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MEDINA COUNTY RECORDER

LINDA HOFFMANN

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**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS
AND RESTRICTIONS**

OF

MONTVILLE RESERVE SUBDIVISION

MONTVILLE TOWNSHIP, MEDINA COUNTY, OHIO

BEING DEVELOPED BY:

MONTVILLE RESERVE LTD.

Attn: Dave Kolar

130 West Streetsboro Street

Hudson, Ohio 44236

Phone: 330 656 3999

This Instrument Prepared By:

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MONTVILLE RESERVE HOMEOWNERS' ASSOCIATION, INC.

**DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS
AND RESTRICTIONS**

**MONTVILLE RESERVE SUBDIVISION
MONTVILLE TOWNSHIP, MEDINA COUNTY, OHIO**

THIS DECLARATION, (the "**Declaration**") made this 19 day of November, 2024, by and between MONTVILLE RESERVE LTD., an Ohio limited liability company (hereinafter referred to as "**Declarant**"), and MONTVILLE RESERVE HOMEOWNERS' ASSOCIATION, INC., an Ohio not-for-profit corporation (hereinafter referred to as the "**Association**").

PREAMBLE

- A. The Declarant is the owner of real property containing approximately 52.80 acres situated in Montville Township, Medina County, Ohio consisting of Sublots 1 through 39, inclusive, duly dedicated public streets and Common Areas all as shown on the Site Plan (the "**Subdivision**"), which is legally described in **Exhibit "A"** attached hereto and incorporated herein (the "**Property**");
- B. The Declarant desires to create a separate planned residential community pursuant to Ohio Revised Code Chapter 5312 (the Ohio Planned Community Law) on the Property which, upon completion, is planned to consist of (however the Declarant is under no obligation to construct) thirty-nine (39) Dwelling Units (hereinafter defined) (to be constructed on individual Sublots (hereinafter defined), and including publicly dedicated rights-of-way and Common Areas (hereinafter defined) to be owned and maintained by the Association (hereinafter defined) for the benefit of the Owners (hereinafter defined) of the Dwelling Units;
- C. The Declarant has deemed it desirable for the efficient preservation of the values and amenities in the Property to create an agency to which should be delegated and assigned the powers of maintaining and administering the Areas of Common Responsibility (hereinafter defined) within the Property and administering and enforcing the covenants and restrictions of this Declaration, and collecting and disbursing the assessments and charges created herein, and to this end has incorporated under the laws of the State of Ohio, as a non-profit corporation, being MONTVILLE RESERVE HOMEOWNERS' ASSOCIATION, INC. (hereinafter referred to as the "**Association**"), for the purposes of exercising the functions aforesaid;
- D. The Association joins in this Declaration for the purpose of accepting the duties and responsibilities imposed upon it by the protective covenants and restrictions herein contained; and

E. Declarant declares that the Property, as the same may be expanded from time to time, shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as “**Covenants and Restrictions**”) hereinafter set forth, and further specified that this Declaration shall constitute covenants to run with the land and shall be binding upon Declarant, and its successors and assigns and all other owners of any part of said real Property, together with their grantees, successors, heirs, executors, administrators or assigns.

ARTICLE I

PREAMBLE; PROPERTY; DECLARANT'S RIGHT TO ADD AND DELETE LAND

Section 1.1 - Preamble

The Preamble is incorporated in and made a part of this Declaration.

Section 1.2 – Property

The Property which is and shall be owned, held, transferred, sold, used and occupied subject to this Declaration is the real property described in Exhibit “A” and shown graphically on Exhibit “B”.

Section 1.3 – Expansion and Contraction of the Property

(a) The Declarant reserves the right from time to time, subject to and in accordance with the Township Zoning Resolution and County Subdivision Regulations, to add additional property to the Property and to subject the same to the provisions of this Declaration. To add any additional property, the Declarant shall execute and record 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, except as the same may be modified by the Subsequent Amendment. The additional property may be any directly adjacent or contiguous real property (the “**Additional Property**”) and may be annexed by the Declarant without the consent of Members within ten (10) years of the date this Declaration is recorded in the Medina County records.

(b) The Declarant reserves the right from time to time, subject to and in accordance with the Township Zoning Resolution and County Subdivision Regulations, to delete lands from the Property (provided the lands so deleted have not been previously declared Common Areas) and thereby to free such lands from the provisions of this Declaration. Lands not owned by Declarant may be deleted from the Property only with the written consent of the title owner thereof. To delete such lands, the Declarant shall execute and record a Subsequent Amendment to this Declaration which expressly provides that the land described therein shall no longer be a part of the Property and shall no longer be subject to the provisions set forth in this Declaration.

Section 1.4 – Developer’s Right to Divide and Combine the Property During Class ‘B’ Control Period

During the Class 'B' Control Period, the Declarant shall have the unilateral right, privilege, and option, without the consent of the Class "A" Members, subject to and in accordance with the Township Zoning Resolution and County Subdivision Regulations, to divide the Property into two or more separate properties governed by separate associations, or to combine property within any other community with the Property pursuant to Section 1.3 above, in which case the resulting Property may, at the option of Declarant, be governed by either the Association or by any other association governing another community thereby being combined. To accomplish such division or combination the Declarant shall execute and record a Subsequent Amendment to this Declaration.

Section 1.5 – Property

After the expiration of the Class 'B' Control Period, the Board shall have the right, with the consent of two-thirds (2/3rds) of each class of Members of the Association, subject to and in accordance with the Township Zoning Resolution and County Subdivision Regulations, to divide the Property into two or more properties governed by separate associations, or to combine any other community with the Property pursuant to Section 1.4 above, in which case the resulting Property may, as approved by two-thirds (2/3rds) of each class of Members of the Association, be governed by either the Association or by any other association governing another community thereby being combined. To accomplish such division or combination the Association shall execute and record a Subsequent Amendment to this Declaration.

Section 1.6 – Development by Declarant

It is contemplated that the Property will be developed pursuant to a plan (including the Site Plan), which may, from time to time, be amended or modified. Declarant reserves the right, but will not be obligated, to pursue the development, construction and marketing of the Property, or the right to direct the size, shape, and composition of the Property, and the right to create and/or designate Sublots, Common Areas or to subdivide all or any portion of the Property, subject to any limitations imposed on portions of the Property by any applicable Plat. Without limiting the preceding sentence, Declarant reserves the right, at any time and in Declarant's sole discretion, to (a) plat any unplatted land within the Property, in whole or in part and in phases, (b) replat any platted land within the Property, in whole or in part, and (c) convert residential lots to Common Areas, (d) convert Common Areas to residential lots, (e) impose or remove easements, and (f) effect any other land use or change in land use which is conducive to the completion of the development of the Community or the sale of land owned by Declarant within the Property. Collectively, the rights reserved to the Declarant as set forth in this Declaration shall be known as the "Development Rights", and Declarant hereby reserves the right and privilege for itself, and/or its assigns, to exercise the Development Rights, and any other rights reserved on behalf of the Declarant as set forth in this Declaration until twenty-four (24) months after the expiration or termination of the Class 'B' Control Period, except the right to appoint and remove Board members and officers of the Association which shall be governed by the provisions set out in the Code. These rights may be exercised with respect to any portions of the Property or the Common Areas. As each portion of the Property is developed or dedicated, Declarant may designate the use, classification and such additional covenants, conditions and restrictions as Declarant may deem appropriate for such Property.

ARTICLE II
EXHIBITS AND DEFINITIONS

Section 2.1 - Exhibits

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

- EXHIBIT "A": A legal description of the Property
- EXHIBIT "B": Site Plan of the Property
- EXHIBIT "C": Form Certificate of Compliance (See 7.27 of this Declaration)
- EXHIBIT "D": Code of Regulations (Bylaws) of Montville Reserve Homeowners' Association, Inc.

Section 2.2 - Definitions

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

(a) "**Act**". Ohio Revised Code Chapter 5312 (the Ohio Planned Community Law).

(b) "**Affiliate of Declarant**". Any person who controls, is controlled by, or is under common control with the Declarant. (1) A Person "controls" the Declarant if the Person (a) is a general partner, officer, director, managing member or employer of the Declarant, (b) directly or indirectly or acting in concert with one or more other Persons, or through one or more subsidiaries owns, controls, holds with power to vote, or holds proxies representing more than twenty percent (20%) of the voting interest in the Declarant, (c) controls in any manner the election of a majority of the directors of the Declarant, or (d) has contributed more than twenty percent (20%) of the capital of the Declarant; (2) a Person "is controlled by" a Declarant if the Declarant (a) is a general partner, officer, director, or employer of the Person, (b) directly or indirectly or acting in concert with one or more other Persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent (20%) of the voting interest in the Person, (c) controls in any manner the election of a majority of the directors of the Person, or (d) has contributed more than twenty percent (20%) of the capital of the Person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

(c) "**Areas of Common Responsibility**". The Areas of Common Responsibility shall mean and refer to (1) the Common Areas (including Open Spaces); (2) the entrances to the Property situated off of existing and future public streets that abut the Property (the "**Entrances**") and landscaping, lighting, irrigation and other improvements with the Entrances; (3) islands and/or medians within public rights-of-way to which the Association has been granted landscaping easements, if any; (4) sidewalks and all walking or recreation paths (if any) within

Common Areas; (5) storm drainage that generally serves the Property and that is not the responsibility of the Township or the County, including storm water retention/detention and management areas (including such areas outside the Property over which an easement has been granted to the Association); (6) real and personal property owned by the Association; (7) real and personal property not owned by the Association but determined by the Board to be the responsibility of the Association; (8) landscaping of the Common Areas; (9) maintenance and repair of structure(s) within the Common Areas (including fencing); (10) lighting within the Common Areas; (11) any bridges not located on an individual Sublot and associated pathways; (12) any private drive aisles; and (13) any fire hydrants within the Subdivision.

(d) "**Articles**" or "**Articles of Incorporation**". The Articles of Incorporation of the Association which are filed with the Secretary of State of Ohio to create the Association.

(e) "**Assessments**". The assessments levied against all Owners of Dwelling Units to fund Common Expenses. Assessments include Special Assessments, as further defined herein.

(f) "**Association**". Montville Reserve Homeowners' Association, Inc., a non-profit Ohio corporation, its successors and assigns, created to govern, operate, control and administer the Areas of Common Responsibility and to supervise and enforce this Declaration.

(g) "**Board**". The Board of Directors of the Association.

(h) "**Builder**". Builder shall mean any Person who (1) purchases a Sublot within the Property for the purpose of the construction and sale of one or more Dwelling Units, such Builder also being an Owner during the period such Builder owns title to the Sublot; or (2) is retained by an Owner to construct a Dwelling Unit or any addition thereto. It is anticipated that Pulte Homes of Ohio LLC ("Pulte") shall construct all of the Dwelling Units located within the Property, and as such, shall be considered a Builder as set forth herein.

(i) "**Bulk Rate Contracts**". Bulk Rate Contracts mean one or more contracts entered into by Declarant or the Association for the provision of services of any kind or nature by which a particular service is provided to all or a portion of the Subdivision, or by which various services are offered at the option of each Owner, or both. The services provided under Bulk Rate Contracts may include, without limitation, services provided by Community Systems and services for cable television, telecommunications, internet access, "broadband", security monitoring, trash pick-up, propane and natural gas, lawn and landscaping maintenance, and wastewater, and other services which are considered by the Declarant or the Board to be beneficial to all or a portion of the Subdivision.

(j) "**Class 'B' Control Period**". The period of time in which, among other things set forth herein, Declarant reserves the right to facilitate the development, construction, and marketing of the Property, and the right to direct the size, shape and composition of the Property. The expiration of the Class 'B' Control Period is set forth in Section 5.2(b)(2) of this Declaration.

(k) "**Code**". The Code of Regulations of the Association which is the instrument filed with this Declaration that is referred to as "Regulations" pursuant to Ohio Revised Code Chapter 1702 (Ohio Nonprofit Corporation Law).

(l) "**Common Areas**". All real and personal property now or hereafter owned by the Association or otherwise held for the common use and enjoyment of the Owners or Occupants. Common Areas shall include all portions of the Property not part of a Sublot, and not part of a dedicated right-of-way. The Common Areas are intended for the common use, benefit and enjoyment of all Occupants of the Property. Any Owner may delegate, in accordance with the Code and subject to reasonable rules, regulations, and limitations as may be adopted in accordance therewith, his or her right of enjoyment to the Common Areas and facilities to the members of his or her family, tenants, and social invitees and shall be deemed to have made a delegation of all such rights to the Occupants of any leased Dwelling Unit. Common Areas does not mean or imply that the public at large acquires any easement of use or enjoyment therein. The Common Areas are not for the use by the general public, but are for the common use and enjoyment of the Owners and Occupants of Dwelling Units within the Property. The Common Areas shall be conveyed to the Association at the time of the termination of the Class 'B' Control Period, or such earlier time as desired by the Declarant in its sole and absolute discretion.

(m) "**Common Expenses**". The actual and estimated expenses of operating the Association, both for general or special purposes, including reasonable reserves, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Code, and the Articles of Incorporation of the Association. Unless otherwise provided in this Declaration, all costs the Association incurs in the administration, governance and maintenance of the Property are Common Expenses and all costs of administration, operation, maintenance, repair and replacement of Common Areas are Common Expenses. The funding for the perpetual inspection, operation and maintenance of the storm water management system is a Common Expense.

(n) "**County**". Medina County, Ohio.

(o) "**Design Review Committee**". The committee created by this Declaration and granted original jurisdiction to review and approve or disapprove exterior and structural improvements, including the Dwelling Units, landscaping, additions to the Dwelling Units and changes within the Property.

(p) "**Declarant**". Montville Reserve Ltd., an Ohio limited liability company, and the specifically designated successors or assigns of any of their rights as Declarant under the Declaration or under any supplement to the Declaration involving the Property as the same may be expanded or contracted from time to time. No person, real or corporate, shall be deemed to be a successor, alternate or additional Declarant for the purposes of the Declaration unless and until such person or entity has been specifically so designated by Declarant herein, by instrument in writing and placed of record, and shall be deemed a successor and assign of Declarant only to the particular rights and interests of Declarant under the Declaration or under a supplement to the Declaration. The Declarant is also sometimes referred to herein as the "**Original Declarant**".

(q) **"Dwelling Unit(s)".** All units of residential housing to be situated on the Property. Without limiting the generality of the foregoing, Dwelling Unit(s) shall mean a portion of the Property intended for any type of independent ownership for use and occupancy as a single family residence and shall, unless otherwise specified, include within its meaning (by way of illustration, but not by way of limitation) single family houses (including attached Dwelling Units) on separately platted Sublots, as may be developed, used and defined as herein provided or as provided in Subsequent Amendments; provided, further, the term Dwelling Unit shall also include all portions of the Sublot owned as a part of any structure thereon. For the purposes of this Declaration, a Dwelling Unit shall come into existence when the improvements constructed thereon are sufficiently complete to reasonably permit the habitation thereof, whether or not a certificate of occupancy has been issued for the Dwelling Unit by the governmental authority having jurisdiction over the same, and the Dwelling Unit has been conveyed to a person other than the Declarant.

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

(s) **"Governing Documents".** This Declaration, the Code, any standards set forth by the Design Review Committee, any policy manual or rule and regulations applicable to the Association promulgated by the Association pursuant to this Declaration, and resolutions of the Board, as each may be adopted and amended from time to time.

(t) **"Member".** A person or entity entitled to membership in the Association, as provided in the Declaration and Code.

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

(v) **"Open Spaces".** Land that is assigned for open space use, including "common land" and "open spaces" (if any) required by the Township's or County's Planning and Zoning Code, if any. The Open Spaces are to be owned and administered by the Association.

(w) **"Owner".** The record Owner of fee simple title in a Sublot and Dwelling Unit situated thereon, including the Declarant (except as otherwise provided herein) with respect to any unsold Dwelling Unit, but Owner shall exclude in all cases any party holding an interest merely as security for the performance of an obligation. If a Dwelling Unit is sold under a land installment contract, the purchaser ("vendee") (rather than the fee Owner) will be considered to be the Owner. For the purpose of this Declaration, the Owner of Dwelling Units that are rented to others shall be as follows: for the purpose of votes and Assessments, the record Owner of the Dwelling Unit; for the purpose of use and enjoyment of common facilities and amenities which are part of the Common Areas, the Tenant residing in the Dwelling Unit. Every Owner shall be treated for all purposes as a single Owner for each Dwelling Unit held irrespective of whether such ownership is joint or in common. Where such ownership is joint or in common, the

majority vote of such Owners shall be necessary to cast any vote to which such Owners are entitled.

(x) "**Ownership Interest**". The entire right, title and interest of any Owner in all of the freehold and leasehold estates of such Owner in his Dwelling Unit.

(y) "**Plat**" or "**plat**". The subdivision plat(s) creating the Sublots, Common Areas and streets/roads within the Property. The Plat(s) will specifically designate thereon the Common Areas owned or to be owned by the Association.

(z) "**Person**". A natural individual, corporation, partnership, limited partnership, limited liability company, trust or other entity to which the law attributes the capacity of having rights and duties.

(aa) "**Property**". The land described in Exhibit "A" of this Declaration as the same may from time to time be amended.

(bb) "**Proposed Dwelling Unit**". Shall mean and refer to Dwelling Units proposed but not yet constructed or Dwelling Units under construction as shown on preliminary plans submitted by the Declarant or a Builder and any subsequent plans approved by the Township.

(cc) "**Rules**". Rules and regulations promulgated by the Board that govern the operation and use of the Sublots, Dwelling Units, Areas of Common Responsibility, Common Areas, and any other property owned by the Association.

(dd) "**Site Plan**". The preliminary site plan of the Property dated April 26, 2023, prepared by Cunningham & Associates, Inc. The Site Plan is attached hereto as Exhibit "B". The Site Plan may be supplemented and amended by the Declarant from time to time. The Site Plan shows the Property described in Exhibit "A".

(ee) "**Special Declarant Rights**" means those rights reserved for the benefit of the Declarant as provided for in this Declaration and the Code, and shall include, without limitation, the following rights: (1) to maintain sales offices, management offices, customer services offices, signs identifying and/or advertising the Property; (2) to grant and to reserve easements over the Property and to use easements through the Common Areas for the purpose of making improvements within the Property; and (3) to expand the Property in accordance with the terms contained herein; and (4) to appoint or remove any Board Members or officers of the Association during the period that the Declarant has the right to elect or designate members of the Board.

(ff) "**Subdivision**." Montville Reserve Subdivision as shown and graphically depicted on the Site Plan.

(gg) "**Sublot**". A platted single-family lot upon which a Dwelling Unit has been or may be constructed.

(hh) "**Subsequent Amendment**". 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.

(ii) "**Tenant**". Any person(s) having a possessory leasehold estate in a Dwelling Unit, other than an Owner.

(jj) "**Township**". York Township, Medina County, Ohio.

ARTICLE III **EASEMENTS**

Section 3.1 - Utility Easements

There is hereby reserved in favor of Declarant and granted to the Association, its successors and assigns, a non-exclusive easement upon, across, over, through and under the Property for ingress, egress, installation, replacement, repair and maintenance of all utilities and service lines and systems including, but not limited to, water, storm and sanitary sewers, energy, drainage, gas, telephone, electricity, television, cable and communication lines and systems. By virtue of this easement, it shall be expressly permissible for the Declarant and/or the Association and their successors and assigns, or the providing utility or service company, to install and maintain facilities and equipment on the Property provided that such facilities shall not materially impair or interfere with any Dwelling Units and provided further that any areas disturbed by such installation and maintenance are restored to substantially the condition in which they were found. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or located except as approved by the Declarant or the Design Review Committee or unless the same are shown on a recorded plat. 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 easements for utility purposes does not overburden the utilities serving the Property. Any conflicts between the provisions of this Section and a plat granting similar easements shall be resolved in favor of the plat.

Section 3.2 - Easement for Ingress and Egress

There is hereby created a non-exclusive easement upon, across, over and through all roadways, sidewalks, walkways, pathways and parking areas constructed within the Common Areas in favor of Declarant and the Association, all Owners, Occupants, and their respective guests, licensees and invitees for pedestrian ingress and egress, to and from all of the various portions of the Property. Notwithstanding the foregoing, the Declarant and/or the Association may limit this right of ingress and egress by a Subsequent Amendment. There is hereby reserved in favor of the Declarant or the Association the right (but not the obligation) to grant neighboring

property owners easements for roadway access purposes so long as the granting of an easement does not overburden the roadways serving the Property.

Section 3.3 – Owner’s Easement of Enjoyment

Declarant, every Owner, an Occupant and the guest of such parties shall have a right and non-exclusive easement of use and enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Sublot, subject to the following provisions:

(a) the right of the Association to suspend the voting rights and right to use of the recreational facilities (if any) by an Owner for any period during which any assessment against his Sublot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its Rules;

(b) the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Board. After the Class ‘B’ Control Period, no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been signed by seventy-five percent (75%) of the Members and has been recorded with the County.

Section 3.4 - Common Areas

Declarant, all Owners, Occupants and the guests of such parties shall have the right to enter upon, and shall have the non-exclusive right and easement to use and enjoy the Common Areas for their intended purposes in accordance with this Declaration and the applicable Rules which shall be appurtenant to and shall pass with the title to every Sublot, subject to the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Board. After the Class ‘B’ Control Period, no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer signed by seventy-five percent (75%) of the Members has been recorded.

During the Class ‘B’ Control Period and for a period of ten (10) years thereafter, Declarant and its licensees shall have the right, but not the obligation, to enter upon the Common Areas for purposes of inspecting, improving, modifying and repairing the Common Areas and/or any improvements thereon at Declarant's expense; provided; however, nothing contained herein shall obligate Declarant to make any such inspections, improvements or repairs.

Section 3.5 - Easements for Construction, Alteration, etc.

Easements are hereby created in favor of the Declarant, the Association, all Owners, and their respective agents, contractors, and employees upon such portions of the Common Areas and Sublots as may be reasonably necessary for access thereto in connection with the construction, alteration, rebuilding, restoration, maintenance and repair of any Dwelling Unit or other structures and improvements within the Property or serving the Property; provided, however, that in the exercise of any rights under this easement, there shall be no unreasonable interference with the use of any Dwelling Unit, Sublot, or other structure or improvement on the

Property. Any Person benefiting from the foregoing easement shall indemnify and save harmless the Declarant, the Association, and each Owner and Occupant from and against any and all losses, damages, liabilities, claims and expenses, including reasonable attorneys' and paralegals' fees resulting from any such construction, rebuilding, alteration, restoration, maintenance and shall repair any damage caused in connection with such activities to substantially the condition that existed prior to such activities.

All Sublots will be subject to an easement of ingress and egress for the benefit of Declarant, its employees, subcontractors, successors and assigns, over and upon the front, side and rear yards of the Sublots as may be expedient or necessary for the construction, servicing and completion of Dwelling Units and landscaping upon adjacent Sublots, provided that such easement will terminate as to any Sublot two (2) years after the date such Sublot is conveyed to an Owner other than a Builder. Any damage to a Sublot caused by Declarant due to exercise of the foregoing completion easement rights, shall be promptly repaired by the party exercising such easement rights after completing its construction activities in the damaged area.

Section 3.6 - Parking in Common Areas; Off-Street Parking Spaces

There shall be no parking of motor vehicles within the Common Areas unless within marked off-street parking spaces (if any) as permitted by the Association and the Township. The Declarant and/or the Association reserve the right and easement to create additional off-street parking spaces to be situated within the Common Areas. Vehicles shall not be permitted to park in any Common Areas for more than three (3) consecutive days, nor for periods more often than three (3) times per any calendar year.

