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WINCHESTER BEND APARTMENTS II LLC

**First Grantee:**  
WINCHESTER BEND II CONDOMINIUM

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AUDITOR  
FRANKLIN COUNTY, OHIO

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AUDITOR  
FRANKLIN COUNTY, OHIO

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**DECLARATION AND BY-LAWS**

**CREATING AND ESTABLISHING A PLAN FOR**

**CONDOMINIUM OWNERSHIP**

**UNDER CHAPTER 5311 OF THE REVISED CODE OF OHIO**

**FOR**

**WINCHESTER BEND II CONDOMINIUM**

**CERTIFICATE OF AUDITOR**

November 16, 2022

Receipt is hereby acknowledged of a copy of the Declaration, By-Laws, and Drawings of the above-named Condominium.

*Deanna R. Cook*  
Auditor/Deputy Auditor of Franklin County, Ohio

This Instrument Prepared by:  
Deanna R. Cook, Attorney at Law  
Vorys, Sater, Seymour & Pease  
52 East Gay Street  
Columbus, Ohio 43216  
Phone: 614-464-6349

**FOR REFERENCE PLEASE SEE  
CONDOMINIUM PLAT BOOK NO. 302 PAGE 032-036**

**PLAT # 202211300162459**

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**DECLARATION**  
**OF**  
**WINCHESTER BEND II CONDOMINIUM**

This is the Declaration of WINCHESTER BEND II CONDOMINIUM made on or as of the 14<sup>th</sup> day of November, 2022, pursuant to the provisions of Chapter 5311 of the Revised Code of Ohio.

**RECITALS**

A. Winchester Bend Apartments II LLC, an Ohio limited liability company, "Declarant", is the owner in fee simple of all of the real property hereinafter described and the improvements thereon and appurtenances thereto.

B. The Declarant desires to create at this property condominium Units, and commonly owned areas and facilities, and to these ends to submit this property to condominium ownership under the Condominium Act.

**DEFINITIONS**

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

1. "Association" and "Winchester Bend II Condominium Association" mean the unincorporated association and is also one and the same as the Association created for the Condominium under the Condominium Act.

2. "Board" and "Board of Directors" mean those persons who, as a group, serve as the board of directors of the Association.

3. "By-Laws" mean the by-laws of the Association, as the same may be lawfully amended from time to time, created under and pursuant to the Condominium Act for the Condominium, and which also serve as the code of regulations of the Association under and pursuant to the provisions of Chapter 1702, in the event the association is incorporated. A true copy of the By-Laws is attached hereto as "Exhibit D" and made a part hereof.

4. "Common Elements" means all of the Condominium Property, except that portion described in this Declaration as constituting a Unit or Units, and is that portion of the Condominium Property constituting "common elements" of the Condominium under the Condominium Act.

5. "Condominium" and "Winchester Bend II Condominium" mean the condominium regime for the Condominium Property created under and pursuant to the Condominium Act.

6. "Condominium Act" means Chapter 5311 of the Revised Code of Ohio.

7. "Condominium Organizational Documents" means the By-Laws, the Drawings, and this Declaration.

8. "Condominium Property" means the tract of land hereinafter described as being submitted to the Condominium Act, all buildings, structures and improvements situated thereon, and all easements, rights and appurtenances belonging thereto.

9. "Condominium Senior Lender" has the meaning set forth in Section 5 of Article XI of this declaration.

10. "Declarant" means whoever is designated in the recitals of this Declaration as creating the Condominium, and Declarant's successors and assigns, provided the rights specifically reserved to Declarant under the Condominium Organizational Documents shall accrue only to such successors and assigns as are designated in writing by Declarant as successors and assigns of such rights.

11. "Declarant Affiliate" means an entity controlled by or under common control with Declarant.

12. "Declaration" means this instrument, by which the Condominium Property is hereby submitted to the Condominium Act.

13. "Drawings" means the drawings for the Condominium, and are the Drawings required pursuant to the Condominium Act. A set thereof is attached hereto as "**Exhibit A**", but the same may be detached and filed separately herefrom by the appropriate public authorities.

14. "Exclusive Use Area" means Common Elements reserved herein, if any, for delegation by the Board of Directors to the use of certain Unit or Units to the exclusion of other Units.

15. "Limited Common Elements" means those Common Elements serving exclusively one Unit or more than one but less than all Units, the enjoyment, benefit or use of which are reserved to the lawful occupants of that Unit or Units either in this Declaration, or by the Board, and is that portion of the Condominium Property constituting "limited common Elements and facilities" of the Condominium under the Condominium Act.

16. "Occupant" means a person lawfully residing in a Unit, regardless of whether or not that person is a Unit Owner.

17. "Person" means a natural individual, corporation, limited liability company, partnership, trustee, or other legal entity capable of holding title to real property.

18. "Director" and "Directors" mean that person or those persons serving, at the time pertinent, as a director or directors of the Association, and mean that same person or those persons

serving in the capacity of a member of the Board of Directors of the Association, as defined in the Condominium Act.

19. "Unit" and "Units" mean that portion or portions of the Condominium Property described as a Unit or Units in this Declaration and designated a Unit on the Drawings, and is that portion of the Condominium constituting a "Unit" or "Units" of the Condominium under the Condominium Act.

20. "Unit Owner" and "Unit Owners" mean that person or those persons owning a fee-simple interest in a Unit or Units, each of whom is also a "member" of the Association, as defined in Chapter 1702 of the Revised Code of Ohio.

### THE PLAN

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

#### ARTICLE I THE LAND

A legal description of the land constituting the Condominium Property, located in the County of Franklin, City of Columbus, and State of Ohio, and being approximately a 11.6999 +/- acre tract, is attached hereto and marked "**Exhibit B**".

#### ARTICLE II NAME

The name by which the Condominium shall be known is "WINCHESTER BEND II CONDOMINIUM."

#### ARTICLE III PURPOSES; RESTRICTIONS

Section 1. Purposes. This Declaration is being made to establish separate individual parcels from the Condominium Property to which fee-simple interests may be conveyed; to establish a Unit Owners' Association to administer the Condominium; to provide for the preservation of the values of Units and the Common Elements; to provide for and promote the benefit, enjoyment and wellbeing of Unit Owners and Occupants; to administer and enforce the covenants, easements, charges and restrictions hereinafter set forth; and to raise funds through assessments to accomplish these purposes. By acceptance of a deed to a Unit, each Unit Owner (i) represents that he/she/it understands that the Unit is a "commercial unit" for all intents and purposes of the Condominium Act and that the Condominium is not intended to be and shall under no circumstances be deemed to be a "condominium development" as that term is defined in the Condominium Act, and (ii) covenants with Declarant and each and every other Unit Owner that he/she/it is purchasing the Unit as an investment and shall own and operate the Unit for the commercial purpose of leasing the Unit to one or more third-party tenants to be occupied as a

residence as if the Unit were an apartment subject to the terms and conditions of this Declaration, the Bylaws, and any rules and regulations promulgated from time to time by the Board.

Section 2.     Restrictions. The Condominium and the Condominium Property shall be benefited by and subject to the following restrictions:

(A) Unit Uses. Except as otherwise specifically provided in this Declaration, all Units shall be used for the commercial purpose of a multi-family apartment development, it being Declarant's intent that all Units be owned and operated for investment purposes and that all Units constitute "commercial units" for all intents and purposes of the Condominium Act. Operation of a property management company and/or the providing of property management services from and out of a Unit shall in no event be considered incidental to the principal occupancy of a Unit for residential purposes; provided, however, that notwithstanding the foregoing, it shall be permissible for the Declarant to maintain, during its ownership of at least one Unit, sales models and offices in one Unit and/or in the any clubhouse or similar structure, if any located on the Condominium Property.

(B) Common Elements Uses. The Common Elements (except the Limited Common Elements) shall be used in common by Unit Owners and Occupants and their agents, customers, invitees and licensees, in accordance with the purposes for which they are intended, reasonably suited and capable, and as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of Units. Unless expressly provided otherwise herein, no Common Elements shall be used for any purpose other than the health, safety, welfare, convenience, comfort, recreation and enjoyment of Unit Owners and Occupants, subject to such rules and regulations as may from time to time be promulgated by the Board, or the Manager on behalf of the Board, which may, among other things, regulate open fires, regulate the amount of trash that an Owner and/or Occupant of a Unit may place in the Common Element trash/waste receptacles, and prohibit temporary buildings or structures.

(C) Limited Common Elements Uses. Those portions of the Common Elements described herein and shown on the Drawings as Limited Common Elements, if any, shall be used and possessed exclusively by the Unit Owners and Occupants of the Unit or Units served by the same, as specified in the Declaration, and shall be used only for the purposes intended.

(D) Exclusive Use Area Uses. In the event than any Exclusive Use Area is designated by the Board of Directors for the exclusive use of any one or more Units, then such Exclusive Use Areas shall be used and possessed exclusively by the Unit Owners and Occupants of the Unit or Units to which such area is designated, until such designation is changed by the Board, in accordance with the purpose for which such Exclusive Use Area is intended, and subject to such rules and regulations as may from time to time be promulgated by the Board including, without limitation, the charging of a fee, one-time or periodic, for such designation, and the right to terminate such designation.

(E) Visible Areas. Nothing shall be caused or permitted to be hung or displayed on the outside or inside of windows (except inoffensive drapes, curtains, or louvered blinds) or placed on the outside walls of a building or otherwise outside of a Unit, or any part thereof, and no sign, awning, canopy, shutter or television or citizens' band or other radio antenna or transmitter (except satellite dishes, which shall be permitted as described below), or any other device or ornament, shall be affixed to or placed upon the exterior walls or roof or any part thereof, or in, on, or over a patio or balcony, unless authorized by the Board or required by applicable law to be permitted but, in such case, subject to such lawful rules and regulations as the Board may adopt from time to time. Satellite dishes, less than 24" in diameter, shall be permitted. However, the location and installation of any satellite dish requires Board approval prior to installation.

(F) Offensive Activities. No noxious or offensive activity shall be carried on in any Unit, or upon the Common or Limited Common Elements, nor shall any Unit or portion of the Common Elements or limited Common Elements be used in any way or for any purpose which may endanger the health of or unreasonably disturb any Occupant.

(G) Vehicles. The Board may promulgate rules and regulations restricting or prohibiting the parking of automobiles, inoperable vehicles, trucks, boats and recreation vehicles on the Common Elements, or parts thereof, and may enforce such regulations or restrictions by levying enforcement charges, having such vehicles towed away, or taking such other actions as it, in its sole discretion, deems appropriate.

(H) Renting and Leasing. Any form of lease agreement shall provide that the lease be subject in all respects to the provisions hereof (including, without limitation, the provisions of Section 7 of Article XV), and to the rules and regulations promulgated from time to time by the Board, or the Manager on behalf of the Board, and shall provide that the failure by the tenant to comply with the terms of the Condominium Organizational Documents and lawful rules and regulations shall be a default under the lease. The Association shall have the authority and power, in the name of the Unit Owner, or in its own name, to cause an eviction of any tenant of any Unit Owner which is violation of the Declaration, Bylaws and/or rules and regulations promulgated by the Board.

(I) Signs. No sign of any kind shall be displayed to the public view on the Condominium Property except: (i) on the Common Elements, signs regarding and regulating the use of the Common Elements, provided they are approved by the Board; (ii) on the interior side of the window of a Unit, one professionally prepared sign, not in excess of nine square feet in size, advertising the Unit for sale or rent; and (iii) on the Common Elements and in connection with the model dwellings, signs advertising the sale and/or rental of dwellings by the Declarant. Model dwelling and advertising signs and any other sale or marketing signs deemed necessary by the Declarant may not be limited by the Board, the Association or its members in any way. Should the Board, the Association or its members interfere with the Declarant's model, advertising, sale or marketing signs in any way, the Declarant shall have the right to seek compensation from the Association for damage, destruction or replacement of said signs.

(J) Replacements. Any building erected to replace an existing building containing Units shall be of new construction, be of comparable size, design and construction to that replaced, and shall contain a like number of Units of comparable size to the Units in the building replaced.

(K) Structural Integrity. Nothing shall be done in any Unit, or in, on or to the Common or Limited Common Elements, which may impair the structural integrity of any improvement.

(L) Construction in Easements. No structure, planting or other material shall be placed or permitted to remain within the easements for the installation and maintenance of utilities and drainage facilities which may damage or interfere with the installation and maintenance of utility lines or which may change the direction of the flow of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easement areas. The utility facilities within the easement areas shall be subject to the right of the Association to maintain the same, and its right to delegate that right to a public authority or utility.

(M) Animals. Except as hereinafter provided, no animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit or on the Common Elements. Notwithstanding the foregoing, household domestic pets, not bred or maintained for commercial purposes, may be maintained in a Unit, provided that: (i) the permitting of animals shall be subject to such rules and regulations as the Board may from time to time promulgate, including, without limitation, the right to place limitations on the size, number and type of such pets, and the right to levy enforcement charges against persons who do not clean up after their pets; and (ii) the right of an Occupant to maintain an animal in a Unit shall be subject to termination if the Board, in its full and complete discretion, determines that maintenance of the animal constitutes a nuisance or creates a detrimental effect on the Condominium or other Units or Occupants.

