

# BARCLAY PARK

## FIRST AMENDMENT TO CONSOLIDATING MASTER DEED

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This Amended and Restated Master Deed is made and executed on this \_\_\_<sup>th</sup> day of \_\_\_\_\_, 2023, by Barclay Park Association, a Michigan Nonprofit Corporation, hereinafter referred to as "Association", in pursuance of the provisions of the Michigan Condominium Act (being Act 59 of the Public Acts of 1978, as amended), hereinafter referred to as the "Act".

WITNESSETH:

**WHEREAS**, the Association, by recording this Amended and Restated Master Deed together with the Bylaws attached hereto as Exhibit "A", desires to reaffirm the establishment of the real property described in Article II below, together with the improvements located thereon, and the appurtenances thereto, as a residential Condominium under the provisions of the Act. The original Master Deed for Barclay Park (except for the Condominium Subdivision Plan attached as Exhibit "B"), recorded in Liber 3789, Pages 042 et seq., along with the First Amendment thereto recorded in Liber 3948, Pages 509 et seq., Second Amendment thereto recorded in Liber 4064, Pages 959 et seq., Third Amendment thereto recorded in Liber 4207, Pages 398 et seq., Fourth Amendment thereto recorded in Liber 4219, Pages 931 et seq., Fifth Amendment thereto recorded in Liber 4432, Pages 971 et seq., and the Superseding Consolidating Master Deed (except for the Table of Percentages of Value attached as Exhibit "C") recorded in Liber 4604, Pages 603 et seq., Washtenaw County Records, are all superseded hereby. The Condominium Subdivision Plan attached to the original Master Deed as Exhibit "B", and the Table of Percentages of Value attached to the Superseding Consolidating Master Deed as Exhibit "C" are incorporated herein by reference and made a part hereof as though attached as Exhibits "B" and "C", respectively.

This Master Deed was approved by action taken without a meeting by the requisite majority of Co-owners by votes counted on [DATE] and has been executed by the President of Barclay Park Association, the nonprofit corporation organized to administer the affairs of the Condominium Project.

**NOW, THEREFORE**, the Association does, upon the recording hereof, reaffirm the establishment of Barclay Park as a Condominium under the Act and does declare that Barclay Park (hereinafter referred to as the "Condominium", "Project" or the "Condominium Project") shall be held, conveyed, hypothecated, encumbered, leased, rented, occupied, improved, or in any other matter utilized, subject to the provisions of the Act, and as same may be amended, and to the covenants, conditions, restrictions, uses, limitations and affirmative obligations set forth in this Amended and Restated Master Deed, and in the Bylaws attached as Exhibit "A", and Exhibits "B" and "C" incorporated herein, all of which shall be deemed to run with the land and shall be a burden and a benefit to the Association, its successors and assigns, and any persons acquiring or owning an interest in the Condominium Premises, their grantees, successors, heirs, personal representatives and assigns. In furtherance of the establishment of the Condominium, it is provided as follows:

## **ARTICLE I**

### **TITLE AND NATURE**

The Condominium shall be known as Barclay Park, Washtenaw County Condominium Subdivision Plan No. 305. The architectural plans and specifications for each Unit constructed in the Condominium have been filed with the City of Ann Arbor, Washtenaw County, Michigan. The Condominium is established in accordance with the Act. The buildings and Units contained in the Condominium, including the number, boundaries, dimensions, volume and area of each Unit therein, and the designation of Common Elements as General Common Elements or Limited Common Elements are set forth completely in the Condominium Subdivision Plan attached as Exhibit "B" hereto and/or in Article IV of this Master Deed. Each building contains individual Units created for residential purposes and each Unit is capable of individual utilization on account of having its own entrance from and exit to a Common Element of the Condominium. Each Co-owner in the Condominium shall have an exclusive right to his Unit and shall have an undivided and inseparable interest with the other Co-owners in the Common Elements of the Condominium and shall share with the other Co-owners the Common Elements of the Condominium as provided in this Master Deed. The provisions of this Master Deed, including, but without limitation, the purposes of the Condominium, shall not be construed to give rise to any warranty or representation, express or implied, as to the composition or physical condition of the Condominium, other than that which is expressly provided herein.

## **ARTICLE II**

### **LEGAL DESCRIPTION**

The land which is submitted to the Condominium established by this Master Deed is particularly described as follows:

Commencing at the S 1/4 corner of Section 10, T2S, R6E, City of Ann Arbor, Washtenaw County, Michigan, thence N 89°56'13" E 1316.52 feet along the South line of said Section 10; thence N 00°11'20" W 661.18 feet along the centerline of Nixon Road (variable width) and the West line of the E 1/2 of the SE 1/4 of said Section 10, to the POINT OF BEGINNING, thence continuing N 00°11'20" W 656.43 feet along the said centerline of Nixon Road and the West line of the E 1/2 of the SE 1/4 of said Section 10; thence N 89°29'37" E 1319.16 feet along the North line of the N 1/2 of the SE 1/4 of the SE 1/4 of said Section 10; thence S 89°44'53" E 829.34 feet along the North line of the N 1/2 of the SW 1/4 of the SW 1/4 of Section 11, T2S, R6E, City of Ann Arbor, Washtenaw County, Michigan; thence S 00°00'00" E 294.21 feet; thence S 51°29'37" W 89.98 feet; thence S 38°30'23" E 20.94 feet; thence N 51°56'51" E 83.52 feet; thence Southeasterly 51.47 feet along the arc of a circular curve to the right, radius 44.87 feet, central angle 65°43'53", long chord S 85°19'04" E 48.69 feet; thence S 52°27'08" E 37.51 feet; thence S 26°06'40" E 92.82 feet; thence S 51°29'37" W 176.15 feet; thence N 90°00'00" W 155.43 feet; thence S 00°00'00" E 133.03 feet; thence N 89°36'10" W 662.48 feet; thence N 00°04'50" E 0.85 feet; thence S 89°55'10" W 1318.08 feet to the POINT OF BEGINNING. Being a part of the E 1/2 of the SE 1/4 of said Section 10 and being a part of the W 1/2 of the SW 1/4 of said Section 11, containing 32.58 acres of land, more or less, and subject to rights, if any, of the State of Michigan, as to any part of the subject property, lying in the bed of bodies of water located on the subject property, as disclosed by the Washtenaw County Equalization Department Airflight Maps, and of the riparian owners and the public to use the surface, subsurface of said bodies of water, for purposes of navigation and recreation, being subject to all other lawful easements, restrictions, and rights-of-way of record and all governmental limitations.

