

DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS  
AND RESERVATION OF EASEMENTS FOR  
AUTUMN HILL ESTATES IN THE CITY OF SEVEN HILLS  
CUYAHOGA COUNTY, OHIO

CERTIFICATE OF AUDITOR

A copy of this declaration with Plat prepared by Elewski and Associates, Inc.  
attached was filed with this office on \_\_\_\_\_, 2003

\_\_\_\_\_  
Cuyahoga County Auditor

By \_\_\_\_\_  
Deputy Auditor

The Declaration of Covenants, Conditions, Restrictions and Reservation of  
Easements for Autumn Hill Estates Senior Residential Development, made on or as  
of the \_\_\_\_\_ day of \_\_\_\_\_, 2003, is hereinafter set forth in the Table of  
Contents and the following pages 1 through 26.

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**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND  
RESERVATION OF EASEMENTS FOR AUTUMN HILL ESTATES IN THE CITY  
OF SEVEN HILLS**

Declarant, **Yayouni Ltd.**, an Ohio limited liability company, is the owner of certain real estate in the City of Seven Hills, Cuyahoga County, Ohio, described in Exhibit "A", attached hereto and incorporated herein (hereinafter referred to as the "Property").

Declarant hereby declares that the Property shall be held, sold and conveyed subject to the covenants, conditions, restrictions and reservation of easements herein, which are for the purpose of protecting the value and desirability of and which shall run with the Property submitted hereunder, and shall be binding on all parties having any right, title or interest in the Property, its successors and assigns, and shall inure to the benefit of each owner thereof and their respective heirs and personal representatives.

**ARTICLE I. DEFINITIONS**

**1.1. Assessments.** "Assessments" means those charges upon the Lots established by Article VI of this Declaration.

**1.2. Association.** "Association" means Autumn Hill Estates Homeowners Association, Inc., an Ohio nonprofit corporation, its successors and assigns. Except as the context otherwise requires "Association" shall mean the Board of Trustees acting on behalf of the Association.

**1.3. Board.** "Board" shall mean the Board of Trustees of the Association.

**1.4. Builder.** "Builder" means any person or entity (including the Declarant) that acquires a Lot for the purpose of improving that Lot and erecting a Dwelling Unit thereon for resale to an Owner.

**1.5. City.** "City" means the City of Seven Hills.

**1.6. Common Areas.** "Common Areas" shall mean any real estate and improvements thereon owned or leased by the Association, including easements in favor of the Association, and is intended to include all of the Property other than the 73 Lots described in paragraph 1.12 below.

**1.7. Common Expenses.** "Common Expenses" means expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves.

- 1.8. Declarant.** "Declarant" means Yayouni, Ltd., an Ohio limited liability company.
- 1.9. Declaration.** "Declaration" means this Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Autumn Hill Estates, including any amendments hereto.
- 1.10. Development Rights.** "Development Rights" means the rights reserved by the Declarant pursuant to Article XI.
- 1.11. Dwelling Unit.** "Dwelling Unit" means a building situated on the Property designed and intended for use and occupancy as a single-family residence.
- 1.12. Lot.** "Lot" means the physical portion of the Property designated for separate ownership or occupancy, the boundaries of which are described pursuant to Article II, Section 2.1. There are 73 lots in this Autumn Hill Estates development, as shown on the Record Plan, a copy of which is attached hereto and made a part hereof.
- 1.13. Member.** "Member" means any person or entity that becomes a member of the Association as provided in Article V, Section 5.2 hereof.
- 1.14. Occupant.** "Occupant" means any person in possession of a Lot or Dwelling Unit whether or not such possession is lawful and shall include, but not be limited to, an Owner's family members, guests, invitees, tenants and lessees.
- 1.15. Owner.** "Owner" means the Declarant or other person or entity who owns a Lot, but does not include a person or entity having an interest in a Lot solely as security for an obligation.
- 1.16. Planting Area.** Planting Area means the land area immediately contiguous to each Dwelling Unit to a depth of no more than six feet (6') from the exterior walls of such Dwelling Unit or such lesser area as may be designated in Rules and Regulations adopted by Association. It is intended that such Areas be used to permit Lot Owners to individually plant and/or decorate around their house; provided that such Planting Areas must be in good taste, consistent with the landscaping of the common areas and shall be maintained by each Owner.
- 1.17. Property.** "Property" means the real estate described in Exhibit "A" attached hereto and any other property, which may be made subject to the terms of this Declaration, together with any improvements made thereon.
- 1.18. Record Plan.** "Record Plan" means the record plat for Autumn Hill Estates as prepared by Elewski and Associates, Inc., JANUARY 5, 2003, entitled "Autumn Hill Estates Development", attached hereto.
- 1.19. Detention Basin.** "Detention Basin" means that portion of the Property set aside for storm water detention management designated a Detention Basin on the Record Plan.

**1.20. Special Declarant Rights.** "Special Declarant Rights" means the rights reserved by the Declarant in Article XII.

**1.21. Surface Water Management System.** "Surface Water Management System" shall mean the system designed for the Property by the Declarant for storm water, soil erosion and sediment control. Such system shall include the storm sewer system, Detention Basin and all existing watercourses, ditches and swales constructed as part of the Autumn Hill Estates development, whether or not located in utility or drainage easements within the Property.

**1.22. Utilities.** "Utilities" means: gas, electricity, telephone, telecommunication, water, storm sewer, and sanitary sewer lines or facilities for or used in connection therewith which lines or facilities are located anyplace on the Property except within, under or on a Dwelling Unit.

## ARTICLE II. LOTS

**2.1. Description of Lot Boundaries.** The boundaries of the Lots shall be those as set forth on the Record Plan.

## ARTICLE III. COMMON AREAS AND EASEMENTS

**3.1. Description.** The Common Areas shall be any portion of, or interest in, the Property owned by the Association, including easements in favor of the Association. The Common Areas include the private streets within the Property as identified on the Record Plan. The private streets are designated on the Record Plan as: Elmhurst Drive Extension; Falling Leaf Drive and Harvest Lane. These private streets are expressly declared to be easements for ingress and egress for the benefit of the Owners and others as set forth in this Declaration. The Common Areas also include the Detention Basin, certain common areas designated A and B on the Record Plan, and such other areas as are designated on the Record Plan.

**3.2. Easements.** The Lots and Common Areas shall include certain easements. There are designated on the Record Plan certain easements which are binding upon and inuring to the benefit of the Lots. Such easements are designated by name, record reference and/or identification on the Record Plan. These easements shall be appurtenant to and pass with the title to the Lots.

**3.2.1. Enjoyment.** The Common Areas shall be subject to an easement of enjoyment in favor of the Lots and Owners, but said easement shall be limited to the specific purposes for which the Common Areas are created. Any persons who are not Owners thereof shall construe nothing in this paragraph 3.2.1 to provide any right of access to the Lots.

**3.2.2. Drainage.** The Property shall be subject to easements in favor of the Lots benefited for surface water management as further defined in Article IV. No

Owner shall do anything within a Lot or Dwelling Unit, which shall unreasonably increase the flow of surface water or impede the management of surface water for the property.

**3.2.3. Utilities.** The Lots and certain of the Common Areas shall be subject to utility easements as shown on the Record Plan.

**3.2.4. Sidewalk Easement.** The Lots and certain of the Common Areas shall be subject to a 4-foot sidewalk easement as shown on the Record Plan. The sidewalk easement is declared to be an easement for ingress and egress for the benefit of Owners and others as set forth in this Declaration and shall run to the Association. Sidewalks and maintenance thereof shall be the responsibility of the Association and the easement rights and duties therein shall be deemed as in Common Areas.

**3.2.5. Local Governmental Authorities.** A non-exclusive easement is granted to the City of Seven Hills, the City of Cleveland and Cuyahoga County, and to all police, fire and other emergency personnel, ambulance operators, delivery, personnel and to all similar persons, and to the local governmental authorities, but not to the public in general, to enter upon the Common Areas and the property and perform services permitted or required hereunder or as are needed in the performance of their duties.

**3.3. Owner's Delegation Rights.** Any Owner may delegate his or her easement rights and rights of enjoyment to the Common Areas to any Occupants, and any guests, invitees, tenants or lessees thereof. Any Owner who has leased his or her Lot shall be deemed to have delegated such rights. Any such delegation, however, shall be in accordance with and subject to reasonable rules, regulations and limitations as may be adopted by the Association in accordance with its Code of Regulations. Guests, invitees or lessees of any Owner shall further imply such delegation in accordance with normal and reasonable use.

**3.4. Limitation on Common Areas and Easements.** All Common Areas, easements and rights granted herein are subject to:

**3.4.1.** Restrictions set forth in this Declaration.

**3.4.2.** Any rules and regulations adopted by the Association and the right to enforce such rules and regulations.

**3.4.3.** The right of the Association to levy assessments for the Common Expenses and other assessments as set forth herein.

**3.4.4.** The right of the Declarant and the Association to amend the Record Plan and to grant further rights and easements within, upon, over, under, and across the Common Areas for the benefit of the Owners, the Association or Declarant.

**3.4.5.** The Common Areas cannot be mortgaged or conveyed without the consent of three-quarters (3/4) of the Members, excluding the Declarant. During any Declarant Control Period as set forth in Article XII, no portion of the Common Areas

can be dedicated without the prior approval of two-thirds (2/3) of the Members, excluding the Declarant.

3.4.6. If access to any residence is through the Common Areas, any conveyance or encumbrance of such area is subject to the Owner's easement.

3.4.7. All rights granted to the Association in this Declaration.

#### **ARTICLE IV. SURFACE WATER MANAGEMENT, MAINTANENCE AND REPAIR, UTILITIES, LANDSCAPING, SNOW REMOVAL**

4.1. **Surface Water Management System.** The Association shall administer the Surface Water Management System in accordance with the guidelines as may be promulgated from time to time by City and/or Cuyahoga County.

4.2. **Surface Water Management System Easements.** Each Lot shall be subject to and shall be benefited by an easement for drainage and surface water management as more particularly shown on the Record Plan. Such easement shall be non-exclusive as to the Owners and shall run to the Association. Such easement, however, shall not run to the public at large.

