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January 12, 2006

*VIA MESSENGER DELIVERY*

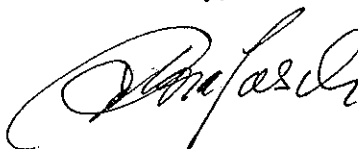
Ed Coaxum, Jr.  
Buckingham, Doolittle & Burroughs  
1375 East Ninth Street  
Suite 1700  
Cleveland, Ohio 44114

**RE:   *Emery Woods Cluster Homes***  
***Declaration of Easements, Covenants and Restrictions***

Dear Ed:

Pursuant to your request, I have enclosed an execution copy of the Declaration (Emery Woods Cluster). Please contact me if you need any additional information.

Sincerely,



Debora S. Lasch

cc:   Gordon Priemer  
     Mary Lovett

**DECLARATION OF  
EASEMENTS, COVENANTS AND RESTRICTIONS  
FOR  
CHATEAUX OF EMERY WOODS CLUSTER HOMES  
Warrensville Heights, Cuyahoga County, Ohio**

The development of the real property that is the subject of the following Declarations is subject to the terms of a Development Agreement, as amended, between the City of Warrensville Heights, Ohio and Emery Woods, LLC. Under the terms of the Development Agreement, the real property may be subject to the levy and collection of special assessments by the City, and builders may be required to assume certain obligations by entering into an assumption agreement with the City.

**Being developed by:**

**Chateaux by WFH, LLC  
an Ohio limited liability company  
20104 Chagrin Blvd.  
Shaker Heights, Ohio 44122  
Phone: (216) 295-6020**

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**EXHIBITS**

Exhibit A	Plat Master Declaration Recording Information
Exhibit B	Legal Description of Cluster Property
Exhibit C	Additional or Expansion Property
Exhibit D	Articles
Exhibit E	Bylaws
Exhibit F	Assessments

**DECLARATION OF EASEMENTS, COVENANTS AND RESTRICTIONS**  
**FOR**  
**CHATEAUX OF EMERY WOODS CLUSTER HOMES**

**THIS DECLARATION** on the later of the dates in the notarial clauses below, by Chateaux by WFH, LLC, an Ohio limited liability company (the "Declarant"), and Emery Woods Cluster Association, Inc. a non-profit Ohio corporation ("Association").

**RECITALS:**

A. Declarant is the owner of real property located in the City of Warrensville Heights, Ohio, shown on the Plat attached hereto as Exhibit A and legally described in Exhibit B attached hereto. Declarant plans to develop the Property (as hereinafter defined) as a residential community and common area for use in common by the entire Emery Woods community.

B. This property is part of Emery Woods, a planned unit development and is governed by a document entitled "Master Declaration of Easements, Covenants and Restrictions for Emery Woods ("Master Declaration") recorded as AFN No. 200412170227 with the Cuyahoga County Recorder's Office. This Declaration is being created pursuant to **Section 1.4** of the Master Declaration which provides, in part, that the Declarant herein may create its own Clusters Declaration to develop, maintain and administer the common areas within a Cluster Area as defined in the Master Declaration and to impose covenants and building use restrictions to supplement those contained in the Master Declaration.

C. This Declaration provides the legal requirements necessary (a) to permit occupants of Chateaux of Emery Woods Cluster Homes to go upon, pass over, enjoy and relax in all of the Common Areas (as hereinafter defined), (b) to create an association whereby community members will be permitted, and encouraged, to participate in policy-making decisions and in the management of the Common Areas, (c) to provide for payment of the costs and expenses necessary to maintain and preserve the Common Areas and the Lots, and (d) to establish high standards for the use and maintenance of Homes, Lots and Common Areas so that the character of Chateaux of Emery Woods Cluster Homes will be preserved.

**DECLARATION:**

**NOW THEREFORE**, Declarant declares that the Property shall be owned, held, transferred, sold, conveyed, used and occupied subject to the covenants, conditions, restrictions, easements, assessments, charges and liens (collectively, the "Covenants and Restrictions") provided in this Declaration, which Covenants and Restrictions shall run with the land and shall

be binding on and inure to the benefit of all persons having any right, title, or interest in any part of the Property, their respective heirs, personal representatives, successors and assigns.

ARTICLE I  
RECITALS; PROPERTY SUBJECT TO THIS DECLARATION

1.1 Recitals. The Recitals are incorporated in and made a part of this Declaration.

1.2 Property. The Property initially which is and shall be owned, held, transferred, sold, conveyed, used, and occupied subject to this Declaration is the real property described in Exhibit B attached hereto, a portion of the area defined in the Master Declaration as the "Cluster Area." Property shall also include any additional land added to the Property and subject to this Declaration as provided in **Section 10.3** below.

1.3 Expansion and Contraction of the Property.

(a) Declaration may add additional property to the Property, including but not limited to the Property described on **Exhibit C**, attached hereto, as such Property may be expanded from time-to-time by Declarant, at any time by the filing of a Subsequent Amendment to this Declaration which expressly provides that the land described therein shall become a part of the Property and shall be subject to the Covenants and Restrictions set forth in this Declaration, except as may be modified by the Subsequent Amendment. The Subsequent Amendment shall include an amendment to the Plat of the Property. By his acceptance of a deed for any Home, an Owner hereby authorizes Declarant as his attorney-in-fact to execute and file such Subsequent Amendment and Plat.

(b) Declarant reserves the right to delete lands from the Property (including, without limitation, lands designated as Common Areas) and thereby to free such lands from the provisions of this Declaration, at any time by the filing of a Subsequent Amendment hereto and of the Plat of the Property. By his acceptance of a deed for any Home, an Owner hereby authorized Declarant as his attorney-in-fact to execute and file such Subsequent Amendment and Plat.

ARTICLE II  
EXHIBITS AND DEFINITIONS

2.1 Exhibits. The following exhibits are attached to and made a part of this Declaration:

Exhibit A: A copy of the plat showing the sublots making up the Property in relation to those of the Expansion Property and the Master Association, which plat may hereafter be amended or modified by Declarant as provided herein.



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- Exhibit B: The legal description of the Property, which may hereafter be amended or modified by Declarant as provided herein.
- Exhibit C: Legal description of Expansion Property
- Exhibit D: The Articles of Incorporation of Emery Woods Cluster Association, Inc. as filed with the Secretary of State of the State of Ohio
- Exhibit E: The Bylaws of Emery Woods Cluster Association, Inc.
- Exhibit F: Assessments during Start-Up Period.

**2.2 Definitions.** The following definitions are applicable to this Declaration:

(a) "Additional Assessments" shall mean the assessments imposed against an Owner by the Master Association pursuant to **Section 11.13**.

(b) "Areas Of Common Responsibility". The Areas of Common Responsibility shall mean and refer to: (1) the Common Areas; (2) any security facilities, walls and fences; (3) Cluster Roads (hereinafter defined) and signs, streetlights (if any) and walks, bridges and pathways (if any); (4) storm drainage that generally serves the Property, including storm retention and detention ponds; (5) sanitary sewer lines not assumed by the City; (6) water laterals extending to Homes and other facilities of Chateaux of Emery Woods Cluster Homes; (7) snow removal and maintenance of originally installed landscaping in accordance with **Section 9.1** hereof; (8) real and personal property owned by the Association; (9) real and personal property not owned by the Association but determined by the Board to be the responsibility of the Association; and (10) together with those areas, if any, which by contract with any commercial establishment or association, or with any local governmental authority become the responsibility of the Association. Any public rights-of-way within or adjacent to the Property may be part of the Areas of Common Responsibility.

(c) "Assessments" means the share of Common Costs referred to in **Section 11.1**, and special assessments as permitted herein, together with "Other Charges" which are from time to time levied by the Board and are required to be paid by an Owner. "Other Charges" shall include, without limitation, (i) interest upon each Assessment and Other Charges as determined from time to time by the Board, but in no event greater than the highest legal rate which may be charged to an individual without being usurious (but not greater than fifteen percent (15%) per annum) from the date the Assessments or Other Charges first become due to the date it is paid in full; and (ii) the reasonable costs of collection of any unpaid Assessments and Other Charges (including court costs and reasonable attorneys' fees and disbursements of counsel).

(d) "Association" means Emery Woods Cluster Association, Inc. an Ohio non-profit corporation, its successors and assigns, created to govern, operate, control and administer Chateaux of Emery Woods Cluster Homes, including, without limitation, the Common Areas, Homes and the Lots (to a more limited degree) and to supervise and enforce the Covenants and Restrictions.



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(e) "Berms" shall mean the mounded landscaped area within the 20-foot wide strip along Emery Road on the Lots designated on the Plat as 58 to 61 and 7-72.

(f) "Board" means the Board of Directors of the Association.

(g) "Builder" means a Person acquiring title to a portion or all of the Property for the sole purpose of engaging in the business of improving the Property with Homes for sale.

(h) "Chateaux of Emery Woods Cluster Homes" means the residential community to be developed by Declarant as described in Recital A to this Declaration and being all of the Property as the same may be expanded from time to time by Declarant.

(i) "City" means the City of Warrensville Heights, Ohio, a municipal corporation organized and existing under the laws of the State of Ohio.

(j) "Cluster Roads" Any private street which is at any time constructed on the Property by Declarant for use by Owners and Occupants (including, without limitation Owners and Occupants of any Expansion Property), their families, guests, licensees, invitees, mortgagees and lessees, whether the same is denominated as a street, avenue, boulevard, drive, place, court, road, circle, lane, walk or other designation (including any curbs, gutters or sidewalks adjacent to any such street or other thoroughfare). A Cluster Road need not be titled in the name of the Association nor dedicated to a governmental authority. Cluster Roads shall include Rue Saint-Anne Court, Rue Saint-Gabriel Court and the Proposed Roads shown on Exhibit A, as amended from time to time by Declarant.

(k) "Common Area" and "Common Areas" means that portion of the Property (including the improvements thereto and facilities thereon) designated by Declarant for ownership or use by the Association for the common use and enjoyment of the Members and Occupants (as such Common Area may be modified by Declarant pursuant to **Sections 10.5 and 1.3**). The Common Area to be used by the Association after Declarant ceases to have an Ownership Interest in any Lot or Home as provided in **Section 7.1**, or earlier, if the Declarant conveys such area to the Association prior to such time, is described as follows: all portions of the Property excluding: (i) any roadways dedicated by Declarant and accepted by the municipality; and (ii) fee simple title to Lots (as the Lots may be modified by Declarant and subject to the common area easements described below) and improvements, if any, within such Lots subject to the Easements set forth in **Articles III and IV**. The Common Area includes the following: (i) security facilities including any walls and fences; (ii) easement rights to (a) the Cluster Roads, Proposed Roads and any other private street which is at any time constructed on the Property, (b) cul-de-sacs and cul-de-sac gardens and landscaping, (c) parking areas, (d) cul-de-sac signs, (e) street lights (if any) and (f) walks, bridges or pathways (if any); (iii) storm drainage easements that generally serves the Property and ponds (if any), including storm retention and detention ponds; (iv) sanitary sewer easements and lines not assumed by the City; (v) water laterals easements extending to Homes and other facilities; and (vi) any other real and



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personal property owned by the Association. The Common Areas are subject to amendment and modifications by Declarant (until such time as Declarant ceases to have an Ownership Interest in any of the Property) by modification or amendment hereof and/or by the filing of an amended plat with the appropriate governmental offices.

(l) "Declarant" means Chateaux by WFH, LLC, and its successors and assigns. No Person shall be deemed to be a successor or assign of the original Declarant for the purposes of this Declaration unless such Person has been specifically so designated by Declarant, by instrument in writing and placed of record.

(m) "Declaration" means this Declaration of Easements, Covenants and Restrictions.

(n) "Design Review Committee" or "DRC" means the Design Review Committee described in Article IV of the Master Declaration.

(o) "Home" means an individual unit of residential housing situated on an individual Lot for use and occupancy as a single family residence, and that portion of the Lot upon which the Home and its foundation rests. For purposes of this Declaration, a Home shall come into existence when the improvements constructed thereon are sufficiently complete to reasonably permit the habitation thereof, whether or not a certificate of occupancy has been issued for the Home by the governmental authority having jurisdiction over the same.

(p) "Lot" means any subplot within the Property as shown on the plat attached hereto as Exhibit A (as same may be amended or modified) upon which a Home has been or is intended to be constructed and which is or will be treated by the Auditor of Cuyahoga County, Ohio, as a separate tax parcel for the purpose of assessing real property taxes. The location and dimensions of each Lot and the number of Lots in the aggregate are subject to amendment and modifications by Declarant (until such time as Declarant ceases to have an Ownership Interest in any of the Property) by modification or amendment hereof and/or by the filing of an amended plat with the appropriate governmental offices.

(q) "Member" means a member of the Association, being Declarant and the other Owners.

(r) "Occupant" means a natural person who resides in a Home.

(s) "Owner" means any Person (including Declarant) who holds part or all of the record title to a Home or to a leasehold estate in any Home having an initial term of fifty (50) years or more. The word "Owner" shall not include (i) any Person holding, whether or not of record, a non-possessory future interest to a Home or to a leasehold estate in a Home having an initial term of less than fifty (50) years; and (ii) any Person having an interest merely as security for the payment of or performance of an obligation unless and until said Person shall have acquired title pursuant to foreclosure or any act or proceeding in lieu of foreclosure. In the case of a land installment contract, the vendee shall be deemed the Owner, absent an agreement between vendor and vendee otherwise. Each Owner shall be treated for all purposes as a single

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Owner for each Home held irrespective of whether such ownership is joint or in common. In the event such ownership interest is joint or in common, the majority vote of the Owners shall be necessary to cast any vote to which such Owners are entitled.

(t) "Ownership Interest" means the fee simple interest of Declarant or any Owner of a Lot, Home, or any other land or real property within the Property or the leasehold estate of an Owner or Declarant having an initial term of fifty (50) years or more therein.

(u) "Person" means a natural person, corporation, partnership, limited partnership, trust and any other legal entity to which the law attributes the capacity of holding title to real property or to which the law attributes rights and duties.

(v) "Property" means the land shown on the drawing attached hereto as Exhibit A and legally described in Exhibit B constituting Chateaux of Emery Woods Cluster Homes in its entirety as said land may, at any time until Declarant ceases to have an Ownership Interest in any of the Property, be (i) enlarged by Declarant's addition, from time-to-time, of land to the Property, as it may be enlarged from time-to-time, and (ii) contracted by Declarant's deletion, from time to time, of land from the Property.

(w) "Proportionate Share" means a share to each Owner (excluding (i) Declarant and Builder(s) during the Start-Up Period and from and after the end of the Start-Up Period until such time, if ever, that Declarant or Builder owns and leases out for rent a Home for a profit and (ii) during the Start-Up Period, the Owner of any Home which is used as a model Home with respect to the sale of Homes in Chateaux of Emery Woods Cluster Homes) based upon the type and size of such Owner's Home (in terms of square feet) relative to the aggregate size of all Homes in Chateaux of Emery Woods Cluster Homes (including such Owner's Home, but excluding (i) Home(s) owned by Declarant or Builder(s) during the Start-Up Period and Home(s) owned by Declarant or Builder from and after the end of the Start-Up Period unless Declarant or Builder leases such Home(s) out for rent for a profit and (ii) during the Start-Up Period, any Home which is used as a model Home with respect to the sale of Homes in Chateaux of Emery Woods Cluster Homes). Proportionate Shares shall be adjusted at hundredths of a percent, so that the total Proportionate Shares of all Homes (excluding (i) Home(s) owned by Declarant and Builder(s) during the Start-Up Period and Home(s) owned by Declarant or Builder from and after the end of the Start-Up Period unless Declarant or Builder leases such Home(s) out for rent for a profit and (ii) during the Start-Up Period, any Home which is used as a model Home with respect to the sale of Homes in Chateaux of Emery Woods Cluster Homes) equals 100.00%. In the event the Property is expanded to include additional Homes, the Proportionate Shares of the respective Homes will be uniformly reallocated to take such additional Homes into consideration so that the total Proportionate Shares of all Homes (excluding (i) Home(s) owned by Declarant and Builder(s) during the Start-Up Period and Home(s) owned by Declarant or Builder from and after the end of the Start-Up Period unless Declarant or Builder leases such Homes out for rent for a profit and (ii) during the Start-Up Period, any Home which is used as a model Home with respect to the sale of Homes in Chateaux of Emery Woods Cluster Homes), adjusted at hundredths, equals 100%.

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(x) "Rules" means such rules and regulations to govern the operation and use of the Homes, the Lots, Common Area and any other Property owned by the Association as may be adopted from time to time by Declarant (as long as Declarant has an Ownership Interest in any of the Property) and thereafter by the Board to implement and carry out the provisions and intent of this Declaration.

(y) "Special Assessments" shall mean the assessments imposed against an Owner by the Association pursuant to **Section 11.6** or by the Master Association pursuant to **Section 11.13**.

(z) "Start-Up Period" means the period commencing upon the filing of this Declaration for record with the Cuyahoga County Recorder and ending on the earlier of (i) the date that Declarant and Builder(s) have completed the sale of all Homes in Chateaux of Emery Woods Cluster Homes, (ii) the date that Declarant or Builder(s) are no longer the only Members of the Association entitled to vote, or (iii) December 31, 2011.

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

(bb) "Tenant" means a Person living in and having a possessory leasehold interest in a Home, other than an Owner.

**ARTICLE III**  
**EASEMENTS**

3.1 Utility Easements. Declarant and the Builder and/or the Association, as the case may be, shall have the right and easement to install, operate, use, maintain, repair and replace or grant to any other Person, utility or public authority the right to install, operate, use, maintain, repair or replace, in, on, over or under any portion of the Property determined by Declarant Builder and/or the Association, as the case may be, any pipes, conduits, ducts, wires, facilities, television cables and equipment, and utility lines and systems to provide or furnish electricity, telephone, television and other communications, sanitary sewers and storm sewers, drainage, gas, water, energy of all types and utility services of all types to or for the benefit of one or more Owners and/or the Association, and Declarant, Builder(s) and the Association shall have the right to do all things reasonably necessary in connection therewith. There is hereby reserved in favor of the Declarant and the Association the right (but not the obligation) to grant neighboring property owners easements for utility purposes so long as the granting of such easements does not overburden the utilities serving the Property.