Section 3.7 - Emergency and Service Easements

There is hereby granted to the Township and the County an easement for access to the Common Areas for emergency purposes or in the event of nonperformance of maintenance of improvements affecting the public interest. Advance notice is not required for emergency entrance onto the Common Areas. Fire, police, health, sanitation, medical, ambulance, school buses, utility company, mail service and other public or quasi-public emergency and service personnel and their vehicles shall have an easement for ingress and egress over and across all roads or drives within the Property for the performance of their respective duties.

Section 3.8 - Drainage Rights and Authority to Transfer Drainage and other Easement Rights to the Township

The Declarant, each Owner, and the Association shall have the non-exclusive right and easement in common to utilize storm detention and/or retention areas (if any), storm sewers and drainage pipes in, over, and upon the Common Areas for the purposes of drainage of surface waters on the Property, said right and easement being hereby established for said purpose. It shall be the obligation of the Association to properly maintain, repair, operate and control such drainage system on the Common Areas unless and until those easement areas are dedicated by the Association and accepted by the Township and/or the County or other governmental authority having jurisdiction by formal action of the Township and/or County. No Person shall

interfere with, by means of constructing any structure or otherwise, the free flow of water through any drainage ditches, swales, storm water easements or storm sewers within the Property, without the written consent of the Association and the Medina County Engineer.

Furthermore, a Plat may set forth easements for drainage and storm sewers being granted by the Declarant to the Township or County (the “**Sewer Easements**”). If granted, each of the Sewer Easements shall be permanent and in accordance with the widths and lengths as shown on each Plat and through each Sublot and Common Areas to clean, deepen, widen, improve, operate, maintain, repair, reconstruct and relocate any improvements associated therewith above and below ground, to maintain and/or improve such improvements as deemed necessary or convenience by the Township or County for maintaining public services, drainage and utilities as the Township or County may determine upon, within and across the Sewer Easements, subject to the terms included herein. No structures shall be placed within said Sewer Easements. Within said Sewer Easements, no fences, signage, mounding or rocks greater than two (2) feet in diameter shall be placed within five (5) feet of waterlines or sanitary sewers without the prior approval of the Township or County. Said Sewer Easements and the rights associated therewith shall include the right, without liability therefore, to remove trees and landscaping, including lawns, within said Sewer Easements, which may interfere with the installation, maintenance, repair or operation of such drainage, public utilities and facilities, the right to clean, widen, deepen, repair, augment and maintain public drainage and service within the Sewer Easements, with the right of access and egress to any of the Sewer Easements for exercising any of the purposes of this easement grant. The Township or County shall not be required to replace or repair any curbs, fences, sidewalks, driveways, roadways, parking areas, signage and landscaping, including ornamental trees, bushes and special plantings and that the same are constructed within the Sewer Easements at each Owner’s risk; the Township or County’s only obligation being to restore the density of subsurface material and to repair or replace any grass damaged in such maintenance repair or reconstruction. Regular maintenance of the landscaping is the responsibility of each Owner or the Association, as set forth herein. The Township and County are hereby provided the right to enter upon any Sublot and performance any landscaping maintenance if an Owner or the Association fails to do so and charge the Owner or Association for said landscaping maintenance.

During the Class ‘B’ Control Period and for a period of five (5) years thereafter, Declarant hereby reserves for the benefit of Declarant and any Builder, a blanket easement on, over and under the ground within the Property (excluding the area where a Dwelling Unit is located) to maintain and correct drainage of surface waters and other erosion controls in order to maintain reasonable standards of health, safety and appearance, and will be entitled to remove trees or vegetation, without liability for replacement or damages, as may be necessary to provide adequate drainage facilities. Notwithstanding the foregoing, nothing herein will be interpreted to impose any duty upon Declarant or any Builder to correct or maintain any drainage facilities within the Property. Any damage to a Sublot caused by or due to the exercise of the foregoing drainage easement rights, shall be promptly repaired by the party exercising such easement rights after completing its construction activities in the damaged area.

Section 3.9 - Easement to Maintain Sales Offices, Models, Signage, etc.

Notwithstanding any provisions contained in this Declaration to the contrary, so long as the construction and sale of Dwelling Units by the Declarant (or an Affiliate of the Declarant or the holder of Special Declarant Rights) is continuing within the Property, it shall be expressly permissible for the Declarant to maintain and carry on upon portions of the Common Areas such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction and/or sale of Dwelling Units within the Property, including, but not limited to, administrative/customer services, construction offices/trailers, parking signs, identification signs, sales signs, and sales and resales offices, and the Declarant, its guests, licensees and invitees shall have an easement for access to all such facilities. The right to maintain and carry on such facilities and activities shall specifically include the right to use Dwelling Units owned by the Declarant, as models and sales offices. The Declarant further reserves the right for itself and its successors, assigns, contractors, material suppliers and others performing work and furnishing materials to construct Dwelling Units and other improvements upon the Property to conduct business and carry on construction/site development activities during business hours that are customary within the Northeast Ohio area. The construction, placement or maintenance of improvements and signage by Declarant will not be considered a nuisance, and Declarant hereby reserves the right and privilege for itself to conduct the activities enumerated in this Section until twenty-four (24) months after expiration or termination of the Class 'B' Control Period. This Section may not be amended or modified without the express written consent of the Declarant.

Section 3.10 - Maintenance Easement

There is hereby reserved for the benefit of the Association and its agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement (but not the duty) to enter upon any Sublot for the purpose of maintenance and/or maintaining reasonable standards of health, fire safety, and appearance within the Property; provided that such right and easement shall not impose any duty or obligation upon Declarant or the Association to perform any actions; and provided further, that in the exercise of its rights hereunder the Declarant or Association shall be entitled to be reimbursed by such Owner.

Section 3.11 – Environmental Easement

There is hereby reserved for the benefit of Declarant, the Association, and their respective agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement on, over, and across the Common Areas and the vacant portion of a Sublot for the purpose of taking any action necessary to effect compliance with the environmental rules, regulations, and procedures from time to time promulgated or instituted by the Board, the Design Review Committee, or by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, and the right to dispense pesticides and the right to maintain wetland areas.

Section 3.12 - Scope of Easements and Dedication of Roadways and Utilities

As the improvements to be located within the Property for the easement rights granted or reserved hereunder may be definable within specific areas, the Declarant or the Association (with

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

Section 3.13 – Owner’s Right to Ingress and Egress

Each Owner shall have the perpetual right as an appurtenance to such Owner’s Dwelling Unit to ingress and egress over, upon and across the Common Areas necessary for access to his or her Dwelling Unit, and such rights shall be appurtenant to and pass with the title to the Dwelling Unit.

Section 3.14 - Easement to Inspect and Right to Correct

During the Class ‘B’ Period and for a period of ten (10) years thereafter, Declarant reserves for itself, its assigns and for the Declarant’s architect, engineer, other design professionals, builder and contractors the right, but not the duty, to inspect, monitor, test, redesign, repair, correct, and relocate any structure, improvement, or condition that may exist on any portion of the Property, including the Sublots, and a perpetual nonexclusive easement of access throughout the Property to the extent reasonably necessary to exercise this right. The party exercising such rights will promptly repair, at its sole expense, any damage resulting from the exercise of this right. This Section may not be construed to create a duty for Declarant, the Association, or any architect, engineer, design professional, builder or contractor, and may not be amended without Declarant’s advanced written consent. In support of this reservation, each Owner, by accepting an interest in or title to a Sublot, hereby grants to Declarant an easement of access and entry over, across, under, and through the Property, including without limitation, all Common Areas and the Owner’s Sublot and all improvements thereon for the purposes contained in this Section.

Section 3.15 - Easements To Run With the Land

All easements and rights described herein are easements appurtenant to the Property, including the Sublots, Dwelling Units, and the Common Areas, shall run with said lands, perpetually and at all times shall inure to the benefit of and be binding upon the Declarant, its successors and assigns, and any Builder, Owner, Tenant, Occupant, purchaser, mortgagee, or other Person having an interest in the Property, or any part or portion thereof. Reference to the easements and rights described in any part of this Declaration, in any deed of conveyance, lease, mortgage, trust deed, declaration for another type of residential association, or other evidence of obligation, shall be sufficient to grant such easements and rights to the respective grantees,

lessees, mortgagees or trustees of such property, or any portion thereof, and to reserve to the grantor or lessor therein, their successors and assigns, as easements appurtenant to the remainder of the such properties, easements created by this Declaration for the benefit of any Owner, Tenant, Occupant, purchaser, mortgagee, Township, County, and/or other Person in respect to any portion of the Property as fully and completely as though such easements and rights were recited fully as set forth in their entirety in such document.

ARTICLE IV **OWNERSHIP AND OPERATION OF COMMON AREAS**

Section 4.1 - Conveyances of Common Areas

Declarant shall convey the Common Areas to the Association on or before termination of the Class 'B' Control Period. Such conveyance shall be by limited warranty deed and shall have priority over all liens and encumbrances whatsoever except the easements, covenants, restrictions and provisions of this Declaration; easements, covenants, restrictions, conditions and other similar matters of record; real estate taxes and assessments which are a lien, but are not due and payable at the time of said conveyance; and zoning and other ordinances, if any. The Association shall hold title to said parcels subject to the provisions of this Declaration. After title to the Common Areas are transferred to the Association, except as otherwise provided herein (including the reservation by Declarant of easement rights), the Declarant shall have no greater ownership or control over the Common Areas than the ownership or control of Owners or Occupants within the Property, or the Additional Property as the same is added to the Property. The Declarant reserves the right to sign a transfer tax exemption form on behalf of the Association during or after the Class 'B' Control Period.

Declarant, and its assignees, reserves the right, from time to time and at any time, to designate by written and recorded instrument portions of the Property being held by the Declarant for the benefit of the Association. Upon the recording of such designation, the portion of the Property identified therein will be considered Common Areas for the purpose of this Declaration. Declarant and its assignees may also at any time assign, transfer or convey to the Association interests in real or personal property within or for the benefit of the Property, the general public, local governmental entities or districts or otherwise, as determined in the sole and absolute discretion of the Declarant. All or any real or personal property assigned, transferred and/or conveyed by the Declarant to the Association shall be deemed accepted by the Association upon Declarant's or its assignee's assignment, transfer or conveyance to the Association without consent or action by the Association, and shall be considered Common Area without regard to whether such real or personal property is designated by the Declarant as Common Area. If requested by the Declarant, the Association will execute a written instrument, in a form requested by the Declarant, evidencing acceptance of such real or personal property; provided, however, execution of a written consent by the Association shall in no event be a precondition to acceptance by the Association. The assignment, transfer, and/or conveyance of real or personal property to the Association may be by deed without warranty, may reserve easements in favor of the Declarant or a third party designated by Declarant over and across such property, and may include such other provisions, including restrictions on use, determined by the Declarant, in the Declarant's sole and absolute discretion. Property assigned, transferred, and/or

conveyed to the Association may be improved or unimproved and may consist of fee simple title, easements, leases, licenses, or other real or personal property interests. **ALL PROPERTY CONVEYED TO THE ASSOCIATION WILL BE DEEMED CONVEYED IN ITS THEN "AS-IS" CONDITION, WITH ALL FAULTS, AND WITHOUT WARRANTY OF ANY KIND, EXPRESS OR IMPLIED, EXCEPT TO THE EXTENT DECLARANT OR ASSIGNEE PROVIDES AN EXPRESS, WRITTEN WARRANTY IN THE DEED OR OTHER DOCUMENT MAKING SUCH CONVEYANCE. TO THE FULLEST EXTENT PERMITTED BY LAW, ALL WARRANTIES PERTAINING TO COMMON AREAS, INCLUDING BUT NOT LIMITED TO STATUTORY AND IMPLIED WARRANTIES (INCLUDING BUT NOT LIMITED TO ANY WARRANTY OF HABITABILITY, MERCHANTABILITY, WORKMANLIKE CONSTRUCTION OR FITNESS FOR A PARTICULAR PURPOSE), ARE HEREBY DISCLAIMED BY DECLARANT AND WAIVED BY THE ASSOCIATION AND EACH OWNER.** Upon Declarant's written request, the Association will re-convey to Declarant any unimproved real property that Declarant originally conveyed to the Association for no payment.

Section 4.2 - Use of Common Areas

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

Section 4.3 – Alteration of Common Areas

All alterations to the Common Areas, including, but not limited to, installation of any improvements, construction of any building or structure, or planting, trimming, or maintenance of any landscaping, lawn or trees, shall be made or done solely by or at the direction of the Association (or the Declarant, during the Class 'B' Control Period, shall be done in accordance with all Township zoning restrictions, and no such alterations shall be permitted to be completed by any Owner or Occupant without prior written approval of the Association.

Section 4.4 – Annual Inspection of Common Areas – Budget

Commencing upon expiration of the Class 'B' Control Period until ten (10) years thereafter, the Association shall at least annually examine the condition of the Common Areas and Areas of Common Responsibility to evaluate the quality, frequency and adequacy of maintenance performed during the preceding year, and to recommend maintenance for the upcoming year. The examination and report may be performed by one or more experts hired by the Association for this purpose, such as a professional property manager, an engineer or professional contractors such as landscapers and brick masons. Within fifteen (15) days after performing the inspection, the expert should submit to the Board a written report with findings and recommendations. As set forth in the Code, the Board should evaluate the Association's operating budget and reserve accounts for maintenance, repair and replacement in light of the

expert's findings and recommendations. Any decision by the Board to reduce or defer recommended maintenance should be made with an evaluation of the potential consequences for future costs and deterioration. Any expert's report shall be a record of the Association that is available to Owners for inspection and copying.

Section 4.5 – No Representations or Warranties Regarding Lakes, Creeks or Drainage Areas

Declarant has informed and hereby informs the Association that any lakes, creeks or drainage areas located within or adjacent to the Property (the "Drainage Areas") are intended primarily for drainage purposes and are not intended as a recreational feature or an amenity with specific aesthetic qualities. DECLARANT AND ANY BUILDER MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE DRAINAGE AREAS AND HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES REGARDING THE DRAINAGE AREAS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES AND ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. THE ASSOCIATION AND EACH OWNER ACCEPTS THE DRAINAGE AREAS IN THEIR "AS-IS" CONDITION.

Section 4.6 – No Representations or Warranties Regarding Natural Areas

Declarant has informed and hereby informs the Association that certain Common Areas or portions thereof, such as existing wetlands, creeks and waterways, drainage areas, water detention facilities and open spaces, may be intended to be unimproved open space to be left or maintained in a natural or semi-natural condition ("Natural Areas") and are not necessarily intended to be a recreational feature or an amenity with specific aesthetic qualities. Neither Declarant nor the Association shall have any obligation to landscape, repair or otherwise improve any Natural Area. DECLARANT AND ANY BUILDER MAKES NO REPRESENTATIONS OR WARRANTIES REGARDING THE NATURAL AREAS AND HEREBY DISCLAIMS ANY AND ALL REPRESENTATIONS AND WARRANTIES REGARDING THE NATURAL AREAS, INCLUDING, WITHOUT LIMITATION, ANY IMPLIED WARRANTIES AND ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE. THE ASSOCIATION AND EACH OWNER ACCEPTS THE NATURAL AREAS IN THEIR "AS-IS" CONDITION.

ARTICLE V
THE ASSOCIATION

Section 5.1 - Existence

The Association is an Ohio not-for-profit corporation. The Association shall not be terminated or dissolved unless the maintenance responsibilities of the Association with respect to the Common Areas are assumed by a successor association or successor in title to the Common Areas.

Section 5.2 - Membership and Voting Rights

(a) **Classes of Membership**

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

- (1) **Class "A" Membership.** Each Owner of a Sublot, with the exception of the Declarant, shall automatically be a Class "A" Member of the Association. All Owners shall be Members of the Association, and membership in the Association is mandatory of all Owners of Sublots within the Property. The Class "A" Membership is appurtenant to the ownership of each Sublot and shall not be separable from the ownership of any Sublot and shall be deemed to have been terminated with any voluntary or involuntary conveyance of any Sublot, whether or not such membership is expressly referred to in the instrument effecting such conveyance, at which time the new Owner or other successor in interest shall immediately and automatically become a Member of the Association with all rights and responsibilities relative thereto. No Owner, whether one or more Persons, shall have more than one membership in the Association per Sublot owned.
- (2) **Class "B" Membership.** The Declarant shall automatically be the sole Class "B" Member of the Association.

(b) **Voting Rights**

- (1) **Class "A" Member.** Class "A" Members shall be entitled to one (1) equal vote for each Sublot in which they hold the interest required for membership under Section 5.2(a)(1) hereof; there shall be only one (1) vote for each Sublot. In any situation where a Member is entitled to exercise a vote and more than one (1) Person holds the interest in such Sublot required for membership, the vote for such Sublot 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 Sublot shall be suspended if more than one (1) Person seeks to exercise it. In the case of a Sublot owned or held in the name of a corporation, partnership, limited partnership, limited liability company, trust or other entity, a certificate signed by such Owner shall be filed with the Secretary of the Association naming the Person authorized to cast a vote for such Sublot, which certificate shall be conclusive until a subsequent substitute certificate is filed with the Secretary of the Association. If such certificate is not on file, the vote of such entity shall not be considered, nor shall the presence of a Person purporting to act on behalf of such entity at a meeting be considered in determining whether the quorum requirement for such meeting has been met. When a fiduciary or other legal representative of an Owner has

furnished to the Association proof of such person's authority, such person may vote as though he or she were the Owner.

- (2) **Class "B" Member.** The Class "B" member shall be the Declarant and shall be entitled to four (4) votes for each Sublot owned. The Class "B" membership shall cease at such time as the Declarant or a successor designated by the Declarant is no longer an Owner of a fee simple interest in the Property. The period during which the Class "B" Membership exists is referred to as the "Class 'B' Control Period."

For purposes of determining the number of votes allowed under this Section the total number of Sublots shall be thirty-nine (39), which is the total number of Sublots which the Declarant intends to (but is not obligated to) submit to the provisions of this Declaration. If Developer at any time makes a final determination that more or less than thirty-nine (39) Dwelling Units will be constructed within the Property and any Additional Property, Declarant may amend this Section 5.2(b) pursuant to Section 16.12 herein to reflect the actual number of Dwelling Units to be constructed.

Section 5.3 - Board and Officers of the Association

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

Section 5.4 - Powers of the Association

Notwithstanding the rights and easements of enjoyment and use created in Article III of this Declaration, and in addition to any power the Association shall have pursuant to this Declaration or in law, the Association shall, subject to and in accordance with the Township Zoning Resolution and County Subdivision Regulations, have the power:

(a) To borrow money from time to time for the purpose of improving the Common Areas or for meeting its obligations with respect to the Areas of Common Responsibility, and may secure said financing by an assignment of future income from Assessments; provided, however, no such financing shall be secured with a mortgage upon any portion of the Property owned by the Association.

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

(c) To convey the Common Areas or a portion thereof, to a successor; provided, however, that any such conveyance shall require the affirmative vote of seventy-five percent (75%) of each class of Members, and provided further that such successor shall agree, in writing, to be bound by the easements, covenants, restrictions and spirit of this Declaration, provided that

if ingress and egress to any Sublot is through any Common Area, such conveyance shall be subject to the Owner's easement of ingress or egress.

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

(e) To grant or obtain or dedicate to public use easements and rights-of-way (i) for access and easements for the construction, extension, installation, maintenance or replacement of utility services and facilities, or (ii) to or from a public utility or governmental authority, and to or from any body or agency which has the power of eminent domain or condemnation over any portion of the Property; provided, however, that after the Class 'B' Control Period no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer be signed by seventy-five percent (75%) of the Members has been recorded. Prior to the termination of the Class 'B' Control Period the Declarant has the exclusive authority to exercise the right of dedication or transfer.

(f) Borrow money, and issue, sell and pledge notes, assessments or Additional Assessments, or assign the future income from such assessments.

(g) The Association may convey a fee simple interest or a security interest in Common Areas with the approval of at least seventy-five percent (75%) of the voting power of the Association.

ARTICLE VI **RESPONSIBILITIES OF THE ASSOCIATION**

The Association shall have the exclusive duty to perform the following functions:

Section 6.1 - Maintenance of Areas of Common Responsibility

The Association shall maintain the Areas of Common Responsibility in a clean, safe, neat, healthy and workable condition, and in good repair, and shall promptly make all necessary repairs and replacements, structural and nonstructural, ordinary as well as extraordinary, subject only to the provisions of this Declaration. The Association has the right to set aside portions of the Common Area (including Open Space) to be left to grow in their natural state. The Association is under no obligation to clear, trim, mow, fertilize or otherwise maintain the natural vegetation in such natural areas. The Association may provide equipment and supplies necessary for the maintenance (including landscape maintenance) and enjoyment of such property. All work performed by the Association under this Article shall be performed in a good and workmanlike manner.

The Township, as a third party beneficiary, may, although under no obligation or duty to do so, compel the Association's compliance with this Section 6.1 as the Township deems

necessary by court action or by any other means. The Township shall have the right, after thirty (30) days written notice to the Association, to perform such actions required of the Association hereunder, with the costs thereof levied as an Assessment against the Association in the same manner that the Association may levy Assessments against an Owner pursuant to Article IX herein. Should the Association fail to pay such Assessment to the Township, the Township shall have the same enforcement rights against the Association as the Association has against a delinquent Owner pursuant to Sections 9.3 and 9.9 herein, and shall have the right to (i) place a lien against the Common Areas in the same manner as provided in Article X herein for liens by the Association placed on Dwelling Units, and (ii) may levy Assessments against Dwelling Unit Owners for the payment of such Assessment in the same manner as the Association may levy Assessments against Owners, and, in the event any such Owner shall fail to pay any such Assessment levied by the Township, the Township shall have all remedies as the Association for such failure, including, but not limited to, the right to place a lien on a nonpaying Owner's Dwelling Unit pursuant to Article X herein.

The following are included among such Areas of Common Responsibility:

(a) **Entrances.** To operate, and to maintain, repair and replace, any entranceway area at or in the vicinity of any entrance to the Property from public roadways, and all associated landscaping and other related facilities, walkways, benches, signs, lighting, and decorative walls, situated at or in the vicinity of the entrance(s) to the Property.

(b) **Common Areas and Open Spaces.** To maintain all improvements and landscaping situated within the Common Areas (including, but not limited to, roads, entrances, fences, walls, gates, sidewalks, and all walking or recreation paths, paving, and all utilities installed within such Common Areas) in a good and attractive condition, for the use and enjoyment of Owners. The Association shall accept a deed to and hold title to such areas in accordance with Section 4.1. The obligations set forth in this subsection shall be deemed to run with the land and shall burden the party accepting any such deed and title to the Common Areas.

(c) **Common Area Lighting.** With respect to all parts (including, but not limited to, poles, standards, fixtures) of a lighting system (if any) which may be installed by or at the direction of Declarant or the Association in the Common Areas, to maintain the same in good order and condition, to make all replacements and renewals necessary to so maintain the same, and to operate and to pay all costs of operating the same. It is likely that Ohio Edison (or other lighting provider) will install and maintain all street lighting; provided, however, the Association may be responsible to pay a monthly fee to Ohio Edison (or such other lighting provider), which fee will be included as part of the Common Expenses. Each Owner shall pay the cost of operating any and all lights within such Owner's Sublot, and shall maintain the same in good order and working condition, making all necessary replacements and repairs.