## **ARTICLE III**

### **DEFINITIONS**

Certain terms are utilized not only in this Master Deed, Exhibit "A" to the Master Deed, as amended, and Exhibit "B" hereto, but are or may be used in various other instruments such as, by way of example and not limitation, the Articles of Incorporation and rules and regulations of Barclay Park Association, a Michigan Nonprofit Corporation, and deeds, mortgages, liens, land contracts, easements and other instruments affecting the establishment of, or transfer of, interests in Barclay Park as a condominium. Wherever used in such documents or any other pertinent instruments, the terms set forth below shall be defined as follows:

Section 1. Act. "Act" means the Michigan Condominium Act, being Act 59 of the Public Acts of 1978, as amended.

Section 2. Arbitration Association. "Arbitration Association" means the American Arbitration Association or its successor.

Section 3. Association. "Association" means Barclay Park Association, which is the nonprofit corporation organized under Michigan law of which all Co-owners shall be members, which corporation shall administer, operate, manage and maintain the Condominium. Any action required of or permitted to the Association shall be exercisable by its Board of Directors unless specifically reserved to its members by the Condominium Documents or the laws of the State of Michigan.

Section 4. Board of Directors or Board. "Board of Directors" or "Board" means the Board of Directors of Barclay Park Association, a Michigan nonprofit corporation organized to manage, maintain and administer the Condominium.

Section 5. Bylaws. "Bylaws" means Exhibit "A" as attached to the Master Deed as Exhibit "A," as amended, and which is incorporated herein by reference thereto, being the Bylaws setting forth the substantive rights and obligations of the Co-owners and required by Section 3(8) of the Act to be recorded as part of the Master Deed. The Bylaws shall also constitute the Corporate Bylaws of the Association as provided for under the Michigan Nonprofit Corporation Act.

Section 6. Common Elements. "Common Elements", where used without modification, means both the General and Limited Common Elements, if any, described in Article IV hereof.

Section 7. Condominium Documents. "Condominium Documents" wherever used means and includes this Master Deed, all Exhibits attached or incorporated by reference herein, and the Articles of Incorporation, and rules and regulations, if any, of the Association as all of the same may be amended from time to time.

Section 8. Condominium Premises. "Condominium Premises" means and includes the land described in Article II above, and the buildings, improvements and structures thereon, and all easements, rights and appurtenances belonging to Barclay Park as described above.

Section 9. Condominium Project, Condominium or Project. "Condominium Project", "Condominium" or "Project" means Barclay Park as a Condominium established in conformity with the provisions of the Act.

Section 10. Condominium Subdivision Plan. "Condominium Subdivision Plan" means Exhibit "B" hereto.

Section 11. Construction and Sales Period. "Construction and Sales Period" means the period commencing with the recording of the initial Master Deed and continuing as long as the Developer owns any Unit which it offers for sale or for so long as the Developer continues to construct or proposes to construct additional Units in the Condominium, together with any applicable warranty period in regard to such Units.

Section 12. Co-owner. "Co-owner" means a person, firm, corporation, partnership, limited liability company, limited liability partnership, association, trust or other legal entity or any combination thereof who or which own one or more Units in the Condominium. Both land contract vendees and vendors are considered Co-owners and are jointly and severally liable for all obligations and responsibilities of Co-owners under the Condominium Documents and the Condominium Act. The term "Owner", wherever used, shall be synonymous with the term "Co-owner".

Section 13. Developer. "Developer" means Barclay Development Company, a Michigan Corporation, which made and executed the original Master Deed, and its successors and assigns. Both successors and assigns shall always be deemed to be included within the term "Developer" whenever, however, and wherever such term is used in the Condominium Documents.

Section 14. First Annual Meeting. "First Annual Meeting" means the initial meeting at which non-Developer Co-owners are permitted to vote for the election of all directors and upon all other matters which may properly be brought before the meeting. Such meeting is to be held: (a) in the Developer's sole discretion after fifty (50%) percent of the Units which may be created are sold, or (b) mandatorily after the elapse of fifty-four (54) months from the date of the first Unit conveyance, or (c) mandatorily after seventy-five (75%) percent of all Units which may be created are sold, whichever first occurs.

Section 15. Transitional Control Date. "Transitional Control Date" means the date on which a Board of Directors of the Association takes office pursuant to an election in which the votes which may be cast by eligible Co-owners unaffiliated with the Developer exceed the votes which may be cast by the Developer.

