

AMENDED AND RESTATED

DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS
AND RESTRICTIONS

OF

THE VILLAS AT MacINTOSH FARMS CLUSTER DEVELOPMENTS,
PHASES ONE - SEVEN

BROADVIEW HEIGHTS, OHIO

DEVELOPED AND BUILT BY:

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an Ohio corporation

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AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND
RESTRICTIONS

OF

THE VILLAS AT MacINTOSH FARMS
CLUSTER DEVELOPMENTS

BROADVIEW HEIGHTS, OHIO

PHASE ONE – GROUP “H”
PHASE TWO – GROUP “K”
PHASE THREE – GROUPS “J-1” and “J-3”
PHASE FOUR – GROUP “J-2”
PHASE FIVE – GROUP “L-1”
PHASE SIX – GROUP “L-2”
PHASE SEVEN – GROUPS “L-3” and “L-4”

THIS AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, AND RESTRICTIONS OF THE VILLAS AT MacINTOSH FARMS CLUSTER DEVELOPMENTS (PHASES ONE – SEVEN), BROADVIEW HEIGHTS, OHIO (the “Amended and Restated Declaration”) is made by PETROS DEVELOPMENT CORPORATION, an Ohio corporation (referred to herein as the “Developer”).

PREAMBLE TO AMENDED AND RESTATED DECLARATION

A. The Developer has previously submitted Phase One of the Property now subject to the terms and conditions of this Amended and Restated Declaration [known as The Villas at MacIntosh Farms Cluster Developments (Phase One - Group "H")] by operation of the document entitled "Declaration of Covenants, Conditions, Easements and Restrictions of The Villas at MacIntosh Farms Cluster Developments, Broadview Heights, Ohio" (the "**Original Declaration**") which was filed for record January 10, 1996 in Volume 96-00212, Page 40 of Cuyahoga County Records. Also on January 10, 1996, the Developer recorded a document entitled "Code of Regulations of The Villas at MacIntosh Farms Cluster Association, Inc." in Volume 96-00213, Page 34 of Cuyahoga County Records (the "**Code**").

B. The Original Declaration was supplemented and amended by the Developer subsequently filing the following documents:

- (1) Pursuant to the authority of Section 15.12(a) of the Original Declaration, Subsequent Amendment No. 1 was recorded on June 4, 1996 with the Cuyahoga County Recorder in Volume 96-05241, Page 46, of Cuyahoga County Records, which Amendment deleted the ability of the Association (as hereinafter defined) to provide certain exterior maintenance, repair, and replacement with respect to the Living Units (as hereinafter defined); and
- (2) Subsequent Amendment No. 2 was recorded on October 29, 1996 with the Cuyahoga County Recorder in Volume 96-10710, Page 35, of Cuyahoga County Records, thereby submitting Phase Two of the Property now subject to the terms and conditions of this Amended and Restated Declaration (known as Group "K") to the Original Declaration; and
- (3) Subsequent Amendment No. 3 was recorded on January 5, 1998 as Instrument No. 650118 in Volume 98-00078, Page 18, of Cuyahoga County Records, thereby submitting Phase Three of the Property now subject to the terms and conditions of this Amended and Restated Declaration (known as Groups "J-1" and "J-3") to the Original Declaration; and
- (4) Subsequent Amendment No. 4 was recorded on April 9, 1998 as Instrument No. 720306 in Volume 98-04097, Page 42, of Cuyahoga County Records, thereby submitting Phase Four of the Property now subject to the terms and conditions of this Amended and Restated Declaration (known as Group "J-2") to the Original Declaration; and
- (5) Subsequent Amendment No. 5 was recorded on August 24, 1998 as Recorder's File No. 839047 in Volume 98-10806, Page 22, of Cuyahoga County Records, thereby submitting Phase Five of the Property now subject to the terms and conditions of this Amended and Restated Declaration (known as Group "L-1") to the Original Declaration;
- (6) Subsequent Amendment No. 6 was recorded on July 13, 1999 as Cuyahoga Recorder's Instrument No. 199907131500, thereby submitting Phase Six of the Property now subject to the terms and conditions of this Amended and Restated Declaration (known as Group "L-2") to the Original Declaration; and
- (7) Subsequent Amendment No. 7 was recorded on January 21, 2000 as Cuyahoga Recorder's Instrument No. 200001210629, thereby submitting Phase Seven of the Property now subject to the terms and conditions of this

Amended and Restated Declaration (known as Groups "L-3", "L-4", and Block "B" from Group "L-1") to the Original Declaration.

The term "Original Declaration" shall include the Subsequent Amendments Nos. 1, 2, 3, 4, 5, 6 and 7 as set forth above.

C. The Board of Trustees of the Association (as hereinafter defined), in order to increase the usability and convenience of working with the Original Declaration, desires to replace the eight-part Original Declaration with a single document that consolidates all eight documents.

D. The Board of Trustees of the Association (as hereinafter defined) desires to amend the Original Declaration to allow the Association the option to provide certain maintenance services with respect to the exterior of Living Units (as hereafter defined) within the Property (as hereafter defined).

E. Section 15.12(a) of the Original Declaration allows the Developer to amend or modify any of the provisions of the Original Declaration, for so long as the Developer is the Owner of a fee simple interest in a portion of the Property (as hereafter defined), if, in the Developer's judgment, the purposes of the general plan of development of the Living Units (as hereafter defined) will be better served by such modification. Pursuant to such Section, the Developer may amend the Original Declaration by filing a supplement to the Original Declaration setting forth the Amendment, which supplement need not be, but shall at the Developer's request, be executed by the Association and all Owners of real property within the Property. Each such Owner, by accepting a deed to his or her Living Unit or other real property within the Property, appointed Developer as his or her attorney-in-fact, coupled with an interest, to execute on his or her behalf any such amendment. Each amendment shall be effective when signed by the Developer and filed for record with the Recorder of Cuyahoga County.

F. As Developer presently retains a fee simple interest in a portion of the Property, and as Developer has determined that the purposes of the general plan of development of the Living Units will be best served by the recording of this Amended and Restated Declaration in order to accomplish the goals of the Board of Trustees of the Association as set forth in Paragraphs C. and D. above, Developer hereby records this Amended and Restated Declaration which, upon being filed for record with the Recorder of Cuyahoga County, shall fully and completely replace and amend the eight recorded documents constituting the Original Declaration as set forth in A. and B. above, and which shall be retroactive in effect, with regard to constituent portions of the Property, to the date the respective constituent document of the Original Declaration was recorded submitting such constituent portion of the Property to the operation of the Original Declaration.

(AMENDED AND RESTATED) PREAMBLE

A. The Developer and the Owners (hereinafter defined) are the owners of real property in the City of Broadview Heights, County of Cuyahoga, State of Ohio, legally described in Exhibit "A" (the "Property"), upon which has been created a planned community in accordance with the Site Plan (hereafter defined) and in accordance with the requirements of the City of Broadview Heights.

B. The Property is part of MacIntosh Farms, a planned residential community, and is governed by document entitled "Master Declaration of Covenants, Conditions, Easements and Restrictions of MacIntosh Farms, a Planned Residential Community ("**Master Declaration**") recorded August 6, 1986 in Volume 86-4890, Page 60 of Cuyahoga County Records. This Amended and Restated Declaration is being recorded by a separate homeowners association, which has been charged with maintaining and administering the common areas within the Property, its individual subdivision, and which shall impose covenants and building use restrictions to supplement those contained in the Master Declaration, so long as the same do not conflict with those contained in the Master Declaration.

C. The Property consists of Living Units, vacant Sublots and the Common Areas, all as hereafter defined.

D. The Property may be developed in whole or in part: (a) as one or more residential communities; (b) for open space and/or recreational purposes; or (c) any combination of the foregoing.

E. The Developer and Owners (hereinafter defined) desire to provide for: (a) the orderly development of the Property; (b) the establishment and maintenance of architectural and design controls and standards; (c) the preservation of Open Space (hereafter defined); (d) the use and maintenance of the Areas of Common Responsibility (hereinafter defined); (e) the compliance with the Zoning Code of the City of Broadview Heights; and (f) the protection of values within the Property. The foregoing is being provided so that the residents of the Property may enjoy a quality environment for themselves and their families. For such purpose, the Developer and Owners have prepared this Amended and Restated Declaration to define the manner in which the Property shall be governed and administered.

F. A central association has been formed to regulate, administer and govern the Property for the fulfillment of the foregoing purposes with the power to levy and collect assessments from Owners (hereafter defined) within the Property and to pay the cost and expense of operating, maintaining, repairing and replacing the Areas of Common Responsibility. The Developer has previously assigned such functions to The Villas of MacIntosh Farms Cluster Association, Inc., a corporation not-for-profit, that

Developer has caused to be created under the laws of the State of Ohio (the "Association").

NOW, THEREFORE, Developer and the Owners declare the Property and any other property as may by Subsequent Amendment (hereafter defined) be added to and subjected to this Amended and Restated Declaration shall be owned, held, transferred, sold, conveyed, used and occupied subject to the covenants, conditions, restrictions, easements, assessments, charges and liens (collectively, the "Covenants and Restrictions") provided in this Amended and Restated Declaration, which Covenants and Restrictions shall run with the land and shall be binding on and inure to the benefit of all Persons (hereafter defined) having any right, title or interest in or to any part of the Property, or any other property as may by Subsequent Amendment be added to and subjected to this Amended and Restated Declaration, and their respective heirs, personal representatives, successors and assigns.

ARTICLE I
PREAMBLES:

PROPERTY SUBJECT TO THIS AMENDED AND RESTATED DECLARATION:
DEVELOPER'S RIGHT TO ADD AND DELETE LAND

Section 1.1 - Preambles

The Preambles are incorporated in and made a part of this Amended and Restated Declaration.

Section 1.2 - Property

The Property which is and shall be owned, held, transferred, sold, used and occupied subject to this Amended and Restated Declaration is the real property described in Exhibit "A".

Section 1.3 - Expansion and Contraction of the Property

(a) The Developer reserves the right from time to time to add additional property to the Property and to subject the same to the provisions of this Amended and Restated Declaration. To add any additional property, the Developer shall execute and record a Subsequent Amendment to this Amended and Restated Declaration which expressly provides that the land described therein shall become a part of the Property and shall be subject to the Covenants and Restrictions set forth in this Amended and Restated Declaration, except as the same may be modified by the Subsequent Amendment.

(b) The Developer reserves the right from time to time to delete lands from the Property (provided the lands so deleted are not designated as Common Areas or Open Space) and thereby to free such lands from the provisions of this Amended and Restated Declaration. Lands not owned by Developer may be deleted from the Property only with the written consent of the title owner thereof. To delete such lands, the Developer shall execute and record a Subsequent Amendment to this Amended and Restated Declaration which expressly provides that the land described therein shall no longer be a part of the Property and shall no longer be subject to the Covenants and Restrictions set forth in this Amended and Restated Declaration.

ARTICLE II EXHIBITS AND DEFINITIONS

Section 2.1 - Exhibits

The following Exhibit is attached to and made a part of this Amended and Restated Declaration:

EXHIBIT "A": A legal description of the Property.

Section 2.2 - Definitions

For the purposes of brevity and clarity, certain words and terms used in this Amended and Restated Declaration are defined as follows:

(a) "AREAS OF COMMON RESPONSIBILITY". The Areas of Common Responsibility shall mean and refer to: (1) the Common Areas; (2) the entrances to the Property situated off of existing and future public streets that abut the Property (the "Entrances") and landscaping, sprinklers (if any) and other improvements at the Entrances; (3) any security facilities, walls and fences; (4) signs, street lights (if any) and walks or pathways (if any); (5) storm drainage that generally serves the Property and ponds, including storm retention and detention ponds; (6) maintenance of Association Landscaping in accordance with Section 6.4 hereof; (7) real and personal property owned by the Association; (8) real and personal property not owned by the Association but determined by the Board to be the responsibility of the Association; (9) together with those areas, if any, which by contract with any commercial establishment or association, or with any local governmental authority become the responsibility of the Association. Any public rights-of-way within or adjacent to the Property, may be part of the Areas of Common Responsibility.

(b) "ARTICLES" or "ARTICLES OF INCORPORATION". The Articles of Incorporation of the Association which are filed with the Secretary of State of Ohio to create the Association.

(c) "ASSESSMENTS". The assessments levied against all Owners of Living Units to fund Common Expenses.

(d) "ASSOCIATION". The Villas of MacIntosh Farms Cluster Association, Inc., a non-profit Ohio corporation, its successors and assigns, created to govern, operate, control and administer the Areas of Common Responsibility and to supervise and enforce this Amended and Restated Declaration.

(e) "ASSOCIATION LANDSCAPING." All lawn and landscaping within the Common Areas, all lawn areas within a Sublot, and all Landscaping installed in the "front shrub beds" and/or the "garage front wrap-around shrub beds" of a Sublot either (i) by the Developer in connection with the original construction of a Living Unit; or (ii) by an Owner in accordance with a landscape plan approved by the Landscaping and Grounds Committee and the Board.

(f) "BOARD". The Board of Trustees of the Association. The Board is sometimes also referred to as the "Trustees".

(g) "CITY". The City of Broadview Heights, an Ohio municipal corporation.

(h) "CLASS "B" CONTROL PERIOD". The period of time during which the Class "B" Member (the Developer) is entitled to appoint a majority of the members of the Board, as provided in Article III, Section 2 of the Code.

(i) "CODE". The "Code of Regulations of the Villas at MacIntosh Farms Cluster Association, Inc." recorded in Volume 96-00213, Page 34 of Cuyahoga County Records.

(j) "COMMON AREAS". All real and personal property now or hereafter owned by the Association or otherwise held for the common use and enjoyment of the Owners or Occupants. Common Areas shall include the Entrances of the Property referred to in subparagraph (a) of this Section, and those areas of land intended for the common use, benefit and enjoyment of all Occupants of the Property. Any Owner may delegate, in accordance with the Code and subject to reasonable rules, regulations, and limitations as may be adopted in accordance therewith, his or her right of enjoyment to the Common Areas and facilities to the members of his or her family, tenants, and social invitees and shall be deemed to have made a delegation of all such rights to the

Occupants of any leased Living Unit. Common Areas does not mean or imply that the public at large acquires any easement of use or enjoyment therein.

(k) "COMMON EXPENSES". The actual and estimated expenses of operating the Association, both for general or special purposes, including reasonable reserves, all as may be found to be necessary and appropriate by the Board pursuant to this Amended and Restated Declaration, the Code, and the Articles of Incorporation of the Association.

(l) "DESIGN REVIEW COMMITTEE". The committee created by this Amended and Restated Declaration and granted original jurisdiction to review and approve or disapprove exterior and structural improvements, additions and changes within the Property.

(m) "DEVELOPER". PETROS DEVELOPMENT CORPORATION, an Ohio corporation, and the specifically designated successors or assigns of any of their rights as Developer under this Amended and Restated Declaration or under any supplement to this Amended and Restated Declaration involving the Property as the same may be expanded or contracted from time to time. Petros Homes, Inc., an Ohio corporation, is specifically designated as a successor and assign. No person, real or corporate, shall be deemed to be a successor, alternate or additional Developer for the purposes of this Amended and Restated Declaration unless and until such person or entity has been specifically so designated by Developer herein, by instrument in writing and placed of record, and shall be deemed a successor and assign of Developer only to the particular rights and interests of Developer under this Amended and Restated Declaration or under a supplement to this Amended and Restated Declaration. The Developer is also sometimes referred to herein as the "Original Developer".

(n) "ELIGIBLE MORTGAGE HOLDERS". Eligible Mortgage Holders shall mean banks, savings and loan associations, insurance companies and other institutional lenders, holders, insurers or guarantors of first mortgages on the Property or portions thereof.

(o) "LANDSCAPING AND GROUNDS COMMITTEE". The committee created by this Amended and Restated Declaration and granted original jurisdiction to review and approve or disapprove alterations, modifications, or changes to grading or landscaping within the Property.

(p) "LIVING UNITS". All units of residential housing situated or to be situated on the Property, whether they are single family homes or any other type of living unit permitted to be constructed or created upon the Property under any applicable zoning code that now exists or may hereafter be amended. Without limiting the generality of the foregoing, Living Unit shall mean a portion of the Property intended for any type of independent ownership for use and occupancy as a single family residence and shall,

unless otherwise specified, include within its meaning (by way of illustration, but not by way of limitation) single family houses on separately platted lots, as may be developed, used and defined as herein provided or as provided in Subsequent Amendments; provided, further, the term Living Unit shall also include all portions of the lot owned as a part of any structure thereon.

For the purposes of this Amended and Restated Declaration, a Living Unit shall come into existence when the improvements constructed thereon are sufficiently complete to reasonably permit the habitation thereof, whether or not a certificate of occupancy has been issued for the Living Unit by the governmental authority having jurisdiction over the same.

(q) "MASTER ASSOCIATION". MacIntosh Farms Community Association, Inc., an Ohio non-profit corporation, created pursuant to the Master Declaration.

(r) "MASTER DECLARATION". Master Declaration of Covenants, Conditions, Easements and Restrictions of MacIntosh Farms, recorded in Volume 86-4890, Page 60 of Cuyahoga County Records (as the same has heretofore or may hereafter be amended) governing the entire MacIntosh Farms Community which includes the Property.

(s) "MEMBER". A person or entity entitled to membership in the Association, as provided herein.

(t) "OCCUPANT". A person in possession of a Living Unit including, without limitation, an Owner or any guest, invitee, lessee, tenant, or family member of an Owner occupying or otherwise using a Living Unit.

(u) "OPEN SPACES". Land that is assigned as private open space use, including "common land" and "open spaces" required by the City's Zoning Code.

(v) "ORIGINAL Developer". PETROS DEVELOPMENT CORPORATION, an Ohio corporation.

(w) "OWNER". The record Owner of fee simple title in any Living Unit, including the Developer (except as otherwise provided herein) with respect to any unsold Living Unit, but Owner shall exclude in all cases any party holding an interest merely as security for the performance of an obligation. If a Living Unit is sold under a land installment contract, the purchaser (Vendee) (rather than the fee Owner) will be considered to be the Owner. For the purpose of this Amended and Restated Declaration, the Owner of Living Units that are rented to others shall be as follows: for the purpose of votes and Assessments, the record Owner of the Living Unit; for the purpose of use and enjoyment of common facilities and amenities which are part of the Common Areas, the

Tenant residing in the Living Unit. Every Owner shall be treated for all purposes as a single Owner for each Living Unit held irrespective of whether such ownership is joint or in common. Where such ownership is joint or in common, the majority vote of such Owners shall be necessary to cast any vote to which such Owners are entitled.

(x) "OWNERSHIP INTEREST". The entire right, title and interest of any Owner in all of the freehold and leasehold estates of such Owner in his Living Unit.

(y) "PERSON". A natural individual, corporation, partnership, limited partnership, trust or other entity to which the law attributes the capacity of having rights and duties.

(z) "PROPERTY". The land described in Exhibit "A" as the same may from time to time be amended.

(aa) "RULES". Rules and regulations that govern the operation and use of the Living Units and the Areas of Common Responsibility, including the Common Areas and any other property owned by the Association, as such rules and regulations may be adopted from time to time by the Board, the Design Review Committee, or the Landscaping and Grounds Committee to implement and carry out the provisions and intent of this Amended and Restated Declaration.

