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 JAMES B MCCARTHY SURPRISE CO AUDITOR

CODE OF REGULATIONS

OF

BRANDYWINE PRESERVE HOMEOWNERS ASSOCIATION, INC.

A Non-Profit Ohio Corporation

TRANSFER NOT NECESSARY
12-28-08
James B. McCarthy County Auditor

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Mailing Examining Box MB 12117



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CODE OF REGULATIONS

OF

BRANDYWINE PRESERVE CLUSTER ASSOCIATION, INC.

Article I

Name, Principal Office, and Definitions

Section 1. **Name.** The name of the Association shall be BRANDYWINE PRESERVE CLUSTER ASSOCIATION, INC., an Ohio non-profit corporation (hereinafter sometimes referred to as the "Cluster Association").

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

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

Article II

Cluster Association: Meetings, Quorum, Voting, Proxies

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

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

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

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

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

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

If mailed, the notice of a meeting shall be deemed to be delivered three (3) days after it is deposited in the United States mail addressed to the Class "A" Member at his address as it appears on the records of the Cluster Association, with postage thereon prepaid.

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Section 6. Waiver of Notice. Waiver of notice of meeting of a Class "A" Member shall be deemed the equivalent of proper notice. Attendance at a meeting by a Class "A" Member whether in Person or by proxy, shall be deemed a waiver by such Class "A" Member of notice of the time, date, and place thereof, unless such Class "A" Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting, shall also be deemed a waiver of notice of all business transacted thereat unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

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

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

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

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

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

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

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

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

Article III

Board of Trustees: Number. Powers. Meetings

A. Composition and Selection.

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

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

- (a) when forty-six (46) Cluster Living Units permitted by the Site Plan for the Property referred to in the Declaration have been sold and conveyed to Persons other than the Developer;
- (b) December 31, 2003; or
- (c) when, in its discretion, the Class "B" Member so determines.

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

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

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

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

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

Section 4. Number of Trustees. The number of Trustees in the Cluster Association shall be not less than three (3) nor more than seven (7), as provided in Section 6 below. Furthermore, there shall be an odd number of Trustees (i.e. 3, 5 or 7). The initial Board shall consist of three (3) members as identified in the Articles of Incorporation of the Cluster Association.

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

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

(a) Within thirty (30) days after the time Class "A" Members own at least twenty (20) of the Cluster Living Units, or whenever the Class "B" Member earlier determines, the Cluster Association shall call a special meeting at which the Class "A" Members shall elect one (1) of the three (3) Trustees. The remaining two (2) Trustees shall

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be appointees of the Class "B" Member. The Trustee elected by the Class "A" Members shall not be subject to removal by the Class "B" Member acting alone and shall be elected for a term of two (2) years or until the happening of the event described in subsection (b) below, whichever is shorter. If such Trustee's term expires prior to the happening of the event described in subsection (b) below, a successor shall be elected for a like term.

(b) Within thirty (30) days after the time Class "A" Members own at least forty (40) of the Cluster Living Units, or whenever the Class "B" Member earlier determines, the Board shall be increased to five (5) Trustees. The Cluster Association shall call a special meeting at which Class "A" Members shall elect two (2) of the five (5) Trustees. The remaining three (3) Trustees shall be appointees of the Class "B" Member. The Trustees elected by the Class "A" Members shall not be subject to removal by the Class "B" Member acting alone and shall be elected for a term of two (2) years or until the happening of the event described in subsection (c) below, whichever is shorter. If such Trustees' terms expire prior to the happening of the event described in subsection (c) below, successors shall be elected for a like term.

(c) At the first annual meeting of the membership after the termination of the Class "B" Control Period specified in Section 2 of this Article III, the Class "A" Members shall first determine the number of Trustees (i.e., either five [5] or seven [7] Trustees); and shall then elect all five (5) or seven (7) Trustees, as the case may be. Immediately prior to such election, all persons previously elected or appointed, whether by the Developer or by the Class "A" Members shall resign; provided, however, that such persons shall be eligible for reelection to the Board of Trustees. Two (2) or three (3) Trustees shall be elected to serve a term of three (3) years, two (2) or three (3) Trustees shall be elected to serve a term of two (2) years, and one (1) Trustee shall be elected to serve a term of one (1) year. Upon the expiration of the initial term of office of each such Trustee, a successor shall be elected to serve a term of three (3) years. Thereafter, all Trustees shall be elected to serve three (3) year terms. For the purpose of the election of Trustees, each Class "A" Member shall have one (1) equal vote.

