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AMENDMENT TO THE
DECLARATION OF CONDOMINIUM OWNERSHIP
FOR
ROCKPORT COLONY CONDOMINIUMS



THIS WILL CERTIFY THAT A COPY OF THIS AMENDMENT TO THE DECLARATION OF CONDOMINIUM OWNERSHIP FOR ROCKPORT COLONY CONDOMINIUMS WAS FILED IN THE OFFICE OF THE FISCAL OFFICER OF SUMMIT COUNTY, OHIO.

DATED: 11-19-03

BY: JOHN A. DONOFRIO
FISCAL OFFICER
Bay. O. Taylor, Deputy
Fiscal Officer

RJB

AMENDMENT TO THE
DECLARATION OF CONDOMINIUM OWNERSHIP FOR
ROCKPORT COLONY CONDOMINIUMS

WHEREAS, the Declaration of Condominium Ownership for Rockport Colony Condominiums (the "Declaration") was recorded at Summit County Records Volume 1244, Page 860 et seq., and

WHEREAS, the Rockport Colony Condominium Owners Association, Inc. (the "Association") is a corporation consisting of all Owners in Rockport Colony and as such is the representative of all Owners, and

WHEREAS, Article IX of said Declaration authorizes amendments to the Declaration, and

WHEREAS, Owners representing at least 75% of the Association's voting power have executed instruments in writing setting forth specifically the matter to be modified (the "Amendment"), and

WHEREAS, attached hereto as Exhibit A is an Affidavit of the Association's President that a copy of the Amendment was mailed by certified mail to all mortgagees on the records of the Association, and

WHEREAS, attached hereto as Exhibit B is a certification from the Association's Secretary as to the consenting mortgagees, on the records of the Association, to the Amendment, and

WHEREAS, the Association has in its records the signed, written consents to the Amendment signed by Owners representing over 78% of the Association's voting power, and

WHEREAS, the Association has in its records the power of attorney signed by Owners representing over 78% of the Association's voting power authorizing the Association's officers to execute the Amendment on their behalf, and

WHEREAS, the proceedings necessary to amend the Declaration as required by Chapter 5311 of the Ohio Revised Code and the Declaration of Condominium Ownership for Rockport Colony Condominiums have in all respects been complied with.

NOW THEREFORE, the Declaration of Condominium Ownership for Rockport Colony Condominiums is hereby amended by the following:

DELETE DECLARATION ARTICLE XV, entitled "Hazard Insurance," in its entirety. Said deletion to be made on Pages 24 - 27 of the Declaration as recorded in the Summit County Records, Volume 1244, Page 860 et seq.



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INSERT A NEW DECLARATION ARTICLE XV, entitled "Casualty Insurance." Said new addition, to be added on Pages 24 - 27 of the Declaration as recorded in the Summit County Records, Volume 1244, Page 860 et seq., is as follows:

XV. Casualty Insurance.

A. Coverage.

- (1) Mandatory Coverage. The Association shall carry Casualty Insurance, subject to a deductible as provided for in Section D below, on all of the insurable improvements comprising the Common Areas (except, to the extent they are part of the Common Areas, for the windows and doors in the perimeter walls, which the Owner shall insure), the Limited Common Areas and all personal property as may be owned by the Association and for which the Association is responsible.
 - (2) Optional Coverage. The Association may, as the Board so determines, also carry Casualty Insurance on some or all of the fixtures, structures, betterments and other insurable improvements constituting a part of the Units (including the windows and doors located in the perimeter walls), whether installed or provided by the Grantor, the Association, or the Owner. In deciding whether to increase or decrease the scope of Casualty Insurance coverage permitted by this Paragraph, the Board may, among other factors, consider the Association's insurance claim history, the financial costs to the Association and the individual Owners, mortgage market requirements, and the overall state of the condominium insurance market. The Board's decision as to the scope of Casualty Insurance coverage shall be determined as first and foremost reflected from time to time in the Board's meeting minutes, not the terms of the insurance policy itself. The Owner shall have the burden to determine whether any portion of the Units are insured under the Association's Casualty Insurance policy; provided, however, that except in the case of an emergency, the Association shall provide the Owners with at least thirty (30) days prior written notice of any increase or decrease in the scope of Casualty Insurance coverage, particularly as it pertains to the Units.
- B. Risks to be Insured and Amount Thereof. The Association's Casualty Insurance shall protect against loss or damage by fire and hazards now or hereafter embraced by "extended coverage, vandalism and malicious mischief," and all other perils which are customarily covered, including perils normally covered by



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the standard "all-risk" endorsement, where such is available at a reasonable cost; in an amount sufficient to cover at least ninety percent (90%) of the replacement cost of any repair or reconstruction in the event of damage or destruction from any such casualty (excluding excavation and foundation costs and other items normally excluded from such coverage).