4.3. **Access to Lots.** For the purpose of performing the surface water management, landscaping and snow removal maintenance required or authorized herein, the Association, through its duly authorized agents or employees, or subcontractors, shall have the right to enter upon the Lot at reasonable hours on any day. For all other purposes, including maintenance of utility lines, Association may enter the lot of an owner only after reasonable notice to the owner, except in case of an emergency where no such notice shall be required.

4.4. **Individual Maintenance.** Subject to the Associations responsibilities for lawn maintenance and utilities maintenance, each Owner shall maintain that portion of the Surface Water Management System, which serves only that Owner's Lot. Association shall have primary responsibility for lawn care and vegetation control within the easements located on each Lot. Such responsibility shall include keeping these easements clean and unobstructed. However, each Owner shall be responsible for maintaining the grade of that portion of the Surface Water Management System located on his or her Lot in accordance with the improvement plans prepared by Declarant and approved by City and/or Cuyahoga County. Maintenance of the Surface Water Management System shall be in accordance with the guidelines and standards set forth by City and/or Cuyahoga County. If any portion of the Surface Water Management System, which serves only one lot, is damaged, the Owner of that Lot shall promptly cause it to be repaired. Each Owner shall be responsible for maintenance of his/her Lot except as otherwise expressly provided herein.

4.5. **Association Maintenance of Common Areas, Lawns and Sidewalks.** The Association shall provide for all maintenance of the Detention Basin, including the repair or maintenance of any pipes, concrete gutters or mechanical devices, lawn care,

vegetation control and debris removal. The Association shall maintain and repair the Common Areas, including and not limited to all Utilities and Utility facilities in connection therewith, as Utilities are defined in paragraph 1.21. The Association shall also maintain the lawns, sprinkler systems, shrubs, trees and landscaping as installed by Declarant or Association on each Lot. The Association shall also be responsible for snow plowing and snow removal of all Common Areas, sidewalks and driveways on each Lot.

**4.6. Restriction on use.** No Owner shall use or permit any other persons to use the Surface Water Management System in any manner which would constitute a nuisance, hazard or unsanitary condition or be in violation of any local, state, or federal law, ordinance, rule, regulation or statute.

**4.7. Utility Services.** Each Owner, by acceptance of deed to a Lot, agrees to pay for utility services separately metered or separately charged by a utility company to the Dwelling Unit on said Lot. In the event any service, benefiting the Property or any portion thereof, is not separately metered, the cost thereof shall be a common expense and paid by the Association.

#### ARTICLE V. OWNERS ASSOCIATION

**5.1. Formation.** The Declarant has caused or will cause to be chartered in accordance with Chapter 1702 of the Ohio Revised Code a nonprofit corporation named Autumn Hill Estates Homeowners Association, Inc. to be the homeowners association for the Owners. The purposes of the Association are to provide for the administrative governance, maintenance and upkeep of the Property and to promote the health, safety and welfare of the Owners and Occupants of the Property.

**5.2. Membership.** The membership of the Association shall at all times consist exclusively of Owners of the Lots. All such Owners shall automatically be Members. Membership shall be appurtenant to and may not be separated from such ownership.

**5.3. Powers of the Association.** Subject to Special Declarant Rights hereinafter set forth in Article XII, the Association may:

**5.3.1.** Adopt and amend a Code of Regulations, also to be known as By-Laws, for the government of the Association, for the conduct of its affairs and the management and maintenance of the Property; the initial Board of said Association shall consist of three (3) members to be appointed by Declarant. Said Code of Regulations (By-Laws) may be amended as provided in the instrument promulgated by Association, provided however that no change of any right or duty created under this Declaration may be made other than as provided herein in Article XIII.

**5.3.2.** Adopt rules and regulations for the use and occupation of the Common Areas and to enforce the rules and regulations and the provisions and restrictions of the Declaration as against the Owners and Occupants.

5.3.3. Adopt and amend budgets for revenues, expenditures and reserves and levy and collect Assessments from Owners;

5.3.4. Hire and discharge managing agents and other employees, agents and independent contractors, and bond officers and employees with fiscal responsibilities;

5.3.5. Institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the property or the community of Lot Owners;

5.3.6. Make contracts and incur liabilities;

5.3.7. Regulate the use, maintenance, repair, replacement and modification of the Common Areas for which the Association has maintenance responsibility and other rights as set forth herein;

5.3.8. Cause additional improvements to be made as part of the Common Areas;

5.3.9. Acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property;

5.3.10. Grant easements, liens, licenses and concessions through or over the Common Areas;

5.3.11. Impose and receive any payments, fees or charges for the use, rental or operation of the Common Areas and for services provided to Owners;

5.3.12. Impose charges for late payments of Assessments and after notice and an opportunity to be heard, levy reasonable fines for violations of the Declaration, Code of Regulations, and the rules and regulations of the Association;

5.3.13. Impose reasonable charges for the preparation and recordation of amendments to the Declaration or for statements of unpaid Assessments;

5.3.14. Provide for indemnification of its officers and the Board and maintain directors' and officers' liability insurance;

5.3.15. Assign its right to future income, including the right to receive Common Expense Assessments, except that this power shall be limited to the purposes of repair of existing structures or improvements;

5.3.16. Exercise any other powers conferred by the Declaration, Code of Regulations or Articles of Incorporation;

5.3.17. Exercise all other powers that may be exercised in the State of Ohio by nonprofit corporations; and

5.3.18. Exercise any other powers necessary and proper for the governance and operation of the Association.

5.4. **Voting Rights.** Subject to Special Declaring Rights as set forth in Article XII, Members shall be entitled to vote on matters properly before them in accordance with this Article, the Code of Regulations and the laws of the State of Ohio.

5.5. **Number of Votes.** There shall be one vote for each Lot. If more than one person owns undivided interests in fee simple in a Lot there shall be one (1) vote for each Lot. However, unless timely challenged by another owner of a fee-simple interest in the same Lot, any owner of a fee-simple interest in that Lot may cast the entire vote with respect to that Lot. To the extent permitted by Ohio law, any interested co-owner to arbitration pursuant to Article 14 may submit disagreement between co-owners of a Lot. Failure of co-owners to timely agree on how to cast their one (1) vote shall preclude any of them from voting on any specific issue properly noticed for a vote. No votes allocated to any Lots owned by the Association may be cast.

5.6. **Proxies.** A vote allocated to a Lot may be cast pursuant to a proxy duly executed by an Owner. An Owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. Except as hereinafter provided, a proxy shall terminate one year after its date, unless it specifies a shorter time. If a first mortgagee has been designated a proxy under the terms of a first mortgage covering the Lot, its presentation to the Board of a copy of the mortgage shall be notice of the proxy designation, and if the mortgage so states, of the irrevocability of that designation. Written notice to the Board or notice in a meeting of a revocation of a proxy designation shall not affect any vote or act previously taken. Each proxy shall automatically cease upon conveyance of the Lot. Unless expressly reserved and the Association is notified of such reservation, a land contract vendee as defined in Chapter 5313 of the Revised Code, shall be deemed the proxy of a land contract vendor for purposes of this section.

5.7. **Annual Meeting.** No annual meeting shall be required during the Declarant Control Period. After the Declarant Control Period, a meeting of the Members of the Association must be held at least once each year.

5.8. **Management Agent.** 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, certain powers granted to the Board by this Declaration. The Declarant, or an affiliate of the Declarant, may be employed as a managing agent or manager.

## ARTICLE VI. ASSESSMENTS

6.1. **Establishment of Assessments.** There are hereby established for the benefit of the Association, its successors and assigns, as a charge on each Lot, certain Assessments



for Common Expenses and other expenses. Each Owner, by acceptance of a deed, covenants and agrees to pay such Assessments and to be otherwise bound by the duties set forth herein.

**6.2. Purpose of the Assessments.** The Assessments are established for the benefit and use of the Association on behalf of all Owners and shall be used in covering the costs of its Common Expenses and for other such purposes as hereinafter set forth.

**6.3. Annual General Assessment.** There is hereby established an "Annual General Assessment" for the purpose of funding the Common Expenses of the Association. The Common Expenses shall include among other things: (1) the cost of management and operation of the Association; (2) the cost of operation, maintenance, repair and replacement of the Common Areas; (3) the cost of any insurance required by this Declaration or determined to be in the best interest of the Association by the Board; (4) reasonable reserves for contingencies and replacement; (5) administrative, accounting and legal fees incurred on behalf of the Association; and (6) all other costs and liabilities incurred by the Association in the exercise of its powers and duties pursuant to this Declaration.

**6.4. Individual Assessment.** The Association after approval by two-thirds (2/3) vote of all members of the Board shall have the right to assess an individual Lot for any of the following:

**6.4.1.** Costs incurred by the Association in the performance of any maintenance in accordance with Article VII, Section 7.3.

**6.4.2** any charges or fines imposed or levied in accordance with Article VIII, Section 8.3.1.1.

**6.4.3.** Any costs, including attorney fees, court costs and other expenses incurred, incurred for maintenance or repair caused through the willful or negligent act of an Owner or Occupant or their family, tenants, guests or invitees.

**6.4.5** any costs associated with the enforcement of this Declaration or the rules and regulations of the Association, including, but not limited to attorney's fees and court costs.

**6.5. Working Capital Fund Assessment.** For the period of two (2) years from the filing of this Declaration, Declarant shall pay to Association any deficit needed for the Association's annual operating expenses. At the time of closing of the sale of a Lot from Declarant or a Builder, the purchaser of such Lot shall be assessed the sum of Four Hundred and Fifty Dollars (\$450) as such purchaser's initial capital contribution to the working capital fund of the Association. The Association for its operating expenses shall use this Assessment. Such Assessment is in addition to, and not an advance payment of, the Annual General Assessment, and it will not be held in any sort of trust or reserve account. Declarant shall not pay further.

**6.6. Special Assessment.** There is hereby established a Special Assessment for the purpose of repairing or restoring damage or destruction to the Common Areas as further set forth in Article IX, Section 9.2. Neither Declarant nor Builder shall be subject to or required to pay any Special Assessment.