3.2 Cluster Roads and Cul de Sacs, Parking Area and Right-of-Way. Declarant, its agents, contractors and employees, the Association, its agents, contractors and employees, and

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all Owners and Occupants (including, without limitation Owners and Occupants of any Expansion Property), their families, guests, licensees, invitees, mortgagees and lessees, shall have the perpetual and non-exclusive right of ingress, egress, access and passage to, from and over all Common Area portions of the Property (including, without limitation, the Cluster Roads, the Proposed Roads and any other private street which is at any time constructed on the Property, the cul-de-sacs and cul-de-sac gardens and landscaping, the parking areas, and walks, bridges or pathways, if any) subject to rules adopted by the Association. The Plat attached hereto as Exhibit A and made a part hereof (the "Plat") and any amendments thereto represent approximate depictions of location of the Cluster Roads, Proposed Roads, cul-de-sacs and parking areas situated on the Property versus a specific depiction of the exact location of said Cluster Roads, Proposed Roads, cul-de-sacs and parking areas. As long as Declarant has an ownership interest in the Property, Declarant reserves the right to amend and modify the Plat and the location of all Cluster Roads, Proposed Roads, cul-de-sacs and parking areas on the Property by modification or amendment hereof and of the Plat.

3.3 Easements for Walkways, Landscaping and Bridges. Easements for the installation, erection, construction, operation, maintenance, replacement, removal, relocation and use of walkways, bridges, traffic or directional signs, curbs, the Berms, landscaping and other similar items which are usual and customary in connection with the operation and maintenance of gardens and landscaping, Berms, bridges and walkways are hereby created on, over, through, upon and across the Lots (and any portions thereof) in favor of Declarant, the Association and their respective agents, contractors and employees, subject to the Rules adopted by the Association. Declarant, its agents, contractors, employees and invitees, the Association, its agents, contractors, employees and invitees and all Owners and Occupants, their families, guests, licensees, invitees, mortgagees and lessees, shall have the perpetual and non-exclusive easement on, over, through and across the Lots (and any portion thereof) for the use of all walkways and bridges situated on the Property and for access, ingress, egress and passage to and from all such walkways and bridges. The Plat represents a proximate depiction of the location of the walkways and bridges situated on the Property versus a specific depiction of the exact location of said walkways and landscaping. As long as Declarant has an Ownership Interest in the Property, Declarant reserves the right to amend and modify the Plat and the location of walkways, bridges, landscaping and entrance areas on the Property by modification or amendment hereof and of the Plat.

3.4 Encroachments. Easements for encroachments caused by inaccuracy of survey or in construction or reconstruction of any Home, building or Common Area or facility or caused by settlement or movement, and including easements for the maintenance and use of the encroaching improvements in favor of each Owner, the Association, and Declarant are hereby created, provided such encroachments are not intentionally created. Encroachments created by the initial construction of Homes by Declarant are and will be acceptable to all Owners even if created intentionally by Declarant.

3.5 Support Easements. Cross easements for support and use of any common structural elements in favor of Declarant, the Association, and the Owners of Homes which utilize common structural elements are hereby created for so long as the building or structure

stands, including the continued use, benefit, enjoyment, support and service, and the right of maintenance, repair, replacement and access to said common structural elements.

3.6 Easements Reserved to Declarant. For any time that Declarant owns a fee simple interest in the Property, Declarant reserves the right and easement for itself and its guests, invitees, agents, contractors, material suppliers and others performing work and furnishing materials to construct Homes and other improvements upon the Property to go upon all portions of Chateaux of Emery Woods Cluster Homes (including the inside of a Home provided that reasonable oral notice is given), for the purpose of developing, constructing, reconstructing, improving, repairing, maintaining, inspecting, selling, or otherwise dealing with any portion of the Common Area or any Lot, building, Home or other structures and improvements within Chateaux of Emery Woods Cluster Homes. Included in the foregoing shall be the Declarant's right to maintain upon the Property (a) signage for the advertisement and sale of real estate within the Property and (b) construction offices/trailers, model units, and sales offices for real estate within the Property. Declarant, its guests, licensees and invitees shall have an easement for access to all such facilities. This Section may not be amended or modified without the express written consent of Declarant.

3.7 Right of Entry for Repair, Maintenance and Restoration. The Association and its agents, employees, successors and assigns shall have a right of entry and access to, over, upon and through all the Property, including each Lot, Home and the Common Areas, to enable the Association to perform its obligations, rights and duties pursuant hereto with regard to maintenance, repair, restoration and/or servicing of any items, things or areas of or in the Property. In the event of an emergency, the Association's right of entry to a Home may be exercised without notice; otherwise, the Association shall give the Owners or Occupants of a Home no less than twenty-four (24) hours advance notice prior to entering a Home.

3.8 Construction in Easements. No structure, planting or other material shall be placed or permitted to remain within the easements for the installation and maintenance of utilities and drainage facilities which may damage or interfere with the installation and maintenance of utility lines or which may change the direction of the flow of drainage channels in the easements or which may obstruct or retard the flow of water through drainage channels in the easement areas. The utility facilities within the easement areas shall be subject to the right of the Board to maintain the same, and its right to delegate that right to a public authority or utility.

3.9 Easements for Community Signs. Easements are created over the Lots and Common Areas to install, maintain, repair, replace and illuminate signs that are for the general benefit of the Property. The type, size and location of the signs shall be subject to the laws of the City and other governmental authorities having jurisdiction.

3.10 Emergency and Service Easements. Easements are created in favor of fire, police, health, sanitation, medical ambulance, school buses, mail services, utility company, public or private emergency and service personnel and their vehicles shall have an easement for ingress and egress over and across the roads or drives including the Cluster Roads within the Property for performance of their respective duties. Included in the easements created by this section is



the grant of an easement to the City and other appropriate governmental bodies of the right of entrance to the Common Area for emergency purposes or in the event of nonperformance of maintenance and improvements effecting the public interest. Such governments shall have the right, after proper notice, to make improvements and perform maintenance functions with the cost levied in accordance with **Article 11** hereof against the Association and its Members with respect to Common Areas. Advanced notice is not necessary for emergency entrance onto such Common Area.

3.11 General. The easements and grants provided herein shall in no way affect any other recorded grant or easement. Failure to refer specifically to any or all of the easements and/or rights described in this Declaration in any deed of conveyance or in any mortgage or other evidence of obligation shall not defeat or fail to reserve said rights or easements but the same shall be deemed conveyed or encumbered, as the case may be, along with the Home or Lot.

3.12 Easement to Run with Land. All easements and rights described herein are easements pertinent to the Property including the Homes, Lots and Common Areas shall run with said lands perpetually and at all times shall inure to the benefit of and being binding upon the Declarant, Builders, and successor and assigns and any Owner, tenant, occupant, purchaser, mortgagee or other person having an interest in the Property.

#### ARTICLE IV PARTY WALLS

4.1 Use. The acceptance and use of party walls shall be governed by the following provisions:

(a) Every Owner who shall accept or receive any instrument of conveyance of a Home by acceptance of title to his or her Home, shall be deemed to have accepted the party wall covenants set forth in this **Article IV**.

(b) Each wall which is built as a part of the original construction of a Home and forming a common wall or boundary between two Homes shall constitute a party wall, and to the extent not inconsistent with the provisions of this **Article IV**, the general rules of law regarding party walls and of liability for property damage due to negligent or willful acts or omissions shall apply thereto.

(c) The Owners of Homes divided by a party wall shall have the right to use it jointly. The term "use" shall and does include normal interior usage such as paneling, wiring, piping, and other normal interior wall usages (but not in such a manner as to detrimentally and materially affect the use by the other party) plastering, painting, decorating, erection of tangent walls and shelving, hanging of mirrors and artwork, but prohibits any form of alteration which would cause an aperture, hole, conduit, break or other displacement of the original materials forming the other side of the party wall or which is not consistent with the foregoing.

4.2 Modification of Party Wall. The modification of any party wall shall be governed by the following provisions:

(a) Neither Owner of a Home sharing a party wall may extend or increase the height of the party wall except upon the written approval of the other Owner and holders of any mortgages on both Homes. No such extension or increase in height may be made which impairs the strength or injures the existing wall or the foundations of the building. No such extension may be made above the roof line of the building without the prior written approval of the other Owner and the Declarant, so long as Declarant is a Member of the Association, or thereafter the Board.

(b) In the event of such extension or increase in the height of the wall, the other Owner shall have the right to use the extended or heightened part of the wall by paying to the constructing party one-half (1/2) of the cost of such part of the wall as he shall use.

(c) Any extension or increased height of the wall shall be a party wall, become part of the existing wall and be subject to the terms hereof.

4.3 Damage and Insurance. The maintenance, repair and insurance of party walls shall be governed by the following provisions:

(a) In the event of damage or destruction of a party wall from any cause whatsoever, other than the negligence or willful misconduct of either Owner sharing the party wall, the Owners sharing the party wall shall, at their own expense, repair or rebuild said wall, and each Owner shall have the right to full use as herein contained of said wall so repaired or rebuilt. If either Owner's (or their family's, guest's, invitee's, licensee's or lessee's) negligence or willful misconduct causes damage or destruction of said wall, such Owner shall bear the entire cost of repair or reconstruction. If either Owner shall refuse to pay such Owner's share, or all of such cost in the case of negligence or willful misconduct, the other Owner may have such wall repaired or reconstructed and shall be entitled to a lien on the Home of the Owner so failing to pay for the amount of such defaulting Owner's share of the repair or replacement costs. If either or both Owners shall give a mortgage upon such Owner's Home, then the mortgagee shall have the full right to exercise the rights of its mortgagor as a party hereunder and, in addition, the right to add to the outstanding balance of such mortgage any amounts paid by the mortgagee for repairs hereunder and not reimbursed to said mortgagee by its mortgagor.

(b) Each Owner sharing a party wall shall obtain special form insurance on such Owner's Home which at all times shall be in an amount equal to the replacement cost of said Home, such policy to provide coverage for any damage to the party wall.

(c) All repairs or rebuilding shall be in accordance with the plans and specifications of a registered architect or engineer and in conformity with the applicable building codes.

4.4 Non-Use. If either Owner shall cease to use the wall as a party wall, such Owner shall be deemed to have abandoned all rights thereto, and the wall shall become the property of

the other Owner who shall have an easement upon the land under the wall so long as the wall shall be used by such Owner.

4.5 Access. The rights of access to party walls shall be governed by the following provisions:

(a) In the event repairs or reconstruction shall be necessary, all necessary entries on the adjacent Home shall not be deemed a trespass so long as the repairs and reconstruction shall be done in a reasonable and workmanlike manner, and consent is hereby given to enter at reasonable times adjacent property to make any necessary repairs and reconstruction. The party entering the adjoining Home shall be liable for all damages arising from the entering party's (or its agents, contractors or employees) entry upon said adjoining Home.

(b) Each Owner is licensed by the other to enter upon the other's Home to make repairs or rebuild the wall at reasonable times, upon prior notice and taking all necessary precautions so as to avoid damage to the other Home. The entering Owner shall be liable for all such damage.

4.6 Other Use. Each Owner sharing a party wall shall have the full right to use the party wall for the support beams and structural materials or in any other lawful manner not prohibited hereby; provided, however, that such use shall not injure, impair the strength of, or endanger the wall, foundation or other portion of the Home of the other Owner, and shall not impair or endanger the party wall benefits and supports to which the adjoining Home is entitled. All further use shall be subject to the terms of this **Article IV**.

4.7 Application. This **Article IV** shall be deemed to apply to a party wall built in connection with the original construction of two Homes and to all extensions and replacements thereof.

## ARTICLE V RESTRICTIONS ON CHANGE OF EXTERIOR OF HOMES

### 5.1 Approval of Plans

(a) Restriction on Change of Exterior of Homes. No Owner, Occupant or guest of an Owner or Occupant shall make any change in the exterior walls or roof of any Home or in the landscaping adjacent to a Home without first obtaining the prior written consent of the DRC (after Declarant ceases to be the only Member of the Association entitled to vote) or Declarant (while Declarant is the only Member of the Association entitled to vote) pursuant to the procedures and methods set out in this Declaration or in Article IV of the Master Declaration; provided, however, that nothing herein shall prevent or prohibit an Owner or Occupant from planting flowers, plants or small shrubbery within three (3) feet of the exterior of his Home (subject to the Rules, if any, as to the types of such permissible flowers, plants and shrubbery), or installing a sliding glass door in the portion of the exterior wall of the Home adjacent to any deck

or porch installed in accordance with the provisions of **Section 5.1(b)** in order to provide access thereto without the consent of the DRC (after Declarant ceases to be the only Member of the Association entitled to vote) or Declarant (while Declarant is the only Member of the Association entitled to vote). No Owner, Occupant or guest of any Owner or Occupant shall install any awnings to any Home including, without limitation, retractable awnings on the windows of any Home, or any storm door on any exterior door of a Home without first obtaining the prior written consent of the DRC (after Declarant ceases to be the only Member of the Association entitled to vote) or Declarant (while Declarant is the only Member of the Association entitled to vote) which approval shall include, without limitation, the design and appearance of such awning or storm door (including, without limitation, color and size). Any such installation which is approved by the DRC, or Declarant, as applicable, shall be professionally installed in accordance with all applicable governmental laws including, without limitation, all building and zoning codes. Any Owner desiring to install an awning or storm door shall submit the plans and specifications for such proposed installation to the Declarant (while Declarant is the only Member of the Association entitled to vote) and the DRC (after Declarant ceases to be the only Member of the Association entitled to vote) with its request for the approval to install such awning or storm door. An Owner shall not place within such Owner's Lot or on such Owner's Home any swing sets and other installations including, without limitation, satellite dishes, storage sheds, swimming pools, hose reels, animal shelters, carports, reflectors, gazebos, basketball hoops, mounted toys, or other equipment including, without limitation, recreational equipment, unless in accordance with Rules which may be adopted by Declarant or the Board or unless Declarant or the Board, as applicable, determines that such installation does not (a) adversely affect Chateaux of Emery Woods Cluster Homes, (b) create a safety or nuisance hazard, and (c) have an unsightly appearance; provided, however, that nothing herein shall prevent or prohibit an Owner from placing a gas grill on the patio or deck adjacent to such Owner's Home as long as such Owner complies with the Rules, if any, adopted by Declarant or the DRC in connection therewith. Declarant shall have all the rights of approval or consent herein provided to Declarant or DRC so long as Declarant is a Member of the Association and thereafter, the DRC shall assume the rights of approval or consent.

(b) Restrictions on Change of Lots or Common Areas. No Owner, Occupant or guest of an Owner or Occupant shall construct any building or structure, make any installation in, or in any manner change any portion of his Lot or the Common Area, including, without limitation, any deck or porch (screened-in for summertime use or winterized for year round use), without the prior written consent of Declarant (while Declarant is the only Member of the Association entitled to vote) or the DRC (after Declarant ceases to be the only Member of the Association entitled to vote) which approval shall include, without limitation, the design, location, appearance (including, without limitation, color and staining) and size of any such deck, porch, building, structure or installation. Notwithstanding the foregoing, Declarant and/or Builder (while Declarant has an Ownership Interest in any of the Property) shall have the right to build buildings and structures, make installations in, and to change or modify any part of the Common Area, or any Lot or Home owned by Declarant, in Declarant's sole discretion including, without limitation, the right to install a deck or porch (screened-in for summertime use or winterized for year round use) contiguous to exterior walls of any Home owned by Declarant. Any Owner desiring to install a deck, porch (screened-in for summertime use or winterized for year round

use) or any other building, structure or installation shall submit the plans and specifications for such proposed installation to the Declarant (while Declarant is the only Member of the Association entitled to vote) and the DRC (after Declarant ceases to be the only Member of the Association entitled to vote) with its request for the approval to install such deck, porch, building, structure or installation. Any deck, porch, building, structure or installation which is approved by the DRC or Declarant, as applicable, shall be professionally installed in accordance with all applicable governmental laws including, without limitation, all building and zoning codes.

(c) Design Review Committee Policies and Guidelines. Plans and specifications for buildings and other structures and for landscaping shall conform to a document entitled "Cluster Design Review Committee Policies and Guidelines" (the "Manual") on file with the Association, as the same may be amended from time to time by the DRC. Any conflict between the provisions of the Cluster Design Review Committee Policies and Guidelines, and the provisions of this Declaration shall be resolved in favor of this Declaration. The plans and specifications submitted to the DRC shall be in such form and shall contain such information as may be reasonably required by the DRC. PROVIDED, HOWEVER, the provisions of this subsection requiring submission of plans and specifications to, and approval by the DRC, shall not be applicable to the Declarant, Builder nor any entity related to or affiliated with the Declarant.

Declarant or the Association may at any time cause design and construction criteria for other structures within the Property including, without limitation, recreation structures, to be prepared and made applicable to the Property.

The decisions of the DRC shall be based upon the applicable Manual (as then amended) in effect of the time that the plans and specifications are submitted to the DRC.

## 5.2 Violation of Article

(a) If any building or structure shall be altered, erected, placed or maintained upon any portion of the Property, or any new use is commenced on any portion thereof otherwise than in accordance with plans and specifications approved by the DRC (unless exempt pursuant to the provisions of this **Article V**), such alteration, erection, placement, maintenance or use shall be deemed to have been undertaken in violation of this Article and without the approval required herein. Upon written notice from either the DRC, any Board member or officer of the Association or the Declarant, any such building so altered, erected, placed or maintained upon any portion of the Property in violation hereof shall be promptly removed or altered and any such use shall be terminated as to extinguish such violation.

