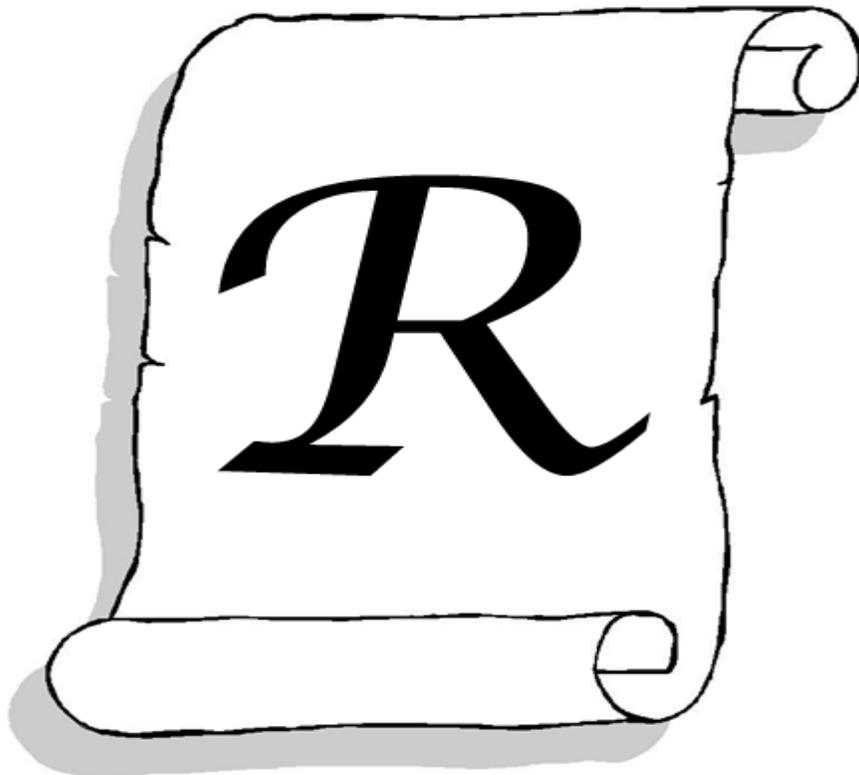


*2444 Madison Road  
Condominium Owners Association, Inc.*

*Declaration of Condominium  
For  
The Regency*



## Forward

This instrument is a composite of the documents which created The Regency Condominium, and govern its continuation as an Association. Each of the documents, together with amendments and referenced exhibits were given each Owner at the time of purchase. Together they comprise a thick stack and present a challenge to read and comprehend. They consist of: Declaration of Condominium; By-laws; Articles of Incorporation; and, Rules and Regulations. The Declaration of Condominium (pp 2-45) is the instrument by which the developer (Declarant) of the project submitted the real estate and buildings of The Regency to the provisions of Chapter 5311 of the Ohio Revised Code, and provided the plan of condominium ownership. The Declaration has been amended by twelve separate Amendments (a brief summary of each of them is included on pages 71 and 72 hereof). In an effort to make the Declaration more readable, the Amendments have been inserted in their proper places in the various Articles, and the amended provision deleted. In addition, those provisions pertaining to the Declarant, and not pertinent to an understanding of the text, have been deleted.

This composite does not in any manner affect legal relationships, nor does it supersede the original documents. To assist the reader who wishes to refer to the original Amendment or review the deleted material, references have been included in the left margin of the applicable Article.

The Bylaws (pp 46-64) establish, describe and govern the administration of the Association. They have been amended extensively by the Sixth and Twelfth Amendments. The Bylaws herein are a composite of the original Document and these Amendments.

The Articles of Incorporation herein (pp 65-70) is an unabridged copy of the Document filed with the Secretary of the State of Ohio incorporating the Association as a non-profit Ohio corporation.

The Rules and Regulations are also unabridged copies as adopted by the Board of Directors.

The Committee for the Declaration and

Bylaws:

Bill Moran, Chair

Sarita Figueroa

Alex Gortsas

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**SUMMARY OF AMENDMENTS**

**EXHIBITS:**

- A.** Legal Description of Land
- B.** Percentage Interest
- C.** Site Plan
- D.** Drawings and Specifications

**DECLARATION SUBMITTING PROPERTY TO THE PROVISIONS  
OF  
CHAPTER 5311 OF THE OHIO REVISED CODE  
FOR  
THE REGENCY, A CONDOMINIUM**

This DECLARATION OF CONDOMINIUM was made this 1st day of March, 1984, by 2444 Madison Road Partnership, an Ohio Partnership.

**RECITALS**

The Land described in Exhibit A has three (3) Buildings containing 289 Residential Units, twenty (20) Cabana Units, eight (8) Commercial Units and related spaces. Declarant declared the Land and all buildings, structures and improvements thereon as a condominium, and by this Declaration established a plan for individual ownership of the Land, buildings, structures and improvements in accordance with Chapter 5311.

**ARTICLE I  
DEFINITIONS**

(Par. deleted)

**A.** The following words and phrases used in this Declaration and the Bylaws and in any amendment to this Declaration and the Bylaws shall have the following meanings:

(1) Articles. The Articles of Incorporation of the Association as filed with the Secretary of State of Ohio.

(2) Assessment. Those amounts charged by the Board against one or more Units pursuant to authority granted in the Condominium Laws, this Declaration and the By-laws in order to enable the Board adequately to operate, maintain, repair, improve or reconstruct the Condominium Property or otherwise to further the common aims of the Condominium.

See 2nd Amend. Sec. I

(3) Association. 2444 Madison Road Condominium Owners Association, Inc., an Ohio non-profit corporation, which is the organization of all of the Unit Owners that administers the

Condominium Property. Association includes the term "corporation;" and any reference in the Articles to the term "corporation" shall include the term "Association."

(4) Board. Those persons elected by the members of the Association to serve on the board of directors as provided in Article III of the By-laws. The Board shall have the right and responsibility to administer the business, operations and affairs of the Association as provided in this Declaration, the Code of Regulations and Ohio law. The Board constitutes the board of trustees described in Section 1702.01, Ohio Revised Code and the board of managers required by the provisions of the Condominium Laws; and it is vested with the authority to conduct the affairs of the Association as its board of managers as described in the Condominium Laws.

(5) Cabana Unit. Each of those Units designed for cabana use and designated on the Drawings as Cabana Units.

(6) Chapter 5311. That portion of the Ohio Revised Code which pertains to condominium ownership.

(7) Bylaws. The governing regulations of the Association which have been adopted pursuant to the Condominium Laws and which shall serve both as the code of regulations of a non-profit corporation required by the provisions of Chapter 1702, Ohio Revised Code and as the bylaws of a Unit Owners' Association required by the provisions of the Condominium Laws.

(8) Commercial Unit. Each of those Units designed for commercial use and designated on the drawing as Commercial Units.

(9) Common Areas. That part of the Condominium Property not included in a Unit, and, where applicable and not otherwise designated and regulated by the provisions of this Declaration, that portion of the Condominium Property constituting "common areas and facilities," as defined by the Condominium Laws.

(10) Common Expenses. The Common Expenses shall include the following:

(i) All expenses incurred by the Association for the administration, management, operation, maintenance, repair, improvement or replacement of the Common Areas and not properly chargeable to individual Unit Owners;

(ii) All sums paid for insurance, taxes and assessments, in connection with the Common Areas and those portions of a Unit required to be insured by the Association;

(iii) Expenses paid for utilities servicing the Condominium

Property that are not separately metered or charged to individual Units and expenses paid for water and sewer service supplied to the Condominium Property, provided that the Board shall be entitled to charge against a Unit by a Special Individual Unit Assessment any additional expense for such utility, water, or sewerage service caused by the excessive or unreasonable use of such services by the owner or occupant of such Unit;

(iv) Any amount necessary to discharge any mechanic's lien or other encumbrance which constitutes a lien against all of the Common Areas and not solely the condominium ownership interests of Unit Owners less than all Unit Owners;

(v) Expenses paid for garbage and refuse removal services provided to all Unit Owners of the Condominium;

(vi) Expenses incurred by the Board for the management and administration of the Condominium, including without limitation, compensation of all employees, managers, security guards, accountants, attorneys, architects and other personnel hired by the Board, whether as employees, independent contractors or otherwise, and all premiums paid by the Association in order to obtain and maintain fidelity bonds covering the officers, employees or agents of the Association handling the funds of the Association;

(vii) Expenses deemed Common Expenses by the Board and lawfully assessed against the Unit Owners in accordance with the by-laws, including annual contributions to the reserve funds; and

(viii) Expenses declared Common Expenses by the Condominium Laws, by this Declaration or by the Bylaws.

(11) Common Surplus. The amount by which Assessments collected during each fiscal year exceed Common Expenses incurred during the same fiscal year.

(12) Condominium. The Regency, a Condominium.

(13) Condominium Laws. The laws of the State of Ohio, as amended, regulating the creation, operation, and use of condominiums. The current statutory laws of Ohio governing condominiums are established in Chapter 5311 of the Ohio Revised Code.

(14) Condominium Ownership Interest. A fee simple estate in a Unit together with an appurtenant undivided interest in the Common Areas.

(15) Condominium Property. The real estate described in Exhibit A, together with all improvements situated thereon and all

easements, rights, privileges, and interests appurtenant to said real estate, which is hereby submitted to the condominium form of ownership pursuant to the Condominium Laws.

**(16) Declaration.** This instrument by which the Condominium Property of The Regency, a Condominium is submitted to the Condominium Laws, together with all lawful amendments to this instrument.

**(17) Declarant.** Dana Properties, Inc., the Declarant, is the Developer of the Condominium as defined in the Condominium Laws.

**(18) Drawings.** The survey, plans and drawings graphically depicting the location, dimensions and specifications of the Unit Buildings, Units, Common Areas and Limited Common Areas constituting the Condominium Property, together with all lawful amendments thereto. The Drawings are attached to the copies of this Declaration filed with the Recorder's Office, Hamilton County, Ohio, as Exhibits C and D and shall be maintained and on file in the office of the Association.

**(19) Limited Common Areas.** Those Common Areas designated in the Drawings and described in the Declaration as reserved for the use of a certain Unit or Units to the exclusion of all other Units; and, where applicable and not otherwise governed by the provisions of this Declaration, those portions of the Condominium Property constituting Limited Common Areas and Facilities, as defined by the Condominium Laws. The Limited Common Areas are described in Article V and VI of this Declaration, which Description may be amended by the Association from time to time pursuant to the provisions of Article XV of this Declaration.

**(20) Percentage Interest.** The Percentage Interest is the relative undivided interest of each Unit in the Common Areas, and is employed to determine (a) the relative obligations for Common Expenses chargeable to each Unit and (b) the relative interests of each Unit in any insurance proceeds, appropriation awards, or other sums disbursed to all owners of Units.

The Percentage Interest of each Unit is computed by dividing the approximate square footage of the Unit by the aggregate square footage of all Units of the Condominium. The Percentage Interest of each Unit is stated in Exhibit B.

**(21) Recreational Facilities.** Those facilities designated on the Drawings as the swimming pool, the recreation room, and the facilities and improvements situated within said areas.

(22) Residential Unit. Each of the Units designed for residential use and designated on the drawings as a Residential Unit.

(23) Rules. The rules and regulations governing the operation, use and enjoyment of all or any portion of the Condominium Property, which are hereafter adopted and amended by the Board or the Association from time to time.

(24) Unit or Units. Those portions of the Condominium Property described and defined in Article IV, section A of this Declaration. The Condominium Property contains Residential, Cabana and Commercial Units.

(25) Unit Building. Any multi-unit structure containing Units which is part of the Condominium Property and is used, or intended to be used, for residential, cabana or commercial purposes.

(26) Unit Owner. The person, persons, or legal entity that owns a Condominium Ownership Interest in a Unit.

**B.** Unless the context clearly indicates otherwise or so requires, all other terms used in this Declaration and the by-laws, shall be assumed to have the meaning attributed to said term by the Condominium Laws.

## **ARTICLE II**

### **THE CONDOMINIUM PROPERTY, NAME AND PURPOSE**

See 3rd Amend. Sec. D.

**A.** Condominium Property. The "Condominium Property" includes the real estate and all easements, rights and appurtenances belonging thereto, together with the one (1) Unit Building having nineteen (19) stories, a basement, a three (3) story garage containing 272 parking spaces, 228 Residential Units and eight (8) Commercial Units (the "High Rise Building Limited Common Area" or "Building A"), one (1) Unit Building of one (1) and two (2) stories containing 61 Residential Units (the "Low Rise Building Limited Common Area" or "Building B"), one (1) Unit Building of one (1) story containing twenty (20) Cabana Units ("Building C") and all other buildings, improvements, structures, and fixtures located on the real estate (the same being more particularly delineated in Articles III, IV and V hereof), which are submitted to the provisions of the Condominium Laws by this Declaration or any amendment thereto.

**B. Name.** The name by which the Condominium Property shall be known is hereby established to be "The Regency, a Condominium."

**C. Purpose.** The purpose for which the Condominium Property is submitted to the provisions of the Condominium Laws is to establish 289 individual habitable parcels of real estate to which the fee simple title, together with a respective undivided interest in the Common Areas, may be conveyed to Purchasers for residential living use; twenty (20) individual cabana parcels of real estate to which the fee simple titles together with a respective individual interest in the Common Areas may be conveyed to Purchasers for cabana use; eight (8) individual commercial parcels of real estate to which the fee simple titles together with a respective undivided interest in the Common Areas may be conveyed to Purchasers for business and commercial use; to establish the Association and the Board to administer the Condominium Property; and to create and provide for the enforcement of covenants, easements, restrictions, assessments, charges, and liens in order to provide for the benefit and well-being of the Unit Owners and in order to promote and preserve the value of the Condominium Property.

### **ARTICLE III**

#### **GENERAL DESCRIPTION OF BUILDINGS**

The buildings of the Condominium consist of three (3) structures containing, in total, the living areas of 289 Residential Units, the cabana areas of 20 Cabana Units and the commercial areas of eight (8) Commercial Units. These Unit Buildings are numbered separately, as detailed in the Drawings, as Nos. A through C.

The principal materials of which the Unit Buildings are constructed are wood, brick, concrete, glass, stone, drywall, shingles and concrete block. The number of stories in each Unit Building are detailed in the Drawings.

There are certain commercial facilities which are a part of the condominium. These facilities are identified as such on Exhibits B, C and D. The Board may permit the use of the Common Areas and

Units owned or leased by the Association for community laundry facilities, a management and resale office, a resident manager's office or apartment, one or more maintenance employee's apartments and any other lawful purpose.

## **ARTICLE IV**

### **UNITS:**

#### **DESCRIPTIONS, DESIGNATIONS AND BOUNDARIES**

**A. Definition of Unit.** A Unit consists of the floor area of each group of rooms that are designated and detailed to constitute one Unit in the Drawings. A Unit shall further consist of the following:

(i) the undecorated interior surface of the perimeter walls bounding said rooms (the "Perimeter Walls"), and all materials, frames and space comprising the interior walls located within the bounds of such Perimeter Walls, except any interior walls which constitute a structural, load-bearing or component element of any Unit Building or contain any pipes, wires, conduits, ducts or similar Common Areas that serve another Unit (the "Interior Walls") and the undecorated interior surfaces of such excluded walls;

(ii) all doors, including without limitation, sliding glass doors, door jambs and hardware, and finishing trim located in the Perimeter or Interior Walls;

(iii) all window frames, windows, and window screens located in the Perimeter Walls or located in doors which are located in the Perimeter Walls;

(iv) all control knobs, switches, thermostats, outlets, equipment and fixtures, that constitute a part of any duct, plumbing, electrical, heating, or utility system or cooling system, if any, serving such rooms that are situated within the Perimeter Walls;

(v) if applicable, the entire manufactured fireplace assembly, the hearth, the flue pipe and exhaust duct, and the flue vent cap;

See 12th Amend. Sec. 2.

(vi) those portions of the forced air gas ducts, vents and registers and the condensing unit, the air handler/blower equipment, the ducts, the vents and registers, the wiring and the plumbing and tubes constituting the heating and air conditioning systems situated within the Perimeter or Interior Walls of a unit and which only serves

such unit (notwithstanding which, the Association maintains at Association expense);

(vii) all pipes, lines, valves, conduits, ducts, wiring, meters and other equipment that are situated within the Perimeter or Interior Walls of a Unit and which only serve such Unit;

(viii) the undecorated interior surface of the ceiling of such rooms;

(ix) the undecorated interior surface of the flooring of such rooms;

(x) the undecorated interior surfaces of the walls, ceiling, floor, stairs and landing of the entry to a Unit, if applicable; and

(xi) All areas of space, wall coverings, floor coverings, personal property, and all fixtures located within the bounds of the floor, ceiling, and wall surfaces described above.

Interior Walls situated within the boundaries of each Unit are approximately located in the Drawings. Those Interior Walls constituting part of a Unit may, from time to time, be removed, altered or replaced by the Unit Owner without requiring an amendment to this Declaration or the Drawings.

See 3rd Amend. Sec. D.

**B. Number of Units; Unit Designations.** There are 289 Residential Units, eight (8) Commercial Units and twenty (20) Cabana Units, located in the three (3) Unit Buildings. The graphical designation, location and approximate area of each Unit, together with the number of rooms comprising each Unit, are detailed in the Drawings.

Each group of rooms constituting a Unit is graphically designated in the Drawings by separately assigned numbers. No Unit bears the same designation as any other Unit. The table attached to this Declaration as Exhibit B sets forth for each Unit its numerical designation, street address, the Percentage Interest of the Unit, its approximate area and the total number of habitable or commercially usable rooms in the Unit.