**6.7. Computation and Payment of Annual General Assessment.** The Annual General Assessment shall be computed and levied in accordance with the budget adopted by the Board pursuant to the Code of Regulations. This Assessment shall be effective as to each Lot on the first day of the Association's fiscal year. The initial Annual General Assessment as to each Lot shall commence on the first day of the month following the earlier of (i) its conveyance to an Owner other than a Builder; or (ii) occupation of the Dwelling Unit. The initial Annual General Assessment as to each Lot shall be prorated on a monthly basis to the end of the Association's fiscal year, and shall be collected at closing of the conveyance of the Lot from the Builder. Thereafter, and so long as there has been no default in payment of any Assessment, it shall be payable in monthly installments due on the fifteenth (15) day of each month. The Board shall have the power from time to time to adopt such billing, collection and payment procedures, charges and other payment time schedules as it deems appropriate. For the period of two (2) years from the recording of this Declaration, Declarant shall pay to Association any deficit needed for the Association's annual operating expenses.

**6.8. Maximum Annual Assessment.** Beginning with the recording of this Declaration and until December 31, 2004, the maximum Annual General Assessment as to each Lot shall be Thirteen Hundred and Twenty Dollars (\$1,320), or One Hundred Ten Dollars (\$110) per month. Beginning with Assessments levied as of January 1, 2005, and annually thereafter, the Board, without a vote of the Owners, may increase or decrease the Annual General Assessment. If the Board increases the Annual General Assessment by more than the percentage increase in the Consumer Price Index of the U.S. Bureau of Labor Statistics, United States City Average - All Items over the twelve (12) month period ending on the last day of the month preceding the effective date of the Annual General Assessment increase (the "CPI Increase"), then, within thirty (30) days of notice of such increase, Members in good standing exercising ten percent (10%) or more of the voting power of the Association may petition the Board for a special meeting of the Association to reconsider such increase. At such meeting, Members in good standing, in person or by proxy, exercising more than fifty percent (50%) of the voting power of the Association may vote to reduce the increased Annual General Assessment to any amount therein proposed, but not lower than the previous year's amount increased by the CPI Increase.

**6.9. Allocation of Assessments.** The Annual General Assessment shall be allocated equally to each Lot. The other Assessments shall be allocated as applicable to the respective Lots and as determined by the Board.

**6.10. Lien for Assessments.** The Association shall have a lien for any Assessment levied against a Lot, for fines imposed against an Owner or Occupant, and for interest, costs and reasonable attorney fees.

**6.10.1 Creation.** The lien for Assessments is created by this Declaration and shall be a charge and a continuing lien on each Lot, which shall run with the land. All persons or entities acquiring an interest in a Lot after the filing of this Declaration take such interest subject to the lien.

**6.10.2. Effective Dates.** The lien for the Annual General Assessment as to each Lot shall be effective on the first day of the fiscal year of the Association. The lien for other Assessments shall be effective on the first day of the month following the notice of its levy on the Owners affected.

**6.10.3. Perfection.** Recording of this Declaration constitutes notice and perfection of the Lien.

**6.10.4. Notice of Lien.** The Association may file a notice of lien with the Recorder of Cuyahoga County. Such notice shall not be required for the Association to enforce its lien.

**6.10.5. Priority of the Lien.** The lien created by this Section shall be prior to all liens and encumbrances recorded subsequent to this Declaration except the lien for real estate taxes and assessments and the lien of any bona fide first mortgage filed of record.

**6.10.6. Subordination and Mortgagee Protection.** Notwithstanding any of the provisions hereof to the contrary, the lien of any Assessment levied pursuant to this Declaration (and any late charges, interest, costs and attorney fees) shall be subordinate to, and shall in no way affect the rights of the holder of a first mortgage made in good faith for value received; provided, however, that such subordination shall apply only to Assessments, or installments thereof, which have become due and payable prior to the date of Sheriff's sale of such Lot pursuant to a foreclosure or the date of a deed in lieu of foreclosure. Such sale or transfer shall not relieve the mortgagee or the purchaser of a Lot at such sale from liability for any Assessments thereafter becoming due, or from the lien of any such subsequent Assessment. Mortgagees are not required to collect Assessments on behalf of the Association.

**6.10.7. Extinguishments of the Lien.** A lien for unpaid Assessments is extinguished unless proceedings to enforce it are instituted within five (5) years after the full amount of the Assessment becomes due. If an Owner of a Lot subject to a lien files a petition for relief under the United States Bankruptcy Code, then the period of time to enforce the Association's lien shall be tolled until thirty (30) days after the automatic stay under Section 362 of the Bankruptcy Code is lifted.

**6.10.8. Estoppel Certificate.** Upon request of any mortgagee or Owner and upon payment in full of all Assessments and other charges permitted by this Declaration that are due to the Association, the Association shall execute and deliver to such mortgagee or Owner an estoppel certificate. Such certificate shall be in recordable form and shall note the payment of the outstanding Assessments and charges and that the Association is estopped from the enforcement of its lien with respect to Assessments

and charges becoming due and payable prior to the date of the certificate. The Association may charge a reasonable fee for the preparation of such certificate.

**6.11. Delinquency and Acceleration.** Any installment of an Assessment provided for by this Declaration shall become delinquent if not paid on the due date as established by this Declaration or by the Board. With respect to each installment of an Assessment not paid within five (5) days of its due date, the Board may, at its election, require the Owner to pay a reasonable late charge, costs of collection, reasonable attorney fees and interest at the rate provided in Section 1343.03 of the Ohio Revised Code (and as amended from time to time). Interest shall be calculated from the date of delinquency to the date full payment is received by the Association. If any installment of an Assessment is not paid within thirty (30) days of its due date, the Board may, at its election, declare all of the unpaid balance of the Assessment immediately due without further notice or demand to the Owner. The Association may enforce the collection of the full Assessment and all charges thereon in any manner authorized by law or this Declaration. The filing of any petition for relief pursuant to the United States Bankruptcy Code by an Owner who's Assessment has been accelerated shall operate as a restoration of the Assessment to its prior status as if it has not been accelerated.

**6.12. Remedies Cumulative.** A suit to recover a money judgment for unpaid Assessments and charges may be maintained without foreclosing or waiving the right to enforce the lien. A foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

**6.13. Personal Obligation.** The Assessments, including fines, if any, payable by each Owner, together with any penalty, interest, costs and reasonable attorney fees shall be the personal obligation of the Owner of the Lot at the time incurred. The personal obligation shall not pass to any successors in title unless expressly assumed by them.

**6.14. Statement of Unpaid Assessments.** The Association shall upon written request of the Owner, contract purchaser, or first mortgagee, furnish a statement setting forth the amount of unpaid Assessments against the Lot. This statement must be furnished within ten (10) business days after receipt of the request and is binding on the Association, the Board and every Owner. The Association may charge a reasonable amount for this statement.

**6.15. No Waiver of Liability for Common Expenses.** No Owner may exempt himself or herself from liability for payment of the Common Expenses by waiver of the use or enjoyment of the Common Areas or by abandonment of the Lot against which the Assessments are made. Notwithstanding the foregoing, neither Declarant nor Builder shall be obligated to pay Common Expenses, except as provided otherwise in paragraph's 6.5 and 6.7.

**6.16. Loan.** In the event that sufficient funds are not on hand to pay Common Expenses as and when the same become due, Declarant may loan the Association such sums as may be required to pay said Common Expenses. All such sums shall draw interest at two percent (2%) above the prime rate charged by Key Bank at the time said loan is made.

## ARTICLE VII. UPKEEP OF THE PROPERTY

**7.1. Lots and Dwelling Unit.** Each and every Lot, its Dwelling Unit and any components thereof together with any improvement erected on a Lot shall be repaired and maintained by its Owner in a reasonable manner in accordance with the standards set forth herein and in the Rules and Regulations of Association. The Association may from time to time adopt reasonable rules and regulations governing the maintenance of Lots and dwelling units. As herein before stated, Association shall provide landscaping maintenance and snow removal. In addition to the initial landscaping installed by Declarant, Declarant shall provide as an amenity included within each Lot, a water sprinkling system to be operated at common expense by Association for the purpose of maintaining the landscaped areas on each Lot.

Any Planting Area shall be the responsibility of each Lot Owner. To the extent that an Owner chooses to use the Planting Area on his/her Lot, it shall be maintained by said Owner in a manner to enhance the property and be consistent with the Association's maintenance of the landscaping on each Lot and on the Common Areas of the Property. Association may adopt rules and regulations permitting Owners to make arrangements with Association or its landscape contractor for special services at the cost of each Lot Owner for landscaping in the Planting Area.

**7.2. Common Areas.** Except as otherwise specifically stated herein, the Association shall maintain the Common Areas.

**7.3. Association's Right to Maintain.** If an Owner shall fail to provide maintenance to his Lot or Dwelling Unit as required by this Declaration in a manner satisfactory to the Association, and such Owner has failed to comply for ten (10) days after being so notified of such failure (and after being provided an opportunity to be heard concerning such failure), the Association shall have the right, through its agents and employees, to enter upon Owner's Lot and repair, maintain and restore the Lot or Dwelling Unit. In the event that such failure poses a health, safety or security risk, then no notice or hearing need be given. If such failure pertains to the Dwelling Unit, Association may repair same only if the Owner has abandoned occupancy or if the condition is a health or safety hazard. The cost of such maintenance and repair shall be assessed against the subject Lot in accordance with Article VI, 6.4. Except as above stated, nothing in this Section shall be construed as giving the Association any right to repair, maintain or restore any Dwelling Unit.

**7.4. Access to Lots.** For the purpose solely of performing the maintenance required or authorized herein, the Association, through its duly authorized agents or employees, or subcontractors, shall have the right, after reasonable notice to the Owner, to enter upon any Lot at reasonable hours on any day, as per Articles IV and VII hereinabove.