(d) **Maintenance of Non-Association Property.** The Association shall maintain property which it does not own, including, without limitation, property dedicated to the public, if the Board determines that it is in the best interest of the Association for the Association to maintain the same.

(e) **Storm Water Drainage.** To maintain all piping, culverts, drains, storm water detention and retention basins, and other facilities now or hereafter situated upon any portion of the Property that are not the responsibility of the Township or the County and which are intended for the collection, retention, detention, transmittal or disposal of storm-water in clean and sanitary condition and in good order and repair and to make all replacements and renewals necessary to so maintain the same. The Owner's responsibilities shall be deemed transferred to the Association concurrently with the conveyance of the Common Areas to the Association pursuant to Section 4.1 of this Declaration.

(f) **Snow Removal.** To remove snow from all driveways and sidewalks within Common Areas. The Association is not required to use a deicing agent.

Section 6.2 - Taxes and Assessments

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

Section 6.3 - Utilities

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

Section 6.4 – Maintenance of Common Area Landscaping

The Association shall provide maintenance, repair, and replacement of the lawn and landscaping situated within designated areas of the Common Areas (subject to the provisions of Section 6.1). Such maintenance may include, but may not be necessarily limited to, irrigation, mowing and edging or lawn areas, weeding, fertilizing, replacement of dead plant material, re-seeding and re-mulching.

Section 6.5 - Insurance and Reconstruction

The insurance which shall be carried upon the Common Areas shall be governed by the following provisions:

(a) **Casualty Insurance.** The Association shall carry casualty insurance on all insurable improvements comprising the Common Areas and all personal property as may be owned by the Association and for which the Association is responsible (the "**Casualty Policy**"). Such insurance shall be written in the name of, and the proceeds thereof shall be payable to the Association. The casualty insurance to be purchased hereunder by the Association shall be in an amount not less than one hundred percent (100%) of the insurable replacement cost of such

improvements, with a "Guaranteed Replacement Cost Endorsement" (excluding excavation and foundation costs and other items normally excluded from coverage), as determined by a qualified appraiser, the amount determined and the insurance to be reviewed annually and adjusted if necessary. The cost of the appraisal shall be a Common Expense. Such insurance shall include the following coverages:

(1) loss or damage by fire and other hazards covered by the standard extended coverage endorsement;

(2) such policy shall include, if reasonably available, a "Construction Code Endorsement" or its equivalent, a "Demolition Cost Endorsement" or its equivalent, an "Increased Cost of Construction Endorsement" or the equivalent, a "Contingent Liability from Operation of Building Laws Endorsement", or its equivalent, and an "Agreed Amount and Inflation Guard Endorsement" or its equivalent; and

(3) such other risks (including flood insurance if such insurance is available) as from time to time customarily shall be covered with respect to improvements similar to those within the Common Areas in construction, location and use, including, but not limited to, debris removal, vandalism, malicious mischief, windstorm and water damage, subject to such deductible amounts as the Board shall determine, provided, however, such deductible amounts shall not exceed the lesser of Five Thousand Dollars (\$5,000) or one percent (1%) of the policy amount. Deductible amounts shall be treated as a Common Expense.

(b) **Liability Insurance for Common Areas.** The Association shall insure itself, the members of the Board, and the Owners and Occupants of Dwelling Units against liability for personal injury, disease, illness or death and for injury to or destruction of property occurring upon, in or about, or arising from or relating to the Common Areas, including, without limitation, water damage, legal liability, hired automobile, non-owner automobile and off-premises employee coverage, such insurance to afford protection to a limit of not less than One Million Dollars (\$1,000,000) in respect to personal injury, disease, illness or death suffered by any one person, and to the limit of not less than One Million Dollars (\$1,000,000) in respect to any one occurrence, and to the limit of not less than One Million Dollars (\$1,000,000) in respect to damage to or destruction of property arising out of any one accident. All liability insurance shall contain cross-liability endorsements to cover liabilities of the Owners as a group to an Owner. In the event the insurance effected by the Association on behalf of the Owners and Occupants of Dwelling Units who are not Owners against liability for personal injury or property damage arising from or relating to the Common Areas shall, for any reason, not fully cover any such liability, the amount of any deficit shall be a Common Expense to the Owners. The Association shall also obtain directors and officers liability coverage, if reasonably available.

(c) **Fidelity Bonds.** To the extent available for a reasonable premium, 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, a Board member, an Owner or

of any other person handling the funds of the Association (including a managing agent, a management company and its employees who control or dispense the funds of the Association), in such amount as the Board shall deem desirable on the exercise by the Board of its best business judgment, but in no event shall the amount of the bond be less than an amount equal to three (3) months' Assessments, plus reserves in the custody of the Association, managing agent or management company. The fidelity bond shall name the Association as the obligee, and the premium for such bond shall be a Common Expense. Such bond shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Such bond shall provide that it may not be canceled for non-payment of any premiums or otherwise substantially modified without ten (10) days prior written notice to the Association.

(d) **Flood Insurance.** The Association shall carry flood insurance on all insurable improvements comprising the Common Areas located within a designated flood plain and floodway, as defined by currently effective federal law or regulation.

(e) **Premiums.** Premiums upon insurance policies purchased by the Association shall be paid by the Association prior to the expiration date of such policies and shall be assessed as Common Expenses.

(f) **Owner Casualty and Liability Insurance.** Each Owner shall, at his or her own expense, obtain: (A) casualty insurance covering his or her Dwelling Unit; (B) flood insurance if the Dwelling Unit is located within a designated flood plain or floodway as defined in (d) above; (C) casualty insurance covering the contents of his or her Dwelling Unit and (D) public liability insurance for personal injuries or damage arising out of the use and occupancy of his Dwelling Unit and Sublot.

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

(h) **Annual Review of Policies.** All policies for insurance shall be reviewed annually by the Board to determine whether the coverage contained in the policies is sufficient to make any and all necessary repairs or replacement of the property which may have been damaged or destroyed.

(i) **Waiver of Subrogation.** Each Person as a condition of accepting title and/or possession of a Dwelling Unit and the Association agree for themselves, and their respective successors, heirs, executors, administrators, personal representatives, assigns, and lessees, provided said agreement does not invalidate or prejudice any policy of insurance, that in the event that any building, structure or improvement within the Property or the fixtures or personal property of anyone located therein or thereon are damaged or destroyed by fire or other casualty that is covered by insurance, the rights, if any, of any of them against the other, or against the employees, agents, licensees or invitees of any of them with respect to such damage or destruction and with respect to any loss resulting therefrom are hereby waived.

(j) **Renter's Insurance.** If an Owner rents his Dwelling Unit, such Owner shall require his tenant to obtain a "Renter's Insurance Policy."

Section 6.6 - Management

The Association shall provide the management and supervision for the operation of the Areas of Common Responsibility. The Association shall establish and maintain such policies, programs and procedures to fully implement this Declaration for the purposes intended and for the benefit of the Members and may, but shall not be required to:

- (a) Adopt Rules;
- (b) Engage employees and agents, including without limitation, security personnel, attorneys, accountants and consultants, maintenance firms and contractors;
- (c) Delegate all or any portion of its authority and responsibilities to a manager, managing agent, or management company. Such delegation may be evidenced by a management contract which shall provide for the duties to be performed by the managing agent and for the payment to the managing agent of a reasonable compensation. Upon the expiration of each management agreement, the Association may renew said management agreement or enter into a different agreement with the same or a different managing agent, provided that no management agreement or renewal thereof shall be for a period longer than one (1) year (subject to the right of either party to terminate the management contract without cause and without payment of a termination fee, upon ninety (90) days written notice to the other party), and provided, further, that the Board may designate a different managing agent with whom the Association shall enter into an agreement after the end of the then existing management agreement.

Section 6.7 - Rules and Regulations

The Association, through the Board, may make and enforce reasonable rules and regulations governing the Areas of Common Responsibility, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines and suspension of the right to vote. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the Code of the Association. An Owner shall be subject to the foregoing sanctions in the event of a violation by such Owner, his family, guests, Tenants or by his co-Owners or the family, guests or Tenants of such co-Owners. Furthermore, the Association, through the Board, may, by contract or other agreement, enforce Township or County ordinances or permit the Township or other governmental authority having jurisdiction to enforce ordinances on the Property for the benefit of the Association and its Members. The Township shall have the right, but not the obligation, to enforce the Rules and Regulations in the same capacity as the Association.

Section 6.8 - Original Declarant's Rights

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

Section 6.9 – Enforcement of Covenants

The Association shall take all actions reasonably necessary under the circumstances to enforce the covenants and restrictions set forth in Article VII hereof. The Township shall have the right, but not the obligation, to enforce the covenants and restrictions in the same capacity as the Association.

ARTICLE VII
COVENANTS AND RESTRICTIONS

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

The Association, acting through the Board, shall have authority to make and to enforce standards and restrictions governing the use of the Property in addition to those contained herein, and to impose reasonable user fees for use of Common Area facilities. Such regulations and use restrictions shall be binding upon all Owners, Land Contract Vendees, Lessees, Tenants and Occupants.

Section 7.1 - Covenant of Good Maintenance and Encroachments

Each Owner shall have the exclusive duty to maintain the interior of such Owner's Dwelling Unit and Sublot in good condition and repair and shall keep the exterior and interior of such Dwelling Unit, Sublot, and the adjacent Common Areas free from debris, rubbish, rubble and other conditions created by such Owners or Occupants or their guests. If a maintenance, repair or replacement required of an Owner, is not promptly commenced or is not diligently and continuously completed by an Owner, the Association, after approval of two-thirds (2/3) vote of the Board, shall have the right (but not the obligation) through its agents and employees, to enter upon said Owner's Sublot and to commence or complete the maintenance, repair or replacement and shall charge the Owner for the cost thereof (together with a reasonable charge for the

Association's overhead or administrative costs). If said charge is not paid by the Owner, the Association shall levy a special Assessment against the Owner.

No Owner shall build or place any improvement (temporary or permanent), including buildings, trees, landscaped gardens, fencing etc., within a Common Area or within any easement area, whether granted to a utility company or to any third party. Such Owner violating the previous sentence shall be responsible to remove such violation and return the property to its original condition. The violation of this rule shall give the Association, the Township and/or the Original Declarant and their designated agent the right, in addition to all other rights set forth herein and provided by law, (a) to enter upon the Dwelling Unit or Sublot or portion thereof upon which, or as to which, such violation or breach exists, and summarily abate and remove such encroachment, at the expense of the Owner or Declarant of the Ownership Interest where the violation or breach exists, any structure, thing, or condition that may exist thereon, which is contrary to the intent and meaning of this Declaration, the Code, or the Rules, and the Association, or its designated agent shall not thereby be deemed guilty in any manner of trespass; (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach; (c) to commence and prosecute an action for specific performance or an action to recover any damages which may have been sustained by the Association or any of its Members as well as an action for punitive damages if warranted; and/or (d) to collect costs of suit and reasonable attorneys' and paralegals' fees incurred in connection with the exercise by the Association of any remedies hereunder, the same to be deemed "Costs of Collection" under Section 11.3 hereof.

Section 7.2 - Trailers, Sheds and Temporary Structures

No temporary building, shed, trailer, recreational vehicle, garage, tent, or any similar structure shall be used, temporarily or permanently, as a residence or office on any part of the Property at any time. Subject to Township regulations, Declarant shall have the right to maintain a temporary trailer on the Property in accordance with Article III, Section 3.9 hereof. No shack or barn shall be permitted on any Sublot. An accessory shed or "outbuilding" may be permitted on a Sublot, if such shed or "outbuilding" is approved prior to commencement of construction by the Design Review Committee. Such shed or "outbuilding" may only be used for the purpose of additional storage of gardening tools, lawn furniture or similar personal property. The shed or "outbuilding" must be positioned on a Sublot so as to minimize the view of such shed or "outbuilding" from the right-of-way. Furthermore, such shed or "outbuilding" must match and be complimentary (as close as possible) to the exterior of the Dwelling Unit upon which Sublot it is located, including the use of similar siding, color and roof materials, and must have similar roof pitch and concrete floor as used for the Dwelling Unit upon which Sublot it is located.

Section 7.3 – Fences, Walls, Hedges and Decks

Fences, walls, trees, hedges, and shrub plantings shall be maintained in a sightly and attractive manner, and shall not obstruct the right-of-way sight lines for vehicular traffic. Natural, artificial or manmade fences, walls, trees, hedges, shrub plantings, trellises, arbor or any similar natural, artificial or manmade means of screening or physically separating on or more Sublots or Dwelling Units from any other Sublot or portion of the Property, of any kind shall not

be erected, begun or permitted to remain upon any portion of the Property unless approved by the Design Review Committee or unless originally constructed by the Original Declarant. All plans and specifications showing the nature, kind, shape, height, location and materials must be provided to and approved by the Design Review Committee prior to commencement of any work. No fence, wall or hedge shall exceed four (4) feet in height and must be situated behind the rear elevation of the home. Any fences erected to enclose the rear yard shall not extend beyond the rear width of any Sublot. No chain link fences shall be permitted. Any fences must be black wrought iron type fencing and must fully consist of iron, aluminum or steel. All fences must be properly maintained by the Owner. An invisible fence on a Sublot used to confine pets is acceptable. Unless otherwise approved by the Design Review Committee, no fencing shall be permitted within any easement area, whether or not such easement is benefitting a utility provider or any third party. Any living fences must be approved by the Design Review Committee and must meet Township planning and zoning codes.

All decks must be properly maintained by the Owner. All plans and specifications showing the nature, kind, shape, height, location and materials for a deck must be provided to and approved by the Design Review Committee prior to commencement of any work.

Section 7.4 – Play Sets and Recreational Apparatuses

Play sets or any similar recreational apparatuses of any kind shall not be erected, begun, or permitted to remain on any portion of a Sublot unless approved by the Design Review Committee or unless originally constructed by the Original Declarant.

Section 7.5 – Nuisance

No noxious or any activity constituting an unreasonable source of discomfort or annoyance shall be carried on upon any portion of the Property (including the Dwelling Units situated thereon), nor shall anything be done thereon that may be or become a nuisance or annoyance to other Owners. The Board shall have absolute power to determine what is “reasonable” and what is “unreasonable” under this Section except that the Board’s determination shall not bind the Township, County, or other governmental agency in enforcing nuisance laws.

Section 7.6 – Animals

No animals, livestock, reptiles or poultry of any kind shall be raised, bred or kept on any portion of the Property (including the Dwelling Units situated thereon) except that dogs, cats, birds and other customary household pets approved by the Board may be kept, subject to Rules adopted by the Board, provided that they are not kept, bred or maintained for any commercial purpose and provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance or annoyance shall be permanently removed from the Property upon three (3) days written notice from the Board. Dogs shall at all times whenever they are outside a Dwelling Unit be confined within a fenced-in area (including an invisible fence) or on a leash held by a responsible person. Persons responsible for pets must immediately clean up and properly dispose of any pet waste.

Section 7.7 – Signs

No sign or other advertising device of any nature shall be placed upon any portion of the Property except for signs and advertising devices installed by or at the direction of the Design Review Committee, or which the Design Review Committee approves as to color, location, nature, size and similar characteristics. “For Rent” signs are prohibited. “For Sale” signs are permitted with the prior written approval of the Design Review Committee as to type, size and location of such signs. Notwithstanding the foregoing, the restrictions of this Section 7.7 shall not apply to Declarant. Furthermore, the right to install signs and the type of signage must comply with Township requirements.

Section 7.8 – Storage of Material and Trash Handling

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

Section 7.9 – Commercial or Professional Uses

Except as expressly permitted in this Declaration, or by Rules adopted in accordance with this Declaration, no industry, business, trade or full-time occupation or profession of any kind, commercial, educational, or otherwise, designated for profit, altruism, exploration or otherwise, shall be conducted, maintained or permitted on any part of the Property; provided, however, subject to Township ordinance or regulations an Occupant may use a portion of his or her Dwelling Unit for his or her office or studio, so long as the activities therein shall not interfere with the quiet enjoyment or comfort of any other Occupant and that such use does not result in the Dwelling Unit becoming principally an office, school or studio as distinct from a Dwelling Unit. Any employee of a permitted business other than the Owner of that Sublot shall not visit the property at any time for any commercial purpose.

No spiritous, vinous and/or fermented liquor shall be manufactured (except so called “home manufacture” for on-premises consumption) or sold, either at wholesale or retail, upon

any part of the Property; and no place of public entertainment of any character shall be established, conducted or suffered to remain upon any part of the Property.

Section 7.10 – Storage of Vehicles and Machinery

No commercial truck or van (except for a non-commercial two-axle truck or van with no more than four tires), camper, camper trailer, recreation vehicle, boat, boat trailer, all terrain vehicle, airplane, snowmobile, commercial vehicle, mobile home, tractor, bus, farm equipment, off-road vehicles or other vehicle (except for automobiles with two axles and four tires and motorcycles) of any kind, licensed or unlicensed, shall be stored on any driveway or other area in or upon the Property, except in the confines of garages, or parking areas approved by the Design Review Committee subject to Township regulations. No machinery of any kind shall be placed or operated upon any portion of the Property except such machinery which is customarily required for the maintenance of the Property, related improvements, lawns and landscaping. Notwithstanding the foregoing, the Declarant and/or a Builder may maintain a construction/office/sales trailer(s) on the Common Areas and on Sublots owned by the Declarant so long as the construction and sales by the Declarant (an affiliate of Declarant or the holder of Special Declarant Rights) or a Builder of the Dwelling Units is continuing.

Section 7.11 – Firearms; Preservation of Wildlife; Ice Skating

Firearms, ammunition and explosives of every kind shall not be discharged nor shall any traps or snares be set, nor shall any hunting or poisoning of wildlife of any kind be permitted in or upon the Property, except for rodent control, with the prior written approval of the Board. No Owner of a Sublot, or any resident, guest or invitee of an Owner shall be allowed to fish or ice skate on any Sublot, Common Area or anywhere within the Property.

Section 7.12 – Control of Trucks, Commercial Vehicles

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

Section 7.13 – Mailboxes

Mailboxes will be located and constructed within the Subdivision as determined by the U.S. Postal Service (the "USPS"). Declarant hereby reserves for the benefit of the USPS, Declarant and the Association an easement over those portions of each Sublot and the Common Areas as may be designated for the installation of a mailbox, together with space reasonably necessary for the installation and maintenance of same (each, a "Mailbox Easement Area"). Mailboxes may be individual mailboxes located on Sublots serving the Dwelling Unit on that Sublot, group or clustered mailboxes on Sublots or Common Areas serving more than one Dwelling Unit, or as otherwise determined by the USPS. No Owner may disturb the mailbox

improvements within the Mailbox Easement Area, obstruct access to the Mailbox Easement Area or construct improvements within the Mailbox Easement Area without the prior written consent of the Association. The Association shall have the right to adopt reasonable rules and regulations governing the use of each Mailbox Easement Area.

Section 7.14 – Poles, Wires, Antennae and DDS Satellite System

Subject to applicable easement rights, no facilities, including poles and wires, for the transmission of electricity, telephone messages, ham radio messages and the like shall be placed or maintained above the surface of the ground in any portion without the prior approval of the Design Review Committee and subject to Township regulations. This provision shall not apply for temporary facilities for the construction or repair of any building or other structure. A Digital or Direct Satellite System (“**DDS System**”), eighteen inches (18”) or less in diameter, may be attached to a Dwelling Unit so long as the DDS System is not readily visible from the street, and so long as the prior approval of the location of the DDS System is given by the Design Review Committee and the same complies with Township zoning requirements.

Section 7.15 – Swimming Pool and Hot Tub Restrictions

No above ground swimming pools are permitted on the Property. Wading pools, no more than two (2) feet in height, installed temporarily during the summer months, are permitted in the rear of the Sublot. In ground pools are permitted with the approval of the Design Review Committee. Hot tubs must be located directly behind the rear elevation of a Dwelling Unit, on a deck or patio immediately adjacent to the Dwelling Unit. No hot tub shall exceed thirty (30) square feet of surface area and a depth of 3.5 feet. Each Owner of a hot tub must maintain the filtration system in proper working order, and in no case shall any hot tub be drained onto any portion of the Property other than the property of the hot tub Owner. Any approved hot tub must be kept in a clean and sanitary condition at all times and must have covers that shall be fastened and key locked when unattended and/or not in use. Hot tubs must have the prior approval of the Design Review Committee.

Section 7.16 – Fire Pits and Basketball Hoops

Fire pits may be installed within Sublots only with the prior approval of the Design Review Committee, subject to the provisions of this Section 7.16. Fire pits must be located behind the rear elevation of a Dwelling Unit, and within the confines of the side building lines. Additionally, fire pits must be located a minimum of five (5) feet from a Dwelling Unit, deck, or other flammable structure. Fire pits must be located within a concrete or other nonflammable patio.

Basketball hoops are permitted; provided, however, they must be permanently installed (i.e. concrete base) within a Sublot and may not be portable or temporary.

Section 7.17 - Alterations to Exterior of Dwelling Units

The exterior of any building or structure in the Property shall not be altered, modified, changed or redecorated in such a way as to change the appearance or decor of the structure, nor

shall any of the landscaping appurtenant to such building or structure be materially changed without the express written authorization of the Board and the Design Review Committee.

Section 7.18 – Grading and Drainage

No person shall change the grade on any portion of the Property without first obtaining the consent of the Design Review Committee. No Person shall interfere with the free flow of water through any drainage ditches or storm sewers within the Property. The Township or other governmental authority having jurisdiction shall have the right (but not the obligation) to enter upon the Common Areas of the Property to repair and maintain all storm, drainage, courses, ditches, structures and appurtenances for the purpose of relieving any flooding condition or threatened flooding condition which might be harmful to other property.

Section 7.19 – Resubdivision of Sublots

No Sublot shall be split, divided or subdivided for sale, resale, gift, transfer or otherwise after acquisition from the Declarant. Declarant, however, hereby expressly reserves the right to replat any Sublot owned by the Declarant.

Section 7.20 - Use of the Name “Montville Reserve”

No Person shall use the name “Montville Reserve” or any derivative thereof in any printed or promotional material without the prior written consent of Declarant. However, Owners may use the name above in printed and promotional material where such word is used solely to specify that particular property is located within the Property.

Section 7.21 - Compliance with Township, County or other Government Codes

Each Owner shall comply with all Township, County, and other governmental requirements. It is agreed that a violation of any such requirements or any restriction, condition, covenant or restriction imposed now or hereafter by the provisions of this Declaration is a nuisance per se that can be abated by the Association or such governmental authority.

Section 7.22 - Sale, Leasing or Other Alienation of Dwelling Units

(a) **Owner’s Right to Lease Dwelling Unit.** Owners in the Subdivision (including but not limited to Declarant and any Builder) may lease their Dwelling Units, the lessees of any leased Dwelling Units are generally permitted to use amenities and other Common Properties on the same basis as resident Owners, and, except as expressly provided otherwise herein, all assessments and obligations under this Declaration, if applicable, shall be applied consistently with respect to each Owner and Sublot. All Dwelling Units and Sublots in the Subdivision, whether leased or not, must be maintained in accordance with the requirements and standards set forth herein. In purchasing a Sublot, each Owner accepts that other Owners may lease their Dwelling Units and Declarant or a Builder may sell Sublots and Dwelling Units in the Subdivision to other builders, investors or other companies or persons who may use them for rental purposes.

