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RESTATED DECLARATION OF CONDOMINIUM OWNERSHIP  
FOR  
SHAKER CLUB CONDOMINIUM

THIS WILL CERTIFY THAT A COPY OF THIS RESTATED DECLARATION OF CONDOMINIUM OWNERSHIP FOR SHAKER CLUB CONDOMINIUM UNIT OWNERS ASSOCIATION, INC. WAS FILED IN THE OFFICE OF THE COUNTY AUDITOR OF CUYAHOGA COUNTY, OHIO.

DATED: \_\_\_\_\_

BY: \_\_\_\_\_

TABLE OF CONTENTS  
FOR  
DECLARATION OF CONDOMINIUM OWNERSHIP  
FOR SHAKER CLUB CONDOMINIUM

1.	Definitions	3
2.	Name	4
3.	The Purpose of and Restrictions on Use of the Condominium Property	4
4.	General Description of the Buildings	8
5.	Description of Unit	9
6.	Description of Common Elements and Limited Common Elements	11
7.	Right of Owner of Residential Units to Alter or Remove Walls, and Relocate Plumbing, Electrical, Heating and Air Conditioning Fixtures and Ductwork	13
8.	Identification, Location, Description, Par Value and Percentage or Interest In Common Elements	15
	(a) Residential Units	15
	(b) Garage Units	19
9.	Unit Owners' Association	20
10.	Statutory Agent	20
11.	Insurance	20
	(a) Fire and Extended Coverage Insurance	20
	(b) Liability Insurance	22
	(c) Other Insurance	23
	(d) General Insurance Provisions	23
12.	Duties of Unit Owners	26
	(a) Maintenance and Repair	26
	(b) Report Defects	27
	(c) Non-disturbance of Others	27
	(d) Pay for Utilities	27
	(e) Comply with this Declaration	27
	(f) Negative covenants	27

13.	Duties of the Association	29
	(a) Management	29
	(b) Common Elements	29
	(c) Improvements Within Units	29
	(d) General Duties	30
	(e) Delegation of Authority	30
14.	Mechanics Liens	31
15.	Easements	31
	(a) Encroachments	31
	(b) Easement of Access for Repair, Maintenance and Emergency	32
	(c) Owner's Right to Ingress and Egress and Support	32
	(d) Association's Right to Use of Common Elements	32
	(e) Utility Easements	32
	(f) Easements to Run with Land	33
	(g) Reference to Easements In Deeds	33
	(h) Reservation By Declarant of Easement for Ingress and Egress	33
	(i) Restrictions on Grants of Easements and Licenses as to Residential Units	34
16.	Assessments and Lien of Association	34
	(a) General	34
	(b) Division of Common Profits and Common Expenses	34
	(c) Non-Use of Facilities	34
	(d) Lien of Association	35
	(e) Priority of Association's Lien	35
	(f) Dispute as to Common Assessments and Other Charges	35
	(g) Liability of Foreclosure Sale Purchaser for Past Due Common Assessments and Other Charges	35
	(h) Liability for Assessments and Other Charges Upon Voluntary Conveyance	36
	(i) Declarant's Obligation to Pay Common Expenses	36
17.	Condemnation	36
18.	Rehabilitation and Renewal of Obsolete Property	37
19.	Remedies for Breach of Covenants and Regulations	37
	(a) Abatement and Injoinment	37
	(b) Involuntary Sales	37
	(c) Cost of Collection	38
	(d) Cost of Enforcement	38

(e)	Suspended Rights	38
(f)	Enforcement Assessments	39
20.	Waiver	39
21.	Liability of Members of the Board and the Officers of the Association	39
22.	Enforcement	40
23.	Property	40
24.	Amendment of Declaration and By-Laws	40
25.	Notices	41
26.	Request by First Mortgagees	42
27.	Requirements of Declarant's Mortgagees	42
28.	Invalidity	43
29.	Gender	43
30.	Perpetuities	43
31.	Covenants to Run With the Land	43
32.	Certain Provisions Required by the Act	43
33.	Miscellaneous Provisions	45
Exhibit "A"	Legal Description	
Exhibit "B"	Restated By-Laws	
Exhibit "C"	Drawings	

**RESTATED**  
**DECLARATION OF CONDOMINIUM OWNERSHIP**  
**FOR SHAKER CLUB CONDOMINIUM**

THIS RESTATED Declaration of Condominium Ownership for Shaker Club Condominium is made by The Shaker Club Condominium Unit Owners Association, Inc., an Ohio Non-profit Corporation (the "Association") this 29 day of January 2013;

WHEREAS, the Condominium Property was originally submitted to the provisions of the Act (hereinafter defined), by the original Declarant, Shaker Club, Inc. ("Declarant") on the 11th day of October, 1979, in compliance with the provisions of Section 5311.06 of the Act, by the appropriate filing and recording by Declarant of the "Original Condominium Documents" consisting of the documents and drawings which were filed with the Recorder of Cuyahoga County, Ohio and recorded, respectively, by him in Volume 15089, Page 179 et seq. of Cuyahoga County, Ohio Records and in Map Volume 37, Pages 11 through 19, inclusive, of Cuyahoga County, Ohio Records, a copy of said documents and drawings having also been filed with the Auditor of Cuyahoga County, Ohio; and

WHEREAS, the Amended Declaration of Condominium Ownership for Shaker Club (the "Declaration") and the By-Laws of The Shaker Club Condominium Unit Owners Association (the "By-Laws"), Exhibit "B" to the Amended Declaration, were recorded at Cuyahoga County Records Volume 15229, Page 665 et seq.; and

WHEREAS, the Amendment to the Amended Declaration of Condominium Ownership for Shaker Club and the By-Laws of the Shaker Club Condominium Unit Owners Association, Exhibit "B" to the Amended Declaration, were recorded at Cuyahoga County Records Instrument Number 199911301015 on November 30, 1999; and

WHEREAS, the Amendment to the Amended Declaration of Condominium Ownership for Shaker Club and the By-Laws of the Shaker Club Condominium Unit Owners Association, Exhibit "B" to the Amended Declaration, were recorded at Cuyahoga County Records Instrument Number 200010110501 on October 11, 2000; and

WHEREAS, the Amendment to the Amended Declaration of Condominium Ownership for Shaker Club and the By-Laws of the Shaker Club Condominium Unit Owners Association, Exhibit "B" to the Amended Declaration, were recorded at Cuyahoga County Records Instrument Number 200108150715 on August 15, 2001; and

WHEREAS, the Amendment to the Amended Declaration of Condominium Ownership for Shaker Club and the By-Laws of the Shaker Club Condominium Unit Owners

Association, Exhibit "B" to the Amended Declaration, were recorded at Cuyahoga County Records Instrument Number 200310080013 on October 8, 2003; and

WHEREAS, the Amendment to the Amended Declaration of Condominium Ownership for Shaker Club and the By-Laws of the Shaker Club Condominium Unit Owners Association, Exhibit "B" to the Amended Declaration, were recorded at Cuyahoga County Records Instrument Number 200311071074 on November 7, 2003; and

WHEREAS, the Amendment to the Amended Declaration of Condominium Ownership for Shaker Club and the By-Laws of the Shaker Club Condominium Unit Owners Association, Exhibit "B" to the Amended Declaration, were recorded at Cuyahoga County Records Instrument Number 200501050022 on January 1, 2005; and

WHEREAS, the Amendment to the Amended Declaration of Condominium Ownership for Shaker Club and the By-Laws of the Shaker Club Condominium Unit Owners Association, Exhibit "B" to the Amended Declaration, were recorded at Cuyahoga County Records Instrument Number 200502180512 on February 18, 2005; and

WHEREAS, the Amendment to the Amended Declaration of Condominium Ownership for Shaker Club and the By-Laws of the Shaker Club Condominium Unit Owners Association, Exhibit "B" to the Amended Declaration, were recorded at Cuyahoga County Records Instrument Number 200508091159 on August 9, 2005; and

WHEREAS, the Amendment to the Amended Declaration of Condominium Ownership for Shaker Club and the By-Laws of the Shaker Club Condominium Unit Owners Association, Exhibit "B" to the Amended Declaration, were recorded at Cuyahoga County Records Instrument Number 200704060298 on April 6, 2007; and

WHEREAS, the Amendment to the Amended Declaration of Condominium Ownership for Shaker Club and the By-Laws of the Shaker Club Condominium Unit Owners Association, Exhibit "B" to the Amended Declaration, were recorded at Cuyahoga County Records Instrument Number 201103280464 on March 28, 2011; and

WHEREAS, the Board unanimously approved the restatement of the documents at the Board meeting held on December 11, 2012, for ease of navigation of the Association documents, making clear that no amendments are being made at this time; and

WHEREAS, the procedures necessary to restate the documents as required by the documents have in all aspects been complied with; and

WHEREAS, the Association desires to consolidate all previous amendments into one document, thereby replacing all prior Condominium Documents.

NOW, THEREFORE, the Association, for the purposes hereinabove set forth, hereby declares as follows:

1. **DEFINITIONS.** The following definitions are applicable to this Declaration in clarification of or in addition to the definitions contained in the Ohio Condominium Act:

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

(b) “Assessment(s)” or “Common Assessment(s)” or “Common Expenses” means Assessments charged proportionately against all Units for common purposes.

(c) “Other Charges” shall include without limitation, the costs, expenses and charges for repairs and replacements made by the Association which were the obligation or responsibility of a Unit Owner to make, any special charges made by the Association to the Unit Owner for special services rendered to the Unit Owner or his Unit and for special or extraordinary uses or consumptions attributable to such Unit Owner or his Unit, damages resulting from the failure of the Unit Owner or of any occupant of a Unit to comply with any of the covenants, conditions, obligations, or restrictions contained in the Declaration or the By-Laws or with any of the rules promulgated by the Association, and the costs of any action to obtain injunctive relief against such noncompliance.

(d) “Association” or “Unit Owners Association” means the organization of all the owners of units in the Condominium Property, and shall be known as The Shaker Club Condominium Unit Owners Association, Inc.

(e) “Board” or “Board of Directors” means the governing body of the Association elected pursuant to the By-Laws as the same may be constituted from time to time.

(f) “By-Laws” means the document attached to the within Amendment and made a part hereof as Exhibit “B” entitled “By-Laws of the Shaker Club Condominium Unit Owners Association, Inc., and any subsequent amendments thereof.

(g) “Condominium Rules” or “Rules” means such rules and regulations as the Declarant or the Board from time to time may adopt relative to the use of the Condominium Property or of any part thereof, and such as are not inconsistent with the Declaration or the By-Laws.

(h) “Declaration” means this document entitled “Restated Declaration of Condominium Ownership for Shaker Club Condominium” and any subsequent amendments thereof.

(i) ““Drawings” means the drawings attached to the within Amendment and made a part thereof as Exhibits “C-1” through “C-9” inclusive, and any subsequent amendments thereof.

(j) “Occupant” means a human being residing in a Residential Unit.

(k) “Person” means a human being, a corporation, partnership, trust and any other legal entity to which the law attributes the capacity of having rights and duties.

(l) “Mortgagee” means the holder(s) of a first mortgage on a Unit(s), including Declarant's Mortgagee.

(m) “Owner” and “Unit Owner” means the person in whom or in which is vested the fee simple title to a Unit or Units.

(n) “Room” means air space, the boundaries of which are walls (whether existing or projected from permanent and identifiable improvements and deemed to exist), floors and ceilings.

(o) “Declarant's Mortgages” means Westinghouse Credit Corporation, a Delaware Corporation, its successors and assigns.

(p) “Unit” means a Residential Unit or a Garage Unit, as the case may be.

(q) “Land” means the parcel of land in Shaker Heights, Ohio, being more fully described in Exhibit “A” attached to the within Amendment and made a part hereof.

(r) “Restated Condominium Documents” means the documents and drawings attached hereto and made a part hereof consisting of the Declaration, By-Laws and Drawings, respectively defined herein.

2. NAME. The Condominium Property shall be known as SHAKER CLUB CONDOMINIUM.

3. THE PURPOSE OF, AND RESTRICTIONS ON USE OF, THE CONDOMINIUM PROPERTY.

(a) Purpose. The Condominium Property shall be used for single family residential use, vehicular parking and other purposes incidental thereto and for no other purpose or purposes, except for those purposes reserved herein by the Declarant; and the Common Elements shall be used for the joint and several benefit, convenience and recreation of the



Unit Owners, all subject to the restrictions, easements, limitations, covenants, declarations and conditions which are of record and/or which are set forth in this Declaration.

(b) Restrictions and Conditions on Condominium Use.

(i) Each Residential Unit shall be occupied and used only for private residential purposes and each Garage Unit shall be occupied and used only for private vehicular parking purposes by the Unit Owner and his or her family, except that an Occupant may use a portion of his or her Residential Unit for an office or studio with prior, written approval of the Board, so long as the activities therein shall not interfere with the quiet enjoyment or comfort of any other Occupant and that such activity does not result in the Residential Unit becoming principally an office, school or studio as distinct from use as a residence; and further provided that the business activity: (1) is not apparent or detectable by sight, sound or smell from outside the Residential Unit; (2) conforms to all local zoning requirements, including §1262.09, or as subsequently revised, of the City of Shaker Heights Zoning Code; (3) does not involve persons coming onto the Condominium Property who do not reside there, nor door-to-door solicitation of other Occupants; and (4) is consistent with the residential character of the Condominium Property and does not constitute a nuisance, a hazardous or offensive use, or threaten the security or safety of other Occupants, as may be determined in the sole discretion of the Board.

(ii) The Common Elements and Limited Common Elements shall not be used in a manner which is inconsistent with the residential character of the Condominium Property. Except as may be permitted pursuant to Paragraph 7 herein, no one shall obstruct, commit any waste in or otherwise cause any damage beyond reasonable wear and tear to the Common Elements or the Limited Common Elements and nothing shall be altered, constructed in or removed from the Common Elements or Limited Common Elements without the prior written consent of the Board or the Declarant, nothing shall be stored in the Common Elements or Limited Common Elements which creates in the reasonable judgment of the Board an unsafe or unsightly appearance.

(iii) No noxious or offensive use shall be made of any part of the Condominium Property and nothing shall be done therein which is or will become an annoyance or nuisance to the other Unit Owners. No use shall be made of any part of the Condominium Property which will constitute a fire hazard or which will result in the cancellation of insurance on any part of the Condominium Property or which is in violation of any law, ordinance or governmental regulations applicable thereto. No use shall be made of any part of the Condominium Property which will increase the rate of insurance on the Common Elements or Limited Common Elements, without prior written consent of the Board. No Unit Owner shall permit anything to be done or kept in the Unit, in the Common Elements or in the Limited Common Elements which is in

violation of any law, ordinance or regulation of any governmental authority or this Declaration.

(iv) No signs (except as provided in subparagraphs 3(b)(i) and 3(b)(viii), awnings or canopies, shutters, clotheslines, radio or television antennas or exterior hangings of any kind shall be hung, posted or otherwise placed upon the exterior walls or roof of the Building or any part thereof, without the prior written consent of the Board or the Declarant.

(v) No animals of any type shall be raised, bred or kept in any Unit or in any of the Common Elements or Limited Common Elements, except that dogs, cats and other animals owned commonly as household pets may be kept in Residential Units subject, however, to the strict adherence of Rules. Under no circumstances shall animals be kept, bred or maintained in any Unit for commercial purposes. Any pet permitted by this paragraph may be ordered removed if the Association believes that such pet or animal is causing or creating an unreasonable disturbance and under such circumstances, the pet shall be removed upon thirty (30) days written notice from the Board of Directors of the Association.

(vi) Nothing shall be done in any Unit, or in, on, or to the Common Elements or Limited Common Elements which will impair the structural integrity of the Condominium Property.

(vii) No clothing, sheets, blankets, laundry of any kind or other articles shall be hung out or exposed on any part of the Common Elements. The Common Elements shall be kept free and clear of rubbish, debris and other unsightly materials.

(viii) There shall be no "For Sale" or "For Rent" signs or other window displays or advertising maintained or permitted, on any part of the Condominium Property or in any Unit therein. The right is reserved by the Declarant or its agents, successors or assigns, to place "For Sale" or "For Rent" or other promotional signs on any unsold or unoccupied Units or the Condominium Property, and the right is hereby given to any Mortgagees, who may become the Owner of any Unit, to place such signs advertising any Unit owned by such Mortgagee. In addition, after the sale of all the Units by the Declarant, the right is hereby given the Association or its representatives to place such 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.

(ix) The Common Elements shall remain undivided; and no Unit Owner shall bring any action for partition, except as permitted in the Act.

(x) There shall be no playing, lounging, parking of baby carriages or playpens, bicycles, wagons, toys, vehicles, benches, chairs or other substantial objects on any part of the Common Elements except in accordance with the Rules.

(xi) No industry, business, trade, occupation or profession of any kind, commercial, religious, educational or otherwise, designated for profit, altruism, exploitation, or otherwise, shall be conducted, maintained or permitted on any part of the Condominium Property, except as permitted in this Declaration. Nothing in this Declaration or the By-Laws, shall be construed to prohibit, and the right is hereby reserved by the Declarant and granted to the Association, to offer food service, restaurant service, maid service, switchboard service, garage service, telegram service and coin-operated washers and dryers or vending machines, or operate any other "commercial" enterprise in the Common Elements, provided that such operation shall be primarily intended for the convenience and welfare of the Unit Owners, notwithstanding that the enterprise may produce a profit; which profits, if any, shall be common profits as that term is defined in the Act.

(xii) Each Unit Owner shall furnish written notice to the Secretary of the Association of the name and address of such Unit Owner's Mortgagee and of any change in the name and address of such Mortgagee.

(xiii) No Unit shall be leased by a Unit Owner except as specified below.

This restriction does not apply to: A) any Unit Owner of record as of November 30, 1999, and said Unit Owner shall continue to have the option of leasing that Unit until the title to said Unit is transferred to a subsequent owner; or, B) Units which are occupied by the parent(s) or child(ren) of a subsequent Unit Owner.

To meet a special situation or to avoid an undue hardship or practical difficulty, the Board shall grant permission to a subsequent Unit Owner to lease his/her Unit to a specified lessee. The lease period shall end within twenty-four (24) months of the commencement of the lease, or by December 31, 2014, whichever is later. Multiple consecutive leases are permitted provided they meet the minimum and maximum periods. The lessee shall not be permitted to sub-lease the Unit.

All exempted leases shall be in writing, shall require the lessee to abide by the terms of the Declaration and the By-Laws, as well as any rules and regulations adopted by the Board, and shall give the Board the right to dispossess or otherwise act for the Unit Owner in case of default under the lease or for violation of the Declaration, By-Laws or the rules and regulations. Any land contract for the sale of a Unit must be recorded and a recorded copy of the same shall be delivered to the Association within 30 days of its recording with the County Recorder. Any land

contract not recorded shall be considered an impermissible lease. The Unit Owner shall continue to be liable for all obligations of ownership of his Unit and shall be responsible to the Board for the conduct of his/her lessee. Copies of all exempted leases shall be delivered to the Board prior to the beginning of the lease term.

In accordance with Ohio Revised Code Section 5311.19(B), the Association may initiate eviction proceedings, pursuant to Chapters 5321 and 1923 of the Revised Code, to evict a tenant. 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 Chapters 5321 and 1923 of the Revised Code, the Association shall give the Unit Owner at least ten days written notice of the intended eviction action. The costs of any eviction action, including reasonable attorneys' fees, shall be charged to the Unit Owner and shall be the subject of a special Assessment against the offending Unit and made a lien against that Unit.

(xiv) No person who is determined to be a sexual predator, or other classification for which law enforcement shall be required to give notice, pursuant to the Ohio Sex Offenders Act or similar statute from another jurisdiction, and required to register with a designated registering agency pursuant to said Act or similar statute, as the same may from time to time be amended, may reside in or occupy a Unit for any length of time. Any violation of this restriction shall subject the Owner and/or any Occupant of the Unit to any and all remedies provided for by law as well as this Declaration. The Association shall not, however, be liable to any Owner or Occupant, or anyone visiting any Unit or the Association, as a result of the Association's alleged failure, whether negligent, intentional or otherwise, to enforce the provisions of this restriction.

(xv) Owner/Resident Information. In accordance with Ohio Revised Code Section 5311.09(A)(2) and (3), each Unit Owner shall, within thirty (30) days of the recording of this Amendment or within thirty (30) days of title transferring to the Unit Owner, provide to the Association the Unit Owner's and/or all occupants' names, home and business mailing addresses, home and business telephone numbers, and the name, business address and business telephone number of any person who manages the Unit as an agent of that Owner. Any change in the information shall be provided to the Board, in writing, within thirty (30) days of said change.

4. **GENERAL DESCRIPTION OF THE BUILDINGS.** As of the date of the filing of this Declaration, the general description of the Building, the principal materials of which it is constructed, and the number of stories and Units therein are as follows:

A five (5) story brick Building located at 19101 and 19201 Van Aken Boulevard, Shaker Heights, Ohio on the land described in Exhibit "A" attached hereto.

The principal materials of which the Building is constructed are brick and concrete, supported structurally by steel and concrete beams and girders.

The Building contains One Hundred Fifty One (151) Residential Units and One Hundred Fifty (150) Garage Units.

The Building has a basement area which contains a restaurant room and kitchens, game room, laundry room, lockers, lavatories and boiler and mechanical equipment and rooms therefor and eight (8) Residential Units. Located in part of the basement area is a garage containing the Garage Units.

5. **DESCRIPTION OF UNIT.**

(a) Each of the One Hundred Fifty One (151) Residential Units shown in the Drawings, and more fully identified and described hereinafter in Paragraph 8 is hereby declared and established as a separate freehold estate, and shall consist of air space between the horizontal and vertical planes as delineated by the undecorated interior surfaces of the perimeter walls, floors and ceilings of each Residential Unit, projected if necessary, by reason of structural divisions such as interior walls and other partitions to constitute a complete enclosure of space, which enclosure of space shall constitute a room or rooms; provided that, wherever such undecorated surfaces consist of plaster or plasterboard or wood subfloor contiguous to such undecorated surfaces, such shall be included within the Residential Unit, but excepting the space occupied thereby lying outside of the perimeter of the Residential Unit. The Residential Units include, without limitation, the following:

(i) The decorated surfaces, including paint, lacquer, varnish, wallpaper, and any other finishing material applied to said perimeter wall, floors and ceilings and also the aforesaid finishing material applied to the interior walls, floors and ceilings;

(ii) The receptacle and switch plates and covers, grills, vent covers, registers and other covering of space; light fixtures, and control knobs, within the bounds of a Residential Unit and which serve only that Residential Unit;

(iii) All non-structural interior walls (other than walls separating Residential Units and Common Elements) and all space between interior walls, including the space occupied by structural, component parts of the Building and by utility pipes, wires, lines and conduits within the bounds of a Residential Unit;

(iv) All doors and windows in perimeter walls, floors or ceilings of a Residential Unit;

(v) All air conditioning units, kitchen cabinets, sinks, appliances, counters, built-in shelves, bathroom cabinets, sinks, commodes, tubs, showers and shower stalls and other plumbing fixtures.

(b) Each of the Garage Units shown on the Drawings is hereby declared and established as a separate freehold estate, and shall consist of the air space between the horizontal planes delineated by the interior surfaces of the floor and ceilings of the garage and the vertical planes of the walls, either as actually constructed (with respect to certain of the Garage Units) or as projected and deemed to exist (with respect to other of the Garage Units), from floor to ceilings, as separated and delineated by permanent improvements embedded in the garage floor, which air space shall constitute a room.

(i) Fee simple title to Garage Units shall be vested solely in Residential Unit Owners. Garage Units shall, however, be freely transferable between and among, but only between and among, Residential Unit Owners;

(ii) Notwithstanding any provision contained in this Declaration to the contrary, the Association shall be responsible for the re-painting of lines when necessary and for replacing any lighting fixture located within a Garage Unit or serving such Unit;

(c) But excluding therefrom all of the following items located within the bounds of the Units as described above:

(i) All walls, floors and ceilings separating or delineating Units, except the decorated surfaces thereof;

(ii) All structural portions of the Building, lying within the bounds of a Unit;

(iii) All heating and ventilating equipment, garage lighting or heating equipment and installations even if located within and serving only one Unit, and all parts, installations and appurtenances thereof, including the thermostats and control devices;

(iv) All plumbing, electrical, heating, cooling, ventilating and other utility or service lines, pipes, ducts, wires, plugs, outlets, conduits and valves existing within a Unit to their place of connection to the toilets, sinks, valves, registers, grills, outlets, light fixtures, appliances and receptacles within a Unit and/or to their tap, plug or shutoff valve within a Unit, and all such lines, pipes, ducts, wires, plugs, outlets, conduits and valves which serve or may serve more than one Unit or the Common Elements;

(v) The valves, plugs and switches at the end of any lines, pipes and wires which constitute Common Elements;

(vi) Without limiting the foregoing all Common Elements and Limited Common Elements located within the bounds of a Unit.