(bb) "SUBLOT". A platted single-family lot upon which a Living Unit has been or may be constructed.

(cc) "SUBSEQUENT AMENDMENT". An amendment to this Amended and Restated Declaration which adds additional property to that covered by this Amended and Restated Declaration or deletes property from that which is covered by this Amended and Restated Declaration. A Subsequent Amendment may, but is not required to: (i) impose, expressly or by reference, additional restrictions and obligations on the land submitted by such Subsequent Amendment to the provisions of this Amended and Restated Declaration; and/or (ii) otherwise amend this Amended and Restated Declaration and/or the Code.

(dd) "TENANT". Any person(s) having a possessory leasehold estate in a Living Unit, other than an Owner.

ARTICLE III EASEMENTS

Section 3.1 - Utility Easements

There is hereby reserved in favor of Developer and granted to the Association, its successors and assigns, an easement upon, across, over, through and under the Property for ingress, egress, installation, replacement, repair and maintenance of all utilities and service lines and systems including, but not limited to, water, sewer, energy, drainage, gas, telephone, electricity, television, cable and communication lines and systems. By virtue of this easement, it shall be expressly permissible for Developer and the Association and their successors and assigns, or the providing utility or service company, to install and maintain facilities and equipment on the Property provided that such facilities shall not materially impair or interfere with any Living Units and provided further that any areas disturbed by such installation and maintenance are restored to substantially the condition in which they were found. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or located except as approved by the Design Review and Landscaping and Grounds Committees, or unless the same are shown on a recorded plat. There is hereby reserved in favor of the Developer and the Association the right (but not the obligation) to grant neighboring property owners easements for utility purposes so long as the granting of such easements does not overburden the utilities serving the Property.

Section 3.2 - Easement for Ingress and Egress

There is hereby created an easement upon, across, over and through the Association Roads and any sidewalks, walkways, bike paths, all-purpose trails and parking areas in favor of Developer and the Association, all Owners, Occupants, and their respective guests, licensees and invitees for pedestrian and vehicular ingress and egress, as the case may be, to and from all of the various portions of the Property. Notwithstanding the foregoing, the Developer and/or the Association may limit this right of ingress and egress by a Subsequent Amendment.

Section 3.3 - Common Areas

Developer, all Owners, Occupants and the guests of such parties shall have the right to enter upon, use and enjoy the Common Areas for their intended purposes in accordance with this Amended and Restated Declaration and the applicable Rules.

Section 3.4 - Easements for Construction, Alteration, etc.

Easements are hereby created upon portions of the Common Areas necessary in connection with the construction, alteration, rebuilding, restoration, maintenance and repair of any Living Unit or other structures and improvements within the Property or serving the Property; provided, however, that in the exercise of any rights under this easement, there shall be no unreasonable interference with the use of any Living Unit or other structure or improvement on the Property. Any Person benefiting from the foregoing easement shall indemnify and save harmless the Developer, the Association and each Owner and Occupant from and against any and all losses, damages, liabilities, claims and expenses, including reasonable attorneys' and paralegals' fees resulting from any such construction, rebuilding, alteration, restoration, maintenance and shall repair any damage caused in connection with such activities to substantially the condition that existed prior to such activities.

Section 3.5 - Drainage Rights and Authority to Transfer Drainage and other Easement Rights to City

The Developer, each Owner, the Association, the Master Association and the City shall have the non-exclusive right and easement in common to utilize the waterways, courses, storm sewers, drainage pipes and retention basins in, over and upon the Common Areas for the purposes of drainage of surface waters on the Property, said rights-of-ways and easements being hereby established for said purpose. It shall be the obligation of the Association to properly maintain, repair, operate and control such drainage system on the Common Areas.

Developer and (after transfer of the Common Areas) the Association shall have the right to grant easements for the installation and maintenance of sanitary sewers, storm sewers, drainage, and swales to the Master Association and the City. No owner shall in any way hinder or obstruct the operation or flow of the drainage system. No structures (including, but not limited to, sidewalks and driveways), plantings or other materials shall be placed or permitted to remain within such easement areas which may damage or interfere with the installation and/or maintenance of such improvements in such easement areas or which may change, retard or increase the flow of water through the respective easement areas. The easement areas and all improvements therein shall be maintained continuously by the Association unless those easement areas are accepted by the City by formal action of the City.

Section 3.6 - Easements for Community Signs

Easements are created over the Common Areas to install, maintain, repair, replace and illuminate signs that are for the general benefit of the Property or for the identification of the Association Roads. The type, size and location of the signs shall be

subject to the approval of the Landscaping and Grounds Committee and subject to the laws of the County, City and other governmental authorities having jurisdiction.

Section 3.7 - Easement to Maintain Sales Offices, Models, etc.

Notwithstanding any provisions contained in this Amended and Restated Declaration to the contrary, so long as construction and sale of Living Units is continuing, it shall be expressly permissible for Developer to maintain and carry on upon portions of the Common Areas such facilities and activities as, in the sole opinion of Developer, may be reasonably required, convenient, or incidental to the construction or sale of Living Units, including, but not limited to, administrative/customer services, construction offices/trailers, parking signs, identification signs, model units, and sales and resales offices, and the Developer, its guests, licensees and invitees shall have an easement for access to all such facilities. The right to maintain and carry on such facilities and activities shall specifically include the right to use Living Units owned by the Developer, as models and sales offices. Developer further reserves the right for itself and its successors, assigns, contractors, material suppliers and others performing work and furnishing materials to construct Living Units and other improvements upon the Property to conduct business and carry on construction/site development activities during business hours that are customary within the County. This Section may not be amended or modified without the express written consent of the Developer.

Section 3.8 - Maintenance Easement

There is hereby reserved for the benefit of the Association and its agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement to enter upon any Sublot for the purpose of maintaining Association Landscaping and for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash and debris in order to maintain reasonable standards of health, fire safety, and appearance within the Property, provided that such easements shall not impose any duty or obligation upon Developer or the Association to perform any such actions (unless otherwise provided herein -e.g. see Section 6.4); and provided, further, that in the exercise of its rights hereunder the Association shall be entitled to be reimbursed by such Owner pursuant to Article VII hereof. Furthermore, the Association is granted easement rights to enter upon a Sublot for the purposes set forth in Section 6.4 hereof; i.e. the permitted exterior maintenance of Living Units and the maintenance of Association Landscaping.

Section 3.9 - Environmental Easement

There is hereby reserved for the benefit of Developer, the Association, and their respective agents, employees, successors, and assigns, an alienable, transferrable, and perpetual right and easement on, over, and across all vacant Sublots for the purpose of

taking any action necessary to effect compliance with environmental rules, regulations, and procedures from time to time promulgated or instituted by the Board, the Design Review Committee, the Landscaping and Grounds Committee, or by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, and the right to dispense pesticides and the right to maintain designated "wetland" areas.

Section 3.10 - Scope of Easements and Dedication of Roadways and Utilities

As the improvements to be located within the Property for the easement rights granted or reserved under Sections 3.1 and 3.2 are definable within specific areas, the Developer or the Association (with the Developer's prior written consent so long as Developer is a Class "B" Member) shall have the right (but not the obligation) to: (a) limit such easements to specific areas and purposes, and record a document or documents releasing the balance of the lands from the burden of such easements; and/or (b) record a plat or other document or documents setting forth the specific areas subjected to such easements; and/or (c) dedicate to public or private use specific areas (and the improvements contained therein) within the Property to meet the requirements of the City and other public authorities having jurisdiction over the same. The Developer or the Association may exercise any of such rights without the necessity of obtaining the consent or approval of Owners and other Persons for whose benefit the easement rights are granted or reserved.

Section 3.11 - Easements To Run With the Lands

All easements and rights described herein are easements appurtenant to the Property (including the Living Units) and the Common Areas, shall run with said lands, perpetually and at all times shall inure to the benefit of and be binding upon the Developer, its successors and assigns, and any Owner, Tenant, Occupant, purchaser, mortgagee, the City or other Person having an interest in the Property, or any part or portion thereof. Reference to the easements and rights described in any part of this Declaration, in any deed of conveyance, lease, mortgage, trust deed, declaration for another type of residential association, or other evidence of obligation, shall be sufficient to grant such easements and rights to the respective grantees, lessees, mortgagees or trustees of such property, or any portion thereof, and to reserve to the grantor or lessor therein, their successors and assigns, as easements appurtenant to the remainder of the such properties, easements created by this Amended and Restated Declaration for the benefit of any Owner, Tenant, Occupant, purchaser, mortgagee, the City or other Person in respect to any portion of the Property as fully and completely as though such easements and rights were recited fully as set forth in their entirety in such document.

ARTICLE IV
OWNERSHIP AND OPERATION OF COMMON AREAS

Section 4.1 - Conveyances of Common Areas

Developer shall convey the Common Areas to the Association. Such conveyance shall have priority over all liens and encumbrances whatsoever except the easements, covenants, restrictions and provisions of this Amended and Restated Declaration; easements, covenants, restrictions, conditions and other similar matters of record; real estate taxes and assessments which are a lien, but are not due and payable at the time of said conveyance; and zoning and other ordinances, if any. Developer shall cause the mortgagee (if any) of the Common Areas to subordinate its mortgage on such areas in favor of this Amended and Restated Declaration. The Association shall hold title to said parcels subject to the provisions of this Amended and Restated Declaration.

Section 4.2 - Use of Common Areas

Any Owner may delegate, in accordance with the Code of the Association and subject to reasonable rules, regulations, and limitations as may be adopted in accordance therewith, his or her right of enjoyment to the Common Areas to the members of his or her family, tenants, and social invitees and shall be deemed to have made a delegation of all such rights to the Occupants or Tenants of any leased Living Unit.

ARTICLE V
THE ASSOCIATION

Section 5.1 - Existence

The Association is an Ohio not-for-profit corporation.

Section 5.2 - Membership and Voting Rights

(a) Classes of Membership

The membership of the Association is and shall be divided into two (2) classes:

(1) Class "A" Membership. Each Owner of a Living Unit (including, without limitation, the Developer if the Developer is the record titleholder of a Living Unit) shall automatically be a Class "A" Member of the Association. The Class "A" Membership is appurtenant to the ownership of each Living Unit and shall not be separable from the ownership of any Living Unit and shall be deemed to have been

terminated with any voluntary or involuntary conveyance of any Living Unit, whether or not such membership is expressly referred to in the instrument effecting such conveyance, at which time the new Owner or other successor in interest shall immediately and automatically become a Member of the Association with all rights and responsibilities relative thereto. No Owner, whether one or more persons, shall have more than one membership per Living Unit owned.

(2) Class "B" Membership. The Developer shall automatically be the sole Class "B" Member of the Association.

(b) Voting Rights

(1) Class "A" Member. Class "A" Members shall be entitled to one (1) equal vote for each Living Unit in which they hold the interest required for membership under Section 5.2(a)(1) hereof; there shall be only one (1) vote for each Living Unit.

In any situation where a Member is entitled to exercise a vote and more than one (1) Person holds the interest in such Living Unit required for membership, the vote for such Living Unit shall be exercised as those Persons determine among themselves and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the vote of the Living Unit shall be suspended if more than one (1) Person seeks to exercise it.

(2) Class "B" Member. The Class "B" Member shall be the Developer. The rights of the Class "B" Member, including the right to approve actions taken under this Amended and Restated Declaration and the Code, are specified elsewhere in the Amended and Restated Declaration and the Code. The Class "B" Member shall be entitled to appoint a majority of the members of the Board during the Class "B" Control Period, as specified in Article III, Section 2 of the Code. After termination of the Class "B" Control Period, the Developer shall have a right to disapprove actions of the Board and any committee as provided in Article III, Section 3, of the Code. The Class "B" membership shall terminate and become converted to Class "A" membership in accordance with Article III, Section 2 of the Code.

Section 5.3 - Board and Officers of the Association

The Trustees of the Board and the Officers of the Association shall be elected as provided in the Code and shall exercise the powers, discharge the duties and be vested with the rights conferred by operation of law, the Articles of Incorporation and Code, except as otherwise specifically provided.

Section 5.4 - Rights of the Association

Notwithstanding the rights and easements of enjoyment and use created in Article III of this Amended and Restated Declaration, and in addition to any right the Association shall have pursuant to this Amended and Restated Declaration or in law, the Association shall have the right:

(a) To borrow money from time to time for the purpose of improving the Common Areas, and may secure said financing with a mortgage or mortgages upon all or any portion of property owned by the Association in accordance with its Articles and Code and subject to the provisions of this Amended and Restated Declaration.

(b) To take such steps as are reasonably necessary to protect the Common Areas from foreclosure.

(c) To convey the Common Areas or a portion thereof, to a successor; provided, however, that any such conveyance shall require the vote of a majority of the Class "A" Members and the vote of the Class "B" Member, and provided further that such successor shall agree, in writing, to be bound by the easements, covenants, restrictions and spirit of this Amended and Restated Declaration.

(d) To enter or authorize its agents to enter on or upon the Property, or any part thereof, when necessary in connection with any maintenance, repair or construction for which the Association is responsible or has a right to maintain, repair or construct. Such entry shall be made with as little inconvenience to the Owner and Occupants thereof as practicable and any damage caused thereby shall be repaired by the Association.

(e) To grant or obtain or dedicate to public use easements (i) for access and easements for the construction, extension, installation, maintenance or replacement of utility services and facilities, or (ii) to or from a public utility or governmental authority, and to or from any body or agency which has the power of eminent domain or condemnation over any portion of the Property.

(f) To provide to all Living Units, as a Common Expense, at the discretion of the Board, Association Exterior Maintenance Services as hereinafter defined in Section 6.11.

ARTICLE VI RESPONSIBILITIES OF THE ASSOCIATION

The Association shall have the exclusive duty to perform the following functions set forth in Sections 6.1 through 6.10, and the right, at the discretion of the Board, but not

the obligation to provide the services set forth in Section 6.11:

Section 6.1 - Maintenance of Areas of Common Responsibility

The Association shall maintain the Areas of Common Responsibility in a clean, safe, neat, healthy and workable condition, and in good repair, and shall promptly make all necessary repairs and replacements, structural and nonstructural, ordinary as well as extraordinary, subject only to the provisions of this Amended and Restated Declaration. The Association may provide equipment and supplies necessary for the maintenance (including landscape maintenance) and enjoyment of such property. All work performed by the Association under this Article shall be performed in a good and workmanlike manner. The following are included among such Areas of Common Responsibility:

(a) Entranceway Areas. To operate, and to maintain, repair and replace, any now-existing or hereafter-created entranceway area at or in the vicinity of any entrance to the Property from public or private roads, and all associated landscaping and other related facilities such as mail house structure, walkways, benches, sprinkler systems, signs, lighting, traffic control devices, decorative or screening walls and fences, ponds and fountains and pumps situated at or in the vicinity of the entrance to the Property. The Association shall also pay or reimburse the Developer for any real estate taxes assessed with respect to any such entranceway area and the improvements thereon, and the Association shall unconditionally accept a deed to and hold title to such portions of the Common Areas and the improvements thereon that are the Association's responsibility to maintain.

(b) Perimeter Fences and Walls. To maintain, repair and replace any fences, walls and gates situated within the Common Areas.

(c) Berms Along Public Roads. With respect to the berms (including berms within public right-of-ways) and landscaping thereon which are desired or required to be maintained adjacent to the perimeter of the Property to maintain such berms, and any landscaping on such portions of such berms, in good and attractive condition.

(d) Roads and Median Strips. To maintain in good and attractive condition all parts of any landscaping now or hereafter within the Common Areas adjacent to any public roads and any landscaping, signage or other improvements within any median strip now or hereafter along public roads.

(e) Drainage System. To maintain all lakes, ponds (including retention and detention ponds), canals, piping, culverts, drains, and other facilities now or hereafter situated upon any portion of the Property which are intended for the collection, retention, detention, transmittal or disposal of storm-water (including gutters, downspouts and other

facilities attached to buildings), in clean and sanitary condition and in good order and repair and to make all replacements and renewals necessary to so maintain the same.

(f) Sanitary Sewer System. To maintain the sanitary sewer lines within the Property (excluding, however, any such sanitary sewer lines located within any Sublot and exclusively serving an individual Living Unit) that are not the responsibility of the governmental authority having jurisdiction over the sanitary sewer system.

(g) Common Areas. To maintain the Common Areas in good and attractive condition, for the use and enjoyment of Owners. The Association shall also pay or reimburse Developer for any real estate taxes and assessments assessed with respect to any such Common Areas, and the Association shall, accept a deed to and hold title to such areas. The obligations set forth in this subsection shall be deemed to run with and burden the party accepting any such deed and title to the Common Areas.

(h) Community Signs. To install, maintain, repair, replace and illuminate all signs located on any portion of the Property which are for the general benefit of the Property.

(i) Maintenance of Non-Association Property. The Association shall maintain property which it does not own, including, without limitation, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard established by the Master Declaration.

Section 6.2 - Taxes and Assessments

The Association shall pay all taxes and assessments levied against portions of the Property owned by the Association and levied against the Areas of Common Responsibility, including, without limitation, personal property taxes, general real estate taxes and special assessments certified by the applicable public authority following conveyance of such property to the Association, the same to be prorated to the date such property is created as a separate tax parcel and is submitted to this Amended and Restated Declaration.

Section 6.3 - Utilities

(a) The Association shall pay all charges for water, sewer, electricity, light, heat or power, telephone and other services used, rented or supplied to or in connection with any property owned and/or operated by the Association. All such utility services shall be contracted for, metered and billed by and through the Association.

(b) The Association shall further pay all charges for maintenance and repair of the sanitary sewer system owned and/or operated by the Association.

Section 6.4 – Snow Removal and Maintenance of Association Landscaping

In addition to the maintenance and repair of the Common Areas, the Association shall provide snow removal from driveways and maintenance of the Association Landscaping pursuant to such guidelines as the Board may establish from time-to-time, provided further that the Board shall have sole discretion to determine whether, and/or when to replace any dead, unhealthy, or unsightly plantings located in the “front shrub beds” or the “garage front wrap-around shrub beds” of any Sublot, including shrubs and trees, provided that any such decisions shall be made in a consistent and uniform manner. Each Owner is responsible for the exterior maintenance, repair and replacement of such Owner’s Living Unit. If an Owner fails to properly maintain, repair or replace the exterior of such Owner’s Living Unit, the Association shall have the right, but not the obligation, to maintain, repair, or replace the same, in which event, the cost of such maintenance, repair or replacement shall be added to and become part of the Assessment for which such Living Unit is subject. For the purpose solely for performing the maintenance required or permitted by this Section, the Association, through its duly authorized agents, employees and contractors, shall have the right and license to enter upon any Sublot or exterior of a Living Unit at reasonable hours.

Section 6.5 - Insurance and Reconstruction

(a) Insurance. The insurance which shall be carried upon the Common Areas shall be governed by the following provisions:

(1) Casualty Insurance. The Association shall carry casualty insurance on all insurable improvements comprising the Common Areas and all personal property as may be owned by the Association and for which the Association is responsible.