(N) Conveyances. Each Unit shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof. The undivided interest of a Unit in the Common Elements shall be deemed to be conveyed or encumbered with the Unit even though that interest is not expressly mentioned or described in the deed, mortgage or other instrument of conveyance or encumbrance. Any conveyance, encumbrance or other transfer (voluntary or involuntary) of an interest in the Common Elements will be void unless the Unit to which that interest is allocated is also transferred to the same transferee. In any instrument of conveyance or any instrument creating an encumbrance, or in any other document legally describing a Unit, it shall be sufficient to lawfully describe a Unit and its interest in the Common Elements by referring to the Unit designation of the Unit and the appropriate recording references of the initial page of the Declaration and the Drawings, and in the case of a Unit added to the Condominium, the initial pages of the amendment to the Declaration and the amendment to the Drawings by which such Unit was added to the Condominium. The right of a Unit Owner to sell, transfer or otherwise convey that owner's Unit is not subject to any right of first refusal or similar restriction, and any Unit Owner may transfer that owner's Unit free of any such limitation. To enable the Association to maintain accurate records of the names

and addresses of Unit Owners, each Unit Owner agrees to notify the Association, in writing, within thirty (30) days after an interest in that Unit Owner's Unit has been transferred to another person. In addition, each Unit Owner agrees to provide to a purchaser of that owner's Unit a copy of the Condominium Organizational Documents and all effective rules and regulations. No prior consent or approval of the Association is required for foreclosure on Units encumbered by a mortgage or the exercise of a deed in lieu of foreclosure or similar disposition of a Unit or Units by a Condominium Senior Lender of which the Association has received notice pursuant to Article XVI of this Declaration.

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

(P) Architectural Control. No building, fence, wall, sign or other structure shall be commenced, erected or maintained upon the Condominium Property, or any part thereof, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by the Board or its designated representative or representatives, in its or their sole and unfettered discretion.

(Q) Rules and Regulations. In addition to adopting and enforcing rules and regulations in the instances specifically hereinbefore mentioned, the Board may, from time to time, adopt and enforce such further reasonable rules and regulations concerning use of the Condominium Property, or any part thereof, as it deems necessary or desirable to promote harmony, to serve the best interests of the Unit Owners, as a whole, and to protect and preserve the nature of the Condominium and the Condominium Property. A copy of all rules and regulations shall be furnished by the Board to the owners of each Unit prior to the time when the same shall become effective.

(R) Disputes Between Owners. In the event of any dispute between Unit Owners as to the application of the foregoing restrictions or any rule or regulation promulgated pursuant thereto, the party aggrieved shall submit a complaint in writing to the Board specifying the dispute. The Board shall set a time, date and place for a hearing thereon within sixty (60) days thereafter, and shall give written notice to each party thereof no less than three (3) days in advance. The Board shall thereupon hear such evidence on the dispute as the Board deems proper and render a written decision on the matter to each party within thirty (30) days thereafter. No action of any type may be instituted by either party to such a dispute unless the dispute has first been submitted to and determined by the Board, as aforesaid.

(S) Occupancy By Sexual Offenders Prohibited. No Unit, or any portion thereof, nor any portion of the Common Elements, may be occupied for any purpose or for any period of time by any person who is adjudicated, classified, labeled or otherwise designated a "sexual predator" (or any replacement or substitute term or variation therefore resulting from any amendment to applicable sections of the Ohio Revised Code) under applicable sections of the Ohio Revised Code, as amended from time to time or an "habitual

sex offender" (or any replacement or substitute term or variation therefore resulting from any amendment to applicable sections of the Ohio Revised Code) under applicable sections of the Ohio Revised Code, and/or required by applicable laws (within the state or Ohio or any other state) to register with a designated registering agency, thereby requiring notice to be given pursuant to the Ohio Sex Offenders Act or similar statute from another jurisdiction; provided, however, that the foregoing prohibition is not intended to, nor shall it be interpreted to, create a duty on behalf of any Unit Owner or Occupant to inquire about, or take any affirmative action to determine, the status of any tenant, Occupant, guest, invitee or contractor as a "sexual predator", "habitual sex offender", or any other designated individual who must register with a designated registering agency, thereby requiring notice to be given pursuant to the Ohio Sex Offenders Act or similar statute from another jurisdiction. Any occupancy of any portion of a Unit or the Common Elements by any person whose occupancy is prohibited by the terms of this subsection (s) shall constitute a noxious and/or offensive activity for the purposes of subsection (f) of this Section. Any violation of this restriction shall subject the Unit Owner and/or any Occupant of the Unit to any and all remedies provided for by law as well as this Declaration.

#### ARTICLE IV IMPROVEMENT DESCRIPTIONS

Section 1. Buildings. There are seventeen (17) buildings in the Condominium Property. Sixteen (16) buildings contain residential units and one (1) building is a clubhouse. All buildings containing residential units are of wood-frame construction with concrete foundation slabs on grade, having sloped roofs with asphalt shingles and exteriors clad in a combination of some brick, vinyl siding, and/or metal flashing, fascia, gutters and down spouts.

Section 2. Other. The Common Elements of the Condominium, as initially constituted hereby include private roads, unenclosed surface parking spaces, green spaces, dry pond area, and clubhouse.

#### ARTICLE V UNITS

Section 1. Unit Designations. The Condominium contains eighty-eight (88) Units. The location and designation of each Unit is also shown on the Drawings. Information concerning the Units, with a listing of Unit designations, is shown on the attached "**Exhibit C**".

Section 2. Compositions of Units.

(A) Unit Composition. Each Unit constitutes a single freehold estate.

(1) Each Unit consists of the space in the building designated by that Unit's designation on the Drawings that is bounded by the interior surfaces of the most interior structural members of the Unit's perimeter walls, floors and ceilings, all projected, if necessary by reason of structural divisions such as interior walls and partitions, to constitute a complete enclosure of space. Without limiting the generality of the foregoing, each Unit shall include:

- (a) the decorated surfaces, including paint, lacquer, varnish, wall covering, tile and other finishing material applied to floors, ceilings, and interior and perimeter walls, carpeting, if any, and also the floors and ceilings themselves, and the drywall, paneling and other finishing wall material.
- (b) all windows, skylights, if any, and screens and doors, including storm doors and windows, if any, and the frames, sashes and jambs, thresholds and the hardware therefor;
- (c) all fixtures and appliances installed for the exclusive use of that Unit, including, without limiting the generality hereof, built-in cabinets, dishwashers, garbage disposal units, refrigerators, stoves and hoods, antennas and cables, furnaces, hot water heaters, heat pumps, air-conditioning units (even though located outside the bounds of a Unit), and components of the foregoing, if any;
- (d) all plumbing, electric, heating, cooling and other utility or service lines, pipes wires, ducts, conduits and apparatus wherever located, which serve only that Unit;
- (e) all control knobs, switches, thermostats and electrical outlets and connections affixed to or projecting from the walls, floors and Ceilings which service either the Unit or the fixtures located therein;
- (f) all interior walls and all components thereof and all space encompassed thereby;
- (g) the attic space or storage space above a Unit, and the crawl space and basement below a Unit, if any, to which the Unit has direct and exclusive access; and
- (h) any deck, patio, porch or balcony serving the Unit exclusively, unless designated otherwise on the Drawings.

excluding therefrom, however, all plumbing, electric, heating, cooling, and other utility or service lines, pipes, sump pumps and accessories thereto, wires, ducts and conduits which serve any other Unit, whether or not located within the bounds of that Unit.

(B) Unit Sizes, Locations and Components. On “**Exhibit C**” attached hereto is a listing of Units that are in the Condominium, together with the approximate square footage of each Unit excluding the area of any patio, deck or balcony, and the undivided interest in the Common Elements assigned to such Unit. The location, dimensions and composition of each Unit are also shown on the Drawings. Each Unit has direct access to Common Elements and easements which lead directly to a public roadway.

Section 3. Division or Combination of Units.

(A) No Relocation of Boundaries between Adjoining Units and Reallocation of Undivided Interests in Common Elements. The boundaries between adjoining Units and appurtenant Limited Common Elements may not be relocated and the undivided interests in the Common Elements appurtenant to those Units may not be reallocated by an amendment to the Declaration pursuant to the procedures set forth in Section 5311.031 of the Condominium Act.

(B) Reallocation of Rights to Use of Limited Common Elements. Rights to the use of Limited Common Elements may be reallocated between or among Units by an amendment to the Declaration pursuant to the following procedures:

- (1) The Unit Owners of the affected Units shall prepare and execute at their expense an amendment to the Declaration that identifies the affected Units and specifies the reallocated rights to the affected Limited Common Elements.
- (2) The Unit Owners of the affected Units shall submit to the Board of Directors the amendment, accompanied by the written consents of the Unit Owners of all affected Units and the holders of all liens on those Units except liens for real estate taxes and assessments not due and payable.
- (3) At the expense of the Unit Owners of the affected Units, the Association shall record the submitted amendment to the Declaration.

ARTICLE VI  
COMMON AND LIMITED COMMON ELEMENTS

Section 1. Common Elements - Description. All of the Condominium Property, including all of the land and all improvements thereon and appurtenances thereto, except those portions labeled or described herein or on the Drawings as a part of a Unit, are Common Elements.

Section 2. Limited Common Elements - Description. There may be portions of the Common Elements labeled or designated "Limited Common Elements" on the Drawings. If there are Limited Common Elements designated on the Drawings, each such Limited Common Element is reserved for the exclusive use of the owners and Occupants of the Unit(s) having direct access thereto or to the Unit(s) to which it is assigned pursuant to "**Exhibit C**" attached hereto.

Section 3. Undivided Interest. The undivided interest in the Common Elements of each Unit is shown on the attached "**Exhibit C**", and, in each case, is based on each unit having an equal par value of one (1). Thus, each owner of an apartment Unit will have an equal undivided interest in the Common Elements.

The Common Elements shall be owned by the Unit Owners as tenants in common, and ownership thereof shall remain undivided. No Unit Owner may waive or release any rights in the Common Elements. Further, the undivided interest in the Common Elements of a Unit shall not

be separated from the Unit to which it appertains. For so long as the Declarant owns one unit, the Declarant shall have the right to maintain an office for sales / leasing purposes on or within the Common Elements.

Section 4.      Limited Common Elements - Reallocation.

Notwithstanding any provision in this Declaration to the contrary, to the extent not prohibited by Ohio Law, rights to the use of Limited Common Elements may be reallocated between or among Units by an amendment to the Declaration pursuant to the following procedures:

(a) The Owners of the affected Units shall prepare and execute at their expense an amendment to the Declaration that identifies the affected Units and specifies the reallocated rights to the affected Limited Common Elements.

(b) The Owners of the affected Units shall submit to the Board of Directors of the Unit Owners Association the amendment, accompanied by the written consents of the Owners of all affected Units and the holders of all liens on those Units except liens for real estate taxes and assessments not due and payable.

(c) At the expense of the Owners of the affected Units, the Unit Owners Association shall record the submitted amendment to the Declaration.

Section 5.      Construction of Improvements in Common and Limited Common Elements.

Notwithstanding any provision in this Declaration to the contrary, to the extent not prohibited by Ohio Law and subject to such rules as the Board may adopt, the Board may authorize the use of Limited Common Elements appurtenant to a particular Unit to be used for the construction of open, unenclosed patios, hedges, decks, fences or similar improvements provided that:

(a) All requirements of subsections (e) and (p) of Article III, Section 2, above, are complied with;

(b) All such improvements are insured and maintained by the owner of the Unit to which such Limited Common Elements are appurtenant; and

(c) Such obligations to insure and maintain are memorialized in an agreement prepared at the direction of the Board (but at the expense of the requesting Unit Owner) and recorded in the chain of title to the Unit so that all successors in title shall have notice that the insurance and maintenance of such improvements are not the responsibility of the Association.

**ARTICLE VII**  
**UNIT OWNERS' ASSOCIATION**

Section 1.      Establishment of Association. The Association shall be established upon the filing of this Declaration in the office of the County Recorder. Until the Association is

established, the Declarant, or the Manager, shall act in the name of and as agent for the Association and/or the Unit Owners in all instances in which action of the Association or its officers is authorized or required by law or the Declaration.

**Section 2. Membership.** Membership in the Unit Owners' Association shall be limited to the Unit Owners, and every person or entity who is or becomes a record owner of a fee or undivided fee simple interest in a Unit is a Unit Owner and shall be a member of the Association when it is established. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Unit, and transfer of a Unit shall automatically transfer membership to the transferee. Declarant is presently the sole member of the Association.

**Section 3. Voting Rights.** Upon establishment of the Association, each Unit shall have equal voting power (i.e., one vote per Unit). Each Unit Owner shall be entitled to a proportionate part of the respective Unit's voting power equal to the respective Unit Owner's proportionate share of the Unit's undivided fee simple interest, provided, that unless timely challenged by an owner of a fee simple interest in a Unit, any owner of a fee simple interest in that Unit may cast the entire voting power with respect to that Unit. The Board, from time to time, may suspend the right of a member to vote with respect to his, her, or its Unit for failure to pay assessments when due, or for failure to observe any of the other terms hereof, the Bylaws, or rules and regulations of the Association, pursuant to rules and regulations duly adopted by the Board from time to time.

**Section 4. Board of Directors.** So long as Declarant or a Declarant Affiliate owns at least one (1) of the Units, the Board shall consist of one (1) Director appointed by Declarant or the Declarant Affiliate. So long as the Declarant or Declarant Affiliate owns more than one (1) Unit, the Director appointed by Declarant or a Declarant Affiliate shall not be deemed to be a representative from a single Unit. Within ninety (90) days after the sale and conveyance to a purchaser in good faith and for value, of the last Unit owned by Declarant or a Declarant Affiliate, the Association shall meet, and all Unit Owners shall elect three (3) Directors (or a number equal to the number of members in the Association in the event that there are fewer than three (3) members of the Association) to replace the Director earlier designated by the Declarant or Declarant Affiliate. The terms of the Directors shall be staggered so that the terms of at least one-third (1/3) of the Directors will expire and successors will be elected at each annual meeting of the Association. Thereafter, at such annual meetings, a successor to the Director whose term then expires shall be elected to serve a three-year term. Notwithstanding the foregoing, the members, by the vote of members exercising not less than a majority of the voting power of members, may from time to time, change the number and terms of Directors, provided, that in any such event the terms of not less than one-third (1/3) of the Directors shall expire annually.