**6. DESCRIPTION OF COMMON ELEMENTS AND LIMITED COMMON ELEMENTS.**

(a) The Common Elements shall consist of all parts of the Condominium Property except the Units. Without limiting the generality of the foregoing, the Common Elements include the following, whether or not located within the bounds of a Unit;

(i) The foundations, columns, girders, floors, beams, supports, the exterior walls of the Building, rafters, roofs, elevators and elevator shafts, fire escapes, any party or recreational, restaurant or service areas and floors and ceilings if they support or contain the Common Elements;

(ii) The yards, gardens, trees, shrubbery, lawns, driveways, walks, pavements and all fixtures and equipment located thereon and courtyards and decks located on the land described in Exhibit "A" or the Building;

(iii) Heating boilers, pumps and equipment, hot water heaters, circulating pumps, stand pipes and incinerator system, sprinkler heads and parts, ducts and installations related thereto;

(iv) Installations of any central or common services such as power, light, telephone, gas, hot and cold water and common meters therefor, heating, air conditioning, rubbish compaction, intercom, and all pipes, storm and sanitary sewers, ducts, wires, conduits, fan coil units, television antennas and lines, lines for any cable antenna television service, receptacles, switches, grills, thermostats and control devices which are a part of, connected to, or used in conjunction with any of the foregoing;

(v) All storage areas for tools and maintenance equipment, all other storage areas wherever located, the switchboard (if any), foyers, stairways, hallways, boiler room, laundry room, entrances and exits to the Building and mailrooms;

(vi) The tanks, pumps, motors, fans, compressors and, in general, all apparatus and installations existing for common use;

(vii) All other parts of the Condominium Property necessary or convenient to its existence, recreation, maintenance and safety, or normally in common use;

(viii) All repairs and replacements of any of the Common Elements;

(ix) Any room or structure within or attached to the Building containing Common Elements, such as water and gas meters, laundry facilities, mail receptacles, electric panels, switches and other Utilities and mechanicals;

(x) All articles of personal property on or in the Condominium Property from time to time which are owned by the Association for the common use, enjoyment or safety of the Unit Owners.

(b) The Common Elements comprise, in the aggregate, a single freehold estate, shall be owned by the Unit Owners as tenants in common and shall remain undivided. No action for partition of any part of the Common Area and facilities shall be maintainable, except as provided in this Declaration or the Act, nor may any Unit Owner otherwise waive or release any rights in the Common Elements; provided, however, that if any Unit be owned by two or more co-owners as tenants in common or as joint tenants, nothing herein contained shall be deemed to prohibit a voluntary or judicial partition of such Unit as between such co-owners.

(c) Except as otherwise limited and restricted herein, each Unit Owner shall have the right to use the Common Elements in accordance with the purposes for which they are intended, for all purposes incident to the use and occupancy of his Residential Unit as a place of residence and his Garage Unit for vehicular parking purposes, including without limitation the non-exclusive easement, together with other Unit Owners, to use and enjoy the Common Elements for ingress and egress to and from the respective Units, and for such other uses as are permitted by the Declaration, which rights shall be appurtenant to and run with his Unit; provided, however, that no person shall use the Common Elements or any part thereof in such manner as to interfere with, restrict or impede the use thereof by others entitled to the use thereof, or in any manner contrary to or not in accordance with this Declaration and the Rules. The Declarant and the Association shall each, subject to the provisions of this Declaration, have the right but not the obligation, to promulgate Rules governing the use of the Common Elements.

(d) Each Residential Unit Owner is hereby granted an exclusive and irrevocable license to use and occupy to the exclusion of all others the Limited Common Elements which are located within the bounds of his Residential Unit or which are appurtenant to and serve only his Residential Unit. The Limited Common Elements with respect to each Residential Unit (or group of Residential Units) shall consist of the following:



(i) All structural interior walls and one-half of any wall, floor or ceiling, separating one Residential Unit from another;

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

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

(iv) The patio areas appurtenant to Residential Units 101, 103, 103, 104, 105, 126, 127, 129 and 130 and designated on the Drawings as a Limited Common Area and Facility appurtenant to such Unit; such patio area may be paved, decked and otherwise improved by Residential Unit Owners having the right of exclusive use of such patio area upon granting of written consent therefor by the Board;

(v) All other parts of the Common Elements located within the bounds of such Residential Unit and which serve only such Residential Unit.

(e) The Declarant or the Association shall have the right but shall not be obligated to designate a surface parking space, if any, for the exclusive use of any employees required to live on the Condominium Property. Additional surface parking spaces, if any, may be rented to Residential Unit Owners by the Association or prior to its formation by the Declarant for rents to be determined by the Association or by the Declarant, as the case may be, and the profits therefrom, if any, shall be common profits as that term is defined in the Act. A number of surface parking spaces may be allocated for visitors of the Condominium Property.

**7. RIGHT OF OWNER OF RESIDENTIAL UNITS TO ALTER OR REMOVE WALLS, AND RELOCATE PLUMBING, ELECTRICAL, HEATING AND AIR CONDITIONING FIXTURES AND DUCTWORK.** Each Owner of a Residential Unit, subject to granting of the prior written consent of his mortgagee(s), shall have the following rights:

(a) Subject to and only if permitted by the provisions of the Act and all other governmental laws, ordinances, rules and regulations, in the event two or more contiguous Residential Units are owned by the same person or persons, which ownership by said persons

is identical in all respects, except for variation, if any, in fractional undivided interests in such Units, or in the event a Residential Unit Owner shall lease, obtain an easement or right to use an area consisting of all or part of a contiguous Residential Unit, said Unit Owner may alter or remove all or portions of the separating wall, if such Units are separated only by a Limited Common Elements which comprise a wall, and if the structural integrity of the Building is not adversely affected. Said Unit Owner of such contiguous Residential Units may install in and attach to the opening or openings thus created, doors, windows and such other fixtures and finishing materials as may be necessary, or in the opinion of said Unit Owner, desirable to construct and complete the type of opening intended.

(b) Owners of Residential Units shall have the right to install, remove, relocate or modify walls, partitions, doors, bathroom and kitchen facilities, heating and air conditioning units, ductwork and electrical and plumbing fixtures, within their Residential Units and within Limited Common Elements contiguous to their Residential Units. Exterior doors leading from Residential Units to common hallways and patios may be removed and filled, replaced, relocated or modified, and additional doors may be installed.

(c) No such alteration, removal or relocation as provided for in subparagraphs (a) and (b) herein, shall be made if same shall jeopardize the structural integrity of the Building. This provision shall not prohibit such alteration or removal if only the rerouting or relocating of wires, pipes, ducts, lines, cables or conduits is necessary to effect the type of opening intended; provided, however, that in no event shall such rerouting or relocating affect the services provided to other Unit Owners by such wires, pipes, ducts, lines or cables or conduits. All such alterations, removals or relocations made pursuant to this paragraph shall be made pursuant to and in accordance with a building permit properly issued by the appropriate governmental authority in accordance with plans and specifications submitted to and approved by said governmental authority.

(d) No rights and obligations with respect to any Unit shall be affected, no percentage of ownership in the Common Elements shall be reallocated, and no subdivision or combination of Units shall occur, or be deemed to have occurred, as a result of any alteration or removal made pursuant to the terms of this Paragraph. Any Unit Owner making such alterations, removals or relocations shall pay in full the expense of doing so, and shall agree to repair any damage to the Common Elements, Limited Common Elements, any other Unit and/or any other property wherever located, arising from such alteration, removal or relocation, and shall save harmless and indemnify the Board and each other Unit Owner from any and all such liability. In the event a Unit Owner alters, removes or relocates the Limited Common Elements permitted by this Paragraph to be altered, removed or relocated, or any portion thereof, and fails to agree to repair any damage, or, after so agreeing, fails to repair any such damage to the Common Elements, the Association may repair the damage, but shall not be obligated to do so. The Association may charge the cost of any such repairs to the Unit Owner who should have made the repairs, which charge shall be an "other charge" as defined

herein. Alternatively, and without being deemed to have elected a remedy, the Association may employ the remedies mentioned in Paragraph 19.

8. **IDENTIFICATION, LOCATION, DESCRIPTION, PAR VALUE AND PERCENTAGE OF INTEREST IN COMMON AREAS.** The Units as shown on the Drawings are more fully identified, located, described and are assigned a par value as follows and each Unit Owner shall be entitled to ownership of an undivided interest in the Common Elements, percentage representation for voting purposes in the Association and percentage interest in the Common Profits and Common Expenses in such percentage as is expressed for each Unit as follows:

(a) RESIDENTIAL UNITS:

UNIT NUMBER	FLOOR	APPROX. AREA (IN SQ. FT.)	NUMBER OF ROOMS (B) Bath (K) Kitchen	(EXPRESSED AS POINTS) PAR VALUE	PERCENTAGE OF INTEREST IN COMMON AREAS
1	Basement	885	4+1½ B+K	30	.39262
2	Basement	796	4+B+K	26	.34027
3	Basement	586	3+B+K	21	.27483
4	Basement	588	3+B+K	19	.24866
5	Basement	300	1+B+K	14	.18323
6	Basement	301	1+B+K	14	.18323
7	Basement	298	1+B+K	14	.18323
8	Basement	783	3+B+K	25	.32718
101	First	826	4+B+K	40	.52349
102	First	778	4+B+K	42	.54968
103	First	932	4+2B+K	52	.68054
104	First	1380	5+2B+K	78	1.02081
105	First	814	4+B+K	40	.52349
106	First	788	4+B+K	42	.54968
107	First	800	4+B+K	40	.52349
108	First	800	4+B+K	40	.52349
109	First	797	4+B+K	40	.52349
110	First	851	4+B+K	43	.56275
110A	First	570	3+B+K	30	.39262
111	First	978	4+2B+K	54	.70671
113	First	777	3+B+K	37	.48423
114	First	917	4+B+K	43	.56275
115	First	839	4+B+K	40	.52349
116	First	864	4+B+K	41	.53658

117	First	584	3+B+K	30	.39262
118	First	1013	4+2B+K	56	.73289
120	First	942	4+2B+K	54	.70671
120A	First	242	1+B	7	.09161
120B	First	330	1+B+K	14	.18323
121	First	848	4+B+K	42	.54968
122	First	798	4+B+K	40	.52349
123	First	800	4+B+K	40	.52349
124	First	800	4+B+K	40	.52349
125	First	788	4+B+K	40	.52349
126	First	808	4+B+K	40	.52349
127	First	1380	5+2B+K	78	1.02081
128	First	906	4+2B+K	50	.65436
129	First	776	4+2B+K	46	.60202
130	First	821	4+B+K	40	.52349
201	Second	1516	4+2B+K	84	1.09933
202	Second	916	4+2B+K	52	.68054
203	Second	932	4+2B+K	52	.68054
204	Second	2202	6+3B+K	113	1.47887
206	Second	788	4+B+K	40	.52349
207	Second	800	4+B+K	40	.52349
208	Second	800	4+B+K	40	.52349
209	Second	814	4+B+K	40	.52349
210	Second	1368	5+2B+K	78	1.02081
211	Second	906	4+2B+K	50	.65436
212	Second	840	4+B+K	42	.54968
213	Second	842	4+2B+K	50	.65436
214	Second	917	4+B+K	43	.56275
215	Second	795	4+B+K	40	.52349
216	Second	872	4+B+K	41	.53658
217	Second	570	3+B+K	30	.39262
218	Second	918	4+2B+K	52	.68054
219	Second	860	4+B+K	42	.54968
220	Second	922	4+2B+K	52	.68054
221	Second	1368	5+2B+K	78	1.02081
222	Second	814	4+B+K	40	.52349
223	Second	794	4+B+K	40	.52349
224	Second	794	4+B+K	40	.52349

225	Second	788	4+B+K	40	.52349
226	Second	808	4+B+K	40	.52349
227	Second	1374	5+2B+K	78	1.02081
228	Second	1046	4+2B+K	58	.75906
229	Second	788	4+2B+K	46	.60202
301	Third	1660	5+3B+K	92	1.20403
302	Third	776	4+2B+K	46	.60202
303	Third	930	4+2B+K	52	.68054
304	Third	1378	5+2B+K	79	1.03390
305	Third	814	4+B+K	40	.52349
306	Third	788	4+B+K	41	.53658
307	Third	800	4+B+K	40	.52349
308	Third	800	4+B+K	40	.52349
309	Third	814	4+B+K	40	.52349
310	Third	1368	5+2B+K	78	1.02081
311	Third	683	3+B+K	33	.43188
312	Third	1058	5+2B+K	58	.75906
313	Third	840	4+2B+K	50	.65436
314	Third	918	4+B+K	43	.50275
315	Third	839	4+B+K	40	.52349
316	Third	1448	5+2B+K	79	1.03390
318	Third	918	4+2B+K	52	.68054
319	Third	860	4+B+K	42	.54968
320	Third	930	4+2B+K	50	.65436
321	Third	1368	5+2B+K	78	1.02081
322	Third	814	4+B+K	40	.52349
323	Third	800	4+B+K	40	.52349
324	Third	800	4+B+K	40	.52349
325	Third	788	4+B+K	40	.52349
326	Third	808	4+B+K	40	.52349
327	Third	1381	5+2B+K	78	1.02081
328	Third	906	4+2B+K	52	.68054
329	Third	776	4+2B+K	46	.60202
401	Fourth	1685	5+2½B+K	92	1.20403
402	Fourth	598	3+B+K	31	.40571
403	Fourth	1235	5+2B+K	72	.94229
404	Fourth	1408	5+2B+K	80	1.04698
405	Fourth	832	4+B+K	41	.53658

406	Fourth	800	4+B+K	41	.53658
407	Fourth	812	4+B+K	41	.53658
408	Fourth	812	4+B+K	41	.53658
409	Fourth	832	4+B+K	41	.53658
410	Fourth	1396	5+2B+K	80	1.04698
411	Fourth	917	4+2B+K	52	.68054
412	Fourth	854	4+B+K	42	.54968
413	Fourth	849	4+2B+K	50	.65436
414	Fourth	932	4+B+K	46	.60202
415	Fourth	1806	5+2B+K	96	1.25638
417	Fourth	585	3+B+K	30	.39262
418	Fourth	1084	4+2B+K	62	.81141
419	Fourth	709	3+B+K	33	.43188
420	Fourth	941	4+2B+K	52	.68054
421	Fourth	1398	5+2B+K	80	1.04698
422	Fourth	832	4+B+K	41	.53658
423	Fourth	812	4+B+K	40	.52349
424	Fourth	812	4+B+K	40	.52349
425	Fourth	800	4+B+K	40	.52349
426	Fourth	826	4+B+K	40	.52349
427	Fourth	1411	5+2B+K	80	1.04698
428	Fourth	1008	4+2B+K	56	.73289
429	Fourth	802	4+2B+K	46	.60202
501	Fifth	1685	5+3B+K	93	1.21712
502	Fifth	802	4+2B+K	46	.60202
503	Fifth	1042	4+2B+K	58	.75906
504	Fifth	1408	5+2B+K	80	1.04698
505	Fifth	832	4+B+K	41	.53658
506	Fifth	800	4+B+K	41	.53658
507	Fifth	812	4+B+K	41	.53658
508	Fifth	812	4+B+K	41	.53658
509	Fifth	832	4+B+K	41	.53658
510	Fifth	1396	5+2B+K	80	1.04698
511	Fifth	436	2+B+K	30	.39262
512	Fifth	1346	5+2B+K	78	1.02081
513	Fifth	1032	4+2B+K	58	.75906
514	Fifth	756	3+B+K	37	.48423
515	Fifth	854	4+B+K	42	.54968

516	Fifth	883	4+B+K	44	.57584
517	Fifth	535	3+B+K	30	.39262
518	Fifth	1084	4+2B+K	60	.78524
519	Fifth	709	3+B+K	33	.43188
520	Fifth	941	4+2B+K	55	.71980
521	Fifth	1398	5+2B+K	80	1.04698
522	Fifth	832	4+B+K	40	.52349
523	Fifth	812	4+B+K	40	.52349
524	Fifth	812	4+B+K	40	.52349
525	Fifth	800	4+B+K	40	.52349
526	Fifth	2246	5+3B+K	114	1.49196
528	Fifth	1008	4+2B+K	57	.74598
529	Fifth	802	4+1½B+K	43	.56275

(b) GARAGE UNITS.

UNIT NUMBER	FLOOR	APPROX. AREA (IN SQ. FT.)	NUMBER OF ROOMS (B) Bath (K) Kitchen	(EXPRESSED AS POINTS) PAR VALUE	PERCENTAGE OF INTEREST IN COMMON AREAS
(150 Garage Units) Numbered 1 thru 146 Plus Nos. 49A, 66A, 86A, and 103A	Basement	(150) for each unit	(1) for each Unit	2 for each unit	.026174 for each Unit

All Units have access to common hallways, driveways or Common Elements as shown on the Drawings attached hereto.

The percentages of ownership interest in Common Elements as stated above were computed based upon the Declarant's determination of the proportion that the par value of such Unit bears to the aggregate par value of all Units on the date that this Declaration will be filed for record. Said percentages of ownership interest cannot be changed, altered or amended except by an amendment to this Declaration unanimously approved by all the Unit Owners affected. Declarant, for itself and its successors and assigns, covenants and agrees that the undivided percentage of interest in the Common Elements and the fee titles to the respective Units, shall not be separated or separately conveyed, encumbered, inherited or devised and each said undivided interest shall be deemed to be conveyed or encumbered with

its respective Unit even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to said Unit.

For purposes of conveyance of title to purchasers of the Units, description by Residential or Garage Unit number and reference to this Declaration and to the Drawings shall be adequate to convey the Condominium Ownership Interest to the Unit together with and subject to the easements of record or those which are specified herein, and the percentage interest in the Common Elements as assigned herein to such Unit.

9. **UNIT OWNERS ASSOCIATION.** Declarant shall cause to be formed Shaker Club Condominium Unit Owners Association, Inc. which shall administer the Condominium Property. Each Unit Owner shall automatically be a member of the Association, which membership shall automatically terminate upon the sale or other disposition by such member of his Unit, at which time the successor Unit Owner shall automatically become a member of the Association. The formation of the Association and the administration of the Condominium Property shall be in accordance with the provisions of the Act, this Declaration and the By-Laws of the Association which are attached hereto as Exhibit "B," as the same may be amended from time to time.

10. **STATUTORY AGENT.** The President of the Association or such other person designated by the Board shall serve as the Statutory Agent to receive service of process for the Association. Until such designation is made, GERALD K. CARLISLE, whose address is 1001 Euclid Avenue, Cleveland, Ohio 44115, shall be designated as such Statutory Agent. The name and address of the Statutory Agent (and of each successor) shall be filed with the Ohio Secretary of State on the customary forms prescribed therefor.

11. **INSURANCE.**

(a) **Fire and Extended Coverage Insurance.**

(i) The Association, as a Common Expense, shall obtain for the benefit of the Association, all the Unit Owners and their respective Mortgagees, as their interests may appear, and thereafter maintain in full force and effect at all times, insurance on the Building, structures and other improvements (except such as may be separately insured by Unit Owners as hereinafter provided), now or at any time hereafter constituting a part of the Condominium Property (including without limitation all personal property owned by the Association) which shall afford protection against loss or damage by fire, lightning and such other perils as are now or hereafter covered by the standard form extended coverage endorsement commonly issued in Cuyahoga County, Ohio and such other risks as from time to time customarily shall be covered with respect to buildings similar in construction, location and use as the Building containing the Units, including without limitation, vandalism, malicious mischief,



boiler and machinery, plate glass and water damage. The casualty insurance to be purchased hereunder shall be in an amount equal to the full replacement cost of the Building, structures, improvements and personal property owned by the Association, exclusive of excavations and foundations and improvements to individual Units which may be separately insured by Unit Owners as hereinafter provided. Such replacement cost shall be determined every other year (or with such greater frequency as the insurance company may require) by the Board of Directors of the Association based upon and in conformance with an M.A.I. appraisal. Such casualty insurance shall provide (i) for the issuance of certificates of insurance to the Unit Owners, (ii) for the issuance of certificates of insurance to the holders of mortgages on the Units, (iii) that for the purpose of such insurance, improvements to Units made by Unit Owners shall not affect the valuation of the buildings and other improvements upon the land described in Exhibit "A," (iv) for the payment of claims without apportionment or contribution, as though no other policy existed, (v) that the insurer waives all defenses based upon the "increase in hazard" provision, co-insurance, invalidity arising by acts of an insured, or similar defenses and waiving the so-called "vacancy" clause, (vi) that the insurer waives its right of subrogation against Declarant, Unit Owners, the Association, any managing agent and their respective families, agents, tenants, guests and employees and all persons lawfully in possession or control of any part of the Condominium Property, (vii) that the insurer waives its right to elect to restore the Condominium Property, or any part thereof, in lieu of making a cash settlement in the case of the termination of the Condominium as provided for in this Declaration or pursuant to the provisions of Chapter 5311 of the Ohio Revised Code, and (viii) that coverage under such insurance will not be terminated, cancelled or materially modified without ten (10) days prior written notice to all insureds, including each Unit Mortgagee. The Association shall pay the premiums for the insurance herein required at least thirty (30) days prior to the expiration date thereof. Certificates of such insurance, together with proof of payment of the premium therefor, shall be delivered by the Association to each Unit Owner and its respective Mortgagee at least ten (10) days prior to the expiration of the then current policy(s). Such insurance policy(s) and endorsements shall be deposited with the Insurance Trustee (as hereinafter defined) who shall first acknowledge that the policy(s) and any proceeds thereof will be held in accordance with the terms hereof.

(ii) All casualty insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their respective Mortgagees, as their respective interests may appear. Such casualty insurance policies shall provide that all proceeds payable as a result of losses shall be paid to The Cleveland Trust Company, as Trustee for the Association, the Unit Owners and their respective Mortgagees, or to any other bank in Cleveland, Ohio with trust powers and total assets of more than Fifty Million Dollars (\$50,000,000.00). Such Trustee or any other bank meeting the foregoing requirements, acting as such Trustee, in herein referred to as the

“Insurance Trustee.” The Insurance Trustee shall not be liable for payment of premiums, for the renewal of policies, for the sufficiency of coverage, for the form of contents of the policies, or 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 and to disburse such proceeds for the purposes stated herein, for the benefit of the Association, the Unit Owners and their respective Unit Mortgagees.

(iii) Except as expressly provided in this subparagraph, no Unit Owner shall separately insure his Unit or any part thereof against loss by fire or other casualty intended to be covered by the insurance described in subparagraph (i) above. Should any Unit Owner violate this provision, any diminution in insurance proceeds resulting from the existence of such other insurance, and/or failure to have the proceeds of such other insurance payable pursuant to the provisions of subparagraph (i), shall be chargeable to the Unit Owner who acquired such other insurance, who shall be liable to the Association to the extent of any such diminution and/or loss of proceeds. Any improvements made by a Unit Owner within a Unit, as well as the personal property of the Unit Owner, may be separately insured by such Unit Owner. Any such insurance policy(s) shall contain the waiver of subrogation provisions referred to in subparagraph 11(a)(i) hereof. Notwithstanding the foregoing, until such time as Declarant has sold a Unit, Declarant shall insure all such Units. Each such Unit shall be released from the insurance policy upon its sales by Declarant or Declarant may assign such insurance to the purchaser of the Residential Unit.

(iv) Notwithstanding the foregoing, until the Association is formed, the insurance required to be procured by the Association shall instead be procured by Declarant.

(b) Liability Insurance.

(i) The Association, as a Common Expense, shall purchase a policy or policies of comprehensive liability insurance, and thereafter maintain the same in full force and effect at all times, insuring the Association, the Board of Directors, the manager or managing agent, if any, and the Unit Owners, against liability for bodily injury or property damage occurring upon. In or about, or arising from the Common Elements; such insurance shall afford protection to a limit of not less than Five Hundred Thousand Dollars (\$500,000.00) in respect to bodily injury suffered by any one (1) person, and to the limit of not less than One Million Dollars (\$1,000,000.00) in respect to any one (1) such 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. Such liability insurance shall contain a cross-liability endorsement to cover liability of one insured to the other.