(b) If within seven (7) days after written notice of such a violation reasonable steps have not been taken by the violator toward the alleviation or termination of the same or if such remedial action is not prosecuted with due diligence until satisfactory completion thereof, the Association and/or Declarant shall have the right, through agents and employees, to enter upon the land and/or Home and to summarily abate and/or remove any building or structure, or to take such steps as may be necessary to extinguish such use, or to otherwise cure the violation. In addition to the foregoing, the Association and/or Declarant shall have the right to obtain an injunction from any court having jurisdiction for the cessation of such alteration, erection,

maintenance or use which is in violation of this Article. The rights and remedies of the Association and Declarant pursuant to the Article shall be non-exclusive and in addition to any other rights or remedies available at law or in equity. Moreover, the failure or neglect to enforce any term, covenant, condition, restriction, right or procedure herein shall in no event and under no circumstances be construed, deemed or held to be a waive with respect to any subsequent breach or violation thereof Subject to the provisions of the Code entitled "Hearing Procedure", a Person in violation of this Article shall be obligated to the Association and/or Declarant for the amount of all costs and expenses, including attorneys and paralegals fees, incurred to remedy any such violation. If said amounts are not paid within ten (10) calendar days following said notification, then said amount shall be "delinquent" and shall, upon perfection as provided in **Section 12.1**, become a continuing lien upon the portion of the Property owned or occupied by such Person(s) and a personal obligation of the Person(s) violating this **Article V**. In addition, the Owner of any portion of the Property shall be liable jointly and severally for any obligations of any Occupant of such Owner's property.

5.3 Liability of Members of the Design Review Committee. No Member of the DRC shall be liable to the Association, any Member or any Person for his acts or omissions or failure to act in any particular manner

## ARTICLE VI COVENANTS, CONDITIONS AND RESTRICTIONS

6.1 Covenant of Good Maintenance. To the degree of responsibility herein assigned, each Owner, Occupant, and the Association shall keep and maintain all land located within the Property owned, leased or controlled by such Person and all improvements, buildings and structures therein or thereon, in a clean and safe condition, in good order and repair, attractive looking and neat, including, but not limited to the seeding, watering, and mowing of all lawns; the pruning and cutting of all trees, shrubbery and grass, the painting (or other appropriate external care) of all buildings, structures and other improvements located thereon, and in accordance with applicable building, fire and health codes, all in a manner and with such frequency as is consistent with good property management.

6.2 Temporary Structures. No temporary building, trailer, tent (except for a party tent placed in a rear yard for no more than 48 hours), recreation vehicle, shack, garage, barn or other outbuilding or similar structure shall be constructed or maintained, temporarily or permanently, on any part of the Property at any time; provided, however, that the Declarant and Builder(s) shall have the right to construct and maintain any such temporary structure for use in connection with the development of the Property and/or the sale of Homes.

6.3 Vehicles. Licensed automobiles in working condition may be parked in the confines of a Home's garage, in the appurtenant entrance driveway of a Home, and in the parking areas, if any, designated by the Board; provided that the Home's garage shall be the primary parking area for all automobiles. No boat, truck (larger than a one ton truck that has a dump bed or a flat bed) trailer, airplane, junk car, unlicensed vehicle, or recreational vehicle camper, camper trailer, boat trailer, all terrain vehicle, snowmobile, commercial vehicle, tractor,

bus, farm equipment, off-road vehicles or any vehicle with commercial advertising shall be parked on any part of the Property except within the confines of a garage provided that (a) such vehicle fits within the confines of the garage and does not prohibit the closing of the garage door and (b) the parking of such vehicle shall not prohibit the use of the garage as the primary parking area for all licensed automobiles. Notwithstanding the foregoing, a boat, truck, trailer or recreational vehicle may be parked within the appurtenant entrance driveway of a Home for the limited purpose of loading or unloading the same in an expeditious manner for a period not to exceed twelve (12) hours. In no event shall any vehicle or personal property of any kind be parked in the private street shown on the plat attached hereto as Exhibit A, unless authorized in advance in writing by the Board.

6.4 Fences, Walls, Hedges, Etc. Fences, walls, trees, hedges and shrub plantings shall be maintained in a sightly and attractive manner. Unless constructed during the Start-up Period by Developer or Builder(s), no fences, walls, trees, hedges or shrub plantings shall be placed or maintained on the Lots without the prior written consent of the DRC.

6.5 Offensive Activities. No noxious or offensive activity shall be conducted upon any portion of the Property (including the Homes situated thereon), or upon the Common Areas, nor shall any portion of the Property (including the Homes and Common Areas) be used in any way or for any purpose which may endanger the health of or unreasonably disturb any Occupant. The Board shall have absolute power to determine what is "reasonable" and "unreasonable" under this Section.

6.6 Animals. Except as hereinafter provided, no animals, livestock, reptiles or poultry of any kind shall be raised, bred or kept in any Home or on the Lots or Common Areas. Notwithstanding the foregoing, usual and common household domestic pets, not bred or maintained for commercial purposes, may be maintained in any Home, provided that:

- (i) no more than three (3) pets may be maintained in any Home, with a maximum of two (2) dogs;
- (ii) the maintaining of animals shall be subject to such Rules as the Board may from time to time promulgate, including, without limitation, the right to prohibit pets entirely, to place reasonable limitations on the number and type of such pets, and to levy enforcement charges against persons who do not clean up after their pets;
- (iii) the right of an Occupant to maintain an animal in a Home (or outside a Home within such Home's yard secured by an invisible fence or similar mechanism used to contain the animal without the need for a physical barrier) shall be subject to termination if the Board, in its full and complete discretion, determines that maintenance of the animal constitutes a nuisance or creates a disturbance, annoyance or detrimental effect on Chateaux of Emery Woods Cluster Homes or other Homes or Occupants; and

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- (iv) dogs shall at all times whenever they are outside a Home (i) be confined on a leash held by a responsible person, or (ii) within the Home's yard secured by an invisible fence or similar mechanism used to contain the dog without the need for a physical barrier.

The Board shall have absolute power to prohibit a pet from being kept on the Property or within a Home if the Board finds a violation of this Section.

6.7 Storage of Material and Trash Handling. No lumber, metals, bulk material, refuse or trash shall be burned, whether in indoor incinerators or otherwise, kept, stored or allowed to accumulate on any portion of the Property, except normal residential accumulation pending pick-up and except building materials during the course of construction or reconstruction of any building or structure. If trash or other refuse is to be disposed of by being picked up and carried away on a regular reoccurring basis, containers may be placed and permitted to remain in the open only on any day that pick-up is to be made, so as to provide access to persons making such pick-up. At all other times such containers shall be stored in garages or in other interior areas expressly designated by the Board for such purpose. No dumping shall be permitted on any part of the Property.

6.8 Pipelines and Drilling. No water pipe, gas pipe, sewer pipe, or drainage pipe shall be installed or maintained on any portion of the Property above the surface of the ground, except hoses and movable pipes used for temporary irrigation purposes. No portion of the surface or subsurface of the Property shall be used for the purpose of boring, mining, quarrying, exploring, or removing oil, gas or other hydrocarbons, minerals, gravel or earth.

6.9 Home Uses. Except as otherwise specifically provided in this Declaration or by Rules developed in accordance with this Declaration, no Home shall be used for any purpose other than that of a residence for individuals living together as a single housekeeping Home and home office use, and uses customarily incidental thereto, provided, however, that no Home may be used as a group home (to the extent such restriction is enforceable by law), commercial foster home, fraternity or sorority house, or any similar type of lodging, care or treatment facility. Notwithstanding the foregoing: (i) an Occupant maintaining a personal or professional library, keeping personal business or professional records or accounts, conducting personal business, making professional telephone calls or corresponding, in or from a Home, is engaging in a use expressly declared customarily incidental to residential use and is not in violation of these restrictions; (ii) it shall be permissible for the Declarant or Builder(s) to maintain one or more Homes as sales and rental models and offices for real estate within or outside the Property, and for storage and maintenance purposes for any time that Declarant or Builder(s) own a fee simple interest in any of the Property; and (iii) one or more Homes may be maintained for the use of the Association in fulfilling its responsibilities.

6.10 Firearms; Preservation of Wildlife. Firearms, ammunition, and explosives of every kind shall not be discharged, nor shall any traps or snares be set, nor shall any fishing, hunting, or poisoning of wildlife of any kind be permitted in or upon the Property, except for rodent control or except upon prior written approval of the Board.



6.11 Control of Trucks and Commercial Vehicles. Other than during the construction or reconstruction of the Homes, no tractor trailers, commercial tractors, commercial vehicles, road machinery or excavating equipment shall be permitted to remain on any portion of the Property for any period of time whatsoever, except while making deliveries or performing services thereon and except as necessary for the construction, reconstruction or repair of buildings or structures. The Board shall have the right to adopt Rules with respect to the use or storage of such vehicles on the Property.

6.12 Use of Common Areas or Lots. The Common Areas shall be used in common by Home Owners and Occupants and their Tenants, agents, servants, customers, invitees and licensees, in accordance with the purposes for which they are intended, reasonably suited and capable, in accordance with the Declaration and the applicable Rules and as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of Homes. Unless expressly provided otherwise herein, no Common Areas shall be used for any purpose other than the health, safety, welfare, convenience, comfort, recreation or enjoyment of Home Owners and Occupants. No Person shall use the Common Areas or shall construct, install or permit anything to remain in the Common Areas or the Lots, except as expressly permitted by this Declaration and as set forth in the Rules.

6.13 Repair or Removal of Damaged Property. In the event that any improvement, building or structure within the Property shall be damaged or destroyed by any event, casualty or occurrence, whether intentional or unintentional, the Owner thereof shall promptly commence the repair or rebuilding of said improvement following such damage or destruction and thereafter diligently and continuously complete the same; provided, however, that if any facility located on the Common Areas shall be damaged or destroyed, such facility shall be repaired or restored unless the damage or destruction is not covered by insurance and the cost of such repair or restoration is fifty percent (50%) or more of the replacement value thereof, in which event the Board may decide not to rebuild or restore said damaged or destroyed facility. Following the date that Declarant shall no longer be the only Member of the Association entitled to vote, the Board shall have the right as provided in **Section 9.1(a)(ix)** to determine not to restore any Common Area facility which is damaged, whether or not the same is covered by insurance.

6.14 Impairment of Structural Integrity of Homes. Nothing shall be done in any Home or in, on or to any Lot or Common Area which will impair the structural integrity of any Home.

6.15 Hazardous Uses and Waste. Nothing shall be done or kept in, on or to any Lot, Home or the Common Area which will increase the rate of insurance applicable for the residential use of any Home and the contents thereof, without the prior written consent of the Board. No Owner shall permit anything to be done or kept in, on or to his Lot or Home or in the Common Area which will result in the cancellation of insurance on his Home or any other Home, or on the contents thereof, or which would be in violation of any law. No waste of any of the Property shall be committed.

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6.16 Laundry. No clothes, sheets, blankets, or laundry of any kind shall be hung out or exposed to view from any Lot or any part of the Common Area.

6.17 Drainage Ditches. No Person shall interfere with the free flow of water through any drainage ditches or storm sewers within the Property. The City or other governmental authority having jurisdiction shall have the right to enter upon the Common Areas of the Property to repair and maintain all storm, drainage, courses, ditches, structures and appurtenances including without limitation the box storm sewer and the other storm sewers, for the purposes of relieving any flooding conditions or threatened flooding conditions which might be harmful to other property within the City.

6.18 Visible Areas. Nothing shall be caused or permitted to be hung or displayed on the outside or inside of windows (except inoffensive decorations, drapes, curtains, or louvered blinds) or placed on the outside walls of a building or otherwise outside of a Home, or any part thereof, and no sign, awning, canopy, shutter, or any other device or ornament, shall be affixed to or placed upon the exterior walls or roof or any part thereof, or in, on, or over a Lot, patio or balcony, unless authorized in writing by the Board or Rules adopted in accordance herewith. All toys and other equipment shall be stored in the Owner's garages overnight.

6.19 Renting or Leasing. No Home or part thereof shall be rented or used for transient or hotel purposes, which is defined as: (i) rental for any period less than one (1) year; (ii) rental under which occupants are provided customary hotel services such as room service for food and beverages, maid service, the furnishing of laundry and linen, busboy service, and similar services; or (iii) rental to roomers or boarders, that is, rental to one or more persons of a portion of a Home only. No Home or part thereof shall be rented to any person under the age of twenty-two (22) years; provided however, other Occupants of the Home may be under such age. No lease may be of less than an entire Home. Any lease agreement shall be in writing, shall provide that the lease shall be subject in all respects to the provisions hereof, the Bylaws and to the Rules promulgated from time to time by the Board, and shall provide that the failure by the Tenant to comply with the terms of the Declaration, the Bylaws and Rules shall be a default under the lease. Prior to the commencement of the term of a lease the Home Owner shall notify the Board, in writing, the name or names of the Tenant or Tenants and the time during which the lease term shall be in effect.

6.20 Names of Owners. To enable the Association to maintain accurate records of the names, addresses and phone number of Owners and other Occupants of Homes, each Owner agrees to notify the Association, in writing, within five (5) days after such Owner's Home has been transferred or leased to another person. In addition, each Owner agrees to provide to a purchaser or Tenant of such Owner's Home a copy of this Declaration, the Master Declaration, the Bylaws and the Rules.

6.21 Architectural Control. Except as constructed by Declarant or Builder (and except for a sliding glass door installed by an Owner in accordance with the provisions of this Declaration), no building, fence, wall, sign or other structure shall be commenced, erected or maintained upon the Property, or any part thereof, nor shall any exterior addition to or change or

alteration therein be made, until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by the Declarant (while Declarant is a Member of the Association) and the DRC (after Declarant ceases to be a Member of the Association) or its designated representative or representatives, in its or their sole and unfettered discretion

6.22 Poles, Wires, Satellite Dishes and Antennae. Subject to applicable easement rights, no facilities, including poles and wires, for the transmission of electricity, telephone messages, satellite dishes, ham radio messages and the like shall be placed or maintained above the surface of the ground in any portion of the Property without the prior written approval of the Association. This provision shall not apply to temporary facilities for the construction or repair of any building or other structure. The foregoing shall not prevent an Owner from installing a satellite dish in his/her backyard provided the same is not visible from any street, unless otherwise approved by the DRC.

6.23 Waiver of Subrogation. Declarant, each Owner and Occupant, and any other Person that owns, leases, operates or controls any portion of the Property, as a condition of accepting title and/or possession of a Lot, Home or any other portion of the Property, and the Association agree, for themselves, and their respective successors, heirs, executors, administrators, personal representatives, assigns and lessees, provided said agreement does not invalidate or prejudice any policy of insurance, that in the event that any building, structure or improvement within the Property or the fixtures or personal property of anyone located therein or thereon are damaged or destroyed by fire or other casualty that is covered by insurance of Declarant, any Owner, Occupant or any other Person that owns, leases, operates or controls any portion of the Property or the Association and the lessees and sublessees of any of them or required to be covered by insurance hereunder, the rights, if any, of any of them against the other, or against the employees, agents, licensees or invitees of any of them in respect of such damage or destruction and in respect of any loss resulting therefrom are hereby waived.

6.24 Signs. Except as provided in the following sentences, no sign or other advertising device of any nature shall be placed upon any portion of the Property including, without limitation, "For Rent" and "For Sale" signs. Notwithstanding the foregoing, the restrictions of this **Section 6.24** shall not apply to Declarant, Builder(s), or the Association after Declarant no longer owns any of the Property, and the Rules shall reasonably allow a "For Sale" sign to be located near the public street upon request of an Owner.

6.25 Violation of Article VI. If any Person required to comply with the Covenants and Restrictions of this **Article VI** is in violation of any one of the same, Declarant (as long as Declarant is a Member of the Association) or the Association shall have the right to give notice to such Person to terminate, remove or extinguish such violation. Such notice shall expressly set forth the facts constituting such violation.

Except in the case of an emergency situation, the violating party shall have fifteen (15) days after written notice of the violation to take reasonable action to cause the removal, alleviation or termination of same. In the case of any emergency situation, or if within fifteen

(15) days after written notice of such a violation reasonable steps have not been taken toward the removal, alleviation or termination of same, or if such remedial action is not prosecuted with due diligence and until satisfactory completion of same, Declarant or the Association shall have the right to obtain an injunction from any court having jurisdiction for the cessation of such violation of this **Article VI**. In addition to the foregoing, the Declarant and/or the Association shall have the right, through their respective agents and employees, to enter upon the Home or Lot where the violation exists and to summarily terminate, remove or extinguish the violation. The rights and remedies of Declarant and the Association contained in this Section shall be non-exclusive and in addition to any other right or remedy available at law or in equity including, without limitation, a claim or action for specific performance and/or money damages (including punitive damages), and attorneys' fees.

The Association or Declarant shall notify in writing the Person in violation of this Article VI of all of the costs incurred to remedy same and of any other damages to which the Association or Declarant may be entitled. If said amounts are not paid within ten (10) calendar days following said notification, then said costs shall be "delinquent" and together with the Other Charges as defined in **Section 2.2(c)** shall, upon perfection as provided in **Section 12.1** become a continuing lien upon the portion of the Property owned or occupied by such Person(s) and a personal obligation of the Person(s) violating this Article. In addition, the Owner of any portion of the Property shall be liable, jointly and severally, for any violations of an Occupant of such Owner's property.

## ARTICLE VII COMMON AREAS

7.1 Ownership. Declarant is currently the fee simple owner of the Common Areas. Declarant shall convey each lot subject to the Common Areas and easements set forth in this Declaration. No later than three (3) months after Declarant ceases to have an Ownership Interest in any Lot or Home, Declarant agrees to convey the Common Areas to the Association free and clear of any delinquent taxes or assessments. Upon such conveyance, the Association shall hold title to the Common Areas subject to the provisions of this Declaration including, without limitation, the easement rights afforded Declarant under **Article III**.

## ARTICLE VIII THE ASSOCIATION

8.1 Existence. The Association is a duly constituted non-profit corporation existing under the laws of the State of Ohio. Copies of its Articles of Incorporation and its Bylaws are marked, respectively, Exhibit C and Exhibit D, and are attached to this Declaration.

8.2 Membership. Declarant and each Owner shall automatically become and be a Member of the Association; In the case of an Owner other than Declarant, such membership is appurtenant to the ownership of each Home and shall terminate upon the voluntary or

involuntary conveyance of record by such Owner of such Home, whether or not such membership is expressly referred to in the instrument effecting such conveyance, at which time the new Owner or other successor in interest shall automatically become a Member of the Association. Declarant's membership in the Association shall terminate on the date when Declarant no longer is the owner of a fee simple interest in any part of the Property. No Owner, whether one or more Persons, shall have more than one membership per Home owned.

