

**FOURTH AMENDMENT TO DECLARATION
OF CONDOMINIUM OWNERSHIP
FOR THE LANDINGS OF WALDEN CONDOMINIUM ✓**

This will certify that a copy of this **Fourth Amendment** has been filed in the office of the County Auditor, Portage County, Ohio.

The original **Declaration** is filed in Volume 953, Pages 154 to 265, inclusive, as amended by the **First Amendment** filed in Volume 973, Pages 88 to 120, inclusive, as amended by the **Second Amendment** filed in Volume 979, Pages 130 to 147, inclusive, and as amended by the **Third Amendment** filed in Volume 1000, Pages 544 to 565, inclusive, of the Portage County, Ohio Records, and further identified in Plat Book 24, Page 74, as amended in Plat Book 27, Page 40, as amended in Plat Book 28, Page 9, and as amended in Plat Book 30, Page 14.

Janet Esposito
Portage County Auditor

By: *E. Long*
Date: DEC 17 2012

This Instrument Prepared By:
John M. Coyne, III, Esq.
X Roetzel & Andress
A Legal Professional Association
222 S. Main Street
Akron, OH 44308
(330) 376-2700

955424_1

Emu X
LINDA FANKHAUSER
PORTAGE CO. RECORDER

20 0238990 178

RECEIVED FOR RECORD
AT 9:50:56
FEE 286.00

INDEXED

**FOURTH AMENDMENT TO DECLARATION
OF
CONDOMINIUM OWNERSHIP
FOR
THE LANDINGS OF WALDEN CONDOMINIUM**

WHEREAS, on the 9th day of May, 1978, The Walden Company, Ltd., an Ohio limited partnership (successor-in-interest to Portage Homes, Inc.) ("**Declarant**"), submitted certain properties in the City of Aurora, Portage County, State of Ohio, to the provisions of Chapter 5311 of the Ohio Revised Code as condominium property by filing with the Portage County Auditor an instrument entitled "Declaration of Condominium Ownership for the Landings of Walden Condominium" (the "**Declaration**"), which **Declaration** was recorded in Volume 953, Pages 154 to 265, inclusive, of the Portage County, Ohio, records, and further identified in Plat Book 24, Page 74 of the Portage County Record of Plats; and

WHEREAS, on November 1, 1979, the **Declaration** was amended by the **First Amendment to Declaration** (the "**First Amendment**"), by instruments recorded in Volume 973, Pages 88 to 120, inclusive, of the Portage County, Ohio, records, and in Plat Book 27, Page 40 of the Portage County Record of Plats; and

WHEREAS, on June 26, 1980, the **Declaration** was amended by the **Second Amendment to Declaration** (the "**Second Amendment**"), by instruments recorded in Volume 979, Pages 130 to 147, inclusive, of the Portage County, Ohio, records, and in Plat Book 28, Page 9, of the Portage County Record of Plats; and

WHEREAS, on December 3, 1982, the **Declaration** was amended by the **Third Amendment to Declaration** (the "**Third Amendment**"), by instruments recorded in Volume 1000, Pages 544 to 565, inclusive, of the Portage County, Ohio, records, and in Plat Book 30, Page 14, of the Portage County Record of Plats; and

WHEREAS, on October 30, 2001, the Bylaws of the **Association** were amended by the filing of a Certification Regarding Amended Bylaws and First Amendment to the Amended Bylaws of the Landings of Walden Condominium Association, Inc. ("**Bylaws Amendment**") by instrument recorded as instrument no. 200129969 of the Portage County, Ohio, records; and

WHEREAS, pursuant to Article XIII of the **Declaration**, The Landings of Walden Condominium Association ("**Association**") and each Unit Owner desire to amend the **Declaration** pursuant to the terms and conditions contained herein; and

WHEREAS, the **Association** has obtained the unanimous consent of the Unit Owners ("**Consent**") (the original of which is attached hereto as Exhibit A); and

WHEREAS, by execution of this **Fourth Amendment**, each Unit Owner of the Condominium hereby consents to the terms and conditions contained herein; and

WHEREAS, upon filing of this **Fourth Amendment** with the Portage County Recorder's Office, a copy will be sent to the Secretary of the **Association** in compliance with Article XIII of the **Declaration**; and

WHEREAS, in compliance with the provisions of Article XIII of the **Declaration**, the President of the **Association** has caused a copy of this **Fourth Amendment** to be sent by certified mail to all mortgagees having bona fide liens of record against any Unit within the Condominium (see Exhibit B for a copy of the President's Affidavit); and

WHEREAS, in compliance with the provisions of Article XIII of the **Declaration**, consents to the mortgagees having bona fide liens of record against any Unit are or will be on file with the Secretary of the **Association**, and the Secretary's Certification as to the names of the consenting and nonconsenting mortgagees is attached hereto as Exhibit C.

