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Harbour Island Boathouse Condominium No. 1  
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HARBOUR ISLAND BOATHOUSE CONDOMINIUM NO. 1

DECLARATION OF CONDOMINIUM OWNERSHIP

This will certify that copies of this Declaration and By-Laws, together with Drawings, attached as Exhibits thereto, were filed in the Office of the County Auditor, Erie County, Ohio, on February 6, 1985.

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Deputy Auditor

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DECLARATION OF CONDOMINIUM OWNERSHIP

WITH BYLAWS

EASEMENTS, RESTRICTIONS, AND COVENANTS

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DECLARATION OF CONDOMINIUM OWNERSHIP  
OF  
HARBOUR ISLAND BOATHOUSE CONDOMINIUM NO. 1

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DECLARATION OF CONDOMINIUM OWNERSHIP

FOR

HARBOUR ISLAND BOATHOUSE CONDOMINIUM NO 1.

WHEREAS, J. B. Wolff & Associates, Inc., an Ohio corporation, its successors and assigns, hereinafter referred to as "Grantor", is the owner in fee simple of the real property (the "Property" as hereinafter described); and

WHEREAS, it is the desire of Grantor to submit said Property, together with the improvements thereon constructed and hereinafter described, to the provisions of Chapter 5311 of the Ohio Revised Code, for condominium ownership for residential purposes.

NOW, THEREFORE, Grantor hereby declares:

ARTICLE I

Legal Description and Definitions

A. Legal Description.

The legal description of the Property is as set forth in Exhibit "A" attached hereto.

B. Definitions. The terms used in this Article I, Section B (except as herein otherwise expressly provided or unless the context otherwise requires) and in the By-Laws attached hereto and made a part hereof as Exhibit "B" for all purposes of the Declaration and of any amendments hereto shall have the respective meanings stated in Chapter 5311 of the Ohio Revised Code.

(1) "Association" means Harbour Island Boathouse Condominium No. 1 Unit Owners' Association, Inc., which is a non-profit Ohio corporation acting as an organization of all unit owners for administering the Condominium Property subject to this Declaration and By-Laws.

(2) "Board" means the Board of Managers of the Association as the same may be constituted from time to time.

(3) "Buildings" means the residential structures constructed on the Condominium Property.

(4) "Chapter 5311" or "Condominium Act" means Chapter 5311 of the Ohio Revised Code, as the same may be amended or supplemented from time to time.

(5) "Common Areas and Facilities" or "Common Elements" means all parts of the Condominium Property except the Units, including, without limitation, all foundations, exterior and supporting girders, beams, supports and walls and roofs of the Buildings, all structural and component parts of all interior walls,

windows and doors in the perimeter walls, floors, and ceilings of the Buildings, all doorsills, balconies, patios, stoops, courtyards, walkways, all plumbing, electrical, antennas and other utility services and lines, entrance ways and exits, driveways and parking spaces and all lawns, landscaping, gardens and recreational facilities now or hereafter situated on the Condominium Property, including any repairs and replacements thereof.

(6) "Common Assessments" means assessments charged proportionately against all Units for common purposes.

(7) "Common Expenses" means those expenses designated as Common Expenses in both Chapter 5311 and this Declaration and By-Laws, including, without limitation, the following:

(a) all sums lawfully assessed against the Unit Owners by the Association;

(b) expenses of the Association incurred in the administration, maintenance, repair and replacement of the Common Areas and Facilities;

(c) expenses determined from time to time to be Common Expenses by the Association.

(8) "Common Surplus" means the amount by which Common Assessments collected during any period exceed Common Expenses.

(9) "Common Losses" means the amount by which the Common Expenses during any period of time exceeds the Common Assessments and Common Profits during that period.

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

(11) "Condominium Property" or "Property" means the property set forth in Exhibit A and the Buildings and all other improvements thereon, all easements, rights, and appurtenances thereto belonging, and all articles of personal property existing thereon for the common use of the Unit Owners.

(12) "Declaration" means this instrument and all of the Exhibits hereto, as originally executed, or, if amended, as hereinafter provided, as so amended.

(13) "Drawings" means the drawings relating to the Condominium Property, which are identified as Exhibit "C" and attached hereto, and made a part hereof, or when amended, as hereinafter provided, as so amended.

(14) "Limited Common Areas and Facilities" means those parts of the Common Areas and Facilities reserved for the use of a certain Unit to the



exclusion of all other Units and more specifically described in Article VI, Section E, hereof.

(15) "Occupant" means the person or persons, natural or artificial, in possession of a Unit.

(16) "Ownership Interest" means the fee simple title interest in a Unit and the appurtenant undivided interest in the Common Areas and Facilities.

(17) "Rules" means such rules and regulations governing the operation and use of the Condominium Property or any portion thereof as may be adopted by the Association or the Board from time to time.

(18) "Unit" means that part of the Condominium Property described in Article V hereof.

(19) "Unit Owner", "Unit Owners", or "Owners", means any person who owns a condominium "Ownership Interest" in a Unit.

(20) "Harbour Association" means The Harbour Homeowners Association, Inc. Each Unit Owner shall automatically become a "member" of the Harbour Association upon taking title to his or her Unit and shall remain a member of the Harbour Association until such time as his or her ownership of the Unit ceases, at which time his or her Harbour Association membership shall automatically terminate unless such Owner remains a member by virtue of his or her owning other property causing such membership.

## ARTICLE II

### Establishment of Condominium and Division of Condominium Property

Grantor is the owner of the Property described on Exhibit A, which, together with the other portions of the Condominium Property, is hereby submitted to the provisions of Chapter 5311.

## ARTICLE III

### Name

The Condominium Property shall be known as Harbour Island Boathouse Condominium No. 1.

## ARTICLE IV

### General Description of Condominium Property

The Condominium Property consists of the Property and the Buildings and other improvements located thereon, including, without limitation, two (2) three (3) story buildings and containing a total of eight (8) Units, and all easements, rights and appurtenances belonging thereto, and all articles of personal property existing thereon for the common use of the Unit Owners. The location, layout, dimensions

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and numerical designation of the Buildings, the Units contained therein, and the Common Areas and Facilities are shown graphically on the Drawings. The Buildings are constructed principally of masonry, hardboard, wood siding and wood framing. All Units are designated on the Drawings by separate Unit numbers and style. The smallest Unit contains approximately 1,434 square feet and the largest Unit contains approximately 1,467 square feet. The square footage of the Units and their respective percentage of interest in the Common Areas and Facilities are set forth on Exhibit D, attached hereto and made a part hereof. All Units have direct ingress and egress to the Common Areas and Facilities. All such Units are clearly shown on the Drawings.

All Units contain fireplaces and Style A and B Units have garages. The individual Units described herein further contain the following per floor plan:

BUILDING D is a four (4) Unit Building containing Units 381, 382, 383 and 384.

BUILDING E is a four (4) Unit Building containing Units 385, 386, 387 and 388.

STYLE A UNITS are Units 381, 384, 385 and 388.

STYLE B UNITS are Units 382 and 386.

STYLE C UNITS are Units 383 and 387.

STYLE A UNITS contain: 1434 sf. of conditioned living area, 285 sf. of garage, 485 sf. of balconies, 2 bedroom/2-1/2 baths, with 775 sf. boathouse. Will accomodate a 32' boat. Entry at 1st floor ground level through side courtyard. Second bedroom and full bath on 1st level for full guest privacy. Living room, dining area with greenhouse window, powder room, kitchen, and master bedroom with master bath and closet are located on second floor level.

STYLE B UNITS contain: 1467 sf. of conditioned living area, 223 sf. of loft area storage that can be converted to a third bedroom, 247 sf. of garage, 163 sf. of balcony, 85 sf. of attic, 2 bedroom/2 bath, with a 1312 sf. boathouse having living quarters on 2nd and 3rd floor levels. Will accomodate a 48' boat. Entry through courtyard at ground level, with living room and deck, dining area, kitchen, 2nd bedroom and bath, laundry and storage loft on 2nd floor level. The master bedroom and bath are located at third floor level with balcony overlooking the courtyard.

STYLE C UNITS contain: 1435 sf. of conditioned living area, 276 sf. of loft area storage that can be converted to a third bedroom, 252 sf. of balcony, 2 bedroom/2 bath with 1128 sf.

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boathouse. Entry and all living quarters at ground floor level. Master bedroom has view of courtyard. Living, dining area looks out over water with full access to large deck off water. Will accomodate 42' boat.

The legal description of each Unit shall consist of the identifying number of each such Unit as shown on said Drawings. Every deed, lease, mortgage or other instrument may legally describe a Unit by its identifying number as shown on said Drawings, and every such description shall be deemed good and sufficient for all purposes as provided in the Condominium Act.

#### ARTICLE V

##### Description of Units

Each Unit shall constitute a single freehold estate and shall consist of all of the space bounded by the horizontal and vertical planes formed by the undecorated interior surfaces (whether plaster, dry wall, wood, concrete, or other materials) of each of the Units in the Buildings, the perimeter walls, windows, doors, floors and ceilings of such Unit; projected, if necessary, by reason of structural divisions such as interior walls, floors, ceilings, and other partitions, as may be necessary to form a complete enclosure of space with respect to such Unit (the exact layout and dimensions of each Unit being shown on the Drawings).

Except as a tenant in common with other Owners, no Owner shall own any pipes, wires, conduits, public utility lines or structural components running through his or her Unit and serving more than his or her Unit, whether or not such items shall be located in the floors, ceiling, or perimeter or interior walls of the Units.