Section 16. Unit or Condominium Unit. "Unit" or "Condominium Unit" each mean the enclosed space constituting a single complete residential Unit in Barclay Park as such space may be described in Exhibit "B" hereto and in Article V, Section 1 below, and shall have the same meaning as the term "Condominium Unit" as defined in the Act.

Section 17. Master Deed. "Master Deed" means and refers to this first amendment to the Superseding Consolidating Master Deed recorded in Liber 4604, Page 603, Washtenaw County Records., together with any subsequent amendments thereto.

Other terms which may be utilized in the Condominium Documents and which are not defined hereinabove shall have the meanings as provided in the Act.

Whenever any reference herein is made to one gender, the same shall include a reference to any and all genders where same would be appropriate; similarly, whenever a reference is made herein to the singular, a reference shall also be included to the plural where the same would be appropriate.

## **ARTICLE IV**

### **COMMON ELEMENTS**

The Common Elements of the Condominium, described in Exhibit "B" attached hereto, and the respective responsibilities for maintenance, decoration, repair or replacement thereof, are as follows:

Section 1. General Common Elements. The General Common Elements are:

- (a) Land. The land described in Article II hereof, including the roadway and drives, sidewalks, boardwalk, wetlands, wetland buffer areas, parking spaces not identified as Limited Common Elements and other common areas, when included as a part of the Condominium (subject to the rights of the public, if any, over any portions of rights-of-way). Notwithstanding the foregoing, the Association may, in its discretion, assign General Common Element parking spaces, if any, to individual Co-owners on an equitable basis as may be determined by the Board of Directors, subject to the provisions of Article VI, Section 8 of the Bylaws (Exhibit "A" to the initial Master Deed, as amended). Further, the Developer may, in its discretion, assign General Common element parking spaces to individual Co-owners on an equitable basis as may be determined by the Developer at any time during the Construction and Sales Period, which assignment shall supersede any assignment by the Association to the extent there is a conflict.
- (b) Clubhouse, Village Square Fountain, Sport Court, and Entryway. The clubhouse, Village Square Fountain, sport court and entryway located within the Condominium.
- (c) Electrical. The electrical transmission system throughout the Condominium, including that contained within Unit walls, up to the point of connection with, but not including, electrical fixtures, plugs and switches within any Unit.
- (d) Telephone. The telephone system throughout the Condominium, including that contained within Unit walls, up to the point of connection with, but not including, telephone fixtures or plugs within any Unit..
- (e) Gas. The gas distribution system throughout the Condominium, including that contained within Unit walls, up to the point of connection with gas fixtures within any Unit.
- (f) Water Distribution System. The water pressure booster station and the water distribution system throughout the Condominium including that contained within Unit walls, up to the point of connection with the fixtures or

their apparatuses (i.e. hoses, etc.) for and contained in an individual Unit.

- (g) Sanitary Sewer. The sanitary sewer system throughout the Condominium, including that contained within Unit walls, up to the point of connection with plumbing fixtures within any Unit.
- (h) Telecommunications. The telecommunications system, if and when it may be installed, up to, but not including, connections to provide service to individual Units.
- (i) Irrigation System. The irrigation system throughout the Condominium.
- (j) Site Lighting. Any lights designed to provide illumination for the Condominium Premises as a whole.
- (k) Storm Water Management System and Detention Area and Aerator. The storm water management system throughout the Project including, without limitation, the detention areas and aerator located at the westerly detention area, as depicted on Exhibit "B".
- (l) Fire Suppression System. The fire suppression system located throughout the Condominium, including within units.
- (m) Foundations and Structural Components. Foundations, supporting columns, Unit perimeter walls (excluding windows therein, but including doors), roofs, ceilings, and floor construction between Unit levels.
- (n) Other. Such other elements of the Condominium not herein designated as General or Limited Common Elements which are not enclosed within the boundaries of a Unit, and which are intended for common use or necessary to the existence, upkeep and safety of the Condominium.

Some or all of the utility lines, systems (including mains and service leads) and equipment, the cable television system, and the telecommunications system, if and when constructed, described above may be owned by the local public authority or by the company that is providing the pertinent service. Accordingly, such utility lines, systems and equipment, and the cable television and telecommunications systems, if and when constructed, shall be General Common Elements only to the extent of the Co-owners' interest therein, if any, and Developer makes no warranty whatsoever with respect to the nature or extent of such interest, if any.

Some or all of the utility systems service single buildings containing more than one Unit. Accordingly, and where necessary or applicable, there shall be an easement for that Common Element through each Unit to enable the utility systems to appropriately serve each of the Units in the subject building.

Section 2. Limited Common Elements. The Limited Common Elements shall be subject to the exclusive use and enjoyment of the Co-owner or Co-owners of the Unit or Units to which the Limited Common Elements are appurtenant. The Limited Common Elements are as follows:

- (a) Porches, Concrete Steps and Walkways. Each individual porch, and the concrete steps and walkways extending out from the Limited Common Element porches attached to the Units in the Condominium shall be limited in use to the Co-owner(s) of the Unit(s) to which the porch(es), concrete steps and walkways are appurtenant, as depicted on Exhibit "B" hereto.
- (b) Balconies and Terraces. Each balcony and each terrace in the Condominium is limited in use to the Co-owner of the Unit which opens onto said balcony or terrace as shown on Exhibit "B" hereto.
- (c) Decks. Each deck in the Condominium is limited in use to the Co-owner of the Unit which opens onto said deck as shown on Exhibit "B" hereto.
- (d) Patios and Wooden Privacy Fences. Each patio, if any, and the wooden privacy fence, if any, in the Condominium is limited in use to the Co-owner of the Unit which opens onto such patio as shown on Exhibit "B" hereto.
- (e) Garage Doors and Openers. The garage door, garage door mechanism, and electric garage door opener for each garage having the same shall be limited in use to the Co-owner of the Unit to which such garage is appurtenant.
- (f) Exterior Lights. The exterior light attached to each garage and the exterior light above each porch are limited in use to the Co-owner of the Unit to which said exterior lights and garage are appurtenant.
- (g) Air Conditioner Compressors. Each air conditioner compressor, if any, located outside any building shall be limited in use to the Co-owner of the Unit which such compressor services.
- (h) Gas Fireplaces, Venting and Combustion Chamber. The gas fireplace located in a Unit, if any, the venting system, and the fireplace combustion chamber shall be limited in use to the Co-owner of the Unit in which the gas fireplace is located.



- (i) Sump Pumps and Sanitary Crocks. Each sump pump and sanitary crock, if any, shall be limited in use to the Co-owner of the Unit which such sump pump and sanitary crock services.
- (j) Unit Windows and Skylights. Unit windows and skylights (if any), shall be limited in use to the Co-owners of Units which they service.
- (k) Interior Surfaces. The interior surfaces of Unit perimeter walls (including the interior surfaces of the doors), ceilings and floors contained within a Unit shall be limited in use to the Co-owner of such Unit.

Section 3. Responsibilities. The respective responsibilities for the maintenance, decoration, repair and replacement of the Common Elements are as follows:

- (a) Balconies and Terraces. The costs of maintenance and decoration (but not repair or replacement) of the balcony or terrace referenced in Article IV, Section 2(b) hereinabove shall be borne by the Co-owner of the Unit to which such Limited Common Element is appurtenant. The responsibility for repair and replacement of each balcony and each terrace shall be borne by the Association.
- (b) Decks. The cost of maintenance, repair and replacement of the Limited Common Element deck described in Article IV, Section 2 (c) above shall be borne by the Co-owner of the Unit which opens onto such Limited Common Element deck; provided, however, that the Association shall be responsible for mowing any unenclosed and unobstructed deck area which consists mainly of lawn. The deck maintenance schedule, stain type and/or color, wood type and any other pertinent procedures and/or materials may be specified by regulations promulgated by the Board of Directors of the Association, pursuant to the provisions of Article VI, Section 11 of the Bylaws (Exhibit "A" to the Master Deed, as amended) which shall be subject to the written approval of the Developer during the Construction and Sales Period pursuant to the provisions of Article VI, Section 16 of the Bylaws.
- (c) Garage Doors and Openers. The costs of maintenance, repair and replacement of each garage door and garage door mechanism referenced in Article IV, Section 2(e) hereinabove shall be borne by the Association. The costs of maintenance, repair and replacement of each electric garage door opener referenced in Article IV, Section 2(e) hereinabove shall be borne by the Co-owner of the Unit to which such Limited Common Elements are appurtenant.

- (d) Exterior Lights. The costs of electricity for the two (2) Limited Common Element exterior lights referenced in Article IV, Section 2(f) hereinabove shall be borne by the Co-owner of the appurtenant Unit and garage. The cost of maintenance, repair, and replacement of these exterior lights shall be borne by the Co-owner for lights located on the rear facing of the building, and by the Association for lights located on the front facing of the building. Co-owners shall not tamper with, damage or alter the photocells operating the exterior lighting located on the garages and porches.
- (e) Air Conditioner Compressors. The costs of maintenance, repair and replacement of each air conditioner compressor referenced in Article IV, Section 2(g) hereinabove shall be borne by the Co-owner of the Unit to which such air conditioner compressor is appurtenant.
- (f) Gas Fireplaces, Venting and Combustion Chamber. The costs of maintenance, repair and replacement of the gas fireplace located within a Unit, if any, the venting system, and the fireplace combustion chamber in any Unit referenced in Article IV, Section 2(h) hereinabove shall be borne by the Co-owner of such Unit. Any maintenance, repair or replacement to said venting system must receive the prior written approval of the Association to ensure the safety of the structures and residents of the Condominium.
- (g) Sump Pumps and Sanitary Crocks. The costs of maintenance, repair and replacement of each sump pump and sanitary crock, if any, referenced in Article IV, Section 2(i) hereinabove shall be borne by the Co-owner of the Unit to which such Limited Common Elements are appurtenant.
- (h) Unit Windows and Skylights. The costs of maintenance, repair and replacement of all Unit windows and skylights (if any), referenced in Article IV, Section 2(j) hereinabove shall be borne by the Co-owner of the Unit to which such Limited Common Elements are appurtenant. The style and color of each window and skylight (if any) described herein shall be subject to the prior express written approval of the Board of Directors of the Association, pursuant to the provisions of Article VI, Section 3 of the Bylaws (Exhibit "A" to the Master Deed, as amended) and subject to the written approval of the Developer during the Construction and Sales Period pursuant to the provisions of Article VI, Section 16 of the Bylaws.
- (i) Interior Surfaces. The costs of decoration and maintenance (but not repair or replacement except in cases of Co-owner fault) of all surfaces referenced in Article IV, Section 2(k) hereinabove shall be borne by the Co-owner of each Unit to which such Limited Common Elements are appurtenant. Notwithstanding anything herein to the contrary, the costs of repair and replacement of any drywall damaged from the inside of the Unit shall be borne by the Co-owner of the Unit.
- (j) Fire Suppression System. The costs of maintenance, repair and replacement of the fire suppression system referenced in Article IV, Section

1(l) shall be borne by the Association. Co-owners shall grant the Association access necessary to inspect same, including, without limitation, pipes, fixtures and valves, and to perform its responsibilities of maintenance, repair and replacement thereon, as provided in the Bylaws attached to the Master Deed as Exhibit "A", as amended.

