interest owed to the Association;
 - b. Second, to administrative late fees owed to the Association;
 - c. Third, to collection costs, attorney's fees, and paralegal fees incurred by the Association;
 - d. Fourth, to the principal amounts the Unit Owner owes to the Association for the Common Expenses or Enforcement Assessments chargeable against the Unit.
7. Actions. The Association, as authorized by the Board:
 - a. may file a lien or liens to secure payment of delinquent assessments, interest and costs, or
 - b. bring an action at law against the Unit Owner or Owners personally obligated to pay the same, or
 - c. bring an action to foreclose a lien, or
 - d. any one or more of these.

In any foreclosure action, the Unit Owner or Owners affected shall be required to pay a reasonable rental for that Unit during the pendency of such action, and the

Association as plaintiff in any such action shall be entitled to become a purchaser at the foreclosure sale. In any such action, interest and costs of such action (including attorneys fees) shall be added to the amount of any such assessments, to the extent permitted by Ohio law.

8. Enforcement Assessments may be made subject of a lien in favor of the Association after the procedures of Article XVIII, Section B(4) have been complied with.

D. Disputes. A Unit Owner who believes that the portion of the Common Expenses chargeable to the Unit for which the Association files a certificate of lien has been improperly charged may commence an action for the discharge of the lien in the court of common pleas of Montgomery County. In the action, if it is finally determined that the portion of the Common Expenses was improperly charged to the Unit Owner or the Unit, the court shall enter an order that it determines to be just, which may provide for a discharge of record of all or a portion of the lien.

E. Effect of Conveyance.

1. Voluntary Conveyance. No Unit Owner shall convey an interest in any Unit until all assessments as to such Unit provided by this Amended Declaration have been paid. In a voluntary conveyance (which includes conveyance by certificate of transfer) of a Unit other than a conveyance in lieu of foreclosure, the grantee of the Unit shall be jointly and severally liable with the grantor for all unpaid assessments by the Association against the grantor and his Unit for his share of Common Expenses or Special Unit Assessments, up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Any such grantee and his mortgagee shall be entitled to a statement from the Board of Directors of the Association setting forth the amount of all unpaid and current assessments against the grantor due the Association, and such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments made by the Association against the grantor in excess of the amount set forth in such statement for the period reflected in such statement.
2. Involuntary Conveyance. Where the mortgagee of a first mortgage of record or other purchaser of a Unit acquires title to the Unit as a result of a foreclosure of any lien or a deed in lieu of the foreclosure of the first mortgage, such acquirer of title, his successors and assigns, shall not be liable for the share of Common Expenses or other assessments by the Association chargeable to such Unit which became due prior to the acquisition of title to such Unit by such acquirer. Such unpaid share of Common Expenses or assessments shall be deemed to be Common Expenses collectible from all of the Units, including that of such acquirer, his successors or assigns.

**ARTICLE XII.
UTILITY SERVICES**

Each Unit Owner by acceptance of a deed to a Unit agrees to pay for utility services separately metered or separately charged by the utility company to that Unit, including all water and sewer charges levied by any governmental authority of Montgomery County, Ohio, for water and sewer services provided for an individual Unit. Water and sewer services provided for the Condominium Property other than for individual Units shall be paid by the Association as a Common Expense of the Condominium. The Association reserves the right to levy additional assessments against any Owner to reimburse it for excessive use of any utility service not separately metered as shall be determined by the Board, in relation to any such common expense utility.