#### ARTICLE VI

##### Common Areas and Facilities

A. Description. Except as otherwise provided in this Declaration, the Common Elements shall consist of all portions of the Property except the Units.

B. Ownership of Common Elements. Each Owner shall own an individual interest in the Common Elements as a tenant in common with all the other Owners of the Property and, except as otherwise limited in this Declaration, shall have the right to use the Common Elements for all purposes incident to the use and occupancy of his or her Unit as a place of residence, and such other incidental uses permitted by this Declaration, which right shall be appurtenant to and run with his or her Unit. Grantor has determined each Unit's corresponding percentage of ownership in the Common Elements in accordance with the Condominium Act based on the proportion of the square footage of each Unit as it bears to the aggregate square footage of all Units on the date this Declaration is filed for record, and the same are set forth in Exhibit "D" attached hereto and made a part hereof.

The undivided percentage of interest of the Unit Owners in the Common Areas and Facilities and the fee title to the respective Units shall not be separated or separately conveyed, encumbered, inherited, or divided; and each undivided

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interest shall be deemed to be conveyed or encumbered with its respective Unit, even though the description in the instrument of conveyance or encumbrance may refer only to the fee title to such Unit.

C. Partition. There shall be no partition of the Common Areas and Facilities through judicial proceedings or otherwise until this Declaration is terminated and the Condominium Property is withdrawn from its terms or from the terms of any statute applicable to condominium ownership; provided, however, that if any Unit shall be owned by two or more co-owners as tenants in common or as joint tenants, nothing herein contained shall be deemed to prohibit a voluntary or judicial partition of such Unit ownership as between such co-owners.

D. Use of Common Areas and Facilities. Each Unit Owner shall have the right to use the Common Areas and Facilities and parking in accordance with the purposes for which they are intended and for all purposes incident to the use and occupancy of his or her Unit, and such rights shall be appurtenant to and run with his or her Unit; provided, however, that no person shall use the Common Areas and Facilities or any part thereof in such manner as to interfere with or restrict or impede the use thereof by others entitled to the use thereof or in any manner contrary to or not in accordance with (i) this Declaration, (ii) the By-Laws, and (iii) the Rules of the Association.

E. Use of Limited Common Areas and Facilities. Each Unit Owner is hereby granted an exclusive and irrevocable license to use and occupy the Limited Common Areas and Facilities located within the bounds of his or her Unit or which serve only his or her Unit. The Limited Common Areas and Facilities with respect to each Unit shall consist of:

- (1) all interior walls, doors, floors and ceilings located within the bounds of such Unit, excluding the structural and component parts thereof;
- (2) all glass and screens within windows and doors within the perimeter walls of such Unit;
- (3) all ducts and plumbing, electrical and other fixtures, equipment and appurtenances, including heating and air conditioning systems and control devices, located within the bounds of such Unit or which serve only such Unit;
- (4) all electric, water or other utility or service lines, pipes, wires and conduits located within the bounds of such Unit and which serve only such Unit;
- (5) stoops, courtyards, boathouse and other appurtenant improvements, which serve only such Unit; and
- (6) all other Common Areas and Facilities as may be located within the bounds of such Unit and which serve only such Unit.

ARTICLE VII

Unit Owners' Association

A. Unit Owners' Association. Grantor has caused to be formed an organization called "Harbour Island Boathouse Condominium No. 1. Unit Owners' Association, Inc.", a non-profit Ohio corporation, which shall administer the Condominium Property, subject to the provisions of the Declaration. Each Unit Owner, upon acquiring an Ownership Interest in a Unit within the Condominium Property shall automatically become a member of the Association. Such membership shall terminate upon the sale or other disposition of his or her Ownership Interest, at which time the new Owner of such Ownership Interest shall automatically become a member of the Association and shall be entitled to vote as set forth in the By-Laws. Except in its capacity as a Unit Owner of unsold Units, the Grantor will not retain a property interest in any of the Common Areas and Facilities after control of the Condominium Property is assumed by the Association.

B. Administration of Condominium Property. The administration of the Condominium Property shall be in accordance with the provisions of this Declaration and the By-Laws. Each Unit Owner and Occupant shall comply with the provisions of this Declaration, the By-Laws, the Rules and the decisions and resolutions of the Association or its representative, as lawfully amended from time to time, and failure to comply with any such provisions, decisions or resolutions shall be grounds for an action for damages or for injunctive relief.

C. Arbitration. In the event of any dispute between Unit Owners as to the application of these restrictions or any rule or regulation to any particular circumstance, the party aggrieved shall submit a complaint in writing to the Board specifying the dispute. The Board shall set a time, date and place for a hearing thereon within thirty (30) days thereafter, and give written notice to each party thereof no less than three (3) days in advance. The Board shall thereupon hear such evidence on the dispute as the Board deems proper and render a written decision on the matter to each party within fifteen (15) days thereafter. No action at law may be instituted by either party to such a dispute unless arbitration pursuant hereto has first been had.

ARTICLE VIII

Management, Repair, Alterations and Improvements

A. Warranties. The Grantor provides a two-year warranty covering the full cost of labor and materials for any repair or replacement of roof and structural components and mechanical, electrical, plumbing and common service elements serving the Condominium Property as a whole, occasioned or necessitated by a defect in material or workmanship.

The Grantor provides a one-year warranty covering the full cost of labor and materials for any repair or replacement of structural, mechanical and other elements pertaining to each Unit occasioned or necessitated by a defect in material or workmanship.

The two-year and one-year warranties shall commence on the date the deed or other evidence of ownership is filed for record following the sale of the first condominium Ownership Interest in the Property to a purchaser in good faith for value.

In the case of ranges, refrigerators, washing machines, clothes dryers, hot water heaters, and other similar appliances installed and furnished as part of the Unit by the Grantor, Grantor assigns the express and implied warranties of the manufacturers to the Unit Owner. The assignment of these warranties satisfies the Grantor's obligation as to the above appliances. The Grantor's warranty is limited to the installation of the appliances.

All warranties made to the Grantor that exceed the time periods set forth hereinabove with respect to any part of the Units or Common Areas and Facilities are hereby expressly assigned to the purchasers.

The exclusive remedy for breach of any of the foregoing shall be the repair of such defect or the replacement of such defective component or element by the Grantor. Any claim for breach of warranty not made within forty-eight (48) hours after expiration of the applicable warranty period by a Unit Owner in writing, addressed to J. B. Wolff & Associates, Inc., Attention: Stephen C. Lochner, President, 2001 Cleveland Road, Sandusky, Ohio 44870, shall be deemed waived by such Unit Owner. THESE WARRANTIES ARE IN LIEU OF ANY AND ALL OTHER WARRANTIES AND LIABILITIES, EXPRESS OR IMPLIED, INCLUDING ANY WARRANTY OF MERCHANTABILITY OR FITNESS FOR ANY PURPOSE AND ANY LIABILITY FOR CONSEQUENTIAL OR INCIDENTAL DAMAGES ARISING OUT OF SUCH DEFECT.

B. Responsibilities of Association. Except as otherwise provided herein, the management, repair, alterations and improvement of the Common Elements shall be the responsibility of the Association. The Association may delegate all or any portion of its authority to discharge such responsibility to a manager or managing agent. Such delegation may be evidenced by a management contract (which shall not exceed two (2) years in duration and shall be terminable for cause on ninety (90) days' written notice), and which shall provide for reasonable compensation of said manager or managing agent to be paid out of the maintenance fund hereinafter provided.

C. Maintenance of the Units.

(1) By the Association. The Association, at its expense, shall be responsible for the maintenance, repair and replacement of those portions of each Unit which contribute to the support of the Building, excluding, however, interior walls, ceiling and floor surfaces. In addition, the Association shall maintain, repair and replace all conduits, ducts, plumbing, wiring and other facilities for the furnishing of utility services which may be located within the Unit boundaries as specified in Paragraph E of Article VI, exclusive of any portions of the foregoing which may be located at or extend from the wall outlets, into the Unit, or which may be the responsibility of an individual Owner under any other provision of this Declaration.

(2) By Each Owner. The responsibility of each Owner shall be as follows:

(a) to maintain, repair and replace at his or her expense all portions of his or her Unit, and all internal installations of such Unit such as appliances, heating, plumbing, electrical and air conditioning fixtures or installations, and any portion of any other utility service facilities located within the Unit boundaries as specified in Paragraph E of Article VI.

(b) to maintain, repair and replace at his or her expense such portions of the appurtenances to his or her Unit and of any exclusive use area licensed, granted or otherwise assigned to such Owner, as the Association shall from time to time determine. Until such time as the Association determines to the contrary, each Owner shall be responsible for the repair, maintenance and appearance of all windows, doors, vestibules and entryways and of all associated structures and fixtures therein, which are appurtenances to his or her Unit and garage door openers, if any. The foregoing includes, without limitation, responsibility for all breakage, damage, malfunctions and ordinary wear and tear of such appurtenances.

D. Construction Defects. The obligation of the Association and of Owners to repair, maintain and replace the portions of the Property for which they are respectively responsible under Paragraphs C(1) and C(2) of this Article VIII shall not be limited, discharged or postponed by reason of the fact that any maintenance, repair or replacement may be necessary to cure any latent or patent defects in material or workmanship in the construction of the Property. The undertaking of repair, maintenance or replacement by the Association or Owners shall not constitute a waiver of any rights against any warrantor but such rights shall be specifically reserved.