- (k) Lawn Care Chemicals and Fertilizers. Any utilization of lawn care chemicals and fertilizers shall be performed in such a manner so as to minimize impacts on the creeks and wetlands.
- (l) Storm Water Management System and Detention Areas. The costs of inspection, maintenance, repair and replacement of the storm water management system and the detention areas and the aerator referenced in Section 1 (k) hereinabove shall be borne by the Association and shall be performed in strict accord with the written Stormwater Wetland System Management Plan ("Management Plan") designed for Barclay Park by the City of Ann Arbor, as may be amended from time to time. The Management Plan, which shall be maintained in the Association's records at all times, sets forth, without limitation, the required procedures and a schedule with regard to inspections and maintenance, sediment control (dredging procedure and material disposal), vegetation management (planting, weeding, herbicide controls, fertilizer prohibitions, mowing of buffer areas and dry sedimentation basins, etc.), and an outlet maintenance plan. The Association is also responsible for all record keeping and submitting reports to the City of Ann Arbor Planning Department as required by the Management Plan. All such records shall be made available to engineers, wetland scientists, public officials, and other responsible parties upon reasonable request. Any proposed changes to the storm water detention facilities must be approved by the City of Ann Arbor Building Department. If there is a failure to properly maintain the inlet and detention areas, the City of Ann Arbor may undertake the necessary procedures and charge the Association and collect same as a single lot assessment as more specifically described in Article VI, Section 4 of the Master Deed.
- (m) Other Common Elements. The costs of maintenance, repair and replacement of all General and Limited Common Elements other than as described above shall be borne by the Association, subject to any provisions of the Bylaws (Exhibit "A" to the Master Deed, as amended) expressly to the contrary.
- (n) Public Utilities. Public utilities furnishing services such as electricity and telephone to the Condominium shall have access to the Common Elements and Condominium Units as may be reasonable for the reconstruction, repair or maintenance of such services, and any costs incurred in opening and repairing any wall of the Condominium to reconstruct, repair or maintain such service shall be borne by the individual Co-owners and/or by the Association, as the case may be, as set forth in the provisions of this Article IV, Section 3.

- (o) Irrigation Equipment. A Co-owner whose Unit contains common irrigation equipment shall not restrict the Association or its contractors or utility companies from entering into the Unit to maintain, repair or replace such equipment. To ensure there is reasonable accessibility to such equipment, Co-owners shall not convert the portion of the Unit containing such equipment to living area without prior written approval of the Board of Directors. The Association shall not be responsible for damage to floor tile, carpeting, paneling, wall coverings, walls or other improvements or property in the Unit or Limited Common Elements if such items are blocking access to the equipment.
- (p) Co-owner Additions, Modifications. Co-owner improvements, additions or modifications, even though approved by the Board of Directors, are not considered Common Elements in any case and, except as the Board determines otherwise in writing, are the complete responsibility of the Co-owner. Should the Association require access to any Common Elements which necessitates the moving or destruction or all or part of any such addition or modification, all costs, damages, and expenses involved in providing access and restoring the addition or modification shall be assessed to and collected from the responsible Co-owner in the manner provided in the Bylaws.
- (q) Unauthorized Repair. The Association shall not be obligated to reimburse any Co-owner for repairs made or contracted for by the Co-owner. Unless otherwise determined by the Board of Directors, the Association shall only be responsible for payments to contractors for work authorized by the Board of Directors or by a management company hired by the Association.

Section 4. Use of Units and Common Elements. No Co-owner shall use his Unit or the Common Elements in any manner inconsistent with the purposes of the Condominium or in any manner which will interfere with or impair the rights of any other Co-owner in the use and enjoyment of his Unit or the Common Elements.

## **ARTICLE V**

### **UNIT DESCRIPTION AND PERCENTAGE OF VALUE**

Section 1. Description of Units. The Condominium shall consist of two hundred ninety-one (291) Units. Each Unit in the Condominium is described in this Section with reference to the Condominium Subdivision Plan of Barclay Park as surveyed by Midwestern Consulting and which Plan is attached hereto as Exhibit "B". Each Unit shall include:

- (1) with respect to each Unit with a slab, all that space contained within the unfinished surface of the concrete slab and the interior finished unpainted walls and ceilings of the first floor;
- (2) with respect to each Unit with a crawl space, all that space contained within the interior surfaces of the crawl space floor and walls and the uncovered underside of the first-floor

joists;

- (3) with respect to the lower levels of Units, all that space contained within the interior finished unpainted walls and ceilings and from the finished sub-floor (including the finished unpainted walls and ceilings and finished floor of the garages), and the interior stairwells;
- (4) with respect to the upper floors of Units, all that space contained within the interior finished unpainted walls and ceiling from the finished subfloor, and the interior stairwells; and
- (5) with respect to each Unit with an attic area, all that space contained within the wood trusses of the attic area;

all as shown on the floor plans and sections in Exhibit "B" hereto and delineated with heavy outlines. Each Unit which has a fireplace shall include the fireplace enclosure within the boundaries of a Unit. Notwithstanding anything hereinabove to the contrary, although within the boundaries of a Unit for purposes of computation of square footage in the Condominium Subdivision Plan, the Co-owner of a Unit shall not own or tamper with any structural components contributing to the support of the building in which such Unit is located, including but not limited to support columns, nor any pipes, wires, conduits, ducts, flues, shafts or public utility lines situated within such Unit which service the Common Elements or a Unit or Units in addition to the Unit where located. Easements for the existence, maintenance and repair of all such structural components shall exist for the benefit of the Association.