**Section 5. Authority.** The Board shall have all authority to manage, maintain, repair, replace, alter and improve the Common Elements and assess and collect funds for the payment thereof, and do all things, and exercise all rights provided by the Condominium Organizational Documents, or the Condominium Act, that are not specifically reserved to Unit Owners, including, without limitation:

- (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 of the Condominium Property and the Association;
- (B) Commence, defend, intervene in, settle, or compromise any civil, criminal, land use planning, or administrative action or proceeding that is in the name of, or threatened against, the Association, the Board of Directors, or the Condominium Property, or that involves two or more Unit Owners and relates to matters affecting the Condominium Property or impacts zoning or otherwise relates to matters affecting the Condominium Property;
- (C) Enter into contracts and incur liabilities relating to the operation of the Condominium Property;
- (D) Regulate the use, maintenance, repair, replacement, modification, and appearance of the Condominium Property;
- (E) Adopt rules that regulate the use or occupancy of Units, the maintenance, repair, replacement, modification, and appearance of Units, Common Elements, and Limited Common Elements when the actions regulated by those rules affect Common Elements or other Units;
- (F) Cause additional improvements to be made as part of the Common Elements;
- (G) Purchase, encumber, and convey Units, and, subject to any restrictions in the Declaration or Bylaws and with the approvals required by division (H)(2) or (3) of Section 5311.04 of the Condominium Act, acquire an interest in other real property and encumber or convey that interest. All expenses incurred in connection with the acquisition, encumbrance, use, and operation of that interest are Common Expenses.
- (H) Acquire, encumber, and convey or otherwise transfer personal property;
- (I) Hold in the name of the Association the real property and personal property acquired pursuant to previous sub-sections (G) and (H);
- (J) Grant easements, leases, licenses, and concessions through or over the Common Elements;
- (K) Impose and collect fees or other charges for the use, rental, or operation of the Common Elements or for services provided to Unit Owners;
- (L) Impose interest and late charges for the late payment of assessments; impose returned check charges; and, pursuant to Section 6 of this Article, impose reasonable enforcement assessments for violations of the Declaration, the Bylaws,

and the rules of the Association, and reasonable charges for damage to the Common Elements or other property;

- (M) Adopt and amend rules that regulate the collection of delinquent assessments and the application of payments of delinquent assessments;
- (N) Subject to applicable laws, adopt and amend rules that regulate the termination of utility or other services to a commercial Unit if the Unit Owner is delinquent in the payment of an assessment that pays, in whole or in part, the cost of that service;
- (O) Impose reasonable charges for preparing, recording, or copying amendments to the Declaration, resale certificates, or statements of unpaid assessments;
- (P) 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;
- (Q) Assign the Association's rights to common assessments, or other future income, to a lender as security for a loan to the Association;
- (R) Suspend the voting privileges and use of recreational facilities of a Unit Owner and/or the Occupants of that Unit Owner's Unit(s) who is delinquent in the payment of assessments for more than thirty (30) days;
- (S) Purchase insurance and fidelity bonds the Board considers appropriate or necessary;
- (T) Invest excess funds in investments that meet standards for fiduciary investments under Ohio law;
- (U) Exercise powers that are:
  - (1) Conferred by the Declaration or the Bylaws of the Association or the Board of Directors;
  - (2) Permitted to be exercised in this state by an unincorporated association;
  - (3) Necessary and proper for the government and operation of the Association.

Section 6. Procedures for Enforcement.

- (A) Notice. Prior to imposing a charge for damages or an enforcement assessment pursuant to Section 5(L) of this Article, the Board of Directors shall give the Unit Owner a written notice, which may be in the form of electronic mail to an electronic mail address previously provided by the Unit Owner in writing, that includes all of the following:

- (1) A description of the property damage or violation;
- (2) The amount of the proposed charge or assessment;
- (3) A statement that the Unit Owner has a right to a hearing before the Board of Directors to contest the proposed charge or assessment;
- (4) A statement setting forth the procedures to request a hearing pursuant to the following subsection (B);
- (5) A reasonable date by which the Unit Owner must cure the violation to avoid the proposed charge or assessment.

(B) Hearing. To request a hearing, the Unit Owner shall deliver a written notice to the Board of Directors not later than the tenth (10<sup>th</sup>) day after receiving the notice provided in the previous subsection (A). If the Unit Owner fails to make a timely request for a hearing, the right to that hearing is waived, and the Board may immediately impose the charge for damages or an enforcement assessment referenced in the notice provided pursuant to the previous subsection (A), or may allow a reasonable time to cure the violation before imposing a charge or assessment. If a Unit Owner requests a hearing, at least seven (7) days prior to the hearing the Board shall provide the Unit Owner with a written notice that includes the date, time, and location of the hearing. The Board shall not levy a charge or assessment before holding any hearing requested pursuant to this Section. Within thirty (30) days following a hearing at which the Board imposes a charge or assessment, the Association shall deliver a written notice of the charge or assessment to the Unit Owner.

(C) Manner of Notice. Any written notice that this Section requires shall be delivered:

- (1) To the Unit Owner or any Occupant of the Unit by personal delivery, by certified mail, return receipt requested, at the address of the Unit, provided that if the Unit Owner has provided the Association with an alternate address for notice purposes, then all notices shall be mailed (by certified mail, return receipt requested) to the Unit Owner at such alternate address; and
- (2) To the Association by personal delivery to any officer of the Association or to any on-site representative of any professional management company employed by the Association; or mailed (certified mail, return receipt requested) to any officer of the Association or to any management company employed by the Association.

Section 7. Delegation of Authority; Professional Management. The Board may delegate some or all of its authority to discharge its responsibilities to a manager (the "Manager"). This delegation of authority and responsibility to the Manager shall be evidenced by one or more

management contracts which shall provide for the payment of reasonable compensation to the Manager as a common expense. Subject to the foregoing, nothing contained herein shall preclude Declarant, or any other entity designated by Declarant, from being employed as the Manager. The Manager shall have the authority to enter into contracts with Declarant or a Declarant Affiliate or any individual or entity related to Declarant in any way, for goods, services, or for any other thing, including, without limiting the generality of the foregoing, contracts for the providing of management, maintenance, repair services, and utility services.

## ARTICLE VIII AGENT FOR SERVICE

The name of the person to receive service of process for the Association, and that person's residence or place of business is:

Michael H. Murphy  
10685 Edgewood Drive  
Dublin, Ohio 43017

## ARTICLE IX MAINTENANCE AND REPAIR

**Section 1. Association Responsibility.** The Association, to the extent and at such times as the Board, in its exercise of business judgment, determines to allocate funds therefore, shall maintain, repair and replace all improvements constituting a part of the Common Elements, including but not limited to utility facilities serving more than one Unit, utility lines in the Common Elements, lawns, shrubs, trees, walkways, drives, parking areas, fireplace stacks, liners and chimneys, if any, and the structural portions and exterior portions of all buildings and improvements which are a part of the Common Elements and that do not constitute part of a Unit, and the structural components of improvements constituting a part of the Limited Common Elements; provided that the Association shall not be responsible for the repair and replacement of non-structural components of improvements a part of the Limited Common Elements nor for the cleaning, housekeeping and routine maintenance of Limited Common Elements or components thereof. Except to the extent, if any, that a loss is covered by insurance maintained by the Association, the Association shall not have responsibility to repair or maintain any Unit, or component thereof, or personal property within a Unit. The Association may, if the Board elects to, but it is not obligated to, maintain a reserve fund in an amount established from the Board from time to time in its sole discretion, for the periodic and unexpected maintenance, repair and replacement of improvements that are a part of the Common Elements. **Prior to electing to collect funds for, and to maintain, either such reserve, it is recommended that the Board investigate the income tax ramifications of collecting and maintaining such reserves.**

**Section 2. Individual Responsibility.** Each Unit Owner shall repair and maintain the Unit or Units, and all components thereof, owned by that Unit Owner, perform cleaning and housekeeping type maintenance with respect to Limited Common Elements appurtenant to that owner's Unit. Without limiting the generality of the foregoing, this repair and maintenance responsibility of a Unit Owner shall include repair, maintenance and replacement of all windows, screens and doors, including the frames, sashes and jambs, and the hardware therefor. In the event

an Unit Owner shall fail to make a repair or perform maintenance required of that Unit Owner, or in the event the need for maintenance or repair of any part of the Common Elements or Limited Common Elements is caused by the negligent or intentional act of any Unit Owner or occupant, or is as a result of the failure of any Unit Owner or occupant, or is as a result of the failure of any Unit Owner or his, her or its predecessors in title to timely pursue to conclusion a claim under any warranty, express, implied, or imposed by law, the Association may perform the same, and if the cost of such repair or maintenance is not covered by insurance, the cost thereof shall constitute a special individual Unit assessment, as hereinafter defined, on the Unit owned by such Unit Owner. The determination that such maintenance or repair is necessary, or has been so caused, shall be made by the Board. The Board shall have the authority to designate what maintenance and repair of the Limited Common Elements is the responsibility of the Unit Owners.

## ARTICLE X UTILITY AND TRASH REMOVAL SERVICES

Section 1. Monthly Cost of Utilities. Each Unit Owner by acceptance of a deed to a Unit agrees to pay for utility services separately metered or separately charged by the utility company to that Unit, or if the utilities are not separately metered, their proportionate share as determined by the Board; and to reimburse the Association for that owner's Unit's share of any utility cost that the Board reasonably determines is attributable to that owner's Unit.

In addition, the owner of a Unit containing a sump pump shall pay for the cost of electricity to operate the same, even though it may serve other Units.

The cost of gas, if available, and electricity provided to and charged against any particular Unit, will vary depending upon the habits of the occupants of that Unit.

The Association will receive a bill for water and sewer service, and a bill for natural gas service, provided to the Condominium as a whole, and either each individual Unit will be separately submetered for such services and the sub meter will be read, monitored and billed by a private company; or if not separately submetered, the Association, potentially using a private company for this purpose, will individually bill each Unit for its prorated share of the water and sewer, and natural gas usage to all Condominium property on a ratio-billing basis. The private company may be an entity related to Declarant. Consequently, the Association will individually bill each Unit for water and sewer service, and for natural gas service, used and for the monitoring of such services. Costs, of course, may be dependent upon usage of the relevant utility. Each purchaser is advised that in the event that a Unit Owner fails to pay the portion of either of these bills attributable to that Unit Owner's Unit and the Association is unable to collect the amount from the Unit Owner, the Association will be responsible for paying the bill. Please be advised, however, that the Association will levy a special individual assessment against a Unit Owner who fails to pay the portion of the relevant expense attributable to that Unit, and may file a lien. Any such lien shall be subordinate to the lien of a first mortgage on a Unit, as provided in Article XV, Section 6 of this Declaration.

Section 2. Trash Removal. The Declarant may arrange for trash removal to be done by a private hauler at the Association's expense. If the Association decides to obtain the trash removal service provided for by the City of Columbus, or the City of Columbus requires the

Association to use their services, then the Association must comply with all local law and regulations governing rubbish and refuse imposed by the relevant governmental authority, at the expense of the Association.

Section 3. Real Estate Taxes and Assessments. The filing of the Condominium Declaration will cause each Unit of the Condominium to be treated as a separate parcel for purposes of the levying and collection of real estate taxes and assessments, and no other Unit may be charged for the payment of taxes and assessments which are attributable to that Unit.

## ARTICLE XI INSURANCE; LOSSES BONDS

Section 1. Fire and Extended Coverage Insurance. The Board shall have the authority to and shall obtain insurance for all buildings, structures, fixtures and equipment, and common personal property and supplies now or at any time hereafter constituting a part of the Common Elements, the Limited Common Elements, or common property of the Association, against loss or damage by fire, lightning, and such other perils as are ordinarily insured against by standard extended coverage endorsements, and all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, where such is available, issued in the locale of the Condominium Property, in amounts at all times sufficient to prevent the Unit Owners from becoming co-insurers under the terms of any applicable coinsurance clause or provision and not less than one hundred percent (100%) of the current replacement cost of such items (exclusive of land, foundations, footings, excavations, and other items normally excluded from coverage), as determined from time to time by the insurer. This insurance:

(a) shall provide coverage for built-in or installed improvements, fixtures and equipment that are originally installed as part of a Unit, and shall provide for coverage of interior walls, windows and doors and the frames, sashes, jambs and hardware therefor, even though these improvements may be parts of Units;

(b) shall have an "Agreed Amount Endorsement" and, if available, an "Inflation Guard Endorsement", when that can be obtained, construction code endorsements, if there is a construction code provision that requires changes to undamaged portions of buildings even when only part of the Condominium Property is destroyed by an insured hazard, such as demolition cost, contingent liability from operation of building laws and increased cost of construction endorsements, and, when applicable, a steam boiler and machinery coverage endorsement, which provides that the insurer's minimum liability per accident at least equals the lesser of one million dollars or the insurable value of the building of buildings housing the boiler or machinery;

(c) shall provide that no assessment may be made against a first mortgage lender, or its insurer or guarantor, and that any assessment under such

policy made against others may not become a lien on a Unit and its appurtenant interests superior to a first mortgage;

(d) shall be written in the name of the "Winchester Bend II Condominium Association for the use and benefit of the individual Unit Owners", or its authorized representative, including any Insurance Trustee with whom the Association has entered into an insurance trust agreement, or any successor to such trustee, for the use and benefit of the individual Unit Owners;

(e) shall contain or have attached the standard mortgagee clause commonly accepted by institutional first mortgage holders, insurers, and guarantors, which (i) must provide that the carrier shall notify the named insured and each first mortgagee named in the mortgage clause at least ten days in advance of the effective date of any reduction in, cancellation of, or substantial change in the policy, and (ii) must be endorsed to provide that any loss shall be paid to the Association (or its Insurance Trustee), as a trustee for each Unit Owner and each such Unit Owner's mortgagee, and, unless otherwise prohibited by a nationally recognized institutional first mortgage holder, insurer, or guarantor, to the holders of first mortgages on Units;

(f) shall be paid for by the Association, as a common expense;

(g) shall contain a waiver of subrogation of rights by the carrier as to the Association, its officers and Directors, and all Unit Owners;

(h) shall provide that the insurance shall not be prejudiced by any acts or omissions of individual Unit Owners who are not under the control of the Association; and

(i) shall be primary, even if a Unit Owner has other insurance that covers the same loss.

