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**DECLARATION OF CONDOMINIUM PROPERTY**

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**FOR**

0022206

**WATERFRONT PLACE CONDOMINIUM**

I hereby certify that copies of the within Declaration, together with the drawings attached as an Exhibit thereto, have been filed in the office of the Auditor, Montgomery County, Ohio.

Dated: 11/22/89

By: DANA A. STAMPS  
Montgomery County Auditor

PLAT REFERENCE:

BOOK

PAGE(S)

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**THIS INSTRUMENT PREPARED BY:**

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# DECLARATION

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## DECLARATION OF CONDOMINIUM OWNERSHIP

THIS DECLARATION, made on the date hereinafter set forth by CHARLES V. SIMMS DEVELOPMENT CORPORATION, an Ohio corporation, hereinafter referred to as "Declarant".

### RECITALS

A. Declarant is the owner in fee simple of the real property hereinbelow described, and it is its desire and intention to enable said real property, together with all building(s), structures, improvements and other permanent fixtures of whatsoever kind situated thereon, and all privileges belonging or in any way appertaining thereto, to be owned under and pursuant to that certain type of ownership commonly known as "Condominium", and to subject and submit such property to the provisions of Chapter 5311 of the Ohio Revised Code.

B. Declarant is further desirous of establishing for the mutual benefit of all future owners, mortgagees or occupants of the Condominium Property or any part thereof, which shall be known as **WATERFRONT PLACE CONDOMINIUM**, certain easements and rights in, over and upon such Condominium Property, and certain mutually beneficial restrictions and obligations with respect to the use, conduct and maintenance thereof.

C. Declarant desires and intends that the several owners, mortgagees, occupants and other persons hereafter acquiring an interest in the Condominium Property shall at all times enjoy the benefits of, and shall hold their interests therein subject to the rights, easements, privileges and restrictions hereinafter set forth in this Declaration, and in the By-Laws of Waterfront Place Condominium Association, Inc. attached hereto as Exhibit "C".

D. Declarant is also the owner of real property adjacent to and adjoining the real property submitted hereby and contemplates submitting such property to the provisions of this Declaration by an amendment or amendments hereto.

### DECLARATIONS

**NOW, THEREFORE**, Declarant hereby makes the following Declaration as to the covenants, restrictions, limitations, conditions and uses to which the Condominium Property may be put, hereby specifying that said Declaration shall constitute covenants to run with the land and shall be binding on Declarant, its successors and assigns, and all subsequent owners of all or any part of the Condominium Property, together with their respective grantees, heirs, executors, administrators, devisees, successors or assigns.



ARTICLE I  
DEFINITIONS

1.01 **General** The following terms used in the Declaration and By-Laws are defined as hereinafter set forth.

1.02 **Additional Property** shall mean adjacent or adjoining property which is described in Exhibit "D" and which, together with improvements thereon, may be added in the future to the Condominium.

1.03 **Agent** shall mean any person who represents or acts for or on behalf of the Developer in selling or offering to sell a Condominium Ownership Interest, but shall not include an attorney-at-law whose representation of another person consists solely of rendering legal services.

1.04 **Amendment and/or Amendments** shall mean an instrument executed with the same formalities of the Declaration and Recorded for the purpose of amending the Declaration, the By-Laws or any other Exhibits thereto.

1.05 **Articles and/or Articles of Incorporation** shall mean the articles, filed with the Secretary of State of Ohio, incorporating the Association as an Ohio not-for-profit corporation under the provisions of Chapter 1702 of the Ohio Revised Code, as the same may be lawfully amended from time to time.

1.06 **Association** shall mean Waterfront Place Condominium Association, Inc., an Ohio not-for-profit corporation, its successors and assigns.

1.07 **Board of Managers** shall mean those persons who as a group serve as the board of trustees of the Association.

1.08 **By-Laws** shall mean the By-Laws of the Association, which are attached as Exhibit "C" as the same may be lawfully amended from time to time, created under and pursuant to the provisions of Chapter 5311 of the Ohio Revised Code for the Condominium, and which also serve as the code of regulations of the Association under and pursuant to the provisions of Chapter 1702 of the Ohio Revised Code.

1.09 **Common Areas and/or Common Areas and Facilities** shall mean all the Condominium Property except that which is specifically defined and referred to as a Unit.

1.10 **Common Assessments** shall mean the assessments charged proportionately on the basis of Percentage of Ownership against all Units for common purposes.

1.11 **Common Expenses** shall mean those expenses designated as such by Chapter 5311 of the Ohio Revised Code, or in accordance with the provisions of the Declaration, or both.

1.12 **Common Losses** shall mean the amount by which the Common Expenses during any period of time exceeds Common Assessments and Common Profits during that period.

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

1.14 **Common Surplus** shall mean the amount by which Common Assessments collected during any period exceeds Common Expenses.

1.15 **Condominium** shall mean Waterfront Place Condominium, the condominium regime for the Condominium Property created under and pursuant to the provisions of Chapter 5311 of the Ohio Revised Code.

1.16 **Condominium Development** shall mean a Condominium Property in which two (2) or more individual Units together with their undivided interests in the Common Areas are offered for sale pursuant to a common promotional plan.

1.17 **Condominium Instruments** shall mean the Declaration, the Drawings and By-Laws attached as Exhibits thereto, any contract pertaining to the management of the Condominium Property, and all other documents, contracts or instruments establishing ownership or exerting control over the Condominium Property or a Unit.

1.18 **Condominium Ownership Interest** shall mean a fee simple estate or a ninety-nine (99) year leasehold estate, renewable forever in a Unit, together with its appurtenant undivided interest in the Common Areas.

1.19 **Condominium Property** shall mean land, all buildings, improvements and structures on the land, all easements, rights and appurtenances belonging to the land, and all articles of personal property submitted to the provisions of Chapter 5311 of the Ohio Revised Code by this Declaration and any Amendment.

1.20 **Control Period** shall mean a period of time five (5) years from the date on which this Declaration is Recorded or a period of time until seventy-five percent (75%) of the Condominium Ownership Interests have been sold and conveyed, whichever first occurs. For purposes hereof, the percentages of Condominium Ownership Interests sold and conveyed by Declarant shall be determined by comparing the Condominium Ownership Interests sold and conveyed, to the total number of Condominium Ownership Interests created and which may be created pursuant to the provisions of the Declaration.

1.21 **Conversion Condominium Development** shall mean a Condominium Development that was originally operated as a rental property occupied by tenants prior to the time that the Condominium Property is or was submitted to the provisions of Chapter 5311 of the Ohio Revised Code and the Units are offered for sale.

1.22 **Declarant** shall mean Charles V. Simms Development Corporation, an Ohio corporation, its successors and assigns.

1.23 **Declaration** shall mean the instrument by which the property hereinafter described is submitted to the provisions of Chapter 5311 of the Ohio Revised Code and any and all Amendments.

- 1.24 Developer shall mean the Declarant, any successor to the Declarant who stands in the same relation to the Condominium Property as the Declarant, and any person who directly or indirectly sells or offers for sale a Condominium Ownership Interest.
- 1.25 Development Period shall mean a period of time seven (7) years from the date on which this Declaration is Recorded.
- 1.26 Drawings shall mean those drawings, as the same may be lawfully amended from time to time, which are attached as Exhibit "B".
- 1.27 Exhibit shall mean any document or instrument attached to the Declaration.
- 1.28 Insurance Trustee shall mean any bank located in Montgomery County, Ohio with trust powers and total assets in excess of Fifty Million Dollars (\$50,000,000.00) which has been selected by the Association pursuant to the provisions of the Declaration.
- 1.29 Limited Common Areas and/or Limited Common Areas and Facilities shall mean and include those Common Areas designated in this Declaration and in an Amendment as reserved for the use of a certain Unit or Units to the exclusion of the other Units.
- 1.30 Majority of Unit Owners shall mean those Unit Owners holding fifty-one percent (51%) of the voting power of the Association.
- 1.31 Managing Agent shall mean a manager or managing agent retained or employed by the Association pursuant to the provisions of the Declaration.
- 1.32 Member depending on its context, shall mean a Unit Owner that is subjected hereto and/or a member of the Association.
- 1.33 Percentage of Ownership shall mean the ownership interest of each Unit in the Common Areas as set forth in the Declaration.
- 1.34 Person shall mean a natural individual, corporation, partnership, trustee, or other legal entity capable of holding title to real property.
- 1.35 Quorum shall mean the presence in person or by proxy of a Majority of Unit Owners.
- 1.36 Recorded shall mean the recording with the Recorder of Montgomery County, Ohio.
- 1.37 Rules and Regulations shall mean those rules and regulations as may be amended from time to time adopted by the Board of Managers.
- 1.38 Special Individual Unit Assessment shall mean an assessment levied or charged by the Board of Managers against a Unit or Units pursuant to the provisions of the Declaration which provides that a particular Unit or Units may be responsible for expenses, charges or costs which are not chargeable or assessable against all Units in the Condominium.