**C. Access.** Each Unit shall have direct access to the Common Areas immediately adjacent to such Unit and through such Common Areas to the sidewalks, driveways and parking areas of the Condominium. Each Unit shall have access to a dedicated street and

to the Recreational Facilities.

## **ARTICLE V**

### **COMMON AREAS**

**A. Definition.** The Common Areas include the Land and all the buildings, improvements, easements, rights and appurtenances constructed on, encumbering or belonging to the Condominium Property, excepting there from the Units as defined in Article IV herein or in any amendment to this Declaration. The Limited Common Areas, as defined in Article VI herein or in any amendment to this Declaration, constitute the portions of the Common Areas which are reserved for the private use and enjoyment of certain Unit Owners. The Common Areas include, without limitation, the hot water heaters, air-conditioning and humidifying equipment and gas furnaces serving the Units (not including air-conditioning units installed in windows), and all pipes, wires and ducts extending from such equipment to each Unit, the commercial space located in the Common Areas, the garage, and two (2) apartments located on the first floor of the High Rise Building.

See 5th Amend. Sec. 3.

The Declaration and Drawings were amended by the 5th Amendment to redesignate certain portions of the Common Areas as Limited Common Areas as shown on the Drawing attached hereto as Exhibit C.

All costs associated with the maintenance, operation, repair, and replacement of the Limited Common Areas designated as High Rise Building Limited Common Areas on the attached Exhibit shall henceforth be assessed to the high rise building unit owners ("High Rise Building Unit Owners").

All costs incurred in maintaining, operating, repairing and replacing the Limited Common Areas designated as Low Rise Building Limited Common Areas in the attached Exhibit shall henceforth be assessed to the low rise building unit owners ("Low Rise Building Unit Owners").

See 5th Amend. Sec. 10.

Notwithstanding the foregoing, the Low Rise Building Unit

Owners and their respective heirs, administrators, successors, assigns, tenants, invitees and licensees shall have the right of ingress and egress on, over and across that portion of the High Rise Building Limited Common Area consisting of an existing entrance and driveway connecting the driveway located on the Low Rise Building Limited Common Area to Dana Avenue, which right of ingress and egress shall not be obstructed or impaired by the Association or by the High Rise Building Unit Owners.

See 5th Amend. Sec. 11.

Notwithstanding the foregoing, the present Low Rise Building Unit Owners (as of March 25, 1988) shall have an irrevocable license to use the swimming pool and associated facilities located on the High Rise Building Limited Common Area with the right of ingress and egress thereto for as long as such Unit Owner resides in his or her Unit and remains a Unit Owner. The license conferred hereby shall terminate automatically upon the conveyance of such Low Rise Building Unit Owner's Unit or when such Unit Owner leases or otherwise ceases to use his or her Unit as a personal residence.

**B. Ownership.** The Common Areas of the Condominium Property are owned by all of the Unit Owners as tenants in common. An undivided interest in the Common Areas shall be an appurtenance of each Unit. The interest in the Common Areas appurtenant to each Unit may not be divided or partitioned from the fee simple interest in the Unit. A Unit Owner may not transfer any interest in the Common Areas appurtenant to his Unit without a simultaneous conveyance of his Unit to the same transferee.

**C. Percentage Interest.** The interest in the Common Areas appurtenant to each Unit is the Percentage Interest of such Unit as set forth in the table attached hereto as Exhibit B. Except as otherwise provided herein for Commercial Units, the Percentage Interests set forth in the Exhibit shall not be altered except by an amendment to this Declaration unanimously approved by all Unit Owners affected.

**D. Lease of Common Areas.** The Association shall have the power to lease those portions of the Common Areas that are designated as commercial space in the Drawings. The Association

may charge rent for such leases.

**E. Surface Parking Spaces.** The Association may, from time to time, and for such fees and upon such terms and conditions, if any, as it may from time to time establish, assign surface parking spaces to the various Unit Owners.

**F. Storage.** The Association shall have the power to assign a particular storage bin, enclosure or area to the use of a particular Unit.

## **ARTICLE VI**

### **LIMITED COMMON AREAS**

**A. Definition.** The Limited Common Areas appurtenant to each Unit shall consist of:

(1) The balcony, deck or patio which is reserved to the use of only that Unit; and

(2) All other Common Areas, whether located within the bounds of one Unit or otherwise, to which a Unit has direct access and which serve only one Unit or are rationally of limited use for less than all Units.

(3) Any garage space for which the exclusive right to use has been conveyed to the Owner of such Unit.

**B. Dana Properties, Inc.'s Exclusive Easement to Use and Convey Garage Parking Spaces.** Dana Properties, Inc. hereby reserves to itself, its successors and assigns, an exclusive easement to use all garage parking spaces (the "Spaces") designated as Limited Common Areas on the Drawings. Dana Properties, Inc. may transfer the exclusive easement to use a Space by an easement deed or the grant of an easement in the deed of a Unit to the Purchaser of a Unit, and may transfer an exclusive easement to use any number of Spaces to the Association, which may dispose of the exclusive easements as it sees fit, provided that such easements shall be transferred only to the Association or Unit Owners. Dana Properties, Inc. or the Association may charge such fee for the transfer of an exclusive easement to use a Space as each desires.

A Unit Owner may transfer his exclusive easement to use a Space only to another Unit owner or to the purchaser of a Unit,

provided that such transfer complies with all pertinent Rules promulgated by the Association from time to time. If the transfer of a Space is to the purchaser of a Unit, such transfer may be by easement deed recorded concurrently with or after the deed to the Unit or by the grant of an easement in such deed to the Unit. If the transfer is to an existing Unit Owner, the transfer shall be by easement deed. All easement deeds shall be promptly recorded and a certified copy shall be presented to the Secretary of the Association, who shall maintain a record of the owners of the exclusive easements to use any such Space. Any transfer of an exclusive easement to use any such Space that does not comply with this Declaration and such Rules shall be null and void and of no force or effect.

**C. Ownership.** The Limited Common Areas of the Condominium Property constitute part of the Common Areas and are owned by all of the Unit Owners as tenants in common, subject to the rights of each Unit owner exclusively to use and enjoy the Limited Common Areas appurtenant to his Unit or which have been assigned to his Unit or to which he owns the exclusive easement to use. Limited Common Areas located adjacent to more than one Unit may be used only by the Owners of such adjacent Units which are reasonably served by such shared Limited Common Areas, unless otherwise provided by this Declaration or the Drawings or any amendment thereto. Each Unit Owner may convey his rights and interest in the Limited Common Areas appurtenant to his Unit only in conjunction with a simultaneous conveyance of his Unit to the same transferee, except with regard to the Spaces as provided in Article VI, Section B above.

See 2nd Amend.

All of the property subject to the Declaration, and each part thereof, shall be held, sold and conveyed subject to the easements, restrictions, covenants and conditions set forth in the Declaration as the same is hereby supplemented and amended, all for the purpose of protecting the value and desirability of the Condominium and which shall run with the land and be binding upon all parties having any right, title or interest therein, or in any part thereof, their heirs, successors and assigns and shall inure to the benefit of each Unit Owner.

## ARTICLE VII

### **MAINTENANCE; REPAIRS; MANAGEMENT ALTERATIONS; IMPROVEMENTS.**

Responsibility for the maintenance and management of the Condominium Property and restrictions upon the use and alteration of the Condominium Property are hereby established as provided in this Article.

**A. Units.** Each Unit Owner or occupant of a Unit shall repair, replace, and maintain in good order and condition, at the Unit Owner's or occupant's expense, all portions, equipment and components of his Unit except for exterior windows and doors, which shall be maintained by and at the expense of the Association. This responsibility of repair and maintenance includes without limitation promptly furnishing all necessary materials and performing or causing to be performed at his own expense all maintenance, repairs and replacements within his Unit which, if omitted, would adversely affect the safety of the Condominium Property. Each Unit Owner shall maintain those portions of his Unit which are adjacent to any Common Areas in accordance with the maintenance and architectural Rules established by the Board or set forth in this Declaration.

If any Unit Owner or occupant fails to maintain his Unit in the manner required herein and if the Board determines that any maintenance, repair, or replacement of any portion or component of such Unit is necessary to ensure public safety, to permit reasonable use or enjoyment of the Condominium Property by other Unit Owners, or to prevent damage to or destruction of any other part of the Condominium Property, the Board may authorize its employees or agents to enter the Unit in accordance with the provisions of Article XIII of this Declaration at any reasonable time to complete the necessary maintenance, repairs, or replacement. Thereafter, the Board may levy a Special Individual Unit Assessment against the Owner of such Unit for all reasonable expenses incurred by the Board in effecting such repair, maintenance or replacement.

**B. Common Areas.** Except as otherwise provided herein, the Association shall maintain, administer, repair and replace all portions of the Common Areas. All incidental damage caused to a Unit in

connection with any work performed on behalf of the Association in or upon any Common Areas shall be promptly repaired at the expense of the Association, except as otherwise provided herein.

**C. Liability for Damage by Unit Owner.** In the event any Common Areas or any portion of a Unit which the Association is required to maintain are damaged by the intentional, reckless, or negligent act or failure to act of any Unit Owner or occupant, his family, guests, or invitees, the Board may levy a Special Individual Unit Assessment against such Unit Owner for the cost of repairing or replacing the damaged property. The Association shall be entitled to enter a Unit to repair any Common Areas adjacent to such Unit and any portion of a Unit the Association is required to maintain in accordance with the provisions of Article XIII of this Declaration. The Association shall repair or replace, at its own expense, all personal property, all portions of any Unit, and all other portions of the Condominium Property which are damaged as a result of the Association's performing its maintenance rights or obligations; provided that if the Board determines that the intentional, reckless, negligent or willful act or omission of any Unit Owner, occupants, or his guests or invitees, caused the Association to undertake the special maintenance or repairs that caused the incidental damage to the Condominium Property, the Board may charge the expense of repairing such damaged property against the responsible Unit Owner as a Special Individual Unit Assessment.

**E. Report of Damage.** Each Unit Owner shall promptly report to the Board any damage or occurrence in or adjacent to his Unit requiring repairs for which the Association is responsible. In the event any such damage shall remain unreported for a period exceeding thirty (30) days from the date the damage occurred, the owner responsible for reporting the damage shall be liable for all costs incurred by the Association in repairing the same.

\*Note Ref.E: Should an Owner or lessee not be in the Unit for an extended period of time, it is the responsibility of the Owner to make arrangements for someone reliable to periodically check the Unit.

**F. Management of the Condominium Property.** The Board has the authority and the responsibility to manage and administer the Condominium Property on behalf of all Unit Owners and the Association. The Board may retain and employ on behalf of the Unit Owners and the Association a managing agent and may delegate to

the agent such duties and services as the Board might otherwise be authorized or obligated to perform. The managing agent shall have professional qualifications and experience similar to or greater than that of managing agents for similar professionally managed condominiums, which experience and qualifications shall also meet the minimum general requirements of lenders holding first mortgages on seventy-five percent (75%) of the Units encumbered by first mortgages. The employment terms and the responsibilities of the managing agent shall be governed by a written management contract. The Board may pay a reasonable compensation to the managing agent. Such compensation shall be a Common Expense.

See 2nd Amend. Sec. IV.

The Board shall retain and employ, or cause to be retained and employed, on behalf of all Unit Owners and the Association, a resident manager, and shall delegate to the resident manager the supervision of the day-to-day management of the Condominium Property. The Association may purchase, no later than the date of the expiration of the Declarant Control Period as defined in Article IX, Section D, a Unit of its choice for the use and occupancy of the resident manager. The Association may purchase such Unit for such or may finance all or a portion of the purchase price and secure all unpaid sums by one or more mortgages. All expenses incurred by reason of the employment of the resident manager, including mortgage payments, assessments, taxes and insurance for the Unit so purchased, except salary and related expenses if the resident manager is not directly employed by the Association, shall be Common Expenses.

The Board may employ on behalf of the Association such employees or contractors as the Board may deem necessary in order to perform the maintenance, repair, and administrative duties of the Association.

G. (Deleted).

**H. Improvements; Alterations.** Nothing shall be done in or to any Unit or in, on, or to any Common Areas which will impair the structural integrity of any building or other improvement. No person shall alter any structural component of any building or any other improvement located in any Common Areas except as hereinafter provided. The Association may make, but has no obligation to make

improvements to the Common Areas; such improvements shall be made only if at least eighty percent (80%) of the members of the Board consent thereto.

(1) Common Areas Bounding Unit. Except as otherwise provided herein, no Unit Owner or other person shall make any addition, partition, or alteration or improvement in or to the Common Areas bounding or adjacent to his Unit without the prior written consent of the Board and, if required in the mortgage documents, the holder of the first mortgage on his Unit. The Board shall be obligated to answer in writing any written request by a Unit Owner for approval of such a proposed addition, partition, alteration or improvement within sixty (60) days after receiving such request. The failure of the Board to answer in writing any such request within the stipulated time shall constitute the consent of the Board to the proposed addition, partition, alteration or improvement. The Board has the authority to delegate its responsibilities hereunder to the President of the Association or to a committee of Unit owners or Board members formed for such purpose.

If any Unit Owner damages the Unit of another Unit Owner or any Common Areas as a result of making any such addition, partition, alteration, or improvement to the Common Areas surrounding his Unit, such Unit Owner shall be responsible for the cost of repairing such damage.

(2) Common Areas. Except as provided in Paragraph (1) above, no Unit Owner, occupant, or other person on behalf of a Unit Owner or occupant shall make any addition, improvement, partition, or alteration to any Common Areas.

With the exception of contracts for which funds were allocated in the annual operating budget and further excepting contracts to remedy circumstances reasonably determined by the Board to be an emergency, the Board may enter into a construction contract or undertake an addition, alteration or new improvement to any Common Areas costing in excess of \$10,000. only if the plans and specifications for such addition, alteration, or improvement have been approved in writing by Unit Owners entitled to exercise a majority of the voting power of all Unit Owners. If such plans are approved by such number of Unit Owners, the Board may commence such addition, alteration or new improvement, and it either may charge all Unit Owners an Additional Operating Assessment for the cost thereof or may pay such costs from the Association's reserve funds, or both.

Any addition, alteration or improvement which costs less than \$10,000, or which was funded in the annual operating budget, or which will reasonably remedy an emergency situation, may be undertaken by the Board without the prior approval of the Unit Owners, and the cost thereof shall constitute a Common Expense.

Notwithstanding the above, if any addition, alteration or improvement to any Common Areas shall be requested by any Unit Owner independent of any action by the Board, and if in the opinion of eighty percent (80%) of the members of the Board, such requested addition, alteration or improvement benefits exclusively such Unit Owner requesting the same and is not necessary to ensure public safety, to permit reasonable use of the Condominium Property, or to prevent damage to any part of the Condominium Property, then the Board shall not undertake any such addition, alteration or improvement until the Unit Owner requesting the same shall agree in writing to repay within a period not exceeding twelve (12) months by one or more installments of a Special Individual Unit Assessment all expenses incurred to complete such addition, alteration or improvement, or to pay all such expenses directly on behalf of the Association, and to pay all expenses for the maintenance of such addition, alteration or improvement.

I. Connecting of Units. In the event a Unit Owner owns two or more adjacent Units, said Unit Owner may connect those Units and shall have an exclusive easement to use so much of the Common Areas dividing the units as is necessary for such purpose if he obtains the prior written consent of the Board, and if required in the mortgage documents, the prior written consent of the holders of the first mortgages of such Units and shall have an exclusive easement to use so much of the Common Areas dividing the units as is necessary for such purpose. The Board shall be obligated to answer in writing any written request by a Unit Owner in the same manner as provided in Paragraph G(1) of this Article. The Board has the authority to delegate its responsibility hereunder in the same manner as provided in Paragraph G(1) of this Article. Such Unit Owner shall be obligated, in a manner satisfactory to the Board, at his expense, to close any openings between such Units prior to separately conveying such connected Units. In the event the Unit Owner fails to close said openings, the Board, upon seventy two (72) hours written notice, may enter into such Units and close said openings. All costs so incurred by the Board shall be equally assessed against such Units as a

Special Individual Unit Assessment.

Connected Units will be treated by the Association for all purposes as the prior number of separate Units until such time as the Declaration and Drawings are amended as provided in Article XV herein, which amendment may be done but is not required.

If any Unit Owner damages the Unit of another Unit Owner or any Common Areas as a result of such connecting of Units, such Unit Owner shall be responsible for the costs of repairing such damage.

**J. Commercial Units: Lease, Division, Combination.** The owner of a Commercial Unit may lease any portion of his Unit for any term as he may desire.

The owner of a Commercial Unit or Units may divide or combine his Unit or Units to create a new Unit or Units ("New Units") only if the following requirements are met:

**a.** The New Units shall comply in all respects with the local building and zoning codes;

**b.** The total of the Percentage Interest of the New Units shall equal the Percentage Interest of the original Unit or Units; and

**c.** The owner of the New Units shall pay all costs of amending the Declaration and the Drawings to reflect creation of the New Units as required by the Condominium Laws. The amendment shall be filed within sixty (60) days after the completion of the New Units.

Upon the filing of the amendment to this Declaration, each New Unit shall have one (1) vote in Association matters and shall be subject to the terms of this Declaration in the same manner as was the original Unit or Units.

## **ARTICLE VIII**

### **USE OF CONDOMINIUM PROPERTY AND RESTRICTIONS**

#### **THEREON**

The following restrictions and covenants concerning the use and occupancy of the Condominium Property run with the Land and are binding upon every Unit Owner or occupant, and their family members, guests, and invitees. All or any of such restrictions and

covenants may be modified or revoked as hereinafter provided in Article XV.