Section 2. Percentages of Value. The percentage of value assigned to each Unit was computed based upon the average square footages of the buildings, inclusive of the garages contained therein, exclusive of fireplaces and exclusive of the crawl spaces, with the resultant percentages reasonably adjusted to total precisely one hundred percent (100%). The percentage of value assigned to each Unit shall be determinative of each Co-owner's undivided interest in the Common Elements, the proportionate share of each respective Co-owner in the proceeds and expenses of administration and the value of such Co-owner's vote at meetings of the Association of Co-owners. Set forth in Exhibit "C" to this Master Deed, and attached hereto, is the Table of Percentages of Value containing the following:

- (1) Each Unit number as it appears on the Condominium Subdivision Plan.
- (2) The percentage of value assigned to each Unit.

Section 3. Modification of Units and Common Elements by Developer. The size, location, nature, design or elevation of Units and/or General or Limited Common Elements appurtenant or geographically proximate to any Units described in Exhibit "B", as same may be revised or amended from time to time, may be modified, in Developer's sole discretion, by amendment to this Master Deed effected solely by the Developer and its successors without the consent of any person so long as such modifications do not unreasonably impair or diminish the appearance of the Condominium or the privacy or other significant attribute or amenity of any Unit which adjoins or is proximate to the modified Unit or Limited Common Element. All of the Co-owners and mortgagees of Units and other persons interested or to

become interested in the Condominium from time to time shall be deemed to have unanimously consented to such amendment or amendments to this Master Deed to effectuate the foregoing. All such interested persons irrevocably appoint Developer or its successors and assigns as agent and attorney for the purpose of execution of such amendment or amendments to the Master Deed and all other documents necessary to effectuate the foregoing.

Section 4. Relocation of Boundaries of Adjoining Units by Co-owners. Boundaries between adjoining Condominium Units may be relocated at the request of the Co-owners of such adjoining Condominium Units and upon approval of the affected mortgagees of these Units. Upon written application of the Co-owners of the adjoining Condominium Units, and upon the approval of said affected mortgagees, the Board of Directors of the Association shall forthwith prepare and execute an amendment to the Master Deed duly relocating the boundaries pursuant to the Condominium Documents and the Act. Such an amendment to the Master Deed shall identify the Condominium Units involved and shall state that the boundaries between those Condominium Units are being relocated by agreement of the Co-owners thereof and such amendment shall contain the conveyance between those Co-owners. All of the Co-owners and mortgagees of Units and other persons interested or to become interested in the Condominium from time to time shall be deemed to have irrevocably and unanimously consented to such amendment of this Master Deed to effectuate the foregoing. All such interested persons irrevocably appoint the Association, through its Board of Directors, as agent and attorney for the purpose of execution of such amendment to the Master Deed and all other documents necessary to effectuate the foregoing. Such amendment may be effected without the necessity of re-recording an entire Master Deed or the Exhibits thereto and may incorporate by reference all or any pertinent portions of this Master Deed and the Exhibits hereto. The amendment shall be delivered to the Co-owners of the Condominium Units involved upon payment by them of all reasonable costs for the preparation and recording thereof.

## **ARTICLE VI**

### **EASEMENTS**

Section 1. Easement for Maintenance of Encroachments and Utilities. In the event any portion of a Unit or Common Element encroaches upon another Unit or Common Element due to shifting, settling or movement of a building, or due to survey errors, or construction deviations, reciprocal easements shall exist for the maintenance of such encroachment for so long as such encroachment exists, and for maintenance thereof after rebuilding in the event of any destruction. There shall be easements to, through and over those portions of the land, structures, buildings, improvements, and walls (including interior Unit walls) contained therein for the continuing maintenance and repair of all utilities in the Condominium. There shall exist easements of support with respect to any Unit interior wall which supports a Common Element.

Section 2. Easement for Ingress and Egress Over Roadway and Sidewalks for the General Public. A non-exclusive easement to traverse the sidewalks and the roadway in the Condominium by pedestrians and vehicles for the purpose of ingress and egress to access the public park located in the Condominium Project has been created in favor of the general public as depicted on Exhibit "B" hereto. The Association shall assume all rights and obligations of

the Developer as Grantor under the Ingress and Egress Easement Over Barclay Way to Access City of Ann Arbor Park Lands upon recordation of said Easement.

Section 3. Reservation of Right to Dedicate Public Right-of Way Over Roadway or to Transfer Title. The Developer reserves the right at any time during the Construction and Sales Period, and the Association shall have the right thereafter, to dedicate to the public a right-of-way of such width as may be required by the local public authority over any or all of the roadway in Barclay Park shown as a General Common Element in the Condominium Subdivision Plan or to transfer title of the roadway to the local public authority. Any such right-of-way dedication or transfer of title may be made by the Developer or the Association, as the case may be, without the consent of any Co-owner, mortgagee or other person and shall be evidenced by an appropriate amendment to this Master Deed and to the Condominium Subdivision Plan hereto, recorded in the Washtenaw County Records. All of the Co-owners and mortgagees of Units and other persons interested or to become interested in the Condominium from time to time shall be deemed to have irrevocably and unanimously consented to such amendment or amendments of this Master Deed to effectuate the foregoing right-of-way dedication or transfer of title. This right of dedication and transfer of title in no way whatsoever obligates the Developer to construct or install the roadway in a manner suitable for acceptance of such dedication by the appropriate municipal authority.