**ARTICLE XIII.
INSURANCE**

- A. Acquisition.** The Association shall carry fire and extended coverage, vandalism and maliciousness, and liability insurance and workmen's compensation insurance, if applicable, pertinent to the ownership, use and maintenance of the buildings, structures, or other improvements now, or at any time hereafter, constituting a part of the Condominium Property. The cost thereof shall be a Common Expense.
- 1. Fire and Extended Coverage.** The Condominium Property shall be insured against fire and other hazards covered by standard extended coverage endorsement in an amount equal to the maximum insurable replacement value excluding foundation and excavation costs, as determined annually by the Board of Directors of the Association. In no event shall the coverage amount be less than one hundred percent (100%) of the replacement value of all of the buildings and structures of the Condominium Property and shall not exceed one hundred percent (100%) co-insurance provisions of the policy of insurance. Such coverage shall also include:
- a. Interior walls within Units, and
 - b. The pipes and wires, conduits and ducts contained therein; and
 - c. All fixtures, equipment, and trim without a Unit which were furnished with the Unit as standard items. In no event, however, shall such insurance cover furniture, furnishings, or other personal property supplied or installed or owned by Unit Owners;
 - d. Each policy of insurance shall be written so as to provide for the issuance of certificates of insurance to the mortgagees at least ten (10) days notice prior to any cancellation of insurance;
 - e. If the insurance coverage required herein ceases to exist for any reason whatsoever, any mortgagee of any portion of the Condominium Property may remedy that lack of insurance by advancing premiums to keep the

insurance in effect or obtain new insurance policies in place thereof. The funds so advanced shall be deemed to have been loaned to the Association and shall bear interest at the per annum rate of eight percent (8%) and shall be due and payable to the mortgagee by the Association immediately. The repayment of this obligation shall be secured by special assessment against all Unit Owners until paid, without any necessity of any vote of Unit Owners or the approval of the Association to establish the special assessment;

- f. Such policies shall also provide for the release by the insurer of any and all rights of the subrogation or assignment and all causes and rights of recovery against any one of them for any loss occurring to the Condominium Property from any of the perils insured against;
- g. Proceeds of any insurance policies owned by the Association shall be paid to an Insurance Trustee selected by the Association and shall be held in a separate account and in trust for the benefit of the Unit Owners and their mortgagees as their interests may appear. The Insurance Trustee shall be a bank, selected by the Association and located in Dayton, Ohio, with trust powers and total assets of more than Fifty Million Dollars (\$50,000,000.00). The Insurance Trustee shall not be liable for:
 - i. payment of premiums;
 - ii. the renewal of the policies;
 - iii. the form or contents of the policies; or
 - iv. the failure to collect any insurance proceeds.

The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purpose of this Article and for the benefit of the Association, the Unit Owners, and their respective mortgagees. In no event shall this Trustee provision be in effect for claims of less than One Thousand Dollars (\$1,000.00);

- h. It shall be the responsibility of each Unit Owner to obtain individual contracts for insurance for his personal property located within the Unit or elsewhere in the Condominium Property, including any betterments or improvements that such Unit Owner may make to his Unit even though such betterments or improvements may be classified as a fixture. No Unit Owner may purchase an individual policy on his Unit or his interest in the Common Elements as real property. If, irrespective of this prohibition, a Owner purchases an individual policy insuring real property, the Unit Owner shall be responsible to the Association for loss or expense that such policy may cause in adjusting the Association's insurance.

- i. The Association reserves the right to levy an additional assessment against an Unit Owner to reimburse it for an excessive cost of the acquisition of insurance to insure a building containing that Unit Owner's Unit if by reason of the design of the building and Unit the cost to insure the Unit's improvements exceeds the average required to insure other such improvements located on the Condominium Property.
2. Liability Insurance. The Association, as a Common Expense, shall insure:
 - a. itself;
 - b. the Board of Directors;
 - c. all Unit Owners and members of their respective families;
 - d. and other Persons residing with the Owner in the Condominium Property; and
 - e. the Owners' tenants and all Persons lawfully in possession or control of any part of the Condominium Property; against liability for bodily injury, disease, illness or death, and for injury to or destruction of property occurring upon, in or about, or arising from the Common Elements. This insurance shall afford protection:
 - i. on a limit of not less than Three Hundred Thousand Dollars (\$300,000.00) with respect to bodily injury, disease, illness or death suffered by any one person; and
 - ii. to the limit of not less than One Million Dollars (\$1,000,000.00) in respect to any one occurrence; and
 - iii. to the limit of not less than One Million Dollars (\$1,000,000.00) with respect to damage to or destruction of property arising out of any one accident.
 - f. Such policy shall not insure against liability for personal injury or property damage arising out of or relating to the individual Units or Limited Common Elements pertaining thereto.
3. It shall be each Unit Owner's responsibility to obtain insurance coverage at his own expense upon his Unit for his personal liability for occurrences within his Unit or upon Limited Common Elements pertaining thereto and also for the alternative living expenses in the event of fire and other damage or destruction.
4. Association Act for Unit Owner. Each Unit Owner, by Ownership of a Unit in the Condominium, shall be deemed to appoint the Association as his true and lawful attorney-in-fact to act in connection with all matters concerning the maintenance of fire and extended coverage, vandalism and maliciousness, liability