The Association or the Board may adopt, amend, and repeal reasonable Rules pertaining to the maintenance and administration of the Condominium Property and to the preservation of the health, safety, and general welfare of the Unit Owners or occupants. Written notice of such Rules shall be delivered to each Unit Owner or occupant.

Each Unit Owner or occupant shall be responsible and liable for ensuring that his family members, guests, and invitees comply with the following restrictions and the published Rules. The Board shall have the authority to suspend a Unit Owner's voting rights in the Association and the Unit Owner's or the occupant's privilege to use recreational facilities, if any, for a period beginning on the date of any infraction of the provisions of this Declaration or the published Rules and ending not later than thirty (30) days after the date such infraction is remedied by the Unit Owner. In its discretion the Board may also assess a fine not exceeding \$50. per day for each day any such infraction continues after the Board delivers written notice of such infraction to the responsible Unit Owner.

No use of any Residential, Commercial or Cabana Unit or of the commercial space in the Common Area shall endanger the security of the residents of the Condominium Property, or unreasonably burden the Common Areas, as determined by the Board.

**A. Use of Residential Units.** Except as otherwise permitted herein, each Residential Unit shall be occupied and used exclusively for private residential purposes and purposes customarily incidental to a residence, provided that a Unit Owner or occupant who keeps business or professional records or accounts in his Residential Unit for personal use, or makes business or professional telephone calls from his Residential Unit shall be deemed to be using his Unit in a manner customarily incidental to a residential use. Upon the prior written approval of the Board, a Residential Unit may be occupied and used by a civic or charitable organization.

**B. Use of Commercial Units.** Commercial Units are restricted exclusively to nonresidential use, and specifically to commercial uses which conform to the applicable zoning regulations of the City of Cincinnati, as the same may be amended from time to time, and may not be used for any other purpose by the Unit Owners or any future

Unit owner. No commercial Unit Owner shall permit his Unit to be used or occupied for any prohibited purpose.

**C. Sale of Commercial Units: Right of First Refusal.** The Association or its designee shall have a right of first refusal ("Right") upon each and every bona fide written offer to purchase, lease or sublease a Commercial Unit ("Offer"). The Right shall entitle the Association or its designee to purchase, lease or sublease the Commercial Unit on the same or better terms and conditions as contained in the Offer. The Unit Owner shall give the Association or its designee written notice of the terms and conditions of the Offer and a copy of the Offer before he accepts it. The Association may exercise the Right within thirty (30) days from receipt of written notice and a copy of the Offer. If the Association determines not to purchase, lease or sublease the Commercial Unit, it shall issue to the Unit Owner, within such time a certificate in recordable form stating the designation of the Commercial Unit, the name of the Unit Owner, and the Association's or designee's decision regarding the exercise of the Right. If the Association determines to exercise the Right, it shall, within such time, give written notice of such exercise to the Unit Owner. The purchase, lease or sublease of a Commercial Unit that does not comply with this provision is null and void, and shall be of no force or effect.

**D. Use of Cabana Units.** No Cabana Unit shall be used as a temporary or permanent living area but shall be used only during the season in which the swimming pool is open, subject to the Rules promulgated by the Association from time to time.

**E. Use of Common Areas.** The Common Areas may be used by Unit Owners, their tenant, families, guests, and invitees only in accordance with the purposes for which they are intended or for any reasonable purposes incidental to the residential and, as applicable, cabana or commercial use of a Unit, including access to and from any Unit. All uses of the Common Areas shall benefit or promote the health, safety, welfare, convenience, comfort, recreation, and enjoyment of the Unit Owners and occupants and shall comply with the provisions of this Declaration, Ohio law, and the Rules established by the Board. The right of a non-occupant Unit Owner, his family, guests and invitees shall be deemed delegated to any tenant of such Owner's Unit and the non-occupant Unit Owner, his family, guests and invitees shall have the right to use the Common Areas only as guests or invitees of the tenant of the Unit.

**F. Use of Limited Common Areas.** Each Unit Owner, for himself, his tenants, guests, invitees, and family members, is hereby granted an irrevocable easement to exclusively use and occupy the Limited Common Areas adjacent to his Unit or appurtenant to his Unit. Each Unit Owner, for himself, his tenants, guests, invitees, and family members, is further granted an irrevocable easement to use and occupy Limited Common Areas adjacent or appurtenant to his Unit and any other Unit or Units exclusively with the Owner, occupant, guests, invitees, and family members of such adjacent Unit or Units. All Limited Common Areas shall be used in accordance with requirements of Ohio law, this Declaration, and the Rules established by the Board. The right of a non- occupant Unit Owner and his guests, invitees and family to use the Limited Common Areas shall be deemed delegated to any tenant of such Owner's Unit and the non-occupant Unit Owner, his family, guests and invitees shall have the right to use the Limited Common Areas only as guests or invitees of the tenant of the Unit.

**G. Hazardous Actions or Materials.** Nothing shall be done or kept in any Unit or in or on any Common Areas which might reasonably be expected to increase the cost of casualty or public liability insurance covering the Condominium Property or for the property of the Unit Owners without the prior approval of the Board. No Unit Owner shall suffer any act to be performed or any property to be kept in his Unit, or in the Limited Common Areas appurtenant to his Unit which might result in the cancellation of any insurance covering the Condominium Property or the personal property of the Unit Owners, or which would violate Ohio law.

**H. Signs; Advertisements.** No sign, advertisement, poster, circular notice, or other lettering shall be exhibited, displayed, inscribed, painted or affixed in or upon any part of any Common Areas or in or on any vehicle parked in such areas by any Unit Owner or occupant, except: (1) signs approved by the Board which are placed on the Common Areas to limit or otherwise regulate the use of the Common Areas; (2) street identification signs; (3) directional signs approved by the Board; and (4) any other sign, including signs relating to the Commercial Units, approved by the Board in writing.

**I. Animals.** No person may keep, breed, board or raise any animal, livestock, reptile, or poultry of any kind for breeding or other commercial purpose in any Unit, or in or upon any Common Areas. The Board shall be entitled to establish Rules regulating the keeping

of domestic pets including Rules limiting the size, number, and type of pets, prohibiting certain types of pets, limiting the activities of pets in the Common Areas, and requiring Owners to clean up after their pets. Each Unit Owner shall keep any permitted domestic pet in accordance with the Rules established by the Board.

If the Board determines that a pet constitutes a nuisance or creates a detrimental or dangerous condition for the Unit Owners, the Board may order the Owner to remove any such pet from the Condominium Property; and the Board may charge any pet owner the costs of repairing any damage to the Condominium Property that is caused by his pet.

**J. Nuisances.** No person may conduct any noxious or offensive activity in any Unit or in or upon any Common Areas.

**K. Business, Trade.** Except as expressly provided in this Declaration, no industry, business, trade, occupation or profession of any kind may be conducted, operated or established on any part of the Condominium Property without the prior written approval of the Board.

**L. Visible Areas.** No Unit Owner shall place air conditioning equipment in any window of his Unit without the prior written consent of the Board. With the exception of air conditioning equipment approved by the Board in writing, all windows located in Perimeter Walls or in doors attached to Perimeter Walls shall contain clear glass or clear acrylic material. All draperies, blinds, or curtains covering the inside of any window shall show a solid white color or lining to the exterior. Nothing shall be hung or displayed in or on any window except the above-described draperies, blinds, curtains, or air conditioning equipment without the prior written approval of the Board.

No person shall paint or otherwise decorate any exterior portion of a Unit that is adjacent to a Common Area, including without limitation any exterior surfaces of window frames, doors, screens, or storm doors, without the prior written approval of the Board. No person may hang, place, display, or attach any sign, picture, advertisement, or other visual display on the walls of any building or other improvement except the Perimeter Walls or Interior Walls of a Unit without the prior written approval of the Board.

**M. Recreational Facilities.** The Recreational Facilities may be used for general recreational purposes by only Residential Unit Owners and occupants, their families, invitees, and guests.

Commercial Unit Owners and occupants and their invitees and guests have no right to use the Recreational Facilities. All persons using said facilities will comply with the Rules established for such facilities by the Board.

**N. Renting and Leasing.** No Unit, or any part thereof, may be used or rented for hotel or transient uses. "Hotel or Transient Uses" include all uses in which the occupant is provided customary hotel services such as room service for food and beverage, maid service, furnishing laundry and linen, and similar services, and includes leases to roomers or boarders of a portion of a Unit only. No Unit may be leased for an initial stated term of less than six months without the prior written approval of the Board.

Any Unit Owner who leases his Unit in violation of this Paragraph or in violation of any Rules of the Board shall be subject to such reasonable penalties as the Board may deem appropriate. Each Owner of a leased Unit shall be responsible for the cost of repairing any damage to any Unit or Common Areas that is caused by any occupant of such Unit. If the Association repairs such damage, the cost of such repairs may be charged to the responsible Unit Owner by a Special Individual Unit Assessment.

**O. Vehicles.** The Board shall be entitled to create and enforce reasonable Rules concerning the parking of any vehicle permitted in the Common Areas. The Board may levy Special Individual Unit Assessments against Unit Owners who violate such Rules or suffer such Rules to be violated by their family members, guests, invitees, or tenants; and the Board shall be authorized to cause the removal of any vehicle violating such Rules, as permitted by law.

**P. Architectural Control.** With the exception of improvements made by Dana Properties, Inc. during the period Dana Properties, Inc. sells the Units pursuant to a common promotional plan, no person shall undertake or commence or contract for any changes or improvements to any Common Area or Limited Common Area until the plans and specifications showing the nature, type, shape, size, color, and location of any of such changes or improvements have been approved by the Board or its designated committee.

**Q. Building on Easements.** With the exception of such structures, landscaping, or other improvements as may exist at the time this Declaration is filed of record, no structure, landscaping, or other improvement shall be located, constructed, installed, or permitted to remain in any easement area designated

for the installation and maintenance of utilities and drainage facilities without the prior written approval of the Board and of the party to whom the easement was granted.

## **ARTICLE IX**

### **UNIT OWNERS' ASSOCIATION**

**A. Formation.** Declarant has formed, for the purpose of managing the Condominium and administering the mutual affairs of the Unit Owners, a non-profit Ohio corporation named 2444 Madison Road Condominium Owners Association, Inc.

**B. Membership, Notice of Membership.** Membership in the Association shall be extended only to persons who are Unit Owners, and each Unit Owner shall automatically become a member of the Association upon acquiring title to a Unit. Membership in the Association is a right appurtenant to and inseparable from a Unit Owner's fee simple title in a Unit; and such right of Association membership shall automatically transfer to any transferee of the fee simple title in a Unit at the time such title is conveyed.

Within thirty (30) days after the closing of his purchase of a Unit, each purchaser of a Unit shall notify the Secretary of the Association in writing of the following: (a) the purchaser's residence address, (b) the purchaser's business and home telephone numbers, (c) the name and address of each and every holder of a mortgage encumbering his Unit together with a copy of such mortgages, and (d) a copy of the Owner's recorded deed to his Unit.

**C. Voting Rights.** In connection with matters properly submitted to a vote of the Association members, the Owner or Owners of each Unit shall be entitled to cast one undivided vote for such Unit; provided that no Unit Owner shall be entitled to vote so long as he is in default in the payment of any Assessment hereunder.

(D&E Deleted)

**F. Service of Process.** The President of the Association shall serve as the statutory agent designated by the Association to receive service of process for the Association. Each newly elected President shall file an amended appointment of statutory agent with the Secretary of State, State of Ohio, within ten (10) days after his election.

## **ARTICLE X**

### **COMMON EXPENSES; COMMON SURPLUS; ASSESSMENTS; REMEDIES**

See 12th Amend. Sec. 3.

#### **A. Common Expenses.**

(l) Determination; Annual Operating Budgets. Each year the Board of Directors shall appoint two committees, one of which shall be composed of Owners of the High Rise Building Limited Common Area, and the other shall be composed of Owners of the Low Rise Building Limited Common Area (both Limited Common Areas are described in Article V hereto). Each committee shall prepare and submit to the Board of Directors, for its consideration and adoption, an Operating Budget for its respective area covering the estimated cost of maintaining, administering, repairing and replacing the Condominium Property in its Limited Common Area for the ensuing fiscal year. In addition, each such budget shall set forth the sums to be paid from the respective Operating Assessments into the respective Capital Improvement Funds. Such separate reserve funds shall be used solely for the purpose of repairing, restoring, replacing or improving the respective common areas.

The Board shall consider separately the budget recommendations of each budget committee, and not later than thirty (30) days prior to the end of the then fiscal year of the Association, shall adopt by separate resolutions a budget for the High Rise Building Limited Common Area and a budget for the Low Rise Building Limited Common Area for the coming fiscal year.

Not later than twenty (20) days after the adoption of each budget by the Board of Directors, the Secretary of the Association shall deliver to each Unit Owner a copy of the proposed budget applicable to such Owner's Unit, together with a written statement setting forth the annual amount and the monthly installments of the Annual Operating Assessments and any other charges against such Owner's Unit. Each budget adopted by the Board of Directors shall be effective at the beginning of the ensuing fiscal year, unless such budget is disapproved by a vote of seventy-five percent (75%) of the Members in good standing affected by such budget at a meeting called for such purpose, or in lieu of such meeting, such budget is disapproved in a writing signed by seventy-five percent (75%) of the

Members in good standing affected by such budget and filed with the Secretary of the Association prior to the beginning of the ensuing fiscal year. If the Board of Directors fails to adopt a proposed budget before the beginning of the ensuing fiscal year, or if a proposed budget is disapproved by the affected Members as provided above, then the Annual Operating Budget that was in effect for the preceding year shall continue in effect until such time as the Board of Directors adopts a new budget which is not disapproved by the affected Members as provided above. Such new Operating Budget shall be retroactive to the beginning of the fiscal year to which it applies.

The Board shall maintain a current list showing the amount of the monthly installment charged to each Unit for Common Expenses and the amount of any unpaid special assessments or unpaid operating assessment installments due from any Owner. This list shall be kept in the office of the Board and may be inspected by any Unit Owner within forty-eight (48) hours after delivering reasonable notice to the Board.

(2) Reserve Funds. The Board shall establish a contingency fund to be utilized for financing the operation of the Association during its first fiscal year and, thereafter, for paying such necessary costs and expenses of operating the Association and of repairing and maintaining the Condominium Property as shall exceed the funds specifically designated therefore in the operating budget for any fiscal year of the Association.

The Board shall also establish and maintain a capital improvements reserve fund to be utilized only for the purpose of repairing, restoring, replacing, or improving the buildings and other capital improvements, together with the fixtures or equipment associated therewith, or for the purpose of providing for expenses of a substantial and non-recurring nature.

The capital improvements reserve fund may be deposited in any institution or may be invested in any manner which the Board, in the exercise of reasonable business judgment, may deem beneficial for the Association. The proportionate interest of any Unit Owner in the capital improvement reserve fund and the contingency fund shall be considered an appurtenance of his Unit, shall not be separated from such Unit, and shall be deemed to be transferred with the fee simple title in such Unit.

**B. Common Surplus**. If at the end of a fiscal year of the Association the Board determines that a Common Surplus exists,

within thirty (30) days of the end of such fiscal year the Board shall notify in writing all Unit Owners of such Common Surplus. The Board shall apply said Common Surplus toward the capital improvement reserve fund to be collected in the ensuing fiscal year pursuant to the annual operating budget, provided that if the Unit Owners entitled to exercise seventy-five percent (75%) of the voting power of the Association shall determine at a meeting of the Association held no later than thirty (30) days after the end of the fiscal year that such sums should be reimbursed to the Unit Owners, or if Unit Owners entitled to exercise eighty-five percent (85%) of such voting power shall so determine in writing within said thirty (30) days, such Common Surplus shall be disbursed to the Unit Owners in proportion to the Percentage Interest of each Unit.

Notwithstanding the foregoing, any over-collection of Utility Assessments by the Association in any fiscal year shall be returned to the Unit Owners upon whom the Utility Assessment was levied. The amount returned to such Unit Owner shall be computed in the same manner as the Utility Assessment was computed, as provided in Section I hereof.

(C Deleted)

**D. Types of Assessments.** By accepting a deed to a Unit, each Unit Owner is deemed to covenant and agree to pay to the Association the following assessments: (i) an Initial Assessment; (ii) Annual Operating Assessments; (iii) Additional Operating Assessments; (iv) Special Capital Improvements Assessments; and (v) Special Individual Unit Assessments.

See 2nd Amend.

**E. Initial Assessment.** Each initial purchaser of a Unit shall be obligated to pay an Initial Assessment into the Association's contingency fund at the time the purchaser closes the purchase of the Unit. Such Initial Assessment shall be in an amount equal to two monthly installments of the Annual Operating Assessment chargeable to that Unit in the year of the Closing. No purchaser shall be entitled to a reimbursement from the Association of the Initial Assessment.

A "purchaser" of a Unit is any individual, group of individuals, or legal entity that purchases a Condominium Ownership Interest in a Unit from the Declarant or from a Unit Owner other than the Declarant.

**F. Annual Operating Assessment.** At the time the Board

completes the preparation of the annual operating budget, the Board shall allocate to each Unit its share of the total estimated Association expenses set forth in the budget. The Annual Operating Assessment chargeable to each Unit shall be computed by multiplying the Percentage Interest of the Unit by the amount of the total Common Expenses and Reserves set forth in the budget. For administrative convenience any such assessment may be increased to the nearest whole dollar. The total amount of the Annual Operating Assessment chargeable to a Unit shall be a continuing charge on that Unit commencing on the first day of each fiscal year of the Association.