Section 4. Barclay Park Site Development Agreement. This Condominium is subject to special maintenance restrictions contained in the Barclay Park Site Development Agreement entered into between the Developer and the City of Ann Arbor, dated October 7, 1998, recorded in Liber 3779, Pages 0501-0506, Washtenaw County Records, as may be amended from time to time. Maintenance requirements are imposed by the Barclay Park Site Development Agreement upon the Association including, without limitation, with regard to lawn care chemicals and fertilizers, as is further described in Article IV, Section 3(k) hereinabove. The Association is also responsible for perpetual maintenance of the General Common Element storm water detention facilities depicted on Exhibit "B" hereto. Any proposed changes to the storm water detention facilities must be approved by the City of Ann Arbor Building Department. If there is a failure to properly maintain the inlet and detention areas, the City of Ann Arbor may serve notice on the Association requiring it to commence and complete the maintenance stated in the notice within the times set forth in the notice. The City may cause the work to be completed at the expense of the Association if the work is not completed within the time set forth in the notice. That portion of the cost of the maintenance work attributable to each condominium Unit shall be a lien on the property and may be collected as a single lot assessment as provided in the Ann Arbor City Ordinances.

Section 5. Reservation of Right to Grant Easements for Utilities. The Developer reserves the right at any time during the Construction and Sales Period, and the Association shall have the right thereafter, to grant easements for utilities over, under and across the Condominium to appropriate governmental agencies or public utility companies and to transfer title of the utilities to governmental agencies or to utility companies. Any such easement or transfer of title may be conveyed by the Association without the consent of any Co-owner, mortgagee or other person and shall be evidenced by an appropriate amendment to this Master Deed and to Exhibit "B" hereto, recorded in the Washtenaw County Register of Deeds. All of the Co-owners and mortgagees of Units and other persons interested or to become interested in the Project from time to time shall be deemed to have irrevocably and

unanimously consented to such amendments to this Master Deed as may be required to effectuate the foregoing grant of easement or transfer of title.

Section 6. Grant of Easements by Association. The Association, acting through its lawfully constituted Board of Directors (including any Board of Directors acting prior to the First Annual Meeting), shall be empowered and obligated to grant such easements, licenses, rights-of-entry and rights-of-way over, under, and across the Condominium Premises for utility purposes, access purposes or other lawful purposes as may be necessary for the benefit of the Condominium; subject, however, to the approval of the Developer so long as the Construction and Sales Period has not expired.

Section 7. Association and Developer Easements for Maintenance, Repair and Replacement. The Developer, the Association, and all public or private utilities shall have such easements over, under, across and through the Condominium Premises, including all Units and Common Elements, as may be necessary to fulfill any responsibilities of maintenance, repair, decoration, replacement or upkeep which they or any of them are required or permitted to perform under the Condominium Documents or by law or to respond to any emergency or common need of the Condominium. These easements include, without any implication of limitation, the right of the Association to obtain access during reasonable hours and upon reasonable notice to water meters, sprinkler controls and valves, fire suppression system components, and other Common Elements located within any Unit or its appurtenant Limited Common Elements. Neither the Developer nor the Association shall be liable to the owner of any Unit or any other person, in trespass or in any other form of action, for the exercise of rights pursuant to the provisions of this Section or any other provision of the Condominium Documents which grant such easements, rights of entry or other means of access. Failure of the Association (or the Developer) to take any such action shall not be deemed a waiver of the Association's (or the Developer's) right to take any such action at a future time. All costs incurred by the Association or the Developer in performing any responsibilities which are required, in the first instance to be borne by any Co-owner, shall be assessed against such Co-owner and shall be due and payable with his installment of the annual assessment next falling due; further, the lien for nonpayment shall attach as in all cases of annual assessments and such assessments may be enforced by the use of all means available to the Association under the Condominium Documents and by law for the collection of annual assessments including, without limitation, legal action and foreclosure of the lien securing payment as provided for in Article II of the Bylaws (Exhibit "A" to Master Deed, as amended) and the Act.

Section 8. Telecommunications Agreements. The Association, acting through its duly constituted Board of Directors and subject to the Developer's approval during the Construction and Sales Period, shall have the power to grant such easements, licenses and other rights of entry, use and access and to enter into any contract or agreement, including wiring agreements, utility agreements, right-of-way agreements, access agreements and multi-Unit agreements and, to the extent allowed by law, contracts for sharing of any installation or periodic subscriber service fees as may be necessary, convenient or desirable to provide for telecommunications, videotext, broad band cable, satellite dish, antenna, multichannel multipoint distribution service and similar services (collectively "Telecommunications") to the Condominium or any Unit therein. Notwithstanding the foregoing, in no event shall the Board of Directors enter into any contract or agreement or grant any easement, license or right of entry or do any other act or thing which will violate any provision of any Federal, State or local



law or ordinance. Any and all sums paid by any Telecommunications or any other company or entity in connection with such service, including fees, if any, for the privilege of installing same, or sharing periodic subscriber service fees, shall be receipts affecting the administration of the Condominium within the meaning of the Act and shall be paid over to and shall be the property of the Developer during the Construction and Sales Period and, thereafter, the Association.