**Section 2. Liability Insurance.** The Association shall obtain and maintain, at Association cost and as a common expense, a comprehensive policy of general liability insurance covering all of the Common Elements, public ways and any other areas under the Association's supervision, even if leased to others, insuring the Association, the Directors, and the Unit Owners and Occupants, with such limits as the Board may determine, but no less than the greater of (a) the amounts generally required by institutional first mortgage holders, insurers, and guarantors for projects similar in construction, location and use, and (b) one million dollars for bodily injury, including deaths of persons, and property damage, arising out of a single occurrence. This insurance shall contain a "severability of interest" provision, or if it does not, an endorsement which shall preclude the insurer from denying the claim of a Unit Owner because of negligent acts of the Association, the Board, or other Unit Owners, and shall include, without limitation, coverage for legal liability of the insureds for property damage, bodily injuries and deaths of persons resulting from the operation, maintenance or use of the Common Elements, and legal liability arising out of lawsuits related to employment contracts in which the Association is a party. Each

such policy must provide that it may not be cancelled or substantially modified by any party without at least ten (10) days' prior written notice to the Association and to each holder of a first mortgage on a Unit.

Section 3. Hazard Insurance Carrier. Each policy of hazard insurance obtained pursuant hereto shall be obtained from an insurance company authorized to write such insurance in the State of Ohio which has a B general policyholder's rating and a III financial size category (or as an alternative and A general policyholder's rating), as determined by the then latest edition of Best's Insurance Reports, or its successor guide, or the insurer is reinsured by a company that meets those rating requirements and the insurer and reinsurer execute an assumption of liability agreement or a similar endorsement providing for 100 percent reinsurance of the insurer's policy and requiring the reinsurer to give the Unit Owner, the first mortgage lender, and the insurer 90 days' written notice before canceling or otherwise terminating the reinsurance, or the coverage is underwritten by Lloyd's of London.

Section 4. Other Association Insurance. In addition, the Board shall maintain any insurance coverage required by law, such as workmen's compensation insurance, if applicable. The Board may purchase and maintain contractual liability insurance, Directors' and officers' liability insurance, and such other insurance as the Board may determine.

Section 5. Insurance Trustee; Power of Attorney. There may be named, under any policy obtained by the Association as an insured on behalf of the Association, its authorized representative, including any trustee with whom the Association may enter into any insurance trust agreement, or any successor to such trustee (each of whom are referred to herein as Insurance Trustee), who shall have authority to negotiate losses under any such policy, subject to the rights of the first priority mortgage under its loan documents and approval by the first priority mortgage of the Units, if each of the Units are encumbered by a single first priority mortgage, including, as of the date of this Declaration, Bellwether Enterprise Mortgage Investments, LLC, a wholly owned subsidiary of Bellwether Enterprise Real Estate Capital, LLC, an Ohio limited liability company, and/or Federal National Mortgage Association, and their respective successors and/or assigns (the "Condominium Senior Lender"). Each Unit Owner, by acceptance of a deed to a Unit, irrevocably appoints the Association or such designated representative, or such successor, as attorney-in-fact for the purpose of purchasing and maintaining such insurance, including: the collection and appropriate disposition of the proceeds thereof; the negotiation of losses and execution of releases of liability; the execution of all documents; and the performance of all other acts necessary to accomplish such purpose. Subject to the rights of the Condominium Senior Lender, the Association, or such designated representative, or such successor shall receive, hold or otherwise properly dispose of any proceeds of insurance, in trust, for Unit Owners and their first mortgage holders, as their interests may appear. This power is for the benefit of each and every Unit Owner and their respective first mortgage holders, and the Association, and the Condominium, runs with the land, and is coupled with an interest. Each Unit Owner and each Unit Owner's mortgagee, if any, shall be beneficiaries of the policy in the percentage of common ownership.

Section 6. Unit Owners' Insurance. Any Unit Owner or Occupant may carry such insurance in addition to that provided by the Association pursuant hereto as that Unit Owner or Occupant may determine, subject to the provisions hereof, and provided that no Unit Owner or

Occupant may at any time purchase individual policies of insurance against loss by fire or other casualty covered by the insurance carried pursuant hereto by the Association. In the event any Unit Owner or Occupant violates this provision, any diminution in insurance proceeds resulting from the existence of such other insurance shall be chargeable to the Unit Owner who acquired or whose Occupant acquired such other insurance, who shall be liable to the Association to the extent of any diminution and/or loss of proceeds. Without limiting the foregoing, a Unit Owner or Occupant may obtain insurance against liability for events occurring within a Unit, losses with respect to personal property and furnishings, and losses to improvements owned by the Unit Owner or Occupant, provided that if the Association obtains insurance for permanent improvements and built-in fixtures and equipment, then the insurance obtained by the Unit Owner with respect to improvements within the Unit shall be limited to the type and nature of coverage commonly referred to as "tenants' improvements and betterments". All such insurance separately carried shall contain a waiver of subrogation rights by the carrier as to the Association, its officers and Directors, and all other Unit Owners and Occupants.

Section 7. Sufficient Insurance. In the event the improvements forming a part of the Common Elements or any portion thereof shall suffer damage or destruction from any cause or peril insured against and the proceeds of any policy or policies insuring against such loss or damage and payable by reason thereof shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken by the Association and the insurance proceeds shall be used in payment therefor; provided, however, that in the event within sixty (60) days after such damage or destruction, the Unit Owners and eligible holders of first mortgages, if they are entitled to do so pursuant to the provisions of this Declaration, shall elect to terminate the Condominium, then such repair, restoration or reconstruction shall not be undertaken.

Section 8. Insufficient Insurance. In the event the improvements forming a part of the Common Elements or any portion thereof shall suffer damage or destruction from any cause or peril which is not insured against, or, if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction, then, unless the Unit Owners and eligible holders of first mortgages, if they are entitled to do so pursuant to the provisions of this Declaration, shall elect within sixty (60) days after such damage or destruction not to make such repair, restoration or reconstruction, the Association shall make repairs, restoration or reconstruction of the Common Elements so damaged or destroyed at the expense (to the extent not covered by insurance) of all Unit Owners in proportion to their respective undivided interests in the Common Elements. Should any Unit Owner refuse or fail after reasonable notice to pay that Unit Owner's share of such cost in excess of available insurance proceeds, the amount so advanced by the Association shall be assessed against the Unit of such Unit Owner and that assessment shall have the same force and effect, and, if not paid, may be enforced in the same manner as herein provided for the nonpayment of assessments.

Section 9. Lender Requirements. Notwithstanding the foregoing provisions of this Article, the Association shall at all times (a) maintain hazard insurance, liability insurance, and fidelity bond coverage conforming with the requirements then governing the making of a first mortgage loan or the purchase, guaranty, or insurance of first mortgages by national institutional lenders, national banking associations, guarantors or insurers of first mortgage loans on

Condominium Units, and (b) if each of the Units are encumbered by a single first priority mortgage, comply with the requirements set forth in the loan documents of a first mortgage lender with respect to the proceeds of a claim on the Association's insurance policy covering the Units.

## ARTICLE XII

### DAMAGE; RESTORATION; REHABILITATION AND RENEWAL

Section 1. Restoration of Substantial Damage or Destruction. In the event of substantial damage to or destruction of all Units in a building, or the taking of one or more Units in any condemnation or eminent domain proceedings, the Association shall promptly restore or replace the same, unless an election is made not to do so, as hereinafter provided.

Section 2. Election Not to Restore. The Association may, with the consent of Unit Owners entitled to exercise not less than eighty percent (80%) of the voting power of Unit Owners, and the consent of the Condominium Senior Lender, in accordance with the loan documents of the Condominium Senior Lender, determine not to repair or restore such damage or destruction, or reconstruct such Unit or Units. In such an event, all of the Condominium Property shall be sold as upon partition. In the event of such an election not to repair or restore substantial damage or destruction or reconstruct such Unit or Units, the net proceeds of insurance paid by reason of such damage or destruction, or the net amount of any award or proceeds of settlement arising from such proceedings, shall be added to the proceeds received from the sale as upon partition, and the total amount distributed among the owners of the Units, and the holders of their respective first mortgage liens, (as their interests may appear), in the proportions of their undivided interests in the Common Elements, in accordance with the loan documents of the Condominium Senior Lender.

Section 3. Lender Requirements. Notwithstanding the foregoing provisions of this Article, provided that each of the Units are encumbered by a single first priority mortgage, the Association shall at all times comply with the requirements set forth in the loan documents of that first priority mortgage lender with respect to the proceeds of a claim on the Association's insurance policy covering the Units.

## ARTICLE XIII

### CONDEMNATION

Section 1. Standing. Except as hereinafter provided, the Association, or its designated representative, or authorized successor, as trustee, shall represent the Unit Owners in any condemnation or eminent domain proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of all or any part of the Condominium Property, and shall have the sole and exclusive right to settle losses with the condemning authority and to receive the award or proceeds of settlement, for the use and benefit of the Unit Owners and their mortgagees as their interests may appear. Notwithstanding the foregoing, in the event that a Unit Owner may lawfully separately pursue and realize upon a claim for incidental and consequential losses or damage to that Unit Owner resulting from a taking under the power of eminent domain, such as for relocation and moving expenses, loss of favorable mortgage terms, and other such individual incidental or consequential losses, that Unit Owner may, at his, her or its election separately pursue

such claim provided that the pursuing of the same or the realization of an award thereof, neither jeopardizes in any way an action by the Association to recoup the losses incurred by it, any other Unit Owner, or the direct loss with respect to the Unit itself, or with regard to the usability thereof, nor diminishes any award for any such loss.

Section 2. Use of Proceeds. The award or proceeds of settlement in any actual or threatened condemnation or eminent domain proceedings, with respect to a partial or total condemnation or taking, after reduction by the costs, if any, incurred in obtaining the same, shall be applied in accordance with the loan documents of a Condominium Senior Lender. In the event that there is no Condominium Senior Lender in place, the award or proceeds of settlement in any actual or threatened condemnation or eminent domain proceedings, with respect to a partial or total condemnation or taking, shall be applied first to the cost of restoring or replacing all damaged or taken improvements on the remaining Condominium Property in accordance with the Drawings, or in accordance with any new plans and specifications therefor approved by Unit Owners exercising no less than seventy-five percent (75%) of the voting power of Unit Owners, and the consent of eligible holders of first mortgage liens.

Section 3. Insufficient Proceeds. If the award or proceeds are insufficient for such purpose, the excess cost shall be paid by the Association and, to the extent funds of the Association are insufficient therefor, in the judgment of the Board, such excess cost shall be a common expense and assessed among the Units in the same manner as special assessments for capital improvements are assessed. Except as hereinafter provided in the balance of any such award or proceeds of settlement, if there is an excess, shall be allocated and disbursed to the Unit Owners, and their first mortgagees, as their interests may appear, in proportion to their relative undivided interests of the Units in the Common Elements.

Section 4. Non-Restorable Unit. Notwithstanding the foregoing, in the event that as a result of any such taking, and consequent restoration or replacement, any Unit could not reasonably be restored to a condition comparable to that which existed prior to the taking, or could not be replaced, prior to the allocation and disbursement of any sum to any other Unit Owner or his, her or its mortgagee, there shall be allocated and disbursed from such award or proceeds, to each Unit Owner whose Unit cannot be so restored or replaced, and his, her or its respective first mortgagee, as their interests may appear, such amount as is equal to the then fair market value of the Unit that cannot be so restored or replaced. Thereupon, such Unit or Units, and the owners thereof, shall be immediately and automatically divested of any interest in the Condominium, the Condominium Property, and the Association, including, without limiting the generality of the foregoing, divestment of an undivided interest, vote, membership in the Association, and liability for common expenses. All such rights and interests shall be reallocated among all other Units and Unit Owners in the same relative proportions as those rights and interests were prior to such taking. To illustrate, upon a Unit being divested from the Condominium (a) the voting right of that Unit will be equally allocated among all other Units, since each Unit prior thereto had an equal vote, and (b) the undivided interest of that Unit will be reallocated among all other Units in the proportions of their relative undivided interests prior to such taking.

Section 5. Power of Attorney. Each Unit Owner, by acceptance of a deed to a Unit, appoints the Association, or its designated representative or authorized successor, as his, her or its

attorney-in-fact to represent that Unit Owner, settle losses, receive and utilize the award or proceeds of settlement, and do all things necessary or desirable for such attorney-in-fact to exercise the rights and fulfill the responsibilities of the Association set forth in this Article with respect to condemnation or eminent domain proceedings. This power is for the benefit of each and every Unit Owner, each holder of a first mortgage on a Unit, the Association, and the real estate to which it is applicable, runs with land, is coupled with an interest, and is irrevocable.

#### ARTICLE XIV GRANTS AND RESERVATIONS OF RIGHTS AND EASEMENTS

Section 1. Easements of Enjoyment; Limitations. Every Unit Owner shall have a right and easement of enjoyment in, over and upon the Common Elements and an unrestricted right of access to and from his, her or its Unit, which rights and easements shall be appurtenant to and shall pass with the title to a Unit, subject to the right of the Board to make reasonable rules and regulations concerning the use and management of the Common Elements, provided that no such rules or regulation shall limit or prohibit the right of ingress and egress to a Unit, or any part thereof, or to that Unit's parking facilities. Any Unit Owner may delegate that Unit Owner's right of enjoyment to the Common Elements and to ingress and egress to the Occupants of that owner's Unit. In addition to the foregoing, there are hereby granted and created perpetual, non-exclusive, appurtenant easements upon, across and over all entryways, and roadways now or hereafter located on any Unit for ingress and egress to and from, any of the Condominium Property to neighboring public roadways. Such easements shall be for the benefit of (i) the owners and Occupants of the Units, their heirs, successors and assigns; (ii) all police, fire protection, ambulance, mail delivery and similar personnel, and (iii) the general public.