NOW, THEREFORE, the **Association** hereby declares as follows:

1. All the terms used herein that are defined in the **Declaration** shall be interpreted as having the same meaning as defined in the **Declaration**.

2. That the **Bylaws Amendment** shall be and is hereby incorporated herein by reference as if the same has been fully rewritten herein, and is hereby re-approved by the Unit Owners and the **Association**.

3. The **Declaration** is hereby amended in accordance with the provisions of Article XIII of the **Declaration** in the following respects:

A. Article I, Section B(1), of the **Declaration** is hereby deleted in its entirety and the following is substituted therefore:

"Article I. Legal Description and Definitions.

B. Definitions.

1) Unit – means "unit" as is defined by Section 5311.01 (I)(1) of the Ohio Revised Code and includes the entire structure (excluding any cinder block portion of any common walls) pursuant to the layout and delineation of a unit as shown on the drawings marked Exhibit "A" and "A-1" sheets 1 through 19, as amended from time to time."

B. Article V, Section A and Section B(1) of the **Declaration** are hereby deleted in their entirety and the following is substituted therefore:

"Article V. Information about Condominium Property.

A. Units.

Each Unit is a freehold estate and consists of the entire building and structure, including, but not limited to, interior and exterior portions thereto, the roof, walls, foundation, basements, garage, utility lines serving the Unit only, drainage facilities (both sanitary and storm) above the ground only and serving the Unit and all other mechanical systems thereto, including electrical, plumbing and HVAC systems whether located above or below the foundation slab. Notwithstanding the foregoing, the Unit does not include any cinder block portion of any common wall separating two Units, but does include the surface area of the cinder block and all plasterboard, insulation, wood or other material attached thereto. The dimensions, layouts and descriptions of each such Unit are shown on the drawings attached hereto.

It is the intent that the entire building and structure and all component parts, including electrical, plumbing and HVAC systems whether located above or below the foundation slab, but excluding any cinder block portion of any common wall and any drainage facilities (both sanitary and storm) located underground be part of the Unit.

Each Unit fronts directly upon and has access to the land upon which the condominium is situated.

B. Common and Limited Common Areas and Facilities.

1) Description of Common Areas and Facilities. Except as otherwise stated herein, the entire balance of the land and improvements thereon, including, but not limited to, any cinder block portion of any common wall, all exterior parking spaces and storage spaces, community and commercial facilities, underground drainage facilities, water mains, pumps, trees, lawns, gardens, and pavement, now or hereinafter situated on the Condominium Property and not located within a Unit, are hereby declared and established as the Common Areas and Facilities.”

C. Article VI, Section A and Section B of the **Declaration** are hereby deleted in their entirety and the following is substituted therefore.

“Article VI. General Provisions as to Units and Common Areas and Facilities.

A. Maintenance of Units.

1) By the Association. The **Association**, at its expense, shall be responsible for the maintenance, repair and replacement of the Common Areas and Facilities (including any cinder block portion of any common wall separating two Units) of each Unit, subsurface conditions, the cleaning of the gutters on each Unit, the exterior painting of the Units, pest and insect control within each Unit, and the underground drainage facilities (both sanitary and storm) servicing the Units. The **Association** shall have the right, but not the obligation, to elect to expand its maintenance obligations upon the affirmative vote of the then current board members.