No Dwelling Unit or other portion of a Sublot may be used as a lodging house, hotel, bed and breakfast lodge, or any similar purpose, but Dwelling Units may be leased for residential purposes for an initial lease term of no less than six (6) months (unless a shorter period is approved by Declarant during the Class "B" Control Period). No Dwelling Unit may be advertised for lease as a short-term rental (less than 6-month term) on any website or other advertising medium. All leases must be for the entire Dwelling Unit and must be in writing. The Owner must provide a copy of this Declaration, the Rules and any other governing documents to its lessee. An Owner must deliver a copy of each Dwelling Unit lease to the Association within 30 days after the effective date of the lease.

An Owner who leases such Owner's Dwelling Unit is deemed to have assigned such Owner's rights to use the amenities and other Common Areas to the lessee of such Dwelling Unit and such Owner is not entitled to use the Subdivision amenities and other Common Areas while the Dwelling Unit is occupied as a rental property. All lessees and other occupants of a Dwelling Unit are obligated to comply with all Rules and all obligations contained herein or any other governing documents, including without limitation repairing and maintaining the occupied Sublot and Dwelling Unit in accordance with the governing documents. The Owner of a leased Dwelling Unit is responsible to the Association for any violation of the Declaration, the Bylaws or the Rules by the Owner's lessee and their guests or invitees, and for any expense incurred by the Association in connection with enforcing the governing documents due to such violation. In the event of any such violation of the governing documents, the applicable Owner, upon notice thereof by the Association, shall immediately take all necessary actions to correct such violation. Neither the Association nor the Declarant will be liable to an Owner for any damages, including lost rents, suffered by the Owner in relation to the Association's enforcement of this Declaration or any other applicable governing documents against the Owner's lessee or other occupants of the Dwelling Unit, nor liable to any Owner for any claim or damages of any kind resulting from another Owner's leasing of such Owner's Dwelling Unit or the activities or conduct of such Owner's lessee or other occupants of the Dwelling Unit.

Notwithstanding any provision in this Declaration to the contrary, unless otherwise required by applicable law, (i) any additional restriction pertaining to the leasing of Dwelling Units must be adopted by an amendment to this Declaration, and (ii) after the expiration of the Class "B" Period, no amendment to this Declaration for that purpose will be effective without the express written consent of 100% of the total number of votes in the Association. The Board may not adopt additional restrictions on the leasing of Dwelling Units by rule.

(b) **Association's Rights with Respect to Leased Dwelling Units.** Violations of these covenants, conditions or restrictions shall be grounds for the Association or any Owner to commence a civil action for damages, injunctive relief, or both, and an award of court costs and reasonable attorneys' fees in both types of action. The Association has the following rights in order to implement the provisions of this Section 7.22:

- (1) The Association may initiate eviction proceedings pursuant to Chapters 5321 and 1923 of the Ohio Revised Code to evict a tenant for a violation of this Section. The action shall be brought by the Association, as the Owner's agent, in the name of the Owner.

- (2) In addition to any procedures required by Chapters 5321 and 1923 of the Revised Code, the Association shall give the Owner at least ten (10) days' written notice of the intended eviction action.
- (3) The costs of any eviction action brought pursuant to this Section, including reasonable attorneys' fees, shall be charged to the Owner and shall be the subject of a special assessment against the offending Dwelling Unit and made a lien against that Dwelling Unit.

(c) **No Sale or Rental to a Sexually-Oriented Offender.** No Owner shall lease, convey or transfer a Dwelling Unit to any Person who is required pursuant to the provisions of Section 2950.04 of the Ohio Revised Code (or other similar statute from any other jurisdiction), to register as a sexually-oriented offender, nor shall any Owner permit any Dwelling Unit to be occupied by any such sexually-oriented offender. Neither the Declarant nor the Association shall be liable to any Owner, Occupant or their guests, as a result of the Declarant's or the Association's alleged failure, whether negligent, intentional or otherwise, to enforce the provision of this restriction.

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

Section 7.23 - Violation of this Article

(a) If any Person required to comply with the foregoing Covenants and Restrictions is in violation of any one of same, including, but not by way of limitation, design review criteria or standards established by the Design Review Committee, the Declarant (as long as the Declarant is a Class "B" Member of the Association) or the Board and/or the Design Review Committee and/or the Covenants Committee (as defined in Article VIII, Section 3 of the Code) shall have the right to give written notice to such Person to terminate, remove or extinguish such violation. Such notice shall expressly set forth the facts constituting such violation.

(b) Except in the case of an emergency situation, the violating party shall have fifteen (15) days after written notice of the violation to take reasonable action to cause the removal, alleviation or termination of same. In the case of an emergency situation, or in the case of the failure of the violating party to comply with the provisions hereof after notice, the Declarant and/or the Association shall have the right, through their respective agents and employees, to enter upon the land where the violation exists and to summarily terminate, remove or extinguish the violation. In addition to the foregoing, the Declarant and/or the Association shall have the right to obtain an injunction from any court having jurisdiction for the cessation of such violation or attempted violation of this Article. The rights and remedies of the Association and Declarant contained in this Article shall be nonexclusive and in addition to any other right or remedy available at law or in equity, including a claim or action for specific performance and/or money damages (including punitive damages), and attorneys' and paralegals' fees. Furthermore, the

failure or neglect to enforce any term, covenant, condition, restriction, right or procedure herein shall in no event and under no circumstance be construed, deemed or held to be a waiver with respect to any subsequent breach or violation thereof. Subject to the provisions of the Section of the Code entitled, "Hearing Procedure", a Person in violation of this Article VII shall be obligated to the Association and/or Declarant for money damages and for the full amount of all costs and expenses, including attorneys' and paralegals' fees, incurred to remedy any such violation. If said amounts are not paid within ten (10) calendar days following said notification, then said amount shall be deemed "delinquent", and shall, upon perfection as provided in Section 8.4, become a continuing lien upon the portion of the Property owned or occupied by such Person(s) and a personal obligation of the Person(s) violating this Article. In addition, the Owner of any portion of the Property shall be liable jointly and severally for any obligations of any Occupant of such Owner's property.

Section 7.24 – Displaying the Flag of the United States

Pursuant to Section 5301.072 of the Ohio Revised Code, the placement of a flagpole that is used for the purpose of displaying of the flag of the United States shall be permitted within the Sublot of the Owner or shall be permitted on the exterior of the Owner's Dwelling Unit in accordance with the following:

- (a) Flags shall be displayed in accordance with the following:
 - (1) The patriotic customs set forth in 4 U.S.C.A. 5-10, as amended, governing the display and use of the flag of the United States;
 - (2) The consent of the Owner of the Dwelling Unit;
 - (3) The recommended flagpole standards set forth in "Our Flag," published pursuant to S.C.R. 61 of the 105th Congress, 1st Session (1998);
 - (4) Any federal law, proclamation of the President of the United States or the governor of the State of Ohio, a section of the Ohio Revised Code, or local ordinance or resolution; and
 - (5) The compliance with the regulations set forth in (b) below.

(b) In addition to (a) above, the following regulations shall govern the display of a United States flag:

- (1) The size of the flag shall not exceed 3 feet by 5 feet.
- (2) The display of a flag on a flagpole(not to exceed twenty feet in height) shall only be permitted within the Sublot of the Owner displaying the flag or the display of a flag on the exterior of an Owner's Dwelling Unit. The Board shall have the right to designate the precise location of the exterior of the Dwelling Unit from which the flag may be displayed.

- (3) No exterior lighting of the flag shall be permitted.
- (4) If displayed immediately adjacent to the exterior side of the Owner's Dwelling Unit, screws or nails holding the flag shall be made into wood and not into vinyl or other non-wood siding, nor into brick or stone. The Owner shall be responsible for the repair of any damage to the Dwelling Unit caused by such installation.
- (5) A total of no more than one flag may be displayed on a Sublot or a Dwelling Unit.

(c) Pursuant to Section 5301.072(B) of the Ohio Revised Code, a covenant, condition, restriction, rule regulation, bylaw, governing document or agreement of the construction of any of these items that violates Subsection (a) above is against public policy and unenforceable in any court of this state to the extent it violates said Subsection (a) above.

Section 7.25 - Restrictions of Other Documents

Nothing contained in this Declaration shall preclude the imposition of more stringent restrictions imposed elsewhere in this Declaration, restrictions imposed on Sublots within subdivisions, restrictions imposed in deeds conveying the Property or portions thereof and restrictions imposed by the Design Review Committee so long as such restrictions are not inconsistent with restrictions imposed by this Declaration, created by the Association or adopted by the Board. The Township and County are third party beneficiaries of the provisions of this Declaration; provided, however, if the Township's or County's zoning, building or other requirements of ordinances and general law are more restrictive than these covenants and restrictions, the Township's or County's requirements, as the case may be, shall prevail.

Section 7.26 - Certificate of Compliance with Restrictions in Connection with Resales of Dwelling Units

Upon an Owner's reconveyance of such Owner's Dwelling Unit or an interest therein, such Owner (i.e. seller) shall request the Association to issue a Certificate of Compliance stating that the Association has no record of a violation of this Article and stating the unpaid Assessments and amount of the Assessments attributable to such Dwelling Unit. A Certificate of Compliance may be relied upon by all persons for all purposes. Neither the Board, nor such officer or agent shall have any liability to the seller, buyer or mortgagee of a Dwelling Unit or to others if the Certificate of Compliance issued hereunder is not correct. The Association may require the advance payment of a reasonable processing fee for the issuance of the Certificate of Compliance. The Certificate shall be substantially in the form of **Exhibit "C"** attached hereto.

Section 7.27 - Landscaping on Sublot

As soon as reasonably possible after conveyance of a Sublot to the initial Owner, but in no event later than three (3) months following such conveyance, the Owner shall submit to the

Design Review Committee a landscaping plan for the Sublot, which plan must show the location of grass, beds, hedges, plants, trees, shrubs etc. on the Sublot, including the types of hedges, plants, trees, shrubs etc. that are being installed (the "**Landscaping Plan**"). Prior to commencing installation of the landscaping in accordance with the Landscaping Plan, the Design Review Committee has the authority to approve or disapprove of the Landscaping Plan, which decisions shall be final and controlling. Upon approval by the Design Review Committee, the Owner shall have such landscaping installed pursuant to the approved Landscaping Plan, which installation must occur no later than six (6) months after the Owner takes title to the Sublot (weather permitting). Any changes to the Landscaping Plan (or layout of the landscaping in general) by the first Owner or any subsequent Owner must be approved by the Design Review Committee. The initial installation of the landscaping in accordance with the Landscaping Plan and any subsequent changes thereto shall be at the sole cost and expense of the Owner of the Sublot.

In the event that the Owner fails to complete the landscaping or install the trees within the timeframes set forth in this Section 7.27, then the Association has the right to enter upon such Sublot and install the landscaping and/or trees, in its sole discretion, and the Owner shall immediately reimburse the Association upon demand for all costs associated therewith together with interest at the "Prime Rate" charged from time to time by KeyBank (its successors or assigns) as published in the Wall Street Journal. If the Owner does not reimburse the Association such costs, then the Association may levy such costs as an Assessment against such applicable Owner pursuant to Article IX herein.

Notwithstanding any other provisions set forth herein, after installation of the landscaping on a Sublot in accordance with the Landscaping Plan, the following terms shall apply:

(a) The Association shall maintain all grass installed on a Sublot, which includes only mowing and fertilizing the grass on a periodic basis. The timing of such mowing and fertilizing shall be at the discretion of the Association. Except as set forth below, any maintenance of the landscaping on a Sublot other than mowing and fertilizing shall be at the sole cost and expense of the Owner.

(b) The Association shall maintain the landscaping beds on a Sublot, but only along the front elevation of the Dwelling Unit (from one front corner of the Dwelling Unit to the other front corner of the Dwelling Unit) and portions of such landscaping beds that continue from the front elevation to a portion of the side elevation of the Dwelling Unit. All landscaping beds not located along the front elevation of the Dwelling Unit and continuing along a portion of the side elevation of the Dwelling Unit shall be maintained by the Owner at its sole cost and expense.

(c) All maintenance by the Association of the landscaping beds along the front elevation of the Dwelling Unit and continuing along a portion of the side elevation of the Dwelling Unit shall only include trimming of bushes/plants and mulching, the timing of which shall be in the sole discretion of the Association. The portion of the landscaping beds along the side elevation of the Dwelling Unit to be maintained by the Association shall be that portion approved by the Association, in its sole discretion, and shall be only such area of the landscaping bed along the side elevation that directly connects to the landscaping beds along the front

elevation, but in no event shall the Association be responsible to maintain all landscaping beds along the side elevation of the Dwelling Unit, unless otherwise agreed to by the Association.

(d) The Association shall also complete a “fall cleanup” and “spring cleanup” in the event that the Association deems it necessary. In the event that the Owner chooses to add mulch to areas that are mulched by the Association or other areas on the Sublot which are not the responsibility of the Association, then the mulch must be of the same (or as reasonably similar) color and consistency as the mulch being utilized by the Association.

(e) Any landscaping work which is not the direct responsibility of the Association shall be accomplished by the Owner of the Sublot, at his or her sole cost and expense. The Owner may request that the same landscaping company hired by the Association complete landscaping maintenance or installation that is not the responsibility of the Association, provided that the Owner shall either pay the landscaping company directly for such additional work or the Owner may be invoiced by the Association.

(f) The Association and its agents are not responsible for any damage done to the landscaping or the Dwelling Unit on a Sublot, which damage shall be remedied at the sole cost and expense of the Owner of the Sublot. In the event that any fence gates are locked or an animal is outside on any day when maintenance of the landscaping on a Sublot is to occur, then the Association (through its agent) shall not complete the landscaping work on such Sublot that particular day (i.e. such Sublot will be skipped).

Section 7.28 – Snow Removal

The Association shall be responsible for periodic removal of snow on the driveways and sidewalks located on the Sublots. The timing for such removal shall be at the discretion of the Association. The Association and its agents shall not be responsible for any damage caused to the driveways and sidewalks, or to the Dwelling Unit, on a Sublot due to such snow removal.

ARTICLE VIII **DESIGN REVIEW COMMITTEE**

Section 8.1 – Power of Design Review Committee

There is hereby created a Design Review Committee for the purpose of architectural and engineering control to secure and maintain an attractive, harmonious residential community. The Declarant shall function as and grant all approvals provided for herein until the Declarant conveys the last Sublot the Declarant owns within the Property, except that the Declarant may elect to delegate and assign such duties and responsibilities to the Design Review Committee prior to that time. The Design Review Committee appointed by the Declarant need not be made up of members of the Association. After the Declarant has conveyed the last Sublot, the Design Review Committee shall be composed of no less than three (3) individuals appointed by the Board of Directors to serve at the Board’s pleasure. A vote of the majority of members of the Design Review Committee shall be required to constitute the decision of the Design Review Committee. This Article may not be amended without the Declarant’s written consent so long as

the Declarant (or an Affiliate of the Declarant) or a Person designated by the Declarant as being exempt from the provisions of this subsection owns any land that is subject to the Declaration.

Section 8.2 – Operation of Design Review Committee

No Dwelling Unit shall be altered, modified or changed in any way which changes exterior or the appearance thereof, nor shall any Dwelling Unit be rebuilt, nor shall an addition be made, or deck added or modified, to a Dwelling Unit, nor shall any grading be changed unless an application, plans and specifications for the proposed alteration, modification, change or addition shall have been submitted to and approved in writing by the Design Review Committee. Furthermore, no landscaping within a Common Area shall be installed by the Owner(s) of a Dwelling Unit(s) or situated in close proximity to such Common Areas unless and application, plan and specifications for such installation shall have been submitted to and approved in writing by the Design Review Committee; and the Design Review Committee may impose as a condition of such approval that the maintenance and replacement of such landscaping shall be the responsibility of such Owner(s), and not the responsibility of the Association. If the Design Review Committee fails to approve or disapprove said application, plans and specifications within thirty (30) days after the same was submitted to it, approval will not be required and this Section will be deemed to have been fully complied with. Provided, however, the provisions of this subsection requiring submission of plans and specifications to and obtaining approval from the Design Review Committee shall not be applicable to the Declarant, nor an Affiliate of the Declarant, nor a Person designated by the Declarant as being exempt from the provisions of this subsection.

Section 8.3 – Inspection

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

Section 8.4 – Violations and Remedies

Should any Dwelling Unit be altered, constructed, or an addition be made thereto within the Sublot, or related improvements be reconstructed or removed from or upon any Sublot, or should the use thereof be modified in any way from the use originally constructed or installed without first obtaining prior written approval of the Declarant or Design Review Committee as provided in this Article VIII, such act shall be deemed to be a violation of this Article VIII and this Declaration. Any party violating this Article VIII shall, immediately upon the receipt of written notice of such violation from the Declarant or Design Review Committee, cease and desist from the commission of any such act and immediately commence to take such steps as will alleviate or remedy any such condition of default and shall continue with all due diligence thereafter until the satisfactory completion of same. Should the party committing such act in contravention of this Article VIII fail to immediately take such remedial action as aforesaid, then and in such event, the Association shall have the right, but not the obligation, in addition to any

and all other rights or remedies available to it or an enforcing governmental agency, at law or in equity, each of which remedies shall be deemed nonexclusive, to do any of the following:

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

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

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

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

(e) **Improvements by Declarant.** Notwithstanding any provisions contained in this Declaration to the contrary, to the extent that any improvements constructed or modified by the Declarant or a Builder on the Property do not comply with a restriction or requirement contained in this Declaration, the Design Review Committee shall be deemed to have granted Declarant or a Builder a variance from such restriction or requirement and such improvements shall not be considered to violate any restriction or requirement in this Declaration or any of the other Governing Documents.

(f) **Decisions of Declarant and Design Review Committee.** Declarant and the members of the Design Review Committee shall have no liability for decisions made by them so long as such decisions are not discriminatory, arbitrary or capricious. Any errors in or omissions from the documents submitted to Declarant or the Design Review Committee shall be the responsibility of the entity or person submitting the documents, and neither Declarant nor the Design Review Committee shall have any obligation to check for errors in or omissions from any such documents, or to check for such documents' compliance with the general provisions of this Declaration, Township codes and other regulations, state statutes or the common law, whether the same relate to Sublot lines, building lines, easements, building standards or any other issue.

(g) **NO LIABILITY OF DECLARANT OR DESIGN REVIEW COMMITTEE.** DECLARANT AND ANY BUILDER SHALL HAVE NO RESPONSIBILITY OR LIABILITY FOR (I) THE CREATION, SELECTION, MANAGEMENT OR OPERATION OF THE DESIGN REVIEW COMMITTEE, (II) ANY ACTIONS TAKEN OR OMITTED TO BE TAKEN BY OR ON BEHALF OF THE DESIGN REVIEW COMMITTEE IN CONNECTION WITH THIS DECLARATION OR THE PROPERTY, OR (III) ANY LIABILITIES,

OBLIGATIONS, DEBTS, ACTIONS, CAUSES OF ACTION, CLAIMS, DEBTS, SUITS OR DAMAGES INCURRED BY OR ON BEHALF OF OR ARISING IN CONNECTION WITH THE DESIGN REVIEW COMMITTEE, THE PROPERTY OR THE DUTIES AND OBLIGATIONS OF THE DESIGN REVIEW COMMITTEE PURSUANT TO THIS DECLARATION. FURTHERMORE, NEITHER DECLARANT, THE ASSOCIATION, A BUILDER, MEMBERS OF THE DESIGN REVIEW COMMITTEE, THE BOARD NOR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES AND AGENTS OF ANY OF THEM, SHALL BE LIABLE IN DAMAGES TO ANYONE SUBMITTING PLANS AND SPECIFICATIONS TO ANY OF THEM FOR APPROVAL, OR TO ANY OWNER BY REASON OF MISTAKE IN JUDGMENT, NEGLIGENCE OR NONFEASANCE ARISING OUT OF OR IN CONNECTION WITH THE APPROVAL OR DISAPPROVAL OR FAILURE TO APPROVE OR DISAPPROVE ANY SUCH PLANS OR SPECIFICATIONS. EVERY PERSON WHO SUBMITS PLANS OR SPECIFICATIONS AND EVERY OWNER AGREES THAT SUCH PERSON WILL NOT BRING ANY ACTION OR SUIT AGAINST DECLARANT, A BUILDER, THE ASSOCIATION, THE DESIGN REVIEW COMMITTEE, THE BOARD OR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES OR AGENTS OF ANY OF THEM, TO RECOVER ANY SUCH DAMAGES AND HEREBY RELEASES AND QUITCLAIMS ALL CLAIMS, DEMANDS AND CAUSES OF ACTION ARISING OUT OF OR IN CONNECTION WITH ANY JUDGMENT, NEGLIGENCE OR NONFEASANCE AND HEREBY WAIVES THE PROVISIONS OF ANY LAW WHICH PROVIDES THAT A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS, DEMANDS AND CAUSES OF ACTION NOT KNOWN AT THE TIME THE RELEASE IS GIVEN. PLANS AND SPECIFICATIONS ARE NOT REVIEWED, APPROVED AND/OR REJECTED FOR ENGINEERING OR STRUCTURAL DESIGN, ADEQUACY OF MATERIALS OR ADEQUACY OF SOILS OR DRAINAGE, AND BY APPROVING SUCH PLANS AND SPECIFICATIONS, NEITHER DECLARANT, A BUILDER, THE ASSOCIATION, THE DESIGN REVIEW COMMITTEE, THE BOARD NOR THE OFFICERS, DIRECTORS, MEMBERS, EMPLOYEES AND AGENTS OF ANY OF THEM ASSUMES LIABILITY OR RESPONSIBILITY THEREFOR, NOR FOR ANY DEFECT IN ANY STRUCTURE CONSTRUCTED FROM SUCH PLANS AND SPECIFICATIONS.

(h) **INDEMNIFICATION OF DECLARANT AND DESIGN REVIEW COMMITTEE.** WITHOUT LIMITING THE FOREGOING PROVISIONS OF THIS SECTION, THE ASSOCIATION SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE DESIGN REVIEW COMMITTEE, ANY BUILDER AND DECLARANT FROM AND AGAINST ALL DAMAGES, CLAIMS AND EXPENSES, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES, REASONABLY INCURRED IN CONNECTION WITH ANY THREATENED, INITIATED OR FILED ACTION, SUIT OR OTHER PROCEEDING (INCLUDING THE SETTLEMENT OF ANY SUIT OR PROCEEDING, IF APPROVED BY THE THEN BOARD) TO WHICH ANY MEMBER OF THE DESIGN REVIEW COMMITTEE OR ANY OF THE BUILDER OR DECLARANT PARTIES MAY BECOME A PARTY BY REASON OF ITS ACTIVITIES UNDER OR IN CONNECTION WITH THIS DECLARATION.

ARTICLE IX
ASSESSMENTS

Section 9.1 - Definition of Assessments

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

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

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

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

(d) Annual capital additions and improvements and/or capital acquisitions (but not repairs or replacements) having a total cost in excess of Seven Thousand Five Hundred Dollars (\$7,500.00), without in each case the prior approval of the Class "B" Member and the vote of at least two-thirds (2/3rds) of the Class "A" Members who are voting in person or by proxy, at a meeting duly called for this purpose. In case of an emergency requiring prompt action to avoid further loss, the Board shall have the discretion to expend whatever is necessary to mitigate such loss.