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

F. Separate Mortgages of Units. Each Owner shall have the right to mortgage and/or encumber his or her own respective Unit, together with his or her respective Ownership Interest in the Common Areas and Facilities. No Owner shall have the right or authority to mortgage or otherwise encumber in any manner whatsoever the Condominium Property or any part thereof except his or her own Unit and his or her own respective Ownership Interest in the Common Areas and Facilities as aforesaid.

G. Separate Real Estate Taxes. Each Unit and its percentage interest in the Common Areas and Facilities shall be deemed to be a separate parcel for all purposes of taxation and assessment of real property, and no other Unit or other part of the Condominium Property shall be charged with the payment of such taxes

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and assessments; however, in the event that for any year such taxes are not separately taxed to each Owner, but are taxed on the Condominium Property as a whole, then each Owner shall pay his or her proportionate share thereof in accordance with his or her respective percentage of Ownership Interest in the Common Areas and Facilities.

#### ARTICLE IX

##### Common Expenses and Assessments

A. General. Assessments for the maintenance, repair and insurance of the Common Areas and Facilities (including any added or altered in and/or from the Limited Common Areas and Facilities) and for the insurance of the Units shall be Common Expenses and, together with the payment of other Common Expenses, shall be made in the manner provided herein, and in the manner provided in the By-Laws. As provided in the Declaration of Restrictions and Covenants of Record of the Harbour Association, the Harbour Association shall provide all landscaping, snowplowing, lawn mowing and shall provide all other services as set forth therein.

B. Utilities. Each Owner shall pay for his or her own telephone, electricity and other utilities which are separately metered or billed to each user by the respective utility company. Utilities which are not separately metered or billed shall be treated as part of the Common Expenses.

C. Division of Common Profits and Common Expenses. The Common Profits of the Condominium Property shall be distributed among, and the Common Expenses shall be assessed against, the Unit Owners by the Association according to the percentages of interest in the Common Areas and Facilities of their respective Units. Every Unit Owner shall pay his or her proportionate share of assessments for Common Expenses and any special assessments levied against him or her, and no Unit Owner shall exempt himself or herself from liability for such assessments by waiver of the use or enjoyment of any of the Common Areas and Facilities or by the abandonment of his or her Unit.

D. Harbour Association. The Association shall not collect assessments of the Harbour Association from the Unit Owners and shall not be responsible for paying such assessments to the Harbour Association.

E. Lien of Association. The Association shall have a lien upon each Unit Owner's Ownership Interest for the payment of all assessments levied by the Association against such Unit which remain unpaid for ten (10) days after the same have become due and payable, from the time a certificate therefor is filed with the County Recorder, pursuant to authorization given by the Board. Such certificate shall contain a description of the Unit, the name or names of the Unit Owner or Owners thereof and the amount of such unpaid portions of the assessments and shall be subscribed by the President of the Association. Such lien shall remain valid for a period of five (5) years from the time of filing thereof, unless sooner released or satisfied in the same manner provided by law for the release and satisfaction of mortgages on real property or discharged by the final judgment or order of a court in an action brought to discharge all or any portion of such lien as hereinafter provided in Paragraph F of this Article IX. In addition, each Unit



Owner shall be personally liable for all assessments levied by the Association against his or her Unit during the period he or she has an Ownership Interest therein, and any assessment not paid within ten (10) days after the same shall become due and payable shall bear interest from the date when due at eight percent (8%) per annum or such legal rate of interest then applicable, whichever is greater, until such time as the same has been paid in full.

F. Priority of Association's Lien. The lien provided for in Paragraph E of this Article IX shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of first mortgages which have been theretofore filed for record, and may be foreclosed in the same manner as a mortgage on real property in an action brought on behalf of the Association by the President thereof pursuant to authority given to him or her by the Board. In any such foreclosure action, the Unit Owner of the Unit affected shall be required to pay a reasonable rental for such Unit during the pendency of such action, and the plaintiff in such action shall be entitled to the appointment of a receiver to collect the same. In any such foreclosure action, the Association shall be entitled to become the purchaser at the foreclosure sale.

G. Dispute as to Common Expenses. Any Unit Owner who believes that the assessments levied by the Association against him or her or his or her Unit, for which a certificate of lien has been filed by the Association, have been improperly determined may bring an action in the Court of Common Pleas in Erie County, Ohio, for the discharge of all or any portion of such lien.

H. Non-Liability of Foreclosure Sale Purchaser for Past Due Common Expenses. Where the mortgagee of a first mortgage of record acquires an Ownership Interest in a Unit as a result of foreclosure of the first mortgage or of the acceptance of a deed in lieu of foreclosure or any purchaser at a foreclosure sale, such mortgagee, its successors and assigns, or such purchaser at a foreclosure sale shall not be liable for the assessments levied against such Unit which were levied prior to the acquisition of an Ownership Interest in such Unit by such mortgagee or such purchaser. Any unpaid assessments shall be deemed to be Common Assessments and shall be assessed against all Unit Owners including the mortgagee or purchaser of the Unit foreclosed.

I. Liability for Assessments Upon Voluntary Conveyance. In a voluntary conveyance of an Ownership Interest in a Unit, other than by deed in lieu of foreclosure, the grantee of the Ownership Interest shall be jointly and severally liable with the grantor for all unpaid assessments levied by the Association against such Unit prior to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. Notwithstanding the foregoing, any such prospective grantee shall upon written request be entitled to a statement from the Board setting forth the amount of all unpaid assessments due the Association with respect to the Ownership Interest to be conveyed, and such grantee shall not be liable for, nor shall the Unit conveyed be subject to a lien for, any unpaid assessments which became due prior to the date of the making of such request if the same are not set forth in such statement or if such statement is not furnished to the grantee within twenty (20) days from the request thereof. As used in this Paragraph, "grantor" shall include a decedent, and "grantee" shall include a legatee or intestate heir of said decedent.

ARTICLE X

Easements

A. Encroachments. In the event that, by reason of the construction, reconstruction, settlement or shifting of the Buildings, or by reason of the partial or total destruction and rebuilding of the Buildings and/or part of the Condominium Property, any part of the Common Elements encroaches or shall hereafter encroach upon any part of any Unit, or any Unit encroaches or shall hereafter encroach upon any part of the Common Elements, or if by reason of the design or construction of any Unit, it shall be necessary or advantageous to an Owner to use or occupy, for normal uses and purposes, any portion of the Common Elements, consisting of unoccupied space within the Buildings and adjoining his or her Unit including, without limitation, mains, pipes, ducts or conduits, valid easements for the maintenance of such encroachment and for the use of such adjoining space are hereby established and shall exist for the benefit of such Unit and the Common Elements, as the case may be, so long as all or any part of the Buildings containing such Unit shall remain standing; provided, however, that in no event shall a valid easement for any encroachment be created in favor of the Owner of any Unit or in favor of the Owners of the Common Elements if such encroachment occurred due to the willful conduct of said Owner or Owners.

B. 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 and Facilities in the performance of their duties.

C. Maintenance Easements. The Owner of each Unit shall be subject to easements for access arising from necessity of maintenance or operation of the entire Condominium Property or any part thereof. The Owner of each Unit shall have the permanent right and easement to and through the Common Areas and Facilities and walls to the use of water, sewer, power, television antenna, and other utilities now or hereafter existing within the walls, and further shall have an easement to hang pictures, mirrors and the like upon the walls of his or her Unit.

D. Easements for Certain Utilities and Ingress and Egress to the Property. The Board may hereafter grant easements for utility purposes for the benefit of the Property, including the right to install, lay, maintain, repair and replace water mains and pipes, sewer lines, telephone wires and equipment, and electrical conduits and wires over, under, along and on any portion of the Common Elements or easements for ingress and egress which benefit the Property; and each Owner and mortgagee hereby grants the Board an irrevocable power of attorney to execute, acknowledge and record, for and in the name of such Owner or such mortgagee, as the case may be, such instruments as may be necessary to effectuate the foregoing.

E. Easements Through Walls Within Units. Easements are hereby declared and granted to install, lay, maintain, repair and replace any pipes, wires, ducts, conduits, public utility lines or structural components running through the walls of the Units, whether or not such walls lie in whole or in part within the Unit boundaries.

F. Easements to Run With the Land. All easements and rights described herein and in the legal descriptions of the Condominium Property are easements appurtenant to and running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on the undersigned, its successors and assigns, and any Owner, purchaser, mortgagee or other person having an interest in the Property or any part or portion thereof. The easements and grants provided herein shall in no way affect any other recorded grant or easement and specifically those easements relating to ingress and egress to the Condominium and those easements relating to The Harbour Homeowners Association, Inc., in which all Unit Owners shall hold a membership interest. Reference in the deeds of conveyance, or in any mortgage or trust deed or other evidence of obligation, to the easements and rights described in this Article, or described in any other part of this Declaration, shall be sufficient to create and reserve such easements and rights to the respective grantees, mortgagees and trustees of such Parcels as fully and completely as though such easements and rights were recited fully and set forth in their entirety in such documents.

G. Reference to Easements in Deeds. Failure to refer specifically to any or all of the easements and/or rights described in this Declaration in any deed of conveyance or in any mortgage or trust deed or other evidence of obligation shall not defeat or fail to reserve said rights or easements but same shall be deemed conveyed or encumbered along with the Unit.