2) By the Unit Owner.

a. Subject to the **Association’s** right to contract on behalf of the Unit Owner to perform the obligations of the Unit Owner as set forth herein, the Unit Owner shall maintain, repair and replace, at his expense, all portions of his Unit, the Limited Common Areas and Facilities appertaining thereto, and all installations, whether located above or below the foundation slab, in said Unit or the Limited Common Areas and Facilities appertaining thereto, and such appliances, heating, plumbing, electrical and air conditioning fixtures or installations, and any other utility service facilities located within the Unit boundaries or the Limited Common Areas and Facilities appertaining thereto, said Unit owner (subject to the **Association’s** right to contract on the Unit Owner’s behalf) shall also maintain, repair and replace, at his expense, any air conditioning and/or heating apparatus located outside his Unit which apparatus serves his

Unit. In addition to the above, the Unit Owner shall be responsible to perform any required waterproofing, parging or sealing to the Unit's foundation, masonry or basement.

b. To maintain and repair, at his expense, all patios, decks, windows, skylights, doors, chimneys, vestibules and entryways and all associated structures and fixtures therein, which are appurtenances to his Unit or the Limited Common Areas and Facilities appertaining thereto. The foregoing includes, without limitation, responsibility for all breakage, damage, malfunctions and ordinary wear and tear of such appurtenances.

c. To maintain and repair all portions including fixtures of any addition that has been made to the Unit.

d. To perform his responsibilities in such a manner so as not to unreasonably disturb other persons residing adjacent to the Unit.

e. Not to paint or otherwise decorate or change the appearance of any exterior portion of the building, the Limited Common Areas and Facilities appertaining thereto, and the exterior portions of the building and structure, unless the written consent of the **Association** is first obtained, which is an absolute condition precedent.

f. To promptly report to the **Association** or its agent any defect or need for repairs of the Common Areas and Facilities or the Unit which if not promptly repaired could effect the Common Areas and Facilities or the Unit. Notwithstanding the foregoing, no structural repairs and replacements to the Unit shall be made without first obtaining the prior written consent of the **Association**.

g. Not to make any alterations in the exterior portions of the Unit and the Limited Common Areas and Facilities appertaining thereto or the building which are to be maintained by the Unit Owner or on the Common Areas and Facilities or remove any portion thereof or make any additions thereto or do anything which would or might jeopardize or impair the safety or soundness of the building and structure without first obtaining the written consent of the **Association**, nor shall any Unit Owner impair any easement without first obtaining the written consent of the **Association** and of the owner or owners for whose benefit such easement exists.

In the case of structural repairs and replacements of the Unit, the selection of the contractor to perform any repair or replacement shall be made by the **Association** with consultation of the Unit Owner. In performing its obligations as set forth in this Section, the **Association** shall solicit at least three (3) bids on any (i) structural repair or replacement, or (ii) contract for goods or services over Five Thousand Dollars (\$5,000). Once the contractor has been selected, the Unit Owner may elect (i) to hire the contractor directly to perform the structural repair and replacement, or (ii) that the **Association** hire a contractor to perform said repairs or replacements at the Unit Owner's expense. Each Unit Owner hereby grants to the **Association** a limited power of attorney to execute on their behalf any contracts or other agreements necessary to accomplish the repair or continued maintenance of the structural portions of the Unit or other items requested by a Unit Owner to be administered by the **Association** on the Unit Owner's behalf or which are required for the protection and preservation of the Common Areas and Facilities or other Units. Notwithstanding the foregoing, if the roof of a multi-Unit structure is to be replaced or repaired, the **Association** shall consult with each Unit

Owner residing in the structure, and the cost of any such repair or replacement shall be shared between each Unit Owner residing within the structure proportionately based upon each Unit Owner's percentage interest in the Common Areas and Facilities. If a dispute arises regarding the **Association's** or the Unit Owner's responsibilities contained in this Section, said dispute shall be submitted to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association in Akron, Ohio. The decision of the arbitrator shall be final and conclusive on the parties. Each party to the arbitration shall pay the costs, fees and expenses of his or her own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator shall be borne equally between the **Association** and the Unit Owner

Notwithstanding the foregoing, if a Unit Owner performs repairs and or replacements to his or her Unit, which repair or replacement is visible to other Unit Owners or to the public, the Unit Owner shall first obtain the prior written approval of the **Association** which is a absolute condition precedent to performing such repairs or replacements.

Notwithstanding the foregoing, the **Association** shall be solely responsible, at its sole cost and expense, to complete the Flat Roof Replacement Program dated September 12, 1998, whereby the **Association** agreed to replace all flat roofs that were the **Association's** responsibility as of September 12, 1998."

D. Article VI of the **Declaration** is hereby modified by adding the following new section.

"I. Mold Inspection and Remediation.