The Annual Operating Assessment shall be due and payable from each Unit Owner in equal monthly installments, in advance, beginning on the first day of the month following the month of the date of the Closing and continuing on the first day of each and every month thereafter until the date the Unit Owner conveys his Condominium Ownership Interest in his Unit, unless otherwise established by the Board. Any Unit Owner may also prepay the Annual Operating Assessment in annual, semi-annual, or quarterly increments, at his option.

No Unit Owner may gain exemption from liability for the Common Expenses assessed against his Unit by waiving or foregoing the use or enjoyment of any of the Common Areas or by abandoning his Unit.

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

**H. Special Capital Improvements Assessments.** In addition to the Annual Operating Assessment and the Additional Operating Assessments which the Board may levy in any fiscal year, the Board may also levy in the same fiscal year special assessments for the purpose of defraying the cost of restoring, reconstructing, or replacing existing capital improvements constituting or situated upon the

Common Areas and for the acquisition of a Commercial Unit pursuant to Article VIII, subparagraph C hereof to the extent the capital improvements reserve fund shall be insufficient to accomplish such purposes. New capital improvements which do not replace existing improvements shall not be contracted for or constructed, and the Right to purchase a Commercial Unit shall not be exercised nor shall any assessments be levied therefore until such new improvements and the related assessments have been approved in a meeting of the Association by Unit Owners entitled to exercise not less than seventy-five percent (75%) of the total voting power of the Association. The Board shall not levy against any Unit Owner in any single year a Special Capital Improvements Assessment in excess of twenty-five percent (25%) of said Unit Owner's Annual Operating Assessment without first obtaining the approval in writing or by a vote at a meeting of the Association of Unit Owners entitled to exercise not less than seventy-five percent (75%) of the voting power of the Association of the contemplated restoration, reconstruction, or replacement to be funded by the assessment.

Any Special Capital Improvements Assessment shall be allocated to the Units in proportion to the Percentage Interest of each Unit. The Board shall notify the Unit Owners in writing of such assessments at least thirty (30) days prior to the date for payment of the assessment.

I. Special Individual Unit Assessments. The Board may levy against one Unit or any number of Units a special assessment to reimburse the Association for costs incurred on behalf of Units that are properly chargeable solely to those Units, including without limitation the cost of making repairs which are the responsibility of the Unit Owner, the cost of any additional insurance premiums separately allocable to the Unit Owner, the cost of any utility expense chargeable to the Unit Owner but not separately billed to the Unit Owner by any utility company, the cost of maintaining the garage, and all other charges that are deemed to be Special Individual Unit Assessments in this Declaration or are reasonably deemed to be such Assessments by the Board.

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

The Board may levy each month against each Unit in the High Rise Building a Utility Assessment to reimburse the Association for the cost of natural gas provided to heat and otherwise service the Unit and for the cost of electricity to operate the air-conditioning compressor. Prior to the commencement of each fiscal year of the Association the Board shall estimate the cost of providing natural gas to all of the Units in the High-Rise Building and the cost of electricity to operate the air-conditioning compressor servicing the High Rise Building. Each such Unit's annual Utility Assessment shall be computed by multiplying such estimated utility expense by each Unit's Utility Assessment Percentage stated in Exhibit B of this Declaration (as amended from time to time). Each such Unit's Utility Assessment shall be payable in monthly installments equal to one-twelfth of its annual Utility Assessment, and such installments shall be due and payable with such Unit's monthly installments of Operating Assessments. The Board shall notify the owner of each such Unit not less than fifteen (15) days prior to the commencement of each Association's fiscal year of the annual Utility Assessment and the monthly installments thereof charged to his Unit.

The Board or its managing agent may levy each month against each Unit a Utility Assessment to reimburse the Association for the cost of utilities provided to a Unit and not separately billed thereto as determined by the Board from time to time. Prior to the commencement of each fiscal year of the Association, the Board shall estimate the cost of providing such utilities to all of the Units. Each Unit's annual Utility Assessment shall be computed by multiplying such estimated utility expense by each Unit's Percentage Interest as stated in Exhibit B of this Declaration (as amended from time to time). Each Unit's Utility Assessment shall be payable as provided in the immediately preceding paragraph.

Collection of Utility Assessments shall be secured and enforced in the manner provided for other assessments in this Declaration. If the aggregate amount of Utility Assessments paid by all Unit Owners in a fiscal year exceeds the actual utility expense incurred during such year, such excess assessment shall constitute Capital Surplus of the Association subject to the terms of this Declaration but allocable only to the Unit owners who were required to pay the

Utility Assessment which created such surplus. If such aggregate amount of paid Utility Assessments is less than the actual utility expense incurred by the Association, the Board may collect such deficiency by levying Special Individual Unit Assessments computed on the basis of each Unit's Percentage Interest. The Board may modify the annual Utility Assessments and the monthly installments thereof from time to time when it determines that the utility expenses paid thereby will exceed the projected assessment amount. The Board shall deliver written notice of such modifications to the Unit Owners not less than fifteen (15) days before any new installment amount becomes effective.

With the exception of Utility Assessments and Special Individual Unit Assessments charged for violations of this Declaration, the Bylaws, or the Rules, the Board shall deliver written notice to the Owner of any Unit to be charged with a Special Individual Unit Assessment at least thirty (30) days prior to the date established for payment of the assessment.

**J. Nonpayment of Assessments; Remedies of the Association.**

(1) Late Charge; Acceleration. If any operating or special assessment or any monthly installment of an assessment shall remain unpaid for ten (10) days after all or any part thereof shall become due and payable, the Board may thereafter charge interest on such unpaid sum at the rate of twelve percent (12%) per annum or the highest rate permitted by law, whichever is less, and a collection charge of \$25., and the Board shall further be entitled to declare the entire unpaid balance of such assessment to be immediately due and payable and thereafter charge interest on said unpaid balance at the rate described above.

(2) Liability for Unpaid Assessment. Each assessment or installment of an assessment, together with interest thereon and any costs of collection, shall become the personal obligation of the Owner or Owners of the Unit beginning on the date the assessment or unpaid installment becomes due and payable. The Board may authorize the President, Vice-President, Secretary, Assistant Secretary, or Treasurer of the Association to institute an action at law on behalf of the Association against the Unit Owner or Owners personally obligated to pay any delinquent assessment. The personal obligation for a Unit's delinquent assessments shall not pass to successors in title who acquired a Condominium Ownership Interest in the Unit after any assessment became due and payable. Except as

otherwise provided herein, the transfer of a Condominium Ownership Interest in a Unit shall neither impair the Association's lien against that Unit for any delinquent assessments nor prohibit the Association from foreclosing that lien.

(3) Liens. All unpaid operating or special assessments or installments of assessments, together with any interest thereon or costs of collection, shall constitute a continuing charge in favor of the Association on the Unit against which the assessment was levied. If any assessment or monthly installment of an assessment remains unpaid for ten (10) days after it was due, the Board may authorize any officer or appointed agent of the Association to file a Certificate of Assessment Lien for all or any part of the unpaid balance of that Assessment, together with interest and costs, with the Recorder's Office of Hamilton County, Ohio. The Certificate shall contain a description of the Unit which the lien encumbers, the name or names of the record Owner or Owners of that Unit, the amount of the unpaid portion of the assessment, and such other information as Ohio law may require. The Certificate may be signed by the President, Vice-President, Secretary, or Treasurer of the Association or any special agent authorized by the Board in writing. Upon the filing of the Certificate, the subject Unit shall be encumbered by a continuing lien in favor of the Association. The assessment lien shall remain valid for a period of five (5) years from the date such certificate was duly filed, unless the lien is released earlier or satisfied in the same manner provided by Ohio law for the release and satisfaction of mortgages on real property, or unless the lien is discharged by the final judgment or order of any court having jurisdiction.

The assessment lien may be foreclosed in the same manner as a mortgage on real property in an action instituted on behalf of the Association by the President, Vice-President, Secretary, Treasurer, or the Association's attorney, pursuant to written authorization given to such officer by the Board. During the pendency of any action to foreclose the Association's lien, the Owner or Owners of the encumbered Unit shall be obligated to pay a reasonable rental for the use of the Common Areas and all common utilities. The Association, as plaintiff in any such action, shall be entitled to purchase the Unit at the foreclosure sale. If the Association shall institute such an action, interest on the unpaid assessment and the

costs of such action, including attorney's fees, shall be added to the amount of the assessment and other charges demanded in such action, to the extent permitted by Ohio law.

(4) Vote on Association Matters; Use of Recreational Facilities. If any operating assessment or installment thereof or special assessment against any Unit remains unpaid for thirty (30) days after it becomes due, the delinquent Unit Owner's voting rights upon Association matters and his privilege to use the Recreational Facilities shall be suspended for the period beginning on said thirtieth day after the assessment became due and ending on the date such assessment is paid.

5) Notice to Mortgagees. The Board or its agent shall notify the holder of the first mortgage on any Unit against which any levied assessment has remained unpaid for a period exceeding thirty (30) days that the assessment is delinquent.

**K. Subordination of the Lien to First Mortgages**. The assessment lien shall be subject and subordinate to the lien of any duly executed first mortgage on the encumbered Unit; and any holder of such first mortgage which comes into possession of a Unit by means of the remedies provided in the mortgage, foreclosure of the mortgage, or a deed or an assignment in lieu of foreclosure and any purchaser of a Unit in connection with the foreclosure of such first mortgage shall take the Unit free of any claims for unpaid assessments, charges, or unpaid installments of assessments thereof against the mortgaged Unit which became due and payable prior to the time such holder or purchaser took title to that Unit.

See 2nd Amend. Sec. VII.

**L. Sale of Unit; Certificate Regarding Assessments**. Every Unit Owner shall notify the Board in writing of any legal or equitable interest in his Unit which such Unit Owner intends to convey. A Unit Owner shall not convey any legal or equitable interest in his Unit, except a leasehold interest, until the President, Treasurer or any other agent authorized in writing by the Board of the Association certifies in writing that all assessments due and payable from such Unit Owner have been paid. This certificate shall be conclusive evidence of payment of any assessment represented therein to have been paid.

**ARTICLE XI**  
**INSURANCE**

**A. Fire and Extended Coverage Insurance.** The Association shall obtain and maintain insurance for all structures and improvements now or hereafter constituting the common Areas, including building service equipment and common personal property and supplies, against loss or damage by fire, windstorm, malicious mischief, vandalism and all other hazards ordinarily insured against in fire and extended coverage insurance policies issued in Hamilton County, Ohio (the "Fire Insurance"). The Fire Insurance shall further insure all bathroom and kitchen fixtures and cabinets, all wall to wall carpeting, parquet floor treatment, all built-in appliances, and all other built-in or installed fixtures and equipment now or hereafter located in any Unit, together with all Interior Walls, windows, doors and the frames, jambs, sashes and hardware thereof constituting part of any Unit. The wall coverings attached to the walls of each Unit and all non-affixed personal property located in each Unit need not be covered by the Fire Insurance. Each Unit Owner shall notify the Board of all permanent improvements valued in excess of \$5,000. made by the Unit Owner to his Unit. The Fire Insurance policy shall contain an agreed amount endorsement establishing coverage in an amount determined by the insurer from time to time to be sufficient to prevent the Unit Owners from becoming co-insurers under the terms of any applicable co-insurance provision, provided that such coverage shall not be less than the actual replacement cost of all buildings and improvements now or hereafter situated on the Condominium Property, exclusive of the cost of excavations, foundations and footings. Such policy shall also contain an "inflation guard" endorsement if available.

The Fire Insurance shall name the Association as the insured for the use and benefit of the Unit Owners. The insurance policy shall contain a waiver by the insurer of its right of subrogation for any claims against Dana Properties, Inc. and for any claims against the Association, the Association's Officers, the Managing Agent employed by the Association, the members of the Board, and the Unit Owners. The Fire Insurance policy shall provide by endorsement or otherwise that its coverage shall not be canceled, invalidated or suspended because of the conduct of any member of the Board or of

any Officer or employee of the Association, or of the Managing Agent employed by the Association unless the Association fails to remedy such conduct within thirty (30) days after the insurer delivers written notice to the Board specifying the conduct to be remedied.

The Fire Insurance policy shall contain or shall have attached thereto a standard mortgage clause customarily acceptable to institutional mortgage lenders in Hamilton County, Ohio in favor of each holder of a mortgage on a Unit. Such mortgage clause shall provide that all proceeds of the Fire Insurance policy shall be paid to the Association for the use and benefit of the Unit Owners and the named mortgagees as their interests may appear. The Fire Insurance policy shall further provide that the coverage of any mortgagee of a Unit will not be canceled, substantially modified, or otherwise affected by the failure of the Association to pay the premiums for the Fire Insurance or by the conduct of any Unit Owner or household member of any Unit Owner, any occupant of the Unit, the Board, any Officer of the Association, or any agent or employee of the Association without the insurer's delivering written notice thereof to such mortgagee at least thirty (30) days prior to the date of such cancellation or modification.

The Board shall obtain the Fire Insurance policy from an insurer authorized to write insurance in the State of Ohio which has a financial rating of at least "A" and a general policy holder's rating of at least "Ten," as determined by the most current available edition of Best's Insurance Reports, or its successor.

The Board shall obtain one master Fire Insurance policy covering physical damage for the entire Condominium Property under which the insurance company will issue to each Unit Owner a certificate or sub-policy specifying the coverage applicable to his Unit and the undivided interest in the Common Areas appurtenant to his Unit. The cost of the premiums for the Fire Insurance shall be paid by the Association as a Common Expense.

**B. Receipt and Disbursement of Proceeds.** All proceeds received from the Fire Insurance policies and endorsements shall be received, held and disbursed for repairs by the Treasurer of the Association in accordance with the applicable provisions of the Bylaws.

**C. Liability Insurance.** The Association shall obtain and maintain a comprehensive policy of public liability insurance insuring the Association, the members of the Board, and the Unit Owners and

occupants of Units against claims for personal injuries and property damage occurring in, on, or about the Common Areas. This liability insurance shall insure against all risks that the Board may determine to be customarily insured against with respect to housing developments located in Hamilton County, Ohio which are similar to the Condominium in construction, purpose and use. The Board shall review the amounts of such coverage at least one time each fiscal year. In no event shall the amounts of such coverage be less than \$1,000,000 for any bodily injury or death and any property damage suffered in any one accident or occurrence. This public liability insurance policy shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of a Unit owner or occupant because of the negligent act of the Association, the Board, or other-Unit Owners or occupants. This policy shall also contain a cross liability endorsement under which the rights of any named insured under the policy shall not be prejudiced with respect to any action he may have against another named insured. Such policy shall further provide for thirty (30) days' written notice prior to cancellation or modification.

**D. Separate Unit Owner's Insurance.** Each Unit Owner or occupant may obtain insurance at his expense for his Unit in addition to the insurance obtained by the Association; however, no Unit Owner or occupant shall purchase any individual policy of fire or extended coverage insurance insuring against the casualties covered in the Fire Insurance policy. If any additional insurance obtained by any Unit Owner or occupant causes any diminution in the amount of proceeds payable to the Association under the Fire Insurance policy or causes any insurance coverage maintained by the Board to be otherwise brought into contribution with the Unit Owner's additional insurance, the Unit Owner or occupant who obtained the additional insurance shall be liable to the Association for any diminution or loss of proceeds suffered by the Association as a result of such additional insurance.

A Unit Owner or occupant may, at his own expense, obtain insurance against losses with respect to the personal property, furnishings, and improvements installed in his Unit, provided that if the Association obtains insurance for permanent improvements and built-in fixtures and equipment located in the Units, a Unit Owner shall not obtain insurance coverage exceeding the type and nature of coverage

commonly referred to as "tenants improvements and betterments." Any Unit owner who obtains insurance covering any portion of the Condominium Property other than personal property shall file a copy of the policy of such insurance with the Board within thirty (30) days after the purchase of the insurance or the cancellation thereof.

It is the responsibility of each Unit Owner to obtain, at his expense, public liability insurance with respect to events occurring within his Unit.

All insurance separately carried by a Unit Owner to cover his Unit shall contain a waiver by the insurer of subrogation rights against Dana Properties, Inc., the Association, the members of the Board, the Officers of the Association, and all Unit Owners and occupants.

**E. Other Association Insurance; Fidelity Bonds.** The Association may obtain and maintain contractual liability insurance, trustees', directors' and officers' liability insurance, worker's compensation insurance, and such other insurance as the Board may determine to be necessary to the welfare of the Association and the Unit Owners.

The Association shall obtain fidelity bond coverage with respect to persons handling Association funds. The amount of such bond coverage shall be reasonably determined by the Board but in no event shall such coverage be less than three (3) months aggregate assessment on all Units plus reserve funds. The Association shall be a named obligee on such bonds, and such bonds shall provide waiver of defenses by the insurer based on exclusion of persons serving without compensation from the definition of "employees." Such bonds shall further provide for thirty (30) days' notice prior to cancellation or modification.

**F. Board as Agent.** The Board is irrevocably appointed agent and attorney-in-fact for each Unit Owner and for each holder of a mortgage or other lien on a Unit and for each owner of any other interest in the Condominium Property for the purpose of adjusting all claims arising under insurance policies purchased by the Board on behalf of the Association, executing and delivering releases upon the payment of claims, collecting and disbursing all insurance proceeds paid to the Association, prosecuting any insurance claims pertaining to the Common Areas on behalf of the Unit Owners, and supervising the restoration of any buildings or improvements damaged by an insurable casualty.