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

Section 9.2 - Responsibility for Payment of Assessments

(a) All Owners of Sublots (other than the Declarant) shall be responsible for paying Assessments levied against such Sublots; provided, however, notwithstanding any other provision set forth herein, a Builder shall not be responsible for paying Assessments until the Dwelling Unit located on the applicable Sublot is conveyed from the Builder to a third-party Owner that will occupy or lease the Dwelling Unit contained thereon. The 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 Assessments, which shall be equal as to each Sublot and shall equal to the amount of such annual budget divided by the number of Sublots subject to Assessment. Written notice of the Assessments shall be sent to the Owner of each Sublot. Payment of Assessments may be required by the Declarant or Board on a monthly, quarterly, semi-annual or annual basis. Except as set forth below, the Declarant and any Builder is exempt from the payment of any Assessments.

(b) During the Class 'B' Control Period, the Declarant shall determine the Assessments to be paid by the Owners, and the Declarant shall pay all Common Expenses which are not covered by the annual Assessments payable by Owners of Dwelling Units other than the Declarant as set forth above. 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. The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services or materials or a combination of services and materials with Declarant or other entities for the payment of some portion of the Common Expenses during the Class 'B' Control Period. An Eligible Mortgage Holder acquiring title to all or any portion of the Property as a result of: (i) a foreclosure sale; or (ii) a deed in lieu of foreclosure, shall not be responsible for the Declarant's obligation for payment of the Common Expenses which are not covered by the annual Assessments payable by Owners of Dwelling Units during the Class 'B' Control Period. After the Class 'B' Control Period, the amount of Assessments attributable to Dwelling Units shall be established by the Board as of January 1 of each year, and each Owner of a Dwelling Unit shall pay an equal amount of such Assessments. In no event shall Declarant or a Builder be obligated to pay any Common Expenses not covered by the annual Assessments payable by Owners of Dwelling Units attributable to the period of time following the Class 'B' Control Period.

Section 9.3 – Creation of the Lien and Personal Obligation of Assessments

Each Owner of any Sublot (other than the Declarant) by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual Assessments or charges, (2) special Assessments for capital improvements, and (3) additional Assessments, all such Assessments to be established and collected as hereinafter provided. Each such Assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the Owner of such Sublot at the time when the Assessment fell due. The personal obligation for delinquent Assessments shall not pass to an Owner's successors in title unless expressly assumed by them.

Section 9.4 – Purpose of Assessments

The Assessments levied by the Association shall be used exclusively to promote the recreation, health, safety and welfare of the Owners and Occupants of the Property for the improvement and maintenance of the Common Areas and as is otherwise consistent with the rights and responsibilities of the Association hereunder and for the benefit of the Members.

Section 9.5 – Maximum Annual Assessment

Until January 1 of the year immediately following the conveyance of the first Dwelling Unit to an Owner, the maximum annual Assessment is \$ 350.00 per Sublot.

(a) From and after January 1 of the year immediately following the conveyance of the first Dwelling Unit to an Owner, the maximum annual Assessment each year may not be increased more than ten percent (10%) above the maximum Assessment for the previous year without a vote of at least fifty-one percent (51%) of the Class "A" Members (excluding the Declarant). A lesser approval is acceptable if the action is taken by a vote of two-thirds (2/3rds) of each class of Members who are voting in person or by proxy, at a meeting duly called for this purpose in accordance with Section 9.6 below.

(b) In addition to the annual Assessments authorized herein, the Association may levy, in any Assessment year, a special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon the Common Areas, including fixtures and personal property related thereto, and/or to meet any other emergency or unforeseen expenses of the Association, provided that any such special Assessment shall have the assent of two-thirds of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

(c) Special Assessments shall be due as provided by the Board.

(d) In addition to such regular Assessments, each Class "A" Member shall be required to make, at the time such Member acquires title to a Sublot and upon each re-sale of a Sublot, an initial capital contribution to the Association of \$ _____ for each Sublot purchased, one-half (1/2) of said sum shall be held by the Association in the Association's working capital account and the balance of said sum shall be held by the Association as a reserve for contingencies and replacements

Section 9.6 – Notice and Quorum for any Action Authorized Under Sections 9.1(d) and 9.5

Written notice of any meeting called for the purpose of taking any action authorized under Section 9.1(d) and 9.5 above shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast sixty percent (60%) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement, and the required quorum at the subsequent meeting shall be one-half (1/2) of the required quorum at the preceding meeting. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

Section 9.7 – Uniform Rate of Assessment

Both annual and special Assessments must be fixed at a uniform rate for all Dwelling Units and may be collected on a monthly, quarterly, semi-annual or annual basis, or other periodic basis not more often than monthly or less often than annually as determined by the Board. Notwithstanding the foregoing, if the Association performs services which do not benefit the Declarant, such as recreational supervision, Sublots owned by the Declarant that do not contain Dwelling Units may be assessed a percentage of the Assessment referred to in Section 9.5 hereof based on the services that do not benefit the Declarant, provided that the financial stability of the Association will not be jeopardized.

Section 9.8 – Date of Commencement of Annual Assessments: Due Dates

The annual Assessment provided for herein shall commence as to Dwelling Units on the first date of the month following the conveyance to an Owner of the first Dwelling Unit. The first annual Assessment shall be adjusted according to the number of months remaining in the

calendar year. The Board shall fix the amount of the annual Assessment against each Dwelling Unit at least thirty (30) days in advance of each annual Assessment period. Written notice of the annual Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board. If additional land is annexed to the Property as herein permitted, the annual Assessments as to Dwelling Units added to the Property by such annexation shall commence on the first (1st) day of the month following conveyance to an Owner of a Dwelling Unit within the annexed land. The Association, shall, upon demand, and for a reasonable charge, furnish a Certificate of Compliance in the form of **Exhibit "C"** of this Declaration signed by an officer of the Association setting forth the amount of the Assessment on a specified Dwelling Unit and setting forth whether the Assessment has been paid. A properly executed Certificate of Compliance of the Association as to the status of Assessments on a Sublot is binding upon the Association as of the date of its issuance.

Section 9.9 – Effect of Nonpayment of Assessments; Remedies of the Association

Any Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of fifteen percent (15%) per annum (not to exceed the highest interest rate chargeable to individuals under applicable law) and shall be subject to the remedies available to the Association as set forth in Section 10.1 this Declaration. In addition, the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose a lien against the Owner's Sublot. No Owner may waive or otherwise escape liability for the Assessments provided for herein by non-use of the Common Areas or abandonment of his Sublot. Failure to pay any Assessment(s) shall not constitute default under an insured Mortgage.

Section 9.10 – Subordination of the Lien to Mortgages

The lien of the Assessments provided for herein shall be subordinate to the lien of any recorded first mortgage. The sale or transfer of a Dwelling Unit shall not affect the Assessment lien. However, the sale or transfer of any Dwelling Unit pursuant to mortgage foreclosure or any proceeding in lieu thereof shall extinguish the lien of record for such Assessments as to payments which become due prior to such sale or transfer.

Section 9.11 – Exempt Property

Notwithstanding anything to the contrary herein, the Common Areas shall be exempt from payment of Assessments or Additional Assessments. All property dedicated to and accepted by a public authority and all property owned by a charitable or non-profit organization exempt from the laws of the State of Ohio shall be exempt from the Assessments created herein. However, no land or improvements devoted to dwelling use shall be exempt from said Assessments.

Section 9.12 – No Exemption for Non-Use of Facilities; No Refund of Reserves

An Owner not otherwise exempt from the Assessments may not exempt him or herself from liability for Assessments levied against them by waiver of the use of the Common Areas that are owned and/or operated by the Association or by abandonment of such Owner's Dwelling

Unit. Furthermore, no Owner shall be entitled to any portion of the funds held for reserves; nor shall any Owner have a claim against the Association with respect thereto.

Section 9.13 - Non-Liability of Foreclosure Sale Purchaser for Past Due Assessments

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

Section 9.14 - Liability for Assessments on Voluntary Conveyance

Upon the voluntary conveyance of an Ownership Interest the grantee of the Ownership Interest shall be jointly and severally liable with the grantor for all unpaid Assessments levied pursuant to this Declaration against the grantor of his Ownership Interest prior to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such prospective grantee, upon written request delivered to the Association, shall be entitled to a statement from the Board or an officer of the Association setting forth the amount of all unpaid Assessments due the Association with respect to the Ownership Interest to be conveyed and such grantee shall not be liable for, nor shall the Ownership Interest conveyed be subject to a lien, for any unpaid Assessments which become due prior to the date of the making of such request if the same are not set forth in such statement. The statement referred to herein shall be included in the Certificate of Compliance with Restrictions referred to in Section 7.26 of this Declaration. The Association may require the advance payment of a processing fee for the issuance of the Certificate of Compliance. A devise of an Ownership Interest or the distribution of said Ownership Interest pursuant to the Statute of Descent and Distribution shall be deemed to be a voluntary conveyance. An unpaid Assessment shall not be deemed a charge or lien against the Ownership Interest until perfected as such pursuant to Article X.

Section 9.15 - Additional Assessments

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

ARTICLE X **LIENS**

Section 10.1 - Perfection of Lien

(a) If any Owner or a Declarant shall fail to pay an Assessment or Additional Assessment levied in accordance with this Declaration (such Owner hereinafter referred to as the “**Delinquent Owner**”) when due and such Assessment or Additional Assessment is delinquent, or if an Owner or a Declarant shall violate any rule or breach any restriction, covenant or provision contained in the Declaration or Code, the Board may authorize the perfection of a lien on the Ownership Interest of the delinquent and/or violating Owner or Declarant by filing for record with the Recorder of the County, a Certificate of Lien. The Certificate of Lien shall be in recordable form and shall include the name of the delinquent Owner, a description of the Ownership Interest of the delinquent Owner, the entire amount claimed for the delinquency and/or violation, including interest thereon and Costs of Collection, and a statement referring to the provisions of this Declaration authorizing the Certificate of Lien. The lien is a continuing lien upon the Dwelling Unit against which each Assessment or charge is made, subject to automatic subsequent adjustments reflecting any additional unpaid interest, administrative late fees, Enforcement Assessments, collection costs, attorney’s fees, paralegal fees and court costs.

(b) In addition, the Board may file a lien against a Sublot for costs of maintenance, repair or replacement incurred by the Association due to the willful or negligent act of an Owner or Occupant of a Sublot, or their family, tenants, guests or invitees, together with Costs of Collection.

Section 10.2 - Duration of Lien

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

Section 10.3 - Priority

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

Section 10.4 - Dispute as to Assessment

The Declarant or any Owner or Declarant who believes that an Assessment levied by the Association against him for which a Certificate of Lien has been filed by the Association has been improperly determined, may bring an action under the provisions contained in Section 16.8 of this Declaration for the discharge of all or any portion of such lien; but the lien shall continue until the actual amount of the lien so determined is paid in full or otherwise be fully discharged. In such action, if it is finally determined that the unpaid amount of the Assessment or charge was improperly charged to the Owner, the court shall enter an order that it determines to be just which may provide for a discharge of record of all or a portion of the lien and an award of attorney's fees to the Owner.

Section 10.5 - No Waiver Implied

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

Section 10.6 - Personal Obligations

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

ARTICLE XI **REMEDIES OF THE ASSOCIATION**

Section 11.1 - Denial of Voting Rights, Use of Recreation Facilities (if any) and Discontinuance of Certain Services

If any Owner fails to pay an Assessment when due, such Owner and the Occupants of any and all of such Owner shall not be entitled to vote on Association matters or to use recreation facilities (if any) or to receive certain services from the Association until said Assessment is paid in full.

Section 11.2 - Specific Remedies

The violation of any Rule, or the breach of any restriction, covenant or provision contained in this Declaration or in the Code, shall give the Association, the Original Declarant and their designated agent the right, in addition to all other rights set forth herein and provided by law, (a) to enter upon the Dwelling Unit or Sublot or portion thereof upon which, or as to which, such violation or breach exists, and summarily abate and remove, at the expense of the Owner or Declarant of the Ownership Interest where the violation or breach exists, any structure, thing, or condition that may exist thereon, which is contrary to the intent and meaning of this Declaration, the Code, or the Rules, and the Association, or its designated agent shall not thereby be deemed guilty in any manner of trespass; (b) to enjoin, abate or remedy by appropriate legal

proceedings, either at law or in equity, the continuance of any breach; (c) to commence and prosecute an action for specific performance or an action to recover any damages which may have been sustained by the Association or any of its Members as well as an action for punitive damages if warranted; and/or (d) to collect costs of suit and reasonable attorneys' and paralegals' fees incurred in connection with the exercise by the Association of any remedies hereunder, the same to be deemed "Costs of Collection" under Section 11.3 hereof.

Section 11.3 - Cost of Collection

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

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

(b) In addition to the amount referred to in (a) above, the Association may assess against such Owner, an administrative fee, not to exceed fifteen percent (15%) of the amount of the delinquency or One Hundred Dollars (\$100), whichever amount is greater, said amount to be determined by the Board provided, however, in no event shall said amount exceed the highest interest rate chargeable to individuals under applicable law. Said administrative fee shall be in addition to interest and the expenses of collection incurred by the Association, such as attorneys' fees, paralegals' fees, court costs and filing fees. The actual expenses of collection and the administrative fee shall hereinafter be referred to as "**Cost of Collection**".

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

Section 11.4 – Application of Payments

The Association shall credit any amount it receives from an Owner in the following order:

(a) To interest owed the Association.

(b) To administrative late fees or Enforcement Assessments owed the Association.

(c) To Cost of Collection.

(d) To the oldest principal amounts the Owner owes the Association for Common Expenses chargeable to the Dwelling Unit or Sublot.

Section 11.5 - Binding Effect

The remedies provided in this Article XI against a Delinquent Owner or Declarant may also be pursued against the heirs, executors, administrators, successors and assigns and grantees of such Owner or Declarant, except as specifically provided in Sections 9.13 and 9.14 of this Declaration.

ARTICLE XII **NO PARTITION**

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

ARTICLE XIII **CONDEMNATION**

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

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

ARTICLE XIV **MORTGAGEES' RIGHTS**

The following provisions are for the benefit of holders, insurers, or guarantors of first mortgages on Dwelling Units and Sublots. To the extent applicable, necessary, or proper, the provisions of this Article shall apply to both this Declaration and to the Code. Where indicated, these provisions apply only to Eligible Mortgage Holders; provided, however, that voting percentages set forth herein are subject to and controlled by higher percentage requirements, if any, set forth elsewhere in this Declaration for specific actions.

Section 14.1 - Notices of Action

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

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

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

Section 14.2 - Other Provisions for First Lien Holders

To the extent possible under Ohio law:

- (a) Any restoration or repair of the Property following a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications unless the approval of the Eligible Mortgage Holders on Dwelling Units to which at least fifty-one percent (51%) of the votes of Dwelling Units and the Eligible Mortgage Holders of first mortgages of the Class "A" and the Class "B" Members, subject to mortgages held by such Eligible Mortgage Holders, are allocated, is obtained to act otherwise.
- (b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Mortgage Holders on Dwelling Units of at least fifty-one percent (51%) of the votes of Dwelling Units and the Eligible Mortgage Holders of first mortgages of the Class "A" Members and the Class "B" Member, subject to mortgages held by such Eligible Mortgage Holders, are allocated.

Section 14.3 - Amendments to Documents

The following provisions do not apply to amendments to the constituent documents or termination of the Association made as a result of destruction, damage, or condemnation pursuant to Section 14.3(a) and (b) of this Article:

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

(b) The vote of at least sixty-seven percent (67%) of the Class "A" Members and the consent of the Class "B" Member and the approval of Eligible Mortgage Holders to which at least fifty-one percent (51%) of the votes of Dwelling Units subject to mortgages appertain, shall be required to materially amend any provisions of the Declaration, Code, or Articles of Incorporation of the Association, or to add any material provisions thereto, which establish, provide for, govern, or regulate any of the following: (1) voting rights; (2) Assessments, Additional Assessments, Assessment liens, or priority assessment liens; (3) reserves for maintenance, repair, and replacement of the Common Areas; (4) responsibility for maintenance and repair; (5) insurance or fidelity bonds; (6) rights to use of the Common Areas; (7) leasing of the Dwelling Units; (8) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Sublot (this provision is subject and subordinate to any provision in an agreement for the sale by the Declarant of a Sublot); (9) establishment of self-management by the Association where professional management has been required by an Eligible Mortgage Holder; (10) restoration or repair of the Property (after hazard damage or partial condemnation) in a manner other than that specified in this Declaration; (11) any action to terminate the legal status of the Property after substantial destruction or condemnation occurs; (12) expansion or contraction of the Property, or the addition of the Property other than as provided in Section 1.3 of this Declaration; or (13) any provisions included in this Declaration, Code, or Articles which are for the express benefit of Eligible Mortgage Holders on Sublots.

Section 14.4 - Special Federal Home Loan Mortgage Corporation Provisions

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

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

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

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

(d) Mortgagee shall not be required to collect Assessments.

Section 14.5 – Special Ohio Provisions

(a) Pursuant to Ohio Revised Code Section 5312.12(C)(1), in any foreclosure action that the holder of a lien commences, the holder shall name the Association as a defendant in the action. The Association or the holder of the lien is entitled to the appointment of a receiver to collect rental payments due on the property. Any rental payment a receiver collects during the pendency of the foreclosure action shall be applied first to the payment of the portion of the Common Expenses chargeable to the Sublot during the foreclosure action.

(b) Pursuant to Ohio Revised Code Section 5312.12(C)(3) a mortgage on a Sublot may contain a provision that secures the mortgagee's advances for the payment of the portion of the Common Expenses chargeable against the Sublot upon which the mortgagee holds the mortgage.

ARTICLE XV **TRANSFER OF SPECIAL DECLARANT RIGHTS**

Section 15.1 - Instrument Transferring Special Declarant Rights

A Declarant may transfer Special Declarant Rights created or reserved in this Declaration or in the Code by an instrument evidencing the transfer recorded in the land records of the County in which the Property is located. The instrument is not effective unless executed by both the transferor and transferee.

Section 15.2 - Liability of Transferor of Special Declarant Rights

(a) If the successor to any Special Declarant Right is an Affiliate of a Declarant, the transferor is jointly and severally liable with the successor for any obligation or liability of the successor which related to the Property.

(b) If a transferor retains any Special Declarant Rights but transfers other Special Declarant Rights to a successor who is not an Affiliate of the Declarant, the transferor is also liable for any obligations and liabilities relating to the retained Special Declarant Rights imposed on a Declarant by the Declaration or Code arising after the transfer.

(c) A transferor has no liability for any act or omission, or any breach of contractual or warranty obligation arising from the exercise of a Special Declarant Right by a successor Declarant who is not an Affiliate of the transferor.

Section 15.3 – Acquisition of Special Declarant Rights

Unless otherwise provided in a mortgage held by a first mortgagee, in case of foreclosure of such mortgage (or deed in lieu of foreclosure), tax sale, judicial sale, or sale under the Bankruptcy Code or receivership proceedings, of any Dwelling Units owned by the Declarant in the Property, the Person acquiring title to all the Dwelling Units being foreclosed (or deed in lieu of foreclosure) or sold, but only upon his request, succeeds to all Special Declarant Rights related to such Dwelling Unit, or only to any rights reserved in the Declaration and/or Code to maintain models, sales offices, customer service offices and signs. The judgment or instrument conveying title shall provide for transfer of only the Special Declarant Rights requested.

Section 15.4 – Termination of Special Declarant Rights

Upon foreclosure (or deed in lieu of foreclosure), tax sale, judicial sale of any Dwelling Units owned by the Declarant in the Property; (1) the Declarant ceases to have any Special Declarant Rights, and (2) the right of the Declarant to elect or designate Board Members pursuant to the Code terminates unless the judgment or instrument conveying title provides for transfer of all Special Declarant Rights held by the Declarant to a successor Declarant.

Section 15.5 – Liabilities of a Transferee of Special Declarant Rights

The liabilities and obligations of persons who succeed to Special Declarant Rights are as follows:

(a) A successor to any Special Declarant Right who is an Affiliate of a Declarant is subject to all obligations and liabilities imposed on the transferor by the Declaration and Code.

(b) A successor to any Special Declarant Right, other than a successor described in paragraphs (c) or (d) of this subsection, who is not an Affiliate of a Declarant, is subject to all obligations and liabilities imposed by the Declaration and Code: (i) on a Declarant which relate to such Declarant's exercise or non-exercise of Special Declarant Rights; or (ii) on the transferor, other than: (A) misrepresentations by any previous Declarant; (B) warranty obligations on improvements made by any previous Declarant, or made before this Declaration is recorded; (C) breach of any fiduciary obligation by any previous Declarant or appointees to the Board of Directors; or (D) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

(c) A successor to only Special Declarant Rights reserved in the Declaration and/or Code to maintain models, sales offices, customer service offices and signs, if such successor is not an Affiliate of a Declarant, may not exercise any other Special Declarant Right (except as specifically designated by the Declarant), and is not subject to any liability or obligation as a Declarant.

(d) A successor to all Special Declarant Rights held by the transferor who is not an Affiliate of that Declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to sublots or Dwelling Units under Subsection (b), may declare the intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all Special Declarant Rights to any person acquiring title to any Dwelling Unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by the Code for the duration of the period that a Declarant has the right to elect or designate Board Members, and any attempted exercise of this rights is void. So long as a successor Declarant may not exercise Special Declarant Rights under this Subsection, such successor Declarant is not subject to any liability or obligation as a Declarant.

Section 15.6 – Limitation on Liability of Transferee of Special Declarant Rights

Nothing in this Article subjects any successor to a Special Declarant Right to any claims against or other obligations of a transferor Declarant, other than claims and obligations arising under this Declaration or the Code.

ARTICLE XVI **GENERAL PROVISIONS**

Section 16.1 - Covenants Run With the Property; Binding Effect

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

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

Section 16.2 - Notices

(a) Any notices required to be given to any Person under the provisions of this Declaration shall be deemed to have been given when personally delivered to such Person's Dwelling Unit or mailed, postage prepaid, to the last known address of such Person or principal place of business if a corporation, or other business entity, provided, however, that a notice of "delinquency" of any payment due hereunder shall be made by personal delivery to such Dwelling Unit or principal place of business if a corporation, or by certified or registered mail, return receipt requested, or by e-mail (if authorized by a Member). The effective date of such a notice shall be the date said notice is personally delivered, or postmarked, or the date of confirmation or receipt of an e-mail, as the case may be.

(b) Notices to the Declarant shall be deemed given only when received and must be either hand delivered or mailed by certified or registered mail, postage prepaid, to Montville Reserve Ltd., Attn: David Kolar, 130 West Streetsboro Street, Hudson, Ohio 44236, with a copy to Matthew T. Viola, Esq., Kohrman Jackson & Krantz, LLP, 1375 East 9th Street, 29th Floor, Cleveland, Ohio 44114.

Section 16.3 - Enforcement-Waiver

Enforcement of the provisions of this Declaration may be by any proceeding at law or in equity against any Person or Persons violating or attempting to violate the provisions of this Declaration, either to restrain violation or to recover damages and against the Person, or to enforce any lien perfected pursuant to this Declaration. The failure by the Association or any one permitted by this Declaration to enforce any provision herein contained shall in no event be deemed a waiver of the right to do so thereafter. The County and the Township shall each have the right, but not the obligation, to enforce the provisions of this Declaration.