insurance and workmen's compensation insurance, if applicable, pertinent to the Common Elements with such insurer as may, from time to time, provide such insurance for the Condominium Property. Without limitation of the generality of the foregoing, the Association as the Unit Owners' attorney-in-fact shall have the full power and authority to:

- a. purchase and maintain such insurance;
- b. collect and remit premiums therefor;
- c. collect proceeds and distribute to mortgagees, as their interests may appear (except as provided in those provisions concerning the collection and distribution of proceeds by the Insurance Trustee);
- d. execute releases of liability; and
- e. execute all documents and do all things on behalf of such Unit Owners and Condominium as shall be necessary or convenient in dealing with any insurance purchased by the Association.

B. Sufficiency.

1. **Sufficient Insurance.** In the event there is any damage or destruction to the Condominium Property from any cause or hazard insured against and the proceeds of any policy or policies shall be sufficient to pay the cost of repair, restoration, or reconstruction, then such repair, restoration, or reconstruction shall be undertaken by the Association, and the insurance proceeds shall be applied to the payment thereof, unless Unit Owners elect not to restore the Condominium Property.
2. **Insufficient Insurance.** In the event the improvements forming a part of the Condominium Property or any part thereof shall suffer damage or destruction from any cause or peril which is not insured against, or if insured against the insurance proceeds shall not be sufficient to pay the cost of such repair, restoration, or reconstruction, then unless the Unit Owners elect not to restore the Condominium Property, such repair, restoration, or reconstruction shall be undertaken by the Association. All costs of such repair, restoration, or reconstruction in excess of the insurance proceeds shall be borne by the Unit Owners in proportion to their respective percentages of interest in the Common Elements. Should any Unit Owner refuse or fail after reasonable notice to pay his share of such costs in excess of available insurance proceeds, the amount may be advanced by the Association. The amount advanced by the Association shall be assessed to the Owner, and such assessment shall have the same force and effect and, if not paid, shall be enforced in the same manner as provided for the non-payment of assessments.

ARTICLE XIV.

DAMAGE AND RECONSTRUCTION; REHABILITATION AND RENEWAL

- A. **Damage and Reconstruction.** Immediately after a casualty causing damage to any portion of the Condominium Property, the Association shall obtain reliable and detailed estimates of the costs to replace or repair the damaged property in a condition as good as that prior to the casualty. Such costs may include professional fees, adjustment company fees, and premiums for such bonds as the Board of Directors deems necessary.

The insurance proceeds and the sums deposited with the Insurance Trustee by the Association from collection of special assessments against Unit Owners on account of such casualty shall constitute a construction fund which shall be distributed to the Insurance Trustee. The fund shall be applied by the Insurance Trustee to the payment of the cost of reconstruction and repair of the Condominium Property, from time to time, as the work progresses, but not more frequently than once in any calendar month. The Trustee shall make payments upon the written request of the Association. The request must be accompanied by a certificate, dated not more than fifteen (15) days prior to such request, signed by a responsible officer of the Association. The certificate must also be signed by the general contractor or an architect in charge of the work, approved by the Association. The certificate shall set forth:

1. That the sum then requested either has been paid by the Association or is justly due to the contractor, subcontractors, materialmen, architects and other Persons who have rendered services and materials in connection with the work, giving a brief description of the services and material furnished, and that the sum requested does not exceed the value of such services and materials described in the certificate; and
2. That, except for the amount stated in such certificate to be due, and for work subsequently performed, there is no outstanding indebtedness known to the Person signing such certificate after due inquiry which might become the basis of vendors, mechanics, materialmen or similar liens arising from such work; and
3. That the cost as estimated by the Person signing such certificate of the work remaining to be done subsequent to the date of the certificate does not exceed the amount of construction funds remaining in the hands of the Insurance Trustee after the payment of the sums so requested; and
4. That such work performed is in compliance with and consistent with the terms of decor and architectural structure for the Condominium Property.

It shall be presumed that the first monies disbursed in payment of the costs of reconstruction and repair shall be from insurance proceeds. If there is a balance in any construction fund after payment of all costs of the reconstruction and repair for which the fund is established, the balance shall be disbursed to the Association.

The Insurance Trustee may rely upon a certificate of the Association certifying as to whether or not the damage to property is to be reconstructed or repaired. The

Association, upon request of the Insurance Trustee, shall deliver such certificate as soon as practicable.

Each Unit Owner shall be deemed to have delegated to the Board of Directors his right to adjust with insurance companies all losses under the insurance policies referred to in Article XIII, Sections A(1) and A(2) of this Amended Declaration, excepting Article XIII, Sections A(2)(f) and A(3).

In the event of substantial damage to or destruction of the Condominium Property, the Unit Owners, by the affirmative vote of those entitled to exercise not less than seventy-five percent (75%) of the voting power, may elect not to repair or restore the damage or destruction. Upon this election, all of the Condominium Property shall be subject to an action for sale upon partition as the suit of any Unit Owner. In the event of any sale, or a sale of the Condominium Property after such election by agreement of all Unit Owners, the net proceeds of the sale, together with the net proceeds of insurance, if any, and any other indemnity arising because of such damage or destruction, shall be considered as one fund and shall be distributed to all Unit Owners in proportion to their respective percentages of interest in the Common Elements. No Unit Owner is entitled to receive any portion of his share of such proceeds until all liens and encumbrances of his Unit have been paid, released, or discharged.

- B. Rehabilitation and Renewal.** The Association may, by the affirmative vote of Unit Owners entitled to exercise not less than seventy-five percent (75%) of the voting power, determine that the Condominium Property is obsolete in whole or in part, and elect to have the same renewed and rehabilitated. The Board of Directors of the Association shall thereupon proceed with such renewal and rehabilitation. The cost thereof shall be a Common Expense. Any Unit Owner who does not vote for such renewal and rehabilitation may make a request in a writing served by him on the President of the Association. This request must be made within five (5) days after receiving notice of such vote. The request may be to receive the fair market value of his Unit from the Association, less the amount of any liens and encumbrances thereon as of the date the vote was taken, in return for a conveyance by him of his Unit, subject to such liens and encumbrances, to the President of the Association as Trustee for all other Unit Owners. The Association shall have the option to either accept or reject such request and to determine what it considers to be the fair market value of the Unit. In order for the Board of Directors of the Association to exercise this option to purchase the Unit, the Board of Directors must act unanimously. In the event that this request is granted by the Association, then the Unit Owner and the Association must agree on the fair market value of the Unit. The fair market value cannot be less than the balance due on the first mortgage, if any, encumbering the Unit. Upon payment of the consideration therefor, if any, which shall be a Common Expense to the Unit Owners who have not so requested, conveyance shall be made within thirty (30) days after the Association and Unit Owner agree upon the fair market value. In the event that the Association does not exercise its option to acquire the Unit from the Unit Owner making this request, then the Unit Owner shall remain responsible for his share of the cost of such renewal and rehabilitation as a Common Expense.