## ARTICLE XII

### **DAMAGE; RESTORATION; REHABILITATION OF BUILDINGS**

**A. Damage to Common Areas Other than Unit Buildings.** If any improvements constituting a part of the Common Areas which are not a part of a Unit Building shall suffer damage or destruction from any cause or peril, the damaged property shall be repaired and restored and all insurance proceeds applied to the cost of such repairs, unless Unit Owners entitled to exercise at least seventy-five percent (75%) of the voting power of all Unit Owners and the holders of two-thirds (2/3) of first mortgages encumbering Units elect within thirty (30) days after such damage not to repair the damaged Condominium Property. To the extent that the Drawings depict the Common Area to be repaired or restored such repair or reconstruction shall be conducted in accordance with the Drawings and in the manner most likely to restore the Common Area to its appearance and function prior to the damage or destruction or in accordance with any new plans and specifications that are approved by the Unit Owners holding Percentage Interests equal to seventy-five percent (75%) or more of the total Percentage Interests in the condominium and are added to the Drawings by an amendment to this Declaration. Repair or reconstruction of elements of the Common Areas not depicted in the Drawings, such as landscaping, maintenance, facilities, walkways, and the determination of materials and manner of repair shall be as determined by the Board.

If the cost of reconstructing and restoring the damaged Common Areas other than Unit Buildings exceeds the insurance proceeds payable therefore the additional cost of such restoration shall be an expense of the Association which may be paid from the capital improvements reserve fund or which may be individually charged against the Units by a Special Capital Improvements Assessment.

**B. Damage to Unit Buildings.** If Unit Buildings containing Units having an aggregate of seventy-five percent (75%) or more of the total Percentage Interests in the Condominium are substantially damaged by any casualty or occurrence, the Unit Owners may elect within sixty (60) days after such damage not to repair or restore the damaged Unit Buildings and to terminate the Condominium. Such election shall require both the affirmative vote of Unit Owners entitled

to exercise at least seventy-five percent (75%) of the voting power of all Unit Owners and the prior written consent of the holders of two-thirds (2/3) of first mortgages encumbering Units. If a sufficient number of Unit Owners and Mortgagees elect not to restore the damaged property, the Condominium shall be terminated forthwith and all of the condominium Property shall be sold as upon partition.

If the unit owners elect to terminate the Condominium and not to repair the damaged Units, the net proceeds from the sale of all of the Condominium Property shall be delivered to the Treasurer of the Association, who shall add such net sale proceeds to any insurance proceeds to establish one fund. The Treasurer shall distribute said fund to each and every Unit owner and his mortgagees, as their interests may appear, in proportion to the Percentage Interest of his Unit. A Unit Owner shall not be entitled to receive any portion of such fund until all mortgages, liens and encumbrances on his Unit, if any, have been satisfied.

If the Unit Owners do not elect to terminate the Condominium, or in the event such damages shall occur to Unit Buildings containing Units having an aggregate of less than seventy-five percent (75%) of the total Percentage Interests in the Condominium, the repair or reconstruction shall be conducted in accordance with the Drawings, to the extent the Drawings depict the affected elements of the Units, or in accordance with any new plans and specifications that are approved by the Unit Owners holding seventy-five percent (75%) of the voting power of the Association and seventy-five percent (75%) of the voting power of the affected Units and added to the Drawings by an amendment to this Declaration. Elements of the Unit not depicted in the Drawings, such as kitchen equipment and facilities shall, to the extent of insurance proceeds allocated to the Unit, be repaired in accordance with the reasonable requests of the Unit Owner. Other elements of the Unit Buildings not depicted in the Drawings and not subject to the preceding sentence shall be repaired as determined by the Board. Each Unit Owner shall repair or reconstruct, at his sole expense, those damaged components of his Unit which are not covered by the Association's casualty insurance policy.

If the Unit Owners elect to repair or reconstruct the damaged Unit Buildings and if the insurance proceeds payable as a result of any damage or destruction thereof shall not be sufficient to pay the cost of the necessary repairs or restorations, the Board shall pay such excess costs from the capital improvements reserve fund. If the

capital improvements reserve fund is inadequate to pay such costs, the Board shall charge Special Capital Improvement Assessments against all Unit Owners in amounts sufficient to obtain the additional funds necessary to complete the repairs or restorations.

**C. Rehabilitation of the Condominium Property.** The Association may determine that the Condominium Property is obsolete in whole or in part and may elect by the affirmative vote of Unit Owners entitled to exercise at least eighty-five percent (85%) of the voting power of all Unit Owners, together with the written consent of a majority of the holders of first mortgages encumbering Units, to have all or any part of the Condominium Property rehabilitated. In the event the Association elects to rehabilitate the Condominium Property, any Unit Owner who voted not to rehabilitate the Condominium Property may elect to sell his Unit to the Association subject to any first mortgage which has encumbered the Unit for a period exceeding twelve (12) months or which is approved in writing by the Board, at the fair market value of that Unit as of the date the election to rehabilitate was held less the amount of any such first mortgage liens. Such dissenting Unit Owner shall exercise this election to sell his Unit by delivering written notice of such election to the President of the Association within five (5) days after the date of the election to rehabilitate. Such written notice shall contain the proposed selling price and the amount and holders of all liens and encumbrances affecting the Unit. If the Board and such dissenting Unit Owner are unable to agree upon the fair market price for the Unit, such price shall be determined by the majority vote of three appraisers to be selected as provided in Chapter 5311. The appraisers, their employees and authorized agents, shall be entitled to enter the Unit at reasonable times in order to determine its value. The price paid to such dissenting Unit Owner shall be a Common Expense. The dissenting Unit Owner shall convey to the Association title to his Unit free and clear of all liens and encumbrances thereon except the above-described first mortgage lien, if any, to which his Unit may be subject; and the dissenting Unit Owner shall pay all charges levied by his mortgage holders, if any, or otherwise incurred by the Unit Owner or the Association in connection with such conveyance.

## **ARTICLE XIII**

### **EASEMENTS AND LICENSES**

**A. Easement of Access and Enjoyment Over Common Areas.** Every Unit owner shall have a right and easement of enjoyment in, over and upon the Common Areas and a right of access to and from his Unit which rights shall be appurtenant to and shall pass with the title to his Unit. Except as otherwise provided herein, such rights of access and enjoyment shall be subject to the rights of other Unit Owners or occupants of Units to use the Common Areas and shall be further subject to the right of the Board to make reasonable Rules concerning the use of the Common Areas, provided that no Rule shall prohibit a Unit Owner's right of ingress or egress to any part of his Unit and Limited Common Area appurtenant thereto, or to any parking space in the Common Areas which may be assigned to his Unit by the Board. A Unit Owner may delegate his rights of access and enjoyment to family members, occupants of his Unit and such Unit Owner's guests and invitees. In the event two or more Units are combined, the Unit owner shall have the exclusive right to access through the Common Area openings which combine such Units.

**B. Easement for Encroachments.** If any part of the Common Areas encroaches or hereafter shall encroach on any part of a Unit or if any part of a Unit encroaches or hereafter shall encroach on any part of the Common Areas, and if such encroachment has resulted or hereafter results from (1) overhangs; (2) deviations in the construction or repair of any Unit Building or other improvement; (3) the shifting, settling, or moving of any structure; (4) errors in the Drawings; (5) deviations in the reconstruction, rehabilitation, restoration, or repair of any Unit Building, or other improvement after any partial or total destruction thereof caused by fire, other casualty, or eminent domain, then the affected Units and Common Areas shall be subject to valid easements for the existence and maintenance of such encroachments. Such easements presently exist and shall continue to exist so long as all or any part of the Unit Building containing an affected Unit shall remain standing; (6) deviations in the location of any Space due to restriping of the pavement or relocation of the Spaces.

**C. Easement for Support.** Every portion of any building, utility line, or other improvement located on, in, or under the Condominium

Property shall be burdened with an easement of support and necessity for the benefit of all Units and all other buildings, utility lines, and improvements located on the Condominium Property.

**D. Right of Entry for Repair.** The duly authorized agents, officers, contractors, and employees of the Association shall have a right of entry and access to, over, in, upon, and through all of the Condominium Property, including without limitation the Units, for the purpose of performing the Association's rights or obligations with respect to repairing, maintaining, and restoring any portion of the Condominium Property, including without limitation all hot water heaters, pipes, wires, conduits, ducts, equipment, or fixtures which serve any Unit and Common Areas. The Association may enter into any Unit to remove any violations of this Declaration or the Rules, or to maintain, repair, and replace the Common Areas located therein or adjacent thereto only during reasonable hours and after delivering notice of such entry to the Unit Owner at least seventy-two (72) hours in advance; provided that, if any violation of the Declaration or Rules or if any damage to or failure of any Common Areas located inside or adjacent to the Unit creates a situation of emergency, the Board may authorize any officer, employee, or agent of the Association to immediately enter such Unit without prior notice to the Unit Owner and remove such violation or repair such damaged or failing portion of the Common Areas. The Association may enter any Common Area or Limited Common Area at any reasonable time to accomplish any of the above purposes.

If the Board determines that the failure of any Unit Owner to repair or maintain all or any part of his Unit has caused a situation of emergency affecting other Unit Owners, then without delivering prior notice the Board may authorize an employee, agent, or Officer of the Association to immediately enter such Unit and repair any part thereof causing such situation of emergency.

**E. Easement for Utilities and Other Purposes.** The Board, acting on behalf of the Association, may convey easements in, under, across, and through all portions of the common Areas to any entity for the purpose of constructing, installing, maintaining, and operating poles, pipes, conduit, wires, ducts, cables, and other equipment necessary to furnish electrical, gas, sewer, water, telephone, cable television, and other similar utility or security services, whether of public or private nature, to the Condominium Property and to any entity for such other purposes as the Board deems appropriate;

provided that such equipment or the exercise of such easement rights shall not unreasonably interfere with the use and enjoyment of the Condominium Property. The Board may grant such easements in, under, across or through all portions of the Common Areas and Units for the benefit of adjacent properties as the Board deems appropriate; provided that the grant of such easements shall impose no undue, unreasonable, material burden upon the Common Areas and Units. The Board may convey such easements in, across, or through a Unit only with the prior written consent of the owner of such Unit. The Board may accept easements from others which benefit the Condominium and may acquire additional property for use as a Common Area; provided that such easements or additional land shall impose no undue, unreasonable or material burden upon the Common Areas and Units. By accepting the deed conveying title to a Unit, each Unit Owner, on behalf of himself, his heirs, successors, and assigns and on behalf of the holders of any mortgages encumbering his Unit, conveys to the Board on behalf of the Association an irrevocable limited power of attorney to convey the above described easements and to execute, acknowledge, and deliver on behalf of the Unit Owner and such other persons any instrument that is necessary to effectuate the conveyance of such easements.

**F. Easement for Services.** A non-exclusive easement is hereby granted to all police, firemen, ambulance operators, mailmen, deliverymen, garbage and trash removal personnel, and all similar persons, and to the local governmental authorities and the Association, but not to the public in general, to enter upon the Common Areas in the performance of their duties.

## **ARTICLE XIV**

### **MORTGAGEES**

**A. Notice to Board.** Any Unit Owner who conveys a mortgage interest in his Unit shall notify the Board in writing of the name and address of the mortgagee and shall file with the Board a true copy of the mortgage.

**B. Notice to Mortgagees.** Any holder or insurer of a first mortgage lien on a Unit whose name and address, together with the designation of the encumbered Unit, have been submitted to the

Board by the Unit Owner, and any other holder or insurer of a first mortgage encumbering a Unit who requests the following notices in writing, shall be entitled to timely written notice from the Board of the following:

(1) Any proposed amendment of this Declaration or the Bylaws effecting a change in (a) the boundaries of any Unit, including the subdivision or combination of any Unit or Units; (b) the Percentage Interest of any Unit in the Common Areas; (c) the percentage measurer of liability of any Unit for Common Expenses; (d) the interest of any Unit in fire insurance proceeds or condemnation awards; (e) the number of votes in the Association appertaining to any Unit or (f) the purposes or uses to which any Unit or the Common Areas are restricted;

(2) any proposed termination or abandonment of the Condominium;

(3) any appropriation or eminent domain proceeding affecting all or any part of the Condominium Property of which the Board receives notice;

(4) any substantial damage or destruction to any portion of the Common Areas;

(5) any decision of the Association not to restore or repair any substantially damaged or destroyed Unit Building or other capital improvement situated on the Condominium Property;

(6) any decision by the Association to rehabilitate any Unit Building or other capital improvement located on the Condominium Property; and

(7) any decision of the Association to construct new capital improvements in locations not shown on the Drawings.

Any holder or insurer of a first mortgage encumbering a Unit shall be entitled, upon written request delivered to the Board, to receive timely written notice of the following:

(1) Time and location of the next Association meeting;

(2) Any default in the performance by any owner of a Unit encumbered by the mortgage of such mortgagee or insurer of any obligation to be kept or performed by such Unit Owner pursuant to this Declaration or the Bylaws that has continued for not less than sixty (60) days prior to the date of such mortgagee's request.

**C. Rights of First Mortgagees.** In addition to the other rights or privileges granted to holders of first mortgages encumbering Units,

such mortgagees shall be entitled to examine the books and records of the Association during reasonable business hours after delivering written notice requesting such inspection at least forty-eight (48) hours in advance thereof. A first mortgagee shall also be entitled to receive a copy of the annual financial statement of the Association if the mortgagee requests such statement in writing.

**D. Mortgagee Protection.** Notwithstanding any and all provisions of this Declaration to the contrary, in order to induce the Federal Home loan Mortgage Corporation ("FHLMC") and/or the Federal National Mortgage Association (FNMA") to participate in the financing of the sale of Units within the Condominium, the following provisions are added hereto (and to the extent these added provisions, pertaining to the rights of Mortgagees, FHLMC and FNMA conflict with any other provisions of this Declaration, these added restrictions shall control) and shall remain in effect so long as FHLMC or FNMA participates in such financing:  
See 2nd Amend. Sec. III.

(a) Each mortgagee of a first mortgage encumbering any Unit, upon filing a written request for notification with the Board, is entitled to written notification from the Association of any default by the mortgagor of such Unit in the performance of such mortgagor's duties under this Declaration, the Articles, or the Bylaws (collectively referred to as the "Condominium Documents"), which default is not cured within sixty (60) days after the Association learns of such default.

(b) Every first mortgagee of a mortgage encumbering any Unit, who obtains title to such Unit pursuant to the remedies provided in a mortgage thereof, or pursuant to foreclosure of the mortgage, or by deed (or assignment) in lieu of foreclosure, shall be exempt from any "right of first refusal".

(c) Each first mortgagee of a mortgage encumbering any Unit which obtains title to such Unit pursuant to judicial foreclosure or the powers provided in such mortgage shall take title to such Unit free and clear of any claims for unpaid assessments or charges against such Unit which accrued prior to the acquisition of title to such Unit by the mortgagee except for claims for a prorata share of such assessments or charges resulting from a prorata allocation of such assessments or charges to all Units, including the mortgaged Unit.

(d) Unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each mortgage owned) or seventy-five

percent (75%) of the Unit Owners of Residential Units, other than Dana Properties, Inc., have given their prior written approval, neither the Association nor the Unit Owners shall:

(1) subject to the provisions of the Condominium Laws to the contrary, by act or omission seek to abandon or terminate the Condominium, partition or subdivide any Unit, abandon, partition, subdivide, encumber, sell or transfer the Common Area (the granting of easements for public utilities or for other public purposes consistent with the intended use of such property by the Association and the Unit Owners, the granting of easements for the use of Spaces and the granting of easements for doorways to provide secondary access from the Units to adjacent Common Area hallways shall not be deemed a transfer within the meaning of this clause):

(2) change the Percentage Interests of the Residential Unit owners in the Common Area or the obligations of any Residential Unit for the purpose of levying assessments or charges or allocating distributions of hazard insurance proceeds or condemnation awards; or determining the prorata share of ownership of each Residential Unit Owner in the Common Area;  
See 2nd Amend. Sec. III.

(3) fail to maintain fire and extended coverage insurance on the insurable Common Area in an amount as near as possible to one hundred percent (100%) of the insurable value (based on current replacement cost); or

(4) use hazard insurance proceeds for losses to the Condominium (whether to Units or Common Area) for other than the repair, replacement or reconstruction of the Condominium.

(e) First mortgagees, upon written request, shall have the right to

(1) examine the books and records of the Association during normal business hours, (2) require from the Association the submission of annual financial reports and other financial data, (3) receive written notice of all meetings of the members of the Association and (4) designate in writing a representative to attend all such meetings.

(f) All first mortgagees shall be given (1) thirty (30) days' written notice prior to the effective date of any proposed material amendment to this Declaration or the Articles or Bylaws, termination of any agreement for professional management of the Condominium following a decision of the Unit Owners to assume self management of the Condominium, and (2) immediate written notice as soon as the

Board receives notice or otherwise learns of any damage to the Condominium whenever the insurance proceeds are less than ninety percent (90%) of the cost of reconstruction, and as soon as the Board receives notice or otherwise learns of any condemnation or eminent domain proceedings or other proposed acquisition with respect to any portion of the Condominium.

(g) First mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any portion of the Condominium and may pay any overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such property, and first mortgagees making such payments shall be owed immediate reimbursement therefore from the Association.

(h) The reserve fund described in ARTICLE X of this Declaration must be funded by regular scheduled monthly, quarterly, semi-annual or annual assessments rather than by special assessments.

(i) Any agreement between the Association and its professional manager, or any agreement providing for services by Dana Properties, Inc., to the Association, shall provide that the contract may be terminated for cause on not more than thirty (30) days' written notice, and without cause (and without penalty or the payment of a termination fee) at any time upon not less than ninety (90) days' written notice, and the term of any such contract shall not exceed three (3) years.

See 2nd Amend. Sec. III.