1.39 **Unit** shall mean a part of the Condominium Property consisting of one more rooms on one or more floors of a building(s) which are designated a Unit by this Declaration or Amendment thereto and are delineated on the Drawings and in the Drawings attached to an Amendment.

1.40 **Unit Owner** shall mean a Person who owns a Condominium Ownership Interest in a Unit.

## ARTICLE II

### NAME, PURPOSE AND ADMINISTRATION

2.01 **Name.** The Condominium Property shall be known as Waterfront Place Condominium.

2.02 **Purpose.** The Condominium Property shall be used for single family residence purposes and common recreational purposes auxiliary thereto and for no other purpose; provided, however, that Declarant or its agents may use one or more of the Units for sales, promotional, development, construction and office purposes.

2.03 **Administration.** The Condominium Property shall be administered in accordance with the provisions of the Declaration, the By-Laws and the Rules and Regulations, as the same may be amended from time to time. Each Unit Owner, tenant or occupant of a Unit shall comply with the provisions of the Declaration, the By-Laws and the Rules and Regulations together with the decisions and resolutions of the Board of Managers.

## ARTICLE III

### LEGAL DESCRIPTION OF PREMISES

3.01 **Legal Description.** The real property subject to this plan for condominium ownership is described in Exhibit "A" attached hereto.

## ARTICLE IV

### DESCRIPTION AND LOCATION OF BUILDING(S)

4.01 **General.** Unless or until amended, the following building(s) are located on the Condominium Property. These building(s) are generally described as follows:

- (a) Building 1 is two (2) stories in height containing twelve (12) flat Units.
- (b) Garage Buildings 1 and 2 are one (1) story in height containing a total of twelve (12) garage spaces designated as part of the Units for Building 1.

4.02 Specific. All of the building(s) are constructed on block or poured concrete walls, with frame exterior walls, some brick veneer, stucco and siding, windows, a wood truss roof with asphalt shingle or wood covering, wood floor joints, wall studs and drywall. A specific graphic description of the building(s) is set forth in the Drawings.

4.03 Location. The building(s) either face Mandel Drive, a public roadway or have access to Mandel Drive, as hereinafter indicated:

- (a) Building 1 and Garage Buildings 1 and 2 face Waterfront Place.

## ARTICLE V

### DESCRIPTION OF UNITS

5.01 General. Each of the Units within this Declaration, or any additional Units brought within the provisions of the Declaration by an Amendment shall consist of all of the space bounded by the undecorated surfaces of the perimeter walls, floors and ceilings of each such Unit, to constitute a complete enclosure of space, the dimensions, layouts and descriptions of each such Unit being shown on the Drawings and in the Drawings attached to an Amendment and including without limitation:

- (a) The decorated surfaces, including paint, lacquer, varnish, wallpaper, tile and other finishing material(s) applied to the interior surface of such perimeter walls, floors and ceilings;
- (b) All windows, screens and doors, including the frames, sashes and jams and the space occupied thereby;
- (c) All fixtures located within the bounds of a Unit, installed in and for the exclusive use of said Unit, commencing at the point of disconnection from the structural body of the building(s) or from the point of disconnection of utility pipes, lines or systems serving the entire building(s) or more than one Unit thereof, whichever may be applicable;
- (d) All control knobs, switches, thermostats and base plugs, floor plugs and connections affixed to or projecting from the walls, floors and ceilings which service either the Unit or the fixtures located therein;
- (e) All interior walls, floors and ceilings;
- (f) All plumbing, electric, heating, security, alarm, vacuum, cooling and other utility lines, pipes, wires, ducts or conduits which exclusively serve either the Unit or the fixtures located therein, and which are located within the bounds of the Unit.

But excepting therefrom, all plumbing, electric, heating, cooling and other utility service lines, pipes, wires, ducts or conduits which are located within the bounds of a Unit but which do not exclusively serve such Unit.

5.02 Type of Units. There are several different types of Units which are generally described as follows:

- (a) Malibu is a first floor, one (1) story flat containing approximately 996 square feet. The Unit may or may not have detached garage space of approximately 200 square feet. Section 5.03 and the Drawings indicate if garage space is included.
- (b) Laguna is a second floor, one (1) story flat containing approximately 996 square feet. The Unit may or may not have detached garage space of approximately 200 square feet. Section 5.03 and the Drawings indicate if garage space is included.

5.03 Designation of Units by Type. The following is a listing of the Units by their type:

<u>Unit No.</u>	<u>Type</u>
100, 104, 108, 112, 116, 120	Malibu with Garage
102, 106, 110, 114, 118, 122	Laguna with Garage

5.04 Room Configurations. Room configurations for a particular Unit are set forth in the Drawings for a particular Unit.

## ARTICLE VI

### DESCRIPTION OF COMMON AREAS

6.01 General. The entire balance of the land and improvements thereon, including but not limited to all buildings, foundations, roofs, main and supporting walls, patios, decks, balconies, driveways, parking areas, detention or retention ponds, trees, lawns, stoops, wires, conduits, utility lines and ducts, now or hereafter situated on the Condominium Property, are hereby declared and established as the Common Areas.

6.02 Easements. The Common Areas shall include and be subject to any easements granted or reserved on the Condominium Property.

6.03 Status. All Common Areas included in the Condominium subjected by the Declaration and any Amendment are fully installed, completed and in operation for the use of the Unit Owners.

## ARTICLE VII

### DESCRIPTION OF LIMITED COMMON AREAS

7.01 General Uses. All plumbing, electrical, heating, cooling and other utility service lines, pipes, wires, ducts and conduits which serve only one (1) Unit shall be Limited Common Areas for the exclusive use of the Unit served thereby.

7.02 Specific Uses. The areas hereinafter described, included within the Common Areas appurtenant to a Unit, are deemed Limited Common Areas designated as reserved for the exclusive use of the appurtenant Unit or Units as hereinafter set forth.

- (a) The patios and decks are designated as Limited Common Areas for the Unit adjoining such patio and deck.
- (b) The entranceways, stairways and stoops are designated as Limited Common Areas for the Unit(s) adjoining such entranceway, stairway and stoop.
- (c) The air conditioning pad, compressor, duct and conduits thereto are designated as Limited Common Areas for the Unit being serviced by such equipment.
- (d) Those additional areas shown, delineated and designated on the Drawings as Limited Common Areas for a particular Unit or building(s) are designated as Limited Common Areas for such Unit or Units within such building(s).

**ARTICLE VIII**  
**USE OF COMMON AREAS**

8.01 General. Each Unit Owner shall own an undivided interest in the Common Areas as a tenant in common with all other such Unit Owners and, except as otherwise limited in this Declaration and in the By-Laws, shall have the right to use the Common Areas for all purposes incident to the use and occupancy of his Unit as a place of residence and such other incidental uses as permitted by this Declaration and the By-Laws, including the non-exclusive easement, together with other Unit Owners to the use and enjoyment of the Common Areas and for ingress and egress to and from their respective Units, which right shall be appurtenant to and shall run with his Unit.

**ARTICLE IX**  
**OWNERSHIP OF COMMON AREAS**

9.01 Percentage of Ownership. Unless or until amended, the Percentage of Ownership of the Common Areas attributable to the ownership interest in each Unit and for the division of Common Profits, Common Surplus and Common Expenses, is as follows:

<u>Unit No.</u>	<u>Percentage of Ownership</u>	<u>Unit No.</u>	<u>Percentage of Ownership</u>
100	8.33 1/3	112	8.33 1/3
102	8.33 1/3	114	8.33 1/3
104	8.33 1/3	116	8.33 1/3
106	8.33 1/3	118	8.33 1/3
108	8.33 1/3	120	8.33 1/3
110	8.33 1/3	122	8.33 1/3

9.02 **Computation.** Each Unit's Percentage of Ownership as herein set forth was determined by comparing the square footage of such Unit to the total square footage of all of the Units on the date when this Declaration is Recorded, or stated in another way, the Percentage of Ownership of a particular Unit is equal to a fraction, the numerator of which is the square footage of such Unit and the denominator of which is the total square footage of all of the Units.

9.03 **Amendment.** Except as specifically provided for in this Declaration, the Percentage of Ownership as herein set forth shall not be altered except by an Amendment unanimously approved by all Unit Owners.

**ARTICLE X**  
**REGULATION OF COMMON AREAS**

10.01 **General.** The Board of Managers may by majority vote adopt reasonable Rules and Regulations and may amend the same which the Board of Managers may deem advisable for the maintenance, conservation and beautification of the Condominium Property and for the health, comfort, safety and general welfare of the Unit Owners and occupants of the Condominium Property. Written notice of the Rules and Regulations and copies thereof shall be made available to all Unit Owners and occupants of the Condominium Property.