Section 16.4 - Construction of the Provisions of this Declaration

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

The Association and the Design Review Committee, to the extent specifically provided herein, may adopt and promulgate Rules regarding the administration, interpretation and enforcement of the provisions of this Declaration. In so adopting the Rules and in making any finding determination, ruling or order, or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Association and the Design Review Committee, as the case may be, shall take into consideration the best interest of

the Declarant(s), Owners, Tenants and Occupants to the end that Montville Reserve Subdivision shall be preserved and maintained as a high quality residential community.

Section 16.5 - Reservations by Original Declarant - Exempt Property

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

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

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

(d) Original 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 (as the Property may be expanded by a Subsequent Amendment), owned or controlled by the Original Declarant, notwithstanding any covenant, easement, restriction or provision of this Declaration or its exhibits, which may be to the contrary.

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

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

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

Section 16.6 - Assignability by Declarant

Declarant may assign, in whole or in part, its rights as Declarant by executing a document assigning such rights. There may be more than one Declarant, if Declarant makes a partial assignment of Declarant status. If at any time there is more than one Declarant, a Declarant may only assign its rights as a Declarant in whole to a single person or entity unless otherwise approved by the other Declarants. Without limiting other provisions of this Declaration, upon a Declarant's assignment of any or all of its rights as Declarant under this Declaration, the assigning Declarant shall automatically, without further acknowledgment or consent of any other party, be fully released and discharged from any obligations accruing under this Declaration after the date of such assignment, including, without limitation, the obligation of such assigning Declarant to fund deficits arising after such assignment. If at any time there is more than one Declarant and a Declarant no longer owns any real property within the Property, then such Declarant's rights that apply or are exercisable only during the Development Period automatically shall be deemed to have been assigned to the remaining Declarant(s).

Section 16.7 - Severability

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

Section 16.8 - Litigation

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

(b) Pursuant to Ohio Revised Code Section 5312.13, the Association and all Owners, Occupants, tenants, and other persons lawfully in possession and control of any part of an Ownership Interest shall comply with any covenant, condition, and restriction set forth in any recorded document to which they are subject, including this Declaration and the Code, as lawfully amended and with the Rules, as lawfully amended. Any violation is grounds for the Association or any Owner to commence a civil action for damages, injunctive relief, or both, and an award of court costs and reasonable attorney's fees in both types of action.

(c) Pursuant to Ohio Revised Code Section 5312.14, in any action relating to the Common Areas, or to any right, duty, or obligation possessed or imposed upon the Association by statute or otherwise, the Association may sue or be sued as a separate legal entity. Service of summons or other process may be made upon the Association by serving the process personally upon the president of the Board or the Person named as statutory agent of the Association. Any action brought by or on behalf of the Association shall be pursuant to authority granted by the Board.

(d) The Association shall not have the power to institute, pursue, join, intervene in, settle or compromise litigation, arbitration or other proceedings: (i) in the name of or on behalf of any Owner (whether one or more); or (ii) pertaining to a claim relating to the design, construction or repair of a Dwelling Unit, a Sublot or any improvements on a Sublot (other than a Claim (as defined below)). This Section 16.8(d) may not be amended or modified without Declarant's written and acknowledged consent and the consent of Class "A" Members entitled to cast at least one hundred percent (100%) of the total number of votes of the Association, both of which must be part of an instrument recorded with the County.

Section 16.9 - Validity of Mortgages

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

Section 16.10 - Amendment of Declaration

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

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

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

(b) This Declaration may also be amended or modified by Original Declarant or the Association at any time and from time to time for the purpose of: (1) complying with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public entity, or private insurance company which performs (or may in the future perform) functions similar to those currently performed by such entities; or (2) inducing any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages; or (3) correcting clerical or typographical or obvious factual errors in this Declaration or any Exhibit hereto or any supplement or amendment hereto; or (4) complying with the underwriting requirements of insurance companies providing casualty insurance, liability insurance or other insurance coverages for the Association; or (5) bringing any provision hereof into compliance or conformity with the provisions of any applicable governmental statute, ordinance, rule or regulation or any judicial determination; or (6) correcting obvious factual errors within this Declaration and other documents governing the Property and correcting any inconsistencies between this Declaration and other documents governing the Property, the correction of which would not materially impair the interest of any Owner or Eligible Mortgage Holder; or (7) enabling a title insurance company to issue title insurance coverage with respect to the Property or any portion thereof; or (8) complying with the requirements of the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and the Ohio Environmental Protection Agency. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant and/or to the Board to vote in favor of, make, or consent to a Subsequent Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting any portion of the Property and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of the power to the Original Declarant to vote in favor of, make and record a Subsequent Amendment. To effect said amendment, Original Declarant shall file a supplement to the Declaration setting forth the Subsequent Amendment which shall be signed by Original Declarant and shall be effective upon the filing of the Subsequent Amendment with the County.

(c) Original Declarant shall have the right to amend this Declaration at any time and from time to time during the Class 'B' Control Period.

(d) Except as expressly provided in this Declaration, and after expiration of the period set forth in (a) of this Article, 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 at least a majority of the voting power of the Class "A" Members unless a greater percentage of vote is required pursuant to this Declaration or in accordance with the Act or other statutes of the State of Ohio; provided, however, that any amendment which would terminate or materially affect the easements set forth in Article III of this Declaration shall not be amended (except as expressly provided in this Declaration) unless all Persons whose rights are terminated or materially affected shall affirmatively consent in writing to such amendment; provided further, that any amendment affecting the rights of Declarant in this Declaration shall not be effective without the prior written consent of Declarant; and provided further, no amendment may increase the financial burden of an Owner without the prior written consent of such Owner. Written notice shall be given each Member at least ten (10) days in advance of the date of the meeting held for the purpose of amending this Declaration, which notice shall expressly state the modification to be considered at such meeting. Each amendment shall be effective when signed by the President and one other officer of the Association, signed by the Declarant if the amendment affects the rights of the Declarant, and filed for record with the County.

(e) No amendment shall limit any right granted to the Township in this Declaration without the consent of the Township.

(f) A vote to terminate the applicability of this Declaration and to dissolve the Association requires the unanimous consent of Owners.

(g) Notwithstanding anything to the contrary contained herein, during the period of time in which Pulte is a Builder on the Property, no amendment to this Declaration shall be effective unless and until Pulte approves such amendment, in writing.

Section 16.11 - Interest Rates

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

Section 16.12 - Headings

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

Section 16.13 - Gender

The use of the masculine gender herein or in the Code shall be deemed to include the feminine and neutral genders, as the case may be, and the use of singular shall be deemed to include the plural, wherever the context so requires.

Section 16.14 – Liberal Interpretation

The provisions of this Declaration shall be liberally interpreted to effectuate its purpose of the development and operation of a first-class residential community.

Section 16.15 - Rule Against Perpetuities

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

Section 16.16 – Security

Each Owner and resident of a Sublot, and their respective guests and invitees, shall be responsible for their own personal safety and the security of their property within the Property, and the Common Areas. The Association may, but shall not be obligated to, maintain or support certain activities within the Property or the Common Areas designed to promote or enhance the level of safety or security which each person provides for himself or herself and his or her property. HOWEVER, NEITHER THE ASSOCIATION, A BUILDER NOR THE DECLARANT NOR THE DIRECTORS, EMPLOYEES, OR AGENTS OF SUCH ENTITIES SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SAFETY OR SECURITY WITHIN THE PROPERTY OR THE COMMON AREAS, NOR SHALL THEY BE HELD LIABLE FOR ANY LOSS OR DAMAGE ARISING FROM OR RELATED TO AN OWNER'S OR RESIDENT'S, OR THEIR RESPECTIVE GUEST'S AND INVITEE'S, PRESENCE IN OR USE OF ANY IMPROVEMENTS ON THE PROPERTY, INCLUDING BUT NOT LIMITED TO ANY OF THE COMMON AREA OR IMPROVEMENTS THEREIN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SYSTEMS OR MEASURES, INCLUDING SECURITY MONITORING SYSTEMS, WALLS AND GATES CANNOT BE COMPROMISED OR CIRCUMVENTED; OR THAT ANY SUCH SYSTEM OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS, AND SHALL BE RESPONSIBLE FOR INFORMING ANY RESIDENTS OF SUCH OWNER'S SUBLOT THAT NEITHER THE ASSOCIATION, A BUILDER NOR THE DECLARANT, NOR THE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, AND COMMITTEES OF SUCH ENTITIES, ARE INSURERS OR GUARANTORS OF SECURITY OR SAFETY AND THAT EACH PERSON WITHIN THE PROPERTY AND THE COMMON AREAS ASSUMES ALL RISKS OF PERSONAL INJURY AND LOSS OR DAMAGE TO PROPERTY RESULTING FROM ACTS OF THIRD PARTIES, INCLUDING BUT NOT LIMITED TO ANY DAMAGE OR LOSS TO ANY RESIDENCES OR IMPROVEMENTS CONSTRUCTED UPON ANY SUBLOT AND THE CONTENTS LOCATED THEREIN.

Section 16.17 – Privacy

While the Association may adopt policies or procedures designed, directly or indirectly, to support the privacy of persons, property and/or data, the Association shall have no obligation to do so, and each Owner, resident and occupant agrees and accepts the Association does not guarantee the privacy of any person or his or her property or data. TO THE MAXIMUM EXTENT PERMITTED BY LAW, NEITHER THE ASSOCIATION, A BUILDER NOR THE DECLARANT SHALL HAVE ANY DUTY OF ANY KIND, EXPRESS OR IMPLIED, TO PROTECT THE PRIVACY OF ANY OWNER, RESIDENT OR OCCUPANT, INCLUDING WITHOUT LIMITATION THE PRIVACY OF HIS OR HER PERSON, PROPERTY OR DATA, AND EACH OWNER, RESIDENT AND OCCUPANT RELEASES THE ASSOCIATION AND DECLARANT AND THEIR RESPECTIVE BOARD MEMBERS, OFFICERS, EMPLOYEES AND AGENTS FROM ANY LIABILITY, RESPONSIBILITY AND DAMAGE OF EVERY KIND RELATING TO PRIVACY OR A BREACH, LOSS OR INVASION OF PRIVACY.

Section 16.18 – Adjacent Land Use

Although this Declaration may contain disclosures about the Property or its location on the date of this Declaration, Declarant makes no representation that these are the only noteworthy features of the Property or its location. A prospective owner or resident must make his own inspection of the Property, its location and nearby land uses, and make inquiries of anything that concerns him. Declarant makes no representation of any kind as to current or future uses, actual or permitted, of any land that is adjacent to or near the Property, regardless of what any plat, plan or drawing shows as potential uses of adjoining land. Declarant and the Association cannot and do not guaranty scenic views, volumes of traffic on streets around and through the Property, availability of schools or shopping, or any other aspect of the Property that is affected by the uses or conditions of adjacent or nearby land, water or air. No sales agent, realtor or other party has the authority to make any representation on behalf of Declarant.

ARTICLE XVII **DISPUTE RESOLUTION**

Section 17.1 – Dispute Resolution

(a) **Introduction.** This Article is intended to encourage the resolution of certain disputes that may involve or affect the Association, its Members and/or the Property. Such disputes may create significant financial exposure for the Association and its Members, affect each Member's use and enjoyment of their Sublot and the Common Areas, interfere with the resale and refinancing of Sublots, and cause strife and tension among Members, the Board and the Association's management. Accordingly, this Article requires transparency and, in certain circumstances, Owner participation. Transparency means that inspection reports concerning Common Areas related to a dispute are prepared by an independent, professional engineer free from improper influence, and Owners are informed in advance about certain disputes and proposed arrangements between the Association and a law firm or attorney who may represent

the Association in the dispute. Owner participation means that in certain situations Owners will have an opportunity to participate in the decision-making process regarding whether the Association should pursue a claim and engage an attorney or law firm for that purpose.

(b) **Agreement to Resolve Disputes; Application; Definitions.** The Association, Owners, a Builder, the Declarant, all persons subject to this Declaration, and each person not otherwise subject to this Declaration who agrees to submit to this Article by written instrument delivered to a Claimant (defined below), which may include, but is not limited to, a Builder, a general contractor, sub-contractor, or design professional (individually, a "Party" and collectively, the "Parties"), agree to encourage the amicable resolution of disputes covered by this Article to avoid the costs of litigation and arbitration if at all possible. Accordingly, each Party agrees to be subject to the requirements of this Article and agrees this Article applies to all Claims (as defined below). The following words, when capitalized, have the following meanings:

"Claim" means any claim, cause of action, grievance or dispute:

- (i) relating to the rights and/or duties of the Association, the Board, the Design Review Committee or the Declarant under the Governing Documents;
- (ii) relating to the acts or omissions of the Association, the Board, any Board member, any officer of the Association, or the Design Review Committee; any acts or omissions of the Declarant during the Class 'B' Control Period and administration of the Board or the Design Review Committee; or any exercise by Declarant of any rights of Declarant under the Governing Documents, including but not limited to relating to budgets, reserves, assessments, contributions, deficit funding, expenditures, claims of financial guarantees and other financial and accounting matters; or
- (iii) relating to the design, construction, repair, alteration or maintenance, or warranty with respect thereto, of the Common Areas or Areas of Common Responsibility or any improvements located thereon (a "Common Area Claim").

"Claimant" means any Party having a Claim against any other Party.

"Respondent" means any Party against which a Claim has been or may be asserted by a Claimant.

Notwithstanding the foregoing, a Claim does not include and this Article does not apply to (i) a claim by the Association for assessments or any action by the Association to collect Assessments, (ii) any action to enforce the easements, architectural control, maintenance and use restrictions or rules contained in this Declaration or the other Governing Documents, or (iii) a claim for or related to injuries to or the death of a person. Notwithstanding anything contained in this Article, any claim brought by an Owner related to the design or construction of a Dwelling Unit, a Sublot or an improvement on a Sublot will not be subject to this Article, but will be governed exclusively by the express or implied warranty provided by the Builder or contractor which constructed such dwelling or improvement and any other agreements between the Owner

of such Sublot (or its predecessor in title) and such Builder or contractor.

Section 17.2 - Mandatory Procedures

A Claimant may not initiate, participate in or maintain any proceeding before any judge, jury, arbitrator or any judicial or administrative tribunal seeking redress or resolution of a Claim until the Claimant has complied with the applicable procedures of this Article. As provided in Section 17.5 below, all Claims not resolved through negotiation must be submitted to mediation. As provided in Section 0 below, all Claims not resolved through negotiation or mediation must be resolved by binding arbitration.

Informal Resolution of Claims

The Parties are encouraged to informally communicate to amicably and efficiently resolve disputes. A Claimant is not required to follow the mandatory procedures in this Article unless a Claim is not resolved and the Claimant desires to pursue a Claim and initiate a proceeding described in Section 0 above.

Common Areas

Prior to pursuing a Common Area Claim, the Association (or an Owner if determined allowed by the jurisdiction) must comply with the requirements of Section 0 below.

Section 17.3 - Notice of Claim

To pursue a Claim, a Claimant must send each Respondent written notice of the Claim (the "Notice") stating plainly: (i) the nature of the Claim, including date, time, location, persons involved and Respondent's role in the Claim; (ii) the basis of the Claim (i.e., the provision of the Governing Documents or other authority from which the Claim arises or which supports the Claim); (iii) what Claimant wants Respondent to do or not do to resolve the Claim; and (iv) that the Notice is given pursuant to this Section 0 of this Declaration. If the Claim is a Common Area Claim, the Notice must also include a signed resolution of the Board confirming that Members holding a majority of the total votes in the Association approved pursuing the Claim in accordance with Section 17.9(c) below. The Notice must be sent to each Respondent via certified mail, return receipt requested.

Section 17.4 - Negotiation

Within sixty (60) days after Respondent's receipt of the Notice, Respondent and Claimant will meet at a mutually acceptable place and time in an effort to resolve the Claim by good faith negotiation. If the Claim involves or may affect any portion of the Property, then at such meeting or another mutually-agreeable time, Respondent and its representatives will be given access to, and the opportunity to inspect, such portions of the Property.

Section 17.5 - Mediation

If the Parties do not resolve the Claim through negotiation within one-hundred twenty (120) days after the date of the Notice (or within such other period as may be agreed on by the Parties), either Claimant or a Respondent may submit the Claim to mediation with the assistance of a mediator on which the parties mutually agree. The mediator must have at least five (5) years of experience serving as a mediator and with expertise appropriate to the subject matter of the Claim. If the Parties do not settle the Claim within thirty (30) days after submission to mediation, either Respondent or Claimant may initiate arbitration proceedings in accordance with Section 17.6.

Section 17.6 - Arbitration

Claims not resolved through negotiation and mediation must be resolved by binding arbitration as provided below. However, Claimant or Respondent may bring an action in court seeking injunctive relief to preserve the status quo and prevent irreparable harm, seeking relief that would otherwise be unavailable in arbitration, or to compel arbitration of any Claim not referred to arbitration as required by this Section 17.6.

(a) **Governing Rules.** If a Claim has not been resolved after mediation in accordance with Section 0, the Claim will be resolved by binding arbitration pursuant to the Federal Arbitration Act ("FAA") conducted in accordance with the applicable rules of the American Arbitration Association ("AAA"). If the Claim is a Common Area Claim, then those rules shall be the AAA's Construction Industry Arbitration Rules and Mediation Procedures. The periods of limitation under applicable law shall apply to any Claim and arbitration proceeding under this Article. In the event of any inconsistency between the applicable AAA rules and this Section 17.6, this Section 17.6 will control. The decision rendered by the arbitrator shall be binding and, except as provided below, not subject to appeal, but may be reduced to judgment or enforced in any court having jurisdiction.

(b) **Award.** To resolve Claims, the arbitrator may grant any remedy or relief the arbitrator deems just and equitable; provided, however, the arbitrator's decision and award must be in accordance with applicable law and may not violate this Section 17.6 or Section 17.7 below. In each proceeding, the arbitrator shall make specific, written findings of fact and conclusions of law. **In no event may an arbitrator award speculative, consequential, indirect, special, exemplary, treble or punitive damages for any Claim.** In addition to any right of appeal or review under the FAA or applicable AAA rules, any Party may appeal or seek vacation or modification of an award that is based in whole or in part on: (i) factual findings that have no legally or factually sufficient evidence, as those terms are defined under applicable law; (ii) conclusions of law that are erroneous; (iii) an error of applicable law; or (iv) a cause of action or remedy not expressly provided under applicable law.

(c) **Other Matters.** To the maximum extent practicable, an arbitration proceeding hereunder shall be concluded within one hundred and eighty (180) days after the filing of the Claim for arbitration. Arbitration proceedings hereunder shall be conducted in the County. Any Party to a Claim shall have the right to join in the proceedings any contractor, subcontractor, supplier or design professional involved in the design or construction of improvements that are the subject of the Claim. Except as otherwise provided by this Section

17.6 or 17.7, the arbitrator may impose sanctions and take other actions as the arbitrator deems necessary to the same extent a judge could do so pursuant to applicable law. Claimant and each Respondent agree to keep all Claims and arbitration proceedings strictly confidential, except for disclosures of information required in the ordinary course of business of the parties or by applicable law. In no event shall a Party discuss a Claim with the news media or issue a press release regarding a Claim without the written consent of all other parties to the Claim.

Section 17.7 - Costs

Except as provided in the following sentence, each Party shall bear all of its own costs incurred in bringing or responding to a Claim or otherwise complying with the dispute resolution process contained in this Article, including without limitation its attorney's fees and costs, and none of such costs may be allocated or awarded to either Party by an arbitrator. If Claimant files an action in a court of law prior to complying with the applicable dispute resolution procedures in this Article, then Claimant shall reimburse the other Parties for the costs, including attorneys' fees, of dismissing or staying such action. Claimant and each Respondent will equally divide all expenses and fees charged by the mediator and arbitrator.

Section 17.8 - Funding Association Claims

If the Association intends to pursue a Claim and a reasonable estimate of the attorneys' fees, inspection costs, consultant and expert fees, arbitration fees and other costs that may be incurred as a result of prosecuting the Claim (whether incurred by the Association directly or for which the Association may be liable) exceeds \$10,000, then the Association must levy a special assessment to fund the estimated costs to pursue and resolve such Claim in accordance with this Article. The Association may not use its annual operating income or reserve funds to fund the costs to pursue and resolve a Claim, but the Association may use a previously established and funded dispute resolution fund.

Section 17.9 - Claims Relating to Common Areas

The Association does not have the power or right to institute, pursue, join, defend, intervene in or settle litigation, arbitration or other proceedings (i) in the name of or on behalf of an Owner (whether one or more) or (ii) pertaining to a claim relating to the design or construction of a Dwelling Unit, a Sublot, or any improvements on a Sublot (other than a Claim relating to Common Areas on one or more Sublots). Each Owner, by accepting an interest in or title to a Sublot, grants and assigns to the Association the exclusive right to institute, pursue, join, defend, intervene in and settle litigation, arbitration or other proceedings relating Common Area Claims. If the Association desires to assert a Common Area Claim, as a precondition to providing the Notice required by Section 17.3 and initiating the mandatory dispute resolution procedures set forth in this Article, the Association must comply with subsections (a), (b) and (c) below:

(a) **Obtain a Common Area Report.** The Association must obtain a written report (the "**Common Area Report**") prepared by an independent professional engineer licensed by the state in which the Property is located with an office located in the County (the "**Inspection Company**") assessing the condition of the Common Areas which are the subject of

the Claim. *The requirements for the Common Area Report are intended to provide assurance to the Association, Owners and Respondents that the report was prepared by an independent professional and the substance, conclusions and recommendations contained in the report have not been affected by improper influences or influences that could have compromised the professional judgment of the party preparing the report.* The Common Area Report must include: (i) a description and photographs of the Common Areas which are the subject of the Claim and its present condition; (ii) a description of any modifications, maintenance, or repairs to same performed by any party; and (iii) if the report identifies deficient or defective conditions, a detailed description of any recommended repairs, including the specific process, procedures and materials required to repair such deficient or defective conditions, and the estimated costs to effect such repairs. Such estimated repair costs shall be obtained from independent, third-party contractors, each with an office located in the County and holding all licenses required by applicable law to perform the recommended repair work. The Common Area Report must be an "independent" report obtained directly by the Association, which means: (i) the Inspection Company may not have an arrangement or agreement to provide consulting and/or engineering services with a law firm or attorney that presently represents or proposes to represent the Association; (ii) the costs to prepare the Common Area Report must be paid directly by the Association to the Inspection Company at the time the Common Area Report is completed and delivered to the Association; and (iii) a law firm or attorney that presently represents or proposes to represent the Association may not have agreed, conditionally or unconditionally, to reimburse the Association for the cost of the Common Area Report.

(b) **Provide Notice of the Defective Condition and Opportunity to Inspect and Repair.** Within thirty (30) days after the Association receives the Common Area Report, the Association must send each Respondent a written notice of the Common Area Claim identifying in reasonable detail each deficient or defective condition in the Common Areas that is the subject of the Claim, together with a complete copy of the Common Area Report and any other report, study, analysis and recommendation obtained by the Association relating to the Common Areas the subject of the Claim. Such notice must be sent to each Respondent via certified mail, return receipt requested, or via overnight delivery service with proof of delivery. From the date of receipt of such notice and for ninety (90) days thereafter, each Respondent shall have the right to: (a) inspect any condition identified in the Common Area Report as defective or deficient; (b) contact the Inspection Company for additional information needed to clarify any finding or statement in the Common Area Report; and (c) repair or correct any one or more of the conditions identified as being defective or deficient (if a Respondent commences the repair or correction of one or more conditions identified as being defective or deficient, the Respondent shall have the time reasonably necessary to complete such repair or correction). As provided above, the Declarant has an easement throughout the Property for itself, its successors, assigns, architects, engineers, design professionals, each Builder and their contractors that may be utilized to correct any such conditions identified in the Common Area Report.