Section 2. Right of Entry for Repair, Maintenance and Restoration. The Association shall have a right of entry and access to, over, upon and through all of the Condominium Property, including each Unit to enable the Association to perform its obligations, rights and duties pursuant hereto with regard to maintenance, repair, restoration and/or servicing of any items, things or areas of or in the Condominium Property. In the event of an emergency, the Association's right of entry to a Unit and its appurtenant Limited Common Elements may be exercised without notice; otherwise, the Association shall give the owners or occupants of a Unit no less than twenty four hours advance notice prior to entering a Unit or its appurtenant Limited Common Elements.

Section 3. Easements for Encroachments. Each Unit and the Common Elements shall be subject to and benefited by easements for encroachments on or by any other Unit and upon the Common Elements created or arising by reason of overhangs; or by reason of deviations in construction, reconstruction, or repair; or by reason of shifting, settlement, or movement of the structures; or by reason of errors in the Drawings. Valid easements for these encroachments and for the maintenance of same, so long as the encroachments remain, shall and do exist.

Section 4. Easement for Support. Every portion of a building or utility line or any improvement on any portion of the Condominium Property contributing to the support of another building, utility line or improvement on another portion of the Condominium Property shall be burdened with an easement of support for the benefit of all other such buildings, utility lines, improvements and other portions of the Condominium Property.

Section 5. Easements for Utilities. Easements to the Association shall exist upon, over and under all of the Condominium Property for ingress to and egress from, and the installation replacing, repairing and maintaining of, all utilities, including, but not limited to water, sewer, gas, telephone, electricity, security systems, master television antennas and cable television, and the road system and all walkways, and for all other purposes necessary for the proper operation of the Condominium Property. By these easements it shall be expressly permissible for the Association to grant to the providing companies and contractors permission to construct and maintain the necessary appurtenances and improvements on, above, across and under the Condominium Property, so long as such appurtenances and improvements do not unreasonably interfere with the use and enjoyment of the Condominium Property. Should any company furnishing a service request a specific easement, permit, or license, the Board shall have the right to grant such easement, permit, or license without conflicting with the terms hereof. In addition, in the event the Board determines that the grant of easement rights to others is in the best interests of the Association, the Association shall have the right to grant the same, provided that use of the same would not unreasonably interfere with the use and enjoyment of the Condominium Property by Owners and Occupants, in the judgment of the Board.

Section 6. Easement for Services. Non-exclusive easements are hereby granted to all police, firemen, ambulance operators, mailmen, deliverymen, garbage and trash removal personnel, and all similar persons, and to the local governmental authorities and the Association, but not to the public in general, to enter upon the Common Elements in the performance of their duties.

Section 7. Easements Reserved to Declarant. Easements are hereby reserved to Declarant, its successors and assigns, over and upon the Common Elements and Limited Common Elements. In addition to the foregoing, the Declarant may, so long as Declarant owns one Unit, maintain an office in the Common Element clubhouse, if any, and appurtenances thereto, for sales and management offices, and for storage and maintenance, and to use part or all of a Unit as a model dwelling with parking areas for sales and rental purposes, and for the placement of advertising signs.

In addition, a non-exclusive perpetual easement is hereby reserved to Declarant, its successors and assigns, for pedestrian and vehicular access over the streets and walkways that may from time to time be a part of the Condominium Property and each part thereof, to a public street. Additionally, Declarant, for itself and its successors and assigns, reserves the right to extend utility lines and thereafter to service and maintain the same.

All rights and easements reserved to Declarant, its successors and assigns, pursuant to this section, shall be exercised and utilized, as the case may be, in a reasonable manner, and in such way as not to unreasonably interfere with the operation of the Association and the rights of owners and Occupants of Units.

Section 8. Power of Attorney. Each Unit Owner, by acceptance of a deed to a Unit, appoints the Association his, her or its attorney-in-fact to execute, deliver, acknowledge and record, for and in the name of such Unit Owner, such deeds of easement, licenses, permits and other instruments as may be necessary or desirable, in the sole discretion of the Board, or its

authorized representative, to further establish or effectuate the foregoing easements and rights. This power is for the benefit of each and every Unit Owner, the Association, and the real estate to which it is applicable, runs with the land, is coupled with an interest, and is irrevocable.

**Section 9. General.** The easements and grants provided herein shall in no way affect any other recorded grant or easement. Failure to refer specifically to any or all of the easements and/or rights described in this Declaration in any deed of conveyance or in any mortgage or other evidence of obligation shall not defeat or fail to reserve said rights or easements but the same shall be deemed conveyed or encumbered, as the case may be, along with the Unit.

## ARTICLE XV ASSESSMENTS AND ASSESSMENT LIENS

**Section 1. Types of Assessments.** The Declarant, for each Unit within the Condominium, hereby covenants and agrees, and each Unit Owner by acceptance of a deed to a Unit (whether or not it shall be so expressed in such deed) is deemed to covenant and agree, to pay to the Association: (a) annual operating assessments, (b) special assessments for capital improvements, and (c) special individual Unit assessments. All of such assessments are to be established and collected as hereinafter provided.

**Section 2. Purpose of Assessments.** The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of Unit Owners and Occupants and the best interests of the Condominium Property.

**Section 3. Assessments - Apportionment: Due Dates.**

(a) **Annual Operating Assessments.**

(1) Prior to the time any Unit Owner other than Declarant is to be charged assessments by the Association, and prior to the beginning of each fiscal year of the Association after the period for which the first assessments are levied, the Board shall estimate, and prorate among all Units on the basis of the undivided interest of each Unit in the Common Elements, common expenses of the Association consisting of the following, provided, however, the budget may not increase assessments for common expenses from the prior year unless the budget is approved by a vote of the Unit Owners:

a. the estimated next fiscal year's cost of the maintenance, repair, and other services to be provided by the Association;

b. the estimated next fiscal year's costs for insurance and bond premiums to be provided and paid for by the Association;

c. the estimated next fiscal year's costs for utility services not separately metered or charged to Unit Owners;

d. the estimated amount required to be collected to maintain a general operating reserve to assure availability of funds for normal operations of the Association, in an amount deemed adequate by the Board; and

e. the estimated next fiscal year's costs for the operation, management and administration of the Association, including but not limited to, fees for property management, fees for legal and accounting services, costs of mailing, postage, supplies and materials for operating the Association, and the salaries, wages, payroll charges and other costs to perform these services, and any other costs constituting common expenses not otherwise herein specifically excluded.

(2) The Board shall thereupon allocate to each Unit that Unit's share of all of these items, prorated in accordance with each respective Unit's undivided interest in the Common Elements, and thereby establish the annual operating assessment for each separate Unit. For administrative convenience, any such assessment may be rounded so that monthly installments will be in whole dollars.

(3) The annual operating assessment shall be payable in advance, in equal monthly installments, provided that nothing contained herein shall prohibit any Unit Owner from prepaying assessments in annual, semiannual, or quarterly increments. The due dates of any such installments shall be established by the Board, and unless otherwise provided, the Association shall collect on or before the first day of each month from those who own the Unit an equal monthly prorata share of the annual operating assessment for that Unit. However, for a period of two years from the sale and conveyance of the first Unit, Declarant shall be exempt from the payment of the assessments as determined herein. Instead, during this two year period, Declarant shall only be obligated to pay its prorata share of the actual expenses paid, during the period of Declarant's ownership based on the number of Units owned by the Declarant. If there are Units still owned by the Declarant at the expiration of the two year period, then Declarant shall be required to pay the assessments as provided for herein.

(4) If the amounts so collected are, at any time, insufficient to meet all obligations for which those funds are to be used, the deficiency shall be assessed by the Board among the Units on the same basis as heretofore set forth, provided, that if common expenses are incurred by the Association prior to the time the Association commences to levy assessments against the Units, Declarant shall pay the same (subject to its right, if any, to reimbursement from Unit purchasers contained in individual contracts for the sale of a Unit or Units).

(5) If assessments collected during any fiscal year are in excess of the funds necessary to meet the anticipated expenses for which the same have been collected, the excess shall be retained as reserves, and shall in no event be deemed profits not available, except on dissolution of the Association, for distribution to Unit Owners.

(b) Special Assessments for Capital Improvements.

(1) In addition to the annual operating assessments, the Board may levy, in any fiscal year, special assessments to construct, reconstruct or replace capital improvements on the Common Elements to the extent that the reserves therefor are insufficient, provided that new capital improvements not replacing existing improvements shall not be constructed nor funds assessed therefor, if the cost thereof in any fiscal year would exceed an amount equal to five percent (5%) of that fiscal year's budget, without the prior consent of Unit Owners exercising no less than seventy-five percent (75%) of the voting power of Unit Owners.

(2) Any such assessment shall be prorated among all Units in proportion to their respective undivided interests in the Common Elements, and shall become due and payable on such date or dates as the Board determines following written notice to the Unit Owners.

(c) Special Individual Unit Assessments. The Board shall levy assessments against an individual Unit or Units to reimburse the Association for those costs incurred in connection with that Unit or Units properly chargeable by the terms hereof to a particular Unit (such as, but not limited to, the cost of making repairs the responsibility of a Unit Owner and a Unit Owner's enforcement and arbitration charges). Any such assessment shall become due and payable on such date as the Board determines, and gives written notice to the Unit Owners subject thereto. Additionally, during the first years of the Condominium's existence, and until such time as real estate taxes and assessments are split into separate tax bills for each Unit, the Association shall have the right to pay the real estate taxes and

assessments attributable to the Condominium Property in the event the same have not been paid, when due, and assess each Unit Owner for his, her or its share of such real estate taxes and assessments as a special individual Unit assessment. The share of those taxes and assessments attributable to a Unit shall be computed by multiplying the total taxes and assessments for all of the Condominium Property by the undivided interest in Common Elements attributable to that Unit. The calculation by the Association of the Units' shares of taxes and assessments shall be binding upon all Unit Owners.

Section 4. Effective Date of Assessment. Any assessment created pursuant hereto shall be effective, provided it is created as provided herein, if written notice of the amount thereof is sent by the Board to the Unit Owner subject thereto at least ten (10) days prior to the due date thereof, or the due date of the first installment thereof, if to be paid in installments. Written notice mailed or delivered to a Unit Owner's Unit shall constitute notice to that Unit Owner, unless the Unit Owner has delivered written notice to the Board of a different address for such notices, in which event the mailing of the same to that last designated address shall constitute notice to that Unit Owner.

Section 5. Effect of Nonpayment of Assessment; Remedies of the Association.

- (a) If any assessment or any installment of any assessment is not paid within ten (10) days after the same has become due, the Board at its option, without demand or notice, may (i) declare the entire unpaid balance of the assessment immediately due and payable (ii) charge interest on the entire unpaid balance (or on an overdue installment, alone, if it hasn't exercised its option to declare the entire unpaid balance due and payable), at the highest rate of interest then permitted by law, or at such lower rate as the Board may from time to time determine, (iii) charge a reasonable, uniform, late fee as determined from time to time by the Board, and (iv) charge the cost of collection, including attorney fees and other out-of-pocket expenses.
- (b) Annual Operating Assessments and both types of special assessments (Special Assessments for Capital Improvements and Special Individual Unit Assessments), together with interest, late fees, and costs, including attorney fees, shall be a charge in favor of the Association upon the Unit against which each such assessment is made.
- (c) At any time after any assessment or an installment of an assessment levied pursuant hereto remains unpaid for ten (10) or more days after the same has become due and payable, a certificate of lien for all or any part of the unpaid balance of that assessment, interest, late fees, and costs, including attorney fees, may be filed with the recorder of the county in which the Condominium Property is located, pursuant to authorization given by the Board. The certificate shall contain a description of the Unit against which the lien exists, the name or names of the record owner or owners thereof, and the amount of the unpaid portion of the assessments and charges, and shall be signed by the president or other chief officer of the Association.

- (d) The lien provided for herein shall become effective from the time a certificate of lien or renewal certificate was duly filed therefor, and shall continue for a period of five (5) years unless sooner released or satisfied in the same manner provided by law in the State of Ohio for the release and satisfaction of mortgages on real property, or discharged by the final judgment or order of a court in an action brought to discharge the lien.
- (e) Any Unit Owner who believes that an assessment chargeable to his, her or its Unit (for which a certificate of lien has been filed by the Association) has been improperly charged against that Unit, may bring an action in the court of common pleas of the county in which the Condominium Property is located for the discharge of that lien. In any such action, if it is finally determined that all or a portion of the assessment has been improperly charged to that Unit, the Court shall make such order as is just, which may provide for a discharge of record of all or a portion of that lien.
- (f) Each such assessment together with interest, late fees, and costs, including attorney fees, shall also be the joint and several personal obligation of the Unit Owners who owned the Unit at the time when the assessment fell due. The obligation for delinquent assessments, interest, late charges and costs shall not be the personal obligation of that owner or owners' successors in title unless expressly assumed by the successors in title, or required by applicable law, provided however, that the right of the Association to a lien against that Unit, or to foreclose any lien thereon for these delinquent assessments, interest, late charges and costs, shall not be impaired or abridged by reason of the transfer, but shall continue unaffected thereby.
- (g) The Association, as authorized by the Board, may file a lien or liens to secure payment of delinquent assessments, interest, late fees, and costs, including attorney fees, bring an action at law against the owner or owners personally obligated to pay the same, and an action to foreclose a lien, or any one or more of these. In any foreclosure action, the owner or owners affected shall be required to pay a reasonable rental for that Unit during the pendency of such action, and the Association as plaintiff in any such foreclosure action shall be entitled to become a purchaser at the foreclosure sale. In any such foreclosure action, interest and costs of such action (including attorneys' fees) shall be added to the amount of any such assessment, to the extent permitted by Ohio law.
- (h) No owner may waive or otherwise escape liability for the assessments provided for in this Declaration by non-use of the Common Elements, or any part thereof, or by abandonment of his, her or its Unit.