## ARTICLE VIII. USE RESTRICTIONS

**8.1. Use and Occupancy.** The following restrictions are applicable to the use and occupancy of the Property.

**8.1.1. Compliance with Laws.** No improper, offensive or unlawful use shall be made of the Property or any part thereof. All laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction over any portion of the Property shall be observed and complied with, by and at the expense of all Owners and Occupants. This development is planned under and subject to the City Senior Residence Multifamily District Zoning Ordinance. The Lots are intended for occupancy by elderly persons as defined herein, fifty-five (55) years of age or older, however this shall not prohibit ownership or occupancy by any younger person if the circumstances of such person make it appropriate to own or occupy the Property in a manner consistent with the zoning ordinance of the City of Seven Hills governing Senior Residence Development. For example, ownership of a Dwelling Unit by a person under 55 for purposes of occupancy by or with an elderly parent or other elderly person would be appropriate and consistent with the intent hereof.

**8.1.2. Harmful Discharges.** There shall be no production, storage or discharge of hazardous wastes on the Property or discharges or emissions of liquid, solid wastes, gases or other harmful matter into the ground, atmosphere or any body of water, if such emission, production, storage or discharge may adversely effect the use or intended use of any portion of the Property or may adversely effect the health, safety or comfort of any person. No waste nor any substance or materials of any kind shall be discharged into any public sewer or the Surface Water Management System serving the Property or any part thereof in violation of any law, order, rule, regulation or requirement of any applicable government or governmental agency.

**8.1.3. Noise.** No person shall cause any unreasonably loud noise (except for the proper and customary functioning of security devices) anywhere on the Property, nor shall any person permit or engage in any activity, practice or behavior for the purpose of causing annoyance, discomfort or disturbance to any person lawfully present on any portion of the Property.

**8.1.4. Signs .** No signs shall be erected, posted or displayed upon the Property, except: (i) marketing signs installed by the Declarant or Builder while actively marketing the Lots for sale; (ii) street and identification signs installed by the Association or the Declarant; and (iii) one temporary real estate sign, approved by Declarant, not to exceed six square feet in area advertising that such Dwelling Unit is on the market.

**8.1.5. No Trade or Business.** No trade or business of any kind may be conducted in or from any Lot or Dwelling Unit except that an Owner or Occupant of a Lot or Dwelling Unit may conduct such business activity within the Lot or Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from the exterior of the Lot or Dwelling Unit; (b)

the business activity conforms to all zoning requirements for the Property and is not prohibited by the laws of the City of Seven Hills (c) the business activity does not involve persons coming on to the Lot who do not reside in the Property; and (d) the business activity is consistent with the residential character of the Property.

The terms "business" and "trade" as used in this provision shall be construed to have their ordinary generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (i) such activity is engaged in full-time or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefor. The term "trade" or "business" for purposes of this restriction shall not include the business activities of Declarant or the construction, operation and maintenance of any model home or homes and sales offices by any Builder during reasonable hours.

**8.1.6. Trash.** Except in connection with Declarant's or Builder's construction activities, no burning of any trash and no accumulation or storage of litter, refuse, bulk materials, building materials, machinery or trash of any other kind shall be permitted on the Property. Trash containers shall be kept in a clean and sanitary condition and (except during construction) shall not be permitted to remain in public view except on days of trash collection. No incinerator shall be kept or maintained upon any Lot. Notwithstanding the foregoing, Declarant and any Builder shall take the customary and reasonable precautions and safety measures required by law during the construction process and development of the property.

**8.1.7. Parking; Vehicle Repairs.** Except in connection with Declarant's or Builder's construction activities, no buses, trucks, trailers, campers, recreational vehicles, snowmobiles, jet skis, boats and other large vehicles may be parked on the Property. The Association shall have the right to make rules and regulations regarding parking on the private streets, including the prohibition thereof. No junk or derelict vehicle or other vehicle on which current registration plates are not displayed shall be kept upon any portion of the Property. Vehicle repairs and storage of vehicles shall not be permitted on the Property. Recreational vehicles and boats may be parked in the driveways for a period not to exceed forty-eight (48) hours for the purpose of cleaning, loading or unloading.

**8.1.8. Animals.** The maintenance, keeping, boarding or raising of animals of any kind, regardless of number, is prohibited on any Lot except that the keeping of guide animals and orderly domestic pets (e.g., dogs, cats or caged birds), is permitted, subject to rules and regulations which may be adopted by the Board. Such pets are not to be kept or maintained for commercial purposes or for breeding. No external compound cages, kennels or hutches shall be permitted.

Any pet causing or creating a nuisance or unreasonable disturbance or noise may be permanently removed from the Property upon ten (10) days written notice from the Board. Pets shall not be permitted on the Common Areas unless accompanied by

someone who can control the pet and unless carried or leashed. Any Owner or Occupant who keeps or maintains any pet on any portion of the Property shall be deemed to have indemnified and agreed to hold the Association harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Property. All pets which may leave the Dwelling Unit or Lot must be inoculated as required by law.

**8.1.9. Open Fires.** Open burning is not permitted on the Property, except that outdoor fireplaces, grills, and chimneys may be used if equipped with fire screens to prevent the discharge of embers or ashes.

**8.1.10. Storage Tanks.** All tanks for the storage of propane gas, fuel or oil shall be located beneath ground level, except that propane tanks for service to the entire subdivision, or on a temporary basis, for construction of an approved structure may be located above ground.

**8.1.11. Wells.** No well for the production of gas, water or oil, whether intended for temporary or permanent purposes, shall be drilled or maintained on any Lot.

**8.1.12. Water Discharge.** Storm water must be disposed of through the Surface Water Management System and in accordance with the regulations of the entity having jurisdiction thereof. Sump pumps which discharge directly into the street through a curb are prohibited.

**8.2 Architectural Restrictions.** The following architectural restrictions shall be applicable to the Lots.

**8.2.1. Plan Approval.** No structure shall be placed, erected or installed upon any Lot, and no construction (which term shall include within its definition staking, clearing, excavation, grading, and other site work), no exterior alteration or modification of existing improvements, and no plantings or removal of plants, trees, or shrubs shall take place until Declarant's approval has first been obtained pursuant to this section. Prior to any construction, the Owner or Builder shall first submit to the Declarant (which for the terms of this section shall include its designee) a complete set of building plans for the proposed construction. The Declarant shall approve, reject or request additional information with respect to such plans in a writing sent to the Owner or Builder in question not more than thirty (30) days after the plans are submitted to the Declarant. The thirty (30) period shall commence upon execution of a written notice by the Declarant acknowledging receipt of plans and specifications and all information required therewith. Upon Declarant's receipt of additional information requested hereunder, Declarant shall have an additional thirty (30) days to approve or reject the plans submitted. The Declarant shall review the plans as to their compliance with this Declaration and the Design Guidelines (as defined below) as well as the quality of workmanship and design and harmony of external structures with existing structures and



as to location in relation to surrounding structures, topography and finish grade elevation. If the Declarant fails to approve, reject, or request additional information with respect to the plans within the thirty (30) day period, the Declarant's approval shall be deemed to have been given, and no further permission shall be needed before the improvements described in such plans may be constructed or installed. However, in no event shall any improvements be constructed or installed which violate any terms of this Declaration.

**8.2.1.1 Declarant's Plan Approval Period.** Declarant's right of plan approval shall exist for as long as Declarant owns any theretofore unsold Lot in the Property. Declarant's right of plan approval shall include any alterations to existing Lots or Dwelling Units and / or items requiring prior approval by this Declaration. In any items or matters that are discretionary, the Declarant's decision shall be conclusive upon all parties.

**8.2.1.2. Design Guidelines.** The Declarant shall prepare and, on behalf of itself and the Association, shall promulgate design and development guidelines governing construction within the Property ("Design Guidelines"). The Design Guidelines shall be those of the Association, and the Declarant and/or the Association shall have sole and full authority to modify and to amend them from time to time without the consent of any Owner. The Declarant and/or the Association shall make the Design Guidelines available to Builders and Owners who seek to engage in construction upon: all or any portion of the Property.

**8.2.1.3. Declarant's Control of New Construction.** The Declarant shall have exclusive control of new construction within the Property. No provision of this Declaration or the Design Guidelines, as the same relates to new construction, may be modified without Declarant's consent.

**8.2.1.4. Association's Right of Plan Approval.** After Declarant's right of plan approval has expired, the Association shall be responsible for plan approval. The Declarant may assign its right of plan approval, or any portion thereof, to the Association.

**8.2.1.5. No Liability.** Each Owner and Builder are responsible to insure that all construction, or any modifications, are in compliance with all of the terms of this Declaration and any approved plans. If the Declarant or the Trustees have acted in good faith on the basis of such information possessed by them, neither the Declarant, the Board nor any Trustee shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed due to: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; or (b) the construction or performance of any work whether or not pursuant to approved plans, drawings, and specifications.

**8.2.2. Dwelling Type.** No building shall be erected, altered, placed or be permitted to remain on any Lot other than one (1) single-family dwelling with an attached garage for at least two cars that has been approved in accordance with Section 8.2.1 hereof.

**8.2.3. Dwelling Floor Areas.** The living area of the Dwelling Unit exclusive of porches, decks, attics, basements, areas not heated year round and garages shall be no less than the areas set forth in the Design Guidelines.

**8.2.4. Roof Requirements.** The roof and gables of each Dwelling Unit shall be in accordance with the Design Guidelines.

**8.2.5. Set Back, Minimum Elevation and Yard Requirements.** All Dwelling Units shall be located in accordance with the building set back lines, minimum basement elevation and yard requirements, if any, as shown on the Record Plan, approved improvement plans for the Property, the Design Guidelines and as required by applicable codes, ordinances and regulations.

**8.2.6. Front Yards and Driveways.** Front yards shall be landscaped in accordance with the Design Guidelines. All driveways shall be paved in accordance with the Design Guidelines.

**8.2.7. Exterior Siding.** The exterior siding of each Dwelling Unit shall be in accordance with the Design Guidelines.

**8.2.8** It is intended that Declarant and/or a builder of his designation will construct all 73 Dwelling Units on the Lots. Once the original construction of Dwelling Units is completed and/or Declarant's period of control and Plan Approval has terminated, the Association shall have the rights and duties theretofore residing in Declarant, and all Dwelling Units and each Lot shall be bound by the provisions as set forth in this Declaration, the Associations Rules and Regulations, and Design Guidelines.