10.02 **Penalties and Fines.** The Rules and Regulations may establish reasonable fines and penalties for violations of such Rules and Regulations. Any such fines and penalties shall be considered a Special Individual Unit Assessment against the Unit for which it is imposed or charged.

10.03 **Conflict.** In the event of any conflict between the Rules and Regulations and the provisions of the Declaration and/or By-Laws, the provisions of the Declaration and/or By-Laws shall govern.

**ARTICLE XI**  
**RESTRICTIONS ON THE USE OF CONDOMINIUM PROPERTY**

11.01 **Obstruction of Common Areas.** There shall be no obstruction of the Common Areas nor shall anything be stored in the Common Areas without the prior consent of the Board of Managers, except as hereinafter expressly provided.

11.02 **Hazardous Uses and Waste.** Nothing shall be done or kept in any Unit or in the Common Areas which will increase the rate of insurance on the building(s) or contents thereof applicable for residential use, without the prior written consent of the Board of Managers. No Unit Owner shall permit anything to be done or kept in his Unit or in the Common Areas which will result in the cancellation of insurance on the building(s) or contents thereof, or which would be in violation of any law. No waste will be committed in the Common Areas.

11.03 **Exterior Surfaces of Building(s).** Unit Owners shall not cause or permit anything to be hung or displayed on the outside or inside of windows or placed on the outside walls of a building, and no sign, awning, canopy, shutter, radio or



television antenna or receiving dish or disk shall be affixed to or placed upon the exterior walls or roof or any part thereof, without the prior consent on the Board of Managers, other than those originally provided by Declarant.

X 11.04 **Animals and Pets.** No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred or kept in any Unit or in the Common Areas, except that dogs, cats or other household pets may be kept in Units subject to the Rules and Regulations, provided that they are not kept, bred or maintained for any commercial purpose, and provided further, that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Condominium Property subject to these restrictions upon three (3) days written notice from the Board of Managers.

11.05 **Nuisances.** No noxious or offensive activity shall be carried on in any Unit or in the Common Areas nor shall anything be done therein, either willfully or negligently, which may be or become an annoyance or nuisance to the other Unit Owners or occupants.

11.06 **Impairment of Structural Integrity of Building(s).** Nothing shall be done in any Unit or in, on, or to the Common Areas which will impair the structural integrity of the building(s) or which would change the building(s).

X 11.07 **Laundry or Rubbish in Common Areas.** No clothes, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Common Areas. The Common Areas shall be kept free and clear of rubbish, debris and other unsightly materials.

X 11.08 **Lounging or Storage in Common Areas.** There shall be no playing, lounging, parking of campers or boats, inoperable vehicles, trucks, motorcycles, baby carriages, playpens, bicycles, wagons, toys, vehicles, benches or chairs on any part of the Common Areas except in accordance with the Rules and Regulations.

11.09 **Prohibited Activities.** No industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise, designated for profit, altruism, exploration or otherwise, shall be conducted, maintained or permitted on any part of the Condominium Property, nor shall any "For Sale" or "For Rent" signs or other window displays or advertising be maintained or permitted on any part of the Condominium Property. The right is reserved by the Declarant or his agent to place "For Sale" or "For Rent" signs on any unsold or unoccupied Unit. In addition, the right is hereby given to the Association or its representatives to place "For Sale" or "For Rent" signs on any Unit or on the Condominium Property for the purpose of facilitating the disposal of Units by any Unit Owner, mortgagee or the Association.

11.10 **Alteration of Common Areas.** Nothing shall be altered, constructed in, or removed from the Common Areas except as hereinafter provided, and except upon the written consent of the Board of Managers. The Board of Managers may delegate their authority hereunder to an architectural review committee.

11.11 **Rental.** The respective Unit shall not be rented by the Unit Owners thereof for transient or hotel purposes, which shall be defined as: (a) rental for any period less than sixty (60) days; or (b) any rental if the occupants of the Unit are provided customary hotel services such as room service for food and beverage, maid service, and furnishing of laundry and linen services. Other than the foregoing

obligations, and subject to the Rules and Regulations, the Unit Owners shall have the right to lease the same, provided that said lease is in writing and is made subject to the covenants and restrictions in this Declaration.

11.12 **Declarant.** Notwithstanding the above, the Declarant may do what is reasonably necessary to complete the additional building(s) and improvements on the Additional Property, including the storage of construction materials, construction office on location, and what is reasonably necessary to promote and sell the Units thereon constructed.

## ARTICLE XII UNIT OWNERS' ASSOCIATION

12.01 **General.** Declarant formed the Association to administer the Condominium Property. The Association shall be governed by this Declaration and the By-Laws. A Board of Managers and the officers of the Association elected as provided in the By-Laws shall exercise the powers, discharge the duties, and be vested with the rights conferred by operation of law, the By-Laws and by this Declaration, upon the Association, except as otherwise specifically provided; provided however, that in the event any such power, duty or right shall be deemed exercisable or dischargeable by or vested in an officer or member of the Board of Managers, he shall be deemed to act in such capacity to the extent required to authenticate his acts and to carry out the purposes of this Declaration and the By-Laws.

12.02 **Membership in the Association.** Membership in the Association is limited to Unit Owners. Each Unit Owner, upon acquisition of title to a Unit, shall automatically become a Member. Such membership shall terminate upon the sale or other disposition by such Member of his Condominium Ownership Interest, at which time the new Unit Owner shall automatically become a Member. Declarant shall be a Member as long as it retains title to any Unit.

12.03 **Voting Rights.** There shall be one (1) vote for each of the Units comprising the Condominium Property. The Unit Owner or Unit Owners of each Unit shall be entitled to one (1) vote for their Unit. In the event a Unit has been acquired by the Association in its own name or in the name of its agent, designee or nominee on behalf of all Unit Owners, the voting rights of such Unit shall not be exercised so long as it continues to be so held. If two (2) or more persons, whether fiduciaries, tenants in common or otherwise own individual interests in a Unit, each may exercise the proportion of the voting power of all the owners of the Unit that is equivalent to his proportionate interest in the Unit.

12.04 **Service of Process.** The person to receive service of process for the Association shall be the president of the Association. Until such time as a president is elected, service may be made upon Hans H. Soltau, 124 East Third Street, Suite 300, Dayton, Ohio 45402.

12.05 **First Meeting of Association.** A first meeting of the Association shall be held no later than the date on which twenty-five percent (25%) of the Condominium Ownership Interests have been sold and conveyed by the Declarant. The purpose of such meeting shall be to elect two (2) members to the Board of Managers from Unit Owners, other than Declarant.

12.06 **Declarant's Rights.** During the Control Period, the powers, rights, duties and functions of the Association shall be exercised by a Board of Managers selected by the Declarant; provided however, that no later than the date on which twenty-five percent (25%) of the Condominium Ownership Interests have been sold and conveyed by Declarant, two (2) members shall be elected by the Unit Owners, other than Declarant.

12.07 **Computation.** For purposes of the preceding, the percentages of Condominium Ownership Interests sold and conveyed by Declarant shall be determined by comparing the Condominium Ownership Interests sold and conveyed to the total number of Condominium Ownership Interests created and which may be created pursuant to the provisions of the Declaration.

12.08 **Turnover.** Within thirty (30) days after the expiration of any period during which the Developer exercises control over the Association pursuant to the provisions of the Declaration, the Association shall meet and elect all members of the Board of Managers and all other officers of the Association. The persons so elected shall take office immediately from such election. After said meeting, the Declarant shall deliver to such Board of Managers or officers, correct and complete books and records of account as provided by the By-Laws and Section 5311.09(A) of the Ohio Revised Code.

12.09 **Limitations.** The Association shall have no authority to pay for out of its maintenance fund any capital additions and improvements having a total cost in excess of Two Thousand Dollars (\$2,000.00), unless it is for the purpose of replacing or restoring portions of the Common Areas. The Association shall not authorize any structural alterations, capital additions to, or capital improvements of the Common Areas requiring any expenditure in excess of Two Thousand Dollars (\$2,000.00), without in each case, the prior approval of a Majority of Unit Owners.

12.10 **No Active Business to be Conducted for Profit.** Nothing contained in this Declaration or in the By-Laws shall be construed to give the Association authority to conduct active business for profit on behalf of the Unit Owners.

12.11 **Delegation of Duties.** The Board of Managers may and has the authority to delegate to persons, firms or corporations of its choice, such duties and responsibilities of the Association as it may from time to time specify, and to provide for reasonable compensation for the performance of such duties and responsibilities.

12.12 **Special Services.** The Board of Managers may arrange for the providing of any special services and facilities for the benefit of any Unit Owners that may desire to pay for the same. Fees or charges for such special services and facilities shall be determined by the Board of Managers and will be charged directly to the participating Unit Owners.