Section 6. Subordination of the Lien to First Mortgages. The lien of the assessments and charges provided for herein shall be subject and subordinate to the lien of any duly executed first mortgage on a Unit recorded prior to the date on which such lien of the Association arises, and any holder of such first mortgage which comes into possession of a Unit pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed or assignment in lieu of

foreclosure, and any purchaser at a foreclosure sale, shall take the property free of any claims for unpaid installments of assessments and charges against the mortgaged Unit which became due and payable prior, in the case of foreclosure, to the date of the sale, and, in all other cases, to the date legal title vested in the successor owner.

Section 7. Certificate Regarding Assessments. The Board shall, upon demand, for a reasonable charge, furnish a certificate signed by the president, treasurer, secretary or other designated representative of the Association, setting forth whether the assessments on a specified Unit have been paid. This certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

## ARTICLE XVI NOTICES TO AND VOTING RIGHTS OF LENDING INSTITUTIONS

Section 1. Notice to Mortgagees. Any Unit Owner who, as debtor, conveys a mortgage or other security interest in all or any part of his estate or interest in any unit of the condominium property, as may be permitted by this Declaration, the Bylaws and Chapter 5311 of the Revised Code of Ohio, as any of the same may be lawfully amended from time to time, shall notify the Secretary of the Association in writing of the name and address of each such mortgagee and secured party at the time that the interest is given, and shall thereafter notify said Secretary in writing of the payment, cancellation, assignment or other change in status of each mortgage and security interest. Upon delivering a written request to the Board, the holder of any such mortgage or security interest shall be provided with (a) a copy of any and all subsequent notices permitted or required by this Declaration or the Bylaws to be given to the Unit Owner or Owners whose estates or interests are subject to the mortgage or security interest, (b) a written notification of any default in the performance by said Unit Owner or Unit Owners of any obligation set forth in this Declaration, the Bylaws or any administrative rules and regulations governing the Condominium that have been or may be promulgated by the Association, concurrently with the delivery of such notice to the Unit Owner(s) and (c), if so elected by such mortgagee, the opportunity to cure any default of said Unit Owner or Unit Owners (on behalf of said Unit Owner(s)) in the event of a default in the performance by said Unit Owner or Unit Owners of any obligation set forth in this Declaration, the Bylaws or any administrative rules and regulations governing the Condominium. Said copies and notices shall be deemed to be provided when they are mailed to the address of the mortgagee or secured party set forth in the written request to the Board.

## ARTICLE XVII AMENDMENTS

Section 1. Power to Amend. Except as otherwise specifically provided in this Declaration, additions to, changes in, or amendment of this Declaration (or the other Condominium Organizational Documents) shall require the consent of Unit Owners exercising not less than seventy-five percent (75%) of the voting power of Unit Owners. Notwithstanding the foregoing:

- (A) except as provided elsewhere in this Declaration, the consent of all Unit Owners shall be required for any amendment effecting a change in the percentage of interest in the Common Elements of each Unit;
- (B) the consent of Unit Owners exercising not less than one hundred percent (100%) of the voting power of Unit Owners shall be required to terminate the Condominium;
- (C) in any event, Declarant reserves the right and power, and each Unit Owner by acceptance of a deed to a Unit is deemed to and does give and grant to Declarant a power of attorney, which right and power is coupled with an interest and runs with the title to a Unit and is irrevocable (except by Declarant) to amend the this Declaration and the Condominium Organizational Documents to the extent necessary to correct typographical errors or obvious factual errors or omissions the correction of which would not impair the interest of any Unit Owner.
- (D) the consent of all Unit Owners exercising not less than one hundred percent (100%) of the voting power of Unit Owners shall be required for any amendment effecting a change in Declarant's right to appoint Directors for so long as Declarant owns one Unit as set forth in Article VII, Section 4;
- (E) the consent of all Unit Owners exercising not less than one hundred percent (100%) of the voting power of Unit Owners shall be required for any amendment effecting a change in the easements reserved to Declarant;
- (F) the consent of all Unit Owners exercising not less than one hundred percent (100%) of the voting power of the Unit Owners shall be required for any amendment effecting the rights to lease a Unit;
- (G) The Board may amend the Declaration in any manner necessary for any of the following:
  - (i) To meet the requirements of institutional mortgagees, guarantors and insurers of first mortgage loans, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration, and similar institutions (except as such amendment might relate to the leasing of a Unit);
  - (ii) To meet the requirements of insurance underwriters;
  - (iii) To bring the Declaration into compliance with Chapter 5311 of the Ohio Revised Code;
  - (iv) To correct clerical or typographical errors or obvious factual errors in the Declaration or an exhibit to the Declaration; or
  - (v) To designate a successor to the person named to receive service of process for the Association.

(vi) To permit notices to Unit Owners, as required by this Declaration or Bylaws, to be sent by electronic mail and, if returned undeliverable, by regular mail, provided the Association has received the prior written authorization from the Unit Owner.

Section 2. Method to Amend. Except as otherwise provided in Article V, an amendment to this Declaration (or the Drawings or the Bylaws), either adopted with the consents of Unit Owners hereinbefore required or otherwise provided for in this Declaration or the Condominium Act, shall be executed with the same formalities as to execution as this Declaration by the President or a Vice President and by the Secretary or an Assistant Secretary of the Association in the manner provided for in § 5311.05 of the Condominium Act, and shall contain their certification that such amendment was duly adopted in accordance with the provisions of this Declaration. Any amendment adopted by Declarant or a duly empowered successor Declarant pursuant to authority granted it pursuant to the Declaration shall be duly executed by it with the same formalities as to execution as this Declaration and shall contain the certification of such signor or signors that such amendment is made pursuant to authority vested in Declarant or any duly empowered successor Declarant by the Declaration. Any amendment duly adopted and executed in accordance with the foregoing provisions shall be effective upon the filing of the same with the auditor and recorder of the county in which the Condominium Property is located.

## ARTICLE XVIII GENERAL PROVISIONS

Section 1. Covenants Running With the Land. The covenants, conditions, restrictions, easements, reservations, liens and charges created hereunder or hereby shall run with and bind the land, and each part thereof, and shall be binding upon and inure to the benefit of all parties having any right, title or interest in or to all or any party of the Condominium Property, and the Association, and their respective heirs, executors, administrators, successors and assigns.

Section 2. Actions. In addition to any other remedies provided in this Declaration, Declarant, (only with respect to those rights directly benefiting the Declarant), the Association, and each Unit Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens and charges set forth herein or in the Bylaws or now or hereafter imposed by or through the Association's rules and regulations. Failure by Declarant, the Association or by any Unit Owner to proceed with such enforcement shall in no event be deemed a waiver of the right to enforce at a later date the original violation or a subsequent violation, nor shall the doctrine of laches nor any statute of limitations bar the enforcement of any such restriction, condition, covenant, reservation, easement, lien or charge. Further, the Association and each Unit Owner shall have rights of action against each other for failure to comply with the provisions of the Condominium Organizational Documents, rules and regulations, and applicable law, and with respect to decisions made pursuant to authority granted thereunder, and the Association shall have the right to assess reasonable charges against a Unit Owner who fails to comply with the same, including the right to assess charges for the costs of enforcement and arbitration. Notwithstanding the foregoing, in the event of any dispute between

the Association and any Unit Owner or occupant, other than with regard to assessments, that cannot be settled by agreement between them, the matter shall first be submitted to arbitration in accordance with and pursuant to the arbitration law of Ohio then in effect (presently Chapter 2711 of the Revised Code of Ohio), by a single independent arbitrator selected by the Board. Nothing contained herein shall prevent or prohibit the Association from using summary abatement or similar means to enforce any provisions hereof or restrictions against the Unit or its use, provided that judicial proceedings shall be instituted before any items of construction may be altered or demolished by summary means.

Section 3. Severability. Invalidation of any one or more of these covenants, conditions, restrictions or easements by judgment or court order shall in no way affect any other provisions, which provisions shall remain in full force and effect. In the event any language of this Declaration conflicts with mandatory provisions of the Condominium Act, the latter's requirements shall prevail and the conflicting language shall be deemed to be invalid and void, provided that such invalidity shall in no ways affect any other provisions of the Declaration, which provisions shall remain in full force and effect.

Section 4. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations, partnerships, men or women, shall in all cases be assumed as though in such case fully expressed.

Section 5. Captions. The captions of the various provisions of this Declaration are not part of the context hereof, but are merely labels to assist in locating the various provisions hereof.

*(Remainder of Page Intentionally Left Blank)*

The undersigned has executed this instrument this 14<sup>th</sup> day of November, 2022.

**Winchester Bend Apartments II LLC,**  
an Ohio limited liability company

By: Michael H. Murphy

Name: Michael H. Murphy

Title: Manager

State of OHIO:

County of FRANKLIN:

The foregoing instrument was acknowledged before me this 14<sup>th</sup> day of November, 2022, by Michael H. Murphy, the Manager of Winchester Bend Apartments II LLC, an Ohio limited liability company, on behalf of the company. This is an acknowledgement certificate; no oath or affirmation was administered to the signer with regard to this notarized act.



CYNTHIA STRATTON  
NOTARY PUBLIC  
STATE OF OHIO  
Comm. Expires  
09-06-2026

Cynthia Stratton  
Notary Public  
My commission expires: 09-06-2026

**“EXHIBIT A”**Drawings

[have been detached and recorded separately]

[see condominium survey recording information on first page of Declaration or other electronic reference used by the County Recorder]

## EXHIBIT B

Parcel I

Situated in the State of Ohio, County of Franklin, City of Columbus and being 17.7609 acres out of a 139.19 acre tract conveyed to The Columbus & Southern Ohio Electric Company by Deed of Record in Deed Book 2616, Page 108, Recorder's Office, Franklin County, Ohio, said 17.7609 acre tract being more particularly described as follows:

Beginning at a spike in the centerline of Winchester Pike (Old State Route 33) at the northeasterly corner of a 3.877 acre tract conveyed to H.L. Taylor by Deed of Record in Deed Book 2749, Page 55, Recorder's Office, Franklin County, Ohio; thence from the said place of beginning.

South 56° 33'19" East, a distance of 905.78 feet along the centerline of said Winchester Pike to a spike in the easterly line of the said 139.19 acre tract and being in the center of a bridge over Big Walnut Creek; thence

South 21° 18' 55" East, a distance of 213.13 feet along the center of Big Walnut Creek and the easterly line of the said 139.19 acre tract to a point in the center of said Big Walnut Creek and the easterly line of the said 139.19 acre tract; thence

South 12° 11' 05" West, a distance of 119.46 feet along the easterly line of the said 139.19 acre tract to a point in said Big Walnut Creek and the easterly line of the said 139.19 acre tract; thence leaving said Big Walnut Creek and the easterly line of the said 139.19 acre tract; thence leaving said Big Walnut Creek

South 31° 41' 05" West, a distance of 500.28 feet along the easterly line of the said 139.19 acre tract to an iron pin being the southeasterly corner of the said 139.19 acre tract; thence

North 86° 48' 55" West, a distance of 631.62 feet along a southerly line of the said 139.19 acre tract to an iron pin being a corner of said 139.19 acre tract; thence

North 04° 03' 05" East, a distance of 1208.17 feet along a line of the said 139.19 acre tract and the easterly line of the said 3.877 acre tract to the place of beginning, containing 17.7609 acres of land, subject however, to all legal rights-of-way and easements.

**EXCEPTING THEREFROM THE ABOVE CAPTIONED PROPERTY THE FOLLOWING:**

Situated in the State of Ohio, County of Franklin, Township of Madison and City of Columbus, being part of Sections 4 and 9, Range 21, Township 11, Congress Lands East of the Scioto River and being a part that 17.7609 acre tract (Parcel 530-245518-00) as conveyed to Winchester Bend Apartments LLC by deed of record in Instrument Number 201011010145483, all references being to those of record in the Recorder's Office, Franklin County, Ohio said 6.061 acre tract being more particularly bounded and described as follows:

Commencing at the intersection of the westerly line of Section 4 in Winchester-Pike marking the northwesterly corner of said 17.7609 acre tract, said point being 27.00 feet left of centerline survey station 172+81.67 as shown on the Franklin County Right of Way Plans entitled S.R. - 49 Sec. D (1) dated "1940", said point also being North 04 deg. 03' 20" East, 506.07 feet from a point marking the southwesterly corner of Section 4;

Thence along Winchester Pike and the northerly line of said 17.7609 acre tract, South 56 deg. 33' 04" East, a distance of 674.55 feet to a railroad spike set and being the Point of Beginning for the 6.061 acre parcel herein to be described, said point being 27.00 feet left of centerline survey station 179+56.21;

Thence continuing along Winchester Pike and the northerly line of said 17.7609 acre tract, South 56 deg. 33' 04" East, a distance of 231.23 feet to a railroad spike set in the westerly line of a 14.464 acre tract dedicated as right of way to the City of Columbus as recorded in Instrument Number 200503290057673, said point being 27.00 feet left of centerline survey station 181+87.44;

Thence leaving Winchester Pike along the westerly line of said City of Columbus, 14.464 acre tract the following four (4) courses and distances;

South 21 deg. 18' 40" East, 213.13 feet with the original meanders of Blacklick Creek to a point marking the northwesterly corner of that 40.711 acre tract as conveyed to the City of Columbus by deed of record in Instrument Number 200408270201629;

South 21 deg. 18' 40" East, 213.13 feet to a point;

South 12 deg. 11' 20" West, 119.46 feet to a point;

South 31 deg. 41' 20" West, passing an iron pin set at 100.28 feet, a total distance of 500.28 feet to an iron pin set; and ...