(ii) Such comprehensive liability policy shall not insure against liability for bodily injury or property damage occurring within an individual Unit. A Unit Owner may carry such additional personal liability insurance as he may desire.

(iii) Notwithstanding the foregoing, until the Association is formed, such comprehensive liability insurance to be procured by the Association shall instead be procured by the Declarant.

(c) Other Insurance. The Association shall also obtain, to the extent obtainable: (i) fidelity insurance covering all employees who handle Association funds; (ii) workmen's compensation insurance; and (iii) coverage for payment of Common Expense charges on behalf of Unit Owners whose Units are rendered uninhabitable by fire or other casualty.

(d) General Insurance Provisions.

(i) 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, other than those improvements which may be separately insured by Unit Owners pursuant to Subparagraph 11(a)(iii) hereof, 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 Insurance Trustee and the insurance proceeds shall be applied in payment therefor; provided, however, that in the event, within ninety (90) days after such damage or destruction, the Unit Owners, if they are entitled to do so pursuant to Subparagraph (iii) of this Subsection shall elect not to repair, restore or reconstruct, then such repair, restoration or reconstruction shall not be undertaken.

(ii) In the event the improvements forming a part of the Condominium Property, or any portion thereof, other than those improvements which may be separately insured by Unit Owners pursuant to Subparagraph 11(a)(iii) hereof, 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 repair, restoration or reconstruction, then, unless the Unit Owners shall within ninety (90) days after such damage or destruction, if they are entitled to do so pursuant to subparagraph (iii) below, elect not to repair, restore or reconstruct such improvements, then such excess shall be provided either by means of a special assessment levied by the Board against all Unit Owners in proportion to each Unit Owner's percentage interest in the Common Elements or by means of an appropriation from the reserve maintenance fund, if any, or such other fund as may be established for the purpose of providing for the restoration and replacement of the Common Elements or any combination of the foregoing methods, as the Board in its sole discretion may

determine, and such assessment, appropriation, as the case may be, shall be deposited with the Insurance Trustee.

(iii) In the event any damage or destruction renders fifty percent (50%) or more of the Residential Units uninhabitable, the Unit Owners, with the prior written consent of their respective mortgagees, may by the vote of those entitled to exercise not less than 75% of the voting power, elect not to repair, restore or reconstruct such improvements at a meeting which shall be called within sixty (60) days after the occurrence of the casualty. Upon such election, all of the Condominium Property shall be subject to an action for sale as upon partition at the suit of any Unit Owner or Mortgagee. In the event of any such sale or a sale of the Condominium Property after such election, by agreement of all Unit Owners, the net proceeds of the sale together with the net proceeds of insurance, if any, and any other indemnity arising because of such damage or destruction, shall be considered as one fund and shall be distributed to all Unit Owners in proportion to their respective percentages of interest in the Common Elements. No Unit Owner, however, shall receive any portion of his share of such proceeds until all liens and encumbrances on his Unit have been paid, released or discharged. Upon such payment, the interest of the Unit Owner in the Condominium Property shall terminate, and the Unit Owner shall execute and deliver any and all documents or instruments as may be reasonably requested by the Association to evidence such termination. Moreover, in the event of any such sale of the Condominium Property, the members of the Board are hereby authorized to execute and deliver, on behalf of the Association and all of the Unit Owners, any instruments necessary or required to effect such sale or sales and each owner shall be obligated to execute and deliver such instruments and to perform such acts as may be necessary or required to effect such sale or sales.

(iv) Immediately after any damage or destruction to all or any part of the Condominium Property which is required to be covered by insurance carried by the Association in accordance with the provisions of subparagraph 11(a)(i) hereof, the Board or, its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair, restoration or reconstruction of the damaged or destroyed property. Such costs may include professional fees and premiums for bonds. Repair, restore or reconstruct, as used in this subparagraph, means repairing, reconstructing or restoring the Condominium Property (excluding any improvements to individual Units added by Unit Owners) to substantially the same condition in which it existed prior to the fire or other casualty. Each Unit Owner shall be deemed to have delegated, upon acquisition of title to his Unit, to the Declarant prior to the formation of the Association and to the Board thereafter, or their respective agent, his right to adjust with insurance companies all losses under the casualty insurance required to be carried by the Association pursuant to subparagraph 11(a)(i) hereof.

(v) Except as otherwise provided in subparagraph (iii) above, of this subparagraph (d), in the event all or any part of the property which is required to be insured by the Association under subparagraph 11(a)(i) hereof shall be damaged or destroyed, the Association shall cause the same to be restored substantially in accordance with the Drawings.

(vi) Unless the Unit Owners shall be permitted to and shall have elected not to restore such damage pursuant to subparagraph 11(d)(iii) hereof, each Unit Owner shall repair and restore that portion of his Unit not required to be covered under the casualty insurance described in subparagraph 11(a)(i) hereof.

(vii) Each Unit Owner and the Association agree, provided such agreement does not invalidate or prejudice any policy of insurance, that in the event the Condominium Property (including the Units and improvements within the Units), any part or parts of the Condominium Property, or the fixtures or personal property of anyone located therein or thereon are damaged or destroyed by fire or other casualty that is covered by insurance or any Unit Owner or the Association, and the lessees, sublessees or any of them, the rights, if any, or any of them against any other, or against the employees, agents, licensees or invitees of any one of them with respect to damage or destruction and with respect to any loss resulting therefrom are hereby waived to the extent of the coverage of said insurance, notwithstanding the cause of such fire or other casualty, including negligence.

(viii) The proceeds of insurance collected on account of a casualty, and the sums deposited with the Insurance Trustee by the Association from collections of assessments against Unit Owners on account of such casualty and/or appropriations from any funds set aside for such purpose, shall constitute a construction fund which shall be disbursed in payment of the cost of repair, restoration or reconstruction, from time to time as the work progresses, but not more frequently than once in any calendar month. The Insurance Trustee shall make such disbursements in accordance with its customary practices and requirements for disbursing proceeds of construction loans and upon the written request of the Association, accompanied by a certificate, dated not more than ten (10) days prior to such request. Such certificate shall be signed by a responsible officer of the Association and by an architect in charge of the work, who shall be selected by the Association and shall (i) state that the sum requested has either been paid by the Association or is justly due to the contractors, subcontractors, materialmen, architects or other persons who rendered services or furnished materials in connection with the work; (ii) give a brief description of the services and materials for which such progress payment is requested; (iii) state that the sum requested does not exceed the value of the services and materials described in the certificate; (iv) state 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 mechanics', materialmen's or similar lien for such work, upon the Common Elements of any Unit; and (v) state that the cost of the work remaining to be done subsequent to the date of said certificate does not exceed the amount of the construction fund remaining in the hands of the Insurance Trustee after the payment of the sums so requested. If there is a balance in the construction fund after payment of all costs of repair, reconstruction or restoration, such balance shall be distributed jointly to the Unit Owners and their Mortgagees who are the beneficial owners of the funds.

12. **DUTIES OF UNIT OWNERS.** The responsibility of each Unit Owner shall be as follows:

(a) Maintenance and Repair.

(i) To maintain, repair and replace at his expense (subject to the provisions at Paragraph 11) in good working order, and in a safe, clean and sanitary condition and in conformity with all laws, ordinances and regulations applicable to the Condominium Property, any portions of his Residential or Garage Unit, and all internal installations of his Residential Unit such as appliances, plumbing, electrical, heating and air conditioning fixtures or installations, the fan coil unit, any water and/or drain lines that serve the individual Residential Unit, whether located within or outside the bounds of the Residential Unit, to the point of disconnect with a line that serves other Units and/or the Common Elements, and any portion of any other utility service facilities located within the Residential Unit boundaries, other than such utility facilities serving other Units, and to assume the same responsibility with respect to the Limited Common Elements, if any, appurtenant to, and located within his Residential Unit.

(ii) To maintain and repair all window glass, all doors and interior of their framework, including hinges and locking devices of his Residential Unit and of all associated structures and fixtures therein, which are appurtenances to his Unit (subject to the provisions of Paragraph 11). The foregoing includes, without limitation, responsibility for all breakage, damage, malfunctions and ordinary wear and tear of such appurtenance.

(iii) To maintain, repair and replace at his expense (subject to the provisions of Paragraph 11) all portions of the Condominium Property which may be damaged or destroyed by reason of his own act or neglect, the act or neglect or any Occupant of his Residential or Garage Unit, or the act or neglect of any invitee, licensee or guest of such Unit Owner or Occupant. Notwithstanding the foregoing obligation or the Unit Owner, the Association (or other Unit Owner in respect to his own Unit) may, but

shall not be obligated to, repair and replace the property damaged or destroyed by reason of the act or neglect of a Unit Owner, an Occupant, or their invitee, licensee or guest, and charge and collect from such Unit Owner the cost and expense paid or incurred in making any such repair or replacement.

(iv) All of the work required of the Unit Owner in this subparagraph (a) shall be performed by him promptly, properly and in a good and workmanlike manner, using first-class materials or equivalent and equal to or better quality than those originally installed or incorporated into the Condominium Property, and using competent and qualified labor.

(b) Report Defects. To report promptly to the Board or any Managing Agent employed by the Association the need for any maintenance or repair to any portion of the Condominium Property which the Association is obligated to maintain or repair pursuant to the Declaration or the By-Laws.

(c) Non-disturbance of Others. To perform his duties and responsibilities in such manner so as not to unreasonably disturb other Unit Owners and Occupants.

(d) Pay for Utilities. To pay all costs for utility services (such as, without limitation, water, gas, electricity, telephone, sewage, rubbish and trash disposal or treatment and the like), furnished to his Unit or to the Limited Common Elements designated for his use, unless any or all of such services are provided or paid for by the Association and charged, to the Unit Owner as part of the Common Assessments, in which case all or any of such services so provided by the Association shall be paid for by the Unit Owner as part of his share of the Common Assessments. Declarant and the Association reserve the right to install separate electrical or other utility meters for each Unit and each Unit Owner shall cooperate with Declarant or the Association with respect to such installation.

(e) Comply with this Declaration. To faithfully and promptly pay all assessments and other charges made against him or his Ownership Interest in his Unit and the percentage interest in the Common Elements appurtenant to his Unit, pursuant to this Declaration; and faithfully observe, fulfill and perform all of the covenants and restrictions herein contained and all other obligations of a Unit Owner as set forth in (or intended by) this Declaration, the By-Laws, the Rules of the Association, and the Act.

(f) Negative Covenants. Except as otherwise provided herein, each Unit Owner agrees not to:

(i) Do anything which would or might jeopardize or impair the safety or soundness of the Condominium Property or any part thereof;

(ii) Paint or otherwise decorate or change the appearance of any portion of the Condominium Property not within the sounds of his Unit, unless the prior written consent of the Declarant or the Board is obtained;

(iii) Except as may be permitted pursuant to Paragraph 7 herein, decorate, landscape or adorn any Limited Common Elements or remove any portion thereof or make any additions thereto or make any improvements thereon or thereto or thereof without the prior written consent of the Board;

(iv) Except as may be permitted pursuant to Paragraph 7 herein, make or permit any structural alteration, removal, relocation, change, improvement or addition in or to his Unit or in or to any other part of the Condominium Property without first obtaining the written consent of the Board; it being understood that any alteration, removal, relocation, change, improvement or addition to any interior partition located in a Unit is not prohibited so long as the structural integrity of the Building is not adversely affected thereby. The Board shall be obligated to answer any written request by a Unit Owner for approval of a proposed structural alteration, removal, relocation, change, improvement or addition in such Unit Owner's Unit within thirty (30) days after such request, and failure to do so within the stipulated time shall constitute a consent by the Board to the proposed structural alteration, removal, relocation, change, improvement or addition. If any application to any governmental authority for a permit to make any such structural alteration, removal, relocation, change, improvement or addition in or to any Unit requires execution by the Association, and provided consent has been given by reason of the Board's failure to respond as aforesaid, then the application shall be executed on behalf of the Association by the Board only, without however, incurring any liability on the part of the Board or any of them to any contractor, subcontractor or materialmen on account of such alteration, removal, relocation, change, improvement or addition, or to any person having claim for injury to person or damage to property arising therefrom;

(v) The provisions of the foregoing subparagraph 12(f)(iv) shall not apply to the Declarant until the Association, pursuant to Section 5311.08 (C) of the Act, assumes control of the Common Elements. However, no structural alteration, removal, relocation, change, improvement or addition of any portion of the Condominium Property, shall be permitted without the prior written consent of Declarant's Mortgagee. If, however, Declarant shall request in writing such consent from Declarant's Mortgagee, and Declarant's Mortgagee shall not notify Declarant within twenty-one (21) days after receipt of said written request from Declarant that sold Mortgagee disapproves of the contemplated alteration, removal, relocation, change, improvement or addition, said Mortgagee shall be deemed to have provided its written consent thereto to Declarant. Upon the release by Declarant's Mortgagee of ninety



percent (90%) of the Units from the lien and operation of said Mortgagee's mortgage, the consent called for by this subparagraph shall no longer be required.

13. **DUTIES OF THE ASSOCIATION.**

(a) Management. The administration, management, maintenance, repair, alterations and improvements of the Condominium Property, shall be the responsibility of the Association; provided, however, that the Association may delegate all or any portion of its authority to discharge such responsibility as hereinafter provided.

(b) Common Elements. Except as otherwise expressly provided herein, the Association shall maintain and keep the Common Elements in a state of good working order, in a clean, neat and safe condition and in conformity with all laws, ordinances and regulations applicable to the Condominium Property.

(c) Improvements Within Units. Except as may otherwise be expressly provided herein, the Association shall keep and maintain in a state of good condition and repair those parts of the Condominium Property within each Unit which contribute to the support of the Building, excluding, however, the surface of interior walls, ceilings and floors, by making all repairs, replacements, alterations and other improvements necessary to comply with the foregoing. The Association shall further, except as provided in this Declaration, maintain, repair, replace, alter and improve all conduits, ducts, plumbing, wiring, equipment and other facilities for the furnishing of utility services which are used by or for or are common to two or more Units even though such facilities are located within the boundaries of a Unit. The Association shall also be responsible for repairing all damage to a Unit caused by the Association, including damage caused by performance by the Association of its obligations hereunder. If a Unit or Limited Common Elements appurtenant to (and located within) a Unit become impaired in a neglected state or otherwise in need of repair or restoration, and if the Unit Owner thereof fails after notice from the Association to repair, restore or otherwise correct the condition, the Association may, but shall not be obligated to, repair, restore or otherwise correct the condition. The Association shall charge the cost and expense thereof to the Unit Owner who should have performed the work which charge shall be an "other charge" as defined herein.

The Association shall, as a Common Expense, further be responsible for the reasonable replacement of all windows, including the frames, sashes and jams and the spaces occupied thereby, but excluding window glass, screens, locks and handles, located in the perimeter walls of the condominium building, that is needed solely as a result of ordinary wear and tear as determined by the Board. Responsibility for replacement of windows for any other reason and the general maintenance and repair of windows included as part of the Units, including the interior and exterior cleaning of such windows, shall remain with the respective Unit Owner.

(d) General Duties. The Association shall do any and all other things necessary and/or appropriate to carry out the duties and obligations reasonably intended to be required of it under this Declaration and the Act.

(e) Delegation of Authority.

(i) The Declarant, prior to formation of the Association and the Association thereafter may, but shall not be required, delegate all or any portion of its authority and responsibilities to a Manager, Managing Agent or Management Company (herein, the "Managing Agent"). Such delegation may be evidenced by a Management Agreement which shall provide for the duties to be performed by the Managing Agent and for the payment to the Managing Agent of a reasonable compensation as a Common Assessment. Upon the expiration of each Management Agreement, the Association may renew said agreement or enter into a different agreement with a different Managing Agent; provided, however, that no Management Agreement or Agency or renewal thereof shall be for a term longer than two (2) years. In addition, the Declarant covenants that it will not enter into a management agreement which has or would have a term which would expire more than one (1) year following the assumption of control of the Association by the Unit Owners as specified in the Act, unless said agreement is renewed by a vote of the Unit Owners pursuant to the By-Laws required by Section 5311.08 of the Act. The Managing Agent whether selected by the Declarant or the Association may be an entity owned in whole or in part, associated with in whole or in part or in any other manner connected or associated with any owner, partner, agent, contractor, or employee of Declarant without in any manner restricting, limiting or affecting the validity of said agreement; provided, however, that any contract entered into by the Declarant with a Managing Agent shall be in accordance with the provisions of Section 5311.25 of the Act.

(ii) Mortgagees shall be given notice by the Association of the name and address of any new management company at least thirty (30) days prior to the employment of said new management company.

(iii) In the event the Association decides or elects to terminate the employment of a managing agent or management company, with the intent to manage the Condominium Property itself and no longer employ a managing agent or management company, and the terms of any first mortgage on a Unit provides that said termination shall be a default sufficient to accelerate and immediately call due and payable the entire principal balance of said mortgage, the said termination must be approved by said mortgagee) prior to the effective date of the termination. Nothing contained herein shall be construed to prevent the Association from employing a new and

different managing agent or company in accordance with subparagraphs (i) and (ii) of this Paragraph.

(iv) Any and all such Management Agreements must provide for termination by either party without cause and without payment of a termination fee on ninety (90) days written notice by the party terminating the Management Agreement to the other party or parties to the agreement.

14. **MECHANICS LIENS.** No labor performed or materials furnished for use in connection with any Unit with the consent or at the request of a Unit Owner or his agent or subcontractor shall create any right to file a statement or mechanic's lien against the Unit of any other Owner not expressly consenting to or requesting the same or against any interest in the Common Elements except as to the undivided interest therein appurtenant to the Unit of the Owner for whom such labor shall have been performed and such materials shall have been furnished. Each Owner, in connection with labor performed and materials supplied to his Unit, shall indemnify and hold harmless each of the other Owners from and against liability or loss arising from the claim of any lien against the Unit, or any part thereof, of any other Owner for labor performed or for materials furnished in connection with work on the first Owner's Unit. At the written request of any Owner, the Association shall enforce such indemnity by collecting from the Owner of the Unit on which the labor was performed and materials furnished the amount necessary to discharge any such lien, including all costs incidental thereto, and obtaining a discharge of the lien. Such collection shall be made by a special assessment.

15. **EASEMENTS.**

(a) **Encroachments.** In the event that, by reason of the construction, settlement, rising or shifting of the Building or by changes in position caused by repair or reconstruction of the Condominium Property or any part thereof, any part of the Common Elements presently encroaches or shall hereafter encroach upon any part of a Unit or Units, or any part of a Unit presently encroaches or shall hereafter encroach upon any part of the Common Elements, 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 portion of the Common Elements consisting of unoccupied space within the Building 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, valid easements for such encroachments and for the maintenance of the same and for the use of such adjoining space shall and do hereby exist for the benefit of such Unit and the Common Elements, as the case may be, so long as all or any part of the Building containing such Unit shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of the Unit Owner

of any Unit or in favor of the Common Elements if such encroachment occurred due to the willful conduct of said Unit Owner.

(b) Easement of Access for Repair, Maintenance and Emergency. Portions of the Common Elements are or may be located within the Units or may be conveniently accessible only through the Units. The Owners of other Units shall have the irrevocable right, to be exercised by the Declarant or the Board as their agent, to have access to Each Unit and to all Common Elements from time to time during such reasonable hours as may be necessary for the maintenance, repair or replacement of any of the Common Elements located therein or accessible therefrom or at any time for making emergency repairs therein necessary to prevent damage to the Common Elements or to another Unit or Units. The Declarant and Board shall also have such right independent of any agency relationship. Damage to the interior of any part of a Unit or Units resulting from the maintenance, repair, emergency repair or replacement of any of the Common Elements or as a result of emergency repairs within another Unit at the instance of the Association or of Unit Owners shall be an expense of all the Unit Owners; provided, however, that if such damage is the result of negligence of the Unit Owner or of his or its guests, invitees, tenants or of an Occupant of a Unit, then such Unit Owner shall be financially responsible for all of such damage. Such damage shall be repaired and the property shall be restored substantially to the same condition as existed prior to damage. Amounts owing by Unit Owners pursuant hereto shall be collected by the Declarant prior to the formation of the Association and the Board thereafter by charging the cost thereof pursuant to this Declaration.

(c) Owner's Right to Ingress and Egress and Support. Each Unit Owner shall have the right to ingress and egress over, upon and across the Common Elements necessary for access to his Unit, and to any Limited Common Elements designated for use in connection with his Unit, and shall have the right to the horizontal and lateral support of his Unit, and such rights shall be appurtenant to and pass with the title to each Unit.

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

(e) Utility Easements. The Association may hereafter grant easements for utility purposes for the benefit of the Condominium Property, including the right to install, lay, maintain, repair and replace water mains and pipes, sewer lines, gas mains, telephone wires and equipment, television cable lines and electrical conduits and wires over, under, along, on and through any portion of the Common Elements; and each Unit Owner by his acceptance of a deed to his Unit, agrees from time to time to execute, acknowledge, deliver and record such instruments as may be necessary to effectuate the foregoing.

(f) Easements to Run with Land. Each and every easement and right reserved, granted or described herein are easements appurtenant, running with the land, in perpetuity and at all times shall inure to the benefit of and be binding upon the Declarant, all Unit Owners, the Association and each Person for whose respective benefit such easements have been created, their respective heirs, administrators, executors, personal representatives, successors, assigns and grantees, and their respective tenants, subtenants, guests, visitors and invitees. Each Unit Owner and his respective Mortgagee by acceptance of a deed conveying the Ownership Interest of a Unit or a mortgage encumbering such Ownership Interest and/or Unit, as the case may be, hereby irrevocably appoints the Association and/or the Declarant, his Attorney-in-Fact, which appointment shall be deemed to be coupled with an interest, and authorizes, directs and empowers such Attorney-in-Fact, at the option of said Attorney-in-Fact, or either one of them, to execute, acknowledge and record for and in the name of such Unit Owner and his Mortgagee such easements or other instruments as may be necessary to effectuate the foregoing, and each Unit Owner and his Mortgagee agrees to execute, acknowledge and deliver any and all instruments in recordable form which may be necessary or desired by any beneficiary of any such easement to effectuate and/or further manifest the easements and intentions set forth in this Paragraph.

(g) Reference to Easements in Deeds. Failure to refer specifically to any or all of the easements and/or rights described in this Declaration or in the Act in any deed of conveyance or in any mortgage or trust deed or other evidence of obligation shall not constitute a default or failure to reserve said rights or easements but same shall be deemed conveyed or encumbered along with the Unit.

(h) Reservation by Declarant of Easement for Ingress and Egress. The Declarant herein hereby reserves unto itself the easement and right for the benefit of and use by Declarant, its agents, licensees, servants, tenants, personal representatives and Declarant's Mortgagee and its respective successors and assigns for ingress and egress by foot, automobile and otherwise over, through and under the Condominium Property and any part thereof:

(i) Over, through and under a Unit, for so long as Declarant and Declarant's Mortgagee, or its respective successors and assigns, own unfinished and unsold Unit or Units, and such ingress and egress is necessary to complete the construction, repair or restoration of said unsold Unit or Units; and,

(ii) Over, through and under a Unit when such ingress and egress is necessary to provide labor and materials required by Section 5311.25 (E) of the Act; and

(iii) The easements granted by this Paragraph 15(h) shall be automatically terminated upon the sale by Declarant of all Units or upon the completion of the

construction, repair or restoration of unsold Units, whichever event occurs first, with regards to the easement created by subparagraph (i); and upon the expiration of the periods of time mentioned in Paragraph 32(o) with regards to the easement created by subparagraph (ii).

(i) Restrictions on Grants of Easements and Licenses as to Residential Unit. Residential Unit Owners shall have the right to grant easements and licenses pertaining to all or a portion of a Residential Unit. Such easements and licenses may be granted solely to Owners of other Residential Units or the Association except as otherwise provided in this Paragraph. No grant of such easements and licenses shall be valid unless mortgagee(s) affected thereby shall have given written consent thereto.