#### ARTICLE XI

##### Covenants and Restrictions as to Use and Occupancy

The Units and Common Elements shall be occupied and used as required by this Declaration and By-Laws as follows:

A. Purpose of Property. No part of a Unit in the Property shall be used for other than housing and the common recreational purposes for which the Property was designed. Each Unit shall be used as a residence for a single family and for no other purpose.

B. Obstructions of Common Elements. There shall be no obstruction of the Common Elements nor shall anything be stored in the Common Elements without the prior consent of the Association except as herein expressly provided. Each Owner shall be obligated to maintain and keep in good order and repair his or her own Unit. Docking or mooring of boats at designated areas shall not be deemed a violation hereof.

C. Hazardous Uses and Waste. Nothing shall be done or kept in any Unit or in the Common Elements which will increase the rate of insurance of the Buildings, or contents thereof, applicable for residential use, without the prior written consent of the Association. No Owner shall permit anything to be done or kept in his or her Unit or in the Common Elements which will result in the cancellation of insurance on the Buildings, or contents thereof, or which would be in violation of any law. No waste will be committed in the Common Elements.

D. Exterior Exposure of Building. Owners shall not cause or permit anything to be hung or displayed on the outside of windows or placed on the outside

walls of a Building and no sign, awning, canopy, shutter, radio or television antenna shall be affixed to or placed upon the exterior walls or roof or any part thereof, without the prior written consent of the Association.

E. Pets. No animals, rabbits, livestock, fowl or poultry of any kind shall be raised, bred or kept in any Unit or in the Common Elements, except that birds, one dog and one cat may be kept in Units, subject strictly to the Rules adopted by the Association, provided that they are not kept, bred or maintained for commercial purpose; and provided further that any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property subject to these restrictions upon three (3) days' written notice from the Association.

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

G. Impairment of Structural Integrity of Building. Nothing shall be done in any Unit or in, on or to the Common Elements which will impair the structural integrity of the Buildings or which would structurally change the Buildings except as is otherwise provided herein.

H. Lounging or Storage in Common Elements. Except in areas specifically designed and intended for such purpose, there shall be no playing, lounging, parking of baby carriages or playpens, bicycles, wagons, toys, vehicles, benches or chairs on any part of the Common Elements. Docking or mooring of boats at designated areas shall not be deemed a violation hereof.

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

J. Prohibited Activities and Signs. No industry, business, trade, occupation or profession of any kind, commercial, religious, educational, or otherwise, designed for profit, altruism, exploitation, or otherwise, shall be openly conducted, maintained or permitted on any part of the Property, nor shall any "For Sale" or "For Rent" signs or other window displays or advertising be maintained or permitted by any Owner on any part of the Property or in any Unit therein, except in accordance with the Rules therefor adopted by the Association. The right is reserved by Grantor or its agent, to place "For Sale" or "For Rent" signs on any unsold or unoccupied Units, and to place such other signs on the Property as may be required to facilitate the sale of unsold Units.

K. Alterations of Common Elements. Nothing shall be altered or constructed in or removed from the Common Elements, except upon the written consent of the Association.

ARTICLE XII

Rental of Units

No Unit shall be rented by a Unit Owner for transient or hotel purposes. For purposes of this provision, "transient or hotel purposes" shall be defined as a rental for a period of less than thirty (30) days or rental to an Occupant wherein customary hotel services such as furnishing of laundry and linen and room service is maintained. Other than the foregoing, Unit Owners shall have the right to lease their respective Units, provided that said lease is made subject to the covenants and restrictions in this Declaration and the By-Laws and Rules, and any Occupant shall be subject to all of said Rules as though the Occupant were the Unit Owner. Nothing herein contained shall permit a Unit Owner to be relieved from any duties or responsibilities or obligations hereunder because his Unit is occupied by a third party. Each Unit Owner, by acceptance of a Unit hereunder, makes, constitutes and appoints the Association as his or her attorney-in-fact to take such action as may be appropriate, including, but not limited to, eviction of a tenant for violation of the covenants and restrictions herein contained beyond any grace period provide therefor.

ARTICLE XIII

Insurance and Reconstruction

The insurance which shall be carried upon the Condominium Property shall be governed by the following provisions:

A. Authority to Purchase. All insurance policies upon the Condominium Property except as hereinafter provided shall be purchased by the Association for the benefit of the Unit Owners and their respective mortgagees as their interest may appear. All of said policies shall provide for:

- (1) the issuance of certificates of insurance with mortgagee endorsements to the holders of first mortgages on the Units, if any;
- (2) that the insurer waives its right of subrogation against Unit Owners, Occupants, and the Association; and
- (3) that the improvements to Units made by Unit Owners shall not affect the valuation for the purposes of such insurance of the Buildings and all other improvements upon the land.

Such policies and copies of all endorsements shall be retained by the Association, in trust, for the Unit Owners, the Association and Unit mortgagees as their interests may appear, or deposited with the Insurance Trustee (hereinafter provided for) who must first acknowledge that the policies and any proceeds thereof will be held in accordance with the terms hereof. The Association agrees for the benefit of the Unit Owners and each Unit mortgagee that it shall pay the premiums for the casualty insurance hereinafter required to be carried by the Association at least thirty (30) days prior to the expiration date of such policy and such premiums shall be assessed as a Common Expense. Each policy shall further

provide that coverage thereunder shall not be terminated for non-payment of premiums without at least ten (10) days written notice to each Unit mortgagee. Within ten (10) days after an insurable casualty, all Unit mortgagees shall receive notice of such casualty if the estimated claim shall exceed Ten Thousand Dollars (\$10,000.00).

B. Unit Owners' Insurance. Each Unit Owner may obtain insurance, at his or her own expense, affording coverage upon his or her personal property and for his or her personal liability and as may be required by law and may obtain casualty insurance, at his or her own expense, upon any improvements to his or her Unit made by him or her in which he would have an insurable interest in excess of his or her interest in the casualty insurance policy purchased by the Association. Each insurance policy, however, shall provide that it shall be without contribution as against the casualty insurance purchased by the Association or shall be written by the carrier of such insurance for the Association and shall contain the same waiver of subrogation as that referred to in sub-paragraph A(2) above.

C. Coverage. The Building and all other insurable improvements upon the Condominium Property and all personal property as may be owned by the Association shall be insured in an amount equal to the maximum insurable replacement value thereof excluding excavation and foundations, as determined annually by the insurance company affording such coverage. Such coverage shall grant protection against the following:

(1) Loss or damage by fire and other hazards covered by the standard extended coverage endorsement including coverage for the payment of Common Expenses with respect to damaged Units during the period of reconstruction thereof.

(2) Such other risks as determined from time to time to be customary shall be covered with respect to buildings similar in construction, location and use as the Buildings including, but not limited to, vandalism, wind storm, water damage, and malicious mischief. The policy providing such coverage shall provide that, notwithstanding any provision thereof which gives the carrier an election to restore damage in lieu of making a cash settlement therefor, such option shall not be exercised in case of the termination of the condominium as provided for in this Declaration or pursuant to the provisions of Chapter 5311 of the Ohio Revised Code.

The Association shall further insure itself, any managing agent, the Unit Owners and their respective families, agents, tenants, guests, and employees and all persons lawfully in possession or control of any part of the Condominium Property, against liability for personal injury, disease, illness, or death and for injury to or destruction of property occurring upon, in, or about, or arising from or relating to the Common Areas and Facilities, including, without limitation, water damage, legal liability, hired automobile, non-owned automobile, and off-premises employee coverage, such insurance to afford protection to a limit of not less than Five Hundred Thousand Dollars (\$500,000) in respect to personal injury, disease, illness, or death suffered by any one person and to the limit of not less than One Million Dollars (\$1,000,000) in respect to any one occurrence and to the limit of not less than One Million Dollars (\$1,000,000) in respect to damage to or destruction of

property arising out of any one accident. Such insurance shall not insure against liability for personal injury or property damage arising out of or relating to the individual Units. All liability insurance shall contain cross-liability endorsements to cover liabilities of the Unit Owners as a group to a Unit Owner.

D. Insurance Trustee - Distribution of Proceeds. All casualty insurance policies purchased by the Association shall be for the benefit of the Association and the Unit Owners and their respective mortgages as their respective interest may appear and shall provide that all proceeds payable as a result of casualty losses of less than \$10,000.00 shall be paid to the Association, in trust, and all losses in excess of \$10,000.00 shall be payable to any bank, as trustee, which is selected by the Association and located in Erie County, Ohio, with trust powers, which will accept and assume the responsibility and provisions hereinafter set forth. Said Insurance Trustee, if selected, shall not be liable for payment of premiums nor for the renewal of the policies, nor for the sufficiency of coverage, nor for the form or contents of policies, nor for the failure to collect any insurance proceeds. The sole duty of the Insurance Trustee, if selected, shall be to receive such proceeds as are paid and to hold the same in trust for distribution in accordance with the terms and conditions hereinafter set forth and for the benefit of the Association, Unit Owners and their respective mortgages.

E. Responsibility for Reconstruction or Repair.

(1) Unit Owner's. If the damage is only to those parts of one Unit for which the responsibility of maintenance and repairs is that of the Unit Owner, then the Unit Owner shall be responsible for reconstruction and repair after casualty.