(2) Liability Insurance. The Association shall insure itself, the members of the Board, the Owners and Occupants of Living Units against liability for personal injury, disease, illness or death and for injury to or destruction of property occurring upon, in or about, or arising from or relating to the Common Areas, including, without limitation, water damage, legal liability, hired automobile, non-owner automobile and off-premises employee coverage, such insurance to afford protection to a limit of not less than One Million Dollars (\$1,000,000.00) in respect to personal injury, disease, illness or death suffered by any one person, and to the limit of not less than One Million Dollars (\$1,000,000.00) in respect to any one occurrence, and to the limit of not less than

One Million Dollars (\$1,000,000.00) in respect to damage to or destruction of property arising out of any one accident. All liability insurance shall contain cross-liability endorsements to cover liabilities of the Owners as a group to an Owner. In the event the insurance effected by the Association on behalf of the Owners and Occupants of Living Units who are not Owners against liability for personal injury or property damage arising from or relating to the Common Areas shall, for any reason, not fully cover any such liability, the amount of any deficit shall be a Common Expense to the Owners. The Association shall also obtain directors (trustees) and officers liability coverage, if reasonably available.

(3) Fidelity Bonds. A fidelity bond indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any employee of the Association or of any other person handling the funds of the Association, the Board or the Owners in such amount as the Board shall deem desirable, but in no event shall the amount of the bond be less than an amount equal to three (3) months' Assessments. The fidelity bond shall name the Association as the obligee, and the premium for such bond shall be a Common Expense. Such bond shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Such bond shall provide that it may not be cancelled for non-payment of any premiums or otherwise substantially modified without ten (10) days prior written notice to the Association and to all Eligible Mortgage Holders.

(4) Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association at least thirty (30) days prior to the expiration date of such policies and shall be assessed as Common Expenses.

(5) Unit Owner Insurance. Each Owner shall, at his own expense, obtain insurance: (A) covering his Living Unit; and (B) covering the contents of his Living Unit. In addition, each Owner may, at his own expense, obtain public liability insurance for personal injuries or damage arising out of the use and occupancy of his Living Unit or Sublot.

(6) Rating of Insurance Company. All policies for insurance of the Association shall be written with a company licensed to do business in Ohio and holding a rating of B/VI or better in the Financial Category as established by A. M. Best Company, Inc. if reasonably available, or, if not available, the most nearly equivalent rating.

Section 6.6 - Management

The Association shall provide the management and supervision for the operation of the Areas of Common Responsibility. The Association shall establish and maintain

such policies, programs and procedures to fully implement this Amended and Restated Declaration for the purposes intended and for the benefit of the Members and may, but shall not be required to:

(a) Adopt Rules;

(b) Engage employees and agents, including without limitation, security personnel, attorneys, accountants and consultants, maintenance firms and contractors;

(c) Delegate all or any portion of its authority and responsibilities to a manager, managing agent, or management company. Such delegation may be evidenced by a management contract which shall provide for the duties to be performed by the managing agent and for the payment to the managing agent of a reasonable compensation. Upon the expiration of each management agreement, the Association may renew said management agreement or enter into a different agreement with the same or a different managing agent, provided that no management agreement or renewal thereof shall be for a period longer than three (3) years, and provided, further, that the Board may designate a different managing agent with whom the Association shall enter into an agreement after the end of the then existing management agreement; and

(d) The management agreement may be with an entity owned by or associated with Original Developer or owned by, associated with, controlled or employed by any partner, shareholder, officer, director, agent or employee of Original Developer, and may be for a period of time not to exceed three (3) years, in Original Developer's sole discretion.

Section 6.7 - Upgrading

The Association may continuously attempt to upgrade the Areas of Common Responsibility for the good and welfare of all of its Members. In so doing the Association is authorized to expend reasonable sums of money for such purpose and intent, subject to the provisions of this Amended and Restated Declaration and reasonable monetary considerations.

Section 6.8 - Enforcement

The Association shall take all actions reasonably necessary under the circumstances to enforce the covenants and restrictions set forth in Article VII hereof.

Section 6.9 - Rules and Regulations

The Association, through the Board, may make and enforce reasonable rules and regulations governing the Areas of Common Responsibility, which rules and regulations

shall be consistent with the rights and duties established by this Amended and Restated Declaration. Sanctions may include reasonable monetary fines and suspension of the right to vote. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the Code of the Association. An Owner shall be subject to the foregoing sanctions in the event of a violation by such Owner, his family, guests, Tenants or by his co-Owners or the family, guests or Tenants of such co-Owners. Furthermore, the Association, through the Board, may, by contract or other agreement, enforce City ordinances or permit the City or other governmental authority having jurisdiction to enforce ordinances on the Property for the benefit of the Association and its Members.

Section 6.10 - General

The Association shall perform and carry out all other duties and acts reasonably necessary to give effect to and implement the intent of the provisions of this Amended and Restated Declaration.

Section 6.11 - Right to Provide Association Exterior Maintenance Services

The Association may, at the discretion of the Board (but the Association is under no obligation to), provide exterior maintenance services to each Living Unit, which services may include any or all of the following: (i) exterior window cleaning, (ii) gutter cleaning, and/or (iii) exterior exterminating services. Such services as the Board may decide, from time to time, to provide to the Owners of all Living Units shall be "Association Exterior Maintenance Services" and the cost of providing such services shall be a Common Expense. For the purpose solely for performing the Association Exterior Maintenance Services permitted by this Section, the Association, through its duly authorized agents, employees and contractors, shall have the right and license to enter upon any Sublot or exterior of a Living Unit at reasonable hours.

Section 6.12 - Original Developer's Rights

During the Class "B" Control Period, the Original Developer shall exercise all or any of the powers, rights, duties and functions of the Association, including, without limitation, the right to levy special assessments as authorized herein, the right to enter into a management contract, the right to obtain insurance under Original Developer's blanket policy (if any), the right to perform each duty and obligation of the Association set forth herein, the right to collect assessments and disburse all funds of the Association, and the right to have a lien (and to foreclose said lien) on a Living Unit for unpaid assessments in the manner and to the extent granted to the Association as herein provided.

ARTICLE VII
COVENANTS AND RESTRICTIONS

The intent of this Amended and Restated Declaration is to cause the Property to be kept and maintained as a high quality development. Therefore, the covenants and restrictions provided in this Article shall be applicable to the Owners, Land Contract Vendees, Lessees, Tenants and Occupants of the Property. The following Covenants and Restrictions shall be broadly construed and interpreted in furtherance of this intent. The Association, acting through its Board, shall have standing and the power to enforce such standards.

The Association, acting through the Board, shall have authority to make and to enforce standards and restrictions governing the use of the Property in addition to those contained herein, and to impose reasonable user fees for use of Common Area facilities. This authority shall include, without limitation, the power to regulate the speed and flow of traffic on private roads within the Property. Such regulations and use restrictions shall be binding upon all Owners, Land Contract Vendees, Lessees, Tenants and Occupants.

Section 7.1 - Covenant of Good Maintenance

Each Owner and Occupant shall have the exclusive duty to perform the following functions:

(a) Maintenance and Repair.

(1) Each Owner and Occupant of a Living Unit shall maintain the interior of such Living Unit in good condition and repair and shall keep the exterior and interior of such Living Unit and the adjacent Common Areas free from debris, rubbish, rubble and other conditions created by such Owners or Occupants or their guests.

(2) If a repair or replacement required of an Owner is not promptly commenced or is not diligently and continuously completed by Owner, the Association shall have the right (but not the obligation) to commence or complete the repair or replacement and shall charge the Owner for the cost thereof (together with a reasonable charge for the Association's overhead or administrative costs). If said charge is not paid by the Unit Owner, the Association shall levy a special Assessment against the Owner.

(b) Snow Removal. Each Unit Owner and Occupant shall keep the walks leading from the front and rear of the Living Unit to the exterior driveway and any patios, decks, stoops and steps free of unreasonable accumulations of snow and ice.

Section 7.2 - Trailers

No temporary buildings, trailer, recreation vehicle, garage, tent, shack, barn, or any similar structure shall be used, temporarily or permanently, as a residence on any part of the Property at any time.

Section 7.3 - Fences, Walls and Hedges

Fences, walls, trees, hedges, and shrub plantings shall be maintained in a sightly and attractive manner, and shall not obstruct the right-of-way sight lines for vehicular traffic. Fences, walls of any kind and landscaping of any kind shall not be erected, begun or permitted to remain upon any portion of the Property unless approved by the Landscaping and Grounds Committee or unless originally constructed by Developer.

Section 7.4 - Nuisance

No noxious or any activity constituting an unreasonable source of discomfort or annoyance shall be carried on upon any portion of the Property (including the Living Units situated thereon), nor shall anything be done thereon that may be or become a nuisance or annoyance to other Owners. The Board shall have absolute power to determine what is "reasonable" and what is "unreasonable" under this Section.

Section 7.5 - Animals

No animals, livestock, reptiles or poultry of any kind shall be raised, bred or kept on any portion of the Property (including the Living Units situated thereon) without the approval of the Board, except that dogs, cats, birds and other customary household pets approved by the Board may be kept, subject to Rules adopted by the Board, provided that they are not kept, bred or maintained for any commercial purpose and provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance or annoyance shall be permanently removed from the Property upon three days' written notice from the Board. Dogs shall at all times whenever they are outside a Living Unit be confined on a leash held by a responsible person. The Rules may limit the number of pets which may be kept in any one Living Unit. The Board shall have absolute power to prohibit a pet from being kept on the Property or within a Living Unit if the Board finds a violation of this Section.

Section 7.6 - Signs

No sign or other advertising device of any nature shall be placed upon any portion of the Property except for signs and advertising devices installed by or at the direction of the Design Review Committee, or which the Design Review Committee approves as to

color, location, nature, size and similar characteristics. "For Rent" and "For Sale" signs are prohibited. Notwithstanding the foregoing, the restrictions of this Section 7.6 shall not apply to Developer.

Section 7.7 - Storage of Material and Trash Handling

No lumber, metals, bulk material, refuse or trash shall be burned, whether in indoor incinerators or otherwise (excluding the burning of firewood in a fireplace), kept, stored or allowed to accumulate on any portion of the Property, except normal residential accumulation pending pick-up and except building materials during the course of construction or reconstruction of any approved building or structure, except firewood may be stored within Living Units, on patio areas or other areas designated by the Board. If trash or other refuse is to be disposed of by being picked up and carried away on a regular recurring basis, containers may be placed in the open on any day that a pick-up is to be made, thereby providing access to persons making such pick-up. At all other times such containers shall be stored in such manner that they cannot be seen from adjacent and surrounding property. No dumping of rubbish shall be permitted on any portion of the Property. Anything herein to the contrary notwithstanding, the Association or the Board may adopt a Rule or Rules which permit burning, incineration or storage of refuse or trash if the same becomes reasonably necessary for the safety, health or welfare of the Occupants, and is permitted by law.

Section 7.8 - Commercial or Professional Uses

Except as expressly permitted in this Amended and Restated Declaration, or by Rules adopted in accordance with this Amended and Restated Declaration, no industry, business, trade or full-time occupation or profession of any kind, commercial, educational, or otherwise, designated for profit, altruism, exploration or otherwise, shall be conducted, maintained or permitted on any part of the Property; provided, however, an Occupant may use a portion of his or her Living Unit for his office or studio, so long as the activities therein shall not interfere with the quiet enjoyment or comfort of any other Occupant and that such use does not result in the Living Unit becoming principally an office, school or studio as distinct from a Living Unit. Furthermore, no trade or business may be conducted in or from any Living Unit without the written approval of the Board (or Covenants Committee referred to in the Code) first obtained. Such approval shall be granted so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Living Unit; (b) the business activity conforms to all City zoning requirements for the Property; (c) the business activity does not involve persons coming onto the Property who do not reside in the Property except by appointment only; (d) the business activity does not involve door-to-door solicitation of Occupants of the Property; and (e) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the

Property, as may be determined in the sole discretion of the Board (or Covenants Committee). The Board may adopt Rules which intensify, relax or amend the prohibitions of this Article. Nothing in this Section shall preclude the leasing of a Living Unit by the Developer or an Owner; the right of the Developer or the Board (or a firm or agent employed by the Developer or Board) to approve commercial activities such as charity events, temporary food and beverage operations, the right of the Developer to maintain brokerage offices for sales of Sublots and for new sales of Living Units and resales of Living Units and the right of the Developer to utilize a Living Unit for office purposes.

Section 7.9 - Storage of Vehicles and Machinery

No truck (except a two-axle truck with no more than four tires), camper, camper trailer, recreation vehicle, boat, boat trailer, all terrain vehicle, airplane, snowmobile, commercial vehicle, van, mobile home, tractor, bus, farm equipment, off-road vehicles or other vehicle of any kind, licensed or unlicensed, shall be stored on any driveway or other area in or upon the Property, except in the confines of garages, or parking areas approved by the Design Review Committee. No machinery of any kind shall be placed or operated upon any portion of the Property except such machinery which is customarily required for the maintenance of the Property, related improvements, lawns and landscaping.

Section 7.10 - Firearms; Preservation of Wildlife

Firearms, ammunition and explosives of every kind shall not be discharged nor shall any traps or snares be set, nor shall any hunting or poisoning of wildlife of any kind be permitted in or upon the Property, except for rodent control, and the control of such other animals as constitute a nuisance or cause damage to the Property, or except with the prior written approval of the Board.

Section 7.11 - Control of Trucks, Commercial Vehicles

No tractor trailers, commercial tractors, commercial vehicles, road machinery or excavating equipment shall be permitted to remain on any portion of the Property or on the public right-of-way adjoining any portion of the Property for any period of time whatsoever, except while making deliveries or performing services thereon and except as necessary for the construction, reconstruction or repair of buildings or structures on the Property.

Section 7.12 - Poles, Wires and Antennae

Subject to applicable easement rights, no facilities, including poles and wires, for the transmission of electricity, telephone messages, ham radio messages and the like shall be placed or maintained above the surface of the ground in any portion of the Property

without the prior approval of the Design Review Committee. This provision shall not apply for temporary facilities for the construction or repair of any building or other structure.

Section 7.13 - Exterior Appearance, and Lights for Exteriors of Residences

The exterior of any building or structure in the Property shall not be altered, modified, changed or redecorated in such a way as to change the appearance or decor of the structure without the express written authorization of the Design Review Committee. No landscaping or grading within the Property shall be altered, modified, or changed without the express written authorization of the Landscaping and Grounds Committee. The provisions of this paragraph are subject to the provisions of Section 8.2 of this Amended and Restated Declaration.

Section 7.14 - Grading

No Person shall change the grade on any portion of the Property without first obtaining the consent of the Landscaping and Grounds Committee.

Section 7.15 - Drainage Ditches

No Person shall interfere with the free flow of water through any drainage ditches or storm sewers within the Property. The City or other governmental authority having jurisdiction shall have the right to enter upon the Common Areas of the Property to repair and maintain all storm, drainage, courses, ditches, structures and appurtenances for the purpose of relieving any flooding condition or threatened flooding condition which might be harmful to other property within the City. This Section supplements Section 3.5 hereof.

Section 7.16 - Resubdivision of Sublots

No Sublot shall be subdivided or its boundary lines changed except with the proper written approval of the Board or except as expressly authorized herein. Developer, however, hereby expressly reserves the right to replat any Sublot owned by Developer. Any such division, boundary line change, or replatting shall not be in violation of applicable City regulations.

Section 7.17 - Compliance with City Codes

Each Owner shall comply with City and other governmental requirements. It is agreed that a violation of any such requirements or any restriction, condition, covenant or restriction imposed now or hereafter by the provisions of this Amended and Restated

Declaration is a nuisance per se that can be abated by the Association or such governmental authority.

Section 7.18 - Sale, Leasing or Other Alienation of Living Units

(a) Owner's Right of Transfer. The Association shall have no right of first refusal with respect to the purchase or lease of a Living Unit, and an Owner shall be able to transfer his Living Unit freely by sale, gift, devise, lease or otherwise without restriction except as provided in subsection (b) below.

(b) Owner's Right to Lease Living Unit. An Owner shall have the right to lease all (but not less than all) of his Living Unit upon such terms and conditions as the Owner may deem advisable, except that no Living Unit shall be leased or sub-leased for transient or hotel purposes. Any lease or sublease of a Living Unit for a period of less than six (6) months shall be deemed to be a lease or sublease for transient or hotel purposes. Any lease or sublease of a Living Unit shall be in writing and shall provide: (1) that the lease or sublease shall be subject to the terms of this Amended and Restated Declaration, the Code and Rules and that any failure of a lessee to comply with the terms of this Amended and Restated Declaration, the Code and Rules shall be in default under the lease or sublease; (2) that the Association shall have the right to require the Owner to deposit with the Association such amount as the Association shall consider appropriate as security to provide funds for repairs and to assure compliance with this Amended and Restated Declaration, the Code and Rules. The limitations with respect to the leasing of Living Units shall not apply to the Developer or a first mortgagee of a Living Unit.

(c) Names of Owners and Occupants of Living Units. To enable the Association to maintain accurate records of the names, addresses and phone numbers of Owners and other Occupants of Living Units, each Owner agrees to notify the Association in writing, within five (5) days after such Owner's Living Unit has been transferred or leased to another person. In addition, each Owner agrees to provide to a purchaser or lessee of such Owner's Living Unit a copy of this Amended and Restated Declaration, the Code, the Rules and other relevant documents.

Section 7.19 - Waiver of Subrogation

Each Person as a condition of accepting title and/or possession of a Living Unit and the Association agree for themselves, and their respective successors, heirs, executors, administrators, personal representatives, assigns, and lessees, provided said agreement does not invalidate or prejudice any policy of insurance, that in the event that any building, structure or improvement within the 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, the rights, if any, of any of them against the other,

or against the employees, agents, licensees or invitees of any of them with respect to such damage or destruction and with respect to any loss resulting therefrom are hereby waived.

Section 7.20 - Violation of This Article

If any Person required to comply with the foregoing Covenants and Restrictions is in violation of any one of same, including, but not by way of limitation, design review criteria or standards established by the Design Review Committee, the Landscaping and Grounds Committee, the Developer (as long as the Developer is a Class "B" Member of the Association) or the Board and/or the Design Review Committee, the Landscaping and Grounds Committee, and/or the Covenants Committee, as the case may be, shall have the right to give written notice to such Person to terminate, remove or extinguish such violation. Such notice shall expressly set forth the facts constituting such violation.

Except in the case of an emergency situation, the violating party shall have fifteen (15) days after written notice of the violation to take reasonable action to cause the removal, alleviation or termination of same. In the case of an emergency situation, or in the case of the failure of the violating party to comply with the provisions hereof after notice, the Developer and/or the Association shall have the right, through their respective agents and employees, to enter upon the land where the violation exists and to summarily terminate, remove or extinguish the violation. In addition to the foregoing, the Developer and/or the Association shall have the right to obtain an injunction from any Court having jurisdiction for the cessation of such violation or attempted violation of this Article. The rights and remedies of the Association and Developer contained in this Article shall be nonexclusive and in addition to any other right or remedy available at law or in equity, including a claim or action for specific performance and/or money damages (including punitive damages), and attorneys' and paralegals' fees. Furthermore, the failure or neglect to enforce any term, covenant, condition, restriction, right or procedure herein shall in no event and under no circumstances be construed, deemed or held to be a waiver with respect to any subsequent breach or violation thereof. Subject to the provisions of the Section of the Code entitled, "Hearing Procedure", a Person in violation of this Article VII shall be obligated to the Association and/or Developer for money damages and for the full amount of all costs and expenses, including attorneys' and paralegals' fees, incurred to remedy any such violation. If said amounts are not paid within ten (10) calendar days following said notification, then said amount shall be deemed "delinquent", and shall, upon perfection as provided in Section 9.4, become a continuing lien upon the portion of the Property owned or occupied by such Person(s) and a personal obligation of the Person(s) violating this Article. In addition, the Owner of any portion of the Property shall be liable jointly and severally for any obligations of any Occupant of such Owner's property.