### ARTICLE XIII

### AMENDMENT OF DECLARATION AND BY-LAWS

13.01 **General.** Unless otherwise specifically provided for herein, this Declaration and the By-Laws may be amended only upon the affirmative vote of the Unit Owners entitled to exercise at least seventy-five percent (75%) of the voting

power of the Association. Any Amendment must be Recorded. Such Amendment must be executed with the same formalities as this Declaration and must refer to the microfiche number in which this Declaration and its attached Exhibits are Recorded.

**13.02 Mortgage or Mortgagee.** Any Amendment which adversely affects the value, priority or the security of any mortgagee of record shall require the written consent of such mortgagee of record. Any Amendment affecting the underwriting requirements of any mortgagee shall require the written consent of such mortgagee and also F.H.L.M.C. or F.N.M.A. if required by such mortgagee. Any Amendment affecting language specifically referring to mortgagees shall require the written consent of all mortgagees of record.

**13.03 Declarant's Rights.** Any Amendment affecting any rights granted or reserved to the Declarant by the Declaration or By-Laws shall require the written consent of the Declarant.

**13.04 Limited Declarant's Right.** In addition to any other rights granted Declarant in this Declaration, the Declarant shall have and hereby reserves the right and power, and each Unit Owner by the acceptance of a deed is deemed to and does give, grant and confer to Declarant a power of attorney, which right and power is coupled with an interest and runs with title to the Unit and is irrevocable during the Control Period to amend this Declaration, the By-Laws or any other Exhibits hereto and to execute any and all documents deemed necessary or desirable by Declarant to conform to its development plans, or requirements of any lending institution, or to correct scrivener or typographical mistakes or drafting inconsistencies.

#### ARTICLE XIV

#### MANAGEMENT, MAINTENANCE, REPAIRS, ALTERATIONS AND IMPROVEMENTS

**14.01 Association.** Except as otherwise provided herein, management, maintenance, repairs, alterations and improvements of the Common Areas shall be the responsibility of the Association.

**14.02 Delegation to Managing Agent.** The Association may delegate all or any portion of its authority to discharge its responsibility to a Managing Agent, subject to the limitations that:

- (a) Any such delegation be by a written contract with a term of no longer than one (1) year in duration;
- (b) That any such contract be terminable by either party without cause upon sixty (60) days written notice without any termination charges or other penalties;
- (c) That any such contract entered into by the Declarant prior to the time it releases or relinquishes control of the Association shall terminate when the Declarant releases or relinquishes such control unless such contract is renewed by a vote of the Unit Owners at the meeting called for the purpose of turning over control of the Association.

14.03 Mortgagee. A Managing Agent may be required by any lending institution holding mortgages on over fifty-one percent (51%) of the Units, or by any group of lending institutions who in the aggregate hold mortgages on over fifty-one percent (51%) of the Units. The Association shall provide such mortgagee or mortgagees as the case may be, with a copy of any management agreement entered into by the Association and such Managing Agent.

14.04 Unit Owner. The responsibility of each Unit Owner shall be as follows:

- (a) To maintain, repair and replace, at his expense, all portions of his Unit and all internal installations of such Unit such as appliances, heating, plumbing, electrical and air conditioning fixtures or installations, and any portion of any other utility service facilities located within the Unit boundaries and which exclusively serve such Unit.
- (b) To maintain, repair and replace, at his expense those areas or items which are designated by this Declaration as Limited Common Areas for the exclusive use of such Unit Owner.
- (c) To maintain, repair and replace the springs, tracks or any other mechanism relating to the garage doors, including without limitation, any garage door opener and the mechanisms associated therewith whether installed by the Developer or Unit Owner.
- (d) To maintain, repair and replace, at his expense, all portions of the Common Areas which may be damaged or destroyed by reason of the willful or uninsured negligent act or neglect of himself, or by the willful or uninsured negligent act or neglect of any invitee, licensee or guest of such Owner.
- (e) To perform his responsibilities in such a manner so as not to unreasonably disturb other persons residing within the Condominium Property.
- (f) To promptly report to the Association or its Managing Agent any defect or need for repairs, the responsibility of which is with the Association.
- (g) Not to make any alterations in the portions of the Unit or the building(s) which are to be maintained by the Association or remove any portion thereof or 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 Board of Managers and of the Unit Owner or Unit Owners of whose benefit such easement exists.

14.05 Exterior Surfaces. Any exterior maintenance, repair or replacements to be performed by a Unit Owner shall be subject to the prior approval of the Board of Managers or its delegated committee. The Board of Managers may adopt guidelines or other criteria setting forth standards for such maintenance, repair or replacement. Pursuant to such standards, the Board of Managers or its committee may require that only certain types and/or manufacturers be used for replacements to the exterior surfaces in order to assume conformity.

14.06 Failure to Maintain. In the event a Unit Owner shall fail to maintain his Limited Common Area to such extent that in the opinion of the Board of Managers the conditions require maintenance, repair or service for purposes of protecting the public safety or residents in or visitors to the Condominium, or in order to prevent or avoid damage or destruction of any part, portion or aspect of the value thereof, the Association shall have the right, upon approval of the majority of the Board of Managers, to enter upon that Limited Common Area and maintain, repair or service the same. The cost of such maintenance, repair or service shall be added to and become a Special Individual Unit Assessment chargeable to such Unit.

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

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

## ARTICLE XV EASEMENTS

15.01 Encroachments. In the event that by reason of the construction, settlement or shifting of a building(s) or by reason of the partial or total destruction and rebuilding of a building, any part of a building(s) presently encroaches or shall hereafter encroach upon any part of the Common Areas, or if by reason of the design or construction of any Unit it shall be necessary or advantageous to a Unit Owner to use or occupy for formal uses and purposes any portions of the Common Areas consisting of unoccupied space within a building(s) and adjoining his Unit, or if by reason of the design or construction of utility systems, any main pipes, ducts or conduits serving either any other Unit or more than one Unit, presently encroaches or shall hereafter encroach upon any part of any Unit, then valid easements for the maintenance of such encroachment and for the use of such adjoining space are hereby established and shall exist for the benefit of such Unit and the Common Areas as the case may be, so long as all or any part of a building(s) containing such Unit shall remain standing; provided however, that no valid easement for any encroachment shall be created in favor of the Unit Owner of any Unit or in favor of the Common Areas, if such encroachment is caused by the willful conduct of said Unit Owner.

- 15.02 **Easements for Repair, Maintenance and Restoration.** The Association shall have a right of access and an easement to, over and through all of the Condominium Property, including each Unit, for ingress and egress and all other purposes which enable the Association to perform its obligations, rights and duties with regard to maintenance, repair and restoration, provided that exercise of this easement, as it affects the individual Units, shall be at reasonable times with reasonable notice to the individual Unit Owners. Any damage resulting to a particular Unit through the provisions of this Article shall be repaired by the Association, the cost of which will be a Common Expense to all of the Unit Owners.
- 15.03 **Easements Through Walls Within Units.** Easements are hereby declared and granted to the Association to install, lay, maintain, repair and replace the pipes, wires, ducts, conduits, public utility lines, or structural components running through the walls of the Units, whether or not such walls be in whole or in part within the Unit boundaries. The Unit Owner shall have the permanent right and easement to and through the Common Areas and walls for the use of water, sewer, power, television antenna and other utilities now or hereafter existing within the walls, and further shall have an easement to hang pictures, mirrors and the like upon the walls of the Unit. Any damage resulting to a particular Unit as a result of the easement herein granted to the Association, shall be repaired by the Association, the cost of which will be a Common Expense to all of the Unit Owners.
- 15.04 **Easements for Certain Utilities and Cable Television.** The Association may hereafter grant easements on behalf of Unit Owners to entities for utility and cable television purposes for the benefit of the Condominium Property.
- 15.05 **Easements for Construction.** Declarant hereby reserves for itself a right and easement to enter upon the Common Areas to do all things necessary to complete construction and to complete development of the Condominium Property, including the Additional Property.
- 15.06 **Tie-In Easements.** Declarant reserves the right and easement over, on and under the Common Areas to use, tie into and extend all existing utility lines for purposes of serving the Additional Property and any other adjoining property which it may own or acquire during the period in which it has the right to add the Additional Property.
- 15.07 **Service Easements.** An easement is hereby granted to all police, firemen, ambulance operators, mailmen, deliverymen, garbage and trash removal personnel, and all other similar persons and to the local governmental authorities, but not the public in general, to enter upon the Common Areas in the performance of their duties.
- 15.08 **Water Easement.** The Association shall have a right and easement to the exterior water taps or faucets of any Unit for the purpose of watering any Common Area landscaping; provided however, that such use shall be reasonable and the Association shall reimburse the Unit Owner for any excessive use of water.
- 15.09 **Emergency Easement.** The Association and its Managing Agent shall have a right of entry and easement to any Unit in the case of an emergency originating in or threatening such Unit, whether the Unit Owner is present at the time or not.