(2) Association's. If any part of the Common Areas and Facilities shall be damaged by casualty, such damaged portion shall be promptly reconstructed or repaired as hereinafter provided unless such damage renders one-half (1/2) or more of the Units untenantable and the Unit Owners, by the vote of those entitled to exercise not less than seventy-five percent (75%) of the voting power, as well as the consent of seventy-five percent (75%) of the first mortgagees, based upon one (1) vote for each mortgage owned, elect not to reconstruct or repair such damaged part, at a meeting which shall be called within ninety (90) days after the occurrence of the casualty, or if by such date the insurance loss has not been finally adjusted, then within thirty (30) days thereafter. Any such reconstruction or repair shall be substantially in accordance with the Drawings. Further, in all other instances except as set forth in sub-paragraph E(1) above, the responsibility of reconstruction and repair after casualty shall be that of the Association. In the event the aforementioned election is held and it is determined that the damage shall not be reconstructed or repaired, then all of the Condominium Property shall be subject to an action for sale as one entity. Said sale shall be negotiated and consummated by the Board with prior approval of seventy-five percent (75%) of the voting power of the Unit Owners and seventy-five percent (75%) of the first mortgagees, based upon one (1) vote for each mortgage owned. The net proceeds of the sale together with the net proceeds of insurance, if any, and any other indemnity arising because of such damage or destruction, shall be considered as one fund and shall be distributed to all Unit Owners in proportion to the respective percentages of interest in the Common Areas and Facilities. No Unit Owner, however, shall receive any portion of his or her share of such proceeds until all liens and encumbrances on his or her Unit have been paid, released, or discharged.

F. Procedure for Reconstruction or Repair.

(1) Estimates of Cost. Immediately after a casualty damage to any portion of the Condominium Property for which the Association has the responsibility of maintenance and repair, and except in emergency situations, the Association shall obtain firm contract bids from at least two (2) reliable contractors for the cost to place the damaged property in condition as good as that before the casualty. All bids may require the contractor to deposit with the Association a performance and completion bond in the full amount of the contract price which must be issued by a corporate surety company authorized to do business in the State of Ohio and satisfactory to the Association. In addition, the cost may be increased by the Association to include professional fees and the Insurance Trustee's fees as the Board of Managers deems necessary.

(2) Special Assessments. If the proceeds of the insurance policies are not sufficient to defray the estimated cost of reconstruction and repair by the Association including the aforesaid fees, one or more special assessments shall be made against all Unit Owners in sufficient amounts to provide funds for the payment of such costs, and such assessments shall be deposited with the Insurance Trustee.

(3) Disbursement of Construction Fund. The Association shall then deposit with its banking depository or with the Insurance Trustee, if selected, the contract, bonds, and the proceeds of the casualty insurance collected and heretofore referred to and the sums deposited with its banking depository or with the Insurance Trustee by the Association from collections of special assessments as aforescribed. Said money shall constitute a construction fund which shall be disbursed by the Board or by the Insurance Trustee for the payment of the cost of reconstruction and repair of the areas and facilities for which the Association is responsible to reconstruct and repair, and said payment shall be made from time to time as work progresses, but not more frequently than once in any calendar month. The Trustee, if selected, shall not accept for disbursement any sums less than an amount to pay in full the contract price for repair plus estimated fees. The Trustee, if selected, shall make such payments upon the written request of the Association, accompanied by a certificate dated not more than fifteen (15) days prior to such request signed by the contractor, a responsible officer of the Association and by an architect, if any, in charge of the work, who shall be selected by the Association. If there be no architect in charge of the work, the contractor and two officers of the Association shall be required to execute this certificate. The certificate shall set forth the following:

(a) that the sum then requested either has been paid by the Association or is justly due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with the work, giving a brief description of the services and materials, and that the sum requested does not exceed the value of the services and materials described in the certificate;

(b) that except for the amounts stated in such certificate to be due as aforesaid and for work subsequently performed, there is no outstanding indebtedness known to the persons signing such certificate after due inquiry



which might become the basis of a vendor's, mechanic's, materialmen's, or similar lien arising from such work;

(c) that the cost as estimated by the persons signing the certificate of work remaining to be done after the date of the certificate does not exceed the amount of the construction fund remaining in the hands of the Insurance Trustee after payment of the sum requested; and

(d) the contractor shall also issue an "Affidavit of Original Contractor" in accordance with Chapter 1311 of the Ohio Revised Code with each certificate.

It shall be presumed that the first monies disbursed in payment of cost of reconstruction and repair shall be from insurance proceeds, and if there be a balance in any construction fund after the payment of all of the costs of the reconstruction, repair, and fees for which the fund is established, such balance shall be disbursed to the Association. The Association shall then disburse said balance on a prorata basis to the Unit Owners as follows: first, to reimburse Unit Owners for all or any portion of the monies contributed as a "Special Assessment" in accordance with sub-paragraph F(2) of this Article; the balance, if any, shall be distributed prorata based upon beneficial ownership jointly to the Unit Owners and their respective mortgagees. The above procedure pertaining to disbursement of construction funds through an Insurance Trustee as herein described can be waived by unanimous agreement of the Board, provided the cost of construction and repair does not exceed the sum of Ten Thousand Dollars (\$10,000.00). Any other method of disbursement must receive the approval of all Unit mortgagees.

(4) Certification to Proceed with Work. The Insurance Trustee, if selected, may rely upon a certificate of the Association certifying as to whether or not the damaged property is to be reconstructed or repaired. The Association, upon request of the Insurance Trustee, shall deliver such certificate as soon as practical.

(5) Insurance Adjustments. Each Unit Owner shall be deemed to have delegated to the Board of Managers his or her right to adjust with insurance companies all losses under policies purchased by the Association except in any case where the damage is restricted to one Unit, subject to the rights of mortgagees of such Unit.

(6) Encroachments. Encroachments upon or in favor of a Unit Owner or a Unit which may be created as a result of any reconstruction or repair shall not constitute a claim for the basis of a proceeding or action by a Unit Owner upon whose property such encroachment exists, provided that such reconstruction or repair was either substantially in accordance with the plans and specifications or as the Building was originally constructed. Such encroachment or encroachments shall be allowed to continue in existence for so long as the Buildings and/or Units stand.

ARTICLE XIV

Removal of the Property from Provisions of Chapter 5311

With prior written approval of one hundred percent (100%) of the first mortgagees (based on one vote for each mortgage owned), the Owners may, by affirmative vote of one hundred percent (100%) of the total vote, at a meeting of Unit Owners duly called for such purpose, elect to remove the Property from the provisions of Chapter 5311. Such action shall be binding upon all Unit Owners, and it shall thereupon become the duty of every Unit Owner to execute and deliver such instruments and to perform all acts in manner and form as may be necessary to effect such sale. No Unit Owner, however, shall receive any portion of his or her share of the proceeds until all liens and encumbrances on his or her Unit have been paid, released or discharged.

ARTICLE XV

Remedies For Breach of Covenants

A. Abatement and Enjoinment. The violation of any restriction or condition or regulation adopted by the Association, or the Board of Managers, or the breach of any covenant or provision herein contained, shall give the Association the right, in addition to the rights set forth in the next succeeding section:

(1) to enter any Unit in which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions hereof, and of the By-Laws, and Grantor, or its successors or assigns, or the Association, or its agents, shall not thereby be deemed guilty in any manner of trespass; or

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

B. Involuntary Sale. If any Owner (either by his or her own conduct or by the conduct of any other Occupant of his or her Unit) shall violate any of the covenants or restrictions or provisions of the general law, the Condominium Act or of this Declaration or the By-Laws or the Rules adopted by the Association, or the Board of Managers, and such violation shall continue for ten (10) days after notice in writing from the Association, or shall occur repeatedly during any ten (10) day period after written notice to cure such violation from the Association, or Board of Managers, or member thereof, and the mortgagee, if any, has been served with written notice of such violation, then the Association shall have the power, by action of a majority of its Board of Managers, to issue to the defaulting Owner a ten-day notice in writing to terminate the rights of the said defaulting Owner to continue as an Owner and to continue to occupy, use or control his or her Unit and thereupon an action in equity may be filed by the Association against the defaulting Owner for a decree of mandatory injunction against the Owner or Occupant subject to the prior consent in writing of any mortgagee having a security interest in the Unit Ownership of the defaulting Owner, which consent shall not be unreasonably withheld. In the alternative, the action may pray for a

decree declaring the termination of the defaulting Owner's right to occupy, use or control the Unit owned by him or her on the account of the breach of covenant, and ordering that all the right, title and interest of the Owner in the Property shall be sold (subject to the lien of any existing mortgage) at a judicial sale upon such notice and terms as the court shall establish, except that the court shall enjoin and restrain the defaulting Owner from re-acquiring his or her interest at such judicial sale. The Association, however, may acquire said interest at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, master's or commissioner's fees, court reporter charges, reasonable attorneys' fees and all other expenses of the proceeding, and all such items shall be taxed against the defaulting Owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder or any liens, may be paid to the Owner. Upon the confirmation of such sale, the purchaser thereat shall thereupon be entitled to a deed to the Unit Ownership and to immediate possession of the Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession, and it shall be a condition of any such sale, and the decree shall so provide, that the purchaser shall take the interest in the Property sold subject to the Condominium Act, this Declaration, the By-Laws and/or Rules of the Association, and the purchaser shall become a member of the Association in the place and stead of the defaulting Owner.