(c) **Obtain Approval of Owners to Pursue Claim.** *The requirements related to Owner approval are intended to ensure the Owners are fully informed of and approve the potential costs the Association and Owners may incur in prosecuting a Common Area Claim, the time that prosecuting such a claim may take, and the financial and other effects that prosecuting such a claim may have on the Association and its Owners.*

Accordingly, the Association must obtain the approval of Members holding a Majority of the total number of votes entitled to be cast by all Members of the Association at a meeting of the Members called in accordance with the Bylaws to provide the Notice described in Section 17.3, initiate the mandatory dispute resolution procedures set forth in this Article, or take any other action to prosecute a Common Area Claim. The notice of such meeting must include (in addition to any requirements set forth in the Code): (i) a description of the Common Area Claim, the relief sought, an estimate of the time it will take to prosecute the Claim and the likelihood of success; (ii) a copy of the Common Area Report; (iii) an estimate of the attorney fees, consultant fees, expert fees, arbitration fees and other costs that may be incurred as a result of prosecuting the Claim, whether incurred by the Association directly or for which the Association may be liable; (iv) a summary of the steps previously taken by the Association to resolve the Claim; (v) a statement that initiating arbitration or any legal action to resolve the Claim may affect the market value, marketability, or refinancing of a Sublot while the Claim is being prosecuted; and (vi) a description of the manner in which the Association proposes to fund the cost of prosecuting the Claim. The notice required by this paragraph must be prepared and signed by a person who is not the attorney or member of the law firm who represents or is proposed to represent the Association with respect to the Claim, or retained or employed by or otherwise affiliated with the law firm of the attorney who represents or is proposed to represent the Association with respect to the Claim. If the Members so approve pursuing the Common Area Claim, Members holding a majority of the votes in the Association, at a special meeting called in accordance with the Code, may elect to discontinue pursuit of the Claim.

If the Association desires to engage or execute an agreement with a law firm or attorney to investigate or prosecute a Common Area Claim, then the Members should be informed of, and have the opportunity to approve, the financial arrangements between the Association and the law firm or attorney proposed to be engaged. Among other financial arrangements, the engagement agreement between the Association and the law firm or attorney could require the Association to pay fees and expenses to the law firm or attorney which will be paid through Assessments levied against Owners, or may require the Association to pay fees and expenses if the relationship between the Association and the law firm or attorney is terminated, if the Association elects not to engage the law firm or attorney to prosecute the Claim, or if the Association agrees to settle the Claim. Such financial obligations could have a significant effect on the Association and its Members. Accordingly, before the Association engages or executes an agreement with a law firm or attorney to investigate or prosecute a Common Area Claim, the law firm or attorney and the financial arrangements and agreements between the Association and the law firm or attorney (collectively, an "Engagement Agreement") must be approved by Members holding a majority of the total number of votes entitled to be cast by all Members of the Association at the meeting of the Members described in the preceding paragraph. In that case, the meeting notice to the Members must also include: (a) the name of the law firm and attorney; (b) a copy of the Engagement Agreement; (c) an estimate of the fees and expenses that may be required to be paid by the Association under the Engagement Agreement; (d) the conditions upon which such fees and expenses may be required to be paid by the Association; and (e) a description of the process the law firm or attorney will use to evaluate the Claim and whether destructive testing will be required (i.e., the removal of portions of the Common Areas or improvements on the Property). If destructive testing will be required or is likely to occur, the notice shall contain (i) a description of the destructive testing, (ii) the likely locations of the destructive testing, (iii)

whether the Owners' use of their Sublot or any Common Areas will be interrupted or affected by such testing, (iv) the means or methods the Association will use to repair the Common Area or improvements affected by such testing, and (v) the estimated costs for such testing and repairs, along with an estimate of the assessments that may be levied against the Owners to pay for the costs of such testing and repairs. Unless approved by the Members as provided above, the Association shall not have the authority to enter into, and shall not enter into, an Engagement Agreement with a law firm or attorney to investigate or prosecute a Common Area Claim. All Engagement Agreements must be in writing. Neither the Board nor any officer of the Association shall have the authority to pay any fees, expenses or other charges to a law firm or attorney relating to evaluating, investigating or asserting a Common Area Claim unless same is pursuant to a written Engagement Agreement approved by the Owners in accordance with this Section.

Section 17.10 - Claims by Owner(s) Relating to Common Areas

Pursuant to Section 0 above, an Owner does not have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Areas. In the event that a court of competent jurisdiction or arbitrator determines that an Owner does have the power or right to institute, defend, intervene in, settle or compromise litigation, arbitration or other proceedings relating to the design or construction of the Common Areas, since a Claim affecting the Common Areas could affect all Owners, such Owner shall be required, as a precondition to providing the Notice defined in Section 17.3, initiating the mandatory dispute resolution procedures set forth in this Article, or taking any other action to prosecute such a Claim, to comply with the requirements of Section 17.9(a) – (c). Additionally, class action proceedings are prohibited, and no Owner shall be entitled to prosecute, participate, initiate, or join any litigation, arbitration or other proceedings as a class member or class representative in any such proceedings under this Declaration.

ARTICLE XVIII **HOME CONSTRUCTION CLAIMS**

Section 18.1 - Claims Relating to Dwelling Units and Sublots.

EACH OWNER (WHICH INCLUDES WITHOUT LIMITATION EACH SUBSEQUENT PURCHASER OF A SUBLLOT), BY ACCEPTING AN INTEREST IN OR TITLE TO A SUBLLOT, AGREES THAT ALL CLAIMS AND CAUSES OF ACTION THAT SUCH OWNER MAY HAVE RELATING TO THE ORIGINAL DESIGN OR CONSTRUCTION OF SUCH OWNER'S DWELLING UNIT, SUBLLOT, OR ANY IMPROVEMENT ON SUCH OWNER'S SUBLLOT (OTHER THAN COMMON AREAS ON ONE OR MORE SUBLLOTS), INCLUDING WITHOUT LIMITATION CLAIMS BASED ON ANY EXPRESS OR IMPLIED WARRANTIES (COLLECTIVELY, "HOME CONSTRUCTION CLAIMS"), WILL BE GOVERNED EXCLUSIVELY BY THE TERMS AND CONDITIONS OF THE EXPRESS OR IMPLIED WARRANTY PROVIDED BY THE BUILDER OR CONTRACTOR WHICH CONSTRUCTED SUCH DWELLING UNIT OR IMPROVEMENT AND ANY OTHER AGREEMENTS

BETWEEN THE INITIAL PURCHASER OF SUCH DWELLING UNIT AND SUCH BUILDER OR CONTRACTOR, INCLUDING WITHOUT LIMITATION ALL PROCEDURES AND AGREEMENTS CONTAINED THEREIN PERTAINING TO THE RESOLUTION OF DISPUTES. WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, EACH OWNER (WHICH INCLUDES WITHOUT LIMITATION EACH SUBSEQUENT PURCHASER OF A SUBLLOT), BY ACCEPTING AN INTEREST IN OR TITLE TO A SUBLLOT, ASSUMES THE TERMS AND CONDITIONS OF THE EXPRESS OR IMPLIED WARRANTY PROVIDED BY THE BUILDER OR CONTRACTOR WHICH CONSTRUCTED THE DWELLING UNIT OR IMPROVEMENT, AND, UNLESS THE EXPRESS WARRANTY OR CONTRACT PROVIDED BY SUCH BUILDER OR CONTRACTOR CONTAINS OTHER PROCEDURES TO RESOLVE HOME CONSTRUCTION CLAIMS, SPECIFICALLY AGREES TO THE FOLLOWING:

(a) **Agreement to Arbitrate Home Construction Claims.** ALL HOME CONSTRUCTION CLAIMS SHALL BE RESOLVED BY BINDING ARBITRATION. This means each Owner (which includes without limitation each subsequent purchaser of a Sublot) and the other parties involved in the Home Construction Claim GIVE UP THE RIGHT TO GO TO COURT OR TO A JURY to assert or defend Home Construction Claims (EXCEPT for matters that may be taken to SMALL CLAIMS COURT as provided below). Home Construction Claims will be determined by a NEUTRAL ARBITRATOR and NOT by a judge or jury. The parties to each Home Construction Claim will be entitled to a FAIR HEARING, but the arbitration procedures are simpler and more limited than the rules applicable in a court. The arbitrator's decision will be final and binding, subject to appeal as described below. Arbitrator decisions are as enforceable as any court order and are subject to very limited review by a court. For more information, read the provisions regarding arbitration below, review the American Arbitration Association's Home Construction Arbitration Rules and related information at www.adr.org, call the American Arbitration Association at 1-800-778-7879; and consult an attorney if you so choose. Alternatively, if the Home Construction Claim does not exceed the maximum jurisdictional amount for a small claims court in the state where the Sublot is located, a party involved in a Home Construction Claim may elect to have the claim resolved in a small claims court rather than by binding arbitration (however, any appeal of a small claims court judgment must be resolved through arbitration in accordance with this Article).

(b) **Applicable Law.** The original construction and sale of each Dwelling Unit was a transaction involving interstate commerce. The Federal Arbitration Act (the "FAA") shall govern the interpretation and enforcement of this agreement to arbitrate Home Construction Claims. Even if a part of these arbitration provisions is determined to be unenforceable under applicable law, the remainder shall survive, and the parties shall remain obligated to resolve Home Construction Claims through binding arbitration as set forth herein.

(c) **Arbitrator – American Arbitration Association.** The arbitration shall be conducted before an arbitrator appointed by the American Arbitration Association (the "AAA"). If the AAA declines to arbitrate a Home Construction Claim, or if the AAA is not available, the parties will agree to an alternative arbitrator, or have a court appoint a new arbitrator who meets

the qualification criteria of an AAA-trained arbitrator and has at least ten (10) years of construction arbitration experience.

(d) **Arbitration Rules.** The arbitration shall proceed in accordance with the AAA's Home Construction Arbitration Rules. If those rules have been repealed or replaced at the time the arbitration claim is filed, the AAA's rules then most applicable to residential construction shall apply. However, each builder or contractor will be entitled to visually inspect and perform testing as to any component claimed to have a construction defect and no AAA rule shall apply if it is inconsistent with the provisions of this Declaration.

(e) **Additional Parties or Claims.** Each party to a Home Construction Claim may join as a party to the arbitration any third-party consultant, contractor, supplier, manufacturer, engineer, architect or other professional involved in the manufacture, design or construction of any part of the Dwelling Unit, Sublot or improvement on the Sublot. Except as provided above, each Home Construction Claim shall be between only the then Owner of a Dwelling Unit or Sublot and the Builder, Contractor and other parties involved in manufacture, design or construction of any part of such Dwelling Unit or improvements on such Sublot and shall not be joined or consolidated with the claims or arbitration of any other party, and the arbitrator is not authorized to permit any consolidation or joinder with any other party. Each Owner and subsequent purchaser of a Sublot waives the right to institute or participate in a class or any other type of representative arbitration or any type of legal action as a member or representative of a class for any Home Construction Claim and agrees the arbitrator is not authorized to permit any class or representative arbitration.

(f) **Arbitration Process.** A party seeking to resolve a Home Construction Claim shall begin the arbitration process by filing a demand for arbitration with the AAA and serving a copy of the demand on the other party. The failure to initiate arbitration at any particular time shall not be considered a waiver of the right to compel arbitration of a Home Construction Claim. The only way this right to arbitrate claims may be waived is by a written agreement among the parties. To the extent not inconsistent with the FAA, all provisions of this paragraph are subject to the general qualification that state laws, requirements and rules, including, but not limited to, state filing limitations (such as statute of limitations and statutes of repose), may affect how and when arbitration may be initiated and administered. The following is a brief description of the steps to initiate arbitration and the arbitration process:

(1) **Step 1 – Filing a Request.** The party initiating arbitration must notify the AAA in writing of the request for arbitration under the terms of this Agreement. If a Builder or contractor initiates arbitration, such Builder or contractor will pay the AAA's filing fee. If an Owner (including a subsequent purchaser of a Sublot) initiates arbitration, such Owner will pay the lesser of 1/2 of the AAA filing fee or the amount provided by the AAA rules and the Builder or contractor will pay the other 1/2 or remainder. All other AAA arbitration fees and costs shall be paid in accordance with the applicable AAA fee schedule.

(2) **Step 2 - Hearing.** The arbitration will be held at a location agreed to by the parties, usually in the metropolitan area where the Property is located. The hearing typically will be scheduled by the arbitrator at a time mutually agreeable to all parties. At the

hearing, the arbitrator will hear and consider evidence presented by all parties. If a party timely notifies the AAA of a request for a record of the hearing prior to the earlier of the hearing date or the date in the AAA's rules, if specified, the arbitrator will preserve all evidence presented at the arbitration. Oral evidence will be preserved in a manner that it can be converted into a written transcript. The costs of the record will be paid by the party requesting the record or shared equally among the parties requesting a copy.

(3) **Step 3 - Award.** The arbitrator's award will decide the relief to be awarded and, if requested by a party, the scope and manner of correction. The arbitrator's award shall be consistent with this agreement, based on applicable law (except to the extent the FAA overrides and preempts state, local or other law), and shall include findings of fact and conclusions of law. If permitted by the AAA rules, either party may request a written explanation of the award. Each party shall bear its own attorney's fees and expenses (including without limitation the costs and fees of any expert witnesses) in the arbitration, any confirmation proceeding and any appeal. Arbitrator compensation, expenses, and administrative fees (which include filing and hearing fees) shall not be subject to reallocation.

(i) **Appeal.** Each party shall have the right to appeal the arbitrator's award to the AAA by filing a written notice with the AAA (with a copy to the other party) within 30 days of the date of the arbitrator's award. The party appealing the award shall pay the fees necessary to initiate the appeal. If both sides appeal, the fees shall be split 50/50. The notice of appeal must include the specific items the party seeks to change in the award and the supporting facts and law. The appeal shall be heard by a panel of three arbitrators from the AAA. The appeal shall be conducted in accordance with the applicable rules of the AAA and this agreement as if the claim was being initially filed with the AAA, except that: (i) the only issues to be determined on appeal are the issues described in the notice of appeal and any issues raised by the non-appealing party in response to the issues in the notice of appeal, (ii) the arbitrators' award on appeal shall be final, binding and non-appealable, and (iii) no new evidence shall be accepted or considered by the arbitrators.

(ii) **Award after Appeal.** The award of the arbitrator shall be final, subject to appeal as provided above. If a notice of appeal from the initial hearing is not received by the AAA within 30 days after the date of the initial award, then the initial award shall be final. Once the award is final, it will be binding on and enforceable against the parties, except as modified, corrected, or vacated according to the applicable arbitration rules and procedures or to the extent not inconsistent with the FAA or applicable state law. Either party may present the final award to any court having jurisdiction over the Home Construction Claim to enter that award as a judgment of the court.

(4) **Step 4 - Repairs.** Unless designated otherwise in the award (and unless appealed), any party ordered to perform a correction to the Dwelling Unit or Sublot will, within 10 days after a final award, elect to either perform the correction awarded by the arbitrator or, at such party's option, pay the Owner of the Dwelling Unit or Sublot the reasonable cost of such correction. If such party elects to perform a correction under an award, such party will complete the correction within 60 days after a final award or as may be specified by the arbitrator. If the correction cannot be completed in that time, the arbitrator must grant reasonable

additional time to make the correction. If the Owner believes that the correction was not performed satisfactorily or in a timely manner, such Owner may have those issues determined in a later arbitration. If the cost of correction is not specified in the award and party ordered to perform a correction elects to pay the Owner the reasonable cost of the correction, such Owner may have the amount of that payment reviewed in a later arbitration.

(g) **Expenses.** Except as stated above, each party shall bear its own attorney's fees and other expenses incurred in connection with a Home Construction Claim. However, if a party to such a claim files a court action in violation of this Article and the other party is required to compel arbitration by filing a motion with the court, the court shall award the moving party its court costs and reasonable attorneys' fees incurred in connection with the motion.

LIKE ALL COVENANTS CONTAINED IN THIS DECLARATION, THE AGREEMENTS CONTAINED IN THIS ARTICLE ARE COVENANTS RUNNING WITH TITLE TO EACH SUBLLOT, CONCERN EACH SUBLLOT AND THE DWELLING UNIT AND OTHER IMPROVEMENTS ON SUCH SUBLLOT, AND SHALL BE BINDING UPON EACH SUCCESSIVE OWNER OF A SUBLLOT (WHICH INCLUDES WITHOUT LIMITATION EACH SUBSEQUENT PURCHASER OF A SUBLLOT).

ARTICLE XIX **BULK RATE CONTRACTS**

Section 19.1 – Community Systems

The Declarant may provide, the Declarant may enter into and assign to the Association contracts with other persons to provide, or the Association may provide or enter into contracts with other persons to provide, telecommunications receiving and distribution systems (e.g., cable television, video entertainment, data/Internet/Intranet services, telephone, and security monitoring) and related components, including associated wiring, lines, antennae, towers, satellite dishes and other infrastructure, equipment, hardware, and software, to serve the Community, including those based on and containing and serving future technology not now known (collectively, “**Community Systems**”). Such contracts may provide for installation, operation, management, maintenance and upgrades or modifications to the Community Systems. The Owner of each Dwelling Unit shall be responsible for ensuring that such Dwelling Unit is wired to connect to any Community Systems or to receive any such service.

Section 19.2 – Community Services

The Declarant may provide, the Declarant may enter into and assign to the Association contracts with other persons to provide, or the Association may provide or enter into contracts with other persons to provide, services to Owners and their Dwelling Units or Sublots. By way of example and not limitation, such services might include such things as cable television, telephone, Internet, community technology, utilities, fire protection, security, trash collection, lawn and/or landscape maintenance, pest control, and caretaker services. Any Association contract for services may require individual Owners or occupants to execute separate agreements directly with the persons providing services in order to gain access to or obtain specified services. Such contracts and agreements may contain terms and conditions that, if violated by the

Owner or Occupant of a Dwelling Unit, may result in termination of the services provided to such Dwelling Unit. Any such termination shall not relieve the Owner of the continuing obligation to pay Assessments for any portion of the charges for such service that are assessed against the Dwelling as Common Expenses. The Association may discontinue offering any particular service and may modify or cancel existing contracts for services, subject to the contract terms and any provision that may exist elsewhere in the governing documents requiring the Association to provide such services.

Section 19.3 – Bulk Rate Contracts

Any contract to provide Community services and/or Community Systems may be Bulk Rate Contracts. Declarant may enter into and assign to the Association Bulk Rate Contracts with other persons to provide the services set forth in Section 19.2 above and/or Community Systems. In addition, Bulk Rate Contracts may be entered into from time to time with any service providers and on such terms and provisions as the Board may determine in its sole and absolute discretion. The Association may include the charges and other expenses of any Bulk Rate Contract as Common Expenses of the Association and/or the Association may, at its option, add the charges payable with respect to any Owner or Sublot under a Bulk Rate Contract to the Assessments charged against such Owner's Sublot. In this regard, if any Owner fails to pay any charges due by such Owner under the terms of any Bulk Rate Contract, then the Association will be entitled to collect such charges by exercising the same rights and remedies it would be entitled to exercise under this Declaration with respect to the failure by such Owner to pay Assessments, including without limitation the right to foreclose the lien against such Owner's Sublot which is reserved under the terms and provisions of this Declaration. In addition, in the event of nonpayment by an Owner of any charges due under a Bulk Rate Contract and after the lapse of at least twelve (12) days since such charges were due, the Association may, upon five (5) days' prior written notice to such Owner (which may run concurrently with such 12 day period), in addition to all other rights and remedies available pursuant to applicable law, terminate, in such manner as the Board deems appropriate, any service provided at the cost of the Association and not paid for by such Owner (or the resident of such Owner's Sublot) directly to the service provider. Such notice will consist of a separate mailing or hand delivery at least five (5) days prior to a stated date of termination, with the title "termination notice" or similar language prominently displayed on the notice. The notice will include the office or street address where the Owner (or the resident of such Owner's Sublot) can make arrangements for payment of the bill and for re-connection or re-institution of service. No service will be disconnected on a day, or immediately preceding a day, when personnel are not available for the purpose of collection and reconnecting such services.

Section 19.4 – Interruptions in Community Systems and Services

Each Owner acknowledges that interruptions in cable television and other Community Systems and services will occur from time to time. Declarant and the Association shall not be liable for, and shall not be obligated to provide any person with any compensation, or refund, rebate, or offset any applicable fee, as a result of any interruption in Community Systems and services, regardless of whether or not such interruption is caused by reasons within the Association's or the service or system provider's control.

Section 19.5 – Declarant and Association Rights Regarding Community Systems and Services

The Declarant reserves for itself and perpetually for the Association a right and easement over all of the Community to install and operate the Community Systems and to serve any portion of the Subdivision. Such reserved right includes, without limitation, the right to select and contract with companies licensed to provide telecommunications, cable television, and other Community Systems and services, and the right to charge or authorize any provider to charge individual users a reasonable fee, not to exceed the maximum allowable charge for such service (as defined from time to time by applicable laws, rules, and regulations of any government authority having jurisdiction). Declarant shall also have the right to receive compensation from any provider of Community Systems or services (including without limitation in connection with a Bulk Rate Contract), which compensation may be in consideration for, among other things, Declarant's or its affiliates' development of Community Systems or other portions of the Subdivision or marketing activities.

[remainder of page intentionally left blank]

IN WITNESS WHEREOF, the parties have signed this document this 19 day of November, 2024.

MONTVILLE RESERVE LTD., an Ohio limited liability company

By: David Kolar
David Kolar, Manager

MONTVILLE RESERVE HOMEOWNERS' ASSOCIATION, INC., an Ohio non-profit corporation

By: David Kolar

Print Name: David Kolar

Its: President

STATE OF OHIO)
COUNTY OF Summit) SS

The foregoing instrument was acknowledged before me this November 19, 2024 by David Kolar, Manager, Montville Reserve Ltd., an Ohio limited liability company, on behalf of the limited liability company.

Tanya R. Trent
Notary

STATE OF OHIO)
COUNTY OF Summit) SS

The foregoing instrument was acknowledged before me this November 19, 2024 by David Kolar, President, Montville Reserve Homeowners' Association, Inc., an Ohio non-profit corporation, on behalf of the non-profit corporation.