North 86 deg. 48' 40" West, 631.62 feet to a 2" diameter iron pipe found marking the southwesterly corner of said 17.7609 acre tract in the westerly line of Section 9 and in the easterly line of that 63.634 acre tract as conveyed to Dale L. Taylor Trustee and Marcella L. Taylor Trustee as recorded in Instrument Number 200406250148101;

Thence along the westerly line of Section 9 and the easterly line of said 63.634 acre tract, North 04 deg. 03' 20" East, a distance of 47.01 feet to an iron pin set;

Thence across said 17.7609 acre tract the following four (4) courses and distances;

North 65 deg. 08' 58" East, 103.97 feet to an iron pin set;

North 82 deg. 08' 58" East, 348.13 feet to an iron pin set;

North 30 deg. 07' 18" East, 356.10 feet to an iron pin set;

North 03 deg. 59' 40" East, passing an iron pin set at 265.25 feet in the existing southerly right of way line of Winchester Pike as dedicated in easement by Deed Book 1176, page 327, a total distance of 388.13 feet to the point of beginning and containing 6.061 acres, (0.679 acres within right of way Winchester Pike and 5.382 acres in the floodway of Big Walnut Creek), more or less, according to a survey conducted by Jobes Henderson and Associates, Inc. in August of 2010.

The bearings in the above description are based on the centerline bearing of Winchester Pike as being South 56 deg. 33' 04" East on the Ohio State Plane coordinate System - South Zone NAD83 (2009 adjustment).

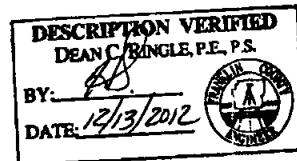
All iron pins set are 5/8" in diameter rebar by 30" in length with red identification caps marked "J&H, PS 8283.

Parcel II

0-041-B

ALL OF  
(530)  
245518

Together with an appurtenant non-exclusive easement for storm sewer as described in the General Warranty Deed from Winchester Bend Apartments LLC to City of Columbus, Ohio dated September 22, 2011 and recorded December 2, 2011, Instrument Number 201112020156990, Recorder's Office, Franklin County, Ohio.



**EXHIBIT C**  
**UNIT DIRECTORY**  
**WINCHESTER BEND II CONDOMINIUM**

Unit Number	Address	Par Value	Interest in	Area (Sqft)
			Common Elements	
3429	3429 Winchester Bend Dr.	1.00	1/88th	672
3431	3431 Winchester Bend Dr.	1.00	1/88th	888
3433	3433 Winchester Bend Dr.	1.00	1/88th	912
3437	3437 Winchester Bend Dr.	1.00	1/88th	912
3439	3439 Winchester Bend Dr.	1.00	1/88th	888
3441	3441 Winchester Bend Dr.	1.00	1/88th	672
3447	3447 Winchester Bend Dr.	1.00	1/88th	672
3449	3449 Winchester Bend Dr.	1.00	1/88th	888
3451	3451 Winchester Bend Dr.	1.00	1/88th	912
3455	3455 Winchester Bend Dr.	1.00	1/88th	912
3457	3457 Winchester Bend Dr.	1.00	1/88th	888
3459	3459 Winchester Bend Dr.	1.00	1/88th	672
3465	3465 Winchester Bend Dr.	1.00	1/88th	672
3467	3467 Winchester Bend Dr.	1.00	1/88th	888
3469	3469 Winchester Bend Dr.	1.00	1/88th	912
3473	3473 Winchester Bend Dr.	1.00	1/88th	912
3475	3475 Winchester Bend Dr.	1.00	1/88th	888
3477	3477 Winchester Bend Dr.	1.00	1/88th	672
3483	3483 Winchester Bend Dr.	1.00	1/88th	672
3485	3485 Winchester Bend Dr.	1.00	1/88th	888
3487	3487 Winchester Bend Dr.	1.00	1/88th	912
3491	3491 Winchester Bend Dr.	1.00	1/88th	912
3493	3493 Winchester Bend Dr.	1.00	1/88th	888
3495	3495 Winchester Bend Dr.	1.00	1/88th	672
3501	3501 Winchester Bend Dr.	1.00	1/88th	672
3503	3503 Winchester Bend Dr.	1.00	1/88th	888
3505	3505 Winchester Bend Dr.	1.00	1/88th	912
3509	3509 Winchester Bend Dr.	1.00	1/88th	912
3511	3511 Winchester Bend Dr.	1.00	1/88th	888
3513	3513 Winchester Bend Dr.	1.00	1/88th	672
3519	3519 Winchester Bend Dr.	1.00	1/88th	672
3521	3521 Winchester Bend Dr.	1.00	1/88th	888
3523	3523 Winchester Bend Dr.	1.00	1/88th	912
3527	3527 Winchester Bend Dr.	1.00	1/88th	912
3529	3529 Winchester Bend Dr.	1.00	1/88th	888
3531	3531 Winchester Bend Dr.	1.00	1/88th	672

**EXHIBIT C**  
**UNIT DIRECTORY**  
**WINCHESTER BEND II CONDOMINIUM**

Unit Number	Address	Par Value	Interest in Common Elements	Area (Sqft)
3537	3537 Winchester Bend Dr.	1.00	1/88th	672
3539	3539 Winchester Bend Dr.	1.00	1/88th	888
3541	3541 Winchester Bend Dr.	1.00	1/88th	912
3545	3545 Winchester Bend Dr.	1.00	1/88th	912
3547	3547 Winchester Bend Dr.	1.00	1/88th	888
3549	3549 Winchester Bend Dr.	1.00	1/88th	672
3555	3555 Winchester Bend Dr.	1.00	1/88th	672
3557	3557 Winchester Bend Dr.	1.00	1/88th	888
3559	3559 Winchester Bend Dr.	1.00	1/88th	912
3563	3563 Winchester Bend Dr.	1.00	1/88th	912
3565	3565 Winchester Bend Dr.	1.00	1/88th	888
3567	3567 Winchester Bend Dr.	1.00	1/88th	672
3577	3577 Winchester Bend Dr.	1.00	1/88th	1129
3579	3579 Winchester Bend Dr.	1.00	1/88th	1109
3583	3583 Winchester Bend Dr.	1.00	1/88th	1109
3585	3585 Winchester Bend Dr.	1.00	1/88th	1129
3591	3591 Winchester Bend Dr.	1.00	1/88th	1129
3593	3593 Winchester Bend Dr.	1.00	1/88th	1109
3597	3597 Winchester Bend Dr.	1.00	1/88th	1109
3599	3599 Winchester Bend Dr.	1.00	1/88th	1129
3605	3605 Winchester Bend Dr.	1.00	1/88th	672
3609	3609 Winchester Bend Dr.	1.00	1/88th	888
3611	3611 Winchester Bend Dr.	1.00	1/88th	912
3615	3615 Winchester Bend Dr.	1.00	1/88th	912
3617	3617 Winchester Bend Dr.	1.00	1/88th	888
3619	3619 Winchester Bend Dr.	1.00	1/88th	672
3625	3625 Winchester Bend Dr.	1.00	1/88th	672
3627	3627 Winchester Bend Dr.	1.00	1/88th	888
3629	3629 Winchester Bend Dr.	1.00	1/88th	912
3633	3633 Winchester Bend Dr.	1.00	1/88th	912
3635	3635 Winchester Bend Dr.	1.00	1/88th	888
3637	3637 Winchester Bend Dr.	1.00	1/88th	672
3643	3643 Winchester Bend Dr.	1.00	1/88th	672
3645	3645 Winchester Bend Dr.	1.00	1/88th	888
3647	3647 Winchester Bend Dr.	1.00	1/88th	912
3651	3651 Winchester Bend Dr.	1.00	1/88th	912

**EXHIBIT C**  
**UNIT DIRECTORY**  
**WINCHESTER BEND II CONDOMINIUM**

Unit Number	Address	Par Value	Interest in Common Elements	Area (Sqft)
3653	3653 Winchester Bend Dr.	1.00	1/88th	888
3655	3655 Winchester Bend Dr.	1.00	1/88th	672
3661	3661 Winchester Bend Dr.	1.00	1/88th	672
3663	3663 Winchester Bend Dr.	1.00	1/88th	888
3665	3665 Winchester Bend Dr.	1.00	1/88th	912
3669	3669 Winchester Bend Dr.	1.00	1/88th	912
3671	3671 Winchester Bend Dr.	1.00	1/88th	888
3673	3673 Winchester Bend Dr.	1.00	1/88th	672
3484	3484 Winchester Bend Dr.	1.00	1/88th	1129
3486	3486 Winchester Bend Dr.	1.00	1/88th	1109
3490	3490 Winchester Bend Dr.	1.00	1/88th	1109
3492	3492 Winchester Bend Dr.	1.00	1/88th	1129
3468	3468 Winchester Bend Dr.	1.00	1/88th	1129
3470	3470 Winchester Bend Dr.	1.00	1/88th	1109
3474	3474 Winchester Bend Dr.	1.00	1/88th	1109
3476	3476 Winchester Bend Dr.	1.00	1/88th	1129
<b>Total</b>		<b>88.00</b>	<b>88/88ths</b>	

**“EXHIBIT D”**By-laws

**BYLAWS**  
**(Code of Regulations)**  
**OF**  
**WINCHESTER BEND II CONDOMINIUM ASSOCIATION**

**ARTICLE I**  
**NAME AND LOCATION**

The name of the Association is Winchester Bend II Condominium Association, ("the Association"), which association is created pursuant to the provisions of Chapter 5311 of the Revised Code of Ohio as the Unit Owners' Association for Winchester Bend II Condominium.

**ARTICLE II**  
**DEFINITIONS**

All of the terms used herein shall have the same meanings as set forth in the Declaration of Winchester Bend II Condominium, ("the Declaration"), recorded simultaneously herewith with the recorder of the county in which the Condominium Property is located.

**ARTICLE III**  
**PURPOSE AND POWERS**

Forthwith upon the creation of the Association the undersigned is creating a Condominium under the provisions of Chapter 5311 of the Revised Code of Ohio, known as Winchester Bend II Condominium ("the Condominium"), located in the City of Columbus, Ohio. The purposes for which the Association is formed are to be and act as the Unit Owners Association for the Condominium, to provide for the maintenance, preservation and architectural control of the property of the Condominium, and to promote the health, safety and welfare of the residents of the Condominium, and for these purposes to:

(A) exercise all of the powers and privileges and perform all of the duties and obligations of the Association as set forth in the Declaration and Bylaws of the Condominium ("the Declaration", and "the Bylaws", respectively);

(B) fix, levy, collect and enforce payment by any lawful means, of all charges or assessments pursuant to the terms of the Declaration, or pursuant to other agreements between the owners, and pay all expenses in connection therewith and all office and other expenses incident of the conduct of the business of the Association;

(C) acquire (by gift, purchase or otherwise), own, hold, improve, build upon, operate, maintain, convey, sell, lease, transfer or otherwise dispose of real or personal property in connection with the affairs of the Association;

(D) borrow money to fulfill its purposes and invest reserves and excess funds in government insured accounts or such other investments as the members approve;

(E) administer and enforce terms, conditions, covenants, restrictions and regulations upon, under and subject to which the Condominium or any part thereof may now or hereafter be used, and fix and provide any such terms, conditions, covenants, restrictions and regulations, and administer, enforce, alter, amend, change, add to, extend, waive, or terminate, in whole or in part, any of the same;

(F) function and act as the Unit Owners Association of the Condominium, under the provisions of Chapter 5311 of the Revised Code of Ohio, and delegate such authority as it desires to a professional management company;

(G) have and exercise any and all powers, rights and privileges which a corporation organized under Chapter 1702 may now or hereafter have or exercise by law; and

(H) take any action necessary, expedient, incidental, appropriate or convenient to the carrying out of the foregoing purposes.

#### ARTICLE IV UNIT OWNERS (MEMBERS)

Section 1. Composition. Membership in the Association shall be as provided in the Declaration.

Section 2. Meetings. Meetings of the Unit Owners may be called at any time by the president or by the Board, upon written request of Unit Owners entitled to exercise one-fourth (1/4) or more of the voting power of Unit Owners, and when required by the Condominium Act.

Section 3. Notice of Meetings. Written notice of each meeting of Unit Owners shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least five days before such meeting, to each Unit Owner entitled to vote at such meeting, addressed to the Unit Owner's address last appearing on the books of the Association, or supplied by such Unit Owner to the Association for the purpose of notice, or by delivering a copy of that notice at such address at least five (5) days before the meeting. The notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 4. Quorum; Adjournment. The Unit Owners present, in person or by proxy, at any duly called and noticed meeting of Unit Owners, shall constitute a quorum for such meeting. Unit Owners entitled to exercise a majority of the voting power of Unit Owners represented at a meeting may, at any time, adjourn such meeting. If any meeting is so adjourned, notice of such

adjournment need not be given if the time and place to which such meeting is adjourned are fixed and announced at such meeting.

Section 5. Proxies. At any meeting of Unit Owners, a Unit Owner may vote in person or by proxy. All proxies shall be in writing and filed with the secretary prior to the meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by a Unit Owner of his, her or its Unit.

Section 6. Voting Power. Voting rights for members shall be as provided in the Declaration. Except as otherwise provided in the Condominium Organizational Documents, or by law, a majority of the voting power of Unit Owners voting on any matter that may be determined by the Unit Owners at a duly called and noticed meeting shall be sufficient to determine that matter. The rules of Roberts Rules of Order shall apply to the conduct of all meetings of Unit Owners except as otherwise specifically provided in the Condominium Organizational Documents or by law.

Section 7. Action In Writing Without Meeting. Any action that could be taken by Unit Owners at a meeting may be taken without a meeting with the affirmative vote or approval, in a writing or writings, of Unit Owners having not less than seventy-five percent (75%) of the voting power of Unit Owners, or such greater proportion of the voting power as may be required by the Condominium Organizational Documents, or by law.