15.10 Additional Property Easement. Declarant hereby reserves a right to grant and/or reserve an easement for ingress and egress over and through the Common Areas for itself and for the benefit of any subsequent owner or owners or part of all of the Additional Property.

15.11 Recreational Easement and Right to Use. In addition to the preceding Section, Declarant reserves the right to grant and permit any owner or subsequent owners of the Additional Property the right to use and enjoy the pool and other amenities on the Common Area, provided however any such right shall be subject to the Rules and Regulations and a reasonable fee not to exceed \$75.00 per year, per family unit.

15.12 Consent to Easements. Each Unit Owner hereby grants and the transfer of title to a Unit Owner shall be deemed to grant the Declarant an irrevocable power of attorney to execute, acknowledge and record for and in the name of such Unit Owner, and his mortgagee or mortgagees, such instruments as may be necessary to effectuate any easements granted or reserved by the Declarant in this Article.

15.13 Easements Shall Run With Land. All easements and rights herein described are 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 the Declarant, its successors and assigns and any owner, purchaser, mortgagee and any other person having an interest in said land, or any part or portion thereof. Failure to refer specifically to any or all of the easements described in this Declaration in any deed of conveyance or in any mortgage or trust deed or other evidence of obligation shall not defeat or fail to reserve said easements, but same shall be deemed conveyed or encumbered along with the Unit.

## ARTICLE XVI HAZARD INSURANCE

16.01 Fire and Extended Coverage Insurance. The Association shall obtain and maintain for the benefit of all Unit Owners and mortgagees, insurance on all building(s), structures or other improvements now or at any time hereafter constituting a part of the Condominium Property against loss or damage by fire, lightning and such perils as are at this time comprehended within the term "extended coverage", with no co-insurance and in an amount not less than one hundred percent (100%) of the replacement value thereof. In the event such policy contains co-insurance provisions, such policy shall contain an agreed amount endorsement. Such insurance shall be written in the name of and the proceeds thereof shall be payable to the Association for each of the Unit Owners and mortgagees for the purposes set forth herein, in accordance with the Percentage of Ownership. The policy providing such coverage shall provide that no mortgagee shall have any right to apply the proceeds thereof to the reduction of any mortgage debt. Said policy shall also provide that despite any clause that gives the insurer the right to restore damage in lieu of a cash settlement, such right shall not exist in case the Condominium Property is removed from the provisions of Chapter 5311 of the Ohio Revised Code pursuant to the provisions of this Declaration. Such policy shall provide coverage for built-in installed fixtures and equipment in an amount not less than one hundred percent (100%) of the replacement value thereof, and shall also



provide that the insurer shall have no right to contribution from any insurance which may be purchased by any Unit Owner as hereinafter permitted.

**16.02 Prohibition.** No Unit Owner may purchase an individual policy of fire and extended coverage insurance for his Unit or his interest in the Common Areas as real property. If irrespective of this prohibition a Unit Owner purchases an individual policy insuring such Unit or interest, said Unit Owner shall be responsible to the Association for any loss or expense that such policy may cause in adjusting the Association's insurance and such amount of loss shall be a lien on his Unit and enforced in the manner provided for in the Declaration.

**16.03 Certificates and Notice of Cancellation.** Such policy of insurance shall contain provisions requiring the issuance of certificates of coverage and the issuance of written notice not less than ten (10) days prior to any expiration or cancellation of such coverage to any mortgagee or mortgagees of any Unit.

**16.04 Subrogation.** Such policy shall also provide for the release by the issuer thereof of any and all rights of subrogation or assignment and all causes and rights of recovery against any Unit Owner, member of his family, his tenant or other occupant of the Condominium Property, for recovery against any one of them for any loss occurring to the insured property resulting from any of the perils insured against under such insurance policy.

**16.05 Mortgagee's Rights.** If the required insurance coverage under this Article ceases to exist for any reason whatsoever, any mortgagee of any portion of the Condominium Property may remedy that lack of insurance by purchasing policies to supply that insurance coverage. The funds so advanced shall be deemed to have been loaned to the Association, shall bear interest at a per annum rate two percent (2%) higher than the basic interest rate in any note secured by the mortgagee's mortgage against a portion of the Condominium Property, and shall be due and payable to the mortgagee by the Association immediately. The repayment of said obligation shall be secured by an assessment against all Unit Owners and shall not require a vote of the Members, anything to the contrary in this Declaration notwithstanding.

**16.06 Sufficient Insurance.** In the event the improvements forming a part of the Condominium Property or any portion thereof shall suffer damage or destruction from any cause or peril insured against and the proceeds of any policy or policies insuring against such loss or damage and payable by reason thereof shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken by the Association and the insurance proceeds shall be applied by the Association in payment therefor; provided however, that in the event, within thirty (30) days after such damage or destruction, the Unit Owners, if they are entitled to do so pursuant to the provisions of the Declaration, shall elect to sell the Condominium Property or to withdraw the same from the provisions of this Declaration, then such repair, restoration or reconstruction shall not be undertaken.

**16.07 Insufficient Insurance.** In the event the improvements forming a part of the Condominium Property or any portion thereof shall suffer damage or destruction from any cause or peril which is not insured against, or if insured against the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction thereof, unless the Unit Owners shall within ninety (90) days after such damage or destruction, if they are entitled to do so pursuant to

the provisions of the Declaration, elect to withdraw the property from the provisions of this Declaration, such repair, restoration or reconstruction of the Units so damaged or destroyed shall be undertaken by the Association at the expense of all the Unit Owners in the same proportions in which they shall own the Common Areas. Should any Unit Owner refuse or fail, after reasonable notice, to pay his share of such cost in excess of available insurance proceeds, the excess shall be assessed to such Unit Owner and such assessments shall have the same force and effect and, if not paid, may be enforced in the same manner as hereinbefore provided for the non-payment of assessments.

**16.08** Procedure for Reconstruction or Repair. Immediately after a casualty causing damage to any portion of the Condominium Property the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as that before the casualty. Such costs may include professional fees and premiums for such bonds as the Board of Managers deems necessary.

**16.09** Construction Funds. The insurance proceeds and the sums received by the Association from the collection of assessments against Unit Owners on account of such casualty shall be considered a special construction fund to be disbursed by the Association to the payment of the cost of reconstruction and repair of the Condominium Property from time to time as the work progresses. It shall be presumed that the first monies disbursed in payment of such costs of reconstruction and repair shall be from insurance funds.

**16.10** Adjustment. Each Unit Owner shall be deemed to have delegated to the Board of Managers his right to adjust with insurance companies all losses under the insurance policies referred to in the Declaration.

**16.11** Non-Restoration of Damage or Destruction. In the event of substantial damage to or destruction of two-thirds (2/3) or more of the Units, 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 such damage or destruction. Upon such election, all of the Condominium Property shall be subject to an action for sale as upon partition by any Unit Owner. In the event of any such sale or a sale of the Condominium Property after such election by agreement of all Unit Owners, the net proceeds of the sale, together with the net proceeds of insurance, if any, and any other indemnity arising because of such damage or destruction, shall be considered as one fund and shall be distributed to all Unit Owners in proportion to their respective Percentage of Ownership. No Unit Owner shall receive any portion of his share of such proceeds until all liens and encumbrances on his Unit have been paid, released or discharged.

**16.12** Deductible. Any amounts paid by the Association on the account of any insurance claim shall be a Special Individual Unit Assessment against the Unit for which such claim was presented.

## ARTICLE XVII INSURANCE TRUSTEE

**17.01** General. At the option of the Declarant, or upon the written request by any lending institution holding mortgages on over fifty-one percent (51%) of the Units, or by any group of lending institutions who in the aggregate hold mortgages

on over fifty-one percent (51%) of the Units, the Association shall select an Insurance Trustee for the purposes herein set forth.

**17.02**     Selection Prior to a Loss. If such selection is prior to any loss, the Association shall make all insurance policies under the Declaration payable to such Insurance Trustee for and on behalf of each of the Unit Owners and mortgagees for the purposes set forth in the Declaration in accordance with the Percentage of Ownership. All insurance policies shall be deposited with the Insurance Trustee who must first acknowledge that the policies and any proceeds thereof will be held in accordance with the terms hereof.

**17.03**     Selection After a Loss. If such selection of an Insurance Trustee is after a loss, the Association shall pay over to the Insurance Trustee any funds received under such insurance policies and resulting from any assessments against the Unit Owners. Said funds are to be held by the Insurance Trustee in accordance with the provisions hereof.

**17.04**     Non-Liability. The Insurance Trustee shall not be liable for payment of premiums, nor for the renewal of the policies, nor for the form or contents of the policies, nor for the failure to collect any insurance proceeds. The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein and for the benefit of the Association, the Unit Owners and their respective mortgagees.