The Association and each Unit Owner shall have the rights of action against each other for failure to comply with the provisions of the Condominium Organizational Documents, rules and regulations, and applicable law, and with respect to decisions made pursuant to authority granted thereunder, and the Association shall have the right to assess reasonable charges against a Unit Owner who fails to comply with the same, including the right to assess charges for the costs of enforcement and arbitration. Notwithstanding the foregoing, in the event of any dispute between the Association and any Unit Owner or Occupant, other than with regard to assessments, that cannot be settled by an agreement between them, the matter shall first be submitted to arbitration in accordance with and pursuant to the arbitration law of Ohio then in effect, by a single independent arbitrator selected by the Board.

#### ARTICLE XVI

##### Amendment of Declaration

This Declaration may be amended effective upon the filing for record with the County Recorder of an instrument in writing setting forth specifically the item or items to be amended and any new matter to be added, which instrument shall have been duly executed by the number of Unit Owners having such aggregate interest in the Common Areas and Facilities as may be required by Chapter 5311 of the Ohio Revised Code. All such amendments must be executed with the same formalities as this instrument and must refer to the volume and page in which this instrument and its attached exhibits are recorded and must contain an affidavit by the President of the Association, that a copy of the amendment has been mailed by ordinary U.S. mail to all Unit Owners and all mortgagees having bona fide liens of record against any Unit Ownership. No amendments shall have any effect, however, upon Grantor, the rights of Grantor under this Declaration and upon the rights of bona fide mortgagees until the written consent of Grantor and/or such

mortgagees to such amendment has been secured. Such consents shall be retained by the Secretary of the Association, and his or her certification in the instrument of amendment as to the consent or non-consent of Grantor and the names of the consenting and non-consenting mortgagees of the various Units may be relied upon by all persons for all purposes.

ARTICLE XVII

Condemnation

A. Entire Taking. In the event all of the Common Areas and Facilities are taken by condemnation, the net proceeds of the award shall be paid to the Association and considered as one fund and shall be distributed to all Unit Owners and their respective mortgagees jointly and proportioned to each Unit Owner's respective percent of interest in the Common Areas and Facilities.

B. Partial Taking. In the event of a partial taking of the Common Areas and Facilities, this condominium shall automatically and of and by itself be amended so that the parcel of land taken by the condemning authorities is excluded from this Declaration. The Unit Owners' share in the Common Areas and Facilities remaining of the condominium shall be in proportion to their respective prior interest in the condominium. Each Unit Owner shall be entitled to secure an award from the condemning authority for the taking of their respective Units or residual damage to their respective Unit and in this regard, payment shall be made directly to the Unit Owner and their respective mortgagee jointly in the ordinary course under eminent domain procedures. All awards granted for the taking of Common Areas and Facilities and/or damage to the residual of the Common Areas and Facilities shall be paid to the Association and distributed to individual Unit Owners and their mortgagees jointly as determined by three (3) reputable real estate appraisers (who shall be members of the Master Appraisers Institute or the Society of Real Estate Appraisers), two (2) of whom shall be appointed by the Board and the third (3rd) of whom shall be appointed by the first two appraisers. The appraisers shall render written instructions to the Board allocating the total award to the Units in such proportion as they, in their sole discretion, determine to be the damages caused to the Units. It is agreed that their determination shall be final and binding upon all Unit Owners and their respective mortgagees.

ARTICLE XVIII

Miscellaneous Provisions

A. Grantor's Rights Pending Sale of Units. Until such time as Grantor is required to call the first meeting of the Unit Owners in accordance with Article I, Section 5(a) of the By-Laws, and members of the Board of Managers are elected containing members other than Grantor or its agents, the Grantor may exercise the powers, rights, duties and functions of the Association and the Board of Managers including, without limitation, the power to determine the amount of and to levy special assessments and assessments for Common Expenses.

Except for the election of members to the Board of Managers by Unit Owners other than Grantor as provided for in Article II, Section 3 of the By-Laws, Grantor

Harbour Island Boathouse Condominium  
C&C - 12/9/83 - 5:00 p.m.

retains the right to appoint and remove the remaining members of the Board of Managers and other officers of the Association and to exercise the powers and responsibilities otherwise assigned by law or the Declaration to the Association, the Board of Managers or other officers which rights shall extend until the earlier of the following:

(1) Five (5) years from the date of the recording of the Articles of Incorporation of the Association; or

(2) Thirty (30) days after the sale and conveyance of condominium Ownership Interests to which appertain seventy-five percent (75%) of the undivided interests in the Common Areas and Facilities to purchasers in good faith for value.

B. Copies of Notice to Mortgage Lenders. Upon written request to the Board, the holder of any duly recorded mortgage against any Unit Ownership shall be given a copy of any and all notices permitted or required by this Declaration to be given to the Owner or Owners whose Unit Ownership is subject to such mortgage.

C. Service of Notice on Board and Service of Process. Notices required to be given to the Board of Managers or the Association may be delivered to any member of the Board of Managers, or officer of the Association, either personally or by mail addressed to such member or officer at his or her Unit. The President of the Association shall be the person authorized to receive service of process for the Unit Owners' Association, which service of process shall be served at his Unit. Until such a time that a President is elected, service of process may be made upon: Stephen C. Lochner, 2001 Cleveland Road, Sandusky, Ohio 44870.

D. Service of Notices on Devisees and Personal Representatives. Notices required to be given any devisee or personal representative of a deceased Owner may be delivered either personally or by mail to such party at his or her or its address appearing in the records of the court wherein the estate of such deceased Owner is being administered.

E. Covenants to Run with Land. Each grantee of the Grantor, by the acceptance of a deed of conveyance, or each purchaser under contract for such deed of conveyance, accepts the same subject to all restrictions, conditions, covenants, reservations, liens and charges, and the jurisdiction, rights, and powers created or reserved by the Condominium Act, this Declaration, the By-Laws, all conditions, restrictions and easements of record, and all rights, benefits and privileges of every character hereby granted, created, reserved or declared, and all impositions and obligations hereby imposed shall be deemed and taken to be covenants running with the land, and shall bind any person having at any time any interest or estate in said land and shall inure to the benefit of such Owner in like manner as though the provisions of this Declaration were recited and stipulated at length in each and every deed of conveyance.

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

G. Waiver of Damages. Except as may be guaranteed or warranted by Grantor, neither Grantor nor its representatives or designees shall be liable for any claim whatsoever arising out of or by reason of any actions performed pursuant to any authority granted or delegated to it by or pursuant to the Condominium Act, this Declaration and/or the By-Laws, or in Grantor's (or its representatives' or designees') capacity as developer, contractor, Owner, manager or seller of the Property, whether or not such claim (i) shall be asserted by any Owner, Occupant, the Association, or by any person or entity claiming through any of them; or (ii) shall be on account of injury to a person or persons or damage to or loss of property wherever located and however caused; or (iii) shall arise ex contractu or (except in the case of gross negligence) ex delictu. Without limiting the generality of the foregoing, the foregoing enumeration includes all claims for, or arising by reason of, the Property or any part thereof being or becoming out of repair or containing any patent or latent defects, or by reason of any act or neglect of any Owner, Occupant, the Association, and their respective agents, employees, guests, and invitees, or by reason of any neighboring property or personal property located on or about the Property, or by reason of the failure to function or disrepair of any utility services (heat, air conditioning, electricity, water, sewage, etc.).

H. Amendments to Declaration. The provisions of Article V, Article VI, Paragraph A of Article VII, Article XII, Article XVI, Article XVII and Paragraphs G and H of this Article XVIII of this Declaration, may be changed, modified or rescinded by an instrument in writing setting forth such change, modification or rescission, signed and acknowledged by the Association, all of the Owners and all mortgagees having bona fide liens of record against any Unit Ownerships. Other provisions of this Declaration may be changed, modified, or rescinded by an instrument in writing setting forth such change, modification or rescission, signed and acknowledged by the Association from the Owners having at least seventy-five percent (75%) of the total vote and seventy-five percent (75%) of the first mortgagees. The change, modification or rescission shall be effective upon the filing of such instrument in the office of the County Recorder, provided, however, that no provision in this Declaration may be changed, modified or rescinded so as to conflict with the provisions of Ohio Revised Code Chapter 5311.

I. Severability. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Declaration, or of any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of this Declaration and/or By-Laws.

J. Perpetuities and Restraints on Alienation. If any of the options, privileges, covenants or rights created by this Declaration and/or the By-Laws shall be unlawful or void for violation of (i) the rule against perpetuities or some analogous statutory provision, (ii) the rule restricting restraints on alienation, or (iii) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of Ronald Reagan, President of the United States.

K. Termination of Rights. In the event of and upon the removal of the Condominium Property from the provisions of the Condominium Act, all easements, covenants and other rights, benefits, privileges, impositions and obligations

declared herein to run with the land and/or any Unit shall terminate and be of no further force or effect.

L. Ownership of Units by Grantor. So long as Grantor owns one or more of the Units established and described herein, Grantor shall be subject to the provisions of the Condominium Act, this Declaration and the By-Laws; and Grantor covenants to take no action which would adversely affect the right of the Association with respect to assurances against latent defects in the Condominium Property or other right assigned to the Association by reason of the establishment of the condominium. Grantor shall assume its rights and obligations as a Unit Owner in its capacity as an Owner of condominium Ownership Interests and shall be obligated to pay Common Expenses attaching to such Units from the date this Declaration is filed for record.