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

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

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

B. Meetings.

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

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

Section 10. Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the President, Vice President, or Secretary of the Cluster Association, or by any two (2) members of the Board. The notice shall specify the time and place of the meeting and the nature of any special business to be considered. The notice shall

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be given to each member of the Board by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; (c) by telephone communication, either directly to the member of the Board or to a person at the member's office or home who would reasonably be expected to communicate such notice promptly to the member of the Board; or (d) by telegram, charges prepaid. All such notices shall be given or sent to the member's address or telephone number as shown on the records of the Cluster Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least seventy-two (72) hours before the time set for the meeting.

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

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

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

Section 14. Conduct of Meetings. The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of the Board, recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring

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at such meetings. Meetings may be conducted by telephone and shall be considered as any other meeting, provided all Trustees are able through telephone connection to hear and to be heard.

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

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

Section 17. Action Without a Formal Meeting. Any action to be taken at a meeting of the Board or any action that may be taken at a meeting of the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members of the Board, and such consent shall have the same force and effect as a unanimous vote. An explanation of the action taken shall be posted at a prominent place or places within the Common Areas within three (3) days after the written consents of all the members of the Board have been obtained.

C. Powers and Duties.

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

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

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

- (a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the Common Expenses;
- (b) from and after the Subsidy Period, making assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment; provided, however, that unless otherwise determined by the Board, the annual assessment against the proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for said month;
- (c) providing for the operation, care, upkeep, and maintenance of all of the Common Areas;
- (d) designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Cluster Association, its property, and the Common Areas and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;
- (e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Cluster Association; provided, however, that any reserve fund may be deposited, in the Trustee's best business judgment, in depositories other than banks;
- (f) making and amending rules and regulations;
- (g) opening of bank accounts on behalf of the Cluster Association and designating the signatories required;
- (h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Areas in accordance with the provisions of the Declaration and this Code after damage or destruction by fire or other casualty;

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

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

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

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

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

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

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

Section 19. Management Agent.

(a) The Board may employ for the Cluster 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

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manager, subject to the Board's supervision, all of the powers granted to the Board by this Code, other than the powers set forth in subparagraphs (a), (b), (f), (g), and (i) of Section 18 of this Article. The Developer, or an affiliate of the Developer, may be employed as managing agent or manager.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(vii) an annual report consisting of at least the following shall be distributed to all Class "A" Members within one hundred twenty (120) days after the close of the fiscal year: (1) a balance sheet as of the end of the fiscal year; (2) an operating (income) statement for the fiscal year; and (3) a statement of changes in financial position for the fiscal year. Ordinarily, the annual report referred to above shall be prepared by an independent accountant for any fiscal year in which the gross income to the Cluster Association exceeds Fifty Thousand Dollars (\$50,000). If said report is not prepared by an independent accountant, it shall be accompanied by the certificate of an authorized officer of the Cluster Association that the statements were prepared without audit from the books and records of the Cluster Association

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

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

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

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

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

(ii) Commence an action to enforce performance on the part of the Member or Tenant or other occupant, and to require the Member to correct such failure, or for such other relief as may be necessary under the circumstances, including injunctive relief; and/or

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

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the provisions of the Declaration, and may take any and all other action reasonably necessary to correct the applicable failure; and/or

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

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

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

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

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

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

(g) **No Waiver of Rights.** The failure of the Cluster Association or a committee or any Member to enforce any covenant, restriction or any other provision of the Declaration, this Code, or the Rules, as the said documents may be amended from time to time, shall not constitute a waiver of the right to do so thereafter.