(j) The Board shall secure and cause to be maintained in force at all times casualty, flood and liability insurance and a fidelity bond for any person or entity handling funds of the Association (including, but not limited to, employees of any professional manager) meeting the insurance and fidelity bond requirements for condominium projects established by FHLMC and FNMA (if FNMA is the holder of any Unit mortgage), except to the extent that such coverage is not available or has been waived in writing by FHLMC and FNMA (if applicable).

(k) Any agreement for the leasing or rental of a Unit shall provide that the terms of such agreement shall be subject in all respects to the provisions of this Declaration, the Articles and the Bylaws. All such agreements shall be in writing and shall provide that

any failure by tenant to comply with the provisions of the Declaration, the Articles and the Bylaws shall be a default under the agreement.

(l) In addition to the foregoing, the Board may enter into such contracts or agreements on behalf of the Association as are required in order to satisfy the guidelines of FHLMC or FNMA or any similar entity, so as to allow for the purchase, guaranty or insurance, as the case may be, by such entities of first mortgages encumbering Units. Each Unit Owner hereby agrees that it will benefit the Association and the membership of the Association, as a class of potential mortgage borrowers and potential sellers of their respective Units if such agencies approve the Condominium as a qualifying community under their respective policies, rules and regulations, as adopted from time to time. Mortgagees are hereby authorized to furnish information to the Board concerning the status of any mortgage encumbering a Unit.

## **ARTICLE XV**

### **AMENDMENTS TO DECLARATION AND BYLAWS**

(Deleted)

See 12 Amend. Sec. 4.

**B. Power to Amend.** Except as otherwise provided in this Article or in this Declaration an amendment to this Declaration or the Bylaws may be adopted at a meeting of the Unit Owners by the affirmative vote of Unit Owners entitled to exercise not less than seventy-five percent (75%) of the voting power of all Unit Owners or may be adopted by the written approval without a meeting of Unit Owners entitled to exercise seventy-five percent (75%) of the voting power of all Unit Owners.

Additionally, Unit Owners may not amend the Declaration and the Bylaws to (i) change the undivided interest in the Common Areas appurtenant to any Unit or (ii) to change the number of votes exercisable in Association matters appertaining to any Unit or (iii) to affect the boundaries of any Unit unless the amendment is adopted by the affirmative vote or written approval of all affected Unit Owners, together with the prior written consent of two-thirds (2/3) of the holders of first mortgages on Units encumbered by mortgages.

**C. Method to Amend.** In order to effect an amendment to this Declaration or the Bylaws, the Board shall cause a writing which

contains the provisions duly adopted by the Unit Owners and mortgagees, together with all exhibits to be attached thereto and a certification that it was adopted in accordance with the requirements of this Article, to be executed and acknowledged with the same formalities as this Declaration by two Officers of the Association. An amendment satisfying the requirements of this Article shall become effective immediately upon the filing of such amendment with the Recorder's Office, Hamilton County, Ohio.

## **ARTICLE XVI**

### **EMINENT DOMAIN**

**A. Common Areas Other than Unit Buildings.** In the event that any authority having the power of eminent domain institutes a proceeding to appropriate any Common Areas other than all or a portion of a Unit Building, the Association shall be the agent and attorney-in-fact of each and every Unit Owner for the purpose of representing in such proceeding the claims and interests of every Unit Owner with respect to those portions of the appropriated Common Areas which do not constitute part of a Unit Building.

In the event Common Areas other than portions of a Unit Building are the only portions of the Condominium Property that are appropriated, the award shall be payable to the Association in trust for the benefit of the Unit Owners. The award shall be applied first to the cost of restoring or replacing all damaged improvements on the remaining Condominium Property in accordance with the Drawings or in accordance with any new plans and specifications that are unanimously approved by the Unit Owners and are added to the Drawings by an Amendment to this Declaration. All such restoration shall be authorized and administered by the Board. In the event the cost of the restoration exceeds the funds paid to the Association, the Board may pay all or any part of the excess cost of the restorations from the capital improvements reserve fund or may assess such excess cost against all Unit Owners as Special Capital Improvements Assessments or may obtain funds to pay such costs from any other source approved by the Board. In the event such award proceeds exceed the cost of restoring the Condominium Property, the portion of the remaining funds attributable to the appropriation of Limited

Common Areas shall be divided among the Owners entitled to possession of such Limited Common Areas in proportion to the size of the relative appropriated areas or facilities of each owner. The portion of the remaining funds attributable to the appropriation of Common Areas shall be allocated and disbursed to the Unit Owners or their mortgagees, as their interest may appear, in proportion to the relative Percentage Interests of the Units.

**B. Unit.** In the event that a Unit is wholly or partially appropriated by any authority having the power of eminent domain, the Association shall be the agent and attorney-in-fact only of those owners of Units which will not be wholly or partially appropriated. The Association will present the claims and represent the interests of such Unit Owners in the appropriation proceeding with respect to the Common Areas to be appropriated.

In the event a Unit is wholly appropriated, such Unit shall be automatically divested of its Percentage Interest, vote in the Association, and liability for Common Expenses; and such Percentage Interest and liability shall be automatically reallocated to the remaining Units of the Condominium in proportion to their relative Percentage Interests prior to the appropriation. The vote in the Association of any wholly appropriated Unit shall be automatically reallocated to the remaining Units in proportion to their relative number of votes prior to the appropriation. In the event a Unit is partially appropriated, such Unit shall be divested of a percentage portion of its Percentage Interest and liability for Common Expenses in proportion to the percentage portion of the total floor area of the Unit that was appropriated. The automatically divested portion of the Percentage Interest and liability of such Unit shall be automatically reallocated to the remaining Units in proportion to their relative percentage Interests prior to the appropriation.

## **ARTICLE XVII**

### **GENERAL PROVISIONS**

**A. Covenants Running with the Land.** The covenants, conditions, restrictions, easements, reservations, liens, charges, rights, powers, privileges and obligations created, granted, conveyed or reserved here under shall run with and bind the Condominium Property, and each part thereof, and shall be binding upon and inure

to the benefit of all parties having any right, title or interest in or to all or any part of the Condominium Property, the Association, and their respective heirs, executors, administrators, successors and assigns;

**B. Severability.** If any Article, section, paragraph, sentence, clause or word in this Declaration or the Bylaws, or if the application thereof, shall in any circumstance be held by any court of competent jurisdiction to be in conflict with any law of the State of Ohio, then the requirements of such law shall prevail and the conflicting provision or language shall be deemed void in such circumstance; provided that the invalidating of any such provision or language shall not affect the remaining provisions or language of this Declaration or the Bylaws, which shall thereafter continue in full force and effect.

(Deleted)

**D. Enforcement; Waiver.** In addition to any other rights or remedies provided in this Declaration, the Association, acting through the Board or any Officer, employee or agent authorized by the Board, and each Unit Owner shall be entitled to enforce in a proceeding at law or in equity all provisions of this Declaration, the Bylaws or the Rules hereafter adopted by the Board. The Association shall be entitled to assess reasonable charges against a Unit Owner who violates such provisions, including charges for the costs of enforcement. Failure of the Association or any Unit Owner to enforce such provisions in any manner shall in no event constitute a waiver of any right to enforce at any later time any violation of such provisions. By accepting a deed to a Unit, each Unit Owner is deemed to waive the defenses of laches and of any statute of limitations in connection with the enforcement by the Association of such violations.

In the event a Unit Owner violates the provisions of this Declaration in a manner which entitles the Association to levy a fine or impose a penalty on such Unit Owner, the Association shall levy such fine, impose such penalty or suspend such voting or recreational use rights, suspend such Unit Owner's voting rights except for non-payment of Assessments, or suspend such Owner's rights to use the recreational facilities, only after it has given the Unit owner no less than ten (10) days written notice of his default hereunder and the opportunity after cooperation of said ten (10) days and prior to imposition of the fine, penalty or suspension, to be heard by the Board or a duly appointed committee thereof in connection with such fine, penalty or suspension.

Each Unit owner shall have a cause of action against the

Association for failure to comply with the provisions of this Declaration, the Bylaws, the Rules or any applicable law of the State of Ohio.

**E. Gender.** The use of the masculine gender in this Declaration shall be construed to mean the feminine and neuter genders and the use of the singular shall be construed to mean the plural whenever the context so requires.

**F. Captions.** The caption of each Article or Section of this Declaration or the Bylaws is inserted only as a matter of reference and does not define, limit or describe the scope or intent of the provisions of this Declaration or the Bylaws.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be executed by its duly authorized officer this 1st day of March, 1984.

Signed and acknowledged  
in the presence of:  
PARTNERSHIP

Declarant:  
2444 MADISON ROAD

Signed by:  
Jay A. Rosenberg  
Diana S. Campbell

By: John Wellington Well, Inc.  
(General Partner)  
  
By: Morton L. Spitz, President

STATE OF OHIO :  
COUNTY OF HAMILTON : SS

Before me, a notary public in and for said county, personally appeared Morton L. Spitz, known to me to be the person who, as president of John Wellington Wells, Inc., General Partner of 2444 Madison, Road Partnership, the corporation which executed the foregoing instrument, signed the same, and acknowledged to me that he did so sign said instrument in the name and upon behalf of said corporation as such officer; that the same is his free act and deed as such officer, and the free and corporate act and deed of said corporation; that he was duly authorized thereunto by its Board of Directors.

In testimony whereof, I have hereunto subscribed my name, and affixed my official seal this 1st day of March, 1984.

Signed by: Jay A. Rosenberg, Attorney at Law

**BYLAWS (CODE OF REGULATIONS)  
OF  
2444 MADISON ROAD CONDOMINIUM OWNERS ASSOC., INC.**

These Bylaws shall constitute the Bylaws of 2444 Madison Road. Condominium Owners Association, Inc. (the "Association") and shall describe, establish, and govern the administration of the Association. The Association shall administer the Condominium Property of the Regency, a Condominium. All Unit Owners, occupants of Units, invitees, guests, and other persons in lawful possession of Units shall be subject to and shall comply with the regulations established in these Bylaws.

Unless the context clearly indicates otherwise, all terms used in these Bylaws shall have the meaning as in the Declaration of Condominium Ownership for The Regency, a Condominium and by Chapters 1702 and 5311 of the Ohio Revised code.

**ARTICLE I**

**NAME AND LOCATION OF THE ASSOCIATION**

The name of the Association is "2444 Madison Road Condominium Owners Association, Inc." The Association is an Ohio not-for-profit corporation created pursuant to the provisions of Chapter 1702, Ohio Revised Code and is the unit owners' association required by the provisions of Chapter 5311, Ohio Revised Code. The principal office of the Association shall be the location set forth in the Articles of Incorporation of the Association and the place of meetings of the Association and of the Board shall be such places in Hamilton County, Ohio as may be designated by the Board from time to time.

**ARTICLE II**

**UNIT OWNERS**

Section 1. Membership. Upon acquiring a whole or undivided condominium ownership interest in a Unit, the Unit Owner shall automatically become a member of the Association ("Member"). Upon the sale or other conveyance of a condominium ownership interest in a Unit in fee simple, the membership in the Association of

the selling owner shall automatically and immediately terminate and be transferred to the purchaser of such condominium ownership interest, who shall thereafter be a Member of the Association. Membership in the Association is appurtenant to and may not be separated from ownership of any Unit.

Section 2. Meetings of Members.

(a) Annual Meeting. An Annual Meeting of the Members shall be held not later than ninety (90) days after the end of each fiscal year of the Association at a place in Hamilton County, Ohio and on the date and time established by the Board from time to time. The appropriate number of Directors shall be elected at each Annual Meeting. The Association may conduct such other business as is described in the notice of the meeting.

(b) Special Meetings. Special Meetings of the Members may be called by the President of the Association, by a majority of the Board, or by Members entitled to cast at least twenty-five percent (25%) of the votes of all Members. Such Special Meetings may be called only if authorized by the Declaration or Chapter 5311, if requested in writing by Members entitled to cast at least twenty-five percent (25%) of the votes of all Members, or if called in connection with circumstances deemed by a majority of the Board to constitute an emergency. The only business that may be transacted at a Special Meeting is the business described in the notice of such meeting.

(c) Notices of Meetings. The Secretary of the Association shall deliver written notice of the Annual Meeting of the Members not more than sixty (60) days and not less than ten (10) days prior to the date of such meeting to each Member of record as of the day immediately preceding the delivery of the notices. With the exception of meetings called to consider emergency circumstances affecting the Condominium Property, the Secretary, of the Association shall deliver written notice of any Special Meeting of the Members at least ten (10) days prior to the date of such meeting to each Member of Record as of the day immediately preceding the delivery of such notices. Each notice shall be given either by personal delivery or by mail, postage prepaid, to each Member at the address for such Member last appearing in the records of the Association. The Notice shall specify the time, place and Order of Business of any meeting called and, in the case of a Special Meeting, shall specify the purpose of the meeting.

Any Member may waive his right to notice of the time, place, or

purpose of any meeting of Members by delivering a waiver in writing of such right to the Secretary of the Association. If any Member shall attend any meeting without protesting the lack of proper notice prior to or at the commencement of the meeting, such Member shall be deemed to have waived both his right to notice of such meeting and his right to object to the Association's failure to comply with such notice requirements.

Section 3. Voting Rights. With respect to matters properly submitted to the vote of the Association, a Member may cast one vote for each Unit owned by such Member. If two or more persons own a Unit, such owners may cast one undivided vote with respect to Association matters. If one individual or entity owns more than one Unit, such Owner may cast the number of votes equal to the number of Units owned by such Owner.

Section 4. Proxies. Members may vote or act in person or by proxy. The person appointed as proxy need not be a Member of the Association. Designation by a Member or Members of a proxy to vote or act on his or their behalf shall be made in a signed writing to the Board and shall be revocable at any time by actual written notice delivered to the Board by the Member or Members making such designation. Revocation of the designation of a proxy shall not affect any vote or act previously taken or authorized. Every proxy shall automatically cease upon the sale by the Member of his Unit.

Section 5. Quorum. The presence in person or by proxy at any duly called and noticed meeting of the Association of Members entitled to cast thirty percent (30%) of the voting power of the Association shall constitute a quorum for such meeting.

Section 6. Adjournment. Any meeting of the Association may be adjourned, from time to time to such place and time as may be determined by majority vote of the Members present, whether a quorum be present or not. Notice of the time, place and purpose of the adjourned meeting shall be delivered to the Members not present at the originally called meeting at least twenty-four (24) hours prior to such adjourned meeting. At any recalled meeting at which a quorum is present, any business may be transacted which might have been transacted by a quorum at the meeting as originally called.

Section 7. Vote Required. Except as otherwise required in the Declaration, Chapter 1702 of the Ohio Revised Code, or Chapter 5311 of the Ohio Revised Code, the vote of a majority of a quorum of Members represented and entitled to vote at any duly called and

noticed meeting shall determine any matter validly presented to such meeting.

Section 8. Conduct of Meeting. The President shall preside over all meetings of the Association and the Secretary shall keep the minutes of the meeting and record in a minute book all reports presented, all actions and proposals considered by the Members, and all resolutions adopted by the Members at the meeting. The rules of the latest edition of Roberts Rules of Order shall govern the conduct of all meetings, except as otherwise provided by the Declaration, these Bylaws, or Ohio law.

Section 9. Action in Writing without Meeting. Any action that could be taken by Members or Unit Owners at a meeting may be taken without a meeting with the affirmative vote or approval in writing of Members or Unit Owners entitled to exercise the same percentage of voting power necessary to approve the action at a meeting, except if a greater percentage of voting power is required by the Declaration or by law for such action of the Association taken without a meeting. Such written votes or approvals shall be filed with the Secretary of the Association.

### **ARTICLE III**

#### **BOARD OF DIRECTORS (BOARD OF MANAGERS)**

Section 1. (Deleted)

Section 2. (Deleted)

See 12th Amend. Sec. 6.

Section 3. Nomination of Directors; Election. The nomination of candidates to serve as Director shall be presented at each Annual Meeting of Association by a Nominating Committee consisting of the immediate past President of the Association, who will also serve as the Chairperson of the Committee, and two Members selected and appointed by the Board of Directors. In the event the past President is unable or refuses to serve on the Committee, the Board of Directors shall select and appoint a third Member to serve on the Committee, and shall appoint one of the three Members as Chairperson thereof.

Only Qualified Individuals (defined below) in good standing may be candidates for the office of Director. For the purposes of these Declarations and Bylaws, a Qualified Individual in good standing is one who is not in default in the payment of his or her Assessments

and has not been notified in writing by the Board of Directors that he or she is in violation of any provision of the Declaration, the Bylaws or the Rules and Regulations of the Association (or if such person has received such a notice he or she has cured such violation within seven [7] days of such notice).

See 12 Amend. Sec. 6.

A Qualified Individual, for the purposes of this Section shall be a Member, the spouse of a Member, or a resident of a Residential or Commercial Unit, except if a Member is a corporation, joint venture, trust, or other entity, a Qualified Individual shall include an officer, partner, joint venturer, trustee, agent or like individual affiliated with such Member.

Any Member may submit the name or names of Qualified Individuals as potential candidates for the office of Director. Such submission shall be made pursuant to a timely notice in writing, addressed to the Secretary of the Association and signed by at least fifteen (15) Members in good standing. To be timely, such notice shall be delivered to, or mailed and received at, the principal office of the Association not less than fifty (50) days prior to the Annual Meeting, provided, however, if less than sixty (60) days notice or public disclosure of the meeting is given to the Members or made public, the notice by the submitting Member, to be timely, must be so received not later than 5 P.M. E.S.T. on the tenth day following the day on which such notice of the Annual Meeting was mailed to the Members, or public disclosure was made. Such notice to the Secretary shall set forth (a) as to each person whom the notice proposes to have nominated as a Director (i) the name, age, business address, and residence address of such person, (ii) the principal occupation or employment of such person, and (iii) any other information that is required of nominees submitted by the Nominating Committee; and (b) as to the Members signing such notice, their full names and Unit numbers. In addition, the Association may require any proposed nominee to furnish such information as it deems necessary to determine the eligibility of such nominee to serve as a Director. If and when such notice conforms to the requirements of these Declarations and Bylaws, the Secretary shall cause such notice to be published in its entirety in the same manner as is the slate of nominees submitted by the Nominating Committee.