#### 16. ASSESSMENTS AND LIEN OF ASSOCIATION.

(a) General. Assessments for the maintenance, repair and insurance of the Common Elements and for the insurance of the Units as hereinbefore provided, together with the payment of the Common Assessments, shall be made in the manner provided herein and in the By-Laws. Common Profits, including income from any coin-operated facilities provided by the Association and from any other income-producing goods, services and/or facilities, in excess of Common Expenses shall be used to defray the Assessments made or shall be used for reserves for the Association, as the Board may determine.

In accordance with Ohio Revised Code Section 5311.18(A)(2), the Association shall credit payments made by a Unit Owner in the following order of priority:

- (i) First, to interest owed to the Association;
- (ii) Second, to administrative late fees owed to the Association;
- (iii) Third, to collection costs, attorneys' fees, and paralegal fees incurred by the Association; and
- (iv) Fourth, to the principal amounts the Unit Owner owes to the Association for the common expenses or enforcement Assessments chargeable against the Unit.

(b) Division of Common Profits and Common Expenses. The Common Profits shall be distributed and the Common Expenses shall be charged to each Unit Owner in accordance with the percentages of interest in the Common Elements for each Unit as set forth above.

(c) Non-Use of Facilities. No Owner of a Unit may exempt himself from liability for his contribution toward the Common Assessments by waiver of the use or enjoyment of any of the Common Elements or by the abandonment of his Unit.

(d) Lien of Association. The Association shall have a lien upon the estate or interest in any Unit of the Owner thereof and its appurtenant percentage of interest in the Common Elements, for the payment of the portion of the Common Assessments and Other Charges chargeable against such Unit which remain unpaid for ten (10) days after the same have become due and payable from time to time and a certificate therefor, subscribed by the President of the Association, is filed for record in the Office of the Recorder of Cuyahoga County, Ohio, pursuant to authorization given by the Board. Such certificate shall contain a description of the Unit, the name or names of the record Owner or Owners thereof and the amount of such unpaid portion of the Common Assessments and/or Other Charges. Such lien shall be valid and enforceable in the same manner and with the same effect as the lien of the Association for Common Expenses accorded by the Act and shall remain valid for a period of five (5) years from the filing thereof, 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 the Court in an action brought to discharge such lien as hereinafter provided. In addition, the Owner of the Unit and any occupant thereof shall be personally liable for such Common Assessments and Other Charges.

In accordance with Ohio Revised Code Section 5311.18(A)(1)(b), the Association has a lien upon each Unit's ownership interest for any unpaid interest, administrative late fees, enforcement Assessments, and collection costs, attorneys' fees, and paralegal fees.

(e) Priority of Association's Lien. The lien provided for in subparagraph (d) of this Paragraph shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and the lien of the 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 by the Association or its President pursuant to authority given in him by the Board. In any such foreclosure action, the Owner or Owners of the Unit affected shall be required to pay a reasonable rental for such Unit during the pendency of such action, and the plaintiff in such action shall be entitled to the appointment of a receiver to collect the same. In any such foreclosure action, the Association shall be entitled to become a purchaser at the foreclosure sale.

(f) Dispute as to Common Assessments or other Charges. Any Unit Owner who believes that the Common Assessments or Other Charges chargeable to his Unit, for which a Certificate of lien has been filed by the Association, have been improperly charged against him or his Unit may commence an action in the Court of Common Pleas for Cuyahoga County, Ohio, for the discharge of such lien.

(g) Liability of Foreclosure Sale Purchaser for Past Due Common Assessments and Other Charges. Where the Mortgagee acquires title to the Unit as a result of foreclosure of the first mortgage or by a deed in lieu of foreclosure, such Mortgagees, its successors and assigns, shall not be liable for the share of the Common Assessments and Other Charges

chargeable to such Unit which became due prior to the acquisition of title to such Unit by said Mortgagee except as hereinafter provided. Such unpaid share of Common Assessments and Other Charges shall be deemed to be Common Expenses collectible from all the Units, including that of such acquiring Mortgagee, its successors and assigns. The foregoing to the contrary notwithstanding where a purchaser of a Unit, other than the acquiring Mortgagee, its successors and assigns, as aforesaid, acquires title to the Unit, as a result of foreclosure of the first mortgage, such acquirer of title, his successors and assigns, shall be liable for the share of the Common Assessments and Other Charges chargeable to such Unit which became due prior to the acquisition of title to any such Unit by any such acquirer.

(h) Liability for Assessments And Other Charges Upon Voluntary Conveyance. In a voluntary conveyance of a Unit (other than a deed in lieu of foreclosure) the grantee of the Unit shall be jointly and severally liable with the grantor for all unpaid Common Assessments and Other Charges charged by the Association against the grantor and his Unit up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee shall be entitled to a statement from the Board setting forth the amount of all unpaid Common Assessments and Other Charges against the grantor due the Association within ten (10) days after receipt of a written request therefor, and such grantee shall not be liable for nor shall the Unit conveyed be subject to a lien for, any unpaid Common Assessments and Other Charges made by the Association against the grantor in excess of the amount set forth in such statement for the period reflected in such statement. As used in this paragraph "grantor" shall include a decedent and "grantee" shall include a legatee or intestate heir of said decedent.

(i) Declarant's Obligation to Pay Common Expenses. In accordance with the requirements of Section 5311.25(F) of the Act, Declarant will assume the rights and obligations of a Unit Owner for all not yet sold Units, including, without limitation, the obligation to pay Common Expenses attaching to each of such untold Units owned by Declarant from and after the date the Amended Declaration is filed for record. Nothing contained in this subparagraph shall be construed to prohibit payment by the Association to Declarant for sums expended by Declarant for improvements, repairs, alterations, maintenance, insurance and other expenses incurred by Declarant pertaining to the Common Elements and Limited Common Elements of the Condominium Property.

17. **CONDEMNATION.** In the event of a taking in condemnation or by eminent domain (or sale in lieu thereof) of all or part of the Common Elements, the award payable for such taking shall be made payable to the Insurance Trustee. Such proceeds shall be applied by the Insurance Trustee for the repair, restoration or reconstruction of such Common Elements, in the manner provided in Paragraph 11 hereof for the repair, restoration or reconstruction of the Condominium Property with the proceeds of insurance, unless the Unit Owners (with the prior written consent of the respective mortgagees) entitled to exercise not less than seventy-five percent (75%) of the voting power of all Unit Owners elect not to



repair, reconstruct or restore such Common Elements. Any such election shall be made in the manner provided in Paragraph 11 hereof. In the event of such an election, the Insurance Trustee shall disburse the net proceeds of such award to the Unit Owners in proportion to their respective interests in the Common Elements and in the manner provided in Paragraph 11 hereof. No Unit Owner, however, shall receive any portion of such award until all liens and encumbrances on his Unit have been paid, released or discharged.

18. **REHABILITATION AND RENEWAL OF OBSOLETE PROPERTY.**

The Association may by the affirmative vote of Unit Owners (with the prior written consent of their respective Mortgagees) entitled to exercise not less than seventy-five (75%) percent of the voting power, determine that the Condominium Property is obsolete in whole or in part, and elect to have the same renewed and rehabilitated. The Board shall thereupon proceed with such renewal and rehabilitation and the cost thereof shall be a Common Assessment.

19. **REMEDIES FOR BREACH OF COVENANTS AND REGULATIONS.**

(a) **Abatement and Enjoinment.** The violation of any restriction, condition or regulation adopted by the Board or the breach of any covenant or provision contained in this Declaration or in the By-Laws shall give the Board in addition to the rights hereinafter set forth in this Paragraph, the right:

(i) To enter upon the 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 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, or its agents, shall not be thereby deemed guilty in any manner of trespass; or

(ii) To enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

(b) **Involuntary Sales.** 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 the general law, this Declaration or of the By-Laws, or the regulations adopted by the Board, and such violation shall continue for thirty (30) days after notice in writing from the Board, or shall occur repeatedly during any 30-day period after written notice or request from the Board to cure such violation, then the Board shall have the power to issue to the defaulting Unit Owner a 10-day notice in writing to terminate the rights of the said defaulting Owner to continue as a Unit Owner and to continue to occupy, use or control his Unit. Thereupon, an action in equity may be filed by the Board against the defaulting Owner for a decree of mandatory injunction against the Unit Owner or occupant. In the alternative, the Board may pray for a decree declaring the termination of the defaulting Unit Owner's right to occupy, use or control the Unit as a result of the breach of covenant, and ordering that all the

right, title and interest of the Unit Owner in the Unit be sold at a judicial sale upon such notice and terms as the Court shall establish, provided that the Court shall enjoin and restrain the defaulting Unit Owner directly or indirectly from reacquiring his interest at such judicial sale. In the event the holder of a mortgage elects not to accelerate and call the entire principal balance due on said mortgage immediately due and payable, or is prohibited from doing so, and said mortgage is unaffected by any order, judgment or decree of the Court enforcing this provision, the Court making such order, judgment or decree may determine the minimum amount for which the right, title and interest of the Unit Owner may be sold, and such minimum amount shall be not less than two-thirds of the difference between the value of the Unit as appraised by the Sheriff (or otherwise if the Sheriff does not make the appraisal) and the amount remaining unpaid on said mortgage. The Association, however, may acquire said interest at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge Court costs, master's or commissioner's fees, court reporter charges, reasonable attorneys' fees, real estate taxes and assessments and all other expenses of the proceeding, and all such items shall be taxed against the defaulting Unit Owner in said decree. Any balance of proceeds, after satisfaction or such charges and any unpaid assessments hereunder or any liens, may be paid to the Unit Owner. Upon the confirmation of such sale, the purchaser thereof shall thereupon be entitled to a deed to the Unit and to immediate possession of the Unit so purchased and may apply to the Court for a writ of possession 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 Unit so purchased, subject to this Declaration. Notwithstanding the foregoing provisions of this subparagraph 19(b), however, if any Unit(s) owned by Declarant are sold pursuant to the provisions of this subparagraph 19(b), the entire principal balance and accrued interest owed in respect of any mortgage encumbering said Unit(s) shall be paid in full from the proceeds derived from any such sale.

(c) Cost of Collection. A delinquent Unit Owner shall be liable for any and all costs incurred by the Association in connection with the collection of the delinquent owner's account, including reasonable attorneys' fees, recording costs, title reports and/or court costs.

(d) Cost of Enforcement. If any Unit Owner (either by his or her conduct or by the conduct of any occupant of his or her unit) shall violate any provision of the Declaration, By-Laws or any rule adopted, said Unit Owner shall pay to the Association, in addition to any other sums due, all costs and expenses incurred by the Association in connection with the enforcement of said provision or rule, including reasonable attorney fees and/or court costs. Said costs and expenses shall be charged as a special assessment against said Unit Owner. The Association, in addition to all other remedies available, shall have the right to place a lien upon the estate or interest of said Unit Owner as further explained and set forth in Paragraph 16, Section (d) of this Declaration.

(e) Suspended Rights. In accordance with the Ohio Revised Code Section 5311.081(B)(18), when a Unit Owner is delinquent in the payment of Assessments for more

than thirty (30) days, the Board may, by a majority vote, suspend the voting privileges of the owner and/or right of the occupants to use the recreational facilities.

(f) Enforcement Assessments. In accordance with Ohio Revised Code Section 5311.081(B)(12), the Board shall have the authority to impose interest and administrative late fees for the late payment of Assessments; impose returned check charges and, in accordance with the procedure outlined in Ohio Revised Code Section 5311.081(C)(1), impose reasonable enforcement Assessments for violations of the Declaration, the By-Laws, and the rules of the Association, and reasonable charges for damage to the Common Elements.

20. WAIVER. The failure of the Declarant, the Board or its delegate to insist, in any instance, upon the strict performance of any of the terms, covenants, conditions or restrictions of this Declaration or of the By-Laws, or to exercise any right herein or therein contained, or to serve any notice or to institute any action shall not be construed as a waiver or a relinquishment for the future, of such term, covenant, condition, restriction or right, but such term, covenant, condition, restriction or right, shall remain in full force and effect. The receipt by the Declarant, the Board or its delegate of the payment of any Common Expenses from any Unit Owner with knowledge of the breach of any covenant hereto shall not be deemed a waiver of such breach, and no waiver by the President, the Board or its delegate of any provision hereof shall be deemed to have been made unless expressed in writing and signed by the Declarant, the Board or its delegate.

21. LIABILITY OF MEMBERS OF THE BOARD AND THE OFFICERS OF THE ASSOCIATION. None of the members of the Board or the officers, employees or agents of the Association shall be liable to the Unit Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct, gross negligence or bad faith and except as provided herein below or in the By-Laws. The Unit Owners other than any Mortgagee acquiring said Unit by reason of foreclosure or a deed in lieu of foreclosure, and the Association shall indemnify and hold harmless each of the members of the Board and the officers, employees or agents of the Association from and against all contractual liability to others arising out of contracts made by the Board on behalf of the Association unless any such contract shall have been made in bad faith or contrary to the express provisions of the Declaration or of the By-Laws. It is intended that the members of the Board shall have no personal liability with respect to any contract made by then on behalf of the Association. It is also intended that the liability of any Unit Owner arising out of any contract made by the Board or out of the aforesaid indemnity in favor of the members of the Board shall be limited to such proportion of the total liability thereunder as his interest in the Common Elements bears to the interests of all the Unit Owners in the Common Elements. The provisions of this Paragraph do not apply to and shall not preclude claims for property damage and personal injury by Unit Owners against the Board or any other insured under the liability insurance required by Paragraph 11 hereinabove.

22. **ENFORCEMENT.** Each Unit Owner shall comply strictly with this Declaration, the By-Laws and the Rules of the Association as the same may be lawfully amended from time to time and with decisions adopted pursuant to said Declaration, By-Laws and Rules, and failure to comply shall be grounds for an action to recover sums due for damages or injunctive relief, or both, maintainable by the Declarant, the Board or its delegate on behalf of the Unit Owners, or in a proper case, by an aggrieved Unit Owner.

23. **PROPERTY.** The Board may acquire and hold, for the benefit of the Unit Owners, real property and tangible and intangible personal property and may dispose of the same by sale or otherwise; and the beneficial interest in such personal property shall be owned by the Unit Owners in the same proportion as their respective interests in the Common Elements. A transfer of a Unit shall transfer to the transferee ownership of the transferor's beneficial interest in such personal property, whether or not such personal property is specifically mentioned therein.  
all.

24. **AMENDMENT OF DECLARATION AND BY-LAWS.**

(a) This Declaration and the By-Laws attached hereto as Exhibit "B" may be amended, and such amendment(s) shall be effective, upon the filing for record with the Recorder of Cuyahoga County, Ohio, of an instrument in writing setting forth specifically the item or items to be amended and/or any new matter to be added, which instrument shall have been duly executed by the Unit Owners entitled to exercise at least seventy-five (75%) percent of the voting power of the Association (except amendments affecting the percentage of interest in the Common Elements, which amendments must be unanimously approved by all Unit Owners and Mortgagees affected). Amendments must be executed with the same formalities as this instrument and its attached exhibits have been executed, and must contain an affidavit of the President of the Association that a copy of the amendment has been mailed by certified mail or hand delivered or sent by telegram to all first mortgagees having bona fide liens of record upon any Unit. No amendment shall have any effect, however, upon a bona fide first mortgagee until the written consent to such amendment of such mortgagee has been secured. Such consents shall be retained by the Secretary of the Association and his certification in the instrument of amendment as to the names of the consenting and non-consenting mortgagees of the Units shall be sufficient for reliance by the general public. If less than all Mortgagees consent to an amendment to this Declaration and/or the By-Laws, said amendment or modification shall nevertheless be valid among the Unit Owners interest, provided that the rights of a non-consenting Mortgagee shall not be derogated thereby.

(b) Notwithstanding anything contained herein to the contrary, no provision in this Declaration or the By-Laws may be changed, modified or rescinded, which, after such change, modification or rescission, would conflict with the provisions of the Act or the general law, nor may any amendment be made to the percentage of interest in the Common Elements

of each Unit except by an amendment to this Declaration unanimously approved by all Unit Owners and Mortgagees affected.

(c) The Declarant prior to the formation of the Association and the Board thereafter each reserve the right to amend the Declaration and/or the By-Laws and/or the Drawings without having to observe the foregoing formalities (other than the legal formalities for the recording of such amendment) so long as the substance of such amendment is to correct minor errors of omission or commission or by changed circumstances which are not foreseen herein or throughout this Declaration, the By-Laws or the Drawings, or such amendment does not substantially impair or materially alter any of the provisions of the Declaration, the By-Laws or the Drawings, as the case may be, or any rights or obligations of any of the Unit Owners or Mortgagees thereunder. In consideration of the foregoing submission to Condominium Ownership, the Association and each Unit Owner does for himself, his, her or its heirs, executors, administrators, successors and assigns, irrevocably appoint the then President of Declarant or President of the Association, as the case may be, as attorney-in-fact, which appointment shall be deemed to be effective concurrently with the transfer of title to any Unit from the Declarant to the Unit Owner. Further, and for like consideration, the foregoing do authorize and approve any Amended Declaration, its exhibits, appendices or By-Laws of the Association as may be necessitated by errors or by changed circumstances as aforesaid and that each of the foregoing does authorize such amendment. The Association and/or each Unit Owner shall, if requested, take such further action and execute any amendment or modification. The Association and each Unit Owner shall approve, cause to be voted or vote in favor of and adopt such amendment if so requested by the Declarant. The special power of attorney aforesaid, if requested, shall be by separate instrument executed by each Unit Owner prior or subsequent to transfer of title.

(d) Notwithstanding any contrary provisions of this Paragraph 24, neither the Declaration, the By-Laws nor the Drawings may be amended without the prior written consent of Declarant's Mortgagee.

25. **NOTICES.** All notices required or permitted hereunder, and under the By-Laws, to the Association or the Board of Directors, shall be in writing and shall be hand-delivered or sent by regular U.S. mail, first-class postage prepaid, to the Board of Directors or the Association at the address of the Condominium Property or to such other address as the Board of Directors may designate from time to time by notice in writing to all Owners. All notices to any Owner shall be hand-delivered or sent by regular U.S. mail, first-class postage prepaid, to such Owner's Unit address or to such other address as may be designated by him/her from time to time, in writing, to the Board of Directors. Any notice required or permitted to be given to any Occupant of a Unit other than an Owner shall effectively be given if hand-delivered or sent by regular U.S. mail, first-class postage prepaid, to the Unit address.

**26. REQUEST BY FIRST MORTGAGEES.**

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

(b) A first mortgagee, upon written request to the Board, shall be given a written statement by the Board of the number of Unit Owners who are more than one (1) month delinquent in the payment of monthly assessments at the time said written request is received by the Board. For the purpose of this sub-section, co-owners of a Unit shall be considered as one (1) Unit Owner.

(c) In general, and in order to facilitate the marketability of the Units, the Board shall comply, to the best of its ability, with requests by first mortgagees for information required, by regulations of the Federal Home Loan Bank, Federal National Mortgage Association and Mortgage Guaranty Insurance Corporation (or other private mortgage insurance company) or required by any other secondary mortgage market lender, or by any governmental insurer or guarantor of the first mortgage of any Unit.

(d) Upon written request to the Association, each Mortgagee shall have the right to receive notices of all meetings of the Association and to designate a representative to attend any such meeting.

**27. REQUIREMENTS OF DECLARANT'S MORTGAGEES.**  
Notwithstanding any contrary provisions of this Declaration, without the prior written consent of Declarant's Mortgagee:

(a) No Garage Unit may be sold by Declarant to anyone other than a purchaser or Owner of a Residential Unit.

(b) No more than one (1) Garage Unit may be sold by Declarant to any purchaser or Owner of a Residential Unit.

(c) No Managing Agent may be appointed to manage the Condominium Property.

(d) No contract with a Managing Agent nor any amendments, modifications, or extension thereof shall be made.

The requirement to obtain the prior written consent or Declarant's Mortgagee in respect of the matters covered by items (c) and (d) of this Paragraph 27 shall not be applicable from and after the date that the Unit Owners have assumed control of the Common Elements and of the Association as prescribed in Section 5311.08(C) of the Act.

28. **INVALIDITY.** The Invalidity of any part of this Declaration shall not impair or affect in any manner the validity, enforceability or effect of the balance of the Declaration.

29. **GENDER.** The use of the masculine gender herein or in the By-Laws shall be deemed to include the feminine and the neuter genders, as the case may be, and the use of the singular shall be deemed to include the plural, wherever the context so requires.

30. **PERPETUITIES.** If any of the options, privileges, covenants or rights created by this Declaration or in the By-Laws shall be unlawful or void for violation of any rule against perpetuities or any analogous statutory provision or any rules restricting restraints on alienation or any other statutory or common law rules imposing time limitations, then such provision shall continue in effect for only twenty-one (21) years after the death of the survivor of the now living descendants of Howard M. Metzenbaum, United States Senator from the State of Ohio and Edward M. Kennedy, United States Senator from the State of Massachusetts.

31. **COVENANTS TO RUN WITH THE LAND.** All easements, rights, covenants, conditions and restrictions set forth in this Declaration run with the land perpetually in full force and effect and at all times inure to the benefit of and are binding upon the Declarant, the lessees, Mortgagees, or other persons having an interest in the Condominium Property or some portion thereof.

32. **CERTAIN PROVISIONS REQUIRED BY THE ACT.** In accordance with Section 5311.25 of the Act and in connection with the sale or offer to sell Condominium Ownership Interests, the Declarant agrees that:

(a) Any deposit or down payment made in connection with the sale of a Unit shall be held in trust or escrow until delivered at settlement or returned to or otherwise credited to the Purchaser of a Unit or forfeited to the Declarant, and if a deposit or down payment of Two Thousand Dollars (\$2,000.00) or more is held for more than ninety days (90), interest at the rate of at least four percent (4%) per annum for any period exceeding ninety days (90) shall be credited to the Purchaser of a Unit at settlement or upon return or other credit made to such

Purchaser, or added to any forfeiture to the Declarant. Deposits and down payments held in trust or escrow pursuant to this Paragraph shall not be subject to attachments by creditors of the Declarant or a Purchaser of a Unit.

(b) Except in its capacity as a Unit Owner of unsold Condominium Ownership Interests, the Declarant will not retain a property interest in any of the Common Elements after control of the Condominium Property is assumed by the Unit Owners Association.

(c) The Owners of Condominium Ownership interests that have been sold by the Declarant or his agent will assume control of the Common Elements and of the Unit Owners Association as prescribed in division (C) of Section 5311.08 of the Act.

(d) Solely and only to the extent such warranties are or may be required by the provisions of Section 5311.25(E) of the Ohio Revised Code, Declarant hereby furnishes a two (2) year warranty covering the full cost, of labor and materials for any repair or replacement of roof and structural components and mechanical, electrical, plumbing and common service elements serving the Condominium Property as a whole, occasioned or necessitated by a defect in material or workmanship and a one (1) year warranty covering the full cost of labor and materials for any repair or replacement of structural, mechanical and other elements pertaining to each Unit, occasioned or necessitated by a defect in material or workmanship commencing as follows:

(i) The two (2) year warranty shall commence on the date that the deed is filed for record following the sale or the first Condominium Ownership Interest to a purchaser in good faith for value;

(ii) The one (1) year warranty shall commence on the date the deed is filed for record following the first sale or a Condominium Ownership Interest to a purchaser in good faith for value;

(iii) In the case of ranges, refrigerators, washing machines, clothes dryers, hot water heaters, and other similar appliances, if any, installed, and furnished as part of the Unit by Declarant, the valid assignment, to the extent assignable, of any express or implied warranties, if any, of the manufacturer's satisfies the Declarant's obligation with respect to such appliances, and the Declarant's warranty is limited to the installation of the appliances;

(iv) All warranties made to the Declarant that exceed the time periods set forth hereinabove with respect to any part of the Units or Common Elements are hereby assigned to purchasers of Units, to the extent that such warranties are assignable.



The foregoing warranties shall be the sole warranties provided, express or implied, and none of the foregoing warranties shall cover repairs or replacements necessitated or occasioned by ordinary wear and tear or by the negligent or wanton acts of any Unit Owner or Occupant or any tenant, guest or invitee of a Unit Owner or Occupant or occasional or necessitated for any reason whatsoever except by defects in materials and workmanship.

(e) All tenants have been or will be offered an option, exercisable within not less than ninety (90) days after notice, to purchase a Condominium Ownership Interest in the Condominium Property, and all tenants have been or will be given written notice of not less than one hundred twenty (120) days prior to being required to vacate the premises they are leasing to facilitate the conversion of the Building to condominium use and ownership.