(h) **Appeal.** Following a hearing before a committee, the violator shall have the right to appeal the decision to the Board. To perfect this right, a written notice of appeal must be received by the President or Secretary of the Cluster Association within thirty (30) days after the date of receipt of the decision of the committee. No later than thirty (30) days after receipt of the notice of appeal, the Board shall review the minutes of the hearing. The

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affirmative vote of two-thirds (2/3rds) of the members of the Board shall be required to reverse or modify the decision of the committee.

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

Article IV Officers

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

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

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

Section 4. **Powers and Duties.** The officers of the Cluster Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time be specifically conferred or imposed by the Board. The President shall be the chief executive officer of the Cluster Association. The

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Secretary shall have primary responsibility for the preparation and maintenance of all minutes and other records of actions by the Board, and shall provide all notice required hereunder and handle all correspondence or other communications of the Cluster Association, either directly or by delegation, to other committees, the management agent, or both. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

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

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

Article V Committees

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

Section 2. Covenants Committee. The Board may appoint a Covenants Committee consisting of at least three (3) and no more than five (5) members. Acting in accordance with the provisions of the Declaration, this Code, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Cluster Association and shall conduct all hearings held pursuant to Article III, Section 23 of this Code.

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Article VI
Finances of Cluster Association (Assessments)

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

In addition to such regular monthly assessments, each Class A Member shall be required to make, at the time such Member acquires title to a Cluster Living Unit from the Developer, an initial capital contribution to the Cluster Association equal to two (2) times the estimated monthly Assessment for Common Expenses for each Cluster Living Unit purchased. The general purpose of this contribution is to provide the Cluster Association with a portion of the necessary initial working capital and/or a contingency reserve. Such funds may be used for certain prepaid items (e.g., insurance premiums, utility deposits and

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organization, equipment and supply costs) and for such other purposes as the Board may determine. This initial capital contribution is not an escrow or advance, is not refundable and shall not be required of the Declarant, but only from those persons who or which purchase a Cluster Living Unit or Cluster Living Units from the Declarant.

Notwithstanding the provisions of this Section 1, the Board shall have the authority to establish payment of assessments on a quarterly (rather than on a monthly) basis.

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

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

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

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

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

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

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

Article VII
Miscellaneous

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

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

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

Section 4. Books and Records.

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

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

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

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

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

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

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

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

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

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JAMES B MCCARTHY SUPPLY CO AUDITOR

IN TESTIMONY WHEREOF, the undersigned, being the sole Member of the Cluster Association, has caused this Code of Regulations to be duly adopted on or as of the 7th day of December, 1998.

Signed in the presence of:
(the names of the witnesses must either be typed or printed below their signatures)

BRANDYWINE PRESERVE, LTD.,
an Ohio limited liability company

Beverly J. Wenzel
Print Name Beverly J. Wenzel
Dawn M. Zenobi
Print Name Dawn M. Zenobi

By: D.K.J. Family Limited Partnership, an Ohio limited partnership, Managing Member

By: Gregg S. Lurie
D.K.J. Family Corporation, an Ohio corporation, General Partner

By: Gregg S. Lurie
Gregg S. Lurie, President

STATE OF OHIO)
COUNTY OF CUYAHOGA) SS:

Before me, a Notary Public in and for said County and State aforesaid, personally appeared BRANDYWINE PRESERVE, LTD., an Ohio limited liability company, by Gregg S. Lurie, President of D.K.J. Family Corporation, an Ohio corporation, General Partner of D.K.J. Family Limited Partnership, an Ohio limited partnership, its Managing Member, who acknowledged that he did sign the foregoing instrument and that the same was his free act and deed individually and as such officer and the free act and deed of said Company, Partnership and Corporation.

GIVEN, under my hand and Notarial Seal this 7th day of December, 1998.

Dawn M. Zenobi
NOTARY PUBLIC

THIS INSTRUMENT PREPARED BY:

Richard A. Rosner, Attorney at Law
Kahn, Klebanov, Yanowitz & Aronson Co., L.P.A.
Suite 2600, The Tower At Erieview
1301 East Ninth Street
Cleveland, Ohio 44114-1824
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DAWN M. ZENOBI
Notary Public State of Ohio Cuy. Cty.
My Commission Expires May 20, 2001

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