- C. Named Insured. Subject to the provisions of Section E, below, the Association's Casualty Insurance shall be for the benefit of the Association, each of the Owners, and the holders of mortgages upon the Ownership Interests, as their interest may appear, and shall provide for the issuance of certificates of insurance with mortgagees' endorsements to the holders of mortgages on the Units, if any.
- D. Deductibles. The Association's Casualty Insurance may include a reasonable deductible as determined by the Board. In the absence of any negligence, the deductible shall be paid by the party who would be responsible for the loss or repair in the absence of insurance and in the event of multiple parties or combined claims covered by the Association's Casualty Insurance policy, shall be allocated in relation to the amount each party's claim bears to the total claim. By way of example, if a storm damages a roof, which costs \$600.00 to repair, and causes interior water damage to a Unit, which costs \$400.00 to repair, and the Association's Casualty Insurance provides coverage for all losses with a \$100.00 deductible, then the Association would recover \$540.00 (\$600.00 less \$60.00 share of deductible) and the Owner would recover \$360.00 (\$400.00 less \$40.00 share of deductible). If any loss or repair is due to the negligence or intentional act of the Association or the Owner (or anyone for which either is respectively responsible as provided for in this Declaration), then in such case, the negligent, responsible party, being either the Association or the Owner, shall be responsible for the full amount of the deductible.
- E. Claim Filing. The Board shall have the sole right and authority to file, or authorize the filing of, any and all claims for damage or destruction that are or may be covered by the Association's Casualty Insurance policy regardless of the person(s), including mortgagees, who may be named as an additional insured or beneficiary of such policy, as the Board determines is consistent with the intent of this Declaration and in the Association's best interests; provided, however, that a mortgagee having an interest in such losses may participate in the settlement negotiations, if any, related thereto. The failure or refusal of the Association to



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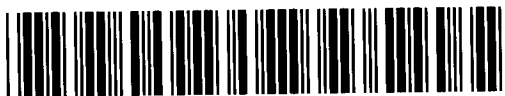
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process or file any claim for damage or destruction to any part of the Condominium Property under the Association's Casualty Insurance, shall not give rise to any claim against the Association or the Board.

- F. Appraisals. The Board shall conduct an annual insurance review that may, at the option of the Board, include a professional replacement cost appraisal, without respect to depreciation, of any and all improvements and personal property comprised in the Condominium Property, by one or more qualified persons. The cost of any such appraisal shall be a Common Expense.
- G. Insurance Company Rating. All policies shall be written with a company licensed to do business in the State of Ohio and, unless not reasonably available to the Association, holding a rating of "A" or better by Best's Insurance Reports, or its present day equivalent.
- H. Mortgagee Requirements. Notwithstanding anything to the contrary anywhere in this Article XV, the Board shall have full right and authority, but not the obligation, to purchase Casualty Insurance, and/or any other insurance policy or endorsement, that includes any and all such terms, conditions or requirements, as the Board determines is in the Association's best interests and is necessary to comply with any requirements of Federal National Mortgage Association ("FNMA") or Federal Home Loan Mortgage Corporation ("FHLMC"), or the designee of FNMA or FHLMC. If the Association provides, as the Board so decides, additional Casualty Insurance coverage, or any additional terms or conditions thereto, beyond the minimum requirements contained in this Article XV, for less than all the Owners, the Association may levy a special assessment against only those Owners so requiring such additional insurance in an amount to be determined by the Board. The Board shall further have the right and power to execute and record special amendments to this Article XV, as the Board determines to be in the Association's interest, to comply with the requirements of FNMA and/or FHLMC. In furtherance of the right and power to record such special amendment, a power coupled with an interest is hereby reserved and granted to the Board to vote in favor of, make or consent to such special amendment on behalf of each Owner as proxy or attorney-in-fact as the case may be.
- I. Owner Insurance. Each Owner shall separately insure those portions of his/her Unit and the Limited Common Areas



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designated for the use of his/her Unit, not insured by the Association, including, without limitation, the windows and doors in the perimeter walls, and insurance on the Limited Common Areas and Unit up to the amount of the Association's Casualty Insurance deductible when either such areas are insured by the Association, against loss by fire and other hazards and perils now or hereafter embraced by "extended coverage, vandalism and malicious mischief" and "all-risk" insurance and shall file a copy of the policy(ies), or such other insurance information as the Board may require, with the Association within thirty (30) days of receipt of a request from the Association. Each Owner shall further separately insure the personal contents of his/her Unit, as well as any other personal property, which he/she stores elsewhere on the Condominium Property.