Section 7.21 - Restrictions of Other Documents

Nothing contained in these Restrictions shall preclude the imposition of more stringent restrictions imposed elsewhere in this Amended and Restated Declaration, restrictions imposed on sublots within subdivisions, restrictions imposed in deeds conveying the Property or portions thereof and restrictions imposed by the Design Review Committee and/or the Landscaping and Grounds Committee so long as such restrictions are not inconsistent with restrictions imposed by the Master Declaration created by this Association or adopted by the Board. The City is a third party beneficiary of these covenants and restrictions; provided, however, if the City's zoning, building or other requirements of ordinances and general law are more restrictive than these covenants and restrictions, the City's requirements shall prevail.

Section 7.22 - Certificate of Compliance with Restrictions

Upon the conveyance of a Living Unit or an interest therein, the grantor shall have the right to request the Association to issue a Certificate of Compliance stating that it has no record of a violation of this Article. A Certificate of Compliance may be relied upon by all persons for all purposes. Neither the Board, nor such officer or agent shall have any liability to the grantor, grantee or mortgagee of a Living Unit or to others if the Certificate of Compliance issued hereunder is not correct. The Association may require the advance payment of a processing fee not to exceed Fifty Dollars (\$50.00) for the issuance of the Certificate of Compliance.

ARTICLE VIII

DESIGN REVIEW / LANDSCAPING AND GROUNDS COMMITTEES

Section 8.1 - Power of Committees

There is hereby created a Design Review Committee for the purpose of architectural and engineering control to secure and maintain an attractive, harmonious residential community. There is also hereby created a Landscaping and Grounds Committee for the purpose of landscaping control to secure and maintain an attractive, harmonious residential community. The Landscaping and Grounds Committee may, the option of the Board, be a committee separate from the Design Review Committee or a subcommittee of the Design Review Committee. The Declarant shall function as and grant all approvals provided for herein until the Declarant conveys the last Sublot the Declarant owns within the Property, except that the Declarant may elect to delegate and assign such duties and responsibilities to the Committees prior to that time. The Committees appointed by the Declarant need not be made up of members of the Association. After control of the Property has been transferred over to the Association, the Committees shall be composed of no less than three (3) individuals appointed by the

Board of Trustees to serve at the Board's pleasure. The same individual(s) may serve on both committees. A vote of the majority of members of a Committee shall be required to constitute the decision of a Committee.

Section 8.2 - Operation of Committees

No Living Unit shall be altered, modified or changed in any way which changes exterior or the appearance thereof, nor shall any Living Unit be rebuilt, unless an application, plans and specifications for the proposed alteration, modification or change shall have been submitted to and approved in writing by the Design Review Committee. No grading or landscaping within the Property may be altered, modified or changed unless an application, plans and specifications for the proposed alteration, modification or change shall have been submitted to and approved in writing by the Landscaping and Grounds Committee. Provided, however, the provisions of this subsection requiring submission of plans and specifications to and obtaining approval from a Committee shall not be applicable to the Developer, nor any entity related to or affiliated with the Developer or designated by the Developer as being subject to the provisions of this subsection.

Section 8.3 - Inspection

The Committees may inspect work being performed with their permission to assure compliance with this Amended and Restated Declaration and applicable regulations. The presence of a member of a Committee, or an agent thereof, on any Sublot shall not be deemed a trespass so long as the presence is in furtherance of said member's duties as a member of a Committee.

Section 8.4 - Violations and Remedies

Should any Living Unit be altered, constructed, or related improvements be reconstructed or removed from or upon any Sublot, or should the use thereof be modified in any way from the use originally constructed or installed without first obtaining the prior written approval of the Declarant or Design Review Committee as provided in this Article VIII, such act shall be deemed to be a violation of this Article VIII and this Amended and Restated Declaration. Should any grading or landscaping within the Property be altered, modified or changed without first obtaining the prior written approval of the Declarant or Landscaping and Grounds Committee as provided in this Article VIII, such act shall be deemed to be a violation of this Article VIII and this Amended and Restated Declaration. Any party violating this Article VIII shall, immediately upon the receipt of written notice of such violation from the Declarant, Design Review Committee, or Landscaping and Grounds Committee, cease and desist from the commission of any such act and immediately commence to take such steps as will alleviate or remedy any such condition of default and shall continue with all due

diligence thereafter until the satisfactory completion of same. Should the party committing such act in contravention of this Article VIII fail to immediately take such remedial action as aforesaid, then and in such event, the Association shall have the right, but not the obligation, in addition to any and all other rights or remedies available to it at law or in equity, each of which remedies shall be deemed to be nonexclusive, to do any of the following:

(a) Abate Violation: Without liability to the Owner of the Sublot, cause its agents and employees to enter upon the Sublot and/or the Living Units for the purpose of summarily abating any such use and/or removing any such building, structure, landscaping, or other improvement.

(b) Seek Injunction: Apply to a court having jurisdiction over the Property for the purpose of obtaining an injunction directing the violating party to abate any such use and/or removing any such building, structure, or landscaping wherever located within the Property.

(c) Seek Reimbursement. Seek full and complete reimbursement from any party committing any of the aforesaid acts in contravention of this Article VIII, of any costs, damages and expenses (including without limitation court costs, attorneys' and paralegals' fees, litigation costs, and costs to collect such sum) incurred by the Association with respect to its exercise of any of its rights for the purpose of remedying any such condition of default.

(d) Treat as Assessment: Should the party committing any acts in contravention of this Article VIII be an Occupant and should such Occupant fail to immediately pay the full amount of all costs, damages, and expenses referred to in above, the Association shall be entitled to treat such amount as an Assessment against the Sublot of which such Occupant is or was the Owner, a member of the Owner's family or a guest or invitee of such Owner.

ARTICLE IX ASSESSMENTS

Section 9.1 - Definition of Assessments

As used in this Amended and Restated Declaration, Assessments shall mean all of the costs and expenses incurred by the Association in the exercise of its obligations with respect to the Areas of Common Responsibility, including, without limitation:

(a) All expenditures required to fulfill the responsibilities of the Association, including, but not limited to, expenditures relating to maintenance fees;

(b) All amounts incurred in collecting Assessments, including all legal and accounting fees;

(c) Reserves for uncollectible Assessments, unanticipated expenses, replacements, major repairs and contingencies;

(d) Annual capital additions and improvements and/or capital acquisitions (but not repairs or replacements) having a total cost in excess of Five Thousand Dollars (\$5,000.00), without in each case the prior approval of the Class "B" Member and the vote of at least a majority of the Class "A" Members. In case of an emergency requiring prompt action to avoid further loss, the Board shall have the discretion to expend whatever is necessary to mitigate such loss.

(e) Such other costs, charges and expenses which the Association determines to be necessary and appropriate within the meaning and spirit of this Amended and Restated Declaration.

(f) The Assessments pursuant to this Amended and Restated Declaration are in addition to the assessments under the Master Declaration.

Section 9.2 -Responsibility for Payment of Assessments

The Developer or the Board shall prepare or cause the preparation of an annual operating budget for the Association and shall fix the amount of the Assessments. Written notice of the Assessments shall be sent to the Owner of each Living Unit. Payment of Assessments may be required by the Developer or Board on a monthly, quarterly, semi-annual or annual basis. As Sublots are improved with Living Units, the Owners thereof shall commence payment of the Assessments.

(a) Assessments. The amount of Assessments attributable to Living Units shall be established as of January 1 of each year and each Living Unit shall pay an equal amount of the Assessments.

Section 9.3 - No Exemption for Non-Use of Facilities; No Refund of Reserves

A Member not otherwise exempt from the Assessments may not exempt himself from liability for Assessments levied against him by waiver of the use of the Common Areas that are owned and/or operated by the Association. Furthermore, no Member shall be entitled to any portion of the funds held for reserves; nor shall any Owner have a claim against the Association with respect thereto.

Section 9.4 - Creation of Lien and Personal Obligation

Each Owner hereby covenants and agrees by acceptance of the deed to a Living Unit whether or not it shall be so expressed in any such deed or other conveyance, to pay to the Association all Assessments levied against such Owner in accordance with this Amended and Restated Declaration on or before the due date for any such Assessment. In the event that the Assessment is not paid by the tenth (10th) day of the month, then such Assessment shall be "delinquent" and the Assessment, together with the Costs of Collection, as hereinafter defined in Section 11.3 hereof shall, upon "Perfection" as provided in Section 10.1, become a continuing lien upon the interest of such Person in his Living Unit and shall bind such Owner, his heirs, devisees, personal representatives, successors and assigns. A co-Owner of a Living Unit shall be personally liable, jointly and severally, with all other co-Owners for all Assessments made by the Association with respect to said Living Unit.

Section 9.5 - Non-Liability of Foreclosure Sale Purchaser for Past Due Assessments

Where the mortgagee of a first mortgage of record acquires an Ownership Interest as a result of foreclosure of the mortgage or an acceptance of a deed in lieu of foreclosure, such mortgagee, its successors and assigns, shall not be liable for the Assessments levied against the Owner of such Ownership Interest prior to the acquisition of the Ownership Interest. The Owner or Owners of an Ownership Interest prior to the judicial sale thereof shall be and remain personally liable, jointly and severally, for the Assessments accruing against the judicially sold Ownership Interest prior to the date of the judicial sale as provided in Section 10.3, but any unpaid part of the Assessments shall be assessed and levied against all of the Owners, including the Owner of the Ownership Interest foreclosed, his successors or assigns, at the time of the first Assessment next following the acquisition of title by such mortgagee, its successors and assigns.

Section 9.6 - Liability for Assessments on Voluntary Conveyance

Upon the voluntary conveyance of an Ownership Interest the grantee of the Ownership Interest shall be jointly and severally liable with the grantor for all unpaid Assessments levied pursuant to this Amended and Restated Declaration against the grantor of his Ownership Interest prior to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such prospective grantee, upon written request delivered to the Association, shall be entitled to a statement from the Trustees of the Board or an officer of the Association setting forth the amount of all unpaid Assessments due the Association with respect to the Ownership Interest to be conveyed and such grantee shall not be liable for, nor shall the Ownership Interest conveyed be subject to a lien, for any unpaid Assessments which become due prior to the date of the making of such request if the same are not set forth in such statement. The statement referred to herein may be

included in the Certificate of Compliance with Restrictions referred to in Section 7.22 of this Amended and Restated Declaration. The Association may require the advance payment of a processing fee for the issuance of the Certificate of Compliance. A devise of an Ownership Interest or the distribution of said Ownership Interest pursuant to the Statute of Descent and Distribution shall be deemed to be a voluntary conveyance. An unpaid Assessment shall not be deemed a charge or lien against the Ownership Interest until perfected as such pursuant to Article X.

Section 9.7 - Additional Assessments

If the Assessments shall for any reason prove to be insufficient to cover the actual expenses incurred by the Association, the Association shall, at such time as it deems it necessary and proper, levy an additional assessment (the "Additional Assessment") against the Owners of Living Units. Each such Owner shall pay an equal share of each such Additional Assessment as if the Additional Assessment were part of the original Assessment.

Section 9.8 - Exempt Property

Notwithstanding anything to the contrary herein, Sublots owned by the Developer and the Common Areas shall be exempt from payment of Assessments or Additional Assessments.

Section 9.9 - Assessments under Master Declaration

The Association shall have the right (but not the obligation) on an annual basis, to elect to collect from Owners the assessments due the Owners to Master Association under the Master Declaration and remit the amounts so collected to the Master Association. If the Association does not exercise such right, the Owners shall remit such amounts directly to the Master Association in accordance with the Master Declaration. Currently, the Association is not collecting the assessment due the Owners to the Master Association and, therefore, each Owner shall pay such assessments directly to the Master Association.

ARTICLE X LIENS

Section 10.1 - Perfection of Lien

If any Owner or a Developer shall fail to pay an Assessment or Additional Assessment levied in accordance with this Amended and Restated Declaration (such Owner hereinafter referred to as the "Delinquent Owner") when due and such

Assessment or Additional Assessment is delinquent, or if an Owner or a Developer shall violate any rule or breach any restriction, covenant or provision contained in this Amended and Restated Declaration or in the Code, the Board may authorize the perfection of a lien on the Ownership Interest of the delinquent and/or violating Owner or Developer by filing for record with the Recorder of Cuyahoga County, a Certificate of Lien. The Certificate of Lien shall be in recordable form and shall include the following:

- (a) The name of the delinquent Owner.
- (b) A description of the Ownership Interest of the delinquent Owner.
- (c) The entire amount claimed for the delinquency and/or violation, including interest thereon and Costs of Collection (defined in Section 11.3).
- (d) A statement referring to the provisions of this Amended and Restated Declaration authorizing the Certificate of Lien.

Section 10.2 - Duration of Lien

Said lien shall remain valid for a period of five (5) years from the date of filing of said Certificate of Lien, unless sooner released or satisfied in the same manner provided by law for the release or satisfaction of mortgages on real property, or discharged by the final judgment or order of a court in action to discharge such lien. A lien may be renewed by the subsequent filing of a certificate of lien prior to the expiration of the five (5) year period referred to above.

Section 10.3 - Priority

A lien perfected under this Article X shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of bona fide mortgagees which have been heretofore filed for record. A lien perfected pursuant to this Article may be foreclosed in the same manner as a mortgage on real property in an action brought by the Association after authorization from the Board. In any such foreclosure action, the affected Owner shall be required to pay reasonable rental for such Ownership Interest during the pendency of such action and the plaintiff in such action shall be entitled to the appointment of a receiver to collect the same. Any funds received at the judicial sale of the delinquent Owner or Developer's Ownership Interest in excess of mortgage liens, court costs and the taxes and assessment liens shall be paid over to the Association to the extent of its lien.

Section 10.4 - Dispute as to Assessment

The Developer or any Owner or Developer who believes that an Assessment levied by the Association against him for which a Certificate of Lien has been filed by the Association has been improperly determined, may bring an action under the Arbitration Provisions contained in Section 15.9 of this Amended and Restated Declaration for the discharge of all or any portion of such lien; but the lien shall continue until the actual amount of the lien so determined is paid in full or otherwise be fully discharged.

Section 10.5 - No Waiver Implied

The creation of a lien upon an Ownership Interest owned by a delinquent Owner shall not waive, preclude or prejudice the Association for pursuing any and all other remedies granted to it elsewhere in this Amended and Restated Declaration, whether at law or in equity.

Section 10.6 - Personal Obligations

The obligations created pursuant to this Article X shall be and remain the personal obligations of the delinquent Owner until fully paid, discharged or abated and shall be binding on the heirs, personal representatives, successors and assigns of such delinquent Owner.

ARTICLE XI REMEDIES OF THE ASSOCIATION

Section 11.1 - Denial of Voting Rights

If any Owner fails to pay an Assessment when due, such Owner and the Occupants of any and all Living Units of such Owner shall not be entitled to vote on Association matters until said Assessment is paid in full.

Section 11.2 - Specific Remedies

The violation of any Rule, or the breach of any restriction, covenant or provision contained in this Amended and Restated Declaration or in the Code, shall give the Association and the Original Developer the right, in addition to all other rights set forth herein and provided by law, (a) to enter upon the Living Unit or Sublot or portion thereof upon which, or as to which, such violation or breach exists, and summarily abate and remove, at the expense of the Owner or Developer of the Ownership Interest where the violation or breach exists, any structure, thing, or condition that may exist thereon, which is contrary to the intent and meaning of this Amended and Restated Declaration, the

Code, or the Rules, and the Association, or its designated agent shall not thereby be deemed guilty in any manner of trespass; (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach; (c) to commence and prosecute an action for specific performance or an action to recover any damages which may have been sustained by the Association or any of its Members as well as an action for punitive damages if warranted; and/or (d) to collect costs of suit and reasonable attorneys' and paralegals' fees incurred in connection with the exercise by the Association of any remedies hereunder, the same to be deemed "Costs of Collection" under Section 11.3 hereof.

Section 11.3 - Cost of Collection

If any Owner fails to pay any Assessment when due or upon delinquency in the payment of any sums or cost due under this Amended and Restated Declaration, the Association may pursue any or all of the following remedies, which remedies shall be in addition to any other remedy available in this Amended and Restated Declaration, or at law or in equity:

(a) Sue and collect from such Owner the amount due and payable, together with interest thereon as provided in this Amended and Restated Declaration and Costs of Collection (hereafter defined).

(b) In addition to the amount referred to in (a) above, the Association may assess against such Owner, liquidated damages, not to exceed fifteen percent (15%) of the amount of the delinquency or One Hundred Dollars (\$100.00), whichever amount is greater, said amount to be determined by the Board provided, however, in no event shall said amount exceed the highest interest rate chargeable to individuals under applicable law. Said liquidated damages shall be in addition to interest, the expenses of collection incurred by the Association, such as attorneys' fees, paralegals' fees, court costs and filing fees. The actual expenses of collection and the liquidated damages shall hereinafter be referred to as "Cost of Collection".

(c) Foreclose a lien filed in accordance with Article X of this Amended and Restated Declaration in the same manner as provided by the laws of the State of Ohio for the foreclosure of real estate mortgages.

Section 11.4 - Binding Effect

The remedies provided in this Article XI against a Delinquent Owner or Developer may also be pursued against the heirs, executors, administrators, successors and assigns and grantees of such Owner or Developer, except as specifically provided in Section 9.5 of this Amended and Restated Declaration.

ARTICLE XII
NO PARTITION

Except as is permitted in this Amended and Restated Declaration or in any amendments thereto, there shall be no physical partition of the Common Areas or any part thereof, nor shall any person acquiring any interest in the Property or any part thereof seek any such judicial partition. This Article shall not be construed to prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring title to real property which may or may not be subject to this Amended and Restated Declaration.

ARTICLE XIII
CONDEMNATION

Whenever all or any part of the Common Areas shall be taken (or conveyed in lieu of and under threat of condemnation) by any authority having the power of condemnation or eminent domain, the Association shall give each Owner notice thereof. The award made for such taking shall be payable to the Association as trustee for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking the Developer (so long as the Developer is a Class "B" Member), and at least seventy-five percent (75%) of the Class "A" Members of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Areas to the extent lands are available therefor, in accordance with plans prepared by the Design Review Committee and/or the Landscaping and Grounds Committee and approved by the Board. If such improvements are to be repaired or restored, the provisions in Section 6.5 hereof regarding the disbursement of funds in respect to casualty damage or destruction shall apply. If the taking does not involve any improvements on the Common Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine in its sole and absolute discretion.