**8.2.9. Radio and Television Antennas.** No exterior antennas, aerials, satellite dishes in excess of eighteen (18) inches in diameter, or other apparatus for the reception or transmission of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Property, including any Dwelling Unit, without prior written approval as provided in Section 8.2.1, and unless in accordance with the Design Guidelines.

**8.2.10. Air Conditioning and Heat Pump Equipment.** No window air conditioning units may be installed, and no air-conditioning or heating equipment may be located in side or rear yards or any place outside of a Dwelling Unit, without consent of Association, which consent shall not be unreasonable. In considering any request, Association shall consider the conditions of health for an occupant.

**8.2.11. Awnings.** No metal or plastic awnings for windows, doors or patios may be erected or used.

**8.2.12. Fences.** No fence of any sort may be erected unless the same is in accordance with the Design Guidelines and until prior approval in accordance with Section 8.2.1 of the Declaration has been obtained. The Declarant reserves the right to

prohibit all fences or types of fences on certain Lots. Chain link fences shall not be permitted.

**8.2.13. Other Structures.** No structure of a temporary character, trailer, or shack shall be permitted on any Lot. No barns, storage sheds or other outbuildings shall be permitted on any Lot.

**8.2.14. Pools and Spas.** No above ground or in-ground swimming pools shall be permitted, except that small portable "kiddie" pools are permitted at the discretion of Association and in accord with Rules and Regulations. Hot-tubs and spas shall not be allowed.

**8.2.15. Play and Recreational Equipment.** Any and all play or recreational equipment must be approved in accordance with Section 8.2.1 hereof and comply with the Association Rules and Regulations.

**8.2.16. Clothes Drying.** No outdoor close drying apparatus of any sort shall be permitted.

**8.2.17. Mailboxes.** No Dwelling Unit shall have a private mailbox. All mail shall be accommodated through the Mailbox Center Area maintained by Association on Common Areas shown on the Record Plan.

**8.2.18. Landscaping.** The original landscaping for each Lot will be installed by Declarant. Thereafter, Association shall maintain the landscaping and will do so through the auspices of a landscape contractor. Planting Areas shall be the responsibility of each Lot Owner.

**8.2.19. Lot Maintenance.** Except as herein provided for maintenance by the Association, all Lots, including any easement areas located thereon, must be kept mowed and free of debris and clutter by the Owner. During construction, each Owner and Builder shall be responsible for keeping the streets and adjacent Lots clean and free of debris. The Declarant shall have the right to assess any Owner or Builder for the cost of mowing or clean up in the event that the Owner or Builder fails to do so.

**8.3. Remedies for Breach of Covenants and Restrictions.** The violation of any covenant or restriction contained in this Declaration or violation of any rule or regulation duly adopted by the Board shall give the Board the authority to enforce the covenants, restrictions, rules and regulations in accordance with this Section.

**8.3.1. Actions.** The Board may take any or all of the following actions:

**8.3.1.1.** levy a fine against the Owner or Occupant which shall also be an Individual Assessment under Section 6.4.

**8.3.1.2.** enter upon a Lot or portion thereof upon which or, as to which, such violation or breach exists and to summarily abate and remove at the expense of the Owner, any structure, thing or condition that may exist thereon contrary to

the intent and meaning of the provisions of this Declaration, and Declarant and the Board, or its agents, shall not be thereby deemed guilty in any manner of trespass or wrongful act.

**8.3.1.3.** institute appropriate legal proceedings to enjoin, abate or remedy the continuance of any breach.

**8.3.1.4.** undertake dispute resolution methods such as mediation and arbitration, except that this provision shall not be construed as any requirement to do so as a condition precedent to legal proceedings.

**8.3.2. Notice and Opportunity to be Heard.** Prior to any action, the Board shall give the Owner and/or Occupant reasonable notice of the violation and an opportunity to be heard. Such notice and opportunity shall not be required in emergency situations or for repeated or continuing violations.

**8.3.3. Individual Actions.** Each Owner is empowered to enforce the covenants by appropriate legal proceedings or alternative dispute resolution methods.

#### **ARTICLE IX. INSURANCE AND CASUALTY LOSSES**

**9.1. Insurance.** The Board or its duly authorized agent shall have the authority to and shall obtain such insurance as it may deem necessary to protect the Common Areas, the Owners, the Association and the Board.

**9.2. Repair and Restoration.** If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, upon the approval vote of two-thirds (2/3) of the Owners, levy a Special Assessment against all Owners. Additional Special Assessments may be levied at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the cost of repair, such excess shall be deposited to the benefit of the Association.

#### **ARTICLE X. CONDEMNATION**

**10.1. Taking of Common Areas.** Whenever all or any part of the Common Areas shall be taken (or conveyed in lieu of and under threat of condemnation by the Board, acting on its behalf or on the written direction of all Owners of Lots subject to the taking, if any) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto, unless otherwise prohibited by law. The award made for such taking shall be payable to the Association, as trustee for all Owners, to be disbursed in accordance with Section 10.2.

**10.2. Disbursement.** 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 Declarant and at least seventy-five (75%) percent of the Owners 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

therefore, in accordance with plans approved by the Board. If such improvements are to be repaired or restored, the above provisions in Article IX hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired 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.

## ARTICLE XI. DEVELOPMENT RIGHTS

**11.1. No Additional Land.** There is no additional Land to be submitted to these restrictions and Declarations.

**11.2. Notice to the Board.** The Declarant shall promptly notify the Board of the filing of any Amendment hereto.

**11.3. Easements Reserved.** The Declarant reserves for itself, its successors and assigns and any Builder, the following easements:

11.3.1. Easements for drainage and all utilities as shown on the Record Plan.

11.3.2. Easements for ingress, egress, drainage and all utilities over the Common Areas provided that such easements do not unreasonably interfere with any Owner's rights of enjoyment.

11.3.3. An easement over the Common Areas as may be reasonably necessary for the purpose of discharging its obligations or exercising any rights under the Declaration.

**11.4. Assignment of Development Rights.** The Declarant reserves the right to assign any or all of its Development Rights to any person or entity for the purpose of further development and improvement of the Property. No assignment shall be effective unless in a writing filed with the Recorder of Cuyahoga County, Ohio.

**11.5. Transfer of Development Rights by Foreclosure.** Unless otherwise provided in any mortgage securing the Property held by Declarant, in the case of foreclosure of such mortgage, deed in lieu of foreclosure, judicial sale, tax sale, sale under the U.S. Bankruptcy Code or receivership proceedings with respect to any portion of the Property held by the Declarant subject to the Development Rights herein reserved (including the Special Declarant Rights), a person acquiring title to such property, but only upon his request, succeeds to all such Development Rights. The judgment or instrument conveying title must provide for the transfer of such rights. Upon foreclosure sale, deed in lieu of foreclosure, judicial sale, tax sale, sale under the U.S. Bankruptcy Code or receivership proceedings, the Declarant ceases to have any of the rights herein reserved. A successor to the Development Rights held by a transferee who acquired such rights pursuant to this Section may declare by a recorded instrument the intention to hold such rights solely for transfer to another person.

Thereafter, until transferring such Development Rights to any person acquiring title to the Property subject to the Development Rights, or until recording an instrument permitting exercise of such rights, that successor may not exercise any of those rights, and any attempted exercise is void. So long as a successor Declarant may not exercise any Development Rights under this section, such Declarant is not subject to any liability as a Declarant.

## ARTICLE XII. SPECIAL DECLARANT RIGHTS

**12.1. Use for Sale Purposes.** Declarant reserves for itself, its successors and assigns, and any Builder the right to maintain sales offices and models on the Lots.

**12.2. Signs and Marketing.** The Declarant reserves the right for itself and any Builder to post signs and displays on the Property to promote sales of Lots, and to conduct general sales activities, in a manner as will not unreasonably disturb the rights of Owners.

### **12.3. Control of the Association.**

**12.3.1. Appointment of Trustees and Officers.** The Declarant reserves the right to appoint and remove the members of the Board and the officers of the Association during the Declarant Control Period which commences upon the recording of this Declaration and shall terminate no later than the earlier of:

(a) sixty (60) days after the conveyance of one hundred percent (100%) of the Lots (including Lots to be included on the Additional Land) to Owners other than Declarant or any Builder; or

(b) three (3) years after recording of this Declaration.

**12.3.2. Early Termination of Control.** The Declarant may voluntarily surrender the right to appoint and remove trustees and officers before the termination of the period set forth above. In that event, the Declarant may require, for the duration of that period, that specified actions of the Association or the Board be approved by Declarant before they become effective. Such voluntary termination shall be evidenced by a recorded instrument executed by the Declarant setting forth the termination of the right to appoint trustees and officers and the actions which require Declarant's approval.

**12.4. Declarant's Personal Property.** The Declarant and any Builder reserve the right to retain all personal property and equipment used in sales, management, construction and maintenance of the premises that has not been represented as property of the Association. The Declarant and Builder reserve the right to remove, within one (1) year after the sale of the last Lot, from the Property any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

**12.5. Right to Amend Documents.** Notwithstanding anything above to the contrary, during the Declarant Control Period this Declaration may be amended at any time without the vote of Owners by a written instrument executed by the Declarant for the purpose of: eliminating or correcting any typographical or other inadvertent error herein; eliminating or resolving any ambiguity herein; making nominal changes; clarifying Declarant's original intent; making any change necessary or desirable to meet the requirements of any institutional lender, or any other agency which may insure or purchase loans on a Lot. No such amendment, however, shall materially affect any Owner's interest in the Association or the Common Areas. Each Owner and his mortgagee, by acceptance of a deed to a Lot or a mortgage encumbering such Lot, shall be deemed to have consented to and approved of the provisions of this paragraph and the amendment of this Declaration by Declarant as provided in the immediately preceding sentence. All such Owners and their mortgagees, upon request of Declarant, shall execute and deliver from time to time all such instruments and perform all such acts as may be deemed by Declarant to be necessary or proper to effectuate the provisions of this paragraph.