J. Damage and Destruction.

- (1) Immediately after the damage or destruction by fire or other casualty to all or any part of the Condominium Property covered by the Association's Casualty Insurance, as determined by the Board, the Board or its duly authorized agent may proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Such costs may include professional fees and premiums for such bonds as the Board deems necessary. Repairs or reconstruction, as used in this Paragraph, means repairing or restoring the Condominium Property to substantially the same condition in which it existed prior to the fire or other casualty. Each Owner shall be deemed to have delegated, and does delegate upon acquisition of any title interest in a Unit, to the Board or its agent, his/her right to adjust with insurance companies all losses under the Casualty Insurance policies referred to in Section A of this Article XV. In furtherance of this delegation, the Board, and its authorized agents, is and are hereby appointed the attorney-in-fact for all Owners to make proof of loss, to negotiate loss adjustment, and to acknowledge receipt for any sums received on or under any and all of said policies.
- (2) In the event any damage to or destruction of the Common Areas renders fifty percent (50%) or more of the Units then comprised within the Condominium Property untenable, the Owners may, by the vote of those entitled to exercise not less than seventy-five percent (75%) of the voting power, elect not to repair or restore such damaged part at a meeting which shall be called within ninety (90) days after the occurrence of the casualty. Upon



such election, all of the Condominium Property shall be subject to an action for sale as upon partition at the suit of any Owner. In the event of any such sale or a sale of the Condominium Property after such election, by agreement of all Owners, the net proceeds of the sale together with the net proceeds of insurance, if any, and any other indemnity arising because of such damage or destruction, shall be considered as one fund and shall be distributed to all Owners in proportion to their respective percentages of interest in the Common Areas. No Owner, however, shall receive any portion of his/her share of such proceeds until all liens and encumbrances on his/her Unit have been paid, released or discharged.

K. Repair and Reconstruction.

- (1) Following the occurrence of a casualty for which insurance proceeds are recovered, the Association shall restore or cause to be restored all damage to or destruction of the Common Areas and Limited Common Areas substantially as such Areas existed immediately before the damage or destruction, provided that the Board may provide for the use of such new or alternative materials as the Board reasonably determines are in the Association's best interest. Distribution and/or payment of Association insurance proceeds for the repair and restoration of the Unit(s), if any, shall be determined by the Board.
- (2) If the cost of the repair for the damages or destruction to the Common Areas exceeds the amount of the insurance proceeds received, such excess may be provided for either by means of a special assessment levied by the Board against all Owners in proportion to each Owner's share in the Common Areas or by means of an appropriation from the reserve maintenance fund or such other fund as may be established for the purpose of providing for the maintenance, repair and replacement of the Common Areas, as the Board, in its sole discretion, may determine. Additional assessments may be made in a like manner at any time during or following the completion of any repair or reconstruction.
- (3) If the cost of the repair for the damages or destruction to the Limited Common Areas exceeds the amount of the insurance proceeds received, such excess may be provided for by means of a special assessment levied by the Board against the Owner(s) having the exclusive use of such Limited Common Area.
- (4) After any damage to or destruction of his/her Unit, each Owner



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shall restore or cause to be restored his/her Unit, including utilities serving the Unit, at the Owner's sole expense, to such minimum standards as the Board may at any time and/or from time to time, in its sole discretion, establish and shall complete such restoration within eight (8) months after the damage or destruction. Minimum standards may include requiring installation of drywall finished with at least one coat of primer, basic floor coverings, and utility lines, ducts, vents and related fixtures and equipment.

- L. Disbursement of Excess Insurance Proceeds. The Association shall use insurance proceeds received to defray the cost of repairing the damage to the Common Areas. If the cost of such repairs is less than the amount of such insurance proceeds, the excess shall be retained by the Association and placed in the reserve maintenance fund or such other fund as may be established for the purpose of providing for the maintenance, repair and replacement of the Common Areas and Facilities.
- M. Waiver of Subrogation. Each Owner and Occupant, as a condition of accepting title and possession, or either one of such, of a Unit, and the Association agree, that in the event any part(s) of the Condominium Property or the fixtures or personal property of anyone located therein or thereon are damaged or destroyed by fire or other casualty that is covered by insurance of any Owner, Occupant or the Association, and the lessees of any one of them, as provided for in this Article XV, the rights, if any, of any party against the other, or against the employees, agents, licensees or invites of any party, with respect to such damage or destruction and with respect to any loss resulting therefrom are hereby waived to the extent of the insurance proceeds actually recovered.