**ARTICLE XV.
CONDEMNATION**

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

**ARTICLE XVI.
REMOVAL FROM CONDOMINIUM OWNERSHIP**

The Unit Owners, by unanimous vote, may elect to remove the Condominium Property from the provisions of the Condominium Act. In the event of such election, all liens and encumbrances, except taxes and assessments not then due and payable upon all or any part of the Condominium Property, shall be paid, released, modified, or discharged. A certificate setting forth that this election was made shall be recorded with the Recorder of Montgomery County, Ohio. This certificate shall be signed by the President of the Board of Directors of the Association who shall certify, under oath, that all liens and encumbrances, except taxes and assessments not then due and payable upon all or any part of the Common Elements, have been paid, released, modified or discharged. The certificate shall also be signed by all of the Unit Owners, each of whom shall certify, under oath, that all liens and encumbrances on the Units have been paid, released, or discharged.

**ARTICLE XVII.
NOTICES TO MORTGAGEES**

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

- A. Any proposed amendment of the Condominium Instruments effecting a change in (a) the boundaries of any Unit; (b) the undivided interest in the Common Elements appertaining to any Unit or the liability for Common Expenses appertaining to any Unit; or (c) the purposes to which any Unit or the Common Elements are restricted;
- B. Any proposed termination of the Condominium as a Condominium regime;
- C. Any condemnation or eminent domain proceeding affecting the Condominium Property or any part thereof, of which the Board obtains notice;
- D. Any significant damage or destruction to the Common Elements;
- E. Any decision by the Association not to restore substantial damage or destruction;
- F. Any decision by the Association to renew or rehabilitate the Condominium Property;

- G. Any decision by the Association to construct new capital improvements not replacing existing improvements;
- H. Times and places of Unit Owners meetings; and
- I. Any default under the Condominium Instruments which gives rise to a cause of action against a Unit Owner whose Unit is subject to the mortgage of such holder or insurer, where the default has not been cured in sixty (60) days.

**ARTICLE XVIII.
GENERAL PROVISIONS**

- A. **Covenants Running with the Land.** The covenants, conditions, restrictions, easements, reservations, liens, and charges created shall run with and bind the land and any part thereof. These covenants 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, the Association, and their respective heirs, executors, administrators, successors and assigns.
- B. **Enforcement.** The violation of any reasonable restriction, condition, Rule or Regulation adopted by the Board of Directors of the Association or the breach of any covenant or provision contained in this Amended Declaration or in the By-Laws shall give the Board of Directors the following rights:
 - 1. The right to enter upon the land or Unit or portion thereof upon which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Unit Owner, any structure, thing, or condition that may exist thereon contrary to the intent and meaning of the provisions of this Amended Declaration and the By-Laws, and the Board of Directors, or its agents, shall not thereby be deemed guilty in any manner of trespass; or
 - 2. The right to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach; provided, however, that in the exercise of any of the rights hereinbefore set forth, the Association shall have the obligation to restore any Unit in which it enters to the condition existing prior to the time of entry except insofar as it relates to the matter or thing to be removed.
 - 3. If any Owner (either by his own conduct or by the conduct of any other Occupant of his Unit) shall violate any of the Condominium Instruments or the reasonable Rules and Regulations adopted by the Board of Directors of the Association, and such violation shall continue for thirty (30) days after notice in writing from the Board of Directors of the Association, or shall occur repeatedly during any thirty (30) day period after written notice or request from the Board of Directors to cure such violation, then the Board of Directors shall have the power to issue to the defaulting Owner a ten (10) day notice in writing to terminate the rights of the defaulting Owner to continue as an Owner and to continue to occupy, use, or control his Unit. Thereupon, an action in equity may be filed by the Board of Directors against the defaulting Owner for either a decree of mandatory injunction