8.3 Voting Rights. Until Declarant ceases to have an Ownership Interest in any of the Property, Declarant shall be the only Member entitled to vote, unless Declarant elects otherwise by written notice to the Owners. Upon the earlier to occur of (i) the date that Declarant ceases to have an Ownership Interest in any of the Property, or (ii) the date that Declarant elects to terminate its sole voting right by written notice to the Owners pursuant to the immediately preceding sentence, each Member, including Declarant, shall be entitled to exercise one (1) vote for each Home owned by such Member. There shall be only one (1) vote for each Home. In any situation where a Member is entitled to exercise a vote and more than one (1) Person holds the Ownership interest in such Home required for membership, the vote for such Home shall be exercised as those Persons determine among themselves and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the vote of the Home shall be suspended if more than one (1) Person seeks to exercise it.

8.4 Board of Directors and Officers. The Board of Directors shall initially be composed of three (3) Persons as provided in the Bylaws. All Board members shall be elected by Declarant so long as Declarant is the only Member of the Association entitled to vote. Thereafter, Board members shall be elected by the voting Members at the annual meeting of the Association as provided in the Bylaws. The Board shall be vested with and shall exercise all of the powers of the Association and shall elect the officers of the Association, and shall discharge the duties and obligations of the Association and shall have all rights conferred by law, the Articles of Incorporation and the Bylaws of the Association. Except with respect to Board members appointed by the Declarant, Board members shall be Members.

8.5 Rights of the Association. Notwithstanding the rights and easements of enjoyment and use created in this Declaration, and in addition to any other right the Association shall have pursuant to this Declaration or at law, the Association shall have the right:

(a) to borrow money from time to time for the purpose of improving the Common Areas and to secure said financing with a mortgage or mortgages upon all or any portion of the Common Areas in accordance with its Articles and Bylaws and subject to the provisions of this Declaration;

(b) to take such steps as are reasonably necessary to protect the Common Areas against foreclosure;

(c) to suspend the enjoyment and use rights in the Common Areas of all of the Occupants and Owners of any Home for which an Assessment or Other Charges is delinquent during the period of delinquency; and to suspend the use and enjoyment rights in the Common

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Areas of any Person in violation of any of the Covenants or Restrictions of this Declaration for any period during which said violation exists;

(d) to convey the Common Areas, or a portion thereof, to a successor; provided, however, that such successor shall agree, in writing, to be bound by the easements, covenants, restrictions and spirit of this Declaration; and provided further, that the conveyance shall be approved by a vote of not less than seventy-five percent (75%) of voting Members of the Association;

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

(f) to dedicate, transfer or grant further easements in all or any part of land or facilities owned or benefited to the Association or, with Declarant's prior written consent, land or facilities owned by Declarant, (i) to any municipality, public agency, authority or utility or (ii) to any Owner to install, operate, use, maintain, repair and replace in, on, over or under such land or any part thereof, roads, rights-of-way, pipes, conduits, ducts, wires, television and other communications, sanitary sewers and storm sewers, drainage, gas, water, energy of all types, utility services of all types and access to or for the benefit of the Owners and/or the Association and further, to construct improvements and establish grade, and for such other purposes as may be determined by the Association;

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

(h) to repair, restore or otherwise correct a condition of disrepair or neglect to the exterior areas of a Home or Lot and to perform any work or duties required of an Owner pursuant hereto, provided that the Owner shall not have made such repair or restoration or shall not have cured said condition within a reasonable time after notice thereof from the Board; provided, however, that the Board need not give notice if in its opinion it is acting to prevent personal injury or damage to property. The Association shall charge and assess the costs and expenses thereof to the Owner who should have performed the work or cured the condition, as a special Assessment pursuant to the provisions of this Declaration;

(i) to promulgate from time to time reasonable and non-discriminatory Rules in respect to the use of Lots, Common Areas and common utilities and in respect of the maintenance and operation of any structures within Chateaux of Emery Woods Cluster Homes; and

(j) to obtain insurance for an Owner's Home required of an Owner pursuant to this Declaration, provided that the Owner shall not have furnished a certificate or other evidence of such insurance to the Association satisfactory to the Board as required under **Section 9.2(d)(iv)** hereof. The Association shall charge and assess the costs and expenses thereof to the Owner who should have maintained the insurance as a special Assessment pursuant to the provisions of this Declaration. The Association shall in no event whatsoever have any obligation to obtain insurance for any Owner's Home, as the right to obtain such insurance provided in this Section shall be at the Association's sole discretion and option. Any insurance obtained by the Association for a Home may, in the Association's sole discretion, be procured and maintained in the Owner's name and/or the Association's name.

(k) to provide or contract for rubbish removal services, the costs of which shall be included within Common Costs.

ARTICLE IX  
RESPONSIBILITIES OF THE ASSOCIATION AND OWNERS

9.1 Responsibilities of the Association. The Association shall have the exclusive duty to perform the following functions:

(a) Maintenance.

- (i) The Association shall maintain, repair and replace the Areas of Common Responsibility, except for those areas assumed by the Master Association pursuant to the Master Declaration, and any areas dedicated for public use which the City will not maintain, in a clean, safe, neat, healthy and workable condition, and in good repair.
- (ii) The Association shall maintain, repair and replace the respective Home's driveways and front door walkways. The Association shall also keep the common drives and the individual Homes' respective driveways and front door walkways free from unreasonable accumulations of ice and snow.
- (iii) The Association shall keep, maintain in good condition, repair and replace, if necessary, all sanitary sewers, storm sewers, and all other utility lines, pipes, conduits, wires and cables located within the Lots and/or Common Areas and outside a Home, subject only to the provisions of this Declaration including, without limitation, all electrical, gas and water lines, pipes, conduits, wires and/or cables, and excepting therefrom any of same installed by an Owner or Occupant.
- (iv) The Association shall make any necessary repairs and replacements to maintain in good condition and repair the exterior skin of the exterior walls of the Homes (including the maintenance, repair, cleaning, painting

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and staining of any siding, brick or planking), but excluding the foundation and structural support components of the exterior walls, all of which shall be maintained, repaired and replaced, if necessary, by the respective Owners of the Homes pursuant to **Section 9.2(a)(i)**; provided that the Association shall have no obligation to make any such repairs or replacements if the necessity of such repair or replacement is caused by a fire or other casualty insured or insurable pursuant to the provisions of **Section 9.2(d)** or the negligence or misconduct of the Owner of Occupant of the affected Home. The Association shall also make any necessary repairs and replacements to maintain in good condition and repair the gutters, downspouts, patio fencing, shutters and the roofs of the Homes excluding the roof joists and roof sheeting which shall be maintained, repaired and replaced, if necessary, by the respective Owners of the Homes pursuant to **Section 9.2(a)(i)**, unless the necessity of such repair or replacement is caused by a fire or other casualty insured or insurable pursuant to the provisions of **Section 9.2(d)** or the negligence or misconduct of the Owner of Occupant of the affected Home.

- (v) The Association shall cause the painting and staining of any decks and railings attached to Homes and charge the respective Owners of the Homes to which such decks are appurtenant a special assessment for the cost of such painting and staining pursuant to **Section 11.6**. Except for such staining and painting, all decks and railings shall be maintained, repaired and replaced, if necessary, by the respective Owners of the Homes pursuant to **Section 9.2(a)(vii)**.
- (vi) The Association shall maintain or repair, if necessary, any electrical or gas street lights and/or posts installed by the Declarant or the Association located in the Common Areas (or upon the Lots) including the replacement of mantels in any gas lanterns and shall maintain or repair the front of the Home lighting fixtures affixed to the exterior of a Home (if installed by Declarant or the Association), except for the replacement of light bulbs.
- (vii) The Association shall maintain, including, without limitation, fertilizing, cutting and pruning, as necessary, all lawns on each Lot, all trees, shrubs and landscaping on a Lot put in by Declarant, Builder, or the Association, all trees, shrubs and landscaping on a Lot put in by an Owner where the Association has agreed in writing with the Owner to maintain such trees, shrubs and landscaping.
- (viii) The Association shall maintain, repair and replace, if necessary, the mailboxes for the Homes and any supports thereof.



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- (ix) The Association shall provide equipment and supplies necessary for the maintenance of the Common Areas and the facilities, if any, located thereon and any other Property which the Association is required or has agreed to maintain from time to time.
- (x) In the case of damage or destruction to any of the facilities located on any Common Area, the Association shall promptly restore such facilities to a condition at least equal to the condition in which they existed prior to the damage or destruction unless the cost of such repair or restoration is fifty percent (50%) or more of the replacement value thereof, and the loss is not covered by insurance. If Declarant is no longer the only Member of the Association entitled to vote and sixty-six and two-thirds percent (66-2/3%) of the Board affirmatively vote not to rebuild or restore such damaged facilities, such facilities need not be replaced. All work performed by the Association under this paragraph shall be performed in a good and workmanlike manner.

(b) Liability of the Association. Except as to the extent of any insurance proceeds payable in respect thereof, the Association and the Association's agents and employees shall not be liable for, and each Owner and Occupant waives all claims for injury or death to Persons or loss or damage to property, or any consequential or incidental damage or loss, resulting from any accident or occurrence in or upon any Home, Lot, Common Area, or any other part of the Property.

(c) Taxes and Assessments. The Association shall pay prior to delinquency all taxes and assessments levied against any Property which the Association may own including, without limitation, personal property taxes, general real estate taxes and special assessments certified by the appropriate public authority.

(d) Utilities. The Association shall pay all charges, if any, for water, gas, sewer, electricity, light, heat or power, telephone and other services used, rented or supplied to or in connection with the Common Areas and any facilities constructed thereon and any other Property owned or Areas of Common Responsibility by the Association. All such utility services shall be contracted for, metered and billed by and to the Association. Additionally, Declarant or the Association, by the requisite vote, may also pay (and assess the Owners for) the installation of sprinkler systems, the maintenance thereof or the cost of watering the Lots and Common Areas.

(e) Insurance. The Association shall, if applicable, obtain and keep in full force and effect the following insurance:

- (i) Special Form insurance, insuring all of the buildings owned by the Association, if any, in an amount equal to the full replacement cost thereof. Such insurance may have a deductible clause in an amount not exceeding One Thousand Dollars (\$1,000.00) or, if the property has a

value of less than One Thousand Dollars (\$1,000.00), the Association shall not be required to maintain insurance on it;

- (ii) Commercial general public liability insurance insuring the Association, the members of the Board, the Owners and Occupants against claims for bodily injury, illness or death and for injury to or destruction of property occurring upon, in or about, or arising from or related to, the Common Areas and any facilities located thereon and any other Property owned, controlled or maintained by the Association (if any) including areas of Common Responsibility, with contractual liability and "personal injury" coverage, such insurance to afford protection to the combined single limit of not less than One Million Dollars (\$1,000,000.00). The insurance procured under this subparagraph shall name Declarant as an additional insured. All liability insurance shall contain cross-liability endorsements to cover liabilities of the Owners as a group to an Owner. In the event the insurance effected by the Association on behalf of the Owners and Occupants against liability for personal injury or property damage arising from or relating to the Common Areas shall, for any reason, not fully cover any such liability, the amount of any deficit shall be a Common Cost (as defined in **Section 11.1** hereof) to the Owners; and
- (iii) Worker's Compensation Insurance if required under the applicable laws of the State of Ohio.

The Association may, but shall not be obligated to, obtain and maintain (i) such additional and other insurance as it deems desirable, including, without limitation, directors' and officers' liability insurance, and (ii) a fidelity bond indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any employee of the Association or of any other person handling the funds of the Association, the Board or the Owners in such amount as the Board shall deem desirable. The premium for any such bond shall be a Common Cost.

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

(f) Management. The Association shall provide the management and supervision for the operation of the Areas of Common Responsibility. The Association shall establish and maintain such policies, programs and procedures to fully implement this Declaration for the purposes intended and for the benefit of the Members and may (but shall not be required to) adopt Rules for the conduct of Members in connection with the use of Common Areas and easements created pursuant to **Articles III and IV** and the Lots (to a more limited degree) and the facilities located thereon. The Association may, but shall not be required to, engage employees or agents including, without limitation, attorneys, accountants, consultants,

maintenance firms and contractors, or delegate all or any portion of its authority and responsibility to a manager, managing agent, or management company, including Declarant or a related entity at reasonable compensation.

(g) Construction of Facilities. The Association may authorize the construction, alteration, renovation, modification or reconstruction of any facilities located on the Common Areas.

(h) Enforcement. The Association shall take all actions reasonably necessary in the circumstances to enforce the Covenants and Restrictions set forth in this Declaration.

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

9.2 Responsibilities of Owners. The Owners shall have the duty to perform the following functions:

(a) Maintenance.

- (i) Each Owner shall keep such Owner's Home in good condition and repair and shall keep the exterior and interior of such Home and the Owner's Lot and adjacent Common Areas free from debris, rubbish, rubble and other conditions created by such Owner or Occupants or their guests. Each Owner shall make all repairs and replacements, structural and non-structural, ordinary as well as extraordinary, interior and exterior, to the Home and its components including, without limitation, the foundation, the roof, the exterior walls and all structural supports, except for those specific items referenced as the Association's obligation to maintain under **Section 9.1(a)(iv)**; provided that the Owner's obligation to make any repairs and replacements to the roof shall be limited to the roof joists and roof sheeting (i.e., plywood sheets attached to joists on bottom to which shingles are attached on top), and provided further that the Owner's obligation to make and repairs and replacements to the exterior walls shall exclude the skin of the exterior walls. Notwithstanding the above, all windows, glass and doors, including hardware and other appurtenances thereof shall be repaired, maintained and replaced, if necessary, by the Owners of the Homes; provided that the installation of replacement windows must have prior written approval of the Association and in the case of damage a substantially identical replacement must be made by the Owner with an outside appearance which is substantially identical to the damaged window being replaced. In addition, each Owner shall make all repairs and replacements necessitated by fire or other casualty which is insured or insurable under the provisions of **Section 9.2(d)** of this

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Declaration even if the Association would otherwise be responsible for such maintenance and repair.

- (ii) The Owners of the Homes shall maintain and keep all flowers, plants, shrubs, trees and landscaping planted by them or prior Owners on their Lots in an attractive condition unless the Association has agreed in writing to assume such maintenance obligation pursuant to **Section 9.1(a)(vii)**.
- (iii) The Owners shall replace light bulbs in any light fixtures affixed to the exterior of their Homes promptly as required.
- (iv) Notwithstanding anything in this Declaration to the contrary, Owners shall repair, maintain and replace, if necessary, all garage doors.
- (v) Each Owner shall be responsible to make all repairs and replacements which would otherwise be the responsibility of the Association or any other Owners, if the repairs or replacements are required because of the acts or negligence of the Owner, the Owner's Occupants or guests.
- (vi) Each Owner shall repair, maintain and replace, if necessary, (i) any utilities exclusively serving such Owner's Home located within the Home and (ii) the respective Home's concrete patio pad and support thereof, storm door, if any, deck or porch (screened-in or winterized), if any, including the railings appurtenant thereto, except for the staining and painting of any decks and railings which shall be caused to be performed by the Association pursuant to **Section 9.1(a)(v)** and sliding glass door providing access to any deck or porch.
- (vii) Each Owner shall be responsible for routinely cleaning windows, glass and doors of the Homes.

(b) Taxes and Assessments. Each Owner shall pay prior to delinquency all taxes and assessments against the Lot and Home owned by such Owner.

(c) Utilities. Each Owner shall pay all charges for water, gas, sewer, electricity, light, heat, power, telephone and other services used, rendered or supplied to or in connection with such Owner's Home, including, without limitation, the charges for electricity used in any light fixture affixed to the exterior of such Owner's Home.

(d) Insurance. Each Owner shall maintain and keep in full force and effect the following insurance:

- (i) Each Owner shall maintain adequate liability insurance covering such Owner's Lot and Home.

- (ii) Each Owner shall maintain Special Form insurance coverage on such Owner's Home, in the amount of the full replacement cost of such Home, such policy to have an Agreed Amount Endorsement to avoid a co-insurance penalty. Such insurance may have a deductible clause in a reasonable amount (\$1,000 shall be considered a reasonable amount at the time this Declaration is filed for record) and may exclude excavation and foundation costs.
- (iii) Each Owner shall maintain hazard insurance on such Owner's contents and personal property as such Owner shall desire.
- (iv) Each Owner shall, on an annual basis, provide the Board with a certificate of insurance evidencing such Owner's compliance with the insurance requirements of this **Section 9.2(d)**.
- (e) Compliance With Governmental Requirements. Each Owner and Occupant shall comply with City and other governmental requirements. A violation of any such requirements or any restriction, condition or covenant imposed now or hereafter by the provisions of this Declaration is a nuisance per se that can be abated by the Association or such governmental authority.

9.3 Standards for Maintenance and Repair. All maintenance, repair and replacement required under this Declaration shall be done in a good and workmanlike manner and in accordance with all federal, state and local laws, statutes, ordinances, codes and regulations. Any replacements required shall be of the same quality, kind and type of the item being replaced. All repairs and maintenance shall be done promptly to maintain the values of the property within Chateaux of Emery Woods Cluster Homes.

## ARTICLE X RIGHTS OF DECLARANT

10.1 General Powers. Until Declarant ceases to be the only Member of the Association entitled to vote, Declarant shall have the right, but shall not be required, to exercise all or any of the powers, rights, duties and functions of the Association including, without limitation, the right to enter into a management contract with any Person whether owned or controlled or affiliated with Declarant or any Person associated with Declarant, the right to obtain insurance under a blanket policy (if any) covering other Persons or locations, the right to dedicate portions of Chateaux of Emery Woods Cluster Homes and facilities to the City and to grant easements to the City and utility companies, the right to perform each duty and obligation of the Association set forth herein, the right to adopt Rules, the right to determine and collect Assessments, the right to disburse Assessments for payment of Common Costs, and the right to collect Assessments including the right to institute litigation and to obtain a lien (and to foreclose said lien) on a Home for unpaid Assessments in the manner and to the extent granted to the Association as hereinafter provided. During such time, the Directors named in the Articles of Incorporation (or

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their successors appointed by Declarant from time to time) shall constitute the Board of the Association. Declarant need not open books and accounts in the name of the Association but may operate through its accounts and books.