(1) Inspection/Repair by Association. Prior to the enforcement of this Section against any Unit Owner, the **Association** shall conduct an inspection of the Unit, including the entire building and structure related thereto, for the presence of any mold or conditions that may cause mold to develop. By consenting to this **Fourth Amendment**, each Unit Owner hereby grants to the **Association** the right to enter their Unit from time-to-time, but no more often than once per calendar year, for the purpose of inspecting the same for mold or mold related causes. The results of the inspection conducted by the **Association** shall be delivered to the Unit Owner, receipt of which shall be acknowledged by the Unit Owner in writing. The **Association** shall, at its sole expense, perform any recommended remediation actions or repairs as set forth in the report which were caused by, or arose from, the Common Areas and Facilities, or other parts of the Unit that the **Association** had responsibility to maintain and/or repair prior to the execution of this **Fourth Amendment**. All repairs should be completed within a reasonable time after the receipt of the report from the inspector. The Unit Owner shall, at his or her sole cost and expense, perform any recommended remediation actions or repairs as set forth in the report which were caused by, or arose from, the Unit, Limited Common Areas and Facilities or other items located within the Unit that the Unit Owner had responsibility to maintain and/or repair prior to the execution of this **Fourth Amendment**. If a dispute arises regarding the responsibility for the mold clean-up or remediation, said dispute shall be submitted to binding arbitration under the Commercial Arbitration Rules of the American Arbitration Association in Akron, Ohio. The decision of the arbitrator shall be final and conclusive on the parties. Each party to the arbitration

shall pay the costs, fees and expenses of his or her own witnesses, experts and counsel. The compensation, costs and expense of the arbitrator shall be borne equally between the **Association** and the Unit Owner.

(2) Unit Owner Responsibility. Once the repairs as outlined in the report obtained by the **Association** are completed by the **Association**, the Unit Owner shall be solely responsible for any future repairs or replacements, including, but not limited to, structural repairs or replacements, whether or not located in the Unit, Limited Common Areas and Facilities or the Common Areas and Facilities, caused by mold damage or mold remediation, at the Unit Owner's sole cost and expense. The Unit Owner shall periodically inspect the Unit for mold or mold causing agents. It is the intent of the Unit Owners and the **Association** that from and after the completion of the repairs as set forth in the inspection report (as referred to above in Section I(1)) by the **Association**, each Unit Owner shall have the absolute obligation to prevent the growth of, or development of, any mold within the Unit, the building and structure, or the Limited Common Areas and Facilities or Common Areas and Facilities related thereto, and clean-up any mold found therein. Unless otherwise agreed to by the **Association**, each Unit Owner agrees to defend, indemnify and hold the **Association** harmless, from and against any and all liabilities, losses, damages, costs, expenses (including attorney fees and expenses), suits, claims, demands or judgments of any nature arising from injury to or death of any person, or damage to or loss of property caused by mold located within the Unit, Limited Common Areas and Facilities or Common Areas and Facilities related thereto."

E. Article IX, Section A of the **Declaration** is hereby deleted in its entirety and the following is substituted therefore.

"Article IX. Insurance.

A. Damage and Casualty Insurance.

Each Unit Owner shall obtain and maintain fire insurance (with full standard form extended coverage) on their Unit, or portions thereof, including all other improvements now or at any time hereafter constituting a part of the Unit in an amount not less than one hundred percent (100%) of the full replacement cost of the building and structure containing the Unit, including all improvements and appurtenances thereon.

Such policy of insurance shall be written with a company licensed to do business in the State of Ohio and holding a rating of "AAA" or better by Bests Insurance Reports. The Unit Owner's insurance shall name the **Association** or insurance trustee designated by the **Association**, as loss payee. Each Unit Owner shall deliver to the **Association** a certificate of insurance upon request of the **Association** and shall further deliver to the **Association**, at least thirty (30) days prior to the expiration of such policy, evidence that it has been renewed. All policies shall provide that they cannot be canceled or amended by the Unit Owner without notice to the **Association**. Such policy shall also provide for the release by the insurer thereof of any

and all rights of subrogation or assignment and all causes and rights of recovery against any Unit Owner, member of his family, his tenant, or other occupant of the Condominium Property or the **Association** for recovery any one of them for any loss occurring to the insured property resulting from any of the perils insured against under such insurance policy.