against the Unit Owner or Occupant. Subject to the prior consent in writing of any mortgagee having a security interest in the Unit of the defaulting Owner, which consent shall not be reasonably withheld, an action in equity may be filed seeking a decree declaring the termination of the defaulting Owner's right to occupy, use or control the Unit owned by him because of the breach of covenant. Such decree may order that all the right, title, and interest of the Owner in the Unit shall be sold (subject to the lien of any existing mortgage) at a judicial sale upon such notice and terms as the court shall establish. However, the court shall enjoin and restrain the defaulting Owner from reacquiring his interest at judicial sale. The proceeds of any judicial sale shall first be paid to discharge court costs, master's or commissioner's fees, court reporter charges, reasonable attorney fees, and all other expenses of the proceeding. All such items shall be taxed against the defaulting Unit Owner in the decree. Any balance of proceeds, after satisfaction of charges and any unpaid assessments or any liens, may be paid to the Unit Owner. Upon the confirmation of sale, the purchaser shall be entitled to a deed to the Unit and to immediate possession of the Unit sold. The purchaser may apply to the court for a writ of assistance for the purpose of acquiring such possession. The decree shall provide that the purchaser shall take the interest in the property sold subject to this Amended Declaration. The decision by the Board of Directors to proceed with an involuntary sale as hereinabove described shall be a unanimous one concurred in by all members of the Board of Directors in writing and made a permanent part of the records of the Association.

4. The Board shall have the right to levy an Enforcement Assessment against the Unit Owner, under the following procedure:
 - a. Prior to imposing a Charge for Damages or an Enforcement Assessment, the Board of Directors shall give the Unit Owner a written notice that includes all of the following:
 - i. A description of the property damage or violation;
 - ii. The amount of the proposed Charge or Assessment;
 - iii. A statement that the Unit Owner has a right to a hearing before the Board of Directors to contest the proposed Charge or Assessment;
 - iv. A statement setting forth the procedures to request a hearing;
 - v. A reasonable date by which the Unit Owner must cure the violation to avoid the proposed Charge or Assessment.
 - b. To request a hearing, the Unit Owner shall deliver a written notice to the Board of Directors not later than the tenth day after receiving the notice required above. If the Unit 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.

- c. If a Unit Owner requests a hearing, at least seven days prior to the hearing, the Board of Directors shall provide the Unit Owner with a written notice that includes the date, time, and location of the hearing.
 - d. The Board of Directors shall not levy a Charge or Assessment before holding any hearing requested pursuant to this section.
 - e. The Unit Owners, through the Board of Directors, may allow a reasonable time to cure a violation.
 - f. Within thirty (30) days following a hearing at which the Board of Directors imposes a Charge or Assessment, the Association shall deliver a written notice of the Charge or Assessment to the Unit Owner.
 - g. Any written notice that this section requires shall 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.
5. All Unit Owners, their tenants, all Persons lawfully in possession and control of any part of a Condominium Property, and the Association shall comply with all covenants, conditions, and restrictions set forth in a deed to which they are subject or in the Condominium Instruments and the Rules and Regulations. Violations of those covenants, conditions, or restrictions shall be grounds for the Association or any Unit Owner to commence a civil action for damages, injunctive relief, or both, and an award of court costs and reasonable attorneys fees in both types of action.
6. The Association may initiate eviction proceedings, pursuant to Chapters 5321 and 1923 of the Revised Code, to evict a tenant for violations of the Condominium Instruments. The action shall be brought by the Association as the Unit Owner's agent, in the name of the Unit Owner. In addition to any procedures required by Chapter 5321 and 1923, the Association shall give the Unit Owner at least ten days written notice of the intended eviction action. The costs of any eviction action brought pursuant to this section, including reasonable attorney's fees, shall be charged to the Unit Owner, shall be the subject of a special assessment against the offending Unit, and shall be made a lien against that Unit.
- C. Severability.** Invalidation of any one or more of the covenants, conditions, restrictions or easements contained in this Amended Declaration 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 Amended Declaration conflicts with mandatory provisions of the Condominium Act, the latter's requirements shall prevail. 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 Amended Declaration, which provisions shall remain in full force and effect.
- D. Notice of Mortgages.** Any Unit Owner who mortgages his ownership interest shall notify the Association, in such manner as the Association may direct, of the name and

address of his mortgagees. Thereafter, the Unit Owner shall notify the Association of the payment, cancellation, or other alteration in the status of such mortgages. The Association shall maintain such information in its working records. Upon written request to the Board of Directors of the Association, the holder of any duly recorded mortgage or trust deed against any Unit shall be given a copy of any and all notices and other documents permitted or required by the Condominium Instruments to be given to the Owner or Owners whose Unit is subject to such mortgage or trust deed and a copy of any lien filed by the Association.