The Secretary shall submit such conforming nomination or

nominations, as the case may be, to the Annual Meeting. No person shall be eligible for election as a Director unless nominated as set forth herein.

See 12th Amend. Sec. 6.

The Nominating Committee may make as many nominations as it deems equitable, provided, however, in no event shall the number of nominees submitted by the Nominating Committee, together with the nominees submitted by the Secretary, be fewer than the number of Directors to be elected.

At all times, at least one Director serving on the Board of Directors shall be a Low Rise Building Owner or a Qualified Individual representing a Low Rise Building Owner, unless no such Owner or Qualified Individual is willing or able to serve.

At the Annual Meeting of the Association, the presiding officer shall appoint three (3) inspectors of election, who need not be members of the Association. The inspectors shall determine (i) the number of votes qualified and entitled to be cast, (ii) the number of Members present in person or by proxy, and (iii) whether a quorum exists. After such determination, the inspectors shall receive and count the vote, either for an election or for a decision of any question. The inspectors shall certify their findings, as to each of the above, to the meeting, and their certificates shall be prima facie evidence thereof.

Beginning with the Annual Meeting of the Association to be held in 1993, the Nominating Committee shall submit a slate of nominees to be elected as Directors for a term of two (2) years, four (4) of whom receiving the highest number of votes shall be elected for such term, and, shall submit a slate of nominees to be elected for a term of one (1) year, three (3) of whom receiving the highest number of votes shall be elected for such term. If low Rise Building Owners, or Qualified Individuals representing low Rise Building Owners, are nominees, at least one of such nominees shall be elected a Director for a term of two (2) years, notwithstanding that such nominee was not among those receiving the highest number of votes.

See 12th Amend. Sec. 6

Thereafter, in subsequent elections, the nominees receiving the highest number of votes shall be elected Directors for two (2) year terms. In a year in which a vacancy occurs in the position of Director

from among the low Rise Building Owners, a nominee from among the Low Rise Building Owners shall be designated separately on the ballot, and such nominee shall be elected a Director for a term of two (2) years regardless of the number of votes such nominee received. In the event two (2) or more nominees are so separately designated, as between or among them, only the one (1) nominee receiving the highest number of votes shall be elected a Director. In the event the Nominating Committee certifies to the meeting that no Qualified Individual from among the Low Rise Building Owners could be found who would agree to stand, or who could qualify, for election as a Director, then the Nominating Committee shall submit a slate of not less than four (4) nominees in order to assure the election of four (4) Directors. No Qualified Individual may be elected a Director for more than three (3) successive terms.

The election for Directors shall be by secret ballot. Each Member or the Member's proxy, with respect to each Director to be elected or each question properly submitted to the Members for vote, may cast one vote for each Residential or Commercial Unit owned by such Member.

In order to ensure a fair and orderly election of Directors and the resolution of matters before the Annual Meeting, these provisions shall be construed liberally and given their full meaning and effect, notwithstanding any and all other provisions relative to the nomination and election of Directors contained in these Bylaws, the Declaration of Condominium or any Amendments thereto.

See 12th Amend. Sec. 7.

Section 4. Term of Office. Upon the expiration of the term of office of any Director, the Director elected to replace said Director and each Director thereafter shall serve a two (2) year term or shall serve until his resignation, removal from office, death, or incapacity, whichever shall be the earliest event.

Section 5. Resignation; Removal; Replacement. Any Director may resign at any time by stating his resignation at any meeting of the Board or by delivering a written resignation to the Secretary of the Association. Such resignation shall become effective immediately or at such time as the resigning Director may specify.

Any Director may be removed with or without cause at a duly called and noticed regular or special meeting of the Association by the vote of Members entitled to exercise at least seventy percent

(70%) of the voting power of all Members. The Board shall remove any Director who is no longer a Member or who fails to attend three (3) consecutive Regular Meetings of the Board or three (3) consecutive Special Meetings of the Board, and shall remove any Director who is thirty (30) days delinquent on the payment of any Assessment or who is not otherwise a member in good standing as hereinbefore defined. A successor to any Director so removed shall be selected by the remaining Directors; and such successor Director shall serve until the next Annual Association Meeting. In the event of the resignation, death or incapacity of any Director, the remaining Directors shall select a successor Director who shall serve until the next Annual Association Meeting.

Section 6. Compensation of Directors. Unless otherwise determined by the vote at a duly called and noticed meeting of the Association by the vote of Members entitled to exercise at least Seventy-five percent (75%) of the voting power of all Members, no Director shall receive compensation for any services rendered to the Association as a Director. Notwithstanding the above restriction, any Director shall be reimbursed any actual expenses incurred by said Director on behalf of the Association in the reasonable performance of his duties: provided that, if a majority of the Members present at a Regular or Special Meeting of the Association shall vote or if a majority of all Members shall state in a writing delivered to the Secretary of the Association that the amount of such reimbursement unreasonably exceeds the amount apportioned in the Annual Operating Budgets for the same category of expenses or that the Director's incurring such expenses without the prior approval of the Association did not constitute a reasonable performance of the Director's duties, such Director shall be reimbursed only the amount determined to be reasonable by said majority of Members.

Section 7. Meetings.

a) Regular Meetings. The Directors shall meet not less than once each calendar quarter. The date, time, and place of any regularly scheduled meeting shall be established from time to time by a resolution of the majority of the Board.

b) Special Meetings. The Directors may hold special meetings upon-the call of the President or of two (2) Directors and upon notice to all Directors as provided in Section 8 below.

c) Matters to be Addressed. The Board shall consider and

determine only those matters described in the notice of the meeting; provided that the Board may consider and determine such additional matters which all Directors consent to consider.

Section 8. Notice of Meetings; Waiver of Notice. The Secretary of the Association, or such other person as may be appointed by the Board, shall deliver written notice of the time and place of any Regular or Special Meeting either personally or by mail, telegram, or cablegram at least three (3) days prior to the meeting; provided that, such person may deliver notice at any meeting to consider an emergency circumstance affecting the Condominium Property by any reasonable method. The notice shall specify the purpose of any special Meeting and shall. Briefly describe the matters to be addressed at any Regular Meeting.

The attendance of a Director at any Board Meeting without protesting the failure of the Secretary to serve proper notice upon him shall constitute a waiver by said Director of such failure to serve notice. A Director may waive in writing the serving upon him of notice of any meeting either before or after such meeting is held and such written waiver shall be filed with or entered upon the records of such meeting.

Section 9. Quorum. The presence of a numerical majority of the Directors in person at any duly called and noticed meeting of the Board shall constitute a quorum for such meeting; provided that a majority of the Directors present at any meeting may adjourn such meeting.

Section 10. Vote Required. Each Director may cast one (1) vote on each matter to be determined by the Board. Except as otherwise required in the Declaration, Chapter 1702, Ohio Revised Code, or Chapter 5311, Ohio Revised Code, the vote of a majority of a quorum of Directors voting at a duly called and noticed meeting shall determine any matter properly determined by the Board.

Section 11. Action Without a Meeting. Any action that could be taken or matter that might be determined by the Board at a meeting may be taken or determined without a meeting by the affirmative written approval of all of the Board Members or Directors.

Section 12. Powers of the Board. Except as otherwise provided by Ohio law, the Declaration, or these Bylaws, all obligations and duties of the Association shall be performed by the Board and all powers and authority of the Association shall be exercised by the Board. Without limiting the generality of the foregoing, in connection

with administering the Condominium Property and carrying out the purposes of the Condominium on behalf Of the Association, the-Board shall have the right, power, and authority, without limitation, to take, authorize or cause to be taken actions to:

- a) enforce the covenants, conditions, and restrictions and exercise the rights set forth in the Declaration;
- b) repair, maintain, and improve the Common Areas as provided in the Declaration;
- c) authorize the officers to enter into contracts on behalf of the Association, including one (1) or more management agreements in order to facilitate the efficient maintenance and operation of the Condominium Property;
- d) obtain insurance in the amounts and coverages required by the Declaration;
- e) lease such portions of the Common Areas as permitted by the Declaration;
- f) assign storage areas and parking spaces;
- g) establish, levy, collect, and enforce assessments as provided in the Declaration;
- h) adopt and publish Rules governing the use of the Common Areas and the personal conduct of Unit Owners and occupants, their family members, guests, and invitees; and establish penalties for infractions of said Rules;
- i) fine Members of the Association, suspend the voting rights of Members of the Association and suspend the rights of Unit Owners and occupants, together with their family members, guests, and invitees, to use the recreational facilities, as provided in the Declaration or in the Rules established by the Board; provided, that the Board may not fine a Member, suspend the rights of a Unit Owner and occupant, their family members, guests,

and invitees, to use the recreational facilities, or suspend the voting rights of a Member, without a hearing before a quorum of the Board, held on at least ten (10) days notice, at which the affected Unit Owners shall be entitled to appear and be heard. The foregoing requirement of a hearing shall not be applicable to the suspension of a Member's right to vote because of his failure to pay any assessment as provided in the Declaration;

- j) appoint such committees as it may deem necessary or appropriate in order to perform its duties;
- k) declare the office of a Director to be vacant in the event such Director shall be absent from three (3) consecutive Regular Meetings of the Board or three (3) consecutive Special Meetings of the Board:
- l) declare the office of a Director to be vacant in the event such Director shall be thirty (30) days delinquent in the payment of any Assessment;
- m) employ attorneys and accountants to perform such legal and accounting services as the Board may deem necessary or appropriate;
- n) reasonably delegate such of the Board's power and authority to the officers, agents, employees, or committees of the Association as the Board may deem necessary or appropriate in order to fulfill its obligations and duties;
- o) take all actions deemed necessary or desirable, to comply with all requirements of Ohio law and the Declaration, and take all actions permissible under this law and the Declaration which are not specifically reserved to other persons or bodies, in order to fulfill the purposes of the Condominium;
- p) to execute and deliver easements, licenses and other agreements permitted or authorized by the Declaration;

and

- q) appoint successor Directors.

Section 13. Duties of Board. In connection with administering and maintaining the Condominium Property on behalf of the Association, the Board shall perform or cause to be performed, without limitation, the following obligations and duties:

- a) cause to be kept complete and accurate records of the actions and corporate affairs of the Association and of the Board and present a summary thereof at each Annual Association Meeting and, if requested by Unit owners entitled to exercise not less than seventy-five percent (75%) of the voting power of all Unit Owners, present such summary at a Special Meeting of the Association called for the purpose of reviewing said records;
- b) supervise all officers, agents, employees and contractors of the Association to ensure that their duties are properly performed;
- c) compute and establish the Annual Operating Budget;
- d) determine the amount of any assessment to be charged against a Unit; deliver or cause to be delivered written notice of any assessment to each Unit Owner within the time limits specified in the Declaration; institute any action at law or in equity to recover any delinquent assessment, including without limitation an action to foreclose any assessment lien held by the Association and an action against the Unit Owner;
- e) cause all officers handling Association funds to be covered by fidelity bonds;
- f) procure and maintain the insurance required by the Declaration, and such other insurance as the Board shall deem necessary;
- g) cause the restrictions created by the Declaration and the

Rules established by the Board to be enforced;

- h) cause all Condominium Property subject to the Board's jurisdiction to be maintained and administered in accordance with the requirements of the Declaration and Ohio law and in furtherance of the purpose of such property; and
- i) take all other action necessary or appropriate in order to comply with all requirements of the Declaration and Ohio law.

## **ARTICLE IV**

### **OFFICERS**

See 6th Amend. Sec. 4.

Section 1. Officers. An officer shall be a Member, a spouse of a Member, or a resident of a Member's Unit except if a Member is a corporation, partnership, joint venturer, trust or other entity, the Board may appoint as an officer an officer, partner, joint venturer, trustee, agent or like individual affiliated with such Member.

Section 2. Election. At each annual organization meeting of the Board, the Directors shall elect a President, Vice-President, a Secretary, an Assistant Secretary, and a Treasurer. The persons elected to be President and Treasurer must be Directors.

Section 3. Term of Office; Vacancies. The officers of the corporation shall hold office until their successors are elected at the next organizational meeting of the Board or other meeting of the Board or until they resign, die, or are removed by the Board. The Board may elect successors for any vacant office at any Regular or Special Meeting of the Board or by unanimous written consent without a meeting.

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 such duties 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 Association and at all meetings of the Board and shall have the supervisory authority to see that orders and resolutions of the Board are carried out. The signature of the President on behalf of the Association on any legal instrument authorized by the Board shall effectively bind the Association.

b) Vice-President. The Vice-President shall perform the duties of the President when the President is absent or otherwise fails or refuses to perform his duties; provided that the signature of the Vice-President on behalf of the Association on any legal instrument shall bind the Association only if such instrument is executed by a second officer.

c) Secretary. The Secretary shall deliver the notices of meetings of the Board and of the Association or Unit Owners and shall record the votes and keep the minutes and proceedings of such meetings. The secretary shall keep all appropriate current records of the Association affairs, as required by law, the Declaration, these Bylaws, or the Board. The records shall show the names and addresses of the Unit Owners and their mortgagees, together with such other information as may be necessary or appropriate.

d) Assistant Secretary. The Assistant Secretary shall perform the duties of the Secretary when the secretary is absent or otherwise fails or refuses to perform his duties, and shall perform such other duties as may be delegated to it by the President or Secretary from time to time.

e) Treasurer. The Treasurer shall assume responsibility for (i) the receipt and deposit in appropriate bank accounts of all monies of the Association, including any proceeds of insurance policies maintained by the Association as required by the Declaration, (ii) the disbursement of such funds as directed by resolution of the Board or by these Regulations, (iii) the keeping of proper books of account, (iv) the preparation of an annual budget and a statement of income and expenditures to be presented to the Unit Owners at Annual Meetings, and (v) the delivery or mailing of a copy of the budget and the income statement to each of the Unit Owners. No person may serve as Treasurer who is not insurable under a fidelity bond.

The Board shall be entitled to delegate any of the above

described duties of any officer to an employee of the Association, to a professional managing agent, to any other officer or to a committee of Unit Owners. An officer may delegate the performance of his duties to an agent or employee only with the prior consent of the Board;

Section 6. Compensation. Unless otherwise determined by the vote at a duly called and noticed meeting of the Association of Members entitled to exercise at least seventy-five percent (75%) of the voting power of all Members, no officer shall receive compensation for any services rendered to the Association as an officer. Notwithstanding the above restriction, an officer may receive compensation for services rendered to the Association in a capacity other than as an officer. In addition, an officer shall be reimbursed any actual expenses that were incurred by said officer on behalf of the Association in the reasonable performance of his duties and that were authorized by the Board; provided that, if a majority of the Members present at a Regular or Special Meeting of the Association shall vote or if a majority of all Members shall state in a writing delivered to the secretary of the Association that the amount of such reimbursement unreasonably exceeds the amount apportioned in the Annual Operating Budget for the same category of expenses or that the officer's incurring such expenses without the prior approval of the Association did not constitute a reasonable performance of the officer's duties, such officer shall be reimbursed only the amount determined to be reasonable by said majority of all Members.

Section 7. Execution of Legal Documents. All agreements, contracts, deeds, leases, checks, and other legal instruments affecting the Association shall be executed by the President or by the Vice-President and another officer if the President is absent or otherwise fails to execute any such legal instrument, or by such other person or persons as may be designated by the Board in writing.

## **ARTICLE V**

### **BOOKS AND RECORDS**

The books, records, and financial statements of the Association shall be audited once each year by the Treasurer and such audit shall be completed prior to each Annual Association Meeting. If requested by three (3) Directors, by a majority of the holders of first mortgages on Units encumbered by mortgages, or by Unit Owners entitled to

exercise a majority of the voting power of all Unit Owners, the annual audit shall be performed by a Certified Public Accountant.

The books, records and financial statements of the Association, including annual audited financial statements when such are prepared, shall be available during normal business hours or under other reasonable circumstances for inspection by Unit Owners and the holders and insurers of first mortgages on Units within reasonable time after any such person shall deliver written notice requesting such inspection. In addition, during normal business hours or under other reasonable circumstances, the Association shall have available for inspection by Unit Owners, lenders and their insurers, and prospective purchasers, current copies of the Condominium organizational documents and the rules and regulations governing operation of the Condominium.

## **ARTICLE VI**

### **CASUALTY DAMAGE; APPROPRIATION RECONSTRUCTION OR REPAIR**

Section 1. Insurance Proceeds. In the event of damage to or the destruction of any Unit or Units or any portion of the Common Areas and if the Association elects to repair or reconstruct such damaged elements in accordance with the provisions of the Declaration, the Treasurer shall receive the insurance proceeds, if any, payable to the Association and shall cause the damaged Condominium Property to be repaired and restored as provided in the Declaration.

Section 2. Appropriation Proceeds. In the event of any partial appropriation of a Unit, any proceeds payable to the Association for the repair of such Unit shall be delivered to the Treasurer. If the Association fails to elect to terminate the Condominium after such appropriation, the Treasurer shall cause the damaged Unit to be restored as provided in the Declaration.