M. Headings. The heading to each Article and to each Section hereof are inserted only as a matter of convenience and for reference and in no way define, limit or describe the scope or intent of this Declaration nor in any way affect this Declaration.

N. Interchangeability of Terms. The singular of any word shall also include the plural of such word, and the masculine gender shall also include the neuter and feminine.

O. Interpretation of Declaration. The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a first class condominium.

P. Down Payments. Any deposit or down payment made in connection with a sale by Grantor of a Unit will be held in trust or escrow until delivered at the settlement, or returned to or otherwise credited to the purchaser, or forfeited to the Grantor pursuant to the sales contract. If a deposit or down payment of Two Thousand Dollars (\$2,000.00) or more is held for more than ninety (90) days, interest at the rate of four percent (4%) per annum for any period exceeding ninety (90) days shall be credited to the purchaser at settlement, or upon return or other credit made to the purchaser, or added to any forfeiture to the Grantor.

Ohio law provides that deposits and down payments held in trust or escrow in accordance with Ohio Revised Code 5311.25(A) shall not be subject to attachment by creditors of the Grantor or a purchaser.

Q. Management Contracts. Neither the Association nor the Unit Owners will be subject to any management contract or agreement for more than one (1) year following the assumption of control by Unit Owners other than Grantor in accordance with Section 5311.08 of the Ohio Revised Code.

#### ARTICLE XIX

##### Additional Requirements of Secondary Mortgage Market

Notwithstanding anything to the contrary that may be contained in this Declaration or the Bylaws or Rules and Regulations of the Association, the following requirements shall govern the operation and conduct of the Association.

A. Right of First Refusal. There is no "right of first refusal" contained in this Declaration and nothing shall impair the rights of a first mortgagee to:

- (1) Foreclosure or take title to the properties pursuant to the remedies provided in the mortgage; or
- (2) accept a deed (or assignment) in lieu of foreclosure in the event of default by a mortgagor; or
- (3) sell or lease the properties acquired by the mortgagee.

B. Unpaid Assessments. Any first mortgagee who obtains title to a Unit pursuant to the remedies provided in the mortgage or foreclosure of the mortgage will not be liable for such Unit's unpaid dues or charges which accrue prior to the acquisition of title to such Unit by the mortgagee.

C. Restricted Activities. Unless at least two-thirds (2/3) of the first mortgagees (based upon one vote for each first mortgage owned) or Owners (other than the sponsor, Grantor or builder) of the Condominium Property have given their prior written approval, the Association shall not be entitled to:

- (1) by act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the Common Elements owned, directly or indirectly, by such Association for the benefit of the Condominium Property (the granting of easements for public utilities or for other public purposes consistent with the intended use of such Common Elements shall not be deemed a transfer within the meaning of this clause);
- (2) change the method of determining the obligations, assessments, dues or other charges which may be levied against Owners of the Condominium Property;
- (3) by act or omission change, waive or abandon any scheme or regulations, or enforcement thereof, pertaining to the architectural design or the exterior appearance of properties, the exterior maintenance of the Condominium Property, the maintenance of the Common Elements, party walks or common fences and driveways, or the upkeep of lawns and plantings;
- (4) fail to maintain fire and extended coverage on insurable Common Elements on a current replacement cost basis in an amount not less than one hundred (100%) of the insurable value (based on current replacement cost);
- (5) use hazard insurance proceeds for losses to Common Elements for other than the repair, replacement or reconstruction of such Common Elements.

D. Taxes, Charges and Premiums. First mortgagees of Unit's may, jointly or singly, pay taxes or other charges which are in default and which may or have



become a charge against Common Elements and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such Common Elements and first mortgagees making such payments shall be owed immediate reimbursement therefor from the Association. Entitlement to such reimbursement may be reflected in an agreement in favor of all first mortgagees of the Unit's duly executed by the Association.

E. Distributions. No provision of the Declaration or Bylaws gives any Owner of a Unit, or any other party, priority over any rights of the first mortgagee of the Unit pursuant to its mortgage in the case of distribution to such Owner of a unit of insurance proceeds or condemnation awards for losses to or taking of a Unit or the Common Elements.

F. Reserves. Associations dues or charges shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Elements that must be replaced, repaired or maintained on a periodic basis and are payable in regular installments rather than by special assessments.

G. Notice. A first mortgagee, upon request, is entitled to written notification from the Association of any default in the performance by the respective individual Owner of the subject mortgaged property of any obligation under the constituent documents which is not cured within sixty (60) days.

H. Agreements. Any agreement for professional management or any other contract providing for services of the Developer, sponsor, or builder, shall not exceed three (3) years. Any such agreement provides for termination by either party without cause and without payment of termination fee on ninety (90) days or less written notice.

IN WITNESS WHEREOF, J. B. WOLFF & ASSOCIATES, INC., an Ohio corporation, by its officers thereunto duly authorized, has caused this instrument to be executed this 29<sup>th</sup> day of January, 1985.

Signed and acknowledged  
in the presence of:

J. B. WOLFF & ASSOCIATES, INC.,  
an Ohio Corporation

By:

And By:

Its

STATE OF OHIO )  
COUNTY OF ERIE )

SS:

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named J. B. WOLFF & ASSOCIATES, INC., an Ohio corporation, by Jackson B. Wolff, its Chairman, and by Stephen C. Bohner, its Vice President who acknowledged that

Harbour Island Boathouse Condominium  
C&C - 12/9/83 - 5:00 p.m.

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they did sign the foregoing instrument for and on behalf of said corporation and that the same is the free act and deed of said corporation and their free act and deed as its duly authorized officers and as individuals.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Sandusky, Ohio this 29<sup>th</sup> day of January, 1985.

Mary Ann Sloan  
NOTARY PUBLIC.

This Instrument Prepared By:

William J. Ockington, Esq.  
CSANK & CSANK CO., L.P.A.  
Attorneys at Law  
55 Public Square - Suite 1700  
Cleveland, Ohio 44113  
(216) 589-5600

My Comm. Expires - 7-10-89



EXHIBIT "C"

(To Declaration of Condominium Ownership for  
Harbour Island Boathouse Condominium No. 1)

REFERENCE TO DRAWINGS

The particulars of the land, buildings and other improvements, including, but not limited to, the layout, location, designation, dimensions of each Unit, the layout, locations and dimensions of the Common Areas and Facilities and the location and dimensions of all appurtenant easements or encroachments are shown graphically on the set of Drawings incorporated in the Declaration of Condominium Ownership for Harbour Island Boathouse Condominium No. 1, by reference as Exhibit "C", prepared and bearing the certified statements of Baharoglu & Associates, Inc., Consulting Engineers & Surveyors, Norwalk, Ohio and Robert Lamb Hart, Registered Architect, 10 East 40th Street, New York, New York 10016, as required by the Condominium Act of the State of Ohio. Such set of Drawings will be filed in the Condominium Map Records of the Office of the Recorder of Erie County, Ohio, simultaneously with the recording of the Declaration.

EXHIBIT "A"

Legal Description

**Baharoglu & Associates, Inc.**

Consulting Engineers & Surveyors  
4 East Seminary • Norwalk, Ohio • 44857

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Norwalk (419) 668-4495  
Sandusky/Huron (419) 433-5305

LEGAL DESCRIPTION  
HARBOR ISLAND BOATHOUSE  
CONDOMINIUM NO. 1  
(BOATHOUSES 4 & 5)

Being a parcel of land located in part of Outlot 6 in Darlings Survey East of Sycamore Line in the City of Sandusky, Erie County, Ohio and being more particularly described as follows:

Beginning at the intersection of the centerline of Causeway Drive with the centerline of the Old New York Central Pier Track right of way now or formerly owned by the City of Sandusky, thence South  $48^{\circ} 01' 50''$  East along the centerline of the Old New York Central Pier Track right of way, a distance of 1968.35 feet to a point; thence North  $41^{\circ} 58' 10''$  East, a distance of 332.28 feet to a point at the principal place of beginning for this description;

1. Thence North  $31^{\circ} 38' 27''$  West, a distance of 14.47 feet to a point;
2. Thence South  $57^{\circ} 53' 36''$  West, a distance of 6.24 feet to a point;
3. Thence North  $32^{\circ} 40' 50''$  West, a distance of 109.41 feet to a point;
4. Thence South  $56^{\circ} 47' 32''$  West, a distance of 14.33 feet to a point;
5. Thence North  $32^{\circ} 36' 30''$  West, a distance of 26.04 feet to a point;
6. Thence North  $57^{\circ} 54' 53''$  East, a distance of 12.54 feet to a point;
7. Thence North  $28^{\circ} 19' 40''$  East, a distance of 68.34 feet to a point;
8. Thence North  $16^{\circ} 33' 42''$  East, a distance of 42.29 feet to a point;
9. Thence South  $73^{\circ} 45' 10''$  East, a distance of 3.95 feet to a point;
10. Thence North  $16^{\circ} 07' 57''$  East, a distance of 109.55 feet to a point;
11. Thence North  $73^{\circ} 45' 10''$  West, a distance of 3.95 feet to a point;
12. Thence North  $15^{\circ} 24' 16''$  East, a distance of 18.00 feet to a point;
13. Thence South  $73^{\circ} 52' 03''$  East, a distance of 118.00 feet to a point;
14. Thence South  $21^{\circ} 10' 20''$  East, a distance of 45.43 feet to a point;