**17.05**     Procedure for Reconstruction or Repair if an Insurance Trustee Has Been Selected. The insurance proceeds and the sums deposited with the Insurance Trustee by the Association from collections of assessments against Unit Owners on account of such casualty, shall constitute a construction fund which shall be disbursed to the Insurance Trustee and be applied 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. Said Insurance Trustee shall make such payments upon the written request of the Association, accompanied by a certificate dated not more than fifteen (15) days prior to such request, signed by a responsible officer of the Association and by an architect in charge of the work who shall be selected by the Association, setting forth: (a) that the sum then requested either has been paid by the Association or is justly due to contractors, subcontractors, materialmen, architects or other persons who have rendered services or furnished materials in connection with the work, giving a brief description of the services and materials, and that the sum requested does not exceed the value of the services and materials described in the certificate; (b) that except for the amount stated in such certificate to be due as aforesaid and for work subsequently performed, there is no outstanding indebtedness known to the person signing such certificate after due inquiry which might become the basis of a vendor's, mechanic's, materialman's or similar lien arising from such work; and (c) that the cost, as estimated by the person signing such certificate, of the work remaining to be done subsequent to the date of such certificate, does not exceed the amount of the construction fund remaining in the hands of the Insurance Trustee after the payment of the sum so requested. It shall be presumed that the first monies disbursed in payment of such costs of reconstruction and repair shall be from insurance proceeds and if there is a balance in any construction fund after payment of all costs of the reconstruction and repair for which the fund is established, such balance shall be disbursed to the Association.

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

ARTICLE XVIII  
LIABILITY AND OTHER INSURANCE

18.01 Liability Insurance. As a Common Expense, the Association shall insure itself, the Board of Managers, all Unit Owners and members of their respective families and other persons residing with them in the Condominium Property, their tenants, and all persons lawfully in the 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 destruction of property occurring upon, in or about, or arising from the Common Areas; such insurance to afford protection to a limit of not less than One Million Dollars (\$1,000,000.00) in respect to bodily injury, disease, illness or death suffered by any one person, and to the limit of not less than One Million Dollars (\$1,000,000.00) in respect to any one occurrence, and to the limit of not less than One Hundred Thousand Dollars (\$100,000.00) in respect to damage to or destruction of property arising out of any one accident.

18.02 Prohibition. 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 Areas appertaining thereto.

18.03 Insufficient Liability Insurance. In the event that the proceeds of any liability policy be insufficient, any deficit shall be charged to all Unit Owners as a Special Individual Unit Assessment.

18.04 Other Insurance. The Association shall also obtain such additional insurance as the Board of Managers considers necessary, including without limitation, fidelity bonds for anyone who either handles or is responsible for funds held or administered by the Association.

18.05 Amount of Fidelity Coverage. The amount of such fidelity bond shall be equal to, at a minimum, the maximum funds that will be in the custody of the Association at any time such bond is in effect. In addition, such fidelity bond coverage must equal the sum of three (3) months Common Assessments, together with the reserve funds, if any.

18.06 Notice of Cancellation or Substantial Changes. Any insurance coverage obtained by the Association shall contain a provision requiring the insurer to notify the Association and any mortgagee named in the mortgage clause, if applicable, in writing of the cancellation or a substantial change of coverage at least thirty (30) days prior to such cancellation or substantial change.

18.07 Annual Review. The amounts and coverage of each insurance policy obtained by the Association shall be reviewed annually by the Board of Managers.

ARTICLE XIX  
REHABILITATION AND RENEWAL OF OBSOLETE PROPERTY

19.01 **General.** 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 Managers shall thereupon proceed with such renewal and rehabilitation and the cost thereof shall be a Common Expense. Any Unit Owner who does not vote for such renewal and rehabilitation may elect, in a writing served by him on the President of the Association within five (5) days after receiving notice of such vote, to receive the fair market value of his Unit, less the amount of any liens and encumbrances thereon as of the date such vote is taken, in return for a conveyance of his Unit, subject to such liens and encumbrances, to the President of the Association as trustee for all other Unit Owners. In the event of such election, such conveyance and payment of the consideration therefor, which shall be a Common Expense to the Unit Owners who have not so elected, shall be made within ten (10) days thereafter, and, if such Unit Owner and a majority of the Board of Managers cannot agree upon the fair market value of such Unit, such determination shall be made by the majority vote of three (3) appraisers, one of which shall be appointed by such Unit Owner, one of which shall be appointed by the Board of Managers and the third of which shall be appointed by the first two appraisers.

ARTICLE XX  
REMEDIES FOR BREACH OF COVENANTS AND RESTRICTIONS

20.01 **Abatement and Enjoinment.** The violation of any restriction or condition or regulation adopted by the Board of Managers, or the breach of any covenant or provision contained in this Declaration or in the By-Laws shall give the Board of Managers the right, in addition to the rights hereinafter set forth in this section: (a) to enter upon the land or Unit 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 Declaration and the By-Laws and the Board of Managers, or its Managing Agent, shall not be thereby deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

20.02 **Involuntary Sale.** If any Unit Owner, either by his own conduct or by the conduct of any other occupant of his Unit, shall violate any of the covenants or restrictions or provisions of this Declaration, or of the By-Laws, or the Rules and Regulations, and such violation shall continue for thirty (30) days after notice in writing from the Board of Managers, or shall occur repeatedly during any thirty (30) day period after written notice or request from the Board of Managers to cure such violation, then the Board of Managers shall have the power to issue to the defaulting Unit Owner a ten (10) day notice in writing to terminate the rights of the said defaulting Unit Owner to continue as a Unit Owner and to continue to occupy, use or control his Unit, and thereupon an action in equity may be filed by the Board of Managers against the defaulting Unit Owner for a decree of mandatory

injunction against the Unit Owner or occupant or, subject to the prior consent in writing of any mortgagee having a security interest in the Unit ownership of the defaulting Unit Owner, which consent shall not be unreasonably withheld, in the alternative a decree declaring the termination of the defaulting Unit Owner's right to occupy, use or control the Unit owned by him on account of the breach of covenant, and ordering that all the right, title and interest of the Unit Owner in the property 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, except that the court shall enjoin and restrain the defaulting Unit Owner from re-acquiring his interest at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, masters or commissioner's fees, and all other expenses of the proceedings, and all such items shall be taxes against the defaulting Unit Owner in said decree. Any balance of proceeds after satisfaction of such charges and any unpaid assessments hereunder or any liens, other than that of the first mortgage, may be paid to the Unit Owner. Upon the confirmation of such sale the purchaser thereat shall thereupon be entitled to a deed to the Unit ownership and to immediate possession of the Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession and it shall be a condition of any such sale and the decree shall so provide that the purchaser shall take the interest in the property sold subject to this Declaration.

**20.03 Civil Action.** Declarant, Developer, Agent, Unit Owner, or any person entitled to occupy a Unit of a Condominium Property is liable in a civil action for damages caused to any person by his failure to comply with any lawful provision of the Condominium Instruments. Any interested person may commence an action for a declaratory judgment to determine his legal relations under the Condominium Instruments or to obtain an injunction against a Declarant, Developer, Agent, Unit Owner, or person entitled to occupy a Unit who refuses to comply, or threatens to refuse to comply, with any provision of the instruments. One or more Unit Owners may bring a class action on behalf of all Unit Owners. The lawful provisions of the Condominium Instruments may, if necessary to carry out their purposes, be enforced against the Condominium Property or any person who owns or has previously owned any interest in the Condominium Property.

**20.04 Proper Party.** An action by the Association under this Article may be commenced by the Association in its own name or in the name of its Board of Managers or in the name of its Managing Agent.

## ARTICLE XXI

### ASSESSMENTS AND LIEN OF ASSOCIATION

**21.01 General.** Assessments for the maintenance, repair and insurance of the Common Areas and for the insurance of the Units, together with the payment of the Common Expenses, shall be made in the manner provided herein and in the manner provided in the By-Laws.

**21.02 Division of Common Profits and Common Expenses.** The proportionate shares of the separate Unit Owners of the respective Units for the Common Profits and Common Expenses of the operation of the Condominium Property shall be in accordance with their Percentage of Ownership. \*

21.03 **Non-Use of Facilities.** No Unit Owner may exempt himself from liability for his contribution toward the Common Expenses by waiver of the use or enjoyment of any of the Common Areas or by the abandonment of his Unit.

21.04 **Acceleration and Late Charges.** If any assessments are not paid within ten (10) days after the same has become due, the Board of Managers, at its option, without demand or notice, may: (a) declare the assessment and if a monthly assessment such monthly assessment plus all monthly assessments remaining on the then current budget, immediately due and payable; and (b) charge a late charge not to exceed \$20.00 and/or interest on any unpaid balance at a rate equal to two percent (2%) above prime as being charged by The First National Bank, Dayton, Ohio, or any successor thereof.