Section 8. Assessments. Assessments, fees and charges for membership shall be as provided in the Declaration.

## ARTICLE V BOARD OF DIRECTORS

Section 1. Initial Director. Initially, the Board shall consist of one (1) Director named as such by Declarant upon the establishment of the Association, which Director may from time to time be replaced by Declarant.

Section 2. Successor Directors. The number, times of election, and terms of office of those who will serve as Directors of the Association to succeed the initial Director, shall be as provided in the Declaration.

Section 3. Removal. Excepting only Directors selected by Declarant, any Director may be removed from the Board with or without cause, by a majority vote of the Unit Owners. In the event of the death, resignation or removal of a Director other than one named selected by the Declarant, that Director's successor shall be selected by the remaining members of the Board and shall serve until the next annual meeting of Unit Owners, when a Director shall be elected to complete the term of such deceased, resigned or removed Director. Declarant shall have the sole right to remove, with or without cause, any Director selected by the Declarant, and select the successor of any Director so selected who dies, resigns, is removed or leaves office for any reason before the election of Directors by all of the Unit Owners as provided in the Declaration.

Section 4. Nomination. Nominations for the election of Directors to be elected by the Unit Owners shall be made by a nominating committee. Nominations may also be made from the floor at the meetings. The nominating committee shall consist of a chairman, who shall be a member of the Board, and two or more Unit Owners, who are not members of the Board, appointed by the Board. The nominating committee shall make as many nominations for election to the Board as it shall, in its discretion, determine, but no less than the number of vacancies that are to be filled.

Section 5. Election. Election to the Board by the Unit Owners shall be by secret written ballot. At such elections, the Unit Owners or their proxies may cast, in respect to each vacancy, such number of votes as they are entitled to under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected, and, likewise, those receiving the largest number of votes shall be elected to the longest terms. In cases of ties, the winner shall be determined by lot. Cumulative voting is not permitted.

Section 6. Compensation. Unless otherwise determined by the Unit Owners at a meeting duly called and noticed for such purpose, no Director shall receive compensation for any service rendered to the Association as a Director. However, any Director may be reimbursed for his or her actual expenses incurred in the performance of duties.

Section 7. Meetings. Meetings of the Board shall be held when called by the president of the Board, or by a majority of the Directors, after not less than three (3) days' notice to each Director.

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

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

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

Section 11. Powers. The Board shall exercise all powers and authority, under law, in the Condominium Act and under the provisions of the Condominium Organizational Documents, that are not specifically and exclusively reserved to the Unit Owners by law or by other provisions thereof, and without limiting the generality of the foregoing, the Board shall have the right, power and authority to:

- (a) take all actions deemed necessary or desirable to comply with all requirements of law, and Condominium Organizational Documents;

- (b) obtain insurance coverage no less than that required pursuant to the Declaration;
- (c) enforce the covenants, conditions and restrictions set forth in the Declaration;
- (d) repair, maintain and improve the Common Elements;
- (e) establish, enforce, levy and collect assessments, late fees, delinquent interest, and such other charges as are provided for in the Declaration;
- (f) adopt and publish rules and regulations governing the use of the Common Elements and the personal conduct of Unit Owners, Occupants, and their guests thereon, and establish and levy enforcement charges for the infraction thereof;
- (g) suspend the voting rights of a Unit Owner during any period in which such Unit Owner shall be in default in the payment of any charge levied by the Association;
- (h) declare the office of a member of the Board to be vacant in the event such Director shall be absent from three consecutive regular meetings of the Board;
- (i) subject to such approvals, if any, as may be required pursuant to the provisions of Condominium Organizational Documents, authorize the officers to enter into one or more agreements necessary or desirable to fulfill the purposes and objectives of the Association, including, without limitation, management agreements, purchase agreements and loan documents, all on such terms and conditions as the Board in its sole and absolute discretion may determine;
- (j) cause funds of the Association to be invested in such reasonable investments as the Board may from time to time determine;
- (k) borrow funds, as needed, and pledge such security and rights of the Association as might be necessary or desirable to obtain any such loan; and
- (l) do all things and take all actions permitted to be taken by the Association by law, or the Condominium Organizational Documents not specifically reserved thereby to others.

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

- (a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Unit Owners at each annual meeting of Unit Owners, or at any special meeting when such statement is requested in writing

by Unit Owners representing one-half (1/2) or more of the voting power of Unit Owners;

(b) supervise all officers, agents and employees of the Association and see that their duties are properly performed;

(c) as more fully provided in the Declaration, to establish, levy, enforce and collect assessments;

(d) issue, or to cause an appropriate representative to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid;

(e) procure and maintain insurance and bonds as provided in the Declaration, and as the Board deems advisable;

(f) cause the property subject to the Association's jurisdiction to be maintained within the scope of authority provided in the Declaration;

(g) cause the restrictions created by the Declaration to be enforced; and

(h) take all other actions required to comply with all requirements of law and the Condominium Organizational Documents.

## ARTICLE VI OFFICERS

Section 1. Enumeration of Officers. The officers of this Association shall be a president, a secretary, a treasurer and such other officers as the Board may from time to time determine. No officer need be a member of the Association nor need any officer be a Director. The same person may hold more than one office.

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

Section 3. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

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

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

(a) President. The president shall preside at all meetings of the Board, shall have the authority to see that orders and resolutions of the Board are carried out, and shall sign all legal instruments on behalf of the Association.

(b) Secretary. The secretary shall record the votes and keep the minutes and proceedings of meetings of the Board and of the Unit Owners, serve notice of meetings of the Board and of the Unit Owners, keep appropriate current records showing the names of Unit Owners of the Association together with their addresses, and shall act in the place and stead of the president in the event of the president's absence or refusal to act.

(c) Treasurer. The treasurer shall assume responsibility for the receipt and deposit in such bank accounts, and investment of funds in such vehicles, as the Board directs, the disbursement of such funds as directed by the Board, the keeping of proper books of account, the preparation of an annual budget and a statement of income and expenditures to be presented to the Unit Owners at annual meetings, and the delivery or mailing of a copy of each to each of the Unit Owners.

## ARTICLE VII COMMITTEES

The Board shall appoint a nominating committee and may appoint such other committees as it deems appropriate in carrying out its purposes.

## ARTICLE VIII BOOKS AND RECORDS

The books, records and financial statements of the Association, including annual financial statements when such are prepared, shall be available during normal business hours or under other reasonable circumstances, upon request to the Association, for inspection by Unit Owners and the holders, insurers and guarantors of first mortgages on Units. Likewise, during normal business hours or under other reasonable circumstances, the Association shall have available for inspection by Unit Owners, holders, insurers and guarantors of first mortgages on Units, and prospective purchasers, current copies of the Condominium Organizational Documents and the rules and regulations governing operation of the Condominium. Notwithstanding the foregoing, unless approved by the Board, a Unit Owner and the holders, insurers and guarantors of first mortgages on Units may not examine or copy any books, records or minutes that meet either of the following conditions:

- (a) Date back more than five years prior to the date of the request;
- (b) Contain any of the following:

- (i) information that pertains to Condominium Property-related personnel matters;
- (ii) communications with legal counsel or attorney work product pertaining to pending litigation or other Condominium Property-related matters;
- (iii) information that pertains to contracts or transactions currently under negotiation or information that is contained in a contract or other agreement containing confidentiality requirements and that is subject to those requirements;
- (iv) information that relates to the enforcement of the Declaration, Bylaws, or rules of the Association against Unit Owners;
- (v) information the disclosure of which is prohibited by state or federal law.

#### ARTICLE IX AUDITS

The Board may cause the preparation and furnishing of an audited financial statement for the immediately preceding fiscal year.

#### ARTICLE X FISCAL YEAR

Unless otherwise changed by the Board, the fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of these By-Laws.

#### ARTICLE XI AMENDMENTS

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

#### ARTICLE XII TRANSACTIONS BETWEEN ASSOCIATION AND DIRECTORS, OFFICERS OR EMPLOYEES

No contract or other transaction shall be void or in any way affected or invalidated by the fact that it is between the Association and one or more of its directors, officers or employees or

between the Association and any other corporation, firm, Association or other entity in which one or more of the directors, officers or employees of this Association are directors, officers, stockholders or otherwise financially interested, provided that: (1) the interest of any such director, officer or employee is disclosed or made known to the board of directors or such members thereof as shall be present at any meeting of the board of directors at which any action on such contract or transaction shall be taken; and (2) at such meeting there is a quorum of directors, without counting the interested directors, and the contract or transaction is approved by a sufficient number of votes without counting the vote or votes of such interested directors; and (3) the contract or transaction is fair as to the Association as of the time it is authorized or approved.

### ARTICLE XIII INDEMNIFICATION

Section 1. Third Party Actions. The Association shall indemnify any person who is or was a party or is threatened to be made a party to any threatened, pending, or completed civil, criminal, administrative or investigative action, suit, or proceeding, including all appeals, other than an action, suit or proceeding by or in the right of the Association, by reason of the fact that the person is or was a director, officer, employee, or volunteer of the Association, against expenses (including attorney's fees), judgments, fines, penalties, and amounts paid in settlement actually and reasonably incurred by that person in connection with such action, suit or proceeding, if that person acted in good faith and in a manner that person reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, if that person had no reasonable cause to believe that person's conduct was unlawful. The termination of any action, suit, or proceeding by judgment, order, settlement, or conviction, or upon a plea of nolo contendere or its equivalent, shall not create, of itself, a presumption that the person did not act in good faith and in a manner which that person reasonably believed to be in or not opposed to the best interest of the Association and, with respect to any criminal action or proceeding, a presumption that the person had reasonable cause to believe that the person's conduct was unlawful.

Section 2. Derivative Actions. The Association shall indemnify any person who is or was a party, or threatened to be made a party, to any threatened, pending, or completed action or suit, including all appeals, by or in the right of the Association to procure a judgment in its favor, by reason of the fact that the person is or was a director, officer, employee, or volunteer of the Association, against expenses (including attorney's fees) actually and reasonably incurred by that person in connection with the defense or settlement of such action or suit, if the person acted in good faith, and in a manner that person reasonably believed to be in or not opposed to the best interests of the Association, except that no indemnification shall be made in respect of (a) any claim, issue, or matter as to which such person is finally adjudged to be liable for negligence or misconduct, in the performance of that person's duty to the Association unless, and only to the extent that, the court of common pleas or the court in which such action or suit was brought determines, upon application, that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court of common pleas or such other court considers proper, or (b) any action or suit in which a director is found liable only pursuant to the provisions of Section 1702.55 of the Ohio Revised Code.

**Section 3. Other Determinations of Rights.** Unless ordered by a court any indemnification under paragraphs (1) and (2) of this Article shall be made by the Association only as authorized in the specific case, upon a determination that indemnification of the director, officer, employee or volunteer is proper under the circumstances because that person has met the applicable standard of conduct set forth in paragraphs (1) and (2) of this Article. Such determination shall be made in any one of the following manners:(a) by a majority vote of a quorum consisting of directors of the Association who were not and are not parties to or threatened with the action, suit or proceeding referred to in paragraph (1) or (2) of this Article, or (b) by the members by majority vote.

**Section 4. Indemnification of Agents and Others.** The Association may, from time to time, and in its sole discretion, indemnify any person who is or was an agent, or other authorized representative of the Association, other than those described under paragraphs (1) and (2) who may be indemnified, or is or was serving at the request of the Association as a director, officer, or employee of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, against any liability asserted against that person or incurred by that person in any such capacity or arising out of that person's status as such, in the same manner and to the same extent as provided herein for directors, officers, employees and volunteers of the Association.

**Section 5. Advances of Expenses.** Expenses of each person indemnified herein incurred in defending a civil, criminal, administrative, or investigative action, suit or proceeding (including all appeals), or threat thereof, may be paid by the Association in advance of the final disposition of such action, suit, or proceeding as authorized by the board of directors, whether a disinterested quorum exists or not, upon receipt of an undertaking by or on behalf of such person, to repay such amount, if it is ultimately determined that that person is not entitled to be indemnified by the Association.

**Section 6. Non-exclusiveness; Heirs.** The foregoing rights of indemnification are not exclusive, and shall be in addition to any other rights granted to those seeking indemnification as a matter of law, or under these Articles, the regulations, any agreement, vote of members or disinterested directors, or otherwise, both as to actions in their official capacities and as to actions in another capacity while holding their offices or positions, shall continue as to a person who has ceased to be a director, officer, employee, member, manager, agent, or volunteer, and shall inure to the benefit of the heirs, executors, and administrators of such a person.

**Section 7. Purchase of Insurance.** The Association may purchase and maintain insurance, or furnish similar protection, including but not limited to trust funds, letters of credit, or self-insurance, for or on behalf of any person who is or was a director, officer, agent, employee, or volunteer of the Association, or is or was serving at the request of the Association as a director, officer, employee, member, manager, agent or volunteer of another corporation, limited liability company, partnership, joint venture, trust or other enterprise, against any liability asserted against that person or incurred by that person in any such capacity, or arising out of that person's status as such, whether or not the Association would have the power to indemnify that person against such liability under the provisions of this Article. Insurance may be purchased from or maintained with a person in which the Association has a financial interest.

ARTICLE XIV  
DURATION

The Association shall exist so long as the Condominium regime of the Condominium exists, and no longer.

ARTICLE XV  
DISSOLUTION

The Association may be dissolved only with the same consents as are required to terminate the Condominium regime, as provided in the Declaration.

ARTICLE XVI  
SEAL

The directors may adopt a seal which, if adopted, shall be in such form as the directors from time to time may determine.

*[remainder of page intentionally blank]*

IN TESTIMONY WHEREOF, the undersigned, the sole member of the Association, has caused these Bylaws to be duly adopted on or as of the 14<sup>th</sup> day of November, 2022.

**Winchester Bend Apartments II LLC,**  
an Ohio limited liability company

By: Michael H. Murphy

Name :Michael H. Murphy

Title: Manager