### **ARTICLE XIII. DURATION, AMENDMENT AND TERMINATION**

**13.1. Duration.** This Declaration, and its provisions, shall be covenants running with the land and shall bind the Property and shall (regardless of whether any such beneficiary owns an interest in any Lot) inure to the benefit of and be enforceable by Declarant, the Association, and each Owner, Occupant and their legal representatives, heirs, devisees, successors and assigns and shall continue in full force and effect for thirty (30) years from the date on which this Declaration is recorded. Thereafter this Declaration shall be automatically renewed for successive ten-year periods unless amended or terminated as provided in this Article.

**13.2. Amendment.** Except as provided in Section 12.5, prior to the end of the Declarant Control Period, any provision of this Declaration may be amended in whole or in part by a recorded instrument executed by Declarant, approved by the Owners of at least seventy-five percent (75%) of all Lots.

**13.2.1.** Except as provided in this Section 12.5, after the end of the Declarant Control Period, any provision of this Declaration may be amended in whole or in part by a recorded instrument approved by the Owners of at least seventy-five percent (75%) of all Lots.

**13.2.2.** Subject to Section 12.5, all Amendments shall be executed by the Declarant and shall be executed by the President and Secretary of the Association. Such Amendment shall certify that the proper notices were sent and that the requisite vote was obtained. Amendments need not be signed by the Owners nor the Federal Housing Administration or the Veterans Administration.

**13.3. Termination.** This Declaration and the rights and duties created thereby may be terminated only in accordance with this Section.

**13.3.1. Consent Required.** This Declaration may be terminated only upon consent of eighty percent (80%) of the Owners and the prior approval of any bona fide lender holding a first mortgage on any Lot, and if during the Declarant Control Period, by consent of the Declarant.

**13.3.2. Agreement to Terminate.** No termination shall be effective unless an agreement to terminate is filed for record with the Cuyahoga County Recorder. This agreement shall be executed in the same manner as an amendment as provided above. The agreement shall provide for disposition of the Common Areas, disposition of Association funds and other resolutions and provisions necessary to terminate the relationships established hereunder and wind up the affairs of the Association.

#### ARTICLE XIV. MISCELLANEOUS

**14.1. No Reverter.** No covenant, condition, restriction or reservation of easement contained in this Declaration is intended to create, or shall be construed as creating, a condition subsequent or a possibility of reverter.

**14.2. Notices.** Any notice required or permitted to be given to an Owner or resident by the Board pursuant to the provisions of this Declaration shall be deemed given when mailed by United States mail, postage prepaid, addressed to such person's last address as it appears on the records of the Association.

**14.3. Construction.** The Board shall have the right to construe the provisions of this Declaration, and, in the absence of an adjudication by a court of competent jurisdiction to the contrary, such construction shall be final and binding as to all persons and entities benefited or bound by the provisions of this Declaration.

**14.4. Invalidity.** The determination by a court of competent jurisdiction that any provision of this Declaration is invalid for any reason shall not affect the validity of any other provision hereof.

**14.5. Headings.** The headings of the Articles and Sections are for convenience only and shall not affect the meaning or construction of the contents of this Declaration.

**14.6. Gender** Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural and vice versa.

**14.7. Conflict.** In the event of a conflict between a restriction, covenant, condition, easement or obligation herein and those of any instrument of the Association which



may be recorded subsequent to this Declaration, the more restrictive restriction, covenant, condition, easement or other obligation shall control.

**14.8 Enforcement-Litigation/Arbitration.** In addition to any other remedies provided in this Declaration, the Declarant (only with respect to those rights directly benefiting the Declarant), the Association, and each Lot Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens, and charges set forth herein, in the Design Guidelines or in the Bylaws now or hereafter imposed by or through the Association's rules and regulations. Failure by the Declarant, the Association, or by any Lot Owner to proceed with such enforcement shall in no event be deemed a waiver of the right to enforce at a later date the original violation or a subsequent violation, nor shall the doctrine of laches nor any statute of limitations bar the enforcement of any such restriction, condition, covenant, reservation, easement, lien, or charge. Further, the Association and each Lot Owner shall have rights of action against each other for failure to comply with the provisions of the Declaration, Association organizational documents, rules, and regulations, and applicable law. With respect to decisions made pursuant to authority granted thereunder, the Association shall have the right to assess reasonable charges against a Lot Owner who fails to comply with the same, including the right to assess charges for the costs of enforcement.

Notwithstanding the foregoing, in the event of any dispute between the Association and any Lot Owner or occupant, other than with regard to assessments or issues of title, or in the event of dispute among co-owners of a Lot other than a dispute involving an issue of title, the matter shall be submitted to binding arbitration. Such arbitration shall be held in accordance with and pursuant to the arbitration law of Ohio then in effect (presently Chapter 2711 of the Revised Code of Ohio), by a single independent arbitrator selected by the Board of Association. The Board may adopt rules specifying in detail the method of arbitration. If the Board fails to adopt such rules or in any given case fails to select such arbitrator within fifteen (15) days from written demand by a disputing Owner, such Owner may petition the Cuyahoga County Court of Common Pleas to select an arbitrator and to supervise such arbitration pursuant to the Local Rules of Common Pleas Court Arbitration shall be binding.

Continued with signatures on Page 26.

IN WITNESS WHEREOF, Yayouni Ltd., has caused this Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Autumn Hill Estates in the City of Seven Hills, Ohio, consisting of Table of Contents i - viii and pages 1-26, to be signed this 23<sup>rd</sup> day of JULY 2003, by its authorized members.

Signed and Acknowledged in the Presence of

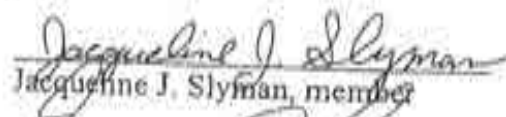
  
(Signature)

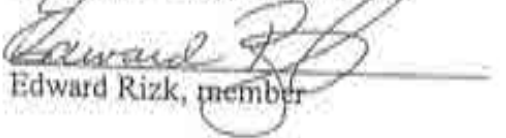
M. Kyle Resser  
(Printed Name)

  
(Signature)

ANTHONY SLYMAN  
(Printed Name)

Yayouni, Ltd.  
an Ohio limited liability company  
BY:

  
Jacqueline J. Slyman, member

  
Edward Rizk, member

STATE OF OHIO                    )  
  ) ss:  
COUNTY OF CUYAHOGA        )

The foregoing instrument was acknowledged before me, this 23<sup>rd</sup> day of July 2003, by Jacqueline J. Slyman and Edward Rizk on behalf of Yayouni, Ltd.

  
NOTARY PUBLIC

VIVIAN HARRIS, Notary Public  
State of OH, Cuyahoga County  
My Commission Expires  
9-23, 2003

LEGAL DESCRIPTION  
EXHIBIT A

**Parcel No. 1:**

Situated in the City of Seven Hills, County of Cuyahoga, State of Ohio and known as being Parcel 2 in the Lot Split and Consolidation Plat for Permanent Parcel No. 552-23-087 and 552-23-016 of part of Original Independence Township Lot No. 25, Tract No. 3, as shown by the recorded plat in Volume 309, Page 98 of Cuyahoga County Map Records, as appears by said plat, be the same more or less, but subject to all legal highways.

P.P.N.: 522-23-101

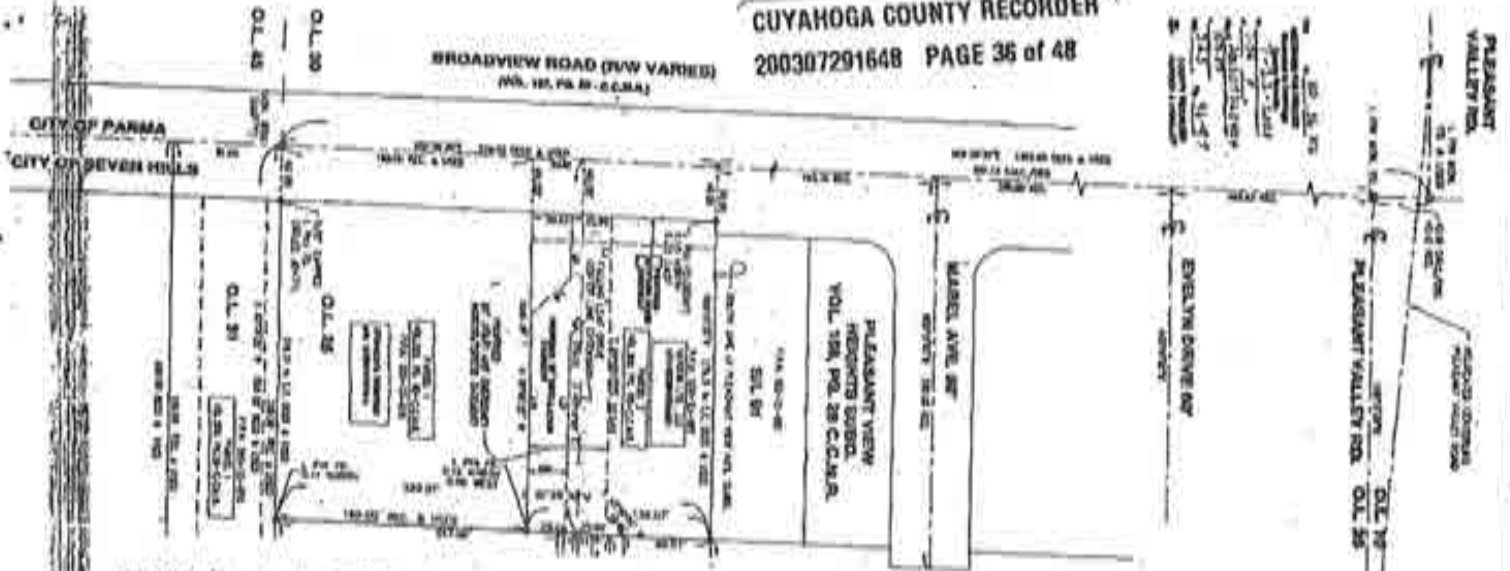
**Parcel No. 2**

Situated in the City of Seven Hills, County of Cuyahoga, State of Ohio and known as being Parcel Three in the Plat of Easement for George and Craig Gacom of part of Original Independence Township Lot No. 31, Tract No. 3, as shown by the recorded plat in Volume 299, Page 59 of Cuyahoga County Map Records, as appears by said plat, be the same more or less, but subject to all legal highways.