21.05 **Lien of Association.** The Association shall have a lien upon the estate or interest in any Unit and its Percentage of Ownership in the Common Areas for the payment of any delinquent assessments chargeable against such Unit. At any time after such delinquency, a certificate of lien for all or any part of the unpaid assessments, including late charges, interest and if monthly assessments are delinquent, then the remaining unpaid monthly assessments under the then current budget may be Recorded pursuant to authorization given by the Board of Managers. The certificate shall contain a description of the Unit against which the lien exists, the name or names of the record Unit Owner(s) thereof, and the amount of the delinquency, and shall be signed by the President of the Association.

21.06 **Term and Validity of Lien.** The lien provided for in the preceding Section 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 in the state of Ohio for the release and satisfaction of mortgages or real property, or discharged by the final judgment or order of a court in an action brought to discharge the lien.

21.07 **Priority of Association's Lien.** The lien provided for in the preceding Section is prior to any lien or encumbrance subsequently arising or created except liens for real estate taxes and assessments and liens of bona fide 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 its President, pursuant to authority given to him by the Board of Managers. In the foreclosure action the Unit Owner shall be required to pay a reasonable rental for the Unit during the pendency of the action, and the plaintiff in the action is entitled to the appointment of a receiver to collect the rental. In the foreclosure action the Association, duly authorized by action of its Board of Managers, is entitled to become a purchaser at the foreclosure sale.

21.08 **Special Individual Unit Assessment.** Notwithstanding anything to the contrary herein, if the Association shall incur any cost or expense, including without limitation filing fees and/or attorney's fees, for or on account of any item of maintenance, repair or other matter directly or indirectly occasioned or made necessary by any wrongful or negligent act or omission or failure to pay assessments or comply with the provisions of the Declaration or Rules and Regulations of and by any Unit Owner or his invitees or lessees, such cost or expense shall be borne by such Unit Owner and not by the Association, and if paid by the Association, shall be paid or reimbursed to the Association by such Unit Owner as a Special Individual Unit Assessment forthwith upon the Association's demand.

21.09 Dispute as to Common Expenses. Any Unit Owner who believes that the portion of Common Expenses chargeable to his Unit for which a certificate of lien has been filed by the Association has been improperly charged against him or his Unit may commence an action for the discharge of such lien in the Court of Common Pleas for Montgomery County, Ohio. \*

21.10 Non-Liability of Mortgagee for Past Due Common Expenses. When the mortgagee of a first mortgage of record acquires title to the Unit as a result of the remedies provided in such mortgage or a foreclosure of the first mortgage, such mortgagee, its 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 mortgagee. 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 mortgagee, its successors or assigns.

21.11 Liability for Assessments Upon Voluntary Conveyance. In a voluntary conveyance of a Unit 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 up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, upon request, any such grantee and his mortgagee shall be entitled to a statement from the Board of Managers 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.

## ARTICLE XXII

### ADDITIONAL PROPERTY

22.01 Contemplated Annexation by Declarant. Declarant is the owner in fee simple of the Additional Property. It is the desire of the Declarant to submit the Additional Property, together with the building(s) and other improvements to be constructed thereon, and all easements, rights and appurtenances belonging thereto, and all articles of personal property existing for the common use of the Unit Owners to the provisions of this Declaration and Chapter 5311 of the Ohio Revised Code, so that the same will become in all respects part of the Condominium Property.

22.02 Reservation of Option to Expand. Declarant hereby expressly reserves the option at any time during the Development Period, to take the action so contemplated in submitting all or any part of the Additional Property, together with the building(s) and other improvements to be built thereon, and all easements, rights and appurtenances belonging thereto, and all articles of personal property existing for the common use of the Unit Owners to the provisions of this Declaration and Chapter 5311 of the Ohio Revised Code, so that the same will become, in all respects, part of the Condominium Property.



- 22.03 **Limitations on Declarant's Option.** Unless otherwise specified in this Article, there are no limitations on Declarant's option to annex or add the Additional Property to the Condominium Property. The consent of Unit Owners to annex or add such Additional Property is not required.
- 22.04 **Additional Property.** Declarant, in its absolute discretion, may annex or add all or any part of the Additional Property in whatever quantity, amount, sequence or order that it may determine. There are no limitations on Declarant as to the amount of the Additional Property to be added, the sequencing or order of such additions, nor as to the boundaries or size of such additions.
- 22.05 **Location and Type of Improvements.** Unless otherwise specified in this Article, there are no limitations imposed on Declarant as to the location of any improvements that may be made to any portion of the Additional Property, nor any restrictions as to the type and amount of improvements which must or may be made on the Additional Property by Declarant.
- 22.06 **Structures.** The structures to be constructed on the Additional Property shall be compatible with the existing structures on the Condominium Property in terms of quality of construction. The structures to be constructed on the Additional Property need not be compatible with the existing structures on the Condominium Property in terms of principal materials used, architectural style, size or elevation.
- 22.07 **Units.** There will be a maximum of sixty-eight (68) Units constructed on the Additional Property, with a density not to exceed twelve (12) Units per acre. Such Units need not be substantially identical to the Units constructed on the Condominium Property. Unless otherwise specified in this Article, there are no limitations imposed on Declarant as to the types of Units that may be created on the Additional Property.
- 22.08 **Limited Common Areas.** Declarant reserves the right to designate any portion of the Additional Property as Limited Common Areas for the use and enjoyment of any Unit or Units to be constructed thereon.
- 22.09 **Reservation of Right to Amend Declaration.** Declarant hereby reserves the right to amend this Declaration in such respects as Declarant may deem advisable in order to effectuate the generality of the foregoing, so as to: (a) include any or all of the Additional Property and the improvements which may be constructed thereon as part of the Condominium Property; (b) include descriptions of building(s) constructed on said real estate and to add Drawings thereof to the appropriate Exhibits; (c) provide that the Unit Owners in the building(s) will have an interest in the Common Areas of the Condominium Property; and (d) amend the Percentages of Ownership which the Unit Owners within the building(s) on the Condominium Property will have at the time of such Amendment, which percentage shall be, with respect to each Unit, in the proportion that the square footage of each Unit at the date said Amendment is Recorded bears to the then aggregate square footage of all of the Units within the Condominium Property, which determination shall be made by Declarant and shall be conclusive and binding upon all Unit Owners.
- 22.10 **Consent and Approval for Annexation Amendments.** Declarant, on its own behalf as the owner of all Units in the Condominium Property and on behalf of all subsequent Unit Owners, hereby consents and approves, and each Unit Owner and his mortgagees by acceptance of a deed conveying such ownership, or a

mortgage encumbering such interest, as the case may be, hereby consents and approves the provisions of this Article, including without limiting the generality of the foregoing, the Amendment of this Declaration by Declarant, and all such Unit Owners and their mortgagees, upon request of Declarant, shall execute and deliver from time to time all such instruments and perform all such acts as may be deemed by Declarant to be necessary or proper to effectuate said provisions.

22.11 **Power of Attorney, Coupled With an Interest.** Each Unit Owner and his respective mortgagees, by the acceptance of a deed conveying such ownership or a mortgage encumbering such interest, as the case may be, hereby irrevocably appoints Declarant his attorney-in-fact, coupled with an interest, and authorizes, directs and empowers such attorney, at the option of the attorney in the event that the Declarant exercises the rights reserved above to add to the Condominium Property the Additional Property, to execute, acknowledge and record for and in the name of such Unit Owner, an Amendment for such purpose and for and in the name of such respective mortgagees, a consent to such Amendment.

### ARTICLE XXIII

#### LIMITED WARRANTIES BY DECLARANT

23.01 **Two (2) Year Limited Warranty.** The Declarant does hereby give and grant a two (2) year limited warranty covering the full cost of labor and materials for any repair or replacement of the roof and structural components and mechanical, electrical, plumbing and common elements serving the Condominium Property, occasioned or necessitated by a defect in material or workmanship.

23.02 **Commencement of Two (2) Year Limited Warranty.** The two (2) year limited warranty shall commence for the property submitted by this Declaration on the date the deed is filed for record following the sale of the first Unit, and for any Additional Property submitted by an Amendment to this Declaration on the date the deed is filed for record following the sale of the first Unit; in either case, to a purchaser in good faith for value.

23.03 **One (1) Year Limited Warranty.** The Declarant does hereby give and grant a one (1) year limited warranty covering the full cost of labor and materials for any repair or replacement of structural, mechanical or other elements pertaining to each Unit, occasioned or necessitated by a defect in material or workmanship performed by or for the Declarant.

23.04 **Commencement of One (1) Year Limited Warranty.** The one (1) year limited warranty shall commence on the date the deed or other evidence of ownership is filed for record following the first sale of a Condominium Ownership Interest to a purchaser in good faith for value.