Tanya R. Trent
Notary Public

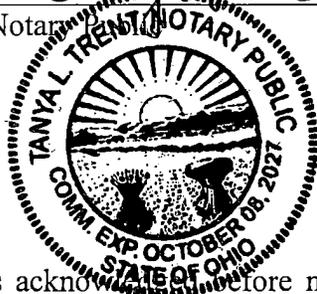


EXHIBIT "A"
LEGAL DESCRIPTION OF THE PROPERTY

EXHIBIT "A"

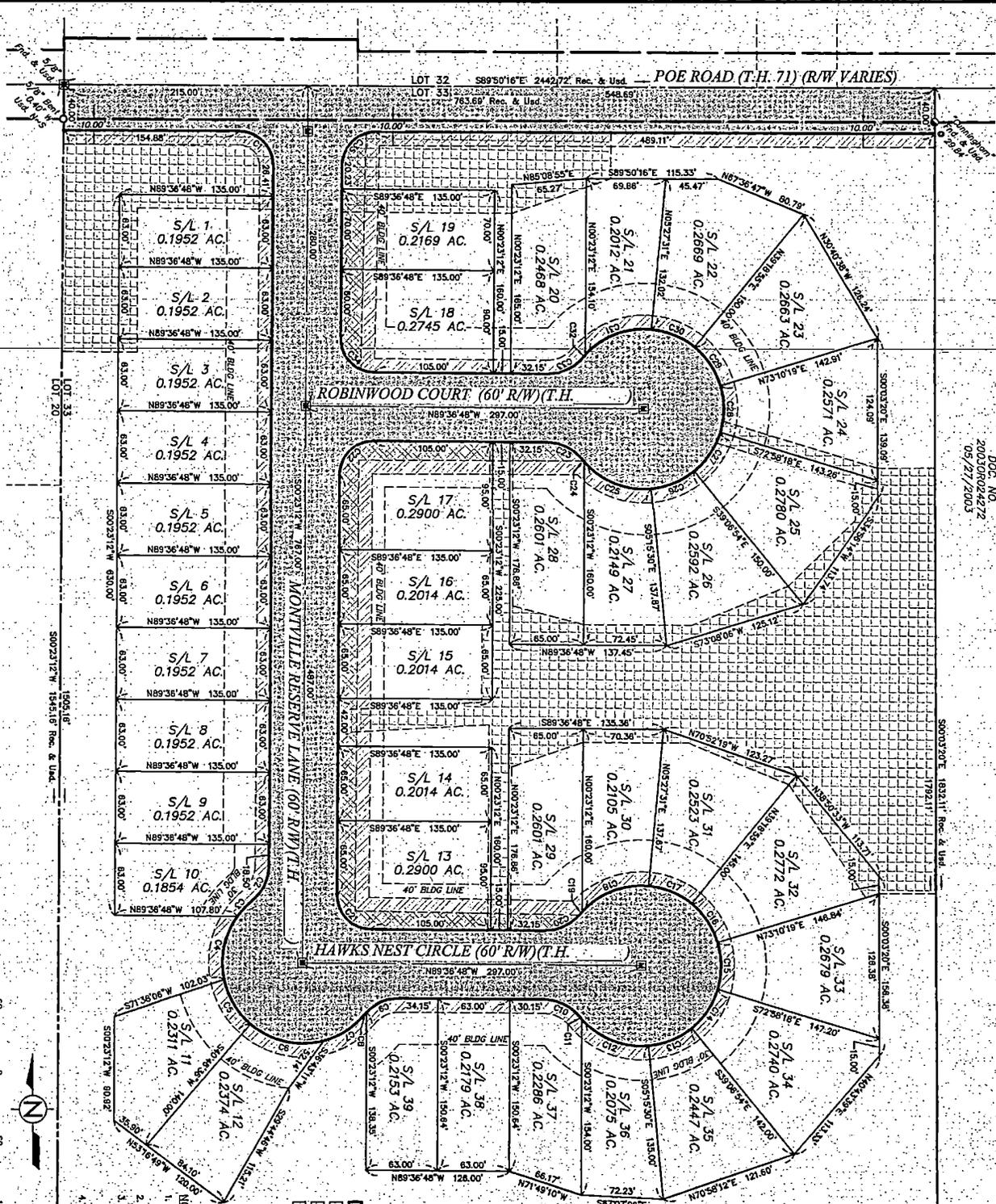
LEGAL DESCRIPTION OF THE PROPERTY

Situated in Montville Township, Medina County, and State of Ohio and known as being Sublot No. 1 through 39, inclusive, and Block "A" in Montville Reserve Subdivision, being part of Original Montville Township Lot No. 33 as shown by the Plat recorded as Medina County Recorder's File No. 2024 PL000034, as appears by said Plat, be the same more or less, but subject to all legal highways.

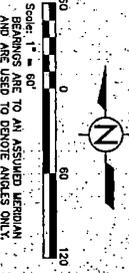
Permanent Parcel Numbers: 030 11C 07 021 through 030 11C 07 060 inclusive

<u>SL# 1</u>	<u>030 11C 07 021</u>	<u>SL 21</u>	<u>030 11C 07 041</u>
2	022	22	042
3	023	23	043
4	024	24	044
5	025	25	045
6	026	26	046
7	027	27	047
8	028	28	048
9	029	29	049
10	030	30	050
11	031	31	051
12	032	32	052
13	033	33	053
14	034	34	054
15	035	35	055
16	036	36	056
17	037	37	057
18	038	38	058
19	039	39	059
20	040	Block "A"	060

EXHIBIT "B"
SITE PLAN



STEVEN D. WILKINSON
20100904022
05/27/2003



- NOTES:**
1. SEE SHEET 4 FOR SANITARY CONNECTIONS.
 2. SEE SHEET 3 FOR LOTS.
 3. SEE SHEET 4 FOR SANITARY SEWER AND UTILITY COMMUNICATIONS EASEMENTS AND LINE AND CURVE TABLES.
 4. SEE SHEET 5 FOR STORM WATER MANAGEMENT EASEMENTS.

- LEGEND:**
- 5/8" IRON PIN AND W/SP
 - IRON PIN AND (NO CAP)
 - IRON PIPE END
 - MONUMENT BOX W/ 1/4" X 1/4" IRON PIN SET UNLESS OTHERWISE NOTED
 - FOUND
 - MEASURED
 - OBSERVED
 - RECORDED
 - USED
 - DEDICATED STREET
 - 12' UTILITY EASEMENT
 - SANITARY SEWER EASEMENT
 - STORM WATER MANAGEMENT EASEMENT

BLOCK "A"
40.6262 AC.

3	5
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CITY: MONTVILLE
TOWNSHIP: MONTVILLE
TRACT:
LOT NUMBER: 33
PROP OWNER: MONTVILLE RESERVE LTD

MONTVILLE RESERVE SUBDIVISION
 COUNTY OF MEDINA LOCATED IN STATE OF OHIO

CUNNINGHAM & ASSOCIATES, INC.
 CIVIL ENGINEERING and SURVEYING
 203 W. LIBERTY ST. MEDINA, OHIO 44136 330-725-5980

EXHIBIT "C"

**CERTIFICATE OF COMPLIANCE AND STATUS OF ASSESSMENTS
WITH RESPECT TO THE RESALE OF A DWELLING UNIT
AT MONTVILLE RESERVE SUBDIVISION
MONTVILLE TOWNSHIP, MEDINA COUNTY, OHIO**

Montville Reserve Homeowners' Association, Inc., a non-profit Ohio corporation (the "**Association**"), created to govern, operate, control and administer the "Areas of Common Responsibility" for Montville Reserve Subdivision, Montville Township, Medina, Ohio and to supervise and enforce the Declaration of Covenants, Conditions, Easements and Restrictions for Montville Reserve Subdivision (the "**Declaration**") hereby certifies as follows:

1. The Association has received notice of a proposed sale of the Dwelling Unit located on Sublot No.____, located at _____, Montville Township, Medina County, Ohio.

2. The proposed purchaser(s) of the Dwelling Unit is (are) _____.

3. The owner(s) of the Dwelling Unit (is) (are) _____.

4. The Association has no record of a violation of the Covenants and Restrictions contained in the Declaration except _____
(if none, write "None").

5. The current annual assessment attributable to the Dwelling Unit is \$_____.

6. The assessments are payable at the rate of \$_____ per (month) (quarter); said assessments being payable through _____ 20_____.

7. A fee is payable to the Association upon the issuance of this Certificate in accordance with the terms of the Declaration.

This Certificate of Compliance is being issued pursuant to Section 7.26 of the Declaration.

**MONTVILLE RESERVE HOMEOWNERS'
ASSOCIATION, INC.**

By: _____

Date: _____, 20__

EXHIBIT "D"

CODE OF REGULATIONS (BYLAWS)
OF
MONTVILLE RESERVE HOMEOWNERS' ASSOCIATION, INC.,

A Non-Profit Ohio Corporation

CODE OF REGULATIONS (BYLAWS)
OF
MONTVILLE RESERVE HOMEOWNERS' ASSOCIATION, INC.

Article I
Name, Principal Office, and Definitions

Section 1. **Name.** The name of the Association is MONTVILLE RESERVE HOMEOWNERS' ASSOCIATION, INC., an Ohio non-profit corporation (hereinafter sometimes referred to as the "Association").

Section 2. **Principal Office.** The principal office of the Association will be located in Montville Township, Medina County, Ohio.

Section 3. **Definitions.** Capitalized terms used in this Code of Regulations ("Code") have the same meanings as set forth in the Declaration of Covenants, Conditions, Easements and Restrictions for Montville Reserve Subdivision, Montville Township, Medina County, Ohio (the "Declaration").

Article II
Association: Meetings, Quorum, Voting, Proxies

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

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

Section 3. **Annual Meetings.** The first annual meeting of the Members shall be held within one hundred twenty (120) days after the termination of the Class "B" Membership in accordance with Section 5.2(b)(2) of the Declaration, and each subsequent annual meeting shall be held at 7:00 p.m. on the same day of the same month of each year thereafter, unless the Board designates a different date. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held on the first day following which is not a legal holiday.

Section 4. **Special Meetings.** The President of the Association may call special meetings. In addition, after the Declarant is no longer a Class "B" Member, it shall be the duty of the President of the Association to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board or upon a petition signed by holders of at least one-fourth (1/4th) of all of the votes of the Class "A" Members. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 5. **Notice of Meetings.** A written or printed notice stating the place, day, and time of any meeting of the Members shall be delivered, either personally or by mail, or by e-mail if authorized in writing by a Member, to each Member entitled to vote at such meeting, at least fifteen (15) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or Persons calling the meeting. Such notice shall specify the place, day and time of the meeting, and, in the case of a special meeting, the purpose of the meeting. No business shall be transacted at a special meeting except as stated in the notice.

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

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

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

The Class "A" Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Class "A" Members to leave less than a quorum, provided that at least ten (10%) percent of the voting power of the Association remains present in Person or by proxy.

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

Section 9. **Proxies.** At all meetings of Members, each Class "A" Member may act or vote in Person or by proxy. The Person appointed as proxy need not be a Member of the Association. Designation by a Member or Members of a proxy to vote or act on his behalf shall be made in writing to the Secretary of the Association (or if there is no Secretary, then with the Person conducting the meeting for which the proxy is given) at or before the meeting and shall

be revocable at any time by actual notice to the Secretary of the Association by the Member or Members making such designation and shall automatically cease upon conveyance by the Member of his Sublot. Notice to the Association in writing or in open meeting of the revocation of the designation of a proxy shall not affect any vote or act previously taken or authorized. The presence at a meeting of the Person appointing a proxy does not revoke the appointment.

Section 10. **Majority.** As used in this Code, the term "majority" shall mean those votes totaling more than fifty (50%) percent of the total number.

Section 11. **Quorum.** Unless otherwise set forth in the Declaration, the presence in Person or by proxy of at least twenty percent (20%) of the voting power of each of the Class "A" and Class "B" Members of the Association shall constitute a quorum at all meetings of the Association except as otherwise provided in the Articles of Incorporation, the Declaration, or this Code. Any provision in the Declaration concerning quorums is specifically incorporated herein. If a quorum is not present or represented at any meeting, the Members entitled to vote thereat shall have the power to adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum as aforesaid shall be present or be represented.

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

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

Article III

Board of Directors: Number, Selection, Term of Office

Section 1. **Number.** During the Class 'B' Control Period specified in Section 5.2(b)(2) of the Declaration, the affairs of this Association shall be managed by a Board of three (3) Directors selected by the Declarant who need not be Members of the Association. After the termination of the Class "B" Membership and in accordance with Article IV, Section 3 of this Code, the Members shall elect all three (3) Directors. Members or spouses of Members may be elected as Directors; provided, however, no single Dwelling Unit shall be represented on the Board by more than (1) Person at the same time. If a Member is a corporation, partnership, limited liability company, trustee or other artificial entity, a certificate signed by such Member shall be filed with the Secretary of the Association naming such Director (or if there is no Secretary, then with the Person conducting the meeting), which certificate shall be conclusive until a subsequent substitute certificate is filed with the Secretary of the Association.

Section 2. **Term of Office.** Prior to the termination of the Class 'B' Control Period, the Class "B" Member shall elect one (1) Director for a term of one (1) year, and two (2)

Directors for a term of two (2) years; and at each annual Meeting thereafter the Class "B" Member shall elect one (1) or two (2) Directors, as the case may be, for a term of two (2) years. After the termination of the Class 'B' Control Period, the Members shall elect one (1) Director, for a term of three (3) years; one (1) Director, for a term of two (2) years; and one (1) Director for a term of one (1) year. At each annual meeting thereafter, the Members shall elect one (1) Director, as the case may be, for a term of three (3) years.

Section 3. **Compensation.** No Director shall receive compensation for any service he may render to the Association. However, any Director may be reimbursed for his actual expenses incurred in the performance of his duties.

Article IV Nomination and Election of Directors

Section 1. **Nomination.** Nomination for election to the Board shall be made by a Nominating Committee. Nominations may also be made from the floor at the annual meeting. The Nominating Committee shall consist of a Chairman, who shall be a Member of the Board, and two (2) Members of the Association. The Nominating Committee shall be appointed by the Board prior to each annual meeting of the Members, to serve from the close of such annual meeting until the close of the next annual meeting and such appointment shall be announced at each annual meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but not less than the number of vacancies that are to be filled. Such nominations may be made from among Members.

Section 2. **Election Inspectors.** At each meeting at which Board members are to be elected, after nominations to the Board, but prior to the election of such Board members, the Members of the Association shall elect two Members of the Association to serve as Election Inspectors at the meeting to examine the ballots cast, to count the votes and to announce the names of the Members elected to Board positions. The Election Inspectors shall not be nominees (or spouses of nominees) for election to the Board.

Section 3. **Election.** Notwithstanding any other provision contained herein:

(a) At the first annual meeting of the membership after the termination of the Class 'B' Control Period specified in Section 5.2(b)(2) of the Declaration, the Class "A" Members shall elect all three (3) Directors. Immediately prior to such election, all Persons previously elected or appointed by the Declarant, shall resign; provided, however, that such Persons shall be eligible for reelection to the Board. The terms of office of the Directors elected by the Class "A" Members shall be in accordance with Article III, Section 2 of this Code.

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

The Directors may be elected to serve any number of consecutive terms. The Persons so elected shall take office upon such election.

Section 4. **Removal of Directors and Vacancies.** A Director who was elected solely by the votes of Class "A" Members other than the Declarant may be removed from office, with or without cause, prior to the expiration of his term only, by the vote of a majority of the voting power of Class "A" Members other than the Declarant. Any Director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a Director, a successor shall then and there be elected by the Class "A" Members entitled to elect the Director so removed to fill the vacancy for the remainder of the term of such Director.

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

Article V Meetings of Directors

Section 1. **Regular Meetings.** Regular meetings of the Board shall be held without notice, at such place and hour as may be fixed from time to time by resolution of the Board. Should said meeting fall upon a legal holiday, then that meeting shall be held at the same time on the next day which is not a legal holiday.

Section 2. **Special Meetings.** Special meetings of the Board shall be held when called by the president of the Association, or by any two (2) Directors, after not less than three (3) days' notice to each Director.

Section 3. **Quorum.** A majority of the number of Directors shall constitute a quorum for the transaction of business. Every act or decision done or made by a majority of the Directors present at a duly held meeting at which a quorum is present shall be regarded as the act of the Board.

Section 4. **Conduct of Meetings.** The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of the Board, recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings. Meetings may be conducted by any method of communication including electronic or telephonic communication, provided all members of the Board can hear or read in real time and participate and respond to every other member of the Board.

Section 5. **Closed Meetings.** Pursuant to Ohio Revised Code Section 5312.04(F), no Owner other than a Director may attend or participate in any discussion or deliberation of a meeting of the Board unless the Board expressly authorizes that Owner to attend or participate.

Section 6. **Executive Session.** The Board may, with approval of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

Section 7. **Action Without a Formal Meeting.** Any action to be taken at a meeting of the Board or any action that may be taken at a meeting of the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Members of the Board, and such consent shall have the same force and effect as a unanimous vote. An explanation of the action taken shall be posted at a prominent place or places within the Common Areas within three (3) days after the written consents of all the Members of the Board have been obtained.

Section 8. **Non-Discrimination by Board.** The Board shall comply with all applicable state and federal laws concerning prohibitions against discrimination on the basis of race, color, religion, sex, military status, national origin, disability, age, or ancestry, including, but not limited to, Chapter 4112 of the Ohio Revised. No private right of action additional to those conferred by the applicable state and federal anti-discrimination laws is conferred on any aggrieved individual by the preceding sentence.

Article VI
Powers, Limitation on Powers and Duties of the Board

Section 1. **Powers.** The Board shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or this Code directed to be done and exercised exclusively by the Class "A" Members.

In addition to powers specified in the Declaration, including the powers set forth in Section 5.4 of the Declaration, and in addition to the duties imposed by this Code or by any resolution of the Association that may be hereafter adopted, the Board shall have the power to and be responsible for the following, in way of explanation, but not limitation:

(a) adopt, publish and enforce Rules governing the use of the Common Areas, the personal conduct of the Members and their guests thereon, and to establish penalties for the infraction thereof in accordance with Article X hereof.

(b) suspend the voting rights, use of the recreational facilities, and the receipt of Association services of a Member during any period in which such Member shall be in default in the payment of any Assessment levied by the Association. Such rights may also be suspended after notice and hearing, for a period not to exceed sixty (60) days for infraction of the Rules;

(c) exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the membership by other provisions of this Code, the Articles of Incorporation, or the Declaration;

(d) declare the office of a Member of the Board to be vacant in the event such Member shall be absent from three (3) consecutive regular meetings of the Board;

(e) select by a majority vote a successor Director in the event of death, resignation or removal of a Director. A successor Director shall serve for the unexpired term of his predecessor;

(f) hire and fire managing agents, attorneys, accountants and other independent professionals and also employees that the Board determines are necessary or desirable in the management of the Property and the Association;

(g) prepare and adopt an annual budget in which there shall be established the contribution of each Owner to the Common Expenses. The budget shall include reserves in an amount adequate to repair or replace major capital items in the normal course of operations without the necessity of special assessments, unless Owners, exercising not less than a majority of the voting power of the Association, waive the reserve requirement annually;

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

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

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

(k) collecting the Assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association; provided, however, that any reserve fund may only be deposited in investments that meet standards for fiduciary investments under the laws of the state of Ohio;

(l) making and amending Rules;

(m) opening of bank accounts on behalf of the Association and designating the signatories required in accordance with Article VII, Section 9 of this Code;

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

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

(p) obtaining and carrying insurance against casualties and liabilities (including directors and officers liability insurance to the extent reasonably available), as provided in the Declaration, and paying the premium cost thereof;

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

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

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

(t) permitting utility suppliers to use portions of the Common Areas reasonably necessary to the ongoing development or operation of the Property;

(u) entering into easement agreements, leases, license agreements and other agreements with utility companies (both private and public), with Owners, and with the owners of neighboring properties;

(v) borrowing money from time to time for the purpose of improving, maintaining, repairing and replacing the Common Areas, and secure said financing without the approval of the Class "A" Members with an assignment of Assessments, including Additional Assessments and future Assessments in accordance with Section 5.4(a) of the Declaration;

(w) granting or obtaining or dedicating to public use easements and rights-of-way (i) for access and for the construction, extension, installation, maintenance or replacement of utility services and facilities, or (ii) to or from a public 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; provided, however, that no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer be signed by two-thirds (2/3rds) of the Members has been recorded.

(x) such other rights as conferred by Ohio Revised Code Chapters 5312 and 1702 that do not conflict with the provisions of the Declaration or this Code.

Section 2. **Limitation on Powers; Right of Declarant to Disapprove Actions.** This Section 2 may not be amended without the express, written consent of the Class "B" Member during the Class 'B' Control Period.

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

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

(a) The Class "B" Member shall have been given written notice of all meetings and proposed actions approved at meetings of the Board or any committee thereof in accordance with Section 16.2 of the Declaration, which notice shall, except in the case of the regular meetings held pursuant to this Code, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program to be implemented by the Board, any committee thereof, or the Association. The Class "B" Member, its representatives or agents shall have the right to make its concerns, thoughts, and suggestions known to the members of the subject committee and/or the Board. The Class "B" Member shall have the right to disapprove any action, policy, or program authorized by the Board or any committee thereof and to be taken by the Board, such committee, the Association, or any individual member of the Association, if Board, committee, or Association approval is necessary for such action. This right may be exercised by the Class "B" Member, its representatives, or agents at any time within thirty (30) days following the meeting held pursuant to the terms and provisions hereof. This right to disapprove may be used to block proposed actions but shall not extend to the requiring of any action or counteraction on behalf of any committee, or the Board or the Association. The Class "B" Member shall not use its right of disapproval to require a reduction in the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditures required to comply with applicable laws and regulations.

Section 3. **Duties.** It shall be the duty of the Board to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of the Members, or at any special meeting when such statement is required in writing by one-fourth (1/4) of the Class "A" Members who are entitled to vote;

(b) supervise all officers, agents and employees of the Association, and to see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(1) fix the amount of the annual Assessment against Sublots at least thirty (30) days in advance of each annual Assessment period;

(2) send written notice of each Assessment to every Owner subject thereto at least thirty (30) days in advance of each annual Assessment period; and

(3) foreclose the lien against any Sublot for which Assessments are not paid within thirty (30) days after due date or to bring an action at law against the Owner personally obligated to pay the same.

(d) issue, or to cause an appropriate officer to issue, upon demand by any Person, a certificate setting forth whether or not any Assessment has been paid. A reasonable charge may be made by the Board for the issuance of these certificates. If a certificate states an Assessment has been paid, such certificate shall be conclusive evidence of such payment;

(e) pursuant to Section 6.5 of the Declaration, procure and maintain adequate liability and hazard insurance on property owned by the Association and adequate officers and directors indemnity insurance and cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(f) cause the Common Areas to be maintained;

(g) establish, levy, assess and collect all Assessments referred to or authorized in the Declaration; and

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

Article VII Officers and Their Duties

Section 1. **Enumeration of Offices.** The officers of the Association shall be a president and vice-president, who shall at all times be Members of the Board, a secretary, and a treasurer, and such other officers as the Board may from time to time by resolution create.

Section 2. **Election of Officers.** The election of officers shall take place at the first meeting of the Board following each annual meeting of the Members.

Section 3. **Term.** The officers of the Association shall be elected annually by the Board and each shall hold office for one (1) year or until his successor is elected and has qualified, unless he or she shall sooner resign, or shall be removed, or otherwise disqualified to serve.

Section 4. **Special Appointments.** The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 5. **Resignation and Removal.** Any officer may be removed from office with or without cause by the Board. Any officer may resign at any time giving written notice to the Board, the president or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.

Section 6. **Vacancies.** A vacancy in any office may be filled by appointment by the Board. The officer appointed to such vacancy shall serve for the remainder of the term of the officer he replaces.

Section 7. **Multiple Offices.** The offices of secretary and treasurer may be held by the same Person. No Person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to Section 4 of this Article.

Section 8. **Powers and Duties.** The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time be specifically conferred by or imposed by the Board. The offices and powers and duties of the officers are as follows:

(a) President: The president shall preside at all meetings of the Board; shall see that orders and resolutions of the Board are carried out; shall see that orders and resolutions of the Board are carried out; shall sign all leases, deeds, and other written instruments and shall co-sign all checks and promissory notes.

(b) Vice-President: The vice-president shall