ARTICLE XIV
MORTGAGEES' RIGHTS

The following provisions are for the benefit of holders, insurers, or guarantors of first mortgages on Living Units and Sublots. To the extent applicable, necessary, or proper, the provisions of this Article shall apply to both this Amended and Restated

Declaration and to the Code. Where indicated, these provisions apply only to Eligible Mortgage Holders; provided, however, that voting percentages set forth herein are subject to and controlled by higher percentage requirements, if any, set forth elsewhere in this Amended and Restated Declaration for specific actions.

Section 14.1 - Notices of Action

An Eligible Mortgage Holder who provides written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the address of the Sublot), will be entitled to timely written notice of:

- (a) any proposed termination of the Association;
- (b) any condemnation or casualty loss which affects a material portion of the Property or which affects any Living Unit on which there is a first mortgage held, insured, or guaranteed by an Eligible Mortgage Holder;
- (c) any delinquency in the payment of assessments or other charges owed by an Owner subject to the mortgage of such Eligible Mortgage Holder, insurer, or guarantor, where such delinquency has continued for a period of sixty (60) days;
- (d) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or
- (e) any proposed action which would require the consent of eligible holders, as required in Sections 14.2 and 14.3 of this Article.

If an Eligible Mortgage holder fails to submit a response to any written proposal for an amendment under this Article XIV within thirty (30) days after it receives proper notice of the proposal, the implied approval of such Eligible Mortgage Holder to the proposal shall be deemed assumed, provided, the notice was delivered by certified or registered mail, with a "return receipt" requested.

Section 14.2 - Other Provisions for First Lien Holders

To the extent possible under Ohio law:

- (a) Any restoration or repair of the Property following a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Amended and Restated Declaration and the original plans and specifications unless the approval of the Eligible Mortgage Holders on Living Units to which at least fifty-one percent (51%) of the votes of Living Units and the Eligible Mortgage Holders of first

mortgages of the Class "A" and the Class "B" Members, subject to mortgages held by such Eligible Mortgage Holders, are allocated, is obtained to act otherwise.

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Mortgage Holders on Living Units of at least fifty-one percent (51%) of the votes of Living Units and the Eligible Mortgage Holders of first mortgages of the Class "A" Members and the Class "B" Member, subject to mortgages held by such Eligible Mortgage Holders, are allocated.

Section 14.3 - Amendments to Documents

The following provisions do not apply to amendments to the constituent documents or termination of the Association made as a result of destruction, damage, or condemnation pursuant to Section 14.2(a) and (b) of this Article:

(a) The consent of at least sixty-seven percent (67%) of the Class "A" Members and of the Class "B" Member and the approval of the Eligible Mortgage Holders to which at least sixty-seven percent (67%) of the votes of Living Units subject to a mortgage appertain, shall be required to terminate the Association.

(b) The vote of at least sixty-seven percent (67%) of the Class "A" Members and the consent of the Class "B" Member and the approval of Eligible Mortgage Holders to which at least fifty-one percent (51%) of the votes of Living Units subject to mortgages appertain, shall be required to materially amend any provisions of the Amended and Restated Declaration, Code, or Articles of Incorporation of the Association, or to add any material provisions thereto, which establish, provide for, govern, or regulate any of the following:

- (1) voting rights;
- (2) Assessments, Additional Assessments, assessment liens, or priority assessment liens;
- (3) reserves for maintenance, repair, and replacement of the Common Areas;
- (4) responsibility for maintenance and repair;
- (5) insurance or fidelity bonds;
- (6) rights to use of the Common Areas;

- (7) leasing of Living Units;
- (8) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Living Unit (this provision is subject and subordinate to any provision in an agreement for the sale by the Developer of a Living Unit.);
- (9) establishment of self-management by the Association where professional management has been required by an Eligible Mortgage Holder;
- (10) restoration or repair of the Property (after hazard damage or partial condemnation) in a manner other than that specified in this Amended and Restated Declaration;
- (11) any action to terminate the legal status of the Property after substantial destruction or condemnation occurs;
- (12) expansion or contraction of the Property, or the addition, annexation, or withdrawal of the Property other than as provided in Section 1.3 of this Amended and Restated Declaration; or
- (13) any provisions included in this Amended and Restated Declaration, Code, or Articles of Incorporation which are for the express benefit of Eligible Mortgage Holders on Living Units.

Section 14.4 - Special Federal Home Loan Mortgage Corporation Provisions

So long as required by the Federal Home Loan Mortgage Corporation, the following provisions shall apply to this Amended and Restated Declaration:

- (a) Unless two-thirds (2/3) of the first mortgagees or Owners give their consent, the Association shall not: (1) by act or omission seek to abandon, become a partition, subdivide, encumber, sell or transfer any portion of the Property owned by the Association (the granting of easements for public utilities or for public purposes or the dedication to public use of utilities or roads consistent with the intended use of the Property shall not be deemed a transfer); (2) change the method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner; (3) fail to maintain fire and extended coverage insurance as required by this Amended and Restated Declaration; or (4) use hazard insurance proceeds for any Common Area losses for other than repair, replacement or reconstruction of such properties.

Section 15.2 - Duration

Unless sooner terminated as hereinafter provided, the Easements, Covenants and Restrictions of this Amended and Restated Declaration shall continue for a term of fifty (50) years from the date the Original Declaration was recorded, after which time, said covenants and restrictions shall automatically be extended for successive periods of ten (10) years each unless terminated by an instrument signed by Members entitled to exercise not less than seventy-five percent (75%) of the Class "A" Members and by the Class "B" Member.

Section 15.3 - Notices

Any notices required to be given to any Person under the provisions of this Amended and Restated Declaration shall be deemed to have been given when personally delivered to such Person's Living Unit or mailed, postage prepaid, to the last known address of such Person or principal place of business if a corporation, provided, however, that a notice of "delinquency" of any payment due hereunder shall be made by personal delivery to such Living Unit or principal place of business if a corporation, or by certified or registered mail, return receipt requested, or by telegram. The effective date of such a notice shall be the date said notice is personally delivered, or postmarked, or the date the telegraph company receives the message, as the case may be.

Notices to the Developer shall be deemed given only when received and must be either hand delivered or mailed by certified or registered mail, postage prepaid, to Developer, 10474 Broadview Road, Broadview Heights, Ohio 44147, with a copy to Richard A. Rosner, Esquire, Kahn, Kleinman, Yanowitz & Amson Co., L.P.A., The Tower At Erieview, Suite 2600, Cleveland, Ohio 44114.

Section 15.4 - Enforcement-Waiver

Enforcement of the Easements, Covenants and Restrictions may be by any proceeding at law or in equity against any Person or Persons violating or attempting to violate any Easement, Covenant or Restriction, either to restrain violation or to recover damages and against the Person or Ownership Interest, or to enforce any lien perfected pursuant to this Amended and Restated Declaration. The failure by the Association or any one permitted by this Amended and Restated Declaration to enforce any Easement, Covenant or Restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 15.5 - Construction of the Provisions of this Amended and Restated Declaration

The Developer, the Association, the Design Review Committee, and the Landscaping and Grounds Committee, where specifically authorized herein to act, shall

have the right to construe and interpret the provisions of this Amended and Restated Declaration and in the absence of an adjudication by arbitrator(s) or a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all Persons or property which benefit or which are bound by the provisions hereof. Any conflict between any construction or interpretation of the Developer, the Association, the Design Review Committee, or the Landscaping and Grounds Committee and that of any Person or entity entitled to enforce the provisions hereof shall be resolved in favor of the construction or interpretation by the Developer, the Association, the Design Review Committee, or the Landscaping and Grounds Committee, as the case may be.

The Association, the Design Review Committee, and the Landscaping and Grounds Committee, to the extent specifically provided herein may adopt and promulgate Rules regarding the administration, interpretation and enforcement of the provisions of this Amended and Restated Declaration. In so adopting Rules and in making any finding, determination, ruling or order, or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Association, the Design Review Committee, or the Landscaping and Grounds Committee, as the case may be, shall take into consideration the best interests of the Developer(s), Owners, Tenants and Occupants to the end that the Property shall be preserved and maintained as a high quality, residential community.

Section 15.6 - Reservations by Original Developer - Exempt Property

(a) Original Developer reserves the right and easement for itself and owners of nearby lands to whom Original Developer, in Original Developer's sole discretion, may grant the same right and easement, to tie into, use, repair, maintain and replace without charge any and all common lines, pipes, utilities, conduits, ducts, wires, cables, private roads and rights-of-way in, on, or over the Property (as the Property may be expanded by a Subsequent Amendment) or any part thereof that will not materially interfere with the use or operation of a building or structure or other improvement thereon, in connection with the development and/or operation of real property. Any damage to buildings, improvements and real estate (including landscaping, if any) caused thereby shall be promptly repaired and restored to its prior condition by the party to whom such right and easement had been granted.

(b) Original Developer hereby reserves the right to grant to or enter into any easements or covenants for the installation, maintenance, service or operation of any and all common lines, pipes, utilities, conduits, ducts, wires, cables and rights-of-way in, on, or over the Property (as the Property may be expanded), or any part thereof that will not materially interfere with the use or operation of a building, structure or other improvement thereon. Any damage caused thereby shall be promptly repaired and the land shall be restored to its prior condition.

(c) Original Developer reserves the right to enter into covenants and easements with any utility or public authority which Original Developer believes, in its sole discretion, to be in the best interests of the development of the Property (as the Property may be expanded).

(d) Original Developer reserves the right to perform or cause to be performed such work as is incident to the completion of the development and improvement of the Property (as the Property may be expanded by a Subsequent Amendment), owned or controlled by the Original Developer, notwithstanding any covenant, easement, restriction or provision of this Amended and Restated Declaration or its exhibits, which may be to the contrary.

(e) Original Developer reserves the right to impose, reserve or enter into additional covenants, easements and restrictions with grantees of Living Units and Sublots as long as such additional easements, covenants and restrictions are not in conflict with the rights, duties and obligations of Owners as set forth in this Amended and Restated Declaration.

(f) Each reservation, right and easement specified or permitted pursuant to this Article shall include the right of ingress and egress for the full utilization and enjoyment of the rights reserved and/or granted herein. The word "common" as used in this paragraph shall mean any and all lines, pipes, utilities, conduits, ducts, wires, cables, private roads and rights-of-way intended for the use of or used by more than one Owner. Any easements or rights referred to in this Article, whether granted by Original Developer prior to the filing of this Amended and Restated Declaration or subsequent thereto, shall at all times have priority over the provisions of this Amended and Restated Declaration and any lien created under this Amended and Restated Declaration.

(g) So long as Developer is a Class "B" Member, no Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property without Developer's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Developer.

Section 15.7 - Assignability by Original Developer

The Original Developer, and its successors, shall have the right from time to time to assign all or any part of its rights as a Developer under this Amended and Restated Declaration (but not the rights expressly conferred upon the Original Developer), provided that the deed or other writing selected by Original Developer, in Original Developer's sole discretion, shall expressly state that the rights of a Developer shall be assigned. Any such assignment may provide that said assignee shall have the rights of a Developer (other than those rights reserved by the Original Developer in any such assignment) set forth in this Amended and Restated Declaration with respect to the Living Units and/or real property owned by such designee.

Section 15.8 - Severability

Invalidation of any one of the easements, covenants, restrictions or provisions contained herein shall in no way affect any other provision which shall remain in full force and effect.

Section 15.9 - Arbitration

Unless otherwise provided in this Amended and Restated Declaration, any controversy, dispute or claim arising out of or relating to this Amended and Restated Declaration or the breach thereof shall be settled by arbitration in Cleveland, Ohio in accordance with the Commercial Rules of the American Arbitration Association and the judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction hereof.

Section 15.10 - Litigation

No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by the vote of seventy-five percent (75%) of the Class "A" Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Amended and Restated Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Articles IX and X hereof, (c) proceedings involving challenges to real estate taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Developer or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 15.11 - Validity of Mortgages

No violation of any Easement, Covenant or Restriction of this Amended and Restated Declaration shall defeat or render invalid the lien of any mortgage made in good faith and for value upon any portion of the Property; provided, however, that any mortgagee in actual possession, or any purchaser at any mortgagees' foreclosure sale shall be bound by and subject to this Amended and Restated Declaration as fully as any other Owner of any portion of the Property.

Section 15.12 - Amendment of Amended and Restated Declaration

Except as expressly provided to the contrary in this Amended and Restated Declaration, this Amended and Restated Declaration may be amended as follows:

(a) For so long as the Developer or a successor designated by the Developer is the Owner of a fee simple interest in the Property, the Original Developer shall be entitled from time to time to amend or modify any of the provisions of this Amended and Restated Declaration or to waive any of the provisions, either generally or with respect to particular real property, if in its judgment, the development or lack of development of the Property requires such modification or waiver, or if in its judgment the purposes of the general plan of development of the Living Units will be better served by such modification or waiver, provided no such amendment, modification

or waiver shall materially and adversely affect the value of existing Living Units or shall prevent a Living Unit from being used by the Owner in the same manner that said Living Unit was used prior to the adoption of said amendment, modification or waiver. To modify the Amended and Restated Declaration in accordance with this paragraph, Original Developer shall file a supplement to this Amended and Restated Declaration setting forth the Amendment, which supplement need not be but shall, at Original Developer's request, be executed by the Association and all Owners of real property within the Property. Each such Owner, by accepting a deed to his Living Unit or other real property, hereby appoints Original Developer his attorney-in-fact, coupled with an interest, to execute on his behalf any such amendments. Each amendment shall be effective when signed by the Original Developer and filed for record with the Recorder of Cuyahoga County.

(b) This Amended and Restated Declaration may also be amended by Original Developer or the Association at any time and from time to time for the purpose of: (1) complying with requirements of the Federal National Mortgage Association, the Government National Mortgage Association; the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public entity, or private insurance company which performs (or may in the future perform) functions similar to those currently performed by such entities; or (2) inducing any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages; or (3) correcting clerical or typographical or obvious factual errors in this Amended and Restated Declaration or any Exhibit hereto or any supplement or amendment hereto; or (4) complying with the underwriting requirements of insurance companies providing casualty insurance, liability insurance or other insurance coverages for the Association; or (5) bringing any provision hereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination; or (6) correcting obvious factual errors or inconsistencies between this Amended and Restated Declaration and other documents governing the Property, the correction of which would not materially impair the interest of any Owner or Eligible Mortgage Holder; or (7) enabling a title insurance company to issue title insurance coverage with respect to the Property or any portion thereof. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Developer and/or to the Board to vote in favor of, make, or consent to a Subsequent Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting any portion of the Property and the acceptance thereof shall be deemed to be a grant and acknowledgement of, and a consent to the reservation of the power to the Original Developer to vote in favor of, make and record a Subsequent Amendment. To effect said amendment, Original Developer shall file a supplement to the Amended and Restated Declaration setting forth the Subsequent Amendment which shall be signed by Original Developer and shall be effective upon the filing of the Subsequent Amendment with the Cuyahoga County Recorder.

(c) Original Developer shall have the right to amend this Amended and Restated Declaration at any time and from time to time in accordance with or in implementation of any of the rights granted to or reserved by Original Developer in this Amended and Restated Declaration.

(d) Except as expressly provided in this Amended and Restated Declaration, and after expiration of the period set forth in (a) of this Article, any provision of this Amended and Restated Declaration may be amended or repealed following a meeting of the Members held for such purpose, by the affirmative vote of the Class "B" Member and the vote of at least a majority of the voting power of the Class "A" Members unless a greater percentage of vote is required pursuant to this Amended and Restated Declaration or in accordance with the statutes of the State of Ohio; provided, however, that any amendment which would terminate or materially affect the easements set forth in Article III of this Amended and Restated Declaration shall not be amended (except as expressly provided to the contrary in this Amended and Restated Declaration) unless all persons whose rights are terminated or materially affected shall affirmatively consent in writing to such amendment; provided further, that any amendment affecting the rights of Developer in this Amended and Restated Declaration shall not be effective without the prior written consent of Developer. Written notice shall be given each Member at least ten (10) days in advance of the date of the meeting held for the purpose of amending this Amended and Restated Declaration, which notice shall expressly state the modification to be considered at such meeting. Each amendment shall be effective when signed by the President and one other officer of the Association, signed by the Developer if the amendment affects the rights of the Developer and filed for record with the Cuyahoga County Recorder.

Section 15.13 - Interest Rates

After the Original Declaration shall have been recorded for five (5) years or more, the Board shall have right to change any interest rate or late payment charge referred to herein by majority vote, but in no event shall said interest rate or late payment charge exceed the highest interest rate chargeable to individuals under applicable law.

Section 15.14 - Headings

The heading of each Article and of each paragraph in this Amended and Restated Declaration is inserted only as a matter of convenience and for reference and in no way defines, limits or describes the scope or intent of this Amended and Restated Declaration or in any way affects this Amended and Restated Declaration.

Section 15.15 - Rule Against Perpetuities

If any of the options, privileges, covenants or rights created by this Amended and Restated Declaration shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common-law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of George W. Bush, President of the United States of America, and Richard Cheney, Vice President of the United States of America.

[Remainder of this page intentionally blank.]

IN WITNESS WHEREOF, the parties have signed this document this 11 day of JANUARY, 2002.

Signed in the presence of:

Neil F. Brennan
Print Name NEIL F. BRENNAN

Virginia Roberts
Print Name Virginia Roberts

PETROS DEVELOPMENT CORPORATION,
an Ohio corporation

By: *Sam Petros*
Sam Petros, President

LIVING UNIT OWNERS
(other than Original Developer)

By: PETROS DEVELOPMENT CORPORATION,
an Ohio corporation, as attorney-in-fact for
said Living Unit Owners pursuant to the
operation of Section 15.12(a) of the Original
Declaration

Signed in the presence of:

Neil F. Brennan
Print Name NEIL F. BRENNAN

Virginia Roberts
Print Name Virginia Roberts

By: *Sam Petros*
Sam Petros, President

STATE OF OHIO)
) SS.
CUYAHOGA COUNTY)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named PETROS DEVELOPMENT CORPORATION, an Ohio corporation, by Sam Petros, its President, who acknowledged that he executed the within instrument and that such execution was the free act and deed of said corporation and was his free act and deed both individually and in his capacity as officer of said corporation.

IN TESTIMONY WHEREOF, I have herein set my hand and notarial seal this 11th day of January, 2002.

Carla M. Santora
Notary Public

CARLA M. SANTORA
Notary Public, State of Ohio
Recorded in Cuyahoga County
My Commission Expires 11-13-2002

THE VILLAS AT MacINTOSH FARMS
CLUSTER ASSOCIATION, INC.,
An Ohio not-for-profit corporation

Signed in the presence of:
(witnesses as to both signatures)

Carol Kormanec
Print Name CAROL KORMANEC

Nancy Anne Wargo
Print Name NANCY-ANNE WARGO

By: Mike Niemczura, its PRESIDENT

By: Bonnie Senger Karger, its SECRETARY

STATE OF OHIO)
) SS.
CUYAHOGA COUNTY)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named THE VILLAS AT MacINTOSH FARMS CLUSTER ASSOCIATION, INC., an Ohio not-for-profit corporation, by MIKE NIEMCZURA, its PRESIDENT, and BONNIE SENGER KARGER, its SECRETARY, who acknowledged that they executed the within instrument and that such execution was the free act and deed of said corporation and was their free act and deed both individually and in their capacity as officers of said corporation.