**Baharoglu & Associates, Inc.**

Consulting Engineers & Surveyors  
4 East Seminary • Norwalk, Ohio • 44857

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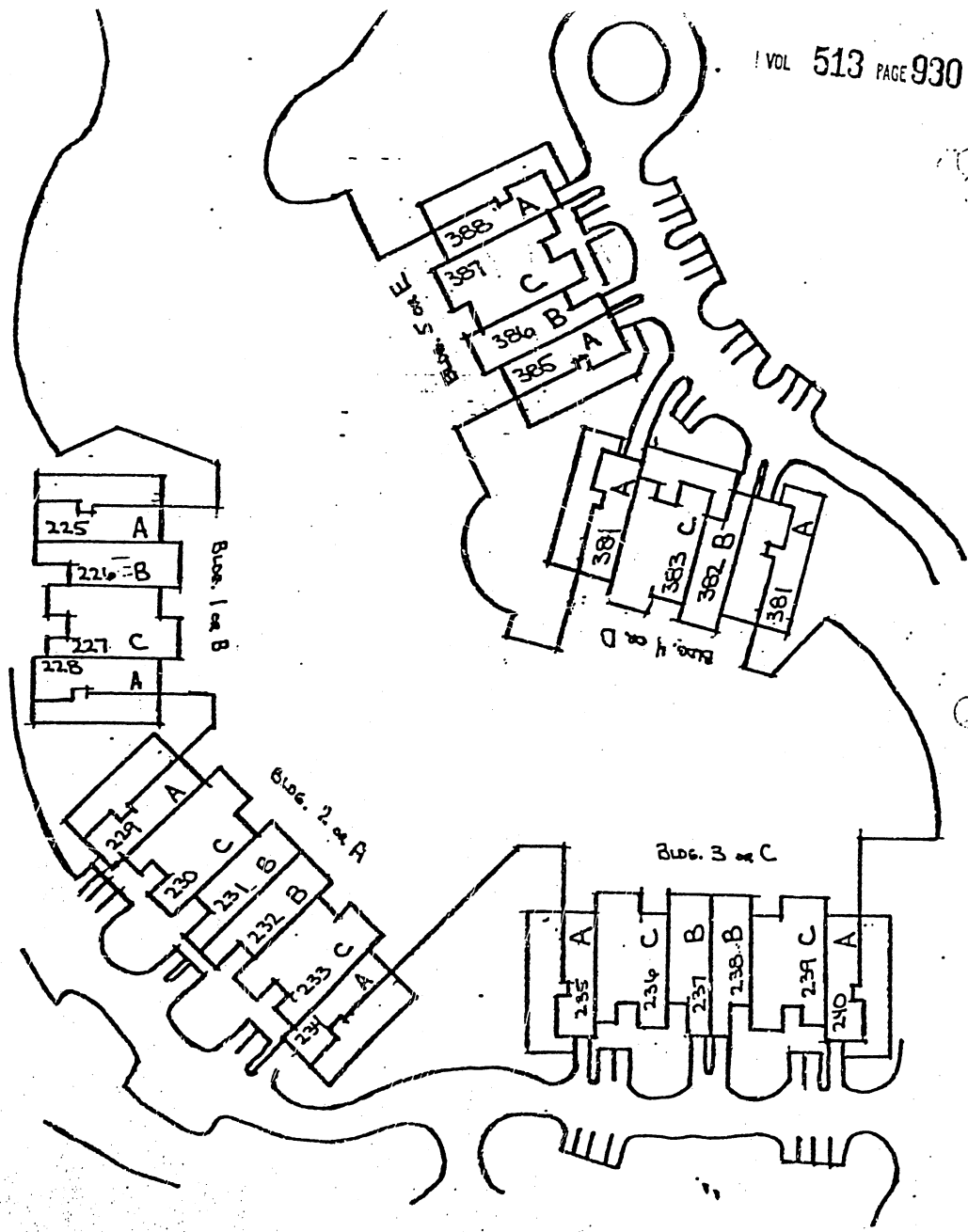
Norwalk (419) 668-4495  
Sandusky/Huron (419) 433-5305

LEGAL DESCRIPTION  
HARBOUR ISLAND BOATHOUSE  
CONDOMINIUM NO. 1  
(BOATHOUSES 4 & 5)

15. Thence South  $74^{\circ} 52' 40''$  East, a distance of 24.00 feet to a point;
16. Thence South  $15^{\circ} 07' 20''$  East, a distance of 45.39 feet to a point;
17. Thence North- $74^{\circ} 52' 40''$  West, a distance of 24.00 feet to a point;
18. Thence South  $15^{\circ} 07' 20''$  West, a distance of 82.00 feet to a point;
19. Thence South  $02^{\circ} 00' 03''$  East, a distance of 34.29 feet to a point;
20. Thence North  $64^{\circ} 41' 15''$  East, a distance of 23.50 feet to a point;
21. Thence South  $25^{\circ} 18' 44''$  East, a distance of 47.30 feet to a point;
22. Thence South  $57^{\circ} 19' 10''$  West, a distance of 146.47 feet to a point;
23. Thence South  $83^{\circ} 31' 36''$  West, a distance of 8.30 feet to the principal place of beginning and containing 1.1043 acres of land, but subject to all easements and restrictions of record.

This description prepared from existing records by Baharoglu & Associates, Inc., Consulting Engineers and Surveyors, Norwalk, Ohio, per Ronald A. Morehouse, Registered Surveyor No. 5340, dated January, 1984.

#3752



Harbour Island

PERCENTAGE OF INTEREST IN COMMON EXPENSES — HARBOUR ISLAND BOATHOUSE CO  
Revised April 6, 1984  
res000.006

HARBOUR ISLAND CONDOMINIUM #1

Building 1 (South Building):

Unit 381	Type A	1434 sf.	12.42634
Unit 382	Type B	1467 sf.	12.71231
Unit 383	Type C	1435 sf.	12.43501
Unit 384	Type A	1434 sf.	12.42634

TOTAL BUILDING 1:		5770 sf.	50.00
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Building 2 (North Building):

Unit 385	Type A	1434 sf.	12.42634
Unit 386	Type B	1467 sf.	12.71231
Unit 387	Type C	1435 sf.	12.43501
Unit 388	Type A	1434 sf.	12.42634

TOTAL BUILDING 2:		5770 sf.	50.00
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TOT. HARBOUR ISL. CONDO #1		11540 sf.	100
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STATE OF OHIO )  
 ) SS.  
COUNTY OF HANCOCK )

BEFORE ME, a Notary Public in and for such county and State, personally appeared the above-named mortgage holder by Robert W. Smith and David A. Whitt, its Assistant Vice President and Assistant Vice President, respectively, who acknowledged that they did sign the foregoing instrument, and that the same is the free act and deed of such entity, and their free act and deed, personally and as such officers.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Findlay, Ohio, this 5<sup>th</sup> day of February, 1985.

James J. Br...  
NOTARY PUBLIC  
James J. Br...  
Notary Public, State of Ohio  
My Commission Expires March 7, 1988



0345596

FILED

'85 FEB -6 P2:13

JOHN W. SCHAEFFER  
RECORDER  
ERIE COUNTY, OHIO

\*\*\*\*\*  
Received February 6th, 1985 at  
2:13 P.M. Recorded February 7th,  
1985 in Erie County Deed Records,  
Vol. 513, Pages 892-933 inc.  
John W. Schaeffer,  
Recorder.  
\*\*\*\*\*

\* 70.00 Paid  
LAWYERS TITLE INS. CORP.  
601 1250 SANDUSKY, OHIO 44870 SA61322

MICROFILMED

The Harbour Island Boathouse  
Condominium No. 1 Association

CONSENT OF MORTGAGEE

For good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Diamond Savings and Loan Company, a savings and loan association incorporated under the laws of the State of Ohio, being the owner and holder of (i) a certain mortgage dated March 1, 1983, and recorded in Volume 461, Page 375, Erie County, Ohio Mortgage Records, as amended and modified by instrument dated as of August 9, 1983, and recorded in Volume 467, Page 580, Erie County, Ohio Mortgage Records, (ii) the Assignment of Rents dated March 1, 1983, and recorded in Volume 461, Page 396, Erie County, Ohio Mortgage Records, as amended and modified by instrument dated as of August 9, 1983, and recorded in Volume 467, Page 580, Erie County, Ohio Mortgage Records, and (iii) Financing Statements No. 63470 and 63471 as filed with the Erie County, Ohio Recorder and filed with the Secretary of State of Ohio as File No. L 93379 (all of the foregoing referred to as the "Financing Documents"), does hereby consent to the filing of the Declaration of The Harbour Island Boathouse Condominium No. 1 Association together with attached Bylaws, Provisions, Drawings, and Exhibits thereto. Notwithstanding the foregoing consent, in the event any of the terms and provisions of Section 5311.13(D) of the Ohio Revised Code are in conflict or inconsistent with any of the terms and provisions of the Financing Documents, the terms and provisions of the Financing Documents shall govern and control.

IN WITNESS WHEREOF, such holder of the Financing Documents has executed this instrument, by its authorized officers, on the 5TH day of FEBRUARY, 1985.

Signed in the presence of:

DIAMOND SAVINGS AND LOAN  
COMPANY, a savings and loan  
association incorporated under  
the laws of the State of Ohio

By *Ralph W. Smith*  
Its ASSISTANT VICE PRESIDENT

And by *[Signature]*  
Its *[Signature]*

*Alfred Harvitt*  
*[Signature]*