Any conflict between the above provisions and any other provisions of the Declaration and Bylaws shall be interpreted in favor of this revision of the Association's and Owners' casualty insurance obligations. Upon the recording of this amendment, only Owners of record at the time of such filing shall have standing to contest the validity of the amendment, whether on procedural, substantive or any other grounds, provided further that any such challenge shall be brought within the court of common pleas within one year of the recording of the amendment.



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John A Donofrio, Summit Fiscal Officer

IN WITNESS WHEREOF, the said Rockport Colony Condominium Owners Association, Inc. has caused the execution of this instrument this 13 day of November, 2003.

ROCKPORT COLONY CONDOMINIUM OWNERS ASSOCIATION, INC.

By: 

TOM SALISBURY, its President

By: 

CHARLOTTE MARKY, its Secretary

STATE OF OHIO)

COUNTY OF SUMMIT)

SS

BEFORE ME, a Notary Public, in and for said County, personally appeared the above named Rockport Colony Condominium Owners Association, Inc., by its President and its Secretary, who acknowledged that they did sign the foregoing instrument and that the same is the free act and deed of said corporation and the free act and deed of each of them personally and as such officers.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal in Dudson, Ohio, this 13 day of November, 2003.


NOTARY PUBLIC

Tonia R. Morrison
Notary Public 02NT 348
In and for the State of Ohio
My Commission Expires Nov. 28, 2007

ENV
This instrument prepared by:
KAMAN & CUSIMANO, Attorneys at Law
50 Public Square
600 Terminal Tower
Cleveland, Ohio 44113
(216) 696-0650


John A Donofrio, Summit Fiscal Officer

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EXHIBIT A

AFFIDAVIT


STATE OF OHIO)

COUNTY OF SUMMIT)

SS

TOM SALISBURY, being first duly sworn, states as follows:

1. He is the duly elected and acting President of the Rockport Colony Condominium Owners Association, Inc.
2. As such President, he certifies that copies of the Amendment to the Declaration of Declaration of Condominium Ownership for Rockport Colony Condominiums were mailed by certified mail to all mortgagees having bona fide liens of record against any Unit Ownerships of whose mortgage interests notice had been given to the Association.
3. Further affiant sayeth naught.


TOM SALISBURY, President

BEFORE ME, a Notary Public, in and for said County, personally appeared the above named TOM SALISBURY who acknowledges that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal in Dresden, Ohio, this 13 day of November, 2003.


NOTARY PUBLIC


John A Donofrio, Summit Fiscal Officer

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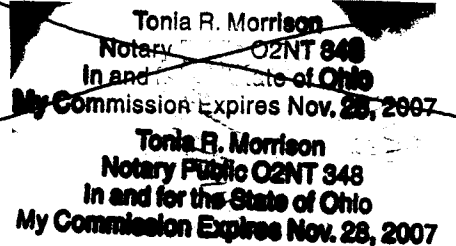

Tonia R. Morrison
Notary Public O2NT 848
In and for the State of Ohio
My Commission Expires Nov. 28, 2007
Tonia R. Morrison
Notary Public O2NT 348
In and for the State of Ohio
My Commission Expires Nov. 28, 2007

EXHIBIT B

CERTIFICATION OF SECRETARY

The undersigned, being the duly elected and qualified Secretary of the Rockport Colony Condominium Owners Association, Inc., hereby certifies that there is on file in the Association's records, the names of the following mortgagees, if any, who have consented to the proposed Amendment to the Declaration of Condominium Ownership for Rockport Colony Condominiums.

NONE

Charlotte Marky
CHARLOTTE MARKY, Secretary

STATE OF OHIO)
)
COUNTY OF SUMMIT) SS

BEFORE ME, a Notary Public in and for said County, personally appeared the above named CHARLOTTE MARKY who acknowledged that she did sign the foregoing instrument and that the same is her free act and deed.

Hudson IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal in _____, Ohio, this 13 day of November, 2003.

Tonia R. Morrison
NOTARY PUBLIC

Tonia R. Morrison
Notary Public O2NT 348
In and for the State of Ohio
My Commission Expires Nov. 28, 2007



John A Donofrio, Summit Fiscal Officer

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