IN TESTIMONY WHEREOF, I have herein set my hand and notarial seal this 29th day of March, 2002.

Nancy Anne Wargo
Notary Public

NANCY-ANNE WARGO
Notary Public, State of Ohio
My Commission Expires May 5, 2006
Recorded in Summit County

This instrument prepared by:
Richard A. Rosner, Attorney at Law
Kahn, Kleinman, Yanowitz & Amson Co., L.P.A.
Suite 2600, The Tower At Erievue
1301 East Ninth Street
Cleveland, Ohio 44114-1824
(216) 696-3311

EXHIBIT A

LEGAL DESCRIPTION OF THE PROPERTY

PHASE ONE – GROUP “H”

Situated in the City of Broadview Heights, County of Cuyahoga, State of Ohio, and known as being Sublot Nos. 1 through 44 in The Villas at MacIntosh Farms Group "H" Subdivision, being part of Original Royalton Township Lot 25, as shown by plat recorded in Volume 726, Page 49 of Cuyahoga County Plat Records, be the same, more or less, but subject to all legal highways.

PHASE TWO – GROUP “K”

Situated in the City of Broadview Heights, County of Cuyahoga, State of Ohio, and known as being Sublot Nos. 1 through 24 in The Villas at MacIntosh Farms Group "K" Subdivision, being part of Original Royalton Township Lot 25, as shown by plat recorded in Volume 280, Page 18 of Cuyahoga County Plat Records, be the same, more or less, but subject to all legal highways.

PHASE THREE – GROUPS “J-1” and “J-3”

GROUP "J-1": Situated in the City of Broadview Heights, County of Cuyahoga, State of Ohio, and known as being Sublot Nos. 1 through 33 in The Villas at MacIntosh Farms Group J-1 of a part of Original Royalton Township Lot 25, as shown by plat recorded in Volume 282 of Maps, Page 33 of Cuyahoga County Plat Records, be the same, more or less, but subject to all legal highways.

GROUP "J-3": Situated in the City of Broadview Heights, County of Cuyahoga, State of Ohio, and known as being Sublot Nos. 1 through 25 in The Villas at MacIntosh Farms Group J-3 of a part of Original Royalton Township Lot 25, as shown by plat recorded in Volume 286 of Maps, Page 60 of Cuyahoga County Plat Records, be the same, more or less, but subject to all legal highways.

PHASE FOUR – GROUP “J-2”

Situated in the City of Broadview Heights, County of Cuyahoga, State of Ohio, and known as being Sublot Nos. 34 through 59 in The Villas at MacIntosh Farms Group "J-2" of a part of Original Royalton Township Lot 25, as shown by plat recorded in

Volume 290, Page 83 of Cuyahoga County Plat Records, be the same, more or less, but subject to all legal highways.

PHASE FIVE – GROUP “L-1”

Situated in the City of Broadview Heights, County of Cuyahoga, State of Ohio, and known as being Sublot Nos. 1 through 26 and 57 through 65 in The Villas at MacIntosh Farms Group "L-1" of a part of Original Royalton Township Lot 25, as shown by plat recorded in Volume 292, Page 13 of Cuyahoga County Plat Records, be the same, more or less, but subject to all legal highways.

PHASE SIX – GROUP “L-2”

Situated in the City of Broadview Heights, County of Cuyahoga, State of Ohio, and known as being Sublot Nos. 66 through 83 and 97 through 100 and Blocks "D", "E" and "F" in The Villas at MacIntosh Farms Group "L-2" of a part of Original Royalton Township Lot 25, as shown by plat recorded in Volume 299, Pages 49 and 50 of Cuyahoga County Plat Records, be the same, more or less, but subject to all legal highways.

PHASE SEVEN – GROUPS “L-3” and “L-4” and Block “B” from “L-1”

GROUP "L-1": Situated in the City of Broadview Heights, County of Cuyahoga and State of Ohio, and known as being Block "B", in the Villas at MacIntosh Farms Group L-1 of a part of Original Royalton Township Lot No. 25, as shown by the recorded plat in Volume 292 of maps, Page 13 of Cuyahoga County Records, be the same more or less, but subject to all legal highways.

GROUP "L-3": Situated in the City of Broadview Heights, County of Cuyahoga, State of Ohio, and known as being Sublot Nos. 27 through 56 and Block "G" in The Villas at MacIntosh Farms Group "L-3" of a part of Original Royalton Township Lot 25, as shown by plat recorded in Volume 302, Page 66 of Cuyahoga County Plat Records, be the same, more or less, but subject to all legal highways.

GROUP "L-4": Situated in the City of Broadview Heights, County of Cuyahoga, State of Ohio, and known as being Sublot Nos. 84 through 96 and Blocks "C" and "H" in The Villas at MacIntosh Farms Group "L-4" of a part of Original Royalton Township Lot 25, as shown by plat recorded in Volume 303, Page 29 of Cuyahoga County Plat Records, be the same, more or less, but subject to all legal highways.

(b) The provisions of this Section shall not be construed to reduce the percentage vote that must be obtained from mortgagees or owners or a larger percentage vote as otherwise required for any of the actions contained in this Article.

(c) First mortgagees may, jointly or singularly, pay taxes or other charges which are in default or which may or have become a charge against the Common Area and may pay overdue premiums of casualty insurance policies or secure new casualty insurance coverage upon the lapse of a policy, for the Common Areas and first mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

ARTICLE XV GENERAL PROVISIONS

Section 15.1 - Covenants Run With the Property; Binding Effect

All of the Easements, Covenants and Restrictions which are imposed upon, granted and/or reserved in this Amended and Restated Declaration constitute Easements, Covenants and Restrictions running with the Property and are binding upon every subsequent transferee of all or any portion thereof, including, without limitation, grantees, Tenants, Owners and Occupants.

Each grantee accepting a deed or Tenant accepting a lease (whether oral or written) which conveys any interest in any portion of the Property that is submitted to all or any portion of this Amended and Restated Declaration, whether or not the same incorporates or refers to this Amended and Restated Declaration, covenants for himself, his heirs, personal representatives, successors and assigns to observe, perform and be bound by all provisions of this Amended and Restated Declaration and to incorporate said Amended and Restated Declaration by reference in any deed, lease or other agreement of all or any portion of his interest in any real property subject hereto.

Each grantee accepting a deed or Tenant accepting a lease (whether oral or written) which conveys any interest in any portion of the Property that is submitted to all or any portion of this Amended and Restated Declaration, whether or not the same incorporates or refers to this Amended and Restated Declaration, covenants for himself, his heirs, personal representatives, successors and assigns to observe, perform and be bound by all provisions of the Master Declaration and to incorporate said Master Declaration by reference in any deed, lease or other agreement of all or any portion of his interest in any real property subject hereto.

CUYAHOGA COUNTY RECORDER
PATRICK J. O'MALLEY - 4
DECL 11/21/2006 10:38:52 AM
200611210152

AMENDMENT TO THE
AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS
OF
THE VILLAS AT MacINTOSH FARMS CLUSTER DEVELOPMENTS
PHASES ONE - SEVEN

PLEASE CROSS MARGINAL REFERENCE WITH THE AMENDED AND RESTATED
DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND
RESTRICTIONS OF THE VILLAS AT MacINTOSH FARMS CLUSTER
DEVELOPMENTS RECORDED AT INSTRUMENT NO. 200204260544, OF THE
CUYAHOGA COUNTY RECORDS.

AMENDMENT TO THE
AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS OF THE VILLAS AT MacINTOSH FARMS
CLUSTER DEVELOPMENTS

WHEREAS, the Amended and Restated Declaration of Covenants, Conditions, Easements and Restrictions of The Villas at MacIntosh Farms Cluster Developments (the "Declaration") and the Code of Regulations of The Villas at MacIntosh Farms Cluster Association, Inc. (the "Code"), attached to and made a part of the Declaration, were recorded at Cuyahoga County Records Instrument No. 200204260544, and

WHEREAS, The Villas at MacIntosh Farms Cluster Association, Inc. (the "Association") is a corporation consisting of all Owners in the Villas at MacIntosh Farms Cluster and as such is the representative of all Owners, and

WHEREAS, Article XV, Section 15.12(d) of said Declaration authorizes amendments to the Declaration and Code Article VII, Section 6 authorizes amendments to the Code, and

WHEREAS, a meeting of the Association's Owners was held on or about October 19, 2006, and, at such meeting and any adjournment thereof, Owners representing at least 50% of the voting power of the Association executed, in person or by proxy, an instrument in writing setting forth specifically the matters to be added (the "Amendment"), and

WHEREAS, the Association has in its records the signed, written consents to the Amendment signed by Owners representing 59.52% of the Association's voting power, together with the minutes from said meeting and any adjournment thereof, and

WHEREAS, the Association has in its records the power of attorney signed by Owners representing 59.52% 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 the Amended and Restated Declaration of Covenants, Conditions, Easements and Restrictions of The Villas at MacIntosh Farms Cluster Developments have in all respects been complied with.

NOW THEREFORE, the Amended and Restated Declaration of Covenants, Conditions, Easements and Restrictions of The Villas at MacIntosh Farms Cluster Developments is hereby amended by the following:

INSERT a new DECLARATION ARTICLE VII, SECTION 7.23 entitled, "Occupancy Restriction." Said new addition, to be added on Page 31 of the Declaration, as recorded at Cuyahoga County Records, Instrument No. 200204260544, is as follows:

Section 7.23 - Occupancy Restriction.

No person who is adjudicated to be a sexual predator or a habitual sex offender and required to register with a designated registering agency, thereby requiring notice to be given pursuant to the Ohio Sex Offenders Act or similar statute from another jurisdiction, as the same may from time to time be amended, may reside in or occupy a Living Unit for any length of time. Any violation of this restriction shall subject the Owner and/or any Occupant of the Living Unit to any and all remedies provided for by law as well as this Declaration. The Association shall not, however, be liable to any Owner or Occupant, or anyone visiting any Owner or the Association, as a result of the Association's alleged failure, whether negligent, intentional or otherwise, to enforce the provisions of this restriction.

Any conflict between this provision and any other provisions of the Declaration and Code of Regulations shall be interpreted in favor of this restriction on the occupancy of Living Units. 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 in the court of common pleas within one year of the recording of the amendment.

IN WITNESS WHEREOF, the said The Villas at MacIntosh Farms Cluster Association, Inc. has caused the execution of this instrument this 16th day of November, 2006.

THE VILLAS AT MacINTOSH FARMS CLUSTER ASSOCIATION, INC.

By: Mike Niemczura
MIKE NIEMCZURA, its President

By: Bonnie Senger Karberg
BONNIE SENGER KARBERG, its Secretary

STATE OF OHIO)
)
COUNTY OF Summit) SS

BEFORE ME, a Notary Public, in and for said County, personally appeared the above named The Villas at MacIntosh Farms Cluster Association, Inc., by its President and its Secretary, who acknowledged that they did sign the foregoing instrument, on Page 3 of 4, 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 Sagamore Hills, Ohio, this 16th day of November, 2006.

Nancy-Anne Wargo
NOTARY PUBLIC
NANCY-ANNE WARGO
Notary Public, State of Ohio
My Commission Expires May 5, 2011
Recorded in Summit County

This instrument prepared by:
KAMAN & CUSIMANO, Attorneys at Law
2000 Terminal Tower
50 Public Square
Cleveland, Ohio 44113
(216) 696-0650

The Villas at MacIntosh Farms Cluster Association

Broadview Heights, Ohio

October 28, 2009

Re: Quorum Amendment

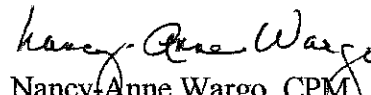
Dear Homeowner,

Enclosed, please find a copy of the fully executed and recorded Amendment to the Code of Regulations of the Villas at MacIntosh Farms Cluster Association, Inc. The Amendment was filed with the Cuyahoga County Recorder's Office on October 9, 2009, at Instrument No. 200910090299. The Amendment became binding and effective on the date it was filed.

Be advised that while the number of owners present in person or by proxy now constitutes a quorum at Association meetings, the Board strongly encourages every owner to attend these meetings.

Please file this Amendment with your copy of the Declaration and Code of Regulations and remember that all of the documents must be passed onto the future buyer of your home.

Sincerely,


Nancy Anne Wargo, CPM
Community Association Manager

NW:mkh

Enclosure: Quorum Amendment

Professionally Managed by Reserve Realty Management
480 West Aurora Road, Sagamore Hills, Ohio (330) 467-0828

CUYAHOGA COUNTY RECORDER
LILLIAN J GREENE - 5
DECL 10/9/2009 12:46:30 PM
200910090299

AMENDMENT TO THE
CODE OF REGULATIONS
OF
THE VILLAS AT MACINTOSH FARMS CLUSTER ASSOCIATION, INC.

PLEASE CROSS MARGINAL REFERENCE WITH THE CODE OF REGULATIONS OF THE VILLAS AT MACINTOSH FARMS CLUSTER ASSOCIATION, INC. RECORDED AT VOLUME 96-00213, PAGE 34 ET SEQ., AND THE AMENDED AND RESTATED DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS, AND RESTRICTIONS OF THE VILLAS AT MACINTOSH FARMS CLUSTER DEVELOPMENTS RECORDED AT INSTRUMENT NO. 200204260544 OF THE CUYAHOGA COUNTY RECORDS.

AMENDMENT TO THE
CODE OF REGULATIONS OF
THE VILLAS AT MACINTOSH FARMS CLUSTER ASSOCIATION, INC.

WHEREAS, the Code of Regulations of The Villas at MacIntosh Farms Cluster Association, Inc. (the "Code") was recorded at Cuyahoga County Records Volume 96-00213, Page 34. et seq., and

WHEREAS, The Villas at MacIntosh Farms Cluster Association, Inc. (the "Association") is a corporation consisting of all Owners in Villas at MacIntosh Farms and as such is the representative of all Owners, and

WHEREAS, Article VII, Section 6 of said Code authorizes amendments to the Code, and

WHEREAS, a meeting of the Association's Owners was held on or about July 9, 2009, and, at such meeting and any adjournment thereof, Owners representing at least 50% of the voting power of the Association executed, in person or by proxy, an instrument in writing setting forth specifically the matter to be modified (the "Amendment"), and

WHEREAS, the Association has in its records the signed, written consents to Amendment B signed by Owners representing 51.98% of the Association's voting power, together with the minutes from said meeting and any adjournment thereof, and

WHEREAS, the Association has in its records the power of attorney signed by Owners representing 51.98% of the Association's voting power authorizing the Association's officers to execute Amendment B on their behalf, and
Owners

WHEREAS, the proceedings necessary to amend the Code as required by the Code have in all respects been complied with.

NOW THEREFORE, the Code of Regulations of The Villas at MacIntosh Farms Cluster Association, Inc. is hereby amended by the following:

AMENDMENT A

*[Intentionally Left Blank – Previously recorded at Cuyahoga County Records
Instrument No. 200611210152 on November 21, 2006]*

AMENDMENT B

MODIFY CODE OF REGULATIONS ARTICLE II, SECTION 11 entitled, "Quorum." Said modification, to be made on Page 4 of the Code, attached to and made a part of the Declaration, as recorded at Cuyahoga County Records, Volume 96-00213, Page 34 et seq., is as follows (deleted language is crossed-out; new language is underlined):

Section 11. Quorum. Except as otherwise provided in this Code or in the Declaration, the presence of those Class "A" Members of the Association in person or by proxy ~~of at least one-third 1/3 of the voting power of the Class "A" Members of the Association~~ shall constitute a quorum at all meetings of the Association. If there are Voting Members, the presence in person or by alternate of Voting Members ~~exercising at least a majority of the voting power of the Association~~ shall constitute a quorum at all meetings of the Association. Any provision in the Declaration concerning quorums is specifically incorporated herein.

Any conflict between this provision and any other provisions of the Declaration and Code of Regulations shall be interpreted in favor of this amendment regarding quorum at Association meetings. 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 in the court of common pleas within one year of the recording of the amendment.

IN WITNESS WHEREOF, the said The Villas at MacIntosh Farms Cluster Association, Inc. has caused the execution of this instrument this 5th day of October, 2009.

THE VILLAS AT MACINTOSH FARMS CLUSTER ASSOCIATION, INC.

By: Mike Niemczuba
MIKE NIEMCZUBA, its President

By: Mary Ann Kannenberg
MARY ANN KANNENBERG, its Secretary

STATE OF OHIO)
)
COUNTY OF _____) SS

BEFORE ME, a Notary Public, in and for said County, personally appeared the above named The Villas at MacIntosh Farms Cluster Association, Inc., by its President and its Secretary, who acknowledged that they did sign the foregoing instrument, on Page 4 of 5, 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 Summit, Ohio, this 23rd day of October, 2009.

Denise L. Bogucki
NOTARY PUBLIC

Place notary stamp here:

DENISE LYNN BOGUCKI
Notary Public, State of Ohio
My Commission Expires Jan. 17, 2013
Recorded in Summit County

This instrument prepared by:
KAMAN & CUSIMANO, LLC, Attorneys at Law
2000 Terminal Tower
50 Public Square
Cleveland, Ohio 44113
(216) 696-0650

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RECORDED THIS DATE
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CUYAHOGA CO. RECORDER

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VOL. 96-00213 PAGE 34

CODE OF REGULATIONS

OF

**THE VILLAS AT MacINTOSH FARMS CLUSTER ASSOCIATION, INC.,
A Non-Profit Ohio Corporation**

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CODE OF REGULATIONSOFTHE VILLAS AT MacINTOSH FARMS CLUSTER ASSOCIATION, INC.Article IName, Principal Office, and Definitions

Section 1. Name. The name of the Association shall be THE VILLAS AT MacINTOSH FARMS CLUSTER ASSOCIATION, INC., an Ohio non-profit corporation (hereinafter sometimes referred to as the "Association").

Section 2. Principal Office. The principal office of the Association shall be located in Broadview Heights, Cuyahoga County, Ohio. The Association may have such other offices, either within or without Broadview Heights, as the Board of Trustees ("Board") may determine or as the affairs of the Association may require.

Section 3. Definitions. The words used in this Code of Regulations ("Code") shall have the same meaning as set forth in that Declaration of Covenants, Conditions, Easements and Restrictions for The Villas at MacIntosh Farms, a Cluster Development, of even date (said declaration, as amended, restated, or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), unless the context shall prohibit.

Article IIAssociation: Meetings, Quorum, Voting, Proxies

Section 1. Membership. The Association shall have two (2) classes of membership, Class "A" and Class "B" ("Members"), as more fully set forth in the Declaration, the terms of which pertaining to memberships are specifically incorporated herein by reference.

Section 2. Place of Meetings. Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board either on the Property or as convenient thereto as possible and practical.

Section 3. Annual Meetings. The first meeting of the Members, whether a regular or special meeting, shall be held within thirty (30) days after the termination of the Class "B" Control Period specified in Article III, Section 2 hereof, unless the Developer determines in its sole discretion to call a special meeting prior thereto. The next annual meeting shall be set by the Board so as to occur no later than ninety (90) days after the close of the Association's fiscal year. Subsequent regular annual meetings of the Members shall be held within thirty (30) days of the same day of the same month of each year thereafter at an hour set by the Board. Subject to the foregoing, the annual meeting of the Members shall be held at a date and time as set by the Board.