## **ARTICLE VII**

### **AMENDMENT**

This Master Deed, the Condominium Subdivision Plan (Exhibit "B" to said Master Deed) and the Table of Percentages of Value (Exhibit "C" to said Master Deed), may be amended with the consent of sixty-six and two-thirds percent (66-2/3%) of all of the Co-owners qualified to vote, in number and in value except as hereinafter set forth:

Section 1. Modification of Units or Common Elements. No Unit dimension may be modified without the consent of the Co-owner or mortgagee of such Unit nor may the nature or extent of Limited Common Elements or the responsibility for maintenance, repair or replacement thereof be modified in any material way without the written consent of the Co-owner or mortgagee of any Unit to which the same are appurtenant.

Section 2. Mortgagee Consent. Whenever a proposed amendment requires mortgagee consent as provided in the Act, then such amendment shall require the approval of sixty-six and two-thirds percent (66-2/3%) of all mortgagees of record, allowing one (1) vote for each mortgage held.

Section 3. By Developer. Prior to one (1) year after expiration of the Construction and Sales Period described in Article III, Section 11 above, the Developer may, without the consent of any Co-owner or any other person, amend this Master Deed, the Condominium Subdivision Plan attached as Exhibit "B", and the Table of Percentage of Value attached as Exhibit "C", in order to correct survey or other errors made in such documents and to make such other amendments to such instruments and to the Bylaws attached to the Master Deed as Exhibit "A", as amended, as do not materially affect any rights of any Co-owners or mortgagees in the Condominium, including, but not limited to, amendments for the purpose of facilitating conventional mortgage loan financing for existing or prospective Co-owners and to enable the purchase of such mortgage loans by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association and/or any other agency of the Federal government or of the State of Michigan.

Section 4. Change in Percentage of Value. The value of the vote of any Co-owner and corresponding proportion of common expenses assessed against such Co-owner shall not be modified without the written consent of such Co-owner and his mortgagee nor shall the percentage of value assigned to any Unit be modified without like consent, except as provided in Article V, Section 7(c) of the Bylaws, attached to the Master Deed as Exhibit "A", as amended, and except as provided in Article V hereof.

Section 5. Termination, Vacation, Revocation and Abandonment. The Condominium may not be terminated, vacated, revoked or abandoned without the written consent of the

Developer (during the Construction and Sales Period) together with eighty percent (80%) of the non-Developer Co-owners, in number and in value, and as otherwise allowed by law.

Section 6. Developer Approval. During the Construction and Sales Period, Article V, Article VI, and this Article VII shall not be amended nor shall the provisions thereof be modified by any other amendment to this Master Deed without the written consent of the Developer. During the time period referenced in the preceding sentence, no other portion of this Master Deed, nor the Bylaws attached to the Master Deed as Exhibit "A", as amended, nor the Subdivision Plan attached hereto as Exhibit "B" may be amended in any manner so as to materially affect and/or impair the rights of the Developer, unless said amendment has received the prior written consent of the Developer. No easements created under the Condominium Documents may be modified or obligations with respect thereto varied without the consent of each owner benefited thereby.

Section 7. Amendments for Secondary Mortgage Market Purposes. The Association may amend this Master Deed or the attached Bylaws to the extent necessary to enable the purchase or insurance of mortgage loans for existing or prospective Co-owners by the Federal Home Loan Mortgage Corporation, the Federal National Mortgage Association, the Government National Mortgage Association, the Veterans Administration, the Department of Housing and Urban Development, Michigan State Housing Development Authority. The foregoing amendments may be made by the Board of Directors without the consent of Co-owners or mortgagees.

Section 8. Association Amendments. The Association may amend this Master Deed or the attached Bylaws to eliminate references throughout to the Developer, to events that have already passed such as the First Annual Meeting or the Development and Sales Period, and to remove provisions that no longer apply including, but not limited to, the advisory committee. The foregoing amendments may be made by the Board of Directors without the consent of Co-owners or mortgagees.

## **ARTICLE VIII**

### **ASSIGNMENT AND COMPLIANCE**

Any or all of the rights and powers granted or reserved to the Developer in the Condominium Documents or by law, including the power to approve or disapprove any act, use or proposed action or any other matter or thing, may be assigned by the Developer to any other entity or to the Association. Any such assignment or transfer shall be made by appropriate instrument in writing duly recorded in the Office of the Washtenaw County Register of Deeds. In the event that any provision of this Master Deed conflicts with any provision of the Bylaws, attached to the Master Deed as Exhibit "A", as amended, the Condominium Subdivision Plan attached hereto as Exhibit "B", and the Table of Percentages of Value attached hereto as Exhibit "C", the provisions of the Master Deed shall govern.

**BARCLAY PARK ASSOCIATION,**

A Michigan Nonprofit Corporation

By: \_\_\_\_\_  
\_\_\_\_\_, President

STATE OF MICHIGAN )

) ss.

COUNTY OF WASHTENAW )

On this \_\_\_<sup>th</sup> day of \_\_\_\_\_, 2023, the foregoing Amended and Restated Master Deed was acknowledged before me by \_\_\_\_\_, President of Barclay Park Association, a Michigan Nonprofit Corporation, on behalf of said Corporation.

\_\_\_\_\_  
, Notary Public

Acting in: Washtenaw County, Michigan

My Commission Expires: \_\_\_\_\_

Amended and Restated Master Deed Drafted by:

When Recorded Return to:

STEVE SOWELL  
SOWELL LAW, P.L.L.C.  
2 Crocker Blvd., Suite 301  
Mount Clemens, Michigan 48043  
(586) 465-9529

BPA\_AMENDED AND RESTATED MASTER DEED\_2022.docx

PROPOSED