P.P.N.: 522-23-100

ST 28242

June 6, 2003



**AUTUMN HILL ESTATES**

SITUATED IN THE CITY OF SEVEN HILLS, CUYAHOGA COUNTY, STATE OF OHIO AND KNOWN AS BEING PARCEL 2 IN THE LOT SPLIT AND CONSOLIDATION PLAT RECORDED IN VOLUME 309, PAGE 98 OF CUYAHOGA COUNTY MAP RECORDS, OF PART OF ORIGINAL INDEPENDENCE TOWNSHIP LOT NO. 25, TRACT NO. 3, WEST OF THE RIVER AND PARCEL 3 IN THE LOT SPLIT PLAT RECORDED IN VOLUME 299, PAGE 59 OF CUYAHOGA COUNTY MAP RECORDS, OF PART OF ORIGINAL INDEPENDENCE TOWNSHIP LOT 31, TRACT NO. 3, WEST OF THE RIVER.

*Cuyahoga One*  
*Patrick J. O*  
Condition of Document Reg

**APPROVALS:**

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 [Signature]  
 [Signature]  
 [Signature]  
 [Signature]

**ACCEPTANCE:**

*[Handwritten signature]*  
 ACCEPTANCE:  
 [Signature]

**WARRANTY ENDORSEMENT:**

*[Handwritten signature]*  
 WARRANTY ENDORSEMENT:  
 [Signature]

*[Handwritten signatures and names]*  
 APPROVALS:  
 [Signature]  
 [Signature]  
 [Signature]  
 [Signature]  
 [Signature]

*[Handwritten signature]*  
 ACCEPTANCE:  
 [Signature]

*[Handwritten signature]*  
 WARRANTY ENDORSEMENT:  
 [Signature]

RECORDED BY CONSULTATION ORDINANCE NO. 283

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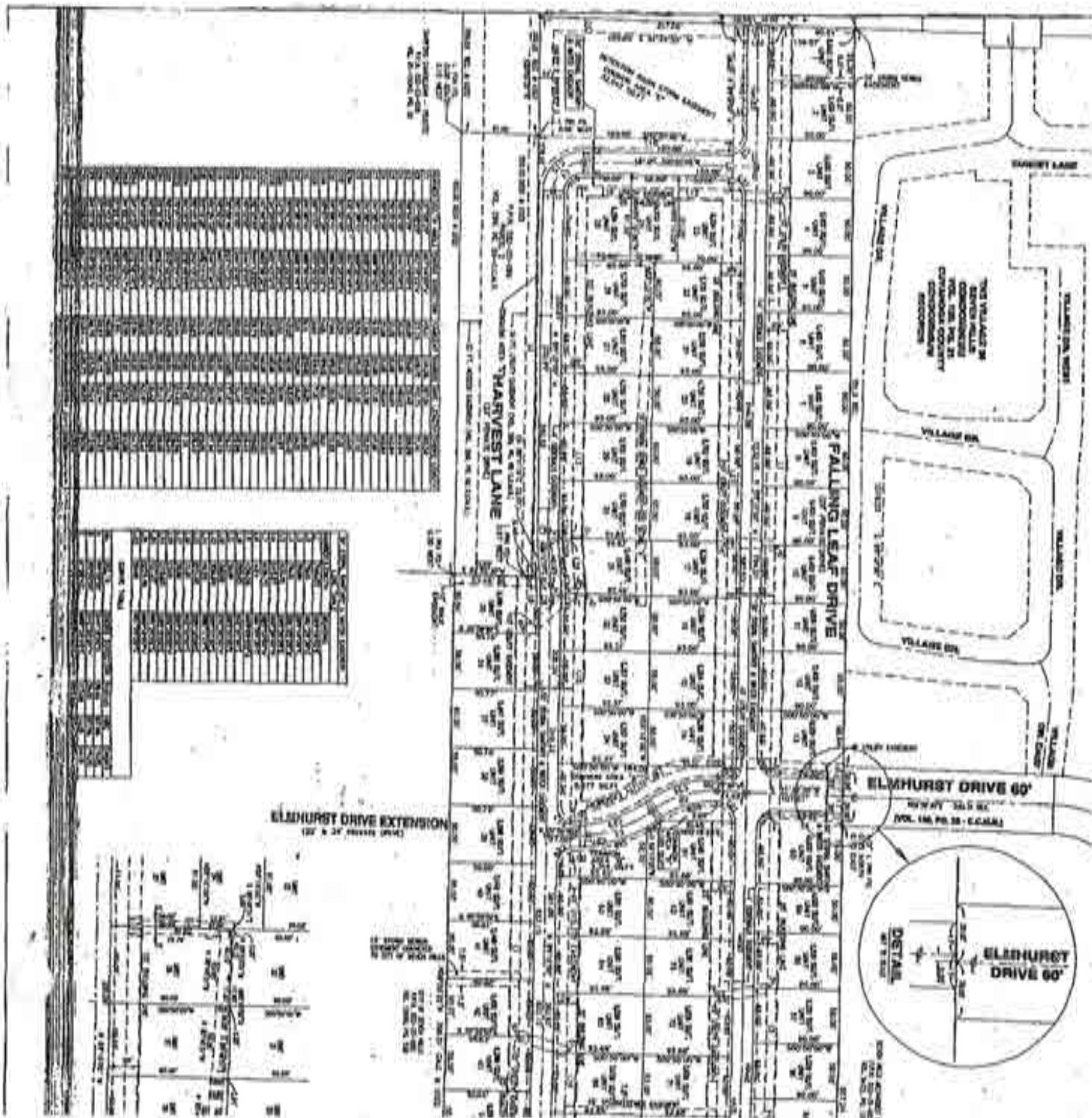
*[Handwritten signature]*  
 CERTIFICATION:  
 [Signature]

*[Handwritten signature]*  
 BASIS OF REASONING:  
 [Signature]

*[Handwritten signature]*  
 552-23-100  
 -101

SEE ST 28292

Cuyahoga County Recorder  
Patrick J. O'Malley  
Condition of Document Recorded as Presented



BY-LAWS  
(Code of Regulations)  
OF  
AUTUMN HILL ESTATES HOMEOWNERS ASSOCIATION, INC.  
♦ A NON-PROFIT OHIO CORPORATION ♦  
IN  
CITY OF SEVEN HILLS, CUYAHOGA COUNTY, OHIO

NAME AND LOCATION

The name of the Association is the Autumn Hill Estates Homeowners Association, Inc. ("Association"), which corporation, not-for-profit, is created pursuant to the provisions of Chapter 1702 of the Revised Code of Ohio. Association is also created pursuant to and in conjunction with the Declaration of Covenants, Conditions, Restrictions and Reservation of Easements for Autumn Hill Estates in the City of Seven Hills, dated \_\_6/1\_\_\_\_\_, 2003 (herein "Declaration"). The principal office of the Association shall be as set forth in its Articles of Incorporation. The place of meetings of Association members (Owners of residential Dwelling Units or Lots) and of the Trustees ("Trustees") of the Association shall be at such place in Cuyahoga County, Ohio as the Board of Trustees ("the Board"), may from time to time designate.

**BY-LAW 1**

DEFINITIONS

All of the terms used herein shall have the same meanings as set forth in the Declaration recorded with the Recorder of Cuyahoga County, Ohio, incorporated herein by reference and made a part hereof.

**BY-LAW II**

**OWNERS (MEMBERS)**

**Composition**

2.01. Each Owner, or Owner of an undivided interest in fee simple of a Lot or Dwelling Unit, as defined in the Declaration, is a member of the Association and is referred to herein as Owner.



ST 28242  
1010 Leader Building  
326 Superior Avenue East  
Cleveland, Ohio 44114-1401  
216-389-8399 800-442-8399 Fax 216-389-8826  
www.suretytitle.com e-mail: info@suretytitle.com

### **Annual Meetings**

2.02. Regular annual meetings of the Owners shall be held in the first calendar quarter of each year hereafter, on a date and at an hour established, from time to time, by the Board.

### **Special Meetings**

2.03. Special meetings of the Owners may be called at any time by the President or by the Board, upon written request of Owners entitled to exercise one-fourth (1/4) or more of the voting power of Owners, and when otherwise required by the Declaration.

### **Notice of Meetings**

2.04. Written notice of each meeting of Owners shall be given by, or at the direction of, the Secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least five (5) days before such meeting, to each Owner entitled to vote thereat, addressed to the Owner's address last appearing on the books of the Association, or supplied by such Owner to the Association for the purpose of notice, or by delivering a copy of that notice at such address at least five (5) days before the meeting. The notice shall specify the place, day, and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

### **Quorum**

2.05. The Owners present, in person or by proxy, at any duly called and noticed meeting of Owners, shall constitute a quorum for such meeting.

### **Proxies**

2.06. At any meeting of Owners, an Owner may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary prior to the meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by an Owner of his, her, or its Unit.

### **Voting Power**

2.07. Except as otherwise provided in the Declaration or by law, a majority of the voting power of Owners voting on any matter that may be determined by the Owners at a duly called and noticed meeting shall be sufficient to determine that matter. The rules of Roberts Rules of Order shall apply to the conduct of all meetings of Owners except as otherwise specifically provided in the Declaration or by law.

### **Action in Writing Without Meeting**

2.08. Any action that could be taken by Owners at a meeting may be taken without a meeting with the affirmative vote or approval, in a writing or writings, of Owners having not less than a majority of the voting power of Owners, or such greater proportion of the voting power as may be required by the Declaration or by law.

## **BY-LAW III**

### **BOARD OF TRUSTEES (BOARD OF MANAGERS)**

#### **Initial Trustees**

3.01. The initial trustees shall be those persons named as the initial Trustees in the Articles, or such other person or persons as may from time to time be designated or substituted by the Declarant. Declarant hereby names as initial Trustees:

Jacqueline J. Slyman  
Edward Rizk

#### **Successor Trustees**

3.02. Those who will serve as Trustees of the Association to succeed the initial Trustees shall be three (3) in number. The times of election, and their terms of office shall be as provided in the Declaration and these By-Laws.