- E. Captions.** The caption of each item and section is inserted only as a matter of convenience and for reference, and in no way defines, limits, or describes the scope or intent of this Amended Declaration nor in any way affects this Amended Declaration.
- F. Interpretation.** The provisions of this Amended Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the establishment and operation of a first class Condominium Property.
- G. Gender and Grammar.** The singular shall be construed to mean the plural when applicable. The necessary grammatical changes required to make the provisions hereof apply either to corporations, partnerships, men, or women, shall in all cases be assumed as though in such case fully expressed.

ARTICLE XIX. AMENDMENTS TO DECLARATION

- A.** This Amended Declaration and the By-Laws may be amended only by the affirmative vote of the Unit Owners entitled to exercise at least seventy-five percent (75%) of the voting power of the Association, except that any amendment purporting to alter the percentage of interest in the Common Elements of each Unit as expressed in this Amended Declaration shall not be adopted unless it is unanimously approved by all of the Unit Owners.
- B.** Any amendment of the Amended Declaration or the By-Laws attached must be filed for record with the Recorder of Montgomery County, Ohio. Such amendment must be executed with the same formalities as this Amended Declaration and must refer to the Microfiche Number in which this Amended Declaration and its attached exhibits are recorded. However, if any amendment adversely affects the value or priority of the security of any mortgage of record, the written consent of the mortgagee to that amendment shall be required. Any amendment of language specifically referring to mortgagees shall require the written consent of all mortgagees of record. Any amendment to this Amended Declaration affecting the percentage interest of Unit Owners in the Common Elements shall require an amendment to the table and schedule of percentage of interest in Common Elements to reflect the proportionate interest each Unit shall have based upon the proportion that the size (square footage) of each Unit bears at the date of amendment to the aggregate size (square footage) of all Units within the buildings on the Condominium Property. No provision hereto may be changed,

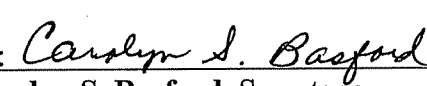
modified, or rescinded in any manner which, after such change, modification, or rescission, would conflict with the provisions of Chapter 5311 of the Ohio Revised Code.

**ARTICLE XX.
AGENT FOR SERVICE**

The Person to receive service of process for the Association, and that Person's residence or place of business, which is Montgomery County, Ohio, shall be designated by the Board of Directors.

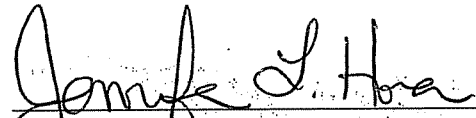
**DEER RUN CONDOMINIUM
ASSOCIATION, INC.,**
An Ohio Nonprofit Corporation

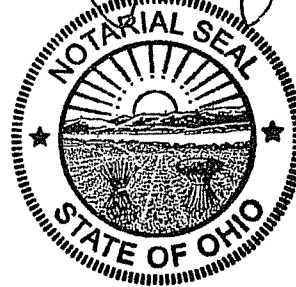
By: 
Thomas A. Wheeler, President

By: 
Carolyn S. Basford, Secretary

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

The foregoing instrument was acknowledged before me this 19th day of June, 2009, by **Thomas A. Wheeler**, President and **Carolyn S. Basford**, Secretary of Deer Run Owners' Association, Inc., an Ohio nonprofit corporation, on behalf of said corporation.


Notary Public



JENNIFER L. HOVER
Notary Public
In and for the State of Ohio
My Commission Expires
Feb. 23, 2014

This Instrument prepared by:
Amy Schott Ferguson, Esq.
Cuni, Ferguson & LeVay Co., L.P.A.
10655 Springfield Pike
Cincinnati, Ohio 45215
(513) 771-6768