10.2 Modification of Design. Until Declarant ceases to have an Ownership Interest in any of the Property, Declarant shall have the right to modify the design of any of the Homes it builds or authorizes others to build upon the Property, including without limitation, elevations, finish materials, style, roof lines and pitches, the inclusion or exclusion of basements and the types and sizes of the Homes.

10.3 Additional Property. Until Declarant ceases to have an Ownership Interest in any of the Property, Declarant may, from time-to-time, add additional land to the Property.

10.4 Deletion of Land. Until Declarant ceases to have an Ownership Interest in any of the Property, Declarant may delete lands from the Property (including, without limitation, lands designated as Common Areas) and thereby free such lands from the provisions of this Declaration.

10.5 Modification of Common Areas. Until Declarant ceases to have an Ownership Interest in any of the Property, Declarant may modify and amend the Common Areas by modification or amendment hereof and/or by the filing of an amended plat with the appropriate governmental offices and also shall have the right to dedicate portions of Chateaux of Emery Woods Cluster Homes and facilities to the City and to grant easements to the City and utility companies.

10.6 Development. Until Declarant ceases to have an Ownership Interest in any of the Property, Declarant reserves the right to perform or cause to be performed such work as is incident to the completion of the development and improvement of the Property, notwithstanding any covenant, easement, restriction or provision of this Declaration or its exhibits which may be to the contrary.

10.7 Right of First Refusal. As long as Declarant has an interest in the Property, Declarant or any of its affiliates shall have the right of first refusal to act as the listing broker with respect to the resale of any homes.

ARTICLE XI  
COMMON COSTS - ASSESSMENTS

11.1 Common Costs. Each Owner (excluding Declarant and Builder(s), except as hereinafter provided in **Section 11.4** and excluding the Owner of any Home which is used a model Home with respect to the sale of Homes in Chateaux of Emery Woods Cluster Homes, except as hereinafter provided in **Section 11.4**), whether or not it shall be so expressed in any contract, deed or other conveyance, shall be deemed to covenant and agree to pay the Association the annual Assessment for Common Costs as determined by Declarant or the Board

to meet the annual Common Costs of the Association. A Lot that is not improved with a Home shall not be subject to any Assessments or Additional Assessment. As used in this Declaration, "Common Costs" shall mean all of the costs and expenses incurred by the Association in owning, and/or using, maintaining, repairing, replacing, cleaning, painting, decorating, preserving, upgrading, administering, managing, operating, and leasing the Common Areas and/or Areas of Common Responsibility and the facilities located thereon, the other Property and improvements of the Association, the other Property maintained by the Association, such as the landscaping upon the Lots (as hereinafter provided) and in carrying out the responsibilities, duties and obligations of the Association, including, without limitation:

- (a) all expenditures required to fulfill the responsibilities of the Association outlined in **Articles VIII** and **IX** of this Declaration;
- (b) the costs of all insurance required to be carried by the Association;
- (c) the costs of utilities and other services which may be provided by the Association whether for the Common Areas and any facilities located thereon or for any other purpose;
- (d) all amounts incurred in collecting Assessments, including legal and accounting fees;
- (e) the cost of funding all reserves established by the Association, including, without limitation, a general operating reserve and a reserve for capital expenditures; provided, however, that Declarant shall not be required to pay any portion of the annual Assessment for Common Costs which represents the funding of such reserves during the Start-Up Period and thereafter, until such time, if ever, that Declarant owns and leases out for rent a Home; and
- (f) such other costs, charges and expenses which the Association determines to be necessary and appropriate within the meaning and spirit of this Declaration.

11.2 Operating Budget and Annual Assessments. Declarant or the Board shall prepare or cause the preparation of an annual operating budget for the Association and shall fix the amount of the annual Assessment against each Home. Written notice of the annual Assessment shall be sent to Declarant and each other Owner. Payment of Assessments may be required on a monthly, quarterly, semi-annual or annual basis as determined by Declarant or the Board. No person liable for the payment of an Assessment may be exempt from liability for the payment of an Assessment by abandonment of any Home or by the abandonment or waiver of any right to use or enjoyment of the Common Areas or the facilities located thereon.

11.3 Payment of Common Costs During Start-Up Period. Each Owner, other than (a) Declarant (b) Builder(s) and (c) the Owner of any Home which is used a model home with respect to the sale of Homes in Chateaux of Emery Woods Cluster Homes, shall pay his Proportionate Share of the Common Costs by payments of Assessments in such amount as shall

be established by the Board from time to time, except that annual assessments for Common Costs (excluding special Assessments) during the Start-Up Period for an individual Home shall not exceed on a prorated basis the following annual amounts: (i) for 2006, the sum indicated on Exhibit F attached hereto for the respective types and sizes of the individual Homes, and (ii) for each year thereafter during the Start-Up Period, the cap with respect to such annual Assessments for an individual Home as set forth in clause (i) shall be increased annually by fifteen percent (15%) of the amount payable during the immediately preceding year. Declarant shall only be obligated during the Start-Up Period to make payments into the Association to fund the deficit, if any, in Common Costs and after the foregoing cap has been reached and a shortfall exists and Declarant and Builder(s) shall have no liability for Assessments or Additional Assessments. This obligation may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of both. Declarant and Builder(s) (and during the Start-Up Period the Owner of any Home which is used as a model home with respect to the sale of Homes in Chateaux of Emery Woods Cluster Homes) shall be exempt from and shall not be required to pay any portion of the Assessments or deficit therein which relate to the funding of any reserves established by the Association, including, without limitation, any general operating reserve or any reserve for capital expenditures. The foregoing notwithstanding, the Association shall reimburse Declarant and Builder(s) for common area expenses paid during the Start-Up Period, out of the assessments paid by the Owners to the Association.

11.4 Common Costs After the End of the Start-Up Period. From and after the end of the Start-Up Period, each Owner of a Home including Declarant and Builder(s) (but only in respect of any Homes which Declarant and Builder(s) own and lease out for rent for a profit) and including the Owner of any Home which is used as a model home with respect to the sale of Homes in Chateaux of Emery Woods Cluster Homes shall pay his Proportionate Share of the Common Costs by payments of Assessments in such amount as shall be established by the Board from time to time; provided, however, that Declarant, Builder(s) and the Owner of any Home which is used as a model home with respect to the sale of Homes in Chateaux of Emery Woods Cluster Homes shall not be required to pay any portion of the Assessments for Common Costs which represent the funding of reserves. Declarant and Builder(s) shall be exempt from and shall not be required to pay any Assessments whatsoever in respect of any Home owned by Declarant or Builder(s) until such time, if ever, that Declarant or Builder leases for profit any such Home.

11.5 Assessments. Assessments for the Common Costs, extraordinary expenditures, and all other charges shall be made in the manner provided herein and in the Bylaws of the Association. In addition to the assessments payable under **Sections 11.3 and 11.4**, each Owner shall have the obligation to pay assessments to the Emery Woods Homeowners Association as provided under **Section 11.13**. Except for special Assessments assessed against individual Members and except as otherwise provided in **Sections 11.3 and 11.4**, all Assessments made by the Association shall be in accordance with the respective Home's Proportionate Share in accordance with the provisions of the Declaration, and each Owner hereby covenants and agrees by acceptance of the deed to an Ownership Interest, whether or not it shall be so expressed in any such deed or other conveyance, to pay the Assessments levied against such Owner in such manner and at such times as provided herein and in the Bylaws. A Member may not exempt himself from liability for Assessments levied against him or her by waiver of the use of the



Common Areas that are owned and/or operated by the Association. No member shall be entitled to any portion of funds held for reserves; nor shall any Owner have a claim against the Association with respect thereto.

11.6 Special Assessments. If an Owner or Occupant fails to perform maintenance, repairs and replacements which are the Owner's obligation, to maintain insurance on such Owner's Home and Lot as required hereunder or to comply with the other provisions of this Declaration, and if the Board shall undertake to provide any repair or restoration, to obtain insurance or to cure any condition not permitted hereunder as provided in **Section 9.1(h)** and 8.6(j), the Board shall levy a special Assessment against such Owner and the Home, equal to the amount so expended. In addition, all costs incurred in the enforcement of any provisions of this Declaration against the Owner, including, but not limited to, attorneys' fees and court costs, shall be assessed to the Owner and the Home against whom enforcement is sought. The Board shall levy a special Assessment against the Owner and the Home for the costs incurred by the Association to cause the staining and painting of any decks and railings appurtenant to such Home pursuant to **Section 9.1(a)(v)**.

11.7 Creation of Lien and Personal Obligation. If a Person liable for the payment of an Assessment shall fail to pay the same when due, the Association shall notify said Person, in writing, of his failure to make said payment. In the event that the Assessment is not paid within ten (10) calendar days following said notification, then such Assessment shall be "delinquent" and, together with the Other Charges as defined in **Section 2.2(c)** shall, upon "perfection" as provided in **Section 12.1**, become a continuing lien upon the portion of the Property owned or occupied by such Person and a personal obligation of the Person who has not paid said Assessment and shall bind such Person's heirs, devisees, personal representatives, successors and assigns. A Co-Owner of a Home shall be personally liable, jointly and severally, with all other Co-Owners for all Assessments made by the Association in respect of said Home.

11.8 Non-Liability of Foreclosure Sale Purchaser for Past-Due Amounts. Where the holder of a first mortgage of record acquires an Ownership Interest as a result of foreclosure of the mortgage or of the acceptance of a deed in lieu of foreclosure, such mortgagee, its successors and assigns, shall not be liable for the Assessments levied against the Owner of such Ownership Interest prior to its acquisition of the Ownership Interest. Any funds received on the judicial sale of the Ownership Interest in excess of the mortgage lien, the court costs and real estate taxes and assessments shall, however, be paid over to the Association to apply on all Assessments owed and interest thereon. The Owner of an Ownership Interest prior to the judicial sale thereof, and such Owner's heirs, executors, administrators, personal representatives, successors and assigns shall be and remain personally and primarily liable, jointly and severally, for the Assessments accruing against the judicially sold Ownership Interest prior to the date of the judicial sale, as provided in this **Article XI**, but any unpaid part of the Assessment shall be deemed to be Common Costs and shall be assessed and levied against all of the other Owners including the Owner of the Ownership Interest foreclosed and such Owner's successors or assigns, at the time of the first Assessment next following the acquisition of title by such mortgagee.

11.9 Liability for Assessments upon Voluntary Conveyance. In a voluntary conveyance of an Ownership Interest, the grantee of the Ownership Interest shall be jointly and severally liable with the grantor for all unpaid Assessments levied pursuant to this Declaration against the grantor and the Ownership Interest prior to the time of the grant or conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee therefore. However, any such prospective grantee shall upon written request delivered to the President or Secretary of the Association, be entitled to a statement from the Board setting forth the amount of all unpaid Assessments due the Association in respect of the Ownership Interest to be conveyed, and such grantee shall not be liable for, nor shall the Ownership Interest conveyed be subject to a lien for, any unpaid Assessments which become due prior to the date of the making of such request if the same are not set forth in such statement. A devise of an Ownership Interest or the distribution of said Ownership Interest pursuant to the Statute of Descent and Distribution shall be deemed to be a voluntary conveyance.

11.10 Exemption from Liens and Assessments. Notwithstanding anything in this Declaration to the contrary, all properties to the extent of any easement or other interest therein dedicated and accepted by the City and devoted to public use, shall be exempted from the Assessments and liens created herein.

11.11 Additional Assessments. Subject to **Sections 11.3 and 11.4**, if the Assessments shall for any reason prove to be insufficient to cover the actual expenses incurred by the Association, the Association may, at such time as it deems it necessary and proper, levy an additional assessment (the "Additional Assessment") against the Owners of Homes [including Declarant (but only after the end of the Start-Up Period in respect of any Home which Declarant owns and leases out for rent for a profit) and including the Owner of any Home used as a model home with respect to the sale of Homes in Chateaux of Emery Woods Cluster Homes (but only after the end of the Start-Up Period)]. Subject to **Sections 11.3 and 11.4**, each such Owner shall pay its Proportionate Share of each such Additional Assessment as if the Additional Assessment were part of the original Assessment.

11.12 Exempt Property. Notwithstanding anything to the contrary herein, Lots not improved with a Home (including, without limitation, Lots owned by the Declarant) and the Common Areas shall be exempt from payment of Assessments or Additional Assessments.

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

ARTICLE XII  
LIENS

12.1 Perfection of Liens. If any Owner shall fail to pay when due any Assessment levied in accordance with this Declaration or any other amount due in accordance with the provisions of this Declaration (such Owner hereinafter referred to as the "Delinquent Person") and such Assessment or amount is delinquent pursuant to the provisions of this Declaration, the Board may authorize the perfection of a lien on the Ownership Interest of the Delinquent Person in the Property by filing for record with the Recorder of Cuyahoga County, Ohio, a certificate of lien. The certificate of lien shall be in recordable form and shall include the following:

- (a) the name of the Delinquent Person;
- (b) a description of the Ownership Interest owned by the Delinquent Person;
- (c) the entire amount claimed, including the amount of any delinquency and Other Charges;
- (d) a statement referring to the provisions of this Declaration and lien authorization.

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

12.3 Priority. A lien perfected pursuant to this **Article XII** shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of bona fide first mortgagees which have been heretofore filed for record, and may be foreclosed in the same manner as a mortgage in real property in an action brought by the Association after authorization from the Board. In any such foreclosure action, the Person affected shall be required to pay reasonable rental for such Ownership Interest during the pendency of such action, and the plaintiff in such action shall be entitled to the appointment of a receiver to collect the same; provided, however, that subject to any court order to the contrary, any moneys collected by a receiver shall be used first to pay real estate taxes and assessments and then to pay on the note of the first mortgagee as is set forth in the mortgage deed, assignment of rents and security agreement, if any, with the balance of such money, if any, to be held and disbursed pursuant to court order. Any funds received on the judicial sale of the Delinquent Person's Ownership Interest in excess of the mortgage liens, the court costs and tax and assessment liens shall be paid over to the Association to the extent of its lien.

12.4 Dispute as to Assessment. Declarant or any Person who believes that any Assessment levied by the Association for which a certificate of lien has been filed by the

Association has been improperly determined, may bring an action under the arbitration provisions contained in **Article 15.13** of this Declaration or in the Court of Common Pleas of Cuyahoga County, Ohio, for discharge of all or any portion of such lien; but until such court or arbitrator shall determine that the lien is improper, the lien shall continue until the lien is paid in full; and the Association may counterclaim in such action for foreclosure of the amount of lien found to be due.

12.5 No Waiver Implied. The creation of a lien upon any Ownership Interest owned by a Delinquent Person shall not waive, preclude or prejudice the Association from pursuing any and all other remedies granted to it elsewhere in this Declaration, at law or in equity.

12.6 Personal Obligations. The obligations created pursuant to this Declaration shall be and remain the personal obligations of the Delinquent Person until fully paid, discharged or abated as well as being obligations which run with the land and binding on the heirs, executors, administrators, personal representatives, successors and assigns of such Delinquent Person.

### ARTICLE XIII REMEDIES OF THE ASSOCIATION

13.1 Suspension of Entitlement to Use Common Areas. If any Person fails to pay an Assessment when due, such Person, the Occupants of any and all Homes owned by such Person and their guests shall not be entitled to use the Common Areas or any facilities located thereon until said Assessment is fully paid.

13.2 Rights of Association and Declarant. A violation of any Rule or the breach of any Covenant and Restriction contained in this Declaration shall give the Association and Declarant the right, in addition to all other rights herein set forth and those provided by law or in equity,

(a) to enter upon the Lot or Home or portion thereof upon which, or as to which, such violation or breach exists and to summarily abate and remove, at the expense of such holder of the Ownership Interest where the violation or breach exists, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions of this Declaration, the Bylaws of the Association or the Rules, and Declarant or the Association and their respective agents shall not thereby be deemed guilty in any manner of trespass;

(b) to enjoin, abate, or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach; and/or

(c) to commence and prosecute an action for specific performance or any action to recover any damages which may have been sustained by the Association or any of its Members.

13.3 Failure to Pay. If any Person fails to pay any Assessment when due or upon delinquency in payment of any sums or costs due under this Declaration, Declarant or the

Association may pursue any or all of the following remedies, which shall be in addition to any other remedy available in this Declaration, at law or in equity:

(a) Assess against such Owner a "late payment" charge not to exceed five percent (5%) of the amount of the delinquency or Fifty Dollars (\$50.00), whichever is greater, said amount to be determined by the Board. Said late payment charge shall be in addition to the Other Charges;

(b) sue and collect from such Person the amount due and payable, together with the Other Charges;

(c) foreclose a lien filed in accordance with **Article XII** of this Declaration in the same manner as provided by the laws of the State of Ohio for the foreclosure of real estate mortgages.

13.4 Rights Against Heirs, Etc. The remedies provided in this **Article XIII** against a Delinquent Person may also be pursued against the heirs, administrators, executors, successors, assigns and grantees of such Person, except as specifically provided in **Section 11.8** of this Declaration.

#### ARTICLE XIV RIGHT OF INSPECTION AND ACCESS

Declarant, the Board, and any agent or employee of either of them, may at any reasonable time or times, enter upon any of the land in Chateaux of Emery Woods Cluster Homes and any improvements, buildings and structures therein for the purpose of inspecting, improving, installing, constructing, altering, repairing, maintaining, replacing, remedying or curing any condition, structure or building, or any part thereof, in accordance with the provisions of this Declaration.

#### ARTICLE XV GENERAL PROVISIONS

15.1 Covenants Run with the Land; Binding Effect. All of the easements, covenants, and restrictions which are imposed upon, granted and/or reserved in this Declaration, including, without limitation, payment of Assessments, constitute easements, covenants and restrictions running with the land and are binding upon every subsequent transferee of all or any part thereof including, without limitation, grantees, Tenants, Occupants, Owners, mortgagees or other Persons having any interest in the Property, or any portion thereof.

Each grantee accepting a deed or Tenant accepting a lease (whether oral or written) which conveys any interest in any portion of the Property, whether or not the same incorporates

or refers to this Declaration, covenants for himself or herself, his or her personal representatives, successors and assigns to observe, perform and be bound by the provisions of this Declaration.