#### **Removal**

3.03. Excepting only Trustees named in the Articles or selected by the Declarant, any Trustee may be removed from the Board with or without cause, by a majority vote of the Owners. In the event of the death, resignation, or removal of a Trustee other



than one named in the Articles or a substitute selected by the Declarant, that Trustee's successor shall be selected by the remaining members of the Board and shall serve until the next annual meeting of Owners, when a Trustee shall be elected to complete the term of such deceased, resigned, or removed Trustee. The Declarant shall have the sole right to remove, with or without cause, any Trustee designated in the Articles, or a substitute selected by the Declarant, and shall select the successor of any Trustee so selected who dies, resigns, is removed, or leaves office for any reason before the election of Trustees by all of the Owners as provided in the Declaration.

### **Nomination**

**3.04.** Nominations for the election of Trustees to be elected by the Owners shall be made by a nominating committee. Nominations may also be made from the floor at the meetings. The nominating committee shall consist of a chairman, who shall be a member of the Board, and two or more Owners appointed by the Board. The nominating committee shall make as many nominations for election to the Board as it shall, in its discretion, determine, but no less than the number of vacancies that are to be filled.

### **Election**

**3.05.** Election to the Board by the Owners shall be by secret written ballot. At such elections, the Owners or their proxies may cast, in respect to each vacancy, such voting power as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

### **Compensation**

**3.06.** Unless otherwise determined by the Owners at a meeting duly called and noticed for such purpose, no Trustee shall receive compensation for any service rendered to the Association as a Trustee. However, any Trustee may be reimbursed for his or her actual expenses incurred in the performance of duties.

### **Regular Meetings**

3.07. Regular meetings of the Board shall be held no less than quarterly, without notice, on such date and at such place and hour as may be fixed from time to time by resolution of the Board. The time and place of regular quarterly meetings shall be supplied at least once per year by notice from the Board to all members.

### **Special Meetings**

3.08. Special meetings of the Board shall be held when called by the President of the Board, or by any three Trustees, after not less than three days' notice to each Trustee.

### **Quorum**

3.09. The presence at any regularly scheduled meeting or at any duly called and noticed meeting, in person or by proxy, of Trustees entitled to cast a majority of the voting power of Trustees shall constitute a quorum for such meeting.

### **Voting Power**

3.10. Except as otherwise provided in the Declaration or by law, vote of a majority of the Trustees voting on any matter that may be determined by the Board at a regularly scheduled meeting or at any duly called and noticed meeting at which a quorum is present shall be sufficient to determine that matter.

### **Action in Writing Without Meeting**

3.11. Any action, except an amendment to these By-Laws, that could be taken by the Board at a meeting of Trustees may be taken without a meeting with the affirmative vote or approval, in a writing or writings, of all of the Trustees

### **Powers**

3.12. The Board shall exercise all powers and authority, under law, and under the provisions of the Declaration, that are not specifically and exclusively reserved to the Owners by law or by other provisions thereof. Without limiting the generality of the foregoing, the Board shall have the right, power, and authority to:

- (1) Take all actions deemed necessary or desirable to comply with all requirements of law, and the Declaration;
- (2) Obtain insurance coverage no less than that required pursuant to the Declaration;
- (3) Enforce the covenants, conditions, and restrictions set forth in the Declaration;
- (4) Repair, maintain, and improve the Common Areas;
- (5) Establish, enforce, levy, and collect assessments as provided in the Declaration;
- (6) Adopt and publish rules and regulations governing the use of the Common Areas and the personal conduct of Owners, occupants, and their guests thereon, and establish penalties for the infraction thereof;
- (7) Suspend the voting rights of a Owner during any period in which such Owner shall be in default in the payment of any assessment levied by the Association (such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for each infraction of published rules and regulations or of any provisions of the Declaration);
- (8) Declare the office of a member of the Board to be vacant in the event such Trustee shall be absent from three consecutive regular meetings of the Board;
- (9) Authorize the officers to enter into one or more management agreements in order to facilitate the efficient operation of the property; (it shall be the primary purpose of such management agreements to provide for administration, management, repair, and maintenance as provided in the Declaration, and the receipt and disbursement of funds as may be authorized by the Board--the terms of any management agreements shall be as determined by the Board to be in the best interest of the Association, subject, in all respects, to the provisions of the Declaration); and;
- (10) Amend these By-Laws by action at any regular meeting or duly noticed special meeting, provided that notice of the intended amendment must be

given to all members, and further that said amendment is subject to hereinafter By-Law IX.

- (11) Do all things and take all actions permitted to be taken by the Association by law, or the Declaration not specifically reserved thereby to others.

### Duties

3.13. It shall be the duty of the Board to:

- (1) Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Owners at each annual meeting of Owners, or at any special meeting when such statement is requested in writing by Owners representing one-half (1/2) or more of the voting power of Owners;
- (2) Supervise all officers, agents, and employees of the Association and see that their duties are properly performed;
- (3) As more fully provided in the Declaration, to:
  - (a) Fix the amount of assessments against each Unit;
  - (b) Give written notice of each assessment to every Owner subject thereto within the time limits set forth therein; and
  - (c) Foreclose the lien against any property for which assessments are not paid within a reasonable time after they are authorized by the Declaration to do so, or bring an action at law against the Owner(s) personally obligated to pay the same, or both;
- (4) Issue, or cause an appropriate representative to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid;
- (5) Procure and maintain insurance as provided in the Declaration, and as the Board deems advisable;
- (6) Cause all officers or employees handling Association funds to be bonded or insured;
- (7) Cause the property subject to the Association's jurisdiction to be maintained within the scope of authority provided in the Declaration;
- (8) Cause the restrictions created by the Declaration to be enforced; and;

- (9) Take all other actions required to comply with all requirements of law and the Declaration.

#### **BY-LAW IV**

### **OFFICERS**

#### **Enumeration of Offices**

4.01. The officers of this Association shall be a President, a Secretary, a Treasurer, and such other officers as the Board may from time to time determine. No officer need be a member of the Association nor need any officer be a Trustee. The same person may hold more than one office.

#### **Selection and Term**

4.02. Except as otherwise specifically provided in the Declaration or by law, the officers of the Association shall be selected by the Board, from time to time, to serve until the Board selects their successors.

#### **Special Appointment**

4.03. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

#### **Resignation and Removal**

4.04. Any officer may be removed from office, with or without cause, by the Board. 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 receipt of such notice or at any later time specified therein, and the acceptance of such resignation shall not be necessary to make it effective.

#### **Duties**

4.05. The duties of the officers shall be as the Board may from time to time determine. Unless the Board otherwise determines, the duties of the officers shall be as

follows:

- (a) President. The President shall preside at all meetings of the Board, shall have the authority to see that orders and resolutions of the Board are carried out, and shall sign all legal instruments on behalf of the Association.
- (b) Secretary. The Secretary shall record the votes and keep the minutes and proceedings of meetings of the Board and of the Owners, serve notice of meetings of the Board and of the Owners, keep appropriate current records showing the names of members of the Association together with their addresses, and shall act in the place and stead of the President in the event of the President's absence or refusal to act.
- (c) Treasurer. The Treasurer shall assume responsibility for the receipt and deposit in appropriate bank accounts of all monies of the Association, the disbursement of such funds as directed by resolution of the Board, the keeping of proper books of account, the preparation of an annual budget and a statement of income and expenditures to be presented to the Owners at annual meetings, and the delivery or mailing of a copy of each to each of the Owners.

#### BY-LAW V

##### COMMITTEES

The Board shall appoint a nominating committee and may appoint such other committees as it deems appropriate in carrying out its purposes.

#### BY-LAW VI

### BOOKS AND RECORDS

The books, records, and financial statements of the Association, including annual audited financial statements when such are prepared, shall be available during normal business hours or under other reasonable circumstances, upon request to the Association, for inspection by Owners and the holders and insurers of first mortgages on Units. Likewise, during normal business hours or under other reasonable circumstances, the Association shall have available for inspection by Owners, lenders, and their insurers, and prospective purchasers, current copies of the Declaration and Association organizational documents and the rules and regulations governing operation of the Association.

### **BY-LAW VII**

#### AUDITS

Upon written request to the Association by an institutional first mortgagee of a Unit, or its insurer, or by vote of the holders of a majority of the voting power of the Owners, the Board shall cause the preparation and furnishing to those requesting of an audited financial statement of the Association for the preceding fiscal year, provided that no such statement need be furnished earlier than ninety (90) days following the end of such fiscal year.

### **BY-LAW VIII**

#### FISCAL YEAR

Unless otherwise changed by the Board, the fiscal year of the Association shall begin on the first day of January and end on the thirty-first day of December of every year, except that the first fiscal year shall begin on the date of incorporation of this Association.

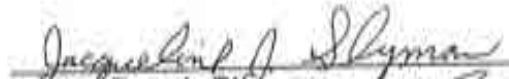
### **BY-LAW IX**

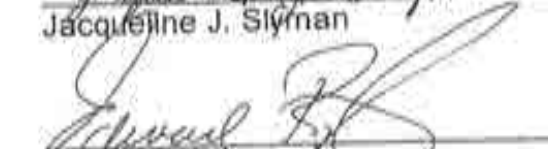
AMENDMENTS

Any modification or amendment of these By-Laws shall be made pursuant to By-Law III hereinabove. Any such amendment which contradicts or purports to change the rights or duties of Owners under the Declaration shall be made only by the same means as an amendment to the Declaration, in the manner and subject to the approvals, terms, and conditions set forth therein, and shall be effective from the time a certificate setting forth such modification or amendment is delivered for recording to the Recorder of Cuyahoga County.

IN TESTIMONY WHEREOF, the undersigned, Yayouni Ltd., the sole member of the Association, by and through its authorized members, Jacqueline J. Slyman and Edward Rizk, have caused these By-Laws to be duly adopted on or as of the 23<sup>rd</sup> day of JULY, 2003.

Yayouni Ltd., by

  
Jacqueline J. Slyman

  
Edward Rizk