23.05 **Appliances.** In the case of ranges, refrigerators, washing machines, clothes dryers, hot water heaters and other similar appliances installed and furnished as a part of the Unit by the Declarant, the valid assignment by the Declarant of the express and implied warranty of the manufacturer satisfies the Declarant's obligation with respect to such appliances and the Declarant's warranty is limited to the installation of the appliances.

23.06 Assignment. All warranties made to the Declarant that exceed the time periods specified above with respect to any part of the Units or Common Areas shall be assigned to the Unit Owner or Association.

**ARTICLE XXIV**  
**MISCELLANEOUS PROVISIONS**

24.01 Grantees and Incorporation Into Deeds. Each grantee of Declarant, by the acceptance of a deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights and powers created or reserved by this Declaration, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land, and shall inure to the benefit of such Unit Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

24.02 Removal. Upon the removal of the Condominium Property from the provisions of Chapter 5311 of the Ohio Revised Code, all easements, covenants and other rights, benefits, privileges, impositions and obligations declared herein to run with the land or any Unit, shall terminate and be of no further force nor effect.

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

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

24.05 Notice to Mortgagees. Upon written request to the Board of Managers, the holder of any duly recorded mortgage against any Unit ownership shall be given a copy of any and all notices and other documents permitted or required by the Declaration or the By-Laws to be given to the Unit Owner or Unit Owners whose Unit ownership is subject to such mortgage or trust deed, and a copy of any lien filed by the Association.

24.06 No Adverse Action by Declarant. That so long as said Declarant, his successors and assigns own one or more of the Units established and described herein, said Declarant, his successors and assigns shall be subject to the provisions of this Declaration and said Declarant covenants to take no action which would adversely affect the rights of the Association with respect to assurances against latent defects in the property or other right assigned to the Association by reason of the establishment of the Condominium.

24.07 Limitation of Declarant's Liability. Unless otherwise provided in this Declaration or by statute, neither Declarant nor his representatives, successors or assigns shall be liable for any claim whatsoever arising out of or by reason of any

actions performed pursuant to any authorities granted or delegated to it by or pursuant to this Declaration or the By-Laws or in Declarant's capacity as Developer, contractor, owner, manager or seller of the Condominium Property, whether or not such claim shall: (a) be asserted by any Unit Owner, occupant, the Association, or by any person or entity claiming through any of them; (b) be on account of injury to person or damage to or loss of property wherever located and however caused; or (c) arise ex contractu or, except in the case of gross negligence, ex delictu. Without limiting the generality of the foregoing, the foregoing enumeration includes all claims for or arising by reason of the Condominium Property or any part thereof being or becoming out of repair or containing any patent or latent defects, or by reason of any act or neglect of any Unit Owner, occupant, the Association and their respective Agents, employees, guests, invitees, or by reason of any neighboring property or personal property located on or about the Condominium Property.

**24.08** Headings. The heading of each Article and to each Section hereof is inserted only as a matter of convenience and for reference, and in no way defines, limits or describes the scope or intent of this Declaration nor in any way affects this Declaration.

**24.09** Liberal Construction. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the establishment and operation of a first class condominium development.

**24.10** Deposits or Down Payments. Any deposit or down payment made in connection with the sale of a Condominium Ownership Interest will be held in trust or escrow until delivered at settlement or returned to or otherwise credited to the purchaser or forfeited to the Developer, and that if a deposit or down payment of Two Thousand Dollars (\$2,000.00) or more is held for more than ninety (90) days, interest at the rate of at least four percent (4%) per annum for any period exceeding ninety (90) days shall be credited to the purchaser at settlement or upon return or other credit made to the purchaser or added to any forfeiture to the Developer.

**24.11** Developer's Interest in Common Areas. Except in its capacity as a Unit Owner of unsold Condominium Ownership interests, the Developer will not retain a property interest in any of the Common Areas after control of the Condominium is assumed by the Association.

**24.12** Rights and Obligations of Developer as a Unit Owner. The Developer will assume the rights and obligations of a Unit Owner in its capacity as an owner of Condominium Ownership Interests not yet sold, including without limitation, the obligation to pay Common Expenses, including reserves, attaching to such interests from the date the Declaration is Recorded.

**24.13** References. Unless otherwise specified, all references to a particular Article or Section shall refer to such Article or Section of the Declaration.

**24.14** Full Compliance. The Condominium has been created and is existing in full compliance with the requirements of Chapter 5311 of the Ohio Revised Code, and all other applicable law.

IN WITNESS WHEREOF, CHARLES V. SIMMS DEVELOPMENT CORPORATION, an Ohio corporation, has caused the execution hereof this 15th day of November, 1989.

Signed and acknowledged in the presence of:

CHARLES V. SIMMS  
DEVELOPMENT CORPORATION

[Signature]

By: [Signature]  
Hans H. Soltau  
Vice President

[Signature]

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

The foregoing instrument was acknowledged before me this 16th day of November, 1989 by Hans H. Soltau, Vice President of Charles V. Simms Development Corporation, an Ohio corporation, on behalf of the corporation.



[Signature]  
Notary Public

CYNTHIA L. LARKINS, Notary Public  
In and for the State of Ohio  
My Commission Expires Nov. 6, 1991

THIS INSTRUMENT PREPARED BY:

HANS H. SOLTAU  
Attorney at Law  
124 East Third Street  
Dayton, Ohio 45402



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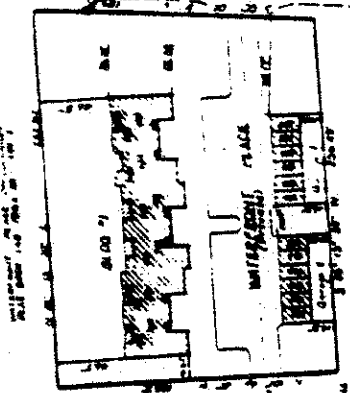
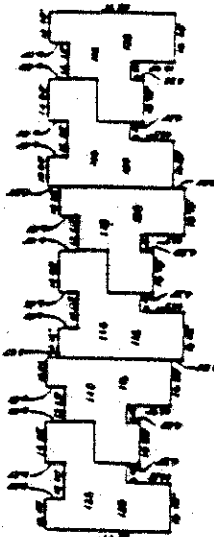
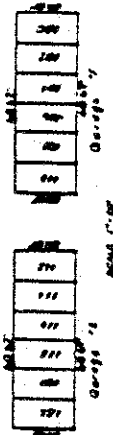
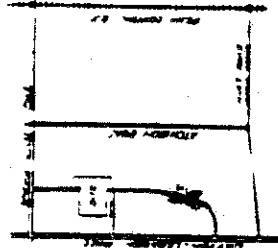
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**WATERFRONT PLACE COMMERCIAL  
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**WATERBURY PLACE COMMUNITY  
SECTION ONE**

BEING 2700 S. 101<sup>st</sup> ST.  
WATERBURY PLACE  
IN THE CITY OF WASHINGTON, D.C.  
SECTION ONE, SUBDIVISION ONE  
RECORDING OFFICE OF THE DISTRICT OF COLUMBIA  
RECORDED IN THE OFFICE OF THE DISTRICT CLERK  
ON 10/10/1988, 1:00 PM



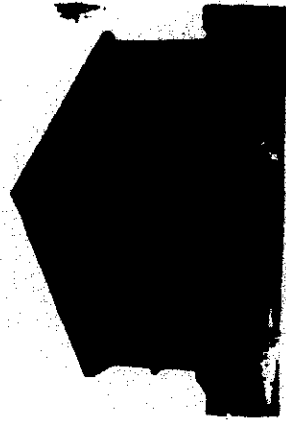
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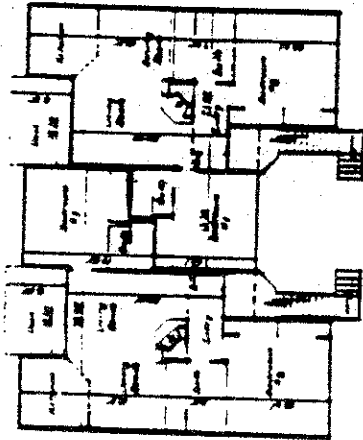


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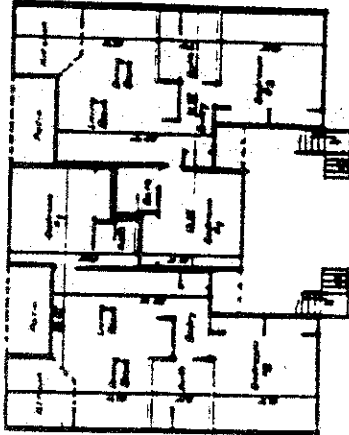


**WEST**

**DEVELOPING /**



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**FIRST FLOOR**  
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**EXHIBIT "C"**

**WATERFRONT PLACE CONDOMINIUM ASSOCIATION, INC.**

**CONDOMINIUM ASSOCIATION BY-LAWS**

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