15.2 Duration of Easements, Covenants and Restrictions. The term of this Declaration and the Covenants and Restrictions which are imposed, granted and/or reserved upon all or any part of the Property by this Declaration shall end upon the date all of the Owners of all of the real property within the Property agree, in writing in recordable form, to terminate this Declaration and such writing is filed with the Cuyahoga County Recorder.

15.3 Plural Owners. In the event that any Owner shall hold title to any portion of the Property as a joint tenant, tenant in common or in any other manner with one or more other Persons (herein referred to as a "Co-Owner"), the signature of any one of the Co-Owners shall be binding upon and shall be effective as an authorization from all of the other Owners of such portion of the Property. In addition, the vote cast at any meeting of the Association by one such Co-Owner shall be binding upon and shall be effective as an authorized vote from all of the Co-Owners of such portion of the Property.

15.4 Notices. Any notices required to be given to any Owner, Occupant, or Person under the provisions of this Declaration shall be deemed to have been given when personally delivered to such Owner's or Occupant's Home in Chateaux of Emery Woods Cluster Homes, or mailed, postage prepaid, to the last known address of such Person or principal place of business of a corporation; provided, however, that notice of a "delinquency" of any payment due hereunder shall be made by personal delivery to such Home or principal place of business of a corporation, or by certified or registered mail, return receipt requested. The effective date of such notice shall be the date said notice is personally delivered or postmarked, as the case may be.

15.5 Enforcement - Waiver. The enforcement of the Covenants and Restrictions may be by any proceeding at law or in equity against any Person or Persons violating or attempting to violate any covenant or restriction, either to restrain violation or to recover damages against the Person or Ownership Interest, or to enforce any lien perfected by the covenants of this Declaration. The failure or neglect by the Association or anyone permitted by this Declaration to enforce any covenant, condition, restriction or right herein contained shall in no event and under no circumstances be construed, deemed or held to be a waiver of the right to do so thereafter.

15.6 Construction of the Provisions of this Declaration. The Association and Declarant shall have the right to construe and interpret the provisions of this Declaration and in the absence of an adjudication by arbitrator(s) (as expressly provided in this Declaration) or a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all Persons or Property which benefit or which are bound by the provisions hereof. Any conflict between any construction or interpretation by the Association or Declarant and that of any Person or entity entitled to enforce the provisions hereof shall be resolved in favor of the construction of or interpretation of the Association or Declarant, as the case may be.

The Association may adopt and promulgate Rules regarding the administration, interpretation and enforcement of the provisions of this Declaration. In so adopting Rules and

**CLUSTER**  
*Execution Copy*

making any findings, determination, ruling or order, or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Association shall take into consideration the best interests of Declarant, Owners, Tenants and Occupants of the Property to the end that the Property shall be preserved and maintained as a high-quality, residential community.

15.7 Amendments. Except as expressly provided to the contrary in this Declaration, this Declaration may be amended as follows:

(a) For so long as Declarant has an Ownership Interest in any of the Property, Declarant shall be entitled from time to time to amend, modify or waive any of the provisions of this Declaration, either generally or with respect to particular real property, if in its sole discretion, the development or lack of development of the Property requires such modification or waiver, if in its judgment the purposes of the general plan of development of Chateaux of Emery Woods Cluster Homes will be better served by such modification or waiver or to exercise any of the rights of Declarant hereunder, provided no such amendment, modification or waiver shall prevent a Home from being used by the Owner in the same manner that said Home was used prior to the adoption of said amendment, modification or waiver. Additionally, so long as Declarant has an Ownership Interest in any of the Property, it shall have the ability to (i) expand the Property by adding property to the Property in accordance with the terms hereof and (ii) contract the Property by deleting property from the Property in accordance with the terms hereof. To modify this Declaration in accordance with this paragraph, Declarant shall file a supplemental declaration and/or plat setting forth the amendment, which supplemental declaration or plat need not be, but shall at Declarant's request be, executed by the Association and all Owners of real property within Chateaux of Emery Woods Cluster Homes. Specifically included in the foregoing powers of Declarant is Declarant's ability to amend and modify the location, dimensions and number of the Lots it owns and the Common Areas by amendment hereto or amendment to the plat. Each such Owner hereby appoints Declarant his attorney-in-fact, coupled with an interest, by accepting a deed to his Home, to execute on his behalf any such amendments. Each amendment shall be effective when signed by Declarant and filed for record with the Recorder of Cuyahoga County, Ohio or if accomplished by amendment of the plat, upon its filing with the applicable county offices.

(b) This Declaration, the Articles of Incorporation and the Bylaws may be amended by Declarant or the Association at any time and from time to time without the consent of any person for the purpose of (i) correcting clerical, typographical or obvious factual errors and similar types of errors in this Declaration or any Exhibit hereto or any amendment hereto, (ii) complying with the requirements of the Federal National Mortgage Association, the Governmental National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veterans Administration, or any other governmental agency or public or quasi-public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities or inducing any of such agencies or entities to make, purchase, sell, insure or guarantee first mortgages, (iii) complying with applicable laws, statutes, rules, regulations, ordinances or judicial determination, (iv) complying with the underwriting

requirements of insurance companies providing casualty insurance, liability insurance or other insurance coverages for the Association, or (v) correcting obvious factual errors or inconsistencies between this Declaration and other documents governing Chateaux of Emery Woods Cluster Homes, the correction which would not materially impair the interest of any Owner or mortgage holder. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant and/or the Board to vote in favor of, make, or consent to such an amendment on behalf of each Owner as proxy or attorney-in-fact as the case may be. Each deed, mortgage, trust deed, or other instrument affecting any portion of the Property and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of the power of the Declarant and the Association to vote in favor of, make and record such an amendment. To effect any said amendment, Declarant or the Association shall file a supplement to the Declaration setting forth the amendment(s) which shall be signed by Declarant or the Association and shall be effective upon the filing of said supplemental declaration with the Recorder of Cuyahoga County, Ohio.

(c) Except as expressly provided in this Declaration, upon Declarant ceasing to have any Ownership Interest in any of the Property, any provision of this Declaration may be amended or repealed following a meeting of the Members held for such purpose, by the affirmative vote of Members entitled to exercise sixty-six and two-thirds percent (66-2/3%) of the voting power of the Association unless a greater percentage of vote is required pursuant to this Declaration or in accordance with the statutes of the State of Ohio; provided, however, that any amendment which would terminate or materially and adversely affect the easements set forth in **Articles III and IV** of this Declaration shall not be amended (except as expressly provided to the contrary in this Declaration) unless all persons whose rights are terminated or materially affected shall affirmatively vote for such amendment; provided further, that any amendment affecting the rights of Declarant in this Declaration shall not be effective without the prior written consent of Declarant. Written notice shall be given each Member entitled to vote at any meeting at least thirty (30) days in advance of the date of the meeting held for the purpose of amending this Declaration, which notice shall expressly state the amendment to be considered at such meeting. Each amendment shall be effective when signed by the President and one other officer of the Association, signed by Declarant if the amendment affects the rights of the Declarant and filed for record with the Recorder of Cuyahoga County, Ohio.

15.8 Severability. The severability, invalidity or unenforceability of any provision hereof shall in no way affect the validity or enforceability of any other provision.

15.9 Attorneys' Fees. In the event of any litigation or arbitration arising out of this Declaration, the prevailing party to the extent permitted by law shall be entitled to reimbursement of the costs and expenses thereof from the other party, including reasonable attorneys' fees and disbursements of counsel, including such costs, expenses and fees incurred on appeals of such litigation or arbitration.

15.10 Rule Against Perpetuities. If any of the Covenants and Restrictions shall be in violation of the Rule Against Perpetuities or any other analogous or comparable statutory or common law rule, such of the Covenants and Restrictions as shall be so affected thereby shall



continue in effect only until twenty-one (21) years after the death of the last survivor of the now living descendants of J. Gordon Priemer.

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

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

If the taking involves a portion of Common Areas on which improvements have been constructed then unless within sixty (60) days after such taking the Declarant and at least seventy-five percent (75%) of the Members of the Association shall otherwise agree by vote, 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 the plans prepared and approved by the Board.

If the taking does not involve any improvements on the Common Areas or if there is a decision not to repair or restore, or if there are net funds remaining after such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes the Board shall determine in its sole and absolute discretion.

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

*(Signatures appear on following pages)*

**CLUSTER**  
*Execution Copy*

IN WITNESS WHEREOF, this Declaration has been executed by Association and Declarant's authorized representatives on the dates set forth in the notarial clauses below:

**CHATEAUX BY WFH, LLC,**  
an Ohio limited liability company

By: **WAKE FOREST HOMES, LLC,**  
an Ohio limited liability company,  
its sole Member

By: **WAKE FOREST CONTRACTORS, INC.,**  
an Ohio corporation  
Its: Member

\_\_\_\_\_  
By: Erwin Hines, President

By: **HEARTLAND DEVELOPERS, LLC,**  
an Ohio limited liability company  
Its: Member

\_\_\_\_\_  
By: J. Gordon Priemer, President

*(Notary Jurats on following page)*

**CLUSTER**  
*Execution Copy*

STATE OF OHIO                    )  
  )       SS  
COUNTY OF CUYAHOGA )

BEFORE ME, a Notary Public in and for said County and State did personally CHATEAUX BY WFH, LLC, an Ohio limited liability company, by Wake Forest Homes, LLC, an Ohio limited liability company, its sole Member, by ERWIN HINES, President of Wake Forest Contractors, Inc. its Member, who acknowledged that he did sign the foregoing instrument on behalf of said company and that the same is the free act and deed of such company, and his free act and deed in such official capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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

STATE OF OHIO                    )  
  )       SS  
COUNTY OF CUYAHOGA )

BEFORE ME, a Notary Public in and for said County and State did personally CHATEAUX BY WFH, LLC, an Ohio limited liability company, by Wake Forest Homes, LLC, an Ohio limited liability company, its sole Member, by J. GORDON PRIEMER, President of Heartland Developers, LLC, its Member, who acknowledged that he did sign the foregoing instrument on behalf of said company and that the same is the free act and deed of such company, and his free act and deed in such official capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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

*(Signatures continue on following pages)*

**EMERY WOODS CLUSTER  
ASSOCIATION, INC.**

\_\_\_\_\_  
By: Erwin Hines, Director

\_\_\_\_\_  
By: J. Gordon Priemer, Director

\_\_\_\_\_  
By: Mark Priemer, Director

STATE OF OHIO                    )  
  )       SS  
COUNTY OF CUYAHOGA )

BEFORE ME, a Notary Public in and for said County and State did personally appear EMERY WOODS CLUSTER ASSOCIATION, INC. an Ohio non-profit corporation, by Erwin Hines, its Director, who acknowledged that he did sign the foregoing instrument on behalf of said company and that the same is the free act and deed of such company, and his free act and deed in such official capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day  
of \_\_\_\_\_, 2005.

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

*(Notary Jurats continue on following page)*

**CLUSTER**  
*Execution Copy*

STATE OF OHIO                    )  
  )       SS  
COUNTY OF CUYAHOGA )

BEFORE ME, a Notary Public in and for said County and State did personally appear EMERY WOODS CLUSTER ASSOCIATION, INC. an Ohio non-profit corporation, by J. Gordon Priemer, its Director, who acknowledged that he did sign the foregoing instrument on behalf of said company and that the same is the free act and deed of such company, and his free act and deed in such official capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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

STATE OF OHIO                    )  
  )       SS  
COUNTY OF CUYAHOGA )

BEFORE ME, a Notary Public in and for said County and State did personally appear EMERY WOODS CLUSTER ASSOCIATION, INC. an Ohio non-profit corporation, by Mark Priemer, its Director, who acknowledged that he did sign the foregoing instrument on behalf of said company and that the same is the free act and deed of such company, and his free act and deed in such official capacity.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal this \_\_\_\_\_ day of \_\_\_\_\_, 2005.

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

EXHIBIT "A"  
Plat Master Declaration Recording Information

(Attached)

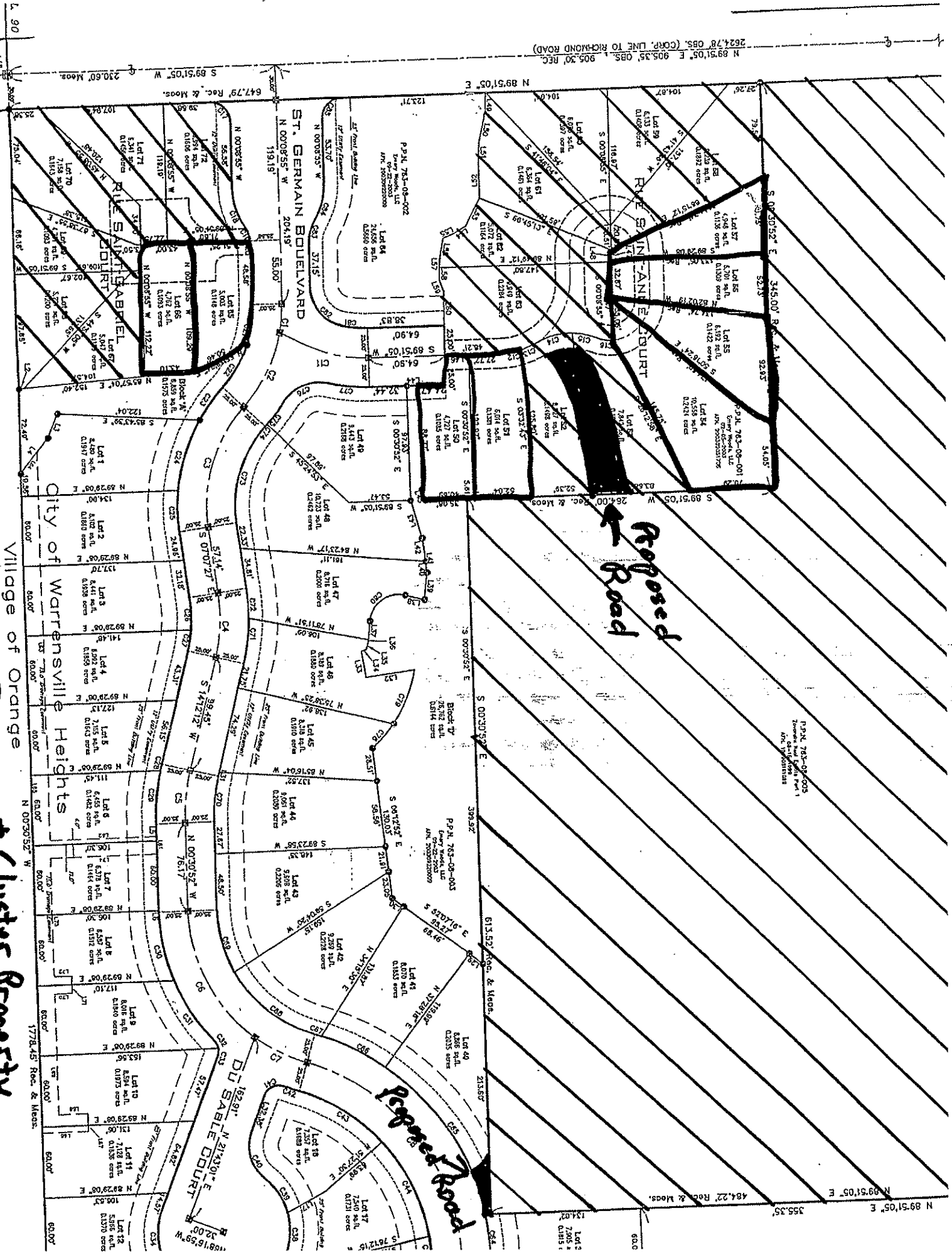


EXHIBIT "B"  
Legal Description of Cluster Property

Situated in the City of Warrensville Heights, County of Cuyahoga and State of Ohio and known as being Sublots 50, 51, 54, 55, 56, 57, 65 and 66 as shown in The Chateaux of Emery Woods as shown by the recorded plat in Volume 336 of Maps, Page 08 of Cuyahoga County Records.



EXHIBIT "C"  
Additional or Expansion Property

Situated in the City of Warrensville Heights, County of Cuyahoga and State of Ohio and known as being Sublots 52, 53, 58, 59, 60, 61, 62, 63, 67, 68, 69, 70, 71 and 72 as shown in The Chateaux of Emery Woods as shown by the recorded plat in Volume 336 of Maps, Page 08 of Cuyahoga County Records.

and

Situated in the City of Warrensville Heights, County of Cuyahoga and State of Ohio, and known as being part of Original Warrensville Township Lot No. 90, and bounded and described as follows: Beginning on the centerline of Emery Road, (60 feet wide), at the Southeasterly corner of the land described in Torrens Certificate of title No. 112330; Then Northern 05 deg. 52' 53" East along the Easterly line of land so described, 408.29 feet to the most Southerly corner of land described in Torrens Certificate of Title No. 114753; Then North 01 deg. 25' 20" West along the Easterly line of land described in Torrens Certificate No. 114745 as aforesaid, 582.36 feet, to the northerly line of land described in Torrens Certificate of Title no. 103224; Then South 89 deg. 43' East, along the northerly line of land so described, 484.21 feet to the northeasterly corner thereof; Thence South 00 deg. 04' East along the most Easterly line of land described in Torrens Certificate of Title No. 103224 as aforesaid, 613.45 feet to an exterior corner thereof; thence north 89 deg. 43' West along a Southerly line of land so described, 264 feet to an interior corner thereof; Thence South 00 deg 04' East along an Easterly line of land so described, 375 feet to a point on the centerline of Emery road; Thence north 89 deg. 43' West along the centerline of Emery Road to the place of beginning, be the same more or less, but subject to all legal highways. Permanent Parcel No. 763-08-005

EXHIBIT "D"  
Articles

# FILE COPY



Prescribed by **J. Kenneth Blackwell**

Ohio Secretary of State  
Central Ohio: (614) 466-3910

Toll Free: 1-877-SOS-FILE (1-877-767-3453)

[www.state.oh.us/sos](http://www.state.oh.us/sos)

e-mail: [busserv@sos.state.oh.us](mailto:busserv@sos.state.oh.us)

Expedite this Form: (Select One)

Mail Form to one of the Following:

☐ Yes PO Box 1390  
Columbus, OH 43216

\*\*\* Requires an additional fee of \$100 \*\*\*

☒ No PO Box 670  
Columbus, OH 43216

## INITIAL ARTICLES OF INCORPORATION

(For Domestic Profit or Non-Profit)

Filing Fee \$125.00

THE UNDERSIGNED HEREBY STATES THE FOLLOWING:

(CHECK ONLY ONE (1) BOX)

(1) <input type="checkbox"/> Articles of Incorporation Profit (113-ARF) ORC 1701	(2) <input checked="" type="checkbox"/> Articles of Incorporation Non-Profit (114-ARN) ORC 1702	(3) <input type="checkbox"/> Articles of Incorporation Professional (170-ARP) Profession _____ ORC 1785
--	---	---

Complete the general information in this section for the box checked above.