### 33. MISCELLANEOUS PROVISIONS.

(a) 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 Condominium Property, and shall inure to the benefit of such holder of an interest in like manner as though the provision of this Declaration were recited and stipulated at length in each, and every need of conveyance.

(b) Upon the removal of the Condominium Property from the provisions of the Act, 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 or effect.

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

(d) Except as otherwise provided in the Act, or as provided in Paragraph 32(d) hereof, neither Declarant nor its representatives, successors or assigns shall be liable for any claim whatsoever arising out of or by reason of any act or actions performed pursuant to any authorities granted or delegated to it by or pursuant to this Declaration or the By-Laws in Declarant's (or its representative's) capacity as owner, manager or seller of the Condominium Property whether or not such claim (1) shall be asserted by any Unit Owner, occupant, the Association, or by any person claiming through any of them; or (2) shall be on account of injury to person or damage to or loss of property wherever located and however caused; or (3) shall arise ex contractu or (except in the case of gross negligence) ex delictu. Without limiting

the generality or 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 or any act or neglect or any Unit Owner, Occupant, the Association and their respective agents, employees, guests and invitees, or by reason of any neighboring property or personal property located on or about the Condominium Property, or by reason of the failure to function or disrepair of any utility services (heat, air conditioning, electricity, gas, telephone, water or sewage).

(e) The heading of each Paragraph in this Declaration and in the By-Laws is inserted only as a matter of convenience and for reference and in no way defines, limits or describes the scope or intent of this Declaration or the By-Laws nor in any way affects this Declaration or the By-Laws.

(f) 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.

(g) Whenever in this Declaration the phrases "Declarant and the Board," "Declarant or the Board," "Declarant and the Association," or "Declarant or the Association," "the Board and the Declarant" or "the Board or the Declarant" are used, any right, power or privilege conferred thereby upon the Declarant shall cease upon the assumption of control of the Common Elements by the Association pursuant to Section 5311.08(C) of the Act.

(h) (i) If the Act shall be amended, or construed, by final non-appealable court order so as to permit the subdivision and/or combination of "dwelling units" as referred to in Section 5311.01 of the Act, and if there shall be compliance with all governmental laws, ordinances, rules and regulations, a Residential Unit may be subdivided by the Unit Owner thereof into two or more separate new Residential Units, a Residential Unit or any portion thereof may be transferred by the Unit Owner thereof to the Unit Owner of a Residential Unit or Residential Units contiguous thereto, and may be combined with such adjacent Residential Unit or Residential Units, and made a part thereof, for use together with such contiguous Residential Unit or Residential Units (thereby forming a new larger Residential Unit), and the Common Elements affected, by such subdivision or transfer and combination may be located or relocated, as required to affect such subdivision or transfer and combination, provided that such subdivision or transfer and combination is made in compliance with the Act and the following provisions. No rights and obligations with respect to any Unit shall be affected, no percentage of ownership in the Common Elements shall be reallocated, and no such subdivision or transfer and combination shall be effective, unless the same is expressly provided for in this subparagraph and unless the same is made in compliance with the requirements of the Act, this subparagraph and Paragraph 24 hereof. The Residential Unit Owner or Residential Unit Owners desiring to make such

subdivision or transfer and combination shall make written application to the Board requesting an amendment to this Declaration (including the Drawings) containing (i) a survey of the proposed alterations of the affected Residential Unit or Residential Units and the affected Common Elements, and (ii) a calculation of the proposed reallocation to the new Residential Units to be created by such proposed subdivision or transfer of the percentage of interest in the Common Elements appurtenant to such affected Residential Unit or Residential Units. Any Residential Unit Owner desiring to alter any part of the Common Elements separating, located between, and which are exclusively serving one or more Residential Units to be transferred and combined pursuant to the provisions of the Act and this subparagraph shall in addition comply with the applicable provisions of subparagraphs (ii) and (iii) hereof. No such proposed subdivision or transfer and combination shall be effective unless first approved in writing by a majority of members of the Board and an amendment has been executed in accordance with the provisions of Paragraph 24 hereof. Such proposed subdivision or transfer and combination shall be effective upon recording of an amendment to this Declaration, together with the amended Drawings, in accordance with the Act. Such amendment shall also specify the resultant reapportionment of the percentage of interest in the Common Elements, the proportionate share of the Common Profits and Common Expenses and the voting power of the Residential Unit or Residential Units resulting from the subdivision or combination, the total of which in each case, shall equal the interest, share and power of the former Residential Unit or Residential Units subdivided or combined. Any expenses incurred in connection with accomplishing any such subdivision or transfer and combination, as provided hereunder, including without limitation, attorneys fees, shall be paid by the Unit Owners of the Residential Units involved, and such Unit Owners shall be jointly and severally liable for the payment thereof.

(ii) That part of the Common Elements separating and located between and exclusively serving two or more contiguous Residential Units used together (including, without limitation, portions of any hallway and any walls) may be altered to afford ingress and egress to and from such Residential Units and to afford privacy to the Occupants of such Residential Units when using such Common Elements, and that part of the Common Elements so altered may be used by the Unit Owner or Owners of such Residential Units as a licensee pursuant to a license agreement with the Association, provided that (i) the expenses of such alterations shall be paid in full by the Residential Unit Owner or Owners making such alteration; (ii) such Residential Unit Owner or Owners shall pay in full the expense of restoring such Common Elements to their condition prior to such alteration in the event such Units shall cease to be used together, as aforesaid; and (iii) such alterations shall not interfere with the use and enjoyment of the Common Elements (other than the aforesaid part of the Common Elements separating such contiguous Residential Units) by other Unit Owners.

(iii) Notwithstanding any contrary provision of the foregoing subparagraphs 32(h)(i) and 32(h)(ii), the rights granted thereunder to Unit Owners of Residential Units shall be subject to all of the provisions of Paragraph 7 of this Declaration including without limitation the necessity for obtaining the prior written consent at the affected mortgagee(s).

(i) No request for the written consent of a mortgagee pursuant to Paragraph 7 or of Declarant's Mortgagee pursuant to Paragraph 12(f)(v) shall be effective unless such request shall be accompanied by plans and specifications detailing the proposed alteration, removal, relocation, change, improvement or addition and containing such other information as shall be sufficient to enable said mortgagee or Declarant's Mortgagee to evaluate and appropriately respond to said request.

(j) If at any time Declarant shall be in default under its mortgage to Declarant's Mortgagee and said default shall not have been cured within thirty (30) days after notice of said default shall have been sent by Declarant's Mortgagee to Declarant, Declarant's Mortgagee, upon its written election, shall automatically become the "person" (within the meaning of Section 5311.08(D) of the Act) designated by the Declarant to appoint and remove members of the Board and other officers of the Association and to exercise the powers and responsibilities otherwise assigned by law and this Declaration to the Association, the Board or the officers of the Association; such powers and responsibilities of the Declarant's Mortgagee shall be effective during the maximum time permitted pursuant to Section 5311.08(D) of the Act.

(k) The respective powers and rights of Declarant's Mortgagee (in its capacity as a Mortgagee) contained in this Declaration or By-Laws shall expire upon the respective dates (if any) expressly set forth in this Declaration or By-Laws for such expiration, but in any event no such power or right of Declarant's Mortgagee shall be effective after the satisfaction of record of the mortgage held by Declarant's Mortgagee.

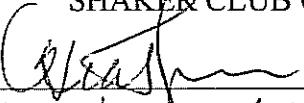
(l) Subject to the provisions of Section 5311.06 of the Act, between the date that the Association is established and the date of the event which gives rise to the First Annual Meeting, the Declarant or persons designated by the Declarant shall have the right to appoint and remove members of the Board of Directors and officers of the Association and to exercise the powers and responsibilities otherwise assigned by law or the Declaration to the Association, the Board or the officers of the Association so long as such rights are exercised in accordance with the provisions of the Act.

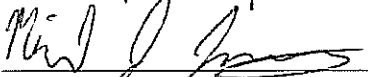
(m) Except as otherwise provided herein, all Members of the Board or Managers of the Association (herein called "Board Members," which members are referred to as "Trustees" in Chapter 1702 of the Ohio Revised Code) shall be Unit Owners; spouses of Unit

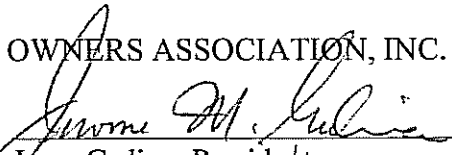
Owners; agents, employees or other designated representatives or mortgagees of Units; partners, agents or employees of partnerships owning a Unit; officers, directors, agents or employees of corporations or associations owning a Unit; or fiduciaries, officers, agents or employees of fiduciaries owning a Unit. Board Members elected or designated by the Declarant need not fulfill the qualifications imposed by this paragraph or any other qualifications imposed on Board Members elected by Unit Owners other than the Declarant, except as otherwise provided in the Declaration, the By-Laws or by law, and Board Members elected or designated by the Declarant may be removed only by the Declarant or as otherwise provided herein.

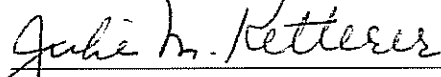
IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed this 29 day of January, 2013.

SHAKER CLUB CONDOMINIUM UNIT OWNERS ASSOCIATION, INC.

  
Witness Heather A. Wilms

  
Witness Michael S. Ladosky

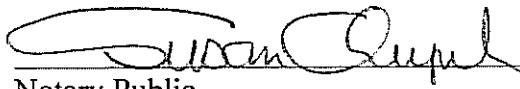
  
Jerry Grdina, President

  
Julie Ketterer, Secretary

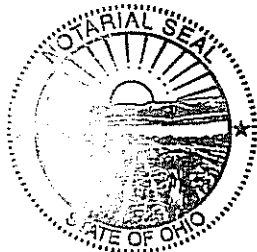
State of Ohio            )  
                                  )        ss  
County of Cuyahoga    )

BEFORE ME, a Notary Public, in and for said County and State, personally appeared the above named SHAKER CLUB CONDOMINIUM UNIT OWNERS ASSOCIATION, INC., by Jerry Grdina, its President, and by Julie Ketterer, its Secretary, who acknowledged that they did execute the foregoing Declaration and that the same is their free act and deed individually and as the officers of Shaker Club Condominium Unit Owners Association, Inc. and the free act and deed of said Shaker Club Condominium Unit Owners Association, Inc.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Beachwood, Ohio and hereby certify the foregoing acknowledgement, this 29<sup>th</sup> day of January, 2013.

  
Notary Public

This Instrument Prepared By:  
Ott & Associates Co., LPA  
55 Public Square, Suite 1400  
Cleveland, Ohio 44113  
(216) 771-2600



**SUSAN CHUPEK**  
Notary Public  
State of Ohio  
My Comm. Exp. 05-10-2014



## EXHIBIT A

Situated in the City of Shaker Heights, County of Cuyahoga and State of Ohio, and known as being part of Original Warrensville Township Lot No. 45 and bounded and described as follows:

Beginning on the northerly line of Van Aken Boulevard at the southeasterly corner of a 20 foot parcel of land conveyed to David Cowan by deed recorded in Volume 6019, Page 656 of Cuyahoga County Records;

thence easterly along the northerly line of Van Aken Boulevard, 200.00 feet to the principal place of beginning;

thence North 89° 52' 15" East along the northerly line of Van Aken Boulevard, a distance of 400.00 feet;

thence North 00° 20' 15" West along a line parallel with the easterly line of lands so conveyed to David Cowan a distance of 290.00 feet to the southerly line of lands conveyed to the Shaker Heights Country Club by deed recorded in Volume 3746, Page 215 of Cuyahoga County Records;

thence South 89° 52' 15" West along the southerly line of lands so conveyed to the Shaker Heights Country Club a distance of 400.00 feet;

thence South 00° 20' 45" East along a line parallel with the easterly line of lands so conveyed to David Cowan as aforesaid, a distance of 290.00 feet to the principal place of beginning, be the same more or less, but subject to all legal highways.





TABLE OF CONTENTS  
OF BY-LAWS OF  
THE SHAKER CLUB CONDOMINIUM UNIT OWNERS ASSOCIATION

<u>ARTICLE</u>	<u>PAGE NO.</u>
I. Purpose and Definitions	1
Section 1. Purpose	1
Section 2. Definitions	1
II. The Association	1
Section 1. Name and Form of Association	1
Section 2. Membership	2
III. Voting Stipulations	2
Section 1. Voting	2
Section 2. Majority	3
Section 3. Quorum	3
Section 4. Proxies	3
IV. Administration	4
Section 1. Place of Meetings	4
Section 2. Establishment of the Association	4
Section 3. Annual Meeting	4
Section 4. Special Meetings	4
Section 5. Notice of Meetings	5
Section 6. Adjourned Meetings	5
Section 7. Order of Business at Annual Meetings	5
Section 8. Order of Business at Special Meetings	6
Section 9. Actions Without a Meeting	6
V. Board of Directors	6
Section 1. Qualification	6
Section 2. Number of Board Members	6
Section 3. Election of Board Members by Declarant and Unit Owners Prior to the First Annual Meeting	7
Section 4. First Annual Meeting	7
Section 5. Election of Board Members from and after the First Annual Meeting	7
Section 6. Removal of Board Members	8
Section 7. Vacancies	8
Section 8. Powers and Duties	9

	Section 9.	Other Duties	10
	Section 10.	Management Agent	10
	Section 11.	Organizational Meeting	11
	Section 12.	Regular Meetings	11
	Section 13.	Special Meetings	11
	Section 14.	Waiver of Notice	11
	Section 15.	Quorum	12
	Section 16.	Open Meetings	12
	Section 17.	Action Without a Meeting	12
	Section 18.	Committees	12
	Section 19.	Fidelity Bonds	13
VI.	Officers		13
	Section 1.	Designation	13
	Section 2.	Election of Officers	13
	Section 3.	Removal of Officers	13
	Section 4.	President	13
	Section 5.	Vice President	14
	Section 6.	Secretary	14
	Section 7.	Treasurer	14
	Section 8.	Duties of Officers May be Delegated	14
VII.	Maintenance and Repair		14
VIII.	Common Expenses and Profits		15
	Section 1.	Common Expenses	15
	Section 2.	Common Profits	16
IX.	Assessments		16
	Section 1.	Obligation of Unit Owners to Pay Assessments and Other Charges	16
	Section 2.	Preparation of Estimated Budget	16
	Section 3.	Fiscal Year	17
	Section 4.	Budget for First Year	17
	Section 5.	Failure to Prepare Annual Budget	17
	Section 6.	Reserve Fund	18
	Section 7.	Payment of Assessments	18
	Section 8.	Status of Funds Collected by Association	18
	Section 9.	Lien of Unpaid Assessments and Other Charges	18
	Section 10.	Remedies for Failure to Pay Assessments or Other Charges	19
	Section 11.	Books and Records of Association	19
	Section 12.	Annual Statements	19

	Section 13.	Annual Audit	20
	Section 14.	Special Services	20
X.	Mortgagees		20
	Section 1.	Notices to Mortgagees	20
	Section 2.	Rights of Mortgagees	20
XI.	Indemnification		21
	Section 1.	General	21
	Section 2.	Advance of Expenses	21
	Section 3.	Indemnification Not Exclusive; Insurance	22
	Section 4.	Indemnification by Unit Owners	22
	Section 5.	Cost of Indemnification	22
XII.	General Provisions		23
	Section 1.	Right of Entry	23
	Section 2.	Acquisition, Lease, Sale or Exchange of Property	23
	Section 3.	Rules and Regulations	23
	Section 4.	Declarant's Rights Pending First Annual Meeting	24
	Section 5.	Severability	24
	Section 6.	Ratification	24
	Section 7.	Conflict Between Declaration, Articles of Incorporation, By-Laws and Rules and Regulations	24
	Section 8.	Agreements Binding	25



EXHIBIT "B"  
BY-LAWS  
OF  
THE SHAKER CLUB CONDOMINIUM UNIT OWNERS ASSOCIATION

**ARTICLE I**  
**PURPOSE AND DEFINITIONS**

**Section 1.     Purpose.**

These By-Laws are attached to the Declaration of Condominium Ownership for The Shaker Club Condominium as Exhibit "B" to said Declaration. The purpose or purposes of the Association are to administer the Condominium Property in accordance with and subject to the provisions of Chapter 5311 of the Revised Code of Ohio, the Declaration, these By-Laws and the administrative rules, and regulations adopted pursuant hereto, as any of the same may be lawfully amended from time to time; to provide for the acquisition, construction, management, maintenance and care of "association property," as said term is defined in present Section 526 of the United States Internal Revenue Code (Title 26. U.S.C. Section 538) or may be hereafter defined in any amendment or replacement of said section) and, in carrying out the foregoing purposes, to purchase, lease, exchange, acquire, own, hold, mortgage, pledge, hypothecate, borrow money upon, sell and otherwise deal in and with real and personal property of every kind, character and description whatsoever and any and all estates and interests therein and otherwise to do all things permitted by law.

All of the foregoing purposes shall be accomplished on a non-profit basis, and no part of the net earnings of the Association shall inure (other than by acquiring, constructing or providing management, maintenance, and care of association property, and other than by a rebate of excess membership dues, fees or assessments) to the benefit of any private person, firm, corporation, association or organization.

**Section 2.     Definitions.**

Certain of the terms used in these By-Laws have been defined in the Declaration, or in the Act, and, when used herein, shall have the same meaning as set forth in the Declaration and in the Act, unless the context clearly indicates a different meaning therefor.

**ARTICLE II**  
**THE ASSOCIATION**

**Section 1.     Name and Form of Association.**

The name of this Association, which shall be a non-profit Ohio Corporation, will be The Shaker Club Condominium Unit Owners Association, Inc.

**Section 2.     Membership.**

Each Unit Owner upon acquisition of the Condominium Ownership Interest to a Unit shall automatically become a Member of the Association. Membership may be held in the name of more than one Unit Owner. Such membership shall terminate upon the sale or other disposition by such Unit Owner of his Unit, at which time the new Owner of his Unit shall automatically become a member of the Association. In addition to any other rights Declarant may have pursuant to the Declaration, Declarant shall be a member of the Association with respect to all Units owned by Declarant and shall have the right, without limitation, except as provided in the Act, to exercise the voting power appurtenant to such Units and the power to vote the same.

**ARTICLE III**  
**VOTING STIPULATIONS**

**Section 1.     Voting.**

Except as otherwise provided by law, there shall be one voting member for each of the Units comprising the Condominium Property. Votes assigned to Units owned by the Association shall be cast as determined by a majority vote of the Board. The total of all votes of all members of the Association shall be one hundred and each Unit Owner shall be entitled to a number of votes equal to the total percentage of ownership in the Common Elements appurtenant to his Unit as set forth in Paragraph 8 of the Declaration. In the case of a Unit owned or held in the name of a corporation or a partnership, a Certificate signed by said Unit Owners shall be filed with the Secretary of the Association naming the person authorized to cast votes for such Unit, which Certificate shall be conclusive until a subsequent substitute Certificate is filed with the Secretary of the Association. If such Certificate is not on file, the vote of such corporation or partnership shall not be considered nor shall the presence of such Owner at a meeting be considered in determining whether the quorum requirement for such meeting has been met. If a Unit shall be owned by a husband and wife as tenants in common, joint tenants or tenants by the entireties, no Certificate need be filed with the Secretary of the Association naming the person authorized to cast votes for such Unit, and either spouse, but not both, may vote in person or by proxy and be considered in determining whether the quorum requirement has been met at any meeting of the members of the Association, unless prior to such meeting either spouse has notified the Secretary of the Association in writing that there is disagreement as to who shall represent their Unit at the meeting, in which case each spouse may exercise the proportion of the voting power of all the Owners of their Unit that is equivalent to his or her proportionate interest in their Unit. Fiduciaries and minors who are owners of record of a Unit or Units may vote their respective interests as Unit Owners. If two

or more persons, whether fiduciaries, tenants in common or otherwise, own undivided interests in a Unit, each may exercise the proportion of the voting power of all the Owners of his Unit that is equivalent to his proportionate interest in the Unit. A fiduciary for a Unit Owner or of the Estate of a Unit Owner may vote as though he were the Unit Owner when he has furnished to the Association proof, satisfactory to it, of his appointment and qualification, as an executor under the last will of a deceased Unit Owner; an administrator of the estate of a deceased Unit Owner; a guardian, committee or conservator of the estate of a ward or incompetent who is a Unit Owner; a trustee in bankruptcy of a Unit Owner; or a statutory or judicial receiver or liquidator of the estate or affairs of a Unit Owner. When any other fiduciary or representative of a Unit Owner has furnished to the Association proof, satisfactory to it, of his authority, he may vote as though he were the Unit Owner. The Declarant or its proxy shall be the voting member with respect to any Unit owned by the Declarant.

## **Section 2.     Majority.**

As used in these By-Laws the term "majority of owners" shall mean those Owners holding in excess of 50% of the votes in accordance with the percentages of interest appurtenant to their respective Units in the Common Elements shown in Paragraph 8 of the Declaration.

## **Section 3.     Quorum.**

A quorum of Unit Owners for any meeting shall be constituted by Unit Owners represented in person or by proxy and holding one-fourth of the voting power entitled to be voted at such meeting, but no action requiring the affirmative vote of designated percentage of the total voting power may be taken by a lesser percentage of the total voting power. Unit Owners entitled to exercise not less than a majority of the voting power or those Unit Owners present in person and represented by proxy at a meeting may adjourn such meeting from time to time, and at such adjourned meeting any business may be transacted as if the meeting had been held as originally called.

## **Section 4.     Proxies.**

Members of the Association may vote or act in person or by proxy. The person appointed as proxy need not be a member of the Association. Designation by a member or members of the Association of a proxy to vote or to act on his or their behalf shall be made in writing to the Board, shall be filed with the Secretary and shall be revocable at any time by actual notice to the Board by the member or members of the Association making such designation. Notice to the Board in writing or in open meeting of the revocation of the designation of a proxy shall not affect any vote or act previously taken or authorized.

## **ARTICLE IV**

### **ADMINISTRATION**

#### **Section 1.     Place of Meetings.**

Meetings of the Association shall be held, if possible, at such suitable place on the Condominium Property as may be designated by the Board. If sufficient space is not available, then the meeting shall be held at some other suitable place as is selected by the Board.

#### **Section 2.     Establishment of the Association.**

The Association shall be established not later than the date that the deed or other evidence of ownership is filed for record following the first sale of a Condominium Ownership Interest.

#### **Section 3.     Annual Meeting.**

Subject to the provisions of Section 3 of Article V hereof, until the First Annual Meeting which shall be held in accordance with the provisions of Article V, Section 4 hereof, the Declarant or persons designated by him may appoint and remove members of the Board and other officers of the Association. After the First Annual Meeting, there shall be an annual meeting of the Association on the first Tuesday of the same calendar month in which the First Annual Meeting was held. Such annual meetings shall be held at such place and time as the Board selects (but not later than thirty (30) days before or after such date) and as may be designated by written notice of the Board delivered to voting members not less than ten (10) days prior to the date fixed for said annual meeting.

#### **Section 4.     Special Meetings.**

Special meetings of the members of the Association may be held on any business day when called by the President of the Association, or by the Board of the Association by action at a meeting or by a majority of the Members of the Board acting without a meeting or by members of the Association entitled to exercise at least twenty-five percent (25%) of the voting power of the Association. Upon request in writing delivered either in person or by certified mail to the President or the Secretary of the Association by any persons entitled to call a meeting of members, such officer shall forthwith cause to be given to the members entitled thereto notice of a meeting to be held on a date not less than seven (7) nor more than thirty (30) days after the receipt of such request as such officer may fix. If such notice is not given within ten (10) days after the delivery or mailing of such request, the persons calling the meeting may fix the time of the meeting and give notice thereof. Each special meeting shall be called to convene at such time and shall be held at such place on the Condominium Property or at such



other place as shall be specified in the notice of meeting. Calls for such meetings shall specify the purposes for which such meeting is requested. No business other than that specified is call and set forth in the notice shall be considered at any special meeting.