Section 4. Special Meetings. The Developer or the President of the Association may call special meetings. In addition, after the Developer is no longer a Class "B" Member, it shall be the duty of the President of the Association to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board or upon a petition signed by holders of at least ten (10%) percent of the total votes of the Association. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 5. Notice of Meetings. A written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than seven (7) nor more than sixty (60) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when required by statute or this Code, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered three (3) days after it is deposited in the United States mail addressed to the Class "A" Member (or to the Voting Member if and when Voting Members are created pursuant to a Subsequent Amendment to the Declaration) at his address as it appears on the records of the Association, with postage thereon prepaid.

Section 6. Waiver of Notice. Waiver of notice of meeting of a Class "A" Member or a Voting Member, as the case may be, shall be deemed the equivalent of proper notice. Any Class "A" Member or Voting Member, as the case may be, may, in writing, waive notice of any meeting of the Voting Members, either before or after such meeting. Attendance at a meeting by a Class "A" Member or a Voting Member, whether in Person

or by proxy, shall be deemed a waiver by such Class "A" Member or Voting Member of notice of the time, date, and place thereof, unless such Class "A" Member or Voting Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed a waiver of notice of all business transacted thereat unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

Section 7. Adjournment of Meetings. If any meetings of the Association cannot be held because a quorum is not present, a majority of the Class "A" Members or Voting Members, as the case may be, who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Class "A" Members or Voting Members in the manner prescribed for regular meetings.

The Class "A" Members or Voting Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Class "A" Members or Voting Members to leave less than a quorum, provided that at least twenty-five (25%) percent of the total votes of the Association remains present in person or by proxy, and provided further that any action taken shall be approved by at least a majority of the Voting Members required to constitute a quorum.

Section 8. Voting. The voting rights of the Members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated herein.

Section 9. Proxies. Class "A" Members may act or vote in person or by proxy. The person appointed as proxy need not be a member of the Association. Designation by a member or members of a proxy to vote or act on his or her behalf shall be made in writing to the Secretary of the Association (or if there is no Secretary, then with the person conducting the meeting for which the proxy is given) at or before the meeting and shall be revocable at any time by actual notice to the Secretary of the Association by the member or members making such designation. ~~Notice to the Association in writing or in open meeting of the revocation of the designation of a proxy shall not affect any vote or act previously taken or authorized.~~ The presence at a meeting of the person appointing

a proxy does not revoke the appointment. Voting Members may not vote by proxy, but only in person or through their designated alternates.

Section 10. Majority. As used in this Code, the term "majority" shall mean those votes, owners, or other group as the context may indicate totaling more than fifty (50%) percent of the total number.

Section 11. Quorum. Except as otherwise provided in this Code or in the Declaration, the presence in person or by proxy of at least one-third (1/3) of the voting power of the Class "A" Members of the Association shall constitute a quorum at all meetings of the Association. If there are Voting Members, the presence in person or by alternate of Voting Members exercising at least a majority of the voting power of the Association shall constitute a quorum at all meetings of the Association. Any provision in the Declaration concerning quorums is specifically incorporated herein.

Section 12. Conduct of Meetings. The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring thereat.

Section 13. Action Without A Meeting. Any action required by law to be taken at a meeting of the Class "A" Members or the Voting Members, or any action which may be taken at a meeting of the Class "A" Members or the Voting Members, may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the Class "A" Members or the Voting Members entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a unanimous vote of the Class "A" Members or the Voting Members.

Article III

Board of Trustees: Number, Powers, Meetings

A. Composition and Selection.

Section 1. Governing Body: Composition. The affairs of the Association shall be governed by the Board of Trustees, each of whom shall have one (1) vote. Except with respect to Trustees appointed by the Developer, the Board shall be Members or spouses of such Members; provided, however, no person and his or her spouse may serve on the Board at the same time. If a Member is a corporation or partnership, having the authority to designate a Trustee(s), a certificate signed by such Member shall be filed with the

Secretary of the Association naming such Trustee(s), which certificate shall be conclusive until a subsequent substitute certificate is filed with the Secretary of the Association.

Section 2. Trustees During Class "B" Control. The Trustees shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member until up to one hundred eighty (180) days after the first to occur of the following ("Class "B" Control Period"):

- (a) when one hundred eighty (180) Living Units have been sold and conveyed to Persons other than the Developer or Builders holding title solely for purposes of development and sale;
- (b) December 31, 2005; or
- (c) when, in its discretion, the Class "B" Member so determines.

Section 3. Right to Disapprove Actions. This Section 3 may not be amended without the express, written consent of the Class "B" Member as long as the Class "B" membership exists.

So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove actions of the Board and the Design Review Committee, as is more fully provided in this Section. This right shall be exercisable only by the Class "B" Member, its successors, and assigns who specifically take this power in a recorded instrument. The right to disapprove shall be as follows:

No action authorized by the Board or Design Review Committee shall become effective, nor shall any action, policy, or program be implemented until and unless:

- (a) The Class "B" Member shall have been given written notice of all meetings and proposed actions approved at meetings of the Board or any committee thereof by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice complies as to the Board meetings with Article III, Sections 8, 9, and 10 of this Code and which notice shall, except in the case of the regular meetings held pursuant to this Code, set forth in reasonable particularity the agenda to be followed at said meeting; and
- (b) The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor

of any prospective action, policy, or program to be implemented by the Board, any committee thereof, or the Association. The Class "B" Member, its representatives or agents shall have the right to make its concerns, thoughts, and suggestions known to the members of the subject committee and/or the Board. The Class "B" Member shall have the right to disapprove any action, policy, or program authorized by the Board or any committee thereof and to be taken by the Board, such committee, the Association, or any individual member of the Association, if Board, committee, or Association approval is necessary for such action. This right may be exercised by the Class "B" Member, its representatives, or agents at any time within ten (10) days following the meeting held pursuant to the terms and provisions hereof. This right to disapprove may be used to block proposed actions but shall not extend to the requiring of any action or counteraction on behalf of any committee, or the Board or the Association. The Class "B" Member shall not use its right of disapproval to require a reduction in the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

Section 4. Number of Trustees. The number of Trustees in the Association shall be not less than three (3) nor more than seven (7), as provided in Section 6 below. The initial Board shall consist of three (3) members as identified in the Articles of Incorporation of the Association.

Section 5. Nomination of Trustees. Except with respect to Trustees selected by the Class "B" Member, nominations for election to the Board of Trustees shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Trustees, and three (3) or more Members of the Association. The Nominating Committee shall be appointed by the Board not less than thirty (30) days prior to each annual meeting of the Class "A" Members or Voting Members to serve a term of one (1) year or until their successors are appointed, and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled. Nominations shall also be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the Class "A" Members or Voting Members and to solicit votes.

Section 6. Election and Term of Office. Notwithstanding any other provision contained herein:

(a) Within thirty (30) days after the time Class "A" Members own at least forty-five (45) of the Living Units, or whenever the Class "B" Member earlier determines,

the Association shall call a special meeting at which the Class "A" Members or the Voting Members, as the case may be, shall elect one (1) of the three (3) Trustees. The remaining two (2) Trustees shall be appointees of the Class "B" Member. The Trustee elected by the Class "A" Members or the Voting Members shall not be subject to removal by the Class "B" Member acting alone and shall be elected for a term of two (2) years or until the happening of the event described in subsection (b) below, whichever is shorter. If such Trustee's term expires prior to the happening of the event described in subsection (b) below, a successor shall be elected for a like term.

(b) Within thirty (30) days after the time Class "A" Members own at least ninety (90) of the Living Units, or whenever the Class "B" Member earlier determines, the Board shall be increased to five (5) Trustees. The Association shall call a special meeting at which Class "A" Members or Voting Members, as the case may be, shall elect two (2) of the five (5) Trustees. The remaining three (3) Trustees shall be appointees of the Class "B" Member. The Trustees elected by the Class "A" Members or Voting Members shall not be subject to removal by the Class "B" Member acting alone and shall be elected for a term of two (2) years or until the happening of the event described in subsection (c) below, whichever is shorter. If such Trustees' terms expire prior to the happening of the event described in subsection (c) below, successors shall be elected for a like term.

(c) Within thirty (30) days after Class "A" Members own at least one hundred thirty-five (135) Living Units, or whenever the Class "B" Member earlier determines, the Board shall be increased to seven (7) Trustees. The Association shall call a special meeting at which Class "A" Members or Voting Members, as the case may be, shall elect four (4) of the seven (7) Trustees. The remaining three (3) Trustees shall be appointees of the Class "B" Member. The Trustees elected by the Class "A" Members or Voting Members shall not be subject to removal by the Class "B" Member acting alone and shall serve until the first annual meeting following the termination of the Class "B" Control Period. If such annual meeting occurs within thirty (30) days after termination of the Class "B" Control Period, this subsection shall not apply and Trustees shall be elected in accordance with subsection (d) below.

(d) At the first annual meeting of the membership after the termination of the Class "B" Control Period specified in Section 2 of this Article III, the Class "A" Members or the Voting Members shall elect all seven (7) Trustees. Immediately prior to such election, all persons previously elected or appointed, whether by the Developer or by the Class "A" Members (or Voting Members), shall resign; provided, however, that such persons shall be eligible for re-election to the Board of Trustees. Three (3) Trustees shall be elected to serve a term of three (3) years, two (2) Trustees shall be elected for a

term of two (2) years, and two (2) Trustees shall be elected to serve a term of one (1) year. Upon the expiration of the initial term of office of each such Trustee, a successor shall be elected to serve a term of three (3) years. Thereafter, all Trustees shall be elected to serve three (3) year terms. For the purpose of the election of Trustees, each Class "A" Member or each Voting Member shall have one (1) equal vote, and Voting Members representing Living Units owned by the Class "B" Member shall also be entitled to vote, except as otherwise provided above.

At any election of Trustees, each Class "A" Member or each Voting Member shall be entitled to cast one (1) equal vote with respect to each vacancy to be filled. The candidates receiving the largest number of votes shall be elected. Such election shall be by written secret ballot whenever requested by a member of the Association; but unless the request is made, the election may be conducted in any manner approved as such meeting. The Trustees elected by the Class "A" Members or the Voting Members shall hold office until their respective successors have been elected by the Association. The Trustees may be elected to serve any number of consecutive terms. The persons so elected shall take office upon such election.

Section 7. Removal of Trustees and Vacancies. Any Trustee elected by the Class "A" Members or the Voting Members may be removed, with or without cause, by the vote of Class "A" Members or the Voting Members holding a majority of the votes entitled to be cast for the election of such Trustee. Any Trustee whose removal is sought shall be given notice prior to any meeting called for that purpose. A Trustee who was elected solely by the votes of Class "A" Members or the Voting Members other than the Developer may be removed from office prior to the expiration of his or her term only by the votes of a majority of Class "A" Members or the Voting Members other than the Developer. Upon removal of a Trustee, a successor shall then and there be elected by the Class "A" Members or the Voting Members entitled to elect the Trustee so removed to fill the vacancy for the remainder of the term of such Trustee.

Any Trustee elected by the Class "A" Members or the Voting Members who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of any assessment or other charge due the Association for more than thirty (30) days may be removed by a majority of the Trustees present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board to fill the vacancy for the remainder of the term. In the event of the death, disability, or resignation of a Trustee, a vacancy may be declared by the Board, and it may appoint a successor. Any Trustee appointed by the Board shall serve for the remainder of the term of the Trustee who vacated the position.

B. Meetings.

Section 8. Organization Meetings. The first meeting of the Board following each annual meeting of the membership shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

Section 9. Regular Meetings. Regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Board, but at least four (4) such meetings shall be held during each fiscal year with at least one (1) per quarter. Notice of the time and place of the meeting shall be communicated to members of the Board not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any member of the Board who has signed a waiver of notice or a written consent to holding of the meeting.

Section 10. Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the President, Vice President, or Secretary of the Association, or by any two (2) members of the Board. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall be given to each member of the Board by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the member of the Board or to a person at the member's office or home who would reasonably be expected to communicate such notice promptly to the member of the Board; or (d) by telegram, charges prepaid. All such notices shall be given or sent to the member's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least seventy-two (72) hours before the time set for the meeting.

Section 11. Waiver of Notice. The transactions of any meetings of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the members of the Board not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any member of the Board who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 12. Quorum of Board. At all meetings of the Board, a majority of the members of the Board shall constitute a quorum for the transaction of business, and the votes of a majority of the members of the Board present at a meeting at which a quorum is present shall constitute the decision of the Board. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of members of the Board, if any action taken is approved by at least a majority of the required quorum for that meeting. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 13. Compensation. No member of the Board shall receive any compensation from the Association for acting as such unless approved by Voting Members representing a majority vote of the total vote of the Association at a regular or special meeting of the Association; provided any Trustee may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other Trustees.

Section 14. Conduct of Meetings. The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of the Board, recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings. Meetings may be conducted by telephone and shall be considered as any other meeting, provided all Trustees are able through telephone connection to hear and to be heard.

Section 15. Open Meetings. Subject to the provisions of Sections 16 and 17 of this Article, all meetings of the Board shall be open to all Class "A" Members or Voting Members, but Class "A" Members or Voting Members other than Trustees may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a member of the Board. In such case, the President may limit the time any Class "A" Member or Voting Member may speak.

Section 16. Executive Session. The Board may, with approval of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 17. Action Without a Formal Meeting. Any action to be taken at a meeting of the Board or any action that may be taken at a meeting of the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members of the Board, and such consent shall have the same force

and effect as a unanimous vote. An explanation of the action taken shall be posted at a prominent place or places within the Common Areas within three (3) days after the written consents of all the members of the Board have been obtained.

C. Powers and Duties.

Section 18. Powers. Except as set forth in the Declaration and in this Code, the Board shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or this Code directed to be done and exercised exclusively by the Class "A" Members or the Voting Members or the membership generally.

The Board shall delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

In addition to the duties imposed by this Code or by any resolution of the Association that may be hereafter adopted, the Board shall have the power to and be responsible for the following, in way of explanation, but not limitation:

(a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the Common Expenses;

(b) from and after the **Subsidy Period**, making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment; provided, however, that unless otherwise determined by the Board, the annual assessment against the proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for said month;

(c) providing for the operation, care, upkeep, and maintenance of all of the Common Areas;

(d) designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Association, its property, and the Common Areas and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association; provided, however, that any reserve fund may be deposited, in the Trustee's best business judgment, in depositories other than banks;

(f) making and amending rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Areas in accordance with the provisions of the Declaration and this Code after damage or destruction by fire or other casualty;

(i) enforcing by legal means the provisions of the Declaration, this Code, and the rules and regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(j) obtaining and carrying insurance against casualties and liabilities, as provided in the Declaration, and paying the premium cost thereof;

(k) paying the cost of all services rendered to the Association or its Members and not chargeable directly to individual Owners;

(l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by the Owners and mortgagees, their duly authorized agents, accountants, or attorneys, during general business hours on working days at the time and in a manner that shall be set and announced by the Board for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting practices;

(m) make available to any prospective purchaser of a Living Unit or a Vacant Sublot, any Owner of a Living Unit or a Vacant Sublot, any first mortgagee, and the holders, insurers, and guarantors of a first mortgage on any Living Unit or Vacant Sublot, current copies of the Declaration, the Articles, this Code, rules governing Living Units and Vacant Sublots, and all other books, records, and financial statements of the Association. The Association may impose a reasonable charge for the foregoing in order to defray duplication costs;

(n) permit utility suppliers to use portions of the Common Areas reasonably necessary to the ongoing development or operation of the Property; and

(o) entering into easement agreements, license agreements and other agreements with utility companies (both private and public), with Owners within the Property, and with the owners of neighboring properties.

Section 19. Management Agent.

(a) The Board may employ for the Association a professional management agent or agents at a compensation established by the Board to perform such duties and services as the Board shall authorize. The Board may delegate to the managing agent or manager, subject to the Board's supervision, all of the powers granted to the Board by this Code, other than the powers set forth in subparagraphs (a), (b), (f), (g), and (i) of Section 18 of this Article. The Developer, or an affiliate of the Developer, may be employed as managing agent or manager.

(b) No management contract may have a term in excess of three (3) years and must permit termination by either party without cause and without termination fee on ninety (90) days' or less written notice.

Section 20. Accounts and Reports. The following management standards of performance will be followed unless the Board by resolution specifically determines otherwise:

(a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;

(b) accounting and controls should conform with established AICPA guidelines and principles, which require, without limitation, (i) a segregation of accounting duties, (ii) disbursements by check requiring two (2) signatures, and (iii) cash disbursements limited to amounts of One Hundred (\$100.00) Dollars and under;

(c) cash accounts of the Association shall not be comingled with any other accounts;

~~(d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any item of value received shall benefit the Association;~~

(e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board; and

(f) commencing at the end of the month in which the first Living Unit is sold and closed, quarterly financial reports shall be prepared for the Association containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all receipt and disbursement activity for the preceding period on an accrual basis;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;

(iv) a balance sheet of an accounting date which is the last day of the preceding period;

(v) a balance sheet as of the last day of the Association's fiscal year and an operating statement for said fiscal year, which shall be distributed within ninety (90) days after the close of a fiscal year;

(vi) a delinquency report listing all Owners who have been delinquent in paying the monthly installments of assessments at the time of the report and describing the status of any action to collect such installments which remain delinquent (A monthly installment of the assessment shall be considered to be delinquent on the fifteenth (15th) day of each month unless otherwise determined by the Board); and

(vii) an annual report consisting of at least the following shall be distributed to all Voting Members (or all Class "A" Members if there are no Voting Members) within one hundred twenty (120) days after the close of the fiscal year: (1) a balance sheet as of the end of the fiscal year; (2) an operating (income) statement for the fiscal year; and (3) a statement of changes in financial position for the fiscal year. Ordinarily, the annual report referred to above shall be prepared by an independent accountant for any fiscal year in which the gross income to the Association exceeds One Hundred Thousand (\$100,000) Dollars. If said report is not prepared by an independent accountant, it shall be accompanied by the certifi-

cate of an authorized officer of the Association that the statements were prepared without audit from the books and records of the Association.

Section 21. Borrowing. The Board shall have the power to borrow money for the purpose of repair or restoration of the Common Areas or Areas of Common Responsibility without the approval of the Class "A" Members or the Voting Members of the Association; provided, however, the Board shall obtain membership approval in the same manner as is provided in Section 9.1 of the Declaration for Assessments for borrowings made for matters referred to in said Section.

Section 22. Rights of the Association. With respect to the Common Areas or other Areas of Common Responsibility, and in accordance with the Articles and this Code, the Association shall have the right to contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operational, or other agreements with trusts, condominiums, or neighborhood and other homeowners or residents associations, both within and without the Property. Such agreements shall require the consent of two-thirds (2/3) of the votes of all members of the Board.

Section 23. Hearing Procedure: Compliance and Non-Monetary Default.