Section 3. Employment of Architect. The Treasurer shall employ an architect to supervise such restoration or repairs and a contractor to perform such repairs; provided that if the total projected cost of the accepted bid for the repairs occasioned by any one occurrence or casualty is less than \$10,000., the Treasurer need not employ an architect, and any duties that would otherwise be

performed by such architect shall be performed by such contractor.

Section 4. Competitive Bidding Required. The Treasurer shall obtain at least three (3) bids from contractors for the required repair or reconstruction work except where such repair or reconstruction is of an emergency nature or of an amount less than \$10,000. (which amount shall be adjusted annually in accordance with the percentage increase, if any, in the Consumer Price Index). The Treasurer shall exercise his reasonable business judgment to accept the most favorable bid based on his consideration of all commercially relevant factors, including without limitation each contractor's professional background, customer references, bonding status, contract price, proposed specifications and other similar factors.

Section 5. Disbursement of Proceeds. The proceeds of any insurance policies payable as a result of any casualty or any award payable as a result of any appropriation, together with any other sums to be paid by the Association in connection with any repairs or reconstruction of the damaged condominium Property shall be held by the Treasurer as a construction fund and shall be disbursed from time to time by him for the payment of the cost of reconstruction and repair. The Treasurer shall make such payments only upon the receipt of the following:

(a) a certificate, dated not more than ten (10) days prior to such request, signed by the contractor and the architect, if any, certifying that the following information is true as of the date of the certificate:

(i) That the sum then requested is justly due to contractors; subcontractors, material men, architects, or other persons who have rendered services or furnished materials in connection with the work (including a list of such persons and giving a brief description of such services and materials), and that the sum requested does not exceed the value of the services and materials described in the certificate;

(ii) That, except for the amount requested in such certificate, and except for work to be performed thereafter, the person signing the certificate has duly inquired and has no knowledge of any unpaid bills or invoices for work performed or materials delivered in connection with the work that might become the basis of a security interest, material men's lien, mechanic's lien, or similar lien arising from such work:

(iii) That the estimated cost of the work remaining to be

completed after the date of such certificate does not exceed the remaining amount of the construction fund held by the Treasurer after the payment of the sum so requested; and

(iv) That all repairs and improvements to the damaged portions of the Condominium Property were made in accordance with the requirements of the Declaration.

(b) a supporting lien waiver from each contractor or subcontractor listed in such certificate.

If a balance remains in the construction fund after payment of all costs of the reconstruction and repair for which the fund is established, the Treasurer shall disburse such balance in accordance with the relevant provisions of the Declaration.

Section 6. Wavier of Procedures. Notwithstanding anything contained here or in the Declaration, any of the procedures or requirements described in this Article VI may be waived, modified or amended upon the written approval of not less than seventy-five percent (75%) of the voting power of the Unit Owners.

## **ARTICLE VII**

### **INDEMNIFICATION**

The Association shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending, or completed action, suit, or proceeding, whether civil, criminal, administrative, or investigative, by reason of the fact that he is or was a Director or officer of the Association, or is or was serving at the request of the Association as a Director or officer, against expenses (including attorneys' fees), judgments, fines, and amounts paid in settlement, actually and reasonably incurred by him in connection with such action, suit, or proceeding, to the extent and under the circumstances permitted by the Corporation Law of the State of Ohio. Unless otherwise ordered by the court, such indemnification shall be made upon a determination that indemnification of the Director or officer is proper in the circumstances because he has met the applicable standards of conduct set forth in the Corporation Law of the State of Ohio. Such determination shall be made (1) by the Board by a majority vote of a quorum consisting of Directors who were not,

and are not parties to or threatened with any such action, suit or proceeding, or (2) if such a quorum is not obtainable, or if a majority vote of a quorum of disinterested Directors so directs, in a written opinion by independent legal counsel meeting the requirements of independence prescribed by the Corporation Law of Ohio, or (3) by the Members, or (4) by the Court of Common Pleas or the court in which such action, suit, or proceeding was brought.

The foregoing right of indemnification shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the Declaration, these Bylaws, any agreement, vote of Members or disinterested Directors, or otherwise, and shall continue as to a person who has ceased to be a Director or officer and shall inure to the benefit of the heirs, executors and administrators of such person.

The Board may elect to pay the expenses, including attorneys' fees, incurred by any Director or officer in defending any action, suit; or proceeding referred to above in advance of the final disposition of such action, suit, or proceeding after receiving from the Director or officer a written agreement stating that he shall repay such amount except if the Board subsequently determines that he is entitled to be indemnified by the Association as authorized in this Article VII.

The Association may purchase and maintain insurance on behalf of any person who is or was a Director, officer or employee of the Association) or is or was serving at the request of the Association as a Director, officer, or employee of another Association against any liability asserted against him and incurred by him in any such capacity, or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under this Article VII.

## **ARTICLE VIII**

### **FISCAL YEAR**

Unless otherwise established by the Board, the fiscal year of the Association shall begin on January 1 and end on December 31 of each and every calendar year, except that the first fiscal year of the Association shall begin on the date of incorporation of the Association.

**ARTICLE IX**  
**AMENDMENTS**

Any modification or amendment of these Bylaws shall be made only by means of amendment to the Declaration in the manner and subject to the terms, approvals, and conditions set forth in the declaration. Any amendment shall be effective from the date a properly adopted and executed certificate setting forth the terms of the amendment is filed with the Recorder's Office, Hamilton County, Ohio.

IN WITNESS WHEREOF, the undersigned, being the sole incorporator of the Association, has adopted these Bylaws on behalf of the Association as of this 15th day of March, 1984.

signed by: Jay A. Rosenberg, Sole Incorporator

ARTICLES OF INCORPORATION

OF

2444 MADISON ROAD CONDOMINIUM  
OWNERS ASSOCIATION, INC.

The undersigned sole incorporator, desiring to form a non-profit corporation under the provisions of Sections 1702.01, et. seq., Ohio Revised Code, does hereby certify:

ARTICLE I

NAME

The name of the corporation is 2444 MADISON ROAD CONDOMINIUM OWNERS ASSOCIATION, INC. (“Association”).

ARTICLE II

PRINCIPAL OFFICE

The principal office of the Association is located at 2444 Madison Road, Cincinnati, Hamilton County, Ohio. The principal office may be changed from time to time by action of the Board of Directors.

ARTICLE III

PURPOSE OF THE ASSOCIATION

The purpose for which the Association is organized is to provide an entity pursuant to the Condominium Property Act (Chapter 5311 of the Ohio Revised Code), for the operation and management of The Regency, a Condominium, located in Cincinnati, Hamilton County, Ohio.

Without limiting the foregoing, the purposes for which this Association is formed are to administer the affairs of The Regency, a Condominium; to provide for the maintenance, preservation and

architectural control of the Units and Common Areas and Facilities within the Condominium; and to promote the health, safety, and welfare of the Condominium residents.

All of said purposes shall be without pecuniary profit to any trustee, manager, director, officer, employee, agent or member of the Association.

#### ARTICLE IV

#### POWERS OF THE ASSOCIATION

The Association shall have the following powers:

(a) To exercise the powers and duties delegated to a condominium unit owner's association in Chapter 5311 of the Ohio Revised Code and any amendments thereto; and, to exercise all of the powers and duties delegated to the Association in the Declaration of Condominium ownership for The Regency, a Condominium (the "Declaration") which is recorded in the Office of the Recorder of Hamilton County, Ohio and the Bylaws (Code of Regulations) of this Association ("Regulations"), as the same may be amended from time to time as therein provided. The Declaration and Regulations are fully incorporated herein by this reference.

(b) To fix, levy, collect and enforce payment by any lawful means of all charges or assessments pursuant to the terms of the Declaration and Regulations and to use the proceeds of these charges and assessments in the exercise of its power and duties; to pay all expenses in connection therewith, including all office and other expenses incident to the conduct of the business of the Association, as well as all licenses, taxes or governmental charges levied or imposed against the property of the Association.

(c) To acquire (by gift, purchase or otherwise), own, hold, improve, repair, replace, build upon, maintain, convey, sell, lease, transfer, dedicate for public use or otherwise dispose of real or personal property.

(d) To borrow money, to mortgage, pledge, deed in trust, encumber, or hypothecate any of all of its real or personal property as security for money borrowed or debts incurred.

(e) To own, lease, acquire, build, operate, and maintain sidewalks, footways, parking areas, drives, commons, maintenance areas, utility lines, recreation areas, and like facilities, including buildings, structures, and all personal properties incidental thereto.

(f) To administer and enforce the terms, conditions, covenants, charges, restrictions, and regulations upon, under and subject to which the property or any part thereof may now or hereafter be placed, and to fix and provide any such terms, conditions, covenants, charges, restrictions, and regulations and administer, enforce, alter, amend, change, add to, extend, waive, or terminate, in whole or in part, any of the same.

(g) To provide the Unit Owners and residents of the Condominium with (i) water service and other utility services not individually provided to a Unit, (ii) garbage and trash collection services, (iii) services supplemental to municipal services, and (iv) maintenance service.

(h) To obtain and maintain personal injury and property damage insurance on all or any of the Condominium real estate.

(i) To act as a Unit Owners Association of all or any part of the real estate submitted to the provisions of Chapter 5311 of the Revised Code of Ohio and any amendments thereto, to submit property to the provisions thereof, and to establish, administer, and enforce administrative rules and regulations governing the operation and use of property subject thereto.

(j) To do any and all other things necessary, expedient, incidental, appropriate, or convenient to the carrying out of the foregoing purposes, and, insofar as permitted by law, to do any other thing that, in the opinion of the Directors, will promote the common benefit and enjoyment of the Unit Owners and residents of the Condominium; and

(k) To contract for management of the Condominium and to delegate to such contractor all powers and duties of the Association, except such as are specifically required by the Declaration to have approval of the Board of Directors or the membership of the Association.

Nothing contained in Subsections (a) through (k) above shall authorize the Association to exercise any power that would contravene the provisions of Chapter 5311 of the Ohio Revised Code, the Declaration, or the Regulations, which provisions shall control in the event of conflict with the powers enumerated herein.

## **ARTICLE V**

### **TAX EXEMPT STATUS**

No part of the net earnings of the Association may inure to the benefit of, or be distributable to, the managers, directors, officers, employees, agents, members or other private persons, except as specifically authorized in the Regulations: it being the intent of the Association to qualify as a not-for-profit corporation under Ohio law and as a "Condominium Management Association" under the following provisions of Section 528 of the Internal Revenue Code, as amended from time to time.

## **ARTICLE VI**

### **MEMBERSHIP**

Every person or legal entity who is a record owner of a fee or undivided fee interest in any Condominium Unit which is part of the Condominium, shall automatically be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Unit. Ownership of such Unit shall be the sole qualification for membership.

**ARTICLE VII**  
**VOTING RIGHTS**

One vote shall be cast with respect to each Unit on each matter properly submitted to the members for vote, except that the developer of the Condominium ("Developer") retains the right to appoint the members of the Board of Directors of the Association until seventy-five percent (75%) of the Units have been sold and title thereto conveyed or three (3) years from the date the Declaration is filed for record as provided in the Declaration, whichever event shall earlier occur. All quorums and percentages of votes required by an Association meeting shall be based upon a residential and commercial Unit basis and not upon any percentage of interest in the Common Areas and Facilities.

**ARTICLE VIII**  
**DIRECTORS**

The affairs of the Association shall be managed by a Board of Directors consisting of the number of Directors determined by the Regulations, but not less than three (3) Directors. Directors shall be elected in the manner determined by the Regulations. Directors may be removed and vacancies on the Board of Directors filled in the manner provided by the Regulations.

**ARTICLE IX**  
**INDEMNIFICATION**

Every Director or Officer of the Association shall be indemnified by the Association against all expenses and liabilities, including attorneys' fees, reasonably incurred by or imposed upon that person in connection with any proceeding or any settlement of any proceeding to which the person may be a party or in which the person may become involved by reason of being or having been a Director or Officer of the Association, or serving at the request of the Association as a Director, Officer or employee of another Association, to the full extent and subject to all limitations imposed by the provisions of Section 1702.12(E) (1) through (E) (6) of the Ohio Revised Code.

The Association may purchase and maintain insurance on behalf of any person who is or was a Director or Officer of the

Association, or is or was serving at the request of the Association as a Director, Officer or employee of another Association, against liability asserted against and incurred by that person in any such capacity, or arising out of the status as such, whether or not the Association would have the power to indemnify that person against such liability under the sections of the Ohio Revised Code mentioned above.

**ARTICLE X**  
**DURATION**

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

**ARTICLE XI**  
**DISSOLUTION**

Upon dissolution of the corporation, any assets remaining after payment or adequate provision for payment of all debts and obligations of the corporation shall be expended in furtherance of the purposes set forth herein. If no successor in interest to the corporation is formed to administer the property of the corporation, its assets shall be distributed according to a plan adopted and administered by the Board of Directors of the corporation, which plan shall comply with the requirements of Chapters 1702 and 5311 of the Ohio Revised Code and the provisions of the Declaration.

**ARTICLE XII**  
**AMENDMENTS**

All Amendments of these Articles or to the Regulations shall require an amendment of the Declaration pursuant to Article XV of the Declaration.

IN WITNESS WHEREOF, for the purposes of forming this Association under the laws of the State of Ohio, the undersigned a sole incorporator of this Association, has executed these Articles of Incorporation this \_\_\_ day of February, 1984.

signed by: Jay A. Rosenberg  
201 East Fourth Street  
Cincinnati, Ohio 45202  
Sole Incorporator

The Declaration of Condominium Ownership has been amended 13 times. The following is a brief summary of these amendments.

#### FIRST AMENDMENT - 2/84

- I. Reconfiguration of units 1507 and 1506 adding one room to 1506 from 1507. Both units are sold.
- II. To correct page 2 of the Drawings to correct an erroneous description of a detached storage area as common area and to depict it correctly a limited common area appurtenant to unit 2346.

#### SECOND AMENDMENT - 6/84

- I. Change the name of the “Unit Owners Association” to 2444 Madison Road Condominium Owners Association, Inc.
- II. Provides for the Declarant to transfer to the Association, at no cost, to the Association, all easements for spaces then held by Declarant, when Declarant is no longer a unit owner of any unsold condominium unit.
- III. Paragraph D is added to Article XIV in order to induce the Federal Home Loan Mortgage Corporation and/or the Federal National Mortgage Association to participate in financing of the sale of units within the condominium.
- IV. Changed the requirement that the Unit Owners Association purchase unit 602A for the resident manager and to allow the Unit Owners Association to purchase a unit of its choice. It further authorizes the Unit Owners Association to finance such purchase.
- V. The drawings were amended to correct a typographical error. Unit 2300 (upper) was incorrectly designated unit 2302 (upper), and to add a certification – thereof by a licensed professional engineer.
- VI. To reflect the reconfiguration of units 104 and 105 to add unit 107.

- VII. Deletes language requiring subsequent purchasers from the obligation of making payments to the Association's contingency fund.

THIRD AMENDMENT - 9/84

- I. To reflect the reconfiguration of unit 101 and 103 and to add unit 108.

FOURTH AMENDMENT – 3/87

- I. Reconfiguration of units 1105 and 1106 adding one room to 1105 from 1106. Unit 1106 is sold.

FIFTH AMENDMENT - 3/88

- I. Redefines common areas as limited common areas.
- II. Provides for the administration of the newly designated limited common areas by a Finance Committee of the Hi-Rise building unit owners and the Low-Rise building unit owners.
- III. Provides that expenses incurred by the Hi-Rise building units to be borne by the owners of the Hi-Rise and that the expenses of the Low-Rise building units to be borne by the owners of the Low Rise.
- IV. Provides for the appointment of committees to budget for the expenses of each.

SIXTH AMENDMENT – 5/88

- I. Provides for a definition of persons authorized to be nominated for directorship and their election.

SEVENTH AMENDMENT – 7/88

- I. Provides for the reconfiguration of unit 106 and unit 1007.

EIGHTH AMENDMENT – 3/89

- I. Provides for the reconfiguration of “Commercial Units” 104 and 107.

NINTH AMENDMENT – 1/90

- I. Provides for the subdivision of unit 2011 into 2011 and 2010A.

TENTH AMENDMENT – 2/90

- I. Provides for the subdivision of unit 107 into 107 and 109.

ELEVENTH AMENDMENT – 5/91

- I. Provides for the reconfiguration of units 1804 and 1805.

TWELFTH AMENDMENT – 11/92

- I. Clarifies a portion of the Definition of a Unit;
- II. Changes the method of adopting Operating Budgets;
- III. Changes the percentage of voting power required to amend the Declaration and By-Laws;
- IV. Restates and expands the provisions pertaining to the nomination and election of Directors.

THIRTEENTH AMENDMENT – 4/10

- I. Amends the provisions of both the Declaration and the By-Laws in accordance with amendments to Chapter 5311 of the Ohio Revised Code effective July 20, 2004 and with the authority of O.R.C. 5311.05 (E)(1) in order to “bring the Declaration in compliance” with Chapter 5311 and 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.

## EXHIBITS

The following exhibits are referred to in and made a part of the Declaration and the Amendments thereto:

A. Legal Description of Land:

This is a metes and bounds description of the land on which the Regency Condominium is situated;

B. Percentage Ownership:

Lists the individual Units; the square footage; number of rooms; and, the percentage of the assessments allocated to each Unit;

C. Site Plan:

A drawing of the land on which the Condominium buildings are situated, and delineates the division between the High Rise Building Area and the Low Rise Building Area, and

D. Drawings and Specifications:

Shows the location, floor plan and dimensions of each Unit.

These Exhibits were given to each Unit Owner at the time of Purchase of a Unit. Copies may be obtained at the Front Office of the association.