**Section 5.     Notice of Meetings.**

Not less than seven (7) nor more than thirty (30) days before the day fixed for a meeting of the members of the Association, written notice stating the time, place and purpose of such meeting shall be given by or at the direction of the Secretary of the Association or any other person or persons required or permitted by these By-Laws to give such notice. Such notice shall be given by personal delivery (which personal delivery shall also be effective if deposited in a Unit Owner's mailbox or attached to or placed under the door to the Unit he occupies) or by mail to each member of the Association who is a Unit Owner of record as of the day preceding the day on which notice is given. If mailed, such notice shall be addressed to the members of the Association and others such as Mortgagees of Units entitled to such notice at their respective addresses as they appear on the records of the Association or to the Unit Owner's Unit if no address has been given to the Association, notice of the time, place and purpose of any meeting of members of the Association may be waived in writing by any members of the Association, either before or after the holding of such meeting, which writing shall be filed with or entered upon the records of the meeting. The attendance of any number of the Association at any such meeting without protesting the lack of proper notice, prior to or at the commencement of the meeting, shall be a waiver by him of notice of each meeting.

**Section 6.     Adjourned Meetings.**

If any meeting of Owners cannot be organized due to the failure to obtain a quorum, the Owners who are present, either in person or by proxy, may adjourn the meeting to a time not less than forty-eight (48) hours from the time the original meeting was called. If any meeting is adjourned, the notice of such adjournment need not be given if the time and place to which such meeting is adjourned are fixed and announced at such meeting.

**Section 7.     Order of Business at Annual Meetings.**

The order of business at all regular meetings of members of the Association shall be as follows:

- (1) Calling of meeting to orders;
- (2) Proof of notice of meeting or waiver of notice;
- (3) Reading of minutes of preceding meeting;
- (4) Reports of officers;
- (5) Reports of Committees;
- (6) Election of Inspectors of Election;

- (7) Election of Members of the Board;
- (8) Unfinished and/or old business;
- (9) New Business;
- (10) Adjournment.

**Section 8.     Order of Business at Special Meetings.**

The business at each special meeting shall be that business specified in the notice therefor.

**Section 9.     Actions Without a Meeting.**

All actions, except removal of a Board member, which may be taken at a meeting of the Association, may be taken without a meeting with the approval of and in a writing or writings signed by Members of the Association having the percentage of voting power required to take such action if the same were taken at a meeting; provided, however, that not less than the majority of the voting membership, both in number and in percentage of voting power, signed the writing. Such writings shall be filed with the Secretary of the Association.

**ARTICLE V**  
**BOARD OF DIRECTORS**

**Section 1.     Qualification.**

Except as otherwise provided herein, all Members of the Board of Directors (herein called "Board Members," which members are referred to as "Trustees" in Chapter 1702 of the Ohio Revised Code) shall be Unit Owners; spouses of Unit Owners; agents, employees or other designated representatives of mortgagees of Units; partners, agents or employees of partnerships owning a Unit; officers, directors, agents or employees of corporations or associations owning a Unit; or fiduciaries, officers, agents or employees of fiduciaries owning a Unit. Board Members elected or designated by the Declarant need not fulfill the qualifications imposed by this Section 1 of this Article V or any other qualifications imposed on Board Members elected by Unit Owners other than the Declarant, except as otherwise provided in these By-Laws or by law, and Board Members elected or designated by the Declarant may be removed only by the Declarant or as otherwise provided herein.

**Section 2.     Number of Board Members.**

The Board shall consist of seven (7) persons, each of whom must be a Unit Owner or the spouse of a Unit Owner and a member in good standing. Good standing requires that the member not be more than thirty (30) days delinquent in the payment of any fees and/or Assessments owed to the Association. If a Board member ceases to meet such good standing

qualifications during his term, he shall cease to be a member of the Board and his place on the Board shall be deemed vacant. Notwithstanding anything herein, no Unit may be represented by more than one person on the Board at any one time. Board members shall be elected at the annual meeting of members of the Association or at a special meeting called for such purpose.

**Section 3.     Election of Board Members.**

At a meeting of members of the Association at which Board members are to be elected, only persons nominated as candidates shall be eligible for election as Board members. At the first annual meeting of the members of the Association held after the recording of this amendment there shall be seven (7) Directors, with staggered terms with a 3-2-2. The Director(s) whose term(s) expire(s) shall be eligible for re-election.

**Section 4.     First Annual Meeting.**

Within thirty (30) days after the earlier of (a) three (3) years following the date of the establishment of the Association or (b) the date of the sale and conveyance of Condominium Ownership Interests to which appertain seventy-five percent (75%) or more of the undivided interests in the Common Area and Facilities to purchasers in good faith for value, the Association shall meet (herein referred to as the "First Annual Meeting") and elect all nine (9) members of the Board and all officers of the Association and all persons previously elected or designated whether by the Declarant or by the other Unit Owners shall immediately resign; provided, however, that such persons shall be eligible for re-election to the Board. The persons so elected at the First Annual Meeting shall take office upon such election and shall serve such terms for which they are elected in accordance with Section 5 of this Article V.

**Section 5.     Election of Board Members from and after the First Annual Meeting.**

Except for the procedures set forth in Section 3 of this Article V for the election of Board Members prior to the First Annual Meeting, Board Members shall be elected at the annual meeting of members of the Association, but when the annual meeting is not held or Board Members are not elected thereat, they may be elected at a special meeting called and held for that purpose. Such election shall be by written secret ballot whenever requested by any member of the Association; but, unless such request is made, the election may be conducted in any manner approved at such meeting.

Any Board Member elected or designated prior to the First Annual Meeting shall hold office for a term not to exceed one (1) year after his election or designation. Commencing with the First Annual Meeting, Board Members shall be elected for such terms so that the terms of office of not less than one-third of the Board Members shall expire each year. Accordingly, at the First Annual Meeting of the Association, three (3) Board Members shall be elected for a

term of three (3) years, three (3) Board Members for a term of two (2) years and three (3) Board Members for a term of one (1) year.

All Board Members shall be elected in accordance with the provisions of this Article V. At meetings of the Association subsequent to the First Annual Meeting which are called for the purpose of electing Board Members, Board Members shall be elected for terms of three (3) years or to complete unfinished terms.

Except as otherwise provided herein, each Board Member shall hold office until the expiration of his term and until his successor is elected, or until his earlier resignation, removal from office or death. Any Board Member may resign at any time by oral statement to that effect made at a meeting of the Board or by a writing to that effect delivered to the Secretary of the Association; such resignation shall take effect immediately or at such other time as the Board Member may specify.

Each member of the Association may cast as many of his votes as there are Board Members to be elected. By way of example, if three (3) Board Members are to be elected, a member of the Association shall have the right to cast a maximum of three (3) votes, but not more than one (1) vote may be cast for any candidate. The candidates receiving the votes of the greatest percentages of the voting power of the Association shall be elected and those receiving the highest percentages of the total vote shall serve for the longest terms. Tie votes shall be decided by drawing of lots.

#### **Section 6.     Removal of Board Members.**

Except as otherwise provided herein and in the Act, the Board may remove any Board Member and thereby create a vacancy in the Board, if by order of court he has been found to be of unsound mind, or if he is physically incapacitated, adjudicated a bankrupt, or fails to attend three\* consecutive meetings of the Board. At any regular or special meeting of members of the Association duly called at which a quorum shall be present, any one or more of the Board Members may be removed with or without cause by the vote of members entitled to exercise a majority of the voting power of the Association, and a successor or successors to such Board Member so removed may be elected at the same meeting for the unexpired term for each such removed Board Member. Any Board Member whose removal has been proposed by the members of the Association shall be given an opportunity to be heard at such meeting prior to the vote on his removal.     \* at least one of any

#### **Section 7.     Vacancies.**

Except as otherwise provided herein and subject to the provisions of the Act, vacancies in the Board may be filled by a majority vote of the remaining Board Members until an election to fill such vacancies is held. Members of the Association shall have the right to fill any

vacancy in the Board (whether or not the same has been temporarily filled by the remaining Board Members) at any meeting of the members of the Association called for that purpose, and any Board Members elected at any such meeting of members of the Association shall serve until the next annual election of Board Members and until their respective successors are elected and qualified.

#### **Section 8.     Powers and Duties.**

The Board shall have the powers, duties and authority specifically conferred upon it by the Act, the Declaration and these By-Laws and shall have the powers, duties and authority necessary for the administration of the affairs of the Association including, at its option, the adoption from time to time of Condominium Rules, which Rules shall be furnished in writing to all Unit Owners, and may do all such act and things as are not by law, the Declaration or by these By-Laws directed to be exercised and done by the Unit Owners or by the Declarant. Members of the Board will serve without compensation for their services, as such; provided, that nothing contained herein shall be construed to preclude any Board Member from having dealings with the Association in any other capacity and receiving compensation therefor. In addition, the Association shall have all rights and duties set forth in its Articles of Incorporation and in accordance with the laws of the State of Ohio.

In accordance with Ohio Revised Code Section 5311.081(B), in addition to all other powers enumerated herein, the Board may exercise all powers of the Association, including the power to do the following:

- (a) Hire and fire managing agents, attorneys, accountants, and other independent contractors and employees that the Board determines are necessary or desirable in the management and/or operation of the Condominium Property and the Association;
- (b) Commence, defend, intervene in, settle, or compromise any civil, criminal, or administrative action or proceeding that is in the name of, or threatened against, the Association, the Board, or the Condominium Property, or that involves two or more Unit Owners and relates to matters affecting the Condominium Property;
- (c) Grant easements, leases, licenses, and concessions through or over the Common Elements;
- (d) Impose and collect fees or other charges for the use, rental, or operation of the Common Elements or for services provided to Unit Owners;
- (e) Enter a Unit for bona fide purposes when conditions exist that involve an imminent risk of damage or harm to Common Elements, another Unit, or to the health or safety of the occupants of that Unit or another Unit;
- (f) Purchase insurance and fidelity bonds the Board considers appropriate or necessary; and
- (g) Invest excess funds in investments that meet standards for fiduciary investments under Ohio law.

**Section 9.     Other Duties.**

In addition to the duties imposed by these By-Laws or by resolutions of the Association, the Board shall be responsible for the following:

(a)     maintenance, repair, replacement and surveillance of the Condominium Property and the Common Elements and the Limited Common Elements;

(b)     levy of Assessments and Other Charges against the Unit Owners and the collection of same;

(c)     designation and dismissal of the personnel necessary for the maintenance and operation of the Condominium Property, the Common Elements and the Limited Common Elements;

(d)     In carrying out the purposes of the Association and subject to the limitations prescribed by law, the Declaration or these By-Laws, the Board, for and on behalf of the Association may:

(i) purchase or otherwise acquire, mortgage, lease as lessee, hold, use, lease as lessor, sell, exchange, transfer, and dispose of property of any description or any interest therein;

(ii) make contracts;

(iii) borrow money, assign the Association's right to future income, including the right to receive common assessments and insurance proceeds as collateral for any monies borrowed, and issue, sell and/or pledge notes, bonds and/or other evidences of indebtedness of the Association and execute related documents, provided that any such borrowing shall be limited to the purpose of acquiring funds to be used for the insurance of the condominium property, for the maintenance, repair and/or replacement of the condominium property, and/or for such capital additions, alterations or improvements as may be approved by the Unit Owners in accordance with these By-Laws, provided that if such borrowing is in excess of \$5,000.00 the prior approval of the members of the Association entitled to exercise a majority of the voting power of the Association shall be obtained at a special meeting duly held for such purpose.

**Section 10.   Management Agent.**

Subject to the provisions of the Act and the Declaration, the Board may employ for the Association a Managing Agent at a compensation established by the Board to perform such

duties and services as the Board shall authorize including, but not limited to the duties listed in Section 9 of this Article V.

**Section 11.    Organizational Meeting.**

Immediately after each annual meeting of members of the Association or special meeting held in lieu thereof, the newly elected Board Members and those Board Members whose terms have not expired shall hold an organizational meeting for the purpose of electing officers and transacting any other business. Notice of such meeting of the Board need not be given.

**Section 12.    Regular Meetings.**

Regular meetings of the Board may be held at such time and place as shall be determined from time to time, by a majority of the Board, but at least four (4) such meetings shall be held during each calendar year. Notice of regular meetings of the Board shall be given to each Board Member, personally or by mail, telephone or telegraph, at least three (3) days prior to the day named for such meetings. At such meetings, any and all business within the power of the Board may be transacted.

In accordance with Ohio Revised Code Section 5311.08(A)(4)(a), any Board meeting may be held in person or by any method of communication, including electronic or telephonic communication, provided that each Board member can hear, participate and respond to every other Board member.

**Section 13.    Special Meetings.**

Special Meetings of the Board may be held at any time upon call by the President or any four (4) Board Members. Notice of the time, place and purposes of each special meeting shall be given to each Board Member by the Secretary or by the person or persons calling such meeting. Such notice shall state the purpose or purposes of the meeting and may be given in any manner or method and at such time so that the Board Member receiving it may have reasonable opportunity to attend the meeting. Such notice shall, in all events, be deemed to have been properly and duly given if delivered or mailed at least forty-eight (48) hours prior to the meeting and directed to the residence of the Board Members shown upon the Secretary's records. Unless otherwise indicated in the notice thereof, any business may be transacted at any organizational, regular or special meeting of the Board.

**Section 14.    Waiver of Notice.**

Before or at any meeting of the Board, any Board Member may waive in writing notice of such meeting and such waiver shall be deemed equivalent to the giving of such notice.

Attendance by a Board Member at any meeting of the Board shall be a waiver of notice by him of the time and place hereof. If all the Board Members are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

**Section 15. Quorum.**

At all meetings of the Board, a majority of the Board shall constitute a quorum for the transaction of business, and the acts at the majority of the Board Members present at a meeting at which a quorum is present shall be the acts of the Board. If, at any meeting of the Board, there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At any such adjourned meeting, any business which might have been transacted at the meeting as originally called may be transacted without further notice.

**Section 16. Open Meetings.**

All meetings of the Board shall be open to all Unit Owners. Adequate notice of all meetings shall be posted conspicuously on the Condominium Property at least forty-eight (48) hours in advance of meetings of the Board except in case of emergency.

**Section 17. Action Without a Meeting.**

Any action required to be taken, or any action which may be taken, at a meeting of the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Board Members entitled to vote with respect to the subject matter thereof.

**Section 18. Committees.**

The Board may by resolution provide for such standing or special committee as it deems desirable, and discontinue the same at its discretion. Each such committee consisting of not less than three (3) members shall have such powers and perform such duties, not inconsistent with law, as may be delegated to it by the Board. Each such committee shall keep full records and accounts of its proceedings and transactions. All action by any such committee shall be reported to the Board at its next meeting succeeding such action and shall be subject to control, revision and alteration by the Board; provided that no rights of third persons shall be prejudicially affected thereby. Each such committee shall fix its own rules of procedure and shall, meet as provided by such rules of the President of the Association or of any two members of the committees. Unless otherwise provided by such rules or by such resolutions, the provisions of Section 13 of the Article V relating to the notice required to be given of special meetings of the Board shall also apply to meetings of each such committee. A majority of the members of a committee shall constitute a quorum. Each such committee may act in writing or by telegram or by telephone with written confirmation, without a meeting, but no such action



shall be effective unless concurred in by all members of the committee. Vacancies in such committee shall be filled by the Board as it may provide.

**Section 19. Fidelity Bonds.**

The Board may require that all officers, employees, volunteers and agents of the Association handling or responsible for Association funds shall furnish adequate fidelity bonds or insurance. The premiums on such bonds or insurance shall be paid by the Association, and shall be a Common Expense.

**ARTICLE VI**  
**OFFICERS**

**Section 1. Designation.**

The principal officers of the Association shall be a President, Vice President, Secretary and Treasurer, all of whom shall be elected by and from the Board. The Board may appoint an Assistant Treasurer and an Assistant Secretary, and such other officers as in their judgment may be necessary who are not Members of the Board, but are members of the Association. Each such officer shall hold office at the pleasure of the Board, and perform such duties as the Board may prescribe.

**Section 2. Election of Officers.**

The officers of the Association shall hold office at the pleasure of the Board, unless sooner removed by the Board, until the first meeting of each new Board until their successors are chosen and qualified.

**Section 3. Removal of Officers.**

Upon an affirmative vote of a majority of the members of the Board, any officer may be removed, either with or without cause, and his successor elected at any regular meeting of the Board, or at any special meeting of the Board called for such purpose. A vacancy in any office, however created, shall be filled by the Board.

**Section 4. President.**

The President shall be the Chief Executive Officer of the Association. He shall have all of the general powers and duties which are usually vested in the office of President of an Association, including but not limited to the power to appoint committees from among the Owners from time to time as he may in his discretion decide its appropriate to assist in the conduct of the affairs of the Association. He shall have authority to sign all contracts, notes and

other instruments requiring his signature and shall have all the powers and duties as the Board may from time to time assign to him.

Until the First Annual Meeting, the Declarant reserves the right to designate the President of the Association.

**Section 5.     Vice President.**

The Vice President shall perform the duties of the President whenever the President is unable to act and shall have such other authority and perform such other duties as may be determined by the Board.

**Section 6.     Secretary.**

The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association; he shall have charge of such books and papers as the Board may direct, and he shall, in general, perform all the duties incident to the office of Secretary and such duties as the Board may prescribe. A copy of such minutes shall be posted in a place designated by the Board.

**Section 7.     Treasurer.**

The Treasurer shall have responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all monies and other valuable effects in the name, and to the credit of, the Association in such depositories as may from time to time be designated by the Board and he shall perform such other duties as from time to time may be assigned to him by the Board.

**Section 8.     Duties of Officers May be Delegated.**

In the absence of any Officer of the Association, or for any other reason the Board may deem sufficient, the Board may delegate the powers or duties, or any of them, of such officers, to any other officer or to any Board member or to the Managing Agent, if any.

**ARTICLE VII**  
**MAINTENANCE AND REPAIR**

The Board or the Managing Agent, if one is employed, shall have the authority either to hire permanent or temporary employees or to contract specifically for the performances of ordinary repairs and maintenance, or to do both, and to purchase the tools and implements used in repair, maintenance, gardening and snow removal and to take any and all actions on behalf

of the Association which may be necessary or appropriate to the proper functioning of the Condominium Property. The execution of a management agreement with a Managing Agent or management company which authorizes or requires the Managing Agent or management company to perform certain duties shall be deemed to be a delegation and authorization to such Managing Agent or management company of such duties and of such power and authority necessary to carry out such duties.

Every Unit Owner must perform promptly all maintenance and repair work within his own Unit, (to the extent required by the Declaration) which maintenance and repair, if omitted, would affect the Condominium Property in its entirety or in a part belonging to other Unit Owner(s). Every Unit Owner is expressly responsible for the damages and liabilities that his failure to so maintain and repair may engender.

## **ARTICLE VIII**

### **COMMON EXPENSES AND PROFITS**

#### **Section 1.     Common Expenses.**

The cost of maintenance and repair of Common Elements; landscaping; snow removal; hazard, liability and other insurance; salaries and fees of the Managing Agent or management company, if any, and employees; utilities not separately metered to individual Units; and the cost of tools and equipment, bonding fees and all other charges deemed necessary or appropriate to the proper functioning of the Condominium Property shall be deemed to be Common Expenses. The cost of such Common Expenses shall be defrayed by Assessments levied against the Units in the manner set forth below.

Notwithstanding anything in these By-Laws or in the Declaration which authorizes expenditures, no single expenditure shall be made by the Association for any additions, alterations or improvements (as distinguished from expenditures for maintenance, repair or replacement and as distinguished from any expenditure in excess of the following amounts approved in the annual budget) of the Common Elements exceeding in total cost Ten Thousand Dollars (\$10,000.00), nor shall Annual expenditures aggregating in excess of Twenty-Five Thousand Dollars (\$25,000.00) be made, without in each case having the prior approval of the members of the Association entitled to exercise a majority of the voting power of all members of the Association present in person or by proxy at an annual or a specific meeting duly held for such purpose. If such approval is obtained, the Board shall proceed with such additions, alterations or improvements and shall assess all Unit Owners for the cost thereof as a Common Expense. The limitations on expenditures by the Association contained in this Section 1 of Article VIII shall in no event apply to repair of the Condominium Property due to casualty loss, emergency repairs immediately necessary for the preservation and safety of the Condominium Property, for the safety of persons or to avoid suspension of any necessary services. The

foregoing provisions of this Section 1 shall not apply to the rehabilitation and renewal of obsolete property which shall be governed by the Declaration.

**Section 2.     Common Profits.**

Any revenue derived from the Common Elements or from any Unit(s) owned by the Association, in excess of the Common Expenses, shall be divided pro rata by the Unit Owners, added to a reserve fund, or credited to reduce Assessments, as the Board may determine. The Board is authorized, notwithstanding anything in this Article to the contrary, to adopt any such Condominium Rules which will permit the Association to qualify for any treatment under the United States Internal Revenue Code, as said Code may be amended from time to time, which in the opinion of the Board shall be advantageous to the Association.

**ARTICLE IX**  
**ASSESSMENTS**

**Section 1.     Obligation of Unit Owners to Pay Assessments and Other Charges.**

It shall be the duty of every Unit Owner to pay his proportionate share of the Common Assessments. Such proportionate share shall be in the same ratio as his percentage of interest in the Common Elements as set forth in Paragraph 8 of the Declaration. Payment thereof shall be in such amounts and at such times as may be determined by the Board in accordance with these By-Laws.

It shall also be the duty of every Unit Owner to pay all Other Charges chargeable to a Unit or Unit Owner.

**Section 2.     Preparation of Estimated Budget.**

On or before the 1st day of December of each year, the Board shall estimate the total amount necessary to pay the Common Expenses for the next calendar year together with reasonable amounts for reserves if so determined by the Board, and other amounts necessary or required for the operation of the Condominium Property as authorized by the Declaration and these By-Laws. On or before the December 1 following the First Annual Meeting and each year thereafter, the Board shall notify each Unit Owner in writing of the amount of such estimate (the "estimated cash requirement"), with a reasonable itemization thereof. Said "estimated cash requirement" shall be assessed to the Unit Owners according to each Unit Owner's percentage of interest in the Common Elements as set forth in Paragraph 8 of the Declaration, and as may be modified as authorized in the Declaration. On or before January 1 of the ensuing year, and the first of each and every month of said year, each Unit Owner shall be obligated to pay to the Association or as it may direct, one-twelfth (1/12) of the Assessment made pursuant to this Section. If the "estimated cash requirement" proves inadequate for any

reason, including the non-payment by any Unit Owner of his Assessment, the Association may at any time prepare an adjusted estimate and levy an additional Assessment, which shall be assessed to Unit Owners in proportion to each Unit Owner's percentage of interest in the Common Elements. The Association shall give written notice of any such additional Assessment to all Unit Owners stating the amount thereof, the reasons therefor and time when the same shall be effective, which shall not be less than ten (10) days after the mailing of such notice, or, if the same is not mailed, the delivery thereof. All Unit Owners shall be obligated to pay the monthly amount as adjusted. Any amount collected by the Association in excess of the amount required for the actual expenses and reserves in any year shall be credited promptly after the same has been determined according to each Unit Owner's percentage interest in the Common Elements, to the monthly installments next due from Unit Owners under the current year's estimate. Any deficiency shall be added, according to each Unit Owner's percentage of interest in the Common Elements, to the installments due in the succeeding six months after rendering of the accounting.

Nothing contained herein shall prohibit a mortgagee of one or more Units from collecting the monthly assessments on behalf of the Association called for by this Section as a part of said mortgagee's monthly installments, or from requiring the Unit Owner/Mortgagor to pay said monthly assessment as a part of his monthly mortgage installment.

### **Section 3.     Fiscal Year.**

The fiscal year of the Association shall end on the thirty-first day of December in each year, or on such other day as may be fixed from time to time by the Board of Directors.

A copy of each such Estimated Budget shall be mailed to Declarant's Mortgagee until such time as said Mortgagee's mortgage has been fully paid and cancelled of record.

### **Section 4.     Budget for First Year.**

The Board shall determine the estimated cash requirement, as hereinabove defined, for the period commencing at the beginning of the second full month after its election and ending on December 31st of the calendar year in which said election occurs. Assessments shall be levied against the Unit Owners during said period as provided in Section 2 of this Article IX.

### **Section 5.     Failure to Prepare Annual Budget.**

The failure of the Board to prepare or serve the annual or adjusted budget on any Unit Owner shall not constitute a waiver or release in any manner of each Unit Owner's obligation to pay his share of the Common Assessments, including, without limitation, the maintenance cost and necessary reserves, as herein provided, whenever the same shall be determined, and in the absence of any annual budget or adjusted budget, each Unit Owner shall continue to pay a

monthly Assessment at the then existing monthly rate established for the previous period until the amount of the monthly Assessment is changed as herein provided.