(a) Enforcement. In the event of a violation by any Member or any Tenant or other occupant of a Member (other than the nonpayment of Assessments or charges, which is governed by Article IX of the Declaration) of any of the provisions of the Declaration, this Code, or the Rules, the Association or a committee created by this Code (e.g., the Covenants Committee) or by the Board shall notify the Member and any Tenant or other occupant of the violation, by written notice. If such violation is not cured as soon as is reasonably practical and in any event within seven (7) days after such written notice, or if the violation is not capable of being cured within such seven (7) day period, if the Member or Tenant or other occupant fails to commence and diligently proceed to completely cure such violation as soon as is reasonably practical within seven (7) days after written demand by the Association or such committee, or if any similar violation is thereafter repeated, the Association or such committee may, at its option:

(i) Impose a fine against the Member or Tenant or other occupant as provided in Subsection (b) of this Section; and/or

(ii) Commence an action to enforce performance on the part of the Member or Tenant or other occupant, and to require the Member to correct such

failure, or for such other relief as may be necessary under the circumstances, including injunctive relief; and/or

(iii) The Association may itself perform any act or work required to correct such failure and, either prior to or after doing so, may charge the Member with all reasonable costs incurred or to be incurred by the Association in connection therewith, plus a service fee equal to fifteen percent (15%) of such costs. In connection with the foregoing, the Association may perform any maintenance or repairs required to be performed, may remove any change, alteration, addition or improvement which is unauthorized or not maintained in accordance with the provisions of the Declaration, and may take any and all other action reasonably necessary to correct the applicable failure; and/or

(iv) Commence an action to recover damages or any other remedy available at law or in equity.

(b) Fines. The amount of any fine shall be a reasonable amount as determined by the Board or the Covenants Committee (as defined in Article V, Section 2). Prior to imposing any fine, the Member or Tenant or other occupant shall be afforded an opportunity for a hearing after reasonable notice to the Member or Tenant or other occupant of not less than ten (10) days, which notice shall include (i) a statement of the date, time and place of the hearing, (ii) a statement of the provisions of the Declaration, this Code or Rules which have allegedly been violated, and (iii) a short and plain statement of the matters asserted by the Association or the committee. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery is entered by the officer, Board member, committee member or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the hearing. The minutes of the hearing shall contain a written statement of the hearing and the sanction, if any, imposed. The Member or Tenant or other occupant shall have an opportunity to respond, to present evidence, and to provide written and oral arguments on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association. At the hearing, the Board or committee shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred, and if the Board or committee so determines, it may impose such fine as it deems appropriate by written notice to the Member or Tenant or other occupant. If the Member or Tenant or other Occupant fails to attend the hearing as set by the Board or committee, the Member or Tenant or other Occupant shall be deemed to have admitted the allegations contained in the notice to the Member or Tenant or other Occupant. Any

fine imposed by the Board or committee shall be due and payable within ten (10) days after written notice of the imposition of the fine, or if a hearing is timely requested, within ten (10) days after written notice of the Board's or committee's decision at the hearing. Any fine levied against a Member shall be deemed an Assessment and if not paid when due all of the provisions of the Declaration relating to the late payment of Assessments shall be applicable. If any fine is levied against a Tenant and is not paid within ten (10) days after same is due, the Association shall have the right to evict the Tenant as hereinafter provided.

(c) Negligence. A Member shall be liable and may be charged by the Association for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a Living Unit or its appurtenances or of the Common Areas.

(d) Responsibility of Members for Tenants. Each Member shall be responsible for the acts and omissions, whether negligent or willful, of his Tenant, and for all employees, agents and invitees of the Member or any such Tenant, and in the event the acts or omissions of any of the foregoing shall result in any damage to the Common Areas, or any liability to the Association, the Member shall be charged for same, limited where applicable to the extent that the expense or liability is not met by the proceeds of insurance carried by the Association. Furthermore, any violation of any of the provisions of the Declaration, this Code, or any Rule, by any Tenant, or any employees, agents or invitees of a Member or any Tenant of a Living Unit, shall also be deemed a violation by the Member, and shall subject the Member to the same liability as if such violation was that of the Member.

(e) Costs and Attorney's Fees. In any legal proceedings commenced by the Association or a committee to enforce the Declaration, this Code and/or the Rules, as said documents may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorneys' and paralegal fees. Any such costs or attorneys' and paralegals' fees awarded to the Association or committee in connection with any action against any Member shall be charged to the Member.

(f) Developer Assessments. The Developer shall not be required to pay any assessments or monies to finance any claim or litigation against the Developer.

(g) No Waiver of Rights. The failure of the Association or a committee or any Member to enforce any covenant, restriction or any other provision of the Declaration,

this Code, or the Rules, as the said documents may be amended from time to time, shall not constitute a waiver of the right to do so thereafter.

(h) Appeal. Following a hearing before a committee, the violator shall have the right to appeal the decision to the Board. To perfect this right, a written notice of appeal must be received by the President or Secretary of the Association within thirty (30) days after the date of receipt of the decision of the committee. No later than thirty (30) days after receipt of the notice of appeal, the Board shall review the minutes of the hearing. The affirmative vote of two-thirds (2/3rds) of the members of the Board shall be required to reverse or modify the decision of the committee.

(i) Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Association, acting through the Board, may elect to enforce any provision of the Declaration, this Code, or the rules and regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or Occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred by the Association in so acting to enforce such rights.

Article IV Officers

Section 1. Officers. The officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The Board may elect such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board. Any two or more offices may be held by the same person, excepting the offices of President and Secretary. The President, Secretary and Treasurer shall be elected from among the members of the Board.

Section 2. Election, Term of Office, and Vacancies. The officers of the Association shall be elected annually by the Board at the first meeting of the Board following each annual meeting of the Members, as herein set forth in Article III. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board for the unexpired portion of the term.

Section 3. Removal. Any officer may be removed by the Board whenever in its judgment the best interests of the Association will be served thereby.

Section 4. Powers and Duties. The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time be specifically conferred or imposed by the Board. The President shall be the chief executive officer of the Association. The Secretary shall have primary responsibility for the preparation and maintenance of all minutes and other records of actions by the Board, and shall provide all notice required hereunder and handle all correspondence or other communications of the Association, either directly or by delegation, to other committees, the management agent, or both. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

Section 5. Resignation. Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. Agreements, Contracts, Deeds, Easements, Leases, Checks. All agreements, contracts, deeds, easements, leases, checks, and other instruments of the Association shall be executed by any two (2) officers of the Association or by such other person or persons as may be designated by resolution of the Board.

Article V Committees

Section 1. General. Committees are hereby authorized to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the members of the Board present at a meeting at which a quorum is present. Such committees shall perform such duties and have such powers as may be provided in the resolution. Each committee shall be composed as required by law and shall operate in accordance with the terms of the resolution of the Board designating the committee or ~~with rules adopted by the Board.~~

Section 2. Covenants Committee. The Board may appoint a Covenants Committee consisting of at least three (3) and no more than five (5) members. Acting in

accordance with the provisions of the Declaration, this Code, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Article III, Section 23 of this Code.

Article VI
Finances of Association (Assessments)

Section 1. Preparation of Estimated Budget. On or before the filing with the Cuyahoga County Recorder of the Declaration, and on or before December 15 of each year thereafter, the Association shall estimate the total amount necessary to pay the Assessments referred to in Article IX of the Declaration for the balance of the calendar year in which the Declaration is filed and, thereafter, for each succeeding calendar year together with a reasonable amount considered by the Association to be necessary for a reserve for contingencies and replacements, and the amounts, if any, which may be received from special assessments, concessions, contracts for special services and facilities, and other sources. On or before December 21, the Association shall notify each Member in writing as to the amount of such estimates, and shall send a copy of such notice to each holder of a first mortgage upon the Ownership Interest of a Member who has made a request in writing for such notification. The failure of the Association to comply strictly with the above time requirements shall not be deemed to be a waiver and shall not prevent the Association from collecting Assessments. The net of the aggregate amounts of such estimates (herein called the "Estimated Cash Requirements") of the next calendar year shall be assessed to those Members required to pay the Assessments according to and as specifically set forth in Article IX of the Declaration. Each Member required to pay Assessments shall pay to the Association or as it may direct, the Assessment made pursuant to this Section on or before the first day of each calendar year, except that the Board may elect to collect annual Assessments quarterly or monthly, in advance. On or before the date of each annual meeting, the Association shall furnish to all Members an itemized accounting of the expenditures for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided, by special Assessments, or otherwise, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited to the last maturing monthly installments due from the Members under the current year's estimate, pro rata. Any net shortage shall be added pro rata to the next installment due after the rendering of the accounting.

Section 2. Reserve for Contingencies and Replacements: Special Assessments. The Association shall build up and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual estimate which may be necessary for the year, shall be charged first against such reserve. If the "Estimated Cash Requirements" proves inadequate for any reason, including nonpayment of any Member's Assessment, the deficiency and any extraordinary expenditures in excess of the reserves therefor shall be assessed to the Members required to pay assessments, pro rata. The Association shall also make any necessary or desirable special Assessments, from time to time which shall be payable at the time or times the Board deems necessary or desirable. The Association shall serve notice of such further Assessments on Members required to pay Assessments, by a statement in writing giving the amount and reasons therefor, and such further assessment shall be payable with the next regular monthly payment becoming due to the Association but not less than ten (10) days after the delivery or mailing of such notice of further Assessment.

Section 3. Failure to Prepare Annual Budget. The failure or delay of the Association to prepare or deliver to a Member any annual or adjusted estimate shall not constitute a waiver or release in any manner of such Member's obligation to pay his share of the Assessments, as herein provided, whenever the same shall be determined, and in the absence of any annual estimate or adjusted estimate, the Member required to pay Assessments pursuant to Article 9.2 of the Declaration shall continue to pay the monthly charge at the existing monthly rate established for the previous period until the Association mails or delivers notice of the new monthly payment due as a result of the determination of the new annual or adjusted estimate.

Section 4. Books and Records of the Association. The Association shall keep full and correct books of account and the same shall be open for inspection by any Member or his representative duly authorized in writing, at such reasonable time or times during normal business hours as may be requested. Upon ten (10) days notice to the Board and payment of a reasonable fee, any Member shall be furnished a statement of his or its account setting forth the amount of any unpaid Assessments or other charges due and owing.

Section 5. Status of Funds Collected by Association. All funds collected hereunder shall be held and expended solely for the purposes designated herein and (except for such special Assessments as may be levied hereunder against less than all of the Members and for such adjustments as may be required to reflect delinquent or prepaid Assessments) shall be deemed to be held for the use, benefit and account of all Members required to pay Assessments pursuant to Article 9.2 of the Declaration.

Section 6. Depository. The depository of the Association shall be such bank or banks and/or such savings and loan association or savings and loan associations and/or such money market fund(s) as shall be designated from time to time by the Board and in which the monies of the Association shall be deposited. Withdrawal of the monies from such accounts shall be only by check signed by such persons as are authorized by the Board.

Section 7. Annual Review. The books of the Association shall be reviewed once a year by the Board and such review shall be completed prior to each annual meeting. If requested by a majority of the members of the Board, such review shall be made by a certified public accountant. In addition and at any time requested by Members or by holders of first mortgages on Ownership Interests possessing in the aggregate fifty percent (50%) or more of the voting power in the Association, the Board shall cause an additional review to be made at the expense of the requesting party.

Section 8. Remedies for Failure to Pay Assessments. If an Owner shall be in default in the payment of any of the aforesaid Assessments, the Association (or Developer if such Assessment was to be paid directly to Developer) shall have all of the remedies set forth anywhere in the Declaration, in this Code or at law or equity to collect such Assessments and all costs associated therewith.

Article VII Miscellaneous

Section 1. Fiscal Year. The initial fiscal year of the Association shall be set by resolution of the Board.

Section 2. Parliamentary Rules. Except as may be modified by Board resolution establishing modified procedures, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Ohio law, the Articles, the Declaration, or this Code.

Section 3. Conflicts. If there are conflicts or inconsistencies between the mandatory provisions of Ohio law, the Articles, the Declaration, and this Code, the mandatory provisions of Ohio law, the Declaration, the Articles, and the Code (in that order) shall prevail.

Section 4. Books and Records.

(a) Inspection by Members and Mortgagees. The Declaration and Code, membership register, books of account, and minutes of meetings of the Members, the Board, and committees shall be made available for inspection and copying by any mortgagee, Member of the Association, or by his or her duly appointed representative at any reasonable time and for a purpose reasonably related to his or her interest as a Member at the office of the Association or at such other place within the Property as the Board shall prescribe.

(b) Rules for Inspection. The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing copies of documents requested.

(c) Inspection by Members of the Board. Every member of the Board shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a member of the Board includes the right to make extracts and copies of documents at the expense of the Association.

Section 5. Notices. Unless otherwise provided in this Code, all notices, demands, bills, statements, or other communications under this Code shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by registered or certified mail, return receipt requested, first class postage prepaid:

(a) if to a Member or a Voting Member, at the address which the Member or Voting Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Living Unit of such Member or Voting Member; or

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by the notice in writing to the Owners pursuant to this Section.

Section 6. Amendment. Prior to the sale and conveyance of the first Living Unit, Developer may unilaterally amend this Code. After such sale and conveyance, the Developer may unilaterally amend this Code so long as it owns any portion of the Property or other lands in MacIntosh Farms, for development and so long as the amendment has no material adverse effect upon the rights of any Member. Thereafter and otherwise, this Code may be amended only by the affirmative vote or written consent or any combination thereof, of Class "A" Members or the Voting Members representing a majority of the total votes of the Association, which shall include a majority of votes of Members other than the Developer or, where the two class Voting structure is still in effect, shall include the Class "B" Member and a majority of the Class "A" Members or Voting Members, as the case may be. However, the percentage of votes necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

No amendment may remove, revoke, or modify any right or privilege of Developer without the written consent of Developer or the assignee of such right or privilege. No amendment may impair the validity or priority of the lien of an Eligible Mortgage Holder or impair the rights granted to an Eligible Mortgage Holder herein without the prior written consent of such Eligible Mortgage Holder.

IN TESTIMONY WHEREOF, the undersigned, being the sole Member of the Association, has caused this Code of Regulations to be duly adopted on or as of the 24th day of November, 1995.

SIGNED IN THE PRESENCE OF: PETROS DEVELOPMENT CORPORATION,
an Ohio corporation

Christine Treen
Print Name CHRISTINE TREEN

By:

Sam Petros, President

Darcy MacGregor
Print Name DARCY MAC GREGOR

STATE OF OHIO

CUYAHOGA COUNTY

)
) SS.
)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named PETROS DEVELOPMENT CORPORATION, an Ohio corporation, by Sam Petros, its President, who acknowledged that he executed the within instrument, that such execution was the free act and deed of said corporation and was his free act and deed both individually and in his capacity as officer.

IN TESTIMONY WHEREOF, I have herein set my hand and notarial seal this 24th day of December, 1995.

Christine M. Trent
Notary Public

CHRISTINE M. TRENT
Notary Public, State of Ohio
Recorded in Cuyahoga Cty.
My Commission Expires Aug. 29, 2000

This Instrument Prepared By:

Richard A. Rosner, Attorney at Law
Kahn, Kleinman, Yanowitz & Arnson Co., L.P.A.
The Tower At Erieview
Suite 2600
Cleveland, Ohio 44114
(216) 696-3311

262944

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Done
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**SUBSEQUENT AMENDMENT NO. 1 TO DECLARATION
OF COVENANTS, CONDITIONS, EASEMENTS AND
RESTRICTIONS OF THE VILLAS AT MACINTOSH FARMS
CLUSTER DEVELOPMENTS,
BROADVIEW HEIGHTS, OHIO**

RECORDED THIS DATE
THANK YOU
CIVILIAN CIVIL RECORDER
96 JUN -4 PM 3:35

THIS SUBSEQUENT AMENDMENT NO. 1 ("Amendment No. 1") to the Declaration (hereinafter defined) made as of the 20th day of MAY, 1996 by PETROS DEVELOPMENT CORPORATION, INC. an Ohio corporation (the "Developer").

THOMAS J. NEFF, P. E., P. S.
COUNTY ENGINEER
TAX MAP DIVISION
APPROVED FOR RECORD
TRANSFER
SPAT

PREAMBLE

A. On January 10, 1996 the Developer caused a document entitled "Declaration of Covenants, Conditions, Easements and Restrictions of The Villas at Macintosh Farms Cluster Developments, Broadview Heights, Ohio" (the "Declaration") to be filed for record in Volume 96-00212, Page 40 of Cuyahoga County Records for "Property" known as The Villas at Macintosh Farms Cluster Developments (Phase One - Group "H"), said Property being described in Exhibit "A" of the Declaration. Unless otherwise defined herein, the terms capitalized herein shall have the same meaning as defined in the Declaration.

B. The Developer reserved the right in Section 15.12(a) of the Declaration for so long as the Developer or a successor designated by the Developer is the Owner of a fee simple interest in the Property, to amend or modify any of the provisions of the Declaration or to waive any of the provisions, either generally or with respect to particular real property, if in its judgment, the development or lack of development of the Property requires such modification or waiver, or if in its judgment the purposes of the general plan of development of the Living Units will be better served by said modification or waiver, provided no such amendment, modification or waiver shall materially or adversely affect the value of existing Living Units or shall prevent a Living Unit used by the Owner in the same manner that said Living Unit was used prior to the adoption of said amendment, modification or waiver.

C. The Developer currently is the Owner of all of the Sublots within the Property.

D. The Developer pursuant to the authority of Section 15.12(a), desires to amend the Declaration as hereinafter set forth. This Amendment transfers the responsibility for exterior maintenance of Living Units from the Association to the Owners of Living Units.

NOW, THEREFORE, the Developer hereby declares the following by this Amendment No. 1:

1. Section 6.4 of the Table of Contents is hereby amended to read as follows: "Maintenance of Originally Installed Landscaping by the Association".

2. Subsection (6) of Section 2.2(a) entitled "AREAS OF COMMON RESPONSIBILITY" of the Declaration is hereby amended to read as follows: "(6) Maintenance of Originally Installed Landscaping in accordance with Section 6.4 hereof."

3. The last sentence of Section 3.8 of the Declaration entitled "Maintenance Easement" is hereby amended to read as follows: "Furthermore, the Association is granted easement rights to enter upon a Sublot for the purposes set forth in Section 6.4 hereof; i.e., the maintenance of Originally Installed Landscaping."

4. Section 6.4 of the Declaration entitled "Exterior Maintenance of Living Units and Originally Installed Landscaping by the Association" is hereby amended to read as follows:

"Section 6.4 - Snow Removal and Maintenance of Originally Installed Landscaping by the Association. In addition to the maintenance and repair of the Common Areas, the Association shall provide snow removal from driveways and maintenance of the Originally Installed Landscaping. Each Owner is responsible for the exterior maintenance, repair and replacement of such Owner's Living Unit. If an Owner fails to properly maintain, repair or replace the exterior of such Owner's Living Unit, the Association shall have the right, but not the obligation, to maintain, repair, or replace the same, in which event, the cost of such maintenance, repair or replacement shall be added to and become part of the Assessment for which such Living Unit is subject. For the purpose solely for performing the maintenance required by this Section, the Association, through its duly authorized agents, employees and contractors, shall have the right and license, to enter upon a Sublot containing a Living Unit."

5. Except as amended herein, all covenants, conditions, easements and restrictions of the Declaration shall remain in full force and effect.

TRANSFER NOT REQUIRED

JMG/KAP/130023.1

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JUN 4 1996

ADU
CLY. COUNTY AUDITOR

MAY 29 1996