If the Unit should be damaged or destroyed by fire, flood or other casualty, the Unit Owner shall give immediate written notice to the **Association**. The Unit shall be repaired and restored by the Unit Owner to the condition as existed prior to the damage or destruction pursuant to plans and specifications approved by the **Association**. The **Association** shall approve the contractor to repair the damaged Unit. Each Unit Owner shall be responsible to pay any deductible due under the insurance policy. All proceeds (not intending to include proceeds for personal property or contents of the Unit) under the insurance policy paid to the **Association** as trustee of the Unit Owner shall be disbursed by the **Association** for said repair and restoration upon written request of the Unit Owner; provided, however, that prior to any distribution by the **Association**, the **Association** shall have the right to inspect the Unit to verify that it complies with the approved plans and specifications. If the Unit Owner fails to commence the **Association** approved repairs within thirty (30) days after the **Association** approval, or if the Unit Owner fails to diligently complete all repairs within a reasonable time thereafter, the **Association** shall have the right, but not the obligation, upon written notice to the Unit Owner, to commence or complete the repairs. The Unit Owner shall be solely responsible for any costs or expenses not covered by the insurance proceeds.”

F. Article IX, Section C of the **Declaration** is hereby deleted in its entirety and the following is substituted therefrom.

“Article IX. Insurance.

C. Insurance Premiums.

Insurance premiums for the policy referred to in Section B above shall be a common expense unless otherwise provided.”

G. Article XVI of the **Declaration** is hereby deleted in its entirety.

H. Article V, Section 5 of the Bylaws is hereby modified by adding the following sentence to the end of the paragraph.

“Article V. General Powers of the Association.

Section 5. Association’s Right to Enter Units.

The **Association** shall have the right in connection with any inspection for mold to access any Unit upon reasonable notice to the Unit Owner.”

I. Article VI, Section 7 and 8 of the Bylaws are hereby deleted in their entirety and the following is substituted therefrom.

"Article VI. Determination and Payment of Assessments.

Section 7. Annual Audit.

At each annual meeting, the **Association** shall appoint three (3) former Board members to an independent audit review committee to review the books and key operating procedures of the **Association**. The committee shall have the powers and duties conferred to it by resolution of the Board. Subject to prior Board approval, the committee may hire a CPA to assist them in the audit. A majority of the committee may determine its action and fix the time and place of its meeting unless the Board shall determine otherwise. All committee meetings shall be open to the members. The committee shall deliver its report and recommendations to the entire membership at the next annual meeting.

Section 8. Remedies for Failure to Pay Assessments.

If any Unit Owner is in default of the monthly payment of any charge, assessment or special assessment for twenty-five (25) days, the **Association** may (i) assess the Unit Owner a penalty equal to the greater of (a) Twenty-Five Dollars (\$25.00) or (b) 1.5% of the total assessment and charges due which amount shall continue and compound each month until the payment is made and/or (ii) bring suit to enforce collection thereof, or to foreclose the lien therefore as provided in the **Declaration**, and there shall be added to the amount due the cost of said suit, together with legal interest and reasonable attorney's fees to be fixed by the court. To the extent permitted by the **Declaration**, any decision or any statute or law now or hereafter effective, the amount of any delinquent and unpaid charges or assessments, and interest, costs and fees as above provided shall be and become a lien or charge against the Unit of the owner involved when payable, and may be foreclosed by an action brought in the name of the **Association** as in the case of foreclosure of liens against real estate, as provided in the **Declaration**. As provided in the **Declaration**, the members of the Board and their successors in office, acting on behalf of the other Unit Owners, shall have the power to bid on the interest so foreclosed at foreclosure sale, and to acquire and hold, lease, mortgage and convey such interest. Any encumbrancer may from time to time request in writing a written statement from the Board setting forth the unpaid common expenses with respect to the Unit covered by its encumbrance, and unless the request shall be complied with within fifteen (15) days, all unpaid common expenses which become due prior to the date of the making of such request shall be subordinate to the lien of such encumbrance. Any encumbrancer holding a lien on any unit may pay any unpaid common expenses payable with respect to such unit and upon such payment such encumbrancer shall have a lien on such unit for the amounts paid at the same rank as the lien of his encumbrance."

J. Attached hereto and incorporated herein by reference are the following exhibits to this **Fourth Amendment to Declaration**:

- (i) Exhibit A Consent of the Unit Owners to **Fourth Amendment**.

EXHIBIT A

See the attached
Consent of Unit Owners to Fourth Amendment
and Grant of Limited Power of Attorney
for each individual Unit