**Section 6.     Reserve Fund.**

The Board shall establish and maintain for the Association a reasonable reserve fund for contingencies and replacements in such amount as the Board may deem necessary. Upon the sale of a Unit by any Unit Owner, such Unit Owner shall have no right to any portion of the funds in the reserve account; nor shall such Unit Owner have any claim against the Association with respect thereto. Extraordinary expenditures incurred in any year which were not originally included in the estimated cash requirement for such year shall be charged first against such reserve fund. The amount of the reserve fund shall be reviewed annually by the Board.

**Section 7.     Payment of Assessments.**

Following the establishment of the Association, its first organizational meeting and election of the Board and prior to the preparation of the estimated budget in accordance with Section 2 of this Article IX, monthly assessments shall be paid by Unit Owners, including Declarant in its capacity as owner of any unsold Units, in an amount estimated by the Board as being sufficient to cover the initial working capital requirements for the Association (the respective amounts payable by each Unit Owner being based upon such Unit Owner's percentage of interest in the Common Elements as set forth in Paragraph 8 of the Declaration) and if such monthly assessments shall be less than required to meet current Common Expenses, all Unit Owners, including the Declarant in its capacity as owner of any unsold Units, shall make up any deficiency on a pro rata basis in accordance with their respective percentages of interest in the Common Elements as shown in Paragraph 8 of the Declaration.

**Section 8.     Status of Funds Collected by Association.**

All funds collected hereunder shall be held and expended solely for the purposes designated in the Declaration and these By-Laws and (except for other charges as may be levied hereunder against less than all the Unit Owners, and for such adjustments as may be required to reflect delinquent or prepaid Assessments) these funds shall be deemed to be held for the use, benefit and account of all Unit Owners in proportion to each Unit Owner's percentage ownership in the Common Elements. All sums collected by the Association from Assessments may be commingled in a single fund or divided into more than one fund, as determined by the Board.

**Section 9.     Lien of Unpaid Assessments and Other Charges.**

Common Assessments and Other Charges shall be a lien upon the Unit in the manner specified in the Declaration. The Board may charge interest on Common Assessments and

Other Charges at the maximum rate permitted by Section 1343.01 of the Ohio Revised Code or at the maximum rate otherwise permitted by law.

**Section 10. Remedies for Failure to Pay Assessments or Other Charges.**

If a Unit Owner is in default in the payment of any Common Assessments or Other Charges for ten (10) days, the Association upon authorization of the Board may bring suit to enforce collection thereof or to foreclose the lien thereof as provided in the Declaration, together with interest as provided in Section 9 of this ARTICLE IX, and reasonable attorneys' fees. The amount of any delinquent Common Assessments or Other Charges, and interest, costs and fees as above provided shall constitute a lien and may be foreclosed by an action brought by the Association if authorized by the Board as in the case of foreclosure of liens against real estate.

In accordance with Ohio Revised Code Section 5311.081(B)(18), when a Unit Owner is delinquent in the payment of Assessments for more than thirty (30) days, the Board may, by a majority vote, suspend the voting privileges of the owner and/or right of the occupants to use the recreational facilities.

**Section 11. Books and Records of Association.**

The Association shall keep full and correct books of accounts and same shall be open for inspection by any Unit Owner or his mortgagee, or by any representatives of a Unit Owner duly authorized in writing, at reasonable times and upon request by a Unit Owner or his mortgagee. Upon fifteen (15) days prior written notice to the Board and upon payment of a reasonable fee, any Unit Owner shall be furnished a statement of his account setting forth the amount of any unpaid Common Expenses or Other Charges due and owing from such Unit Owner.

**Section 12. Annual Statements.**

Within one hundred twenty (120) days after the end of each fiscal year of the Association, the Board shall furnish to each Unit Owner and his Mortgagee a financial statement consisting of (a) a balance sheet containing a summary of the assets and liabilities of the Association as of the date of such balance sheet and (b) a statement of the income and expenses for the period commencing with the date marking the end of the period for which the last preceding statement of income and expenses required hereunder was made and ending with the date of said statement, or in the case of the first such statement, from the formation of the Association to the date of said statement. The financial statement shall have appended thereto a certificate signed by the President or a Vice President and the Treasurer or an Assistant Treasurer of the Association or by a public accountant or firm of public accountants to the effect that the financial statement presents fairly the financial position of the Association and

the results of its operations in conformity with generally accepted accounting principles applied on a basis consistent with that of the proceeding period except as specified therein.

**Section 13. Annual Audit.**

The books of the Association shall be reviewed once a year by the Board, and such review shall be completed prior to each annual meetings. At any time upon the request of Declarant's Mortgagee or of Unit Owners holding more than fifty percent (50%) of the voting power of the Association or their Mortgagees, or upon request of five (5) members of the Board, the Board shall cause a review of the books of the Association to be made by a Certified Public Accountant; any such additional review to be at the expense of the Association.

**Section 14. Special Services.**

The Association may arrange for special services and facilities for the benefit of such Unit Owners and/or Occupants as may desire to pay for same in advance, including, without limitation, the cleaning, repair and maintenance of Units and special recreational, restaurant, garage, educational or medical facilities available to specific Unit Owners and/or Occupants. The cost of any such special services or facilities shall be determined by the Association and may be charged directly to participating Unit Owners and/or Occupants or paid through a special assessment levied against such participating Unit Owners and/or Occupants.

In accordance with Ohio Revised Code Section 5311.081(B)(15), the Board may impose reasonable charges to the Unit Owner for providing copies of the Declaration, By-Laws or amendments thereto as well as reasonable charges for the handling of re-financing and/or resale documentation, and/or statements of unpaid Assessments.

**ARTICLE X**  
**MORTGAGEES**

**Section 1. Notices to Mortgagees.**

A Unit Owner who mortgages his Unit shall notify the Association through the Managing Agent, if any, or the President of the Board in the event there is no Managing Agent, of the name and address of his Mortgagee and thereafter shall notify the Association of the full payment, cancellation or other alteration in the status of such mortgage. The Association shall maintain such information in a book entitled "Mortgagees of Units".

**Section 2. Rights of Mortgagees.**

A Mortgagee of a Unit shall be entitled to written notice from the Association of any default by its Mortgagor which is not cured within sixty (60) days. Any Mortgagee may from



time to time request in writing a written statement from the Board setting forth any and all unpaid Common Expenses due and owing from its Mortgagor/Unit Owner with respect to the Unit subject to the lien of its mortgage and such request shall be complied with within twenty (20) days from receipt thereof. Any Mortgagee holding a mortgage on a Unit may pay any unpaid common expenses assessed with respect to such Unit and upon each payment, such Mortgagee shall have a lien on such Unit for the amounts so paid at the same rank as the lien of its mortgage, to the extent provided for and consistent with its mortgage loan documents.

## **ARTICLE XI** **INDEMNIFICATION**

### **Section 1.     General.**

The Association shall indemnify any Board member, officer, employee, or agent of the Association or any former Board Member, officer, employee or agent of the Association and/or its or their respective heirs, executors and administrators, against reasonable expenses, including attorneys' fees, judgments, decrees, fines, penalties or amounts paid in settlement actually and necessarily incurred by him in connection with the defense of any pending or threatened action, suit, or proceeding, criminal or civil, to which he is or may he made a party by reason of being or having been such Board Member, officer, employee or agent of the Association, provided it is determined in the manner hereafter set forth (a) that such Board Member, officer, employee or Agent of the Association was not, and is not adjudicated to have been, grossly negligent or guilty of misconduct in the performance of his duty to the Association, (b) that he acted in good faith in what he reasonably believed to be in the best interest of the Association, (c) that, in any matter the subject of a criminal action, suit or proceeding, he had no reasonable cause to believe that his conduct was unlawful, and (d) in case of settlement, that the amount paid in the settlement was reasonable. Such determination shall be made either (i) by the Board Members of the Association acting at a meeting at which a quorum consisting of the Board Members who are not parties to or threatened with any such action, suit or proceeding is present, or (ii) in the event of settlement, by a written opinion of independent legal counsel selected by the Board Members.

### **Section 2.     Advance of Expenses.**

Funds to cover expenses, including attorneys' fees, with respect to any pending or threatened action, suit or proceedings, may be advanced by the Association prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the recipient to repay such amounts unless it shall ultimately be determined that he is entitled to indemnification hereunder.

**Section 3.     Indemnification Not Exclusive: Insurance.**

The Indemnification hereinabove provided for in this Article XI shall not be exclusive, but shall be in addition to (a) any other rights to which any person may be entitled under the Articles of Incorporation, Rules and Regulations of the Association, any agreement, any insurance provided by the Association, the provisions of Section 1702.12(E) of the Ohio Revised Code, or otherwise. The Association may purchase and maintain insurance on behalf of any person who is or was a Board Member, officer, agent or employee of the Association against any liability asserted against him or incurred by him in any such capacity or arising out of his status as such whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

**Section 4.     Indemnification by Unit Owners.**

The Board Members and officers of the Association shall not be liable to the Unit Owners for any mistake of judgment, negligence or otherwise, except for their own individual willful misconduct or bad faith. The Unit Owners (other than a Mortgagee who has acquired title by foreclosure or deed in lieu of foreclosure) shall indemnify and hold harmless each of the Board Members and officers of the Association against all contractual liability to third parties arising out of contracts made on behalf of the Association except with respect to any such contracts made in bad faith or contrary to the provisions of the Declaration or By-Laws. It is intended that the Board Members and officers of the Association shall have no personal liability with respect to contracts entered into on behalf of the Association. Every agreement made by any Board Member, officer, employee or agent of the Association or by the Managing Agent, if any, on behalf of the Association, shall provide that such Board Member, officer, employee or agent of the Association, or the Managing Agent, as the case may be, is acting only as agent for the Association and shall have no personal liability thereunder (except as a Unit Owner), and that each Unit Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his percentage of interest in the Common Elements bears to the total percentage interest of all Unit Owners in the Common Elements.

**Section 5.     Cost of Indemnification.**

Any sum paid or advanced by the Association under this Article XI shall constitute a Common Expense and the Association and the Board shall have the power to raise and the responsibility for raising, by special assessment or otherwise, any sums required to discharge its obligations under this Article XI; provided, however, that the liability of any Unit Owner arising out of any contract made by or other acts of any Board Member, officer, employee or agent of the Association, or out of the aforesaid indemnity in favor of such Board Member, officer, employee or agent of the Association, shall be limited to such proportion of the total liability hereunder as said Unit Owner's percentage of interest in the Common Elements bears to the total percentage interest of all the Unit Owners in the Common Elements.

## **ARTICLE XII**

### **GENERAL PROVISIONS**

#### **Section 1.     Right of Entry.**

(a) Each Unit shall be subject to the right of access for the purpose of maintenance, repair or service of any Common Area and Facility located within its boundaries or any portion of the Unit itself or the Limited Common Elements pertaining to a Unit. 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 for public safety or in order to prevent damage or destruction of any other part of the Condominium Property. In connection therewith, the Board reserves the right to retain a passkey to each Unit, and no locks or other devices shall be placed on the doors to any Unit to obstruct access through the use of such passkey. Such passkeys shall be kept in a secure manner.

(b) Each Unit shall also be subject to the right of the Association or its representatives, when so required, to enter a Unit for the purpose of performing installations, alterations, or repairs to the mechanical or electrical services, provided that requests for entry are made in advance and that such entry is not made at an unreasonable time. In case of emergency, such right of entry shall be immediate.

#### **Section 2.     Acquisition, Lease, Sale or Exchange of Property.**

Whenever the Board determines to acquire, lease, sell or exchange real property or any interest therein, other than any Garage Unit, or any personal property, the Board shall submit such acquisition, lease or exchange to the vote of the Unit Owners, and, upon the affirmative vote of the Unit Owners entitled to exercise not less than seventy-five percent (75%) of the voting power of the Association present in person or by proxy at an annual meeting or a special meeting duly held for such purpose, the Board may proceed with such acquisition, lease, sale or exchange, in the name of the Association and on behalf of all Unit Owners, and the costs and expenses incident thereto shall constitute part of the Common Expenses.

#### **Section 3.     Rules and Regulations.**

Either the Association, by the affirmative vote of the Unit Owners entitled to exercise a majority of the voting power of the Association, or the Board, by a vote of majority of the Board Members, may adopt such reasonable Rules and Regulations and from time to time amend the same supplementing the Rules and Regulations set forth in the Declaration and these By-Laws as it or they may deem advisable for the operation, use, maintenance, conservation and beautification of the Condominium Property or any portion thereof, or for the health, comfort, safety and general welfare of the Unit Owners and Occupants of the Condominium

Property. Written notice of such Rules and Regulations shall be given to all Unit Owners and Occupants and the Condominium Property shall at all times be maintained subject to the Rules and Regulations.

**Section 4.     Declarant's Rights Pending First Annual Meeting.**

Subject to the provisions of Section 5311.03 at the Act, between the date that the Association is established and the date of the event which gives rise to the First Annual Meeting, the Declarant or persons designated by the Declarant shall have the right to appoint and remove members of the Board of Directors and officers of the Association and to exercise the powers and responsibilities otherwise assigned by law or the Declaration to the Association, the Board or the officers of the Association so long as such rights are exercised in accordance with the provisions of the Act.

**Section 5.     Severability.**

The invalidity of any covenant, restriction, condition, limitation or any other provision of these By-Laws, or of any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of any other provision contained in these By-Laws or in the Declaration.

**Section 6.     Ratification.**

All present or future Unit Owners or their employees or Occupants shall be subject to the provisions set forth in the Declaration and in these By-Laws. The mere acquisition or rental of any of the Units located within the Condominium Property described in the Declaration, or the mere act of occupancy of any of said Units, will constitute acceptance and ratification of the Declaration and of these By-Laws.

**Section 7.     Conflict Between Declaration, Articles of Incorporation, By-Laws and Rules and Regulations.**

In the event of conflict or inconsistency between any of the provisions of the Declaration and the Articles of Incorporation of the Association or these By-Laws or the Rules and Regulations of the Association, as the case may be, it is hereby agreed that the provisions of the Declaration shall be paramount, and the Unit Owners and all persons claiming under them covenant to vote in favor of such amendments to the Articles of Incorporation or the By-Laws or the Rules and Regulations, as the case may be, as will remove such conflicts or inconsistencies.

**Section 8.**     Agreements Binding.

All agreements and determinations lawfully made by the Association in accordance with the procedure established in the Declaration and these By-Laws shall be deemed to be binding upon all Unit Owners, and their respective heirs, executors, administrators, successors and assigns.

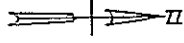


Vol. 37  
Pg. 11

**EXHIBIT**  
**C**

☐ INDICATES RESIDENTIAL UNIT NUMBER  
☐ INDICATES GARAGE UNIT NUMBER

RECORDS SECTION  
CITY OF CLEVELAND  
BUILDING DEPARTMENT  
RECORDS SECTION  
1500 MARKET AVENUE  
CLEVELAND, OHIO 44115



**SHAKER CLUB  
CONDOMINIUM**

SITUATED IN THE CITY OF SHAKER  
COUNTY, OHIO, DIVISION OF  
RECORDS, BOOK 150, PAGE 117, 118  
AND 119, THE SHAKER CLUB  
CONDOMINIUM, TRACT 107 AC. 40.

Dimensions are shown in feet and decimal parts  
thereof. Bearings are given by an assumed  
meridian and are used to show angles only.  
All of which are subject to the survey.  
DATE: 1-1-20  
BY: J. E. 20

**Dempsey & Associates, Inc.**  
Professional Land Surveyors  
Cleveland, Ohio, 44115

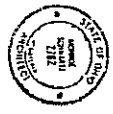


I, hereby certify that the foregoing is a true and  
correct copy of the original as recorded in the  
office of the Surveyor General of the State of Ohio,  
and that the same is subject to the survey and  
adjustment of the same.

Registered Surveyor No. 4452  
J. E. 20

My. I hereby certify that these dimensions, bearings, etc.,  
are correct as shown on the original as recorded in the  
office of the Surveyor General of the State of Ohio,  
and that the same is subject to the survey and  
adjustment of the same.

Registered Surveyor No. 4452  
J. E. 20



East line  
DIVISION OF  
RECORDS, BOOK 150,  
PAGE 117, 118  
AND 119, THE SHAKER  
CLUB, TRACT 107 AC. 40.

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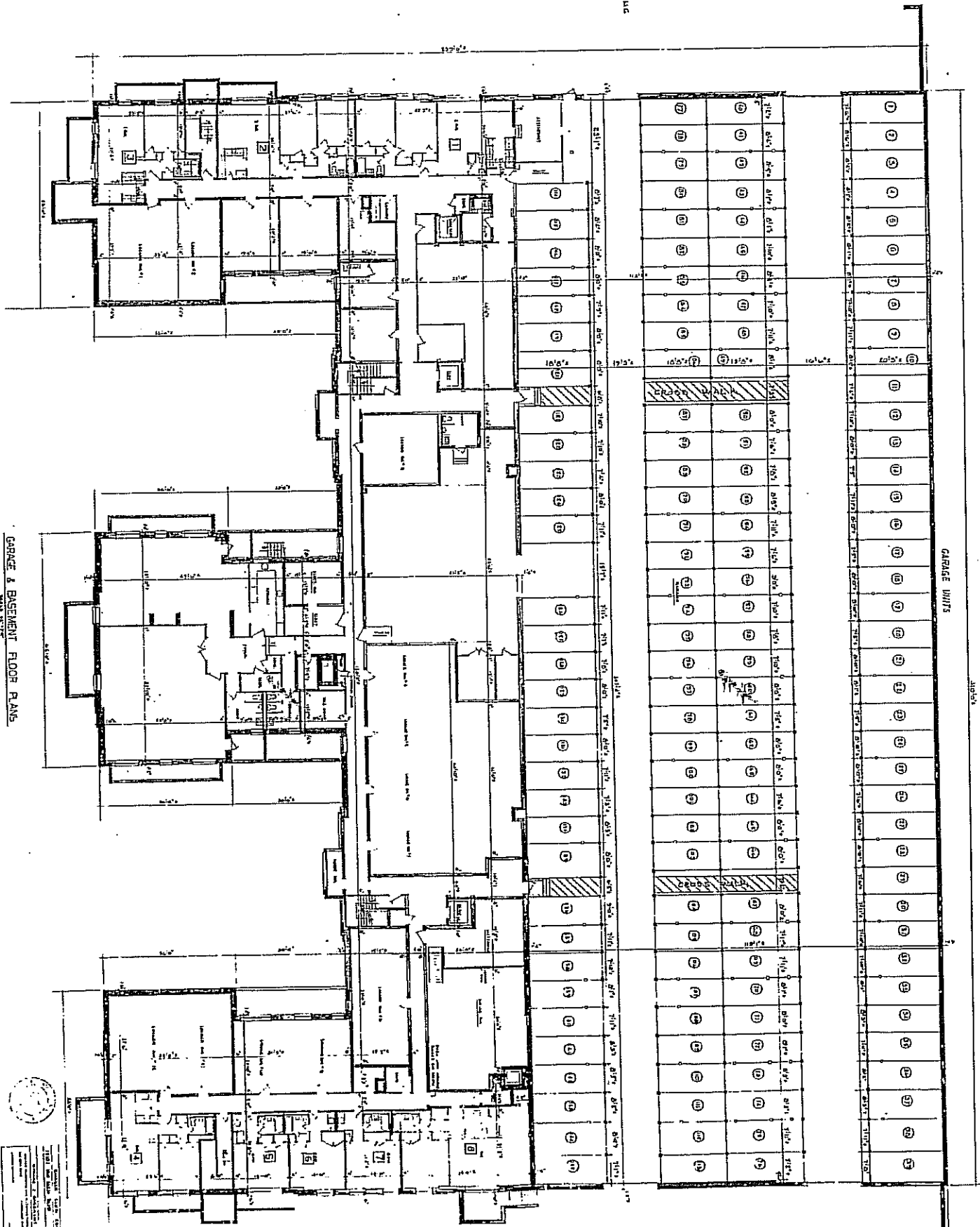
**VAN AKEN**

**BOULEVARD**

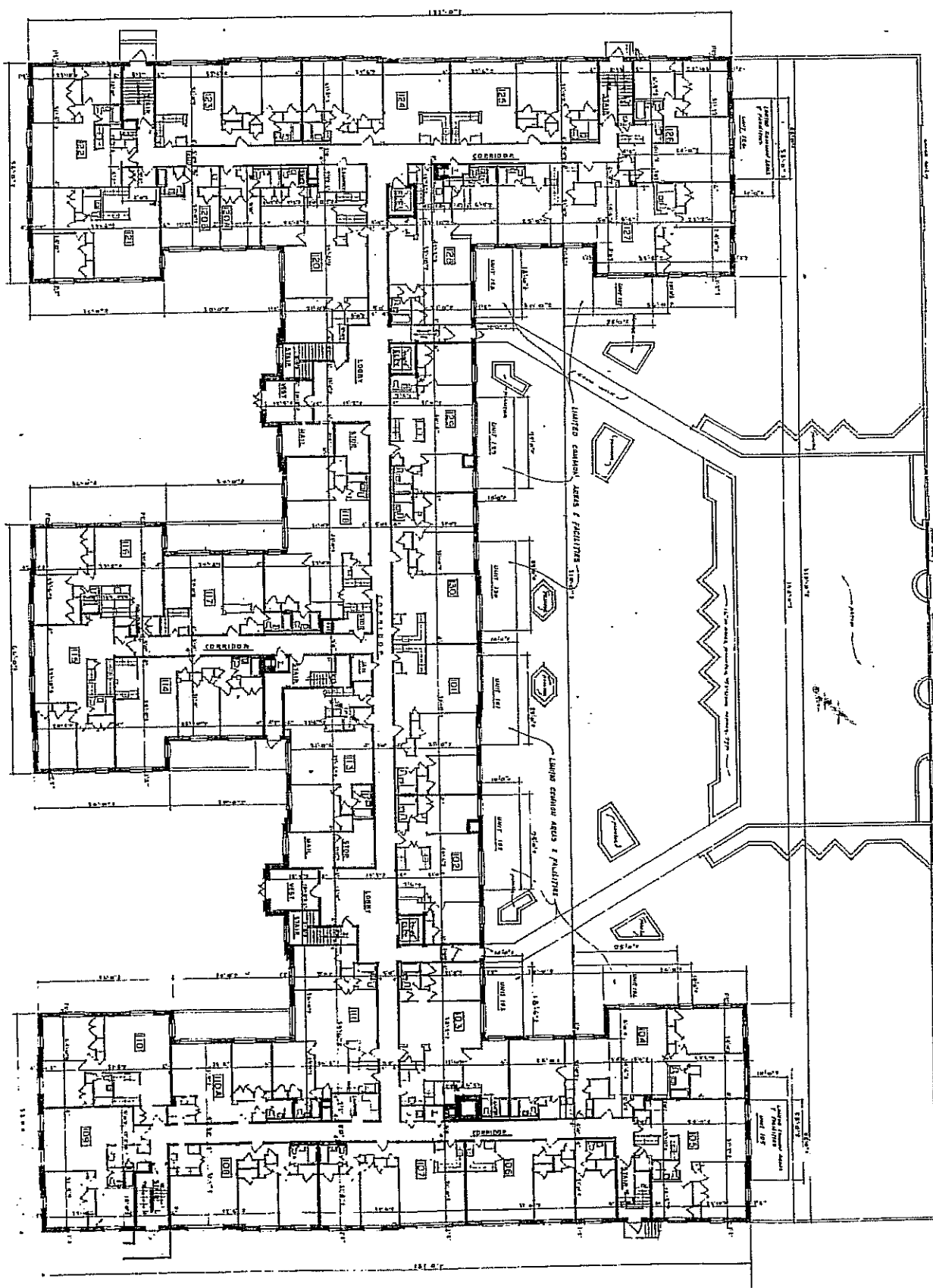
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GARAGE & BASEMENT FLOOR PLANS