FIRST: Name of Corporation Emery Woods Cluster Association, Inc.

SECOND: Location Warrensville Heights Cuyahoga  
(City) (County)

Effective Date (Optional) \_\_\_\_\_ Date specified can be no more than 90 days after date of filing. If a date is specified, the date must be a date on or after the date of filing.  
(mm/dd/yyyy)

☒ Check here if additional provisions are attached

Complete the information in this section if box (2) or (3) is checked. Completing this section is optional if box (1) is checked.

THIRD: Purpose for which corporation is formed \_\_\_\_\_

Refer to attached additional sheets.

\_\_\_\_\_

\_\_\_\_\_

\_\_\_\_\_

Complete the information in this section if box (1) or (3) is checked.

FOURTH: The number of shares which the corporation is authorized to have outstanding (Please state if shares are common or preferred and their par value if any)

(No. of Shares) \_\_\_\_\_ (Type) \_\_\_\_\_ (Par Value) \_\_\_\_\_

(Refer to instructions if needed)

Completing the information in this section is optional

FIFTH: The following are the names and addresses of the individuals who are to serve as initial Directors.

(Name)

(Street)

NOTE: P.O. Box Addresses are NOT acceptable.

(City)

(State)

(Zip Code)

(Name)

(Street)

NOTE: P.O. Box Addresses are NOT acceptable.

(City)

(State)

(Zip Code)

(Name)

(Street)

NOTE: P.O. Box Addresses are NOT acceptable.

(City)

(State)

(Zip Code)

REQUIRED

Must be authenticated  
(signed) by an authorized  
representative

(See Instructions)

Authorized Representative

Erwin Hines, Sole Incorporator

(print name)

5/19/05

Date

Authorized Representative

(print name)

Date

Authorized Representative

(print name)

Date

Complete the information in this section if box (1) (2) or (3) is checked.

# ORIGINAL APPOINTMENT OF STATUTORY AGENT

The undersigned, being at least a majority of the incorporators of Emery Woods Cluster Association, Inc. hereby appoint the following to be statutory agent upon whom any process, notice or demand required or permitted by statute to be served upon the corporation may be served. The complete address of the agent is

C&F One, Inc.

(Name)

1414 Terminal Tower, 50 Public Square

(Street)

NOTE: P.O. Box Addresses are NOT acceptable.

Cleveland

Ohio

44113

(Zip Code)

(City)

Must be authenticated by an authorized representative

Authorized Representative  
Erwin Hines, Sole Incorporator

5/19/05

Date

Authorized Representative

Date

Authorized Representative

Date

## ACCEPTANCE OF APPOINTMENT

The Undersigned,

C&F One, Inc.

named herein as the

Statutory agent for,

Emery Woods Cluster Association, Inc.

hereby acknowledges and accepts the appointment of statutory agent for said entity.

Signature:

*Mary Forbes Lovett*  
(Statutory Agent)

Mary Forbes Lovett, Vice President

---

**ATTACHMENT TO THE ARTICLES OF INCORPORATION**  
**OF**  
**EMERY WOODS CLUSTER ASSOCIATION, INC.**

---

The following provisions shall be included in and be part of the Articles of Incorporation of Emery Woods Cluster Association, Inc.:

**THIRD ARTICLE**  
**PURPOSES**

The principal purposes of the Association are:

1. To serve as a central agency to regulate, administer and govern Emery Woods Cluster, including the enforcement of covenants and restrictions being imposed on Emery Woods Cluster.
2. To own, maintain, repair, replace, manage and operate the Common Area of Emery Woods Cluster.
3. To establish Rules, regulations and criteria applicable to Emery Woods Cluster.
4. To establish an orderly and efficient system of billing to pay for the expenses incurred in the furtherance of the purposes of the Association.
5. To carry out the responsibilities and obligations of the Association set forth in the Cluster Declaration, to exercise the rights set forth in the Cluster Declaration, and to perform such acts and deeds as are deemed necessary to achieve the aforesaid objectives.
6. To such extent as a corporation not for profit may now or hereafter lawfully do, to do each and every thing necessary, suitable, conducive, convenient or proper for, or in connection with, or incidental to, the accomplishment of the foregoing purposes or designed directly or indirectly to promote the interest of the association or to enhance the value of its properties.

**FOURTH ARTICLE**  
**POWERS**

The Association shall have the power to engage in any lawful act pursuant to Chapter

1702 of the Ohio Revised Code deemed by it necessary or desirable to accomplish the purposes set forth in these Articles and to protect the lawful rights and interests of its members in connection therewith.

## **FIFTH ARTICLE** **MEMBERSHIP AND VOTING RIGHTS**

The Declarant and each Owner upon becoming an Owner, shall automatically be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of a Lot and the transfer of a Lot shall automatically transfer membership to the transferee. The voting rights of the Members are described in the Cluster Declaration.

## **SIXTH ARTICLE** **INDEMNITY**

### **1. Indemnification of Officers, Directors, Employees and Agents.**

Subject to the further provisions hereof, the Association shall indemnify any and all of its existing and former Board members, officers, employees and agents against all expenses incurred by them and each of them, including but not limited to legal fees, judgments, penalties, and amounts paid in settlement or compromise, which may arise or be incurred, rendered, or levied in any legal action brought or threatened against any of them for or on account of any action or omission alleged to have been committed while acting within the scope of employment as board member, officer, employee or agent of the Association, whether or not any action is or has been filed against them and whether or not any settlement or compromise is approved by a court. Indemnification shall be made by the Association whether the legal action brought or threatened is by or in the right of the Association or by any other person. Whenever any existing or former board members, officer, employee, or agent shall report to the President of the Association or the Chairman of the Board of Directors that he or she for or on account of any action or omission alleged to have been committed by him or her while acting in the scope of his or her employment as a board member, officer, employee or agent of the Association, the Board of Directors shall, at its next regular or at a special meeting held within a reasonable time thereafter, determine in good faith whether, in regard to the matter involved in the action or contemplated action, such person acted, failed to act, or refused to act willfully or with gross negligence or with fraudulent or criminal intent. If the Board of Directors determines in good faith that such person did not act, fail to act, or refuse to act willfully or with gross negligence or with fraudulent or criminal action, indemnification shall be mandatory and shall be automatically extended as specified herein, provided, however, that no such indemnification shall be available with respect to liabilities under the Securities Act of 1933, and, provided further, that the Association shall have the right to refuse indemnification in any instance in which the person to whom the indemnification would otherwise have been applicable shall have unreasonably refused to permit the Association, at its own expense and through counsel of its own choosing, to defend him or her in the action.

## **SEVENTH ARTICLE** **SAVINGS CLAUSE**

The indemnification provided by ARTICLE SIX shall not be deemed exclusive of any other rights to which those seeking indemnification may be entitled under the Bylaws, agreements, votes of the Members of disinterested Directors or otherwise, or of any other person apart from ARTICLE SIX, both as to action in his official capacity while holding such office, and shall continue as to a person who has ceased to be a board member, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

## **EIGHTH ARTICLE** **MAINTENANCE OF INSURANCE**

The Association shall have power to purchase and maintain insurance on behalf of any person who is or was a board member, officer, employee or agent of the Association, or is or was serving at the request of the Association, partnership, joint venture, trust or other enterprise against any liability asserted against him and incurred by him in any such capacity or arising out of his status as such, whether or not the Association would have the power to indemnify him against such liability under the provisions of this Article.

## **APENDEX 1** **DEFINITIONS**

The following definitions are applicable to these Articles of Incorporation:

1. "Association" means Emery Woods Cluster Association, Inc., a non-profit Ohio corporation, its successors and assigns.

2. "Emery Woods Cluster" means the cluster homes portion of the planned unit development known as "Emery Woods" and located in Warrensville Heights, Cuyahoga County, Ohio, and more particularly described in the Cluster Declaration.

3. "Cluster Declaration" means Declaration of Easements, Covenants and Restrictions for Emery Woods Cluster Homes made by Declarant which will be filed for record in the office of the Cuyahoga County, Ohio Recorder.

4. "Declarant" means Emery Woods, LLC, an Ohio limited liability company, and any successor(s) who stands in the same relation to Emery Woods Cluster as Emery Woods, LLC does upon execution hereof.

5. "Member" means a member of the Association, being the Declarant and Owners.

6. "Owner" means any Person (including Declarant) who holds part or all of the



record title to a Home or to a leasehold estate in any Home having an initial term of fifty (50) years or more. The word "Owner" shall not include (i) any Person holding, whether or not of record, a non-possessory future interest to a Home or to a leasehold estate in a Home having an initial term of less than fifty (50) years; and (ii) any Person having an interest merely as security for the payment of or performance of an obligation unless and until said Person all have acquired title pursuant to foreclosure or any act or proceeding in lieu of foreclosure. In the case of a land installment contract, the vendee shall be deemed the Owner, absent an agreement between vendor and vendee otherwise. Each Owner shall be treated for all purposes as a single Owner for each Home held irrespective of whether such ownership is joint or in common. In the event such ownership interest is joint or in common, the majority vote of the Owners shall be necessary to cast any vote to which such Owners are entitled.

7. "Lot" means any cluster subplot shown on the plat attached to the Cluster Declaration (as same may be amended or modified) upon which a Home has been or is intended to be constructed and which is or will be treated by the Auditor of Cuyahoga County, Ohio, as a separate tax parcel for the purpose of assessing real property taxes. The location and dimensions of each Lot and the number of Lots in the aggregate are subject to amendment and modifications by Declarant (until such time as Declarant ceases to have an Ownership Interest in any of the Property) by modification or amendment hereof and/or by the filing of an amended plat with the appropriate governmental offices.

8. "Home" means an individual unit of cluster housing situated on an individual Lot for use and occupancy as a single family residence, and that portion of the Lot upon which the Home and its foundation rests. For purposes of these Cluster Articles, a Home shall come into existence when the improvements constructed thereon are sufficiently complete to reasonably permit the habitation thereof, whether or not a certificate of occupancy has been issued for the Home by the governmental authority having jurisdiction over the same.

Any capitalized terms used in these Articles and not otherwise defined herein shall have the meanings ascribed to such terms in the Cluster Declaration.

EXHIBIT "E"  
Bylaws

**CODE OF REGULATIONS**  
**(BYLAWS)**  
**OF**  
**EMERY WOODS CLUSTER ASSOCIATION, INC.**  
  
**A Non-Profit Ohio Corporation**

**CODE OF REGULATIONS (BYLAWS) OF  
EMERY WOODS CLUSTER ASSOCIATION, INC.  
A NON-PROFIT CORPORATION**

**ARTICLE I. INTRODUCTION**

**1.01 Definition of Code of Regulations.** This Code of Regulations (hereinafter "Bylaws") constitutes the code of rules adopted for the regulation and management of the affairs of the Emery Woods Cluster Association, Inc. (the "Association"). Any capitalized terms used in these Bylaws and not otherwise defined herein shall have the meanings ascribed to such terms in the Declaration of Easements, Covenants and Restrictions for Chateaux of Emery Woods Cluster Homes, the planned cluster home development known as "Chateaux of Emery Woods Cluster Homes" and located in Warrensville Heights, Cuyahoga County, Ohio, which is or will be filed for record in the office of the Cuyahoga County, Ohio Recorder (the "Cluster Declaration").

**1.02 Purposes of the Association.** This Association will have the purposes or powers as stated in its Articles of Incorporation, and whatever powers are or may be granted by the not for profit law of the State of Ohio or any successor legislation. The primary purpose of this corporation is to carry out the responsibilities and obligations of the Association set forth in the Cluster Declaration, to exercise the rights set forth in the Cluster Declaration, and to perform such acts and deeds as are deemed necessary to achieve the aforesaid objectives.

**1.03 No Active Business to be Conducted for Profit.** Nothing herein contained shall be construed to give the Association authority to conduct an active business for profit on behalf of all the Owners or any of them.

**1.04 Delegation of Duties.** Nothing herein contained shall be construed so as to preclude the Association, through its Board of Directors and officers, from delegating to persons, firms or corporations of its choice, including any manager or managing agent, such duties and responsibilities of the Association as the Directors of the Association shall from time to time specify, and to provide for reasonable compensation for the performance of such duties and responsibilities.

**ARTICLE II. OFFICES AND STATUTORY AGENT**

**2.01 Principal Offices.** The principal place of business of this Association in Ohio will be located at Warrensville Heights, Ohio.

**2.02 Statutory Agent.** The statutory agent for this Association is C&F One, Inc., whose address is 1414 Terminal Tower, 50 Public Square, Cleveland, Ohio, 44113.

### **ARTICLE III. MEMBERSHIP**

**3.01 Definition of Membership.** The Members of this Association are those persons having membership rights in accordance with the provisions of these Bylaws.

**3.02 Members.** Declarant or Builder, if Builder is the record title holder, and each Owner shall automatically become and be a Member of the Association; in the case of an Owner other than Declarant, such membership is appurtenant to the ownership of each Home and shall terminate upon the voluntary or involuntary conveyance of record by such Owner of such Home, whether or not such membership is expressly referred to in the instrument effecting such conveyance, at which time the new Owner or other successor in interest shall automatically become a Member of the Association. Declarant's membership in the Association shall terminate on the date when Declarant no longer is the owner of a fee simple interest in any part of the Common Areas. No Owner, whether one or more Persons, shall have more than one membership per Home owned.

**3.03 Members' Dues.** The annual dues payable to the Association by Members will be in the amounts determined from time to time by resolution of the Board of Directors. The first annual dues will be payable and submitted in full with the application for membership. Future annual dues will be payable in advance on the first day of each fiscal year. Annual dues of new Members will be prorated from the first day of the month in which the Member enters.

**3.04 Assessments.** Memberships will be subject to assessment in the amounts determined from time to time by resolution of the Board of Directors.

**3.05 Place of Members' Meetings.** Meetings of Members will be held at the principal place of business of this Association in the State of Ohio or as stated in the notice of meeting issued by the Board of Directors.

**3.06 Annual Members' Meetings.** The annual meeting of the Members will be held at 7:00 p.m. on the first Monday of the fourth month following the close of each fiscal year.

**3.07 Special Members' Meetings.** Special meetings of the Members may be called by any of the following:

- (a) The Chairman of the Board of Directors.
- (b) The Board of Directors.
- (c) The President.
- (d) The lesser of (a) ten percent (10%) of the voting members or (b) 25 (twenty-five) of the voting members.

**3.08 Notice of Members' Meetings.** Written or printed notice, stating the place, day, and hour of the meeting and, in the case of a special meeting, the purpose or purposes for which the meeting is called, must be delivered not less than ten or more than sixty days before the date

of the members' meeting, either personally, by registered or certified first class mail, or at the direction of the President, the Secretary, or the officers or other persons or Members calling the meeting, to each Member entitled to vote at such meeting. If mailed, the notice will be deemed to be delivered when deposited in the United States mail addressed to the Member at the Member's address as it appears on the records of the Association, with postage prepaid.

**3.09 Voting Rights of Members.** Until Declarant ceases to have an Ownership Interest in any of the Common Areas, Declarant shall be the only Member entitled to vote, unless Declarant elects otherwise by written notice to the Owners. Upon the earlier to occur of (i) the date that Declarant ceases to have an Ownership Interest in any of the Common Areas, or (ii) the date that Declarant elects to terminate its sole voting right by written notice to the Owners pursuant to the immediately preceding sentence, each Member, including Declarant, shall be entitled to exercise one (1) vote for each Home owned by such Member. There shall be only one (1) vote for each Home. In any situation where a Member is entitled to exercise a vote and more than one (1) Person holds the Ownership interest in such Home required for membership, the vote for such Home shall be exercised as those Persons determine among themselves and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the vote of the Home shall be suspended if more than one (1) Person seeks to exercise it.

**3.10 Cumulative Voting Rights.** In all elections for Directors each Member entitled to vote will have the right to cumulate the vote and to give one candidate a number of votes equal to the vote multiplied by the number of Directors to be elected, or to distribute the multiple votes on the same principle among as many candidates as the Member may think fit.

**3.11 Members' Proxy Voting.** A Member may vote either in person or by proxy executed in writing by the Member or by his duly authorized attorney-in-fact. No proxy will be recognized as valid after eleven months from the date of its execution unless expressly provided otherwise in the proxy.

**3.12 Quorum of Members.** The number or percentage of Members entitled to vote represented in person or by proxy that constitutes a quorum at a meeting of Members will be Members holding one tenth of the votes entitled to be cast in that manner. The vote of a majority of the votes entitled to be cast by the Members present or represented by proxy at a meeting at which a quorum is present is necessary for the adoption of any matter voted on by the Members, unless a greater proportion is required by the Nonprofit Association Law, the Articles of Incorporation of this corporation, or any provision of these Bylaws.

**3.13 Transferability of Membership.** Membership in this Association is nontransferable and nonassignable. However, in the event that a Member seeks to transfer its, his or her membership, then the transfer of a certificate of membership in this Association must be without payment of any consideration of money or property of any kind or value to the transferor with regard to the transfer. Any transfer in violation of this Regulation will not be valid or recognized by this Association.

**3.14 Termination of Membership.** Membership will terminate in this Association on any of the following events, and for no other reason:

- (a) Receipt by the Board of Directors of the written resignation of a Member, executed by the Member or the Member's duly authorized attorney-in-fact.
- (b) The death of a Member.
- (c) The failure of a Member to pay annual dues or assessments on or before their due date.
- (d) For cause, inconsistent with membership, after notice, trial, and conviction.