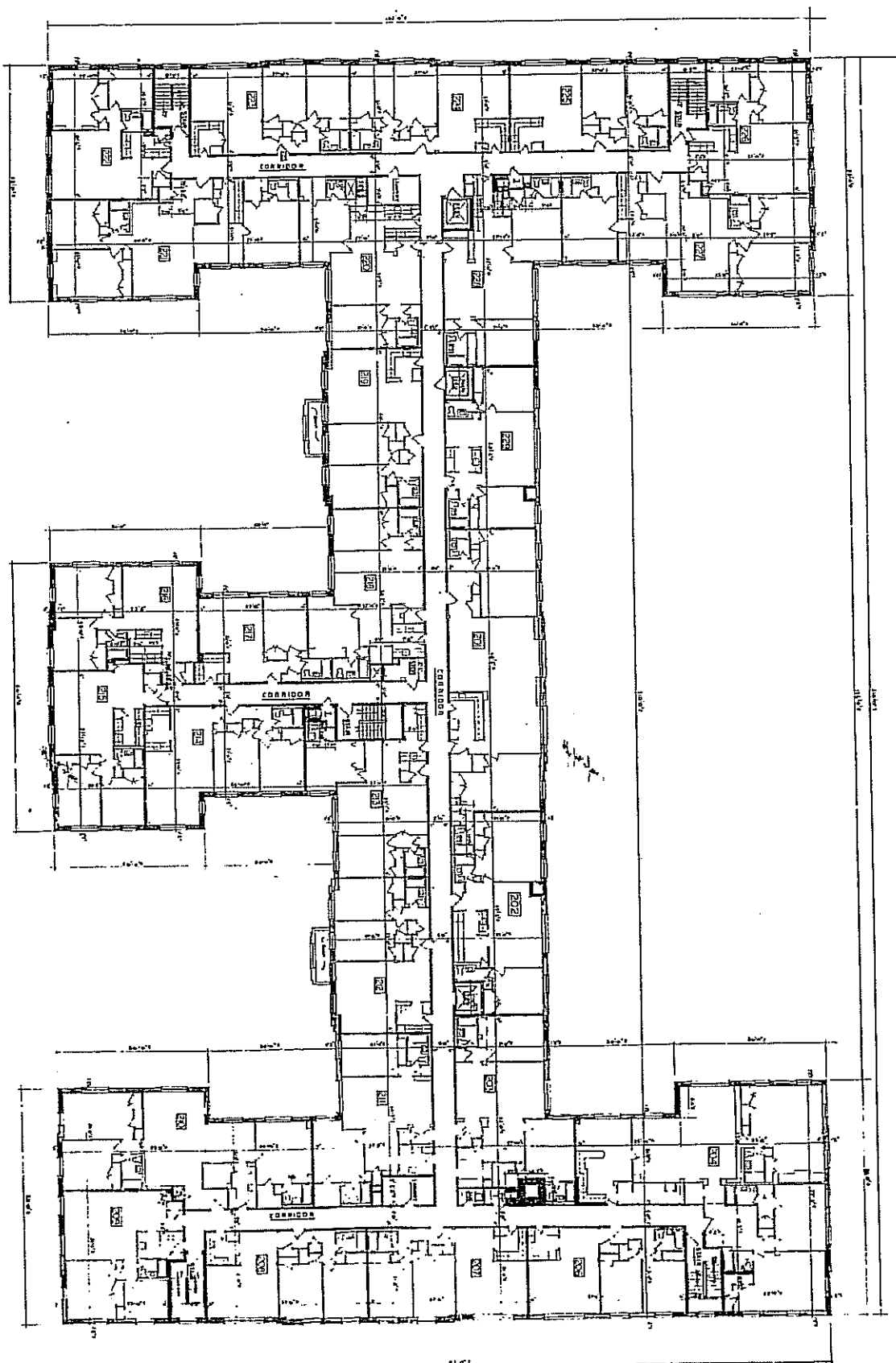


FIRST FLOOR PLAN

0 10 20 30 40 50 60 70 80 90 100 110 120 130 140 150 160 170 180 190 200



UNIT	101
DATE	10/1/77
BY	C.3
CHECKED BY	
DATE	
APPROVED BY	
DATE	



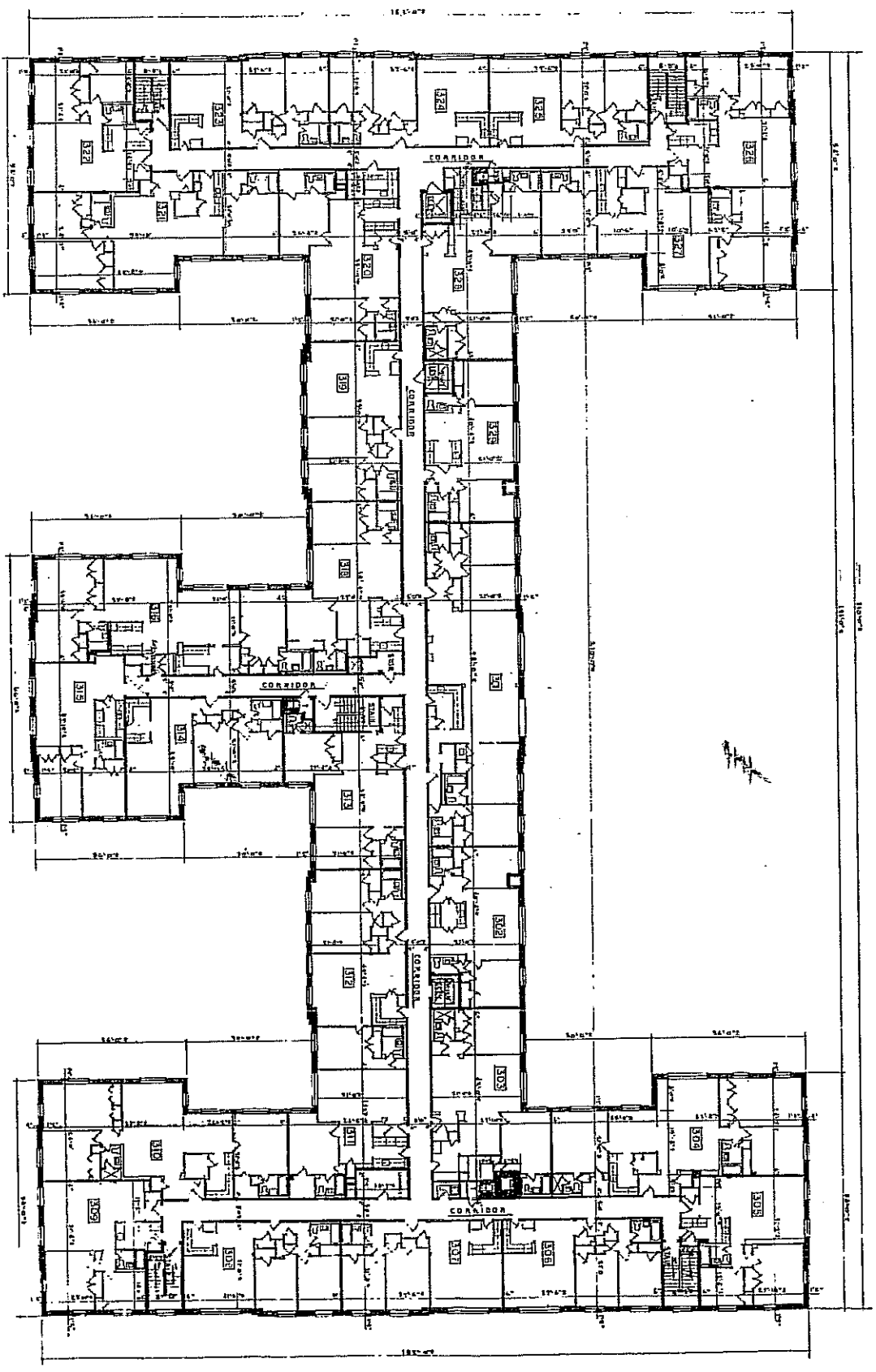
SECOND FLOOR PLAN

SCALE 1/8" = 1'-0"



Project No.	164. 37
Sheet No.	14
Scale	1/8" = 1'-0"
Author	
Checker	
Engineer	
Architect	

16C. 37  
 96.15



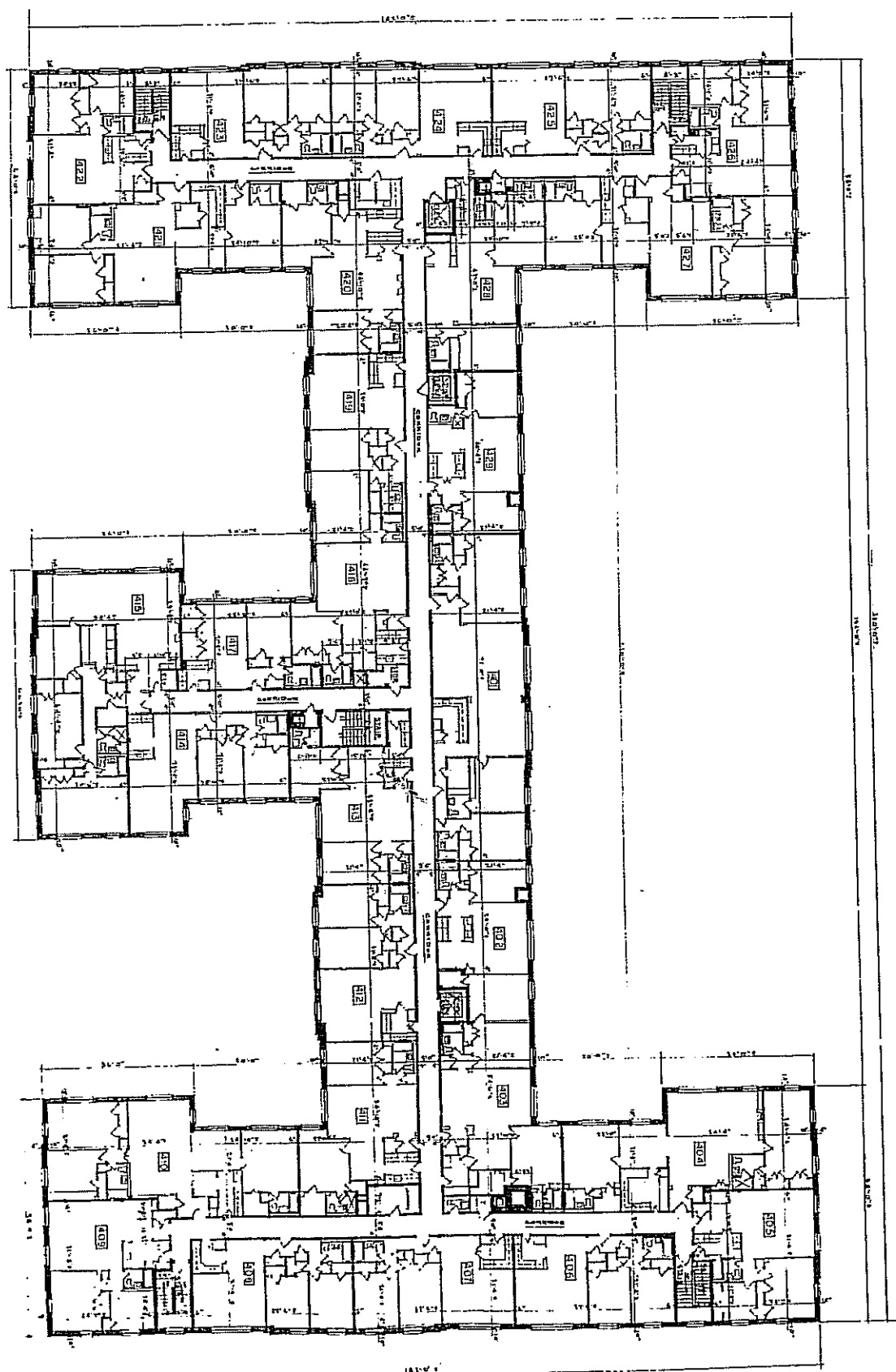
THIRD FLOOR PLAN

SCALE 1" = 10'-0"



UNITED STATES DEPARTMENT OF JUSTICE  
 OFFICE OF THE INSPECTOR GENERAL  
 442 C-5

104-37  
Pg. 16

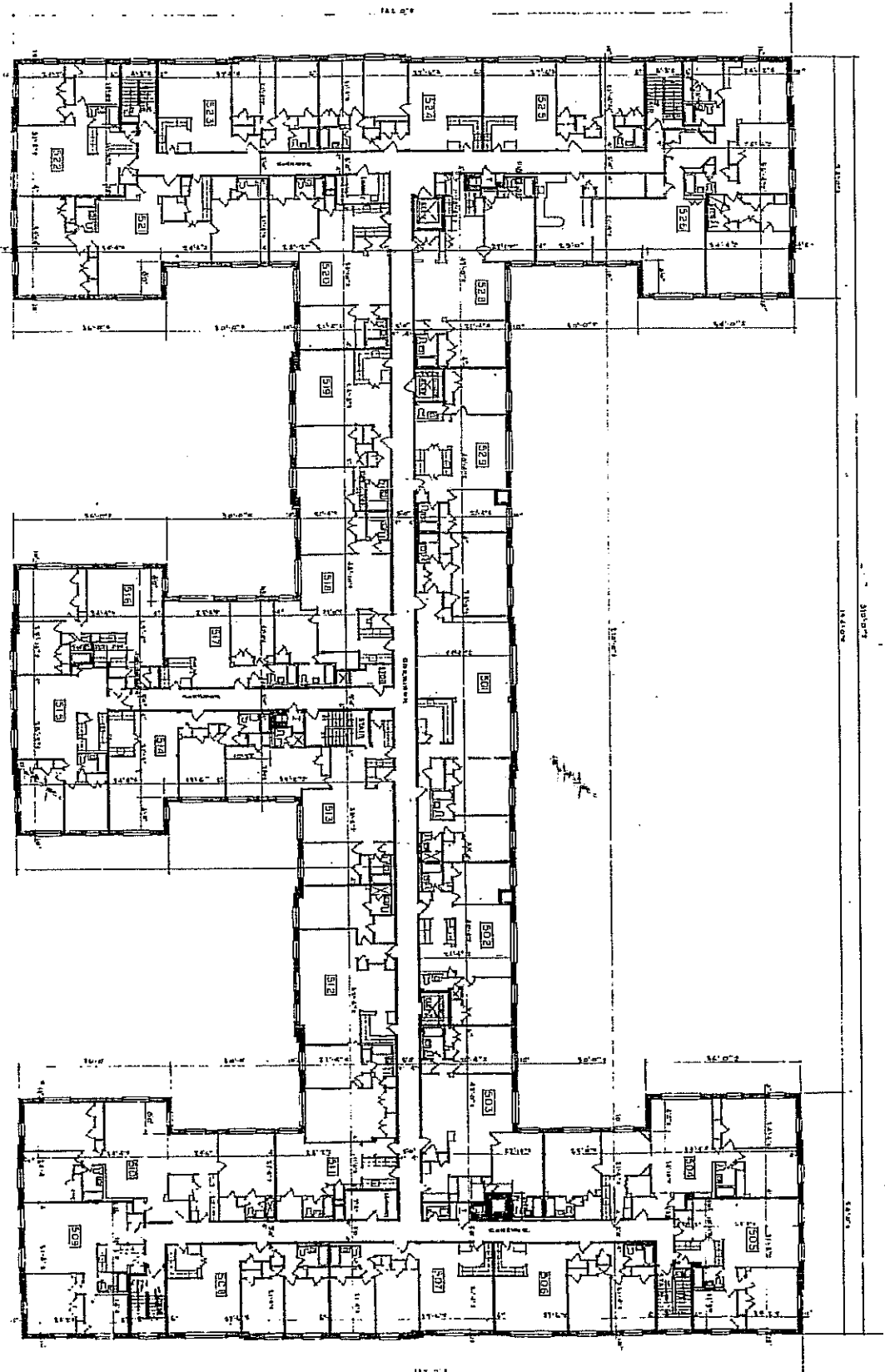


FOURTH FLOOR PLAN

SCALE 0 10 20 30



Architectural drawing showing the fourth floor plan of a building. The plan includes room numbers, corridors, and structural details. A scale bar is provided at the bottom left.

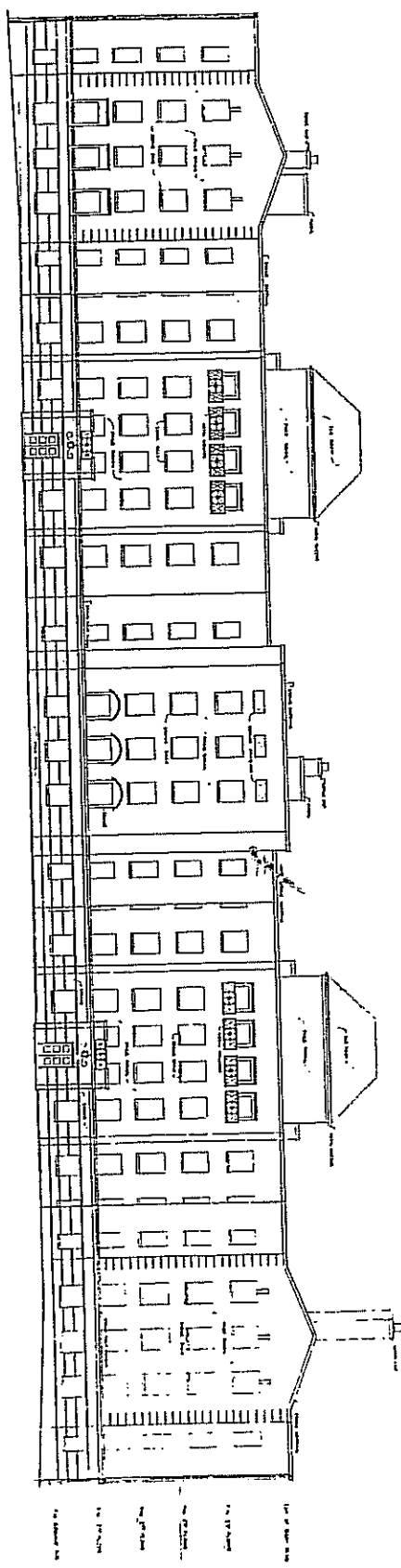


FIFTH FLOOR PLAN  
SCALE 1/8" = 1'-0"

0 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100



L. 37  
6. 18.

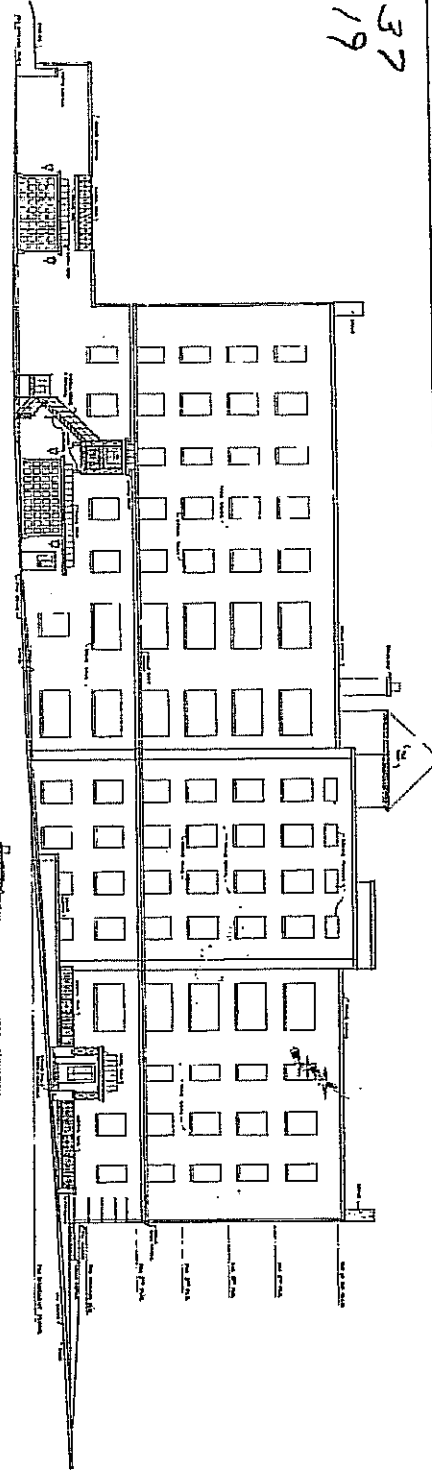


SOUTH ELEVATION

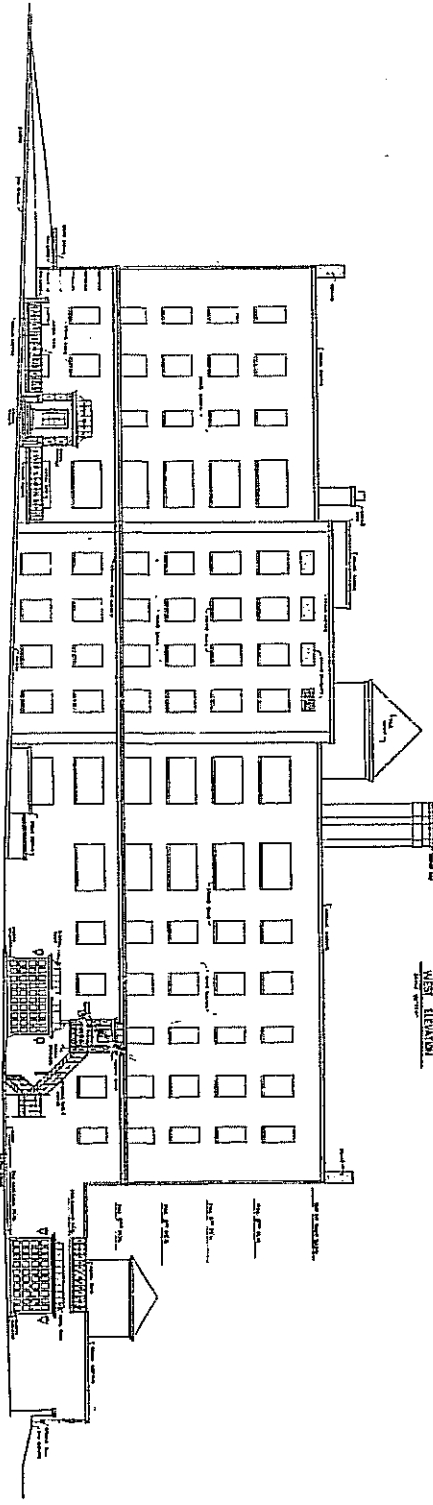


Title	
Drawing No.	
Scale	
Date	
By	
Check	
Approved	
Remarks	

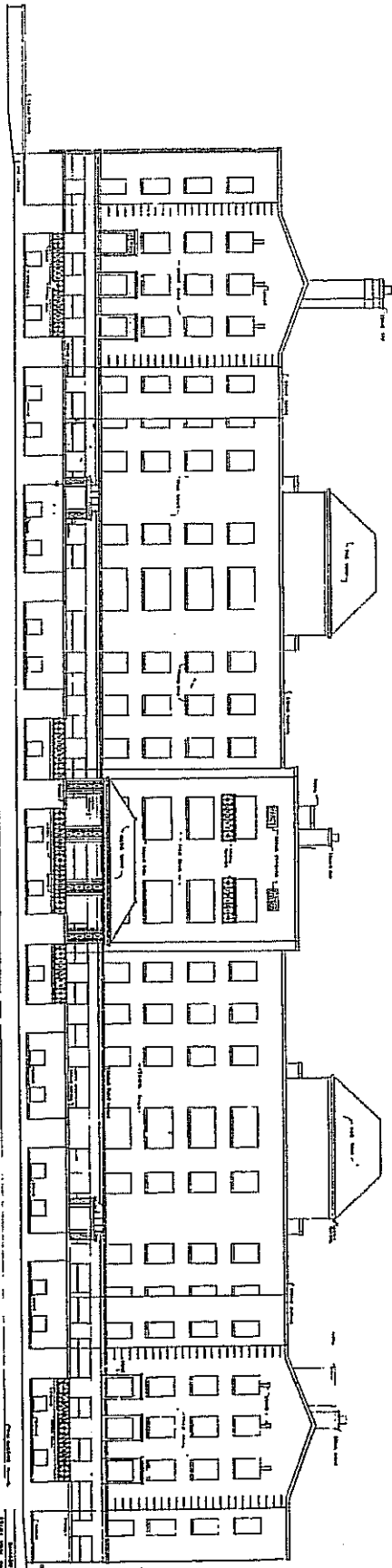
100-37  
Pg. 19



WEST ELEVATION



EAST ELEVATION



NORTH ELEVATION



Architect's Office  
100-37  
C-8