However, a Member terminating membership status for reasons other than those stated in Paragraph (2), above, may be completely and automatically reinstated if the Member corrects the cause of termination before the Board of Directors formally adopts a resolution acknowledging the termination.

#### **ARTICLE IV. BOARD OF DIRECTORS**

**4.01 Powers and Duties.** Except as otherwise provided by law, the Declaration or these Bylaws, all power and authority of the Association shall be exercised by the Board. In carrying out the purposes of the Association and subject to the limitations prescribed by law, the Declaration or these Bylaws, the Board, for and on behalf of the Association, may do the following:

- (a) Maintenance, repair, replacement and surveillance of the Common Areas and the Common Areas and Facilities.
- (b) Levy of Assessments against the Owners and the collection of same.
- (c) Designation and dismissal of the personnel necessary for the maintenance and operation of the Common Areas and Facilities.
- (d) In carrying out the purposes of the Association and subject to the limitations prescribed by law, the Declaration or these Bylaws, the Board, for and on behalf of the Association, may:
  - (i) Purchase or otherwise acquire, lease as lessee, hold, use, lease as lessor, sell, exchange, transfer, and dispose of property of any description or any interest therein.
  - (ii) Grant easements.
  - (iii) Make contracts.

- (iv) Effect insurance.
- (v) Borrow money, and issue, sell, and pledge notes, bonds, and other evidence of indebtedness of the Association, provided, however, if such borrowing is in excess of Five Thousand Dollars (\$5,000.00), the prior approval of the members of the Association entitled to exercise a majority of the voting power of the Association shall be obtained at a special meeting duly held for such purpose.
- (e) Employ a managing agent to perform such duties and services as the Board may authorize.
- (f) Employ lawyers and accountants to perform such legal and accounting services as the Board may authorize.
- (g) Adopt Rules and Regulations.
- (h) To do all things permitted by law and exercise all power and authorization within the purposes stated in these Bylaws or the Declaration or incidental thereto.

**4.02 Removal of Board Members.** The Board may remove any Board member and thereby create a vacancy in the Board if by order of court such Board member has been found to be of unsound mind, or if he or she is physically incapacitated, adjudicated a bankrupt, or fails to attend three consecutive meetings of the Board. At any regular or special meeting of members of the Association duly called at which a quorum shall be present, any one or more of the Board members may be removed with or without cause by the vote of members entitled to exercise a majority of the voting power of the Association, and a successor or successors to such Board member so removed may be elected at the same meeting for the unexpired term for each such removed Board member. Any Board member whose removal has been proposed by the members of the Association shall be given an opportunity to be heard at such meeting.

**4.03 Vacancies.** Except as otherwise provided, vacancies in the Board may be filled by a majority vote of the remaining Board members until an election to fill such vacancies is held. Members of the Association shall have the right to fill any vacancy in the Board (whether or not the same has been temporarily filled by the remaining Board members) at any meeting of the members of the Association called for that purpose, and any Board members elected at any such meeting of members of the Association shall serve until the next annual election of Board members and until their respective successors are elected and qualified.

**4.04 Fidelity Bonds.** The Board of Directors shall require that all officers and employees of the Association handling or responsible for Association funds to furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association and shall be a Common Expense.

**4.05 Compensation.** The Board of Directors shall not receive any salary or compensation for their services, as such, provided nothing herein contained shall be construed to preclude any manager from having dealings with the Association in any other capacity and receiving compensation therefor.

**4.06 Structure of Board.** The Board of Directors shall initially be composed of three (3) Persons: Erwin Hines; J. Gordon Priemer; and Mark Priemer. All Board members shall be elected by Declarant so long as Declarant is the only Member of the Association entitled to vote. Thereafter, Cluster Board members shall be elected by the voting Members at the annual meeting of the Association. The Board of Directors shall be vested with and shall exercise all of the powers of the Association and shall elect the officers of the Association, and shall discharge the duties and obligations of the Association and shall have all rights conferred by law, the Articles of Incorporation and the Bylaws of the Association. Except with respect to Board members appointed by the Declarant, Board members shall be Members.

**4.07 Terms of Directors.** The Directors constituting the first Board of Directors as elected by the Declarant will hold office until the first annual election of Directors. At the first annual election of Directors, Directors will be elected as follows: one for a term of one year; one for a term of two years; and one for a term of three years. Thereafter, Directors will be elected for a term of one year. Each Director will hold office for the term for which the Director was elected and until a successor has been selected and qualified.

**4.08 Location of Directors' Meetings.** Meetings of the Board of Directors, regular or special, will be held at the principal place of business of this Association or such place or places as the Board of Directors designates by resolution duly adopted.

**4.09 Regular Directors' Meetings.** Regular meetings of the Board of Directors will be held at 7:00 p.m. on the first Thursday of the first month of each calendar quarter. If the date set for the meeting falls on a legal business holiday, then the meeting will be held instead on the Thursday immediately following. This provision of the Bylaws constitutes notice to all Directors of all regular meetings, and no further notice shall be required, although further notice may be given.

**4.10 Notice of Special Directors' Meetings.** Written or printed notice stating the place, day, and hours of any special meeting of the Board of Directors will be delivered to each Director not less than three or more than five days before the date of the meeting, either personally or by first class mail, by or at the direction of the President, or the Secretary, or the Directors calling the meeting. If mailed, the notice will be deemed to be delivered when deposited in the United States mail by registered or certified mail addressed to the Director at the Director's address as it appears on the records of this Association, with postage prepaid. The notice need not state the business to be transacted at, or the purpose of, the meeting.

**4.11 Call of Special Board Meetings.** A special meeting of the Board of Directors may be called by either:

- (a) The President.



- (b) A number constituting a quorum of the Board of Directors.

**4.12 Waiver of Notice.** Attendance of a Director at any meeting of the Board of Directors will constitute a waiver of notice of that meeting except when the Director attends a meeting for the express purpose of objecting, at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened.

**4.13 Quorum of Directors.** A majority of the whole Board of Directors will constitute a quorum, provided that in no event will a quorum consist of less than one third of the whole Board. The act of a majority of the Directors present at a meeting at which a quorum is present will be the act of the Board of Directors unless a greater number is required under the provisions of the Nonprofit Association Law, the Articles of Incorporation of this Association, or any provision of these Bylaws.

## **ARTICLE V. OFFICERS**

**5.01 Roster of Officers.** The Officers of this Association will consist of the following personnel:

- (a) A President.
- (b) Vice President.
- (c) A Secretary.
- (d) A Treasurer.

**5.02 Selection of Officers.** Each of the Officers of this Association will be elected and appointed annually by the Board of Directors. Each Officer will remain in office until a successor to the office has been selected and qualified. Elections will be held at the regular meeting of the Board of Directors taking place on the first calendar quarter of each year.

**5.03 Multiple Officeholders.** In any election of Officers, the Board of Directors may elect and appoint a single person to more than one office simultaneously, except that the offices of President and Secretary must be held by separate individuals.

**5.04 President.** The President is the Chief Executive Officer of this Association and will, subject to the control of the Board of Directors or any Committees, supervise and control the affairs of the Association. The President will perform all duties incident to the office and any other duties that may be required by these Bylaws or prescribed by the Board of Directors.

**5.05 Vice President.** The Vice President will perform all duties and exercise all powers of the President when the President is absent or is otherwise unable to act. The Vice President will perform any other duties that may be prescribed by the Board of Directors.

**5.06 Secretary.** The Secretary will keep minutes of all meetings of Members and of the Board of Directors, be the custodian of the corporate records, give all notices as are required by law or by these Bylaws, and, generally, perform all duties incident to the office of Secretary and any other duties as may be required by law, by the Articles of Incorporation, or by these Bylaws, or that may be assigned by the Board of Directors.

**5.07 Treasurer.** The Treasurer will have charge and custody of all funds of this Association, and will deposit the funds as required by the Board of Directors, keep and maintain adequate and correct accounts of the Association's properties and business transactions, render reports and accountings to the Directors and to the Members as required by the Board of Directors or by members or by law. The Treasurer will perform in general all duties incident to the office of Treasurer and any other duties as may be required by law, by the Articles of Incorporation, or by these Bylaws, or that may be assigned by the Board of Directors.

**5.08 Removal of Officers.** Any Officer elected or appointed to office may be removed by the persons authorized under these Bylaws to elect or appoint Officers whenever in their judgment the best interests of this Association will be served. However, any removal will be without prejudice to any contract rights of the Officer so removed.

**5.09 No Compensation to Officers.** None of the officers of the Association shall receive compensation for his or her services as such.

## **ARTICLE VI. INFORMAL ACTION**

**6.01 Waiver of Notice.** Whenever any notice whatever is required to be given under the provisions of the Ohio Nonprofit Association Law, the Articles of Incorporation of this Association, or these Bylaws, a waiver of the notice in writing signed by the person or persons entitled to notice, whether before or after the time stated in the waiver, will be deemed equivalent to the giving of the notice. The waiver must, in the case of a special meeting of Members, specify the general nature of the business to be transacted.

**6.02 Action by Consent.** Any action required by law or under the Articles of Incorporation of this Association or these Bylaws, or any action that otherwise may be taken at a meeting of either the members or Board of Directors, may be taken without a meeting if a consent in writing, setting forth the action taken, is signed by all the persons entitled to vote with regard to the subject matter of the consent, or all Directors in office, and filed with the Secretary of the Association.

## **ARTICLE VII. COMMITTEES**

**7.01 Definition of Executive Committees.** This Association may have certain Committees, each of which will consist of one or more Directors. Each Executive Committee will have and exercise some prescribed authority of the Board of Directors in the management of this Association. However, no Committee will have the authority of the Board in reference to affecting any of the following:

- (a) Submission to members of any action requiring approval of Members under the Ohio Nonprofit Association Law.
- (b) Filling of vacancies in the Board.
- (c) Adoption, amendment, or repeal of Bylaws.
- (d) Amendment or repeal of any resolution of the Board.
- (e) Action on matters committed by Bylaws or resolution of the Board to another Committee of the Board.

**7.02 Appointment of Committees.** The Board of Directors, by resolution duly adopted by a majority of the Directors in office, may designate and appoint one or more Executive Committees and delegate to these Committees the specific and prescribed authority of the Board of Directors to exercise in the management of this Association. However, the creation of Executive Committees will not operate to relieve the Board of Directors, or any individual Director, of any responsibility imposed by law.

**7.03 Required Committees.** The following Executive Committees will always operate as part of the corporate management and with the following specific and prescribed authority of the Board to exercise in the management of this Association. The particular Directors to be serving on the Committee are to be designated and appointed by the Board of Directors in a resolution that may otherwise add to the scope of the Committee's authority, if legally permissible, but not subtract from it:

- (a) Executive Committee, which will act for the Board of Directors in the day-to-day management of this Association in the absence of action by the Board, where legally permissible.
- (b) Maintenance Committee, which will act for the Board of Directors in the day to day management and maintenance of the facilities and Common Areas owned by the Association as stated in Article VIII of the Cluster Declaration.
- (c) Architectural Review Committee, which will act for the Board of Directors in supervising and enforcing the Covenants and Restrictions contained in Articles IV and V of the Cluster Declaration.

**7.04 Functionary Committees.** In addition, the Board of Directors, by resolution may designate and appoint certain Functionary Committees designed to transact certain ministerial business of the Association or to advise the Board of Directors. These Committees will be chaired by an Officer or Director as designated by the Board. The Chairperson will proceed to select the remaining members of the Committee up to the number set by the Board or terminate the memberships or appoint successors in the Chairperson's discretion. The Board may terminate any Committee by resolution.

**7.05 Standing Functionary Committees.** The Association will have the following Standing Functionary Committees, each of which will be chaired by a Director or Officer designated by the Board of Directors, and may consist of any other Members or personnel of the Association appointed by the Chairperson:

(a) Ways and Means Committee, consisting of four members plus a Chairperson, to determine the financial feasibility of corporate projects, acts, and undertakings referred to it by the Board of Directors, and to make recommendations with appropriate documentation to the Board concerning matters under consideration.

(b) Recreation Committee, consisting of four members plus a Chairperson, to determine the need for, recommend sources of funding, to plan and carry out recreational activities of the Association and to make recommendations with appropriate documentation to the Board concerning recreational activities. None of the activities of the Recreation Committee shall be considered Common Expense.

## ARTICLE VIII. OPERATIONS

**8.01 Fiscal Year.** The fiscal year of this corporation will be the calendar year.

**8.02 Execution of Documents.** Except as otherwise provided by law, checks, drafts, promissory notes, orders for the payment of money, and other evidences of indebtedness of this Association will be signed by the Treasurer and countersigned by the President. Contracts, leases, or other instruments executed in the name of and on behalf of the Association will be signed by the Secretary and countersigned by the President, and will have attached copies of the resolutions of the Board of Directors certified by the Secretary authorizing their execution.

**8.03 Books and Records.** This Association will keep correct and complete books and records of account, and will also keep minutes of the proceedings of its Members, Board of Directors, and Executive Committees. The Association will keep at its principal place of business a membership register giving the names, addresses, classes, and other details of the membership of each member, and the original or a copy of its Bylaws including amendments to date certified by the Secretary of the Association.

**8.04 Inspection of Books and Records.** All books and records of this Association may be inspected by any Member, or the Member's agent or attorney, for any proper purpose at any reasonable time on written demand under oath stating the purpose of the inspection.

**8.05 Nonprofit Operations.** This Association will not have or issue shares of stock. No dividend will be paid, and no part of the income of this Association will be distributed to its Members, Directors, or Officers. However, the Association may pay compensation in a reasonable amount to Members, Officers, or Directors for services rendered.

**8.06 Loans to Management.** This Association will make no loans to any of its Directors or Officers or to add any of its key management or other personnel.

## ARTICLE IX. INDEMNIFICATION

**9.01 In General.** The Association shall indemnify any member of the Board, officer, employee, or agent of the Association or any former member of the Board, officer, employee or agent of the Association and/or its or their respective heirs, executors and administrators, against reasonable expenses, including attorneys' fees, judgments, decrees, fines, penalties or amounts paid in settlement actually and necessarily incurred by him or her in connection with the defense of any pending or threatened action, suit, or proceeding, criminal or civil, to which he or she is or may be made a party by reason of being or having been such member of the Board, officer, employee or agent of the Association, provided it is determined in the manner hereinafter set forth (a) that such member of the Board, officer, employee or agent of the Association was not, and is not, adjudicated to have been grossly negligent or guilty of willful misconduct in the performance of his duty to the Association, (b) that such member of the Board acted in good faith in what he reasonably believed to be in the best interest of the Association, (c) that, in any matter the subject of a criminal action, suit or proceeding, such Board member had no reasonable cause to believe that this conduct was unlawful, and (d) in case of settlement, that the amount paid in the settlement was reasonable. Such determination shall be made either by the members of the Board or the Association acting at a meeting at which a quorum consisting of members of the Board who are not parties to or threatened with any such action, suit or proceeding is present, or, in the event of settlement, by a written opinion of independent legal counsel selected by the members of the Board.

**9.02 Advance of Expenses.** Funds to cover expenses, including attorneys' fees, with respect to any pending or threatened action, suit, or proceeding may be advanced by the Association prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the recipient to repay such amounts unless it shall ultimately be determined that he is entitled to indemnification hereunder.

**9.03 Indemnification Not Exclusive; Insurance.** The indemnification provided for in this Article IX shall not be exclusive, but shall be in addition to any other rights to which any person may be entitled under the Articles of Incorporation, Rules and Regulations of the Association, any agreement, any insurance provided by the Association, the provisions of Section 1701.12(E) of the Ohio Revised Code, or otherwise. The Association may purchase and maintain insurance on behalf of any person who is or was a member of the Board, officer, agent or employee of the Association against any liability asserted against him or her or incurred by him or her in any such capacity or arising out of his status as such whether or not the Association would have the power to indemnify him or her against such liability under the provisions of this Article.

**9.04 Indemnification by Owners.** The members of the Board and officers of the Association shall not be liable to the Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Owners shall indemnify and hold harmless each of the members of the Board and officers of the Association

against all contractual liability to third parties arising out of contracts made on behalf of the Association except with respect to any such contracts made in bad faith or contrary to the provisions of the Declaration or these Bylaws. It is intended that the members of the Board and officers of the Association shall have no personal liability with respect to contracts entered into on behalf of the Association. Every agreement made by any members of the Board, officer, employee or agent of the Association or by a management company, if any, on behalf of the Association, shall provide that such members of the Board, officer, employee or agent of the Association, or the management company, as the case may be, is acting only as agent for the Association and shall have no personal liability thereunder (except as a Owner), and that each Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his percentage of interest in the Common Areas and Facilities bears to the total percentage interest of all Owners in the Common Areas and Facilities.

**9.05 Cost of Indemnification.** Any sum paid or advanced by the Association under this Article IX shall constitute a Common Expense and the Association and the Board shall have the power to raise and the responsibility for raising, by special assessment or otherwise, any sums required to discharge its obligations under this Article IX; provided, however, that the liability of any Owner arising out of any contract made by or other acts of any member of the Board, officer, employee or agent of the Association, or out of the aforesaid indemnity in favor of such member of the Board, officer, employee or agent of the Association, shall be limited to such proportion of the total liability hereunder as said Owner's percentage of interest in the Common Areas and Facilities bears to the total percentage interest of all the Owners in the Common Areas and Facilities.

## ARTICLE X. AMENDMENT

**10.01 Modification of Bylaws.** The power to alter, amend, or repeal these Bylaws, or to adopt new Bylaws, to the extent allowed by law, is vested in the voting members. These Bylaws may be altered, amended, or repealed, by the voting members at a meeting held for that purpose, by the affirmative vote of a majority of the voting members present, if a quorum is present.

**10.02 Adoption of Bylaws.** The undersigned certify that these Bylaws were adopted by the written consent of the sole voting member of the Association on \_\_\_\_\_, 2005, at Warrensville Heights, Ohio.

Erwin Hines, Director

J. Gordon Priemer, Director

Mark Priemer, Director

**EXHIBIT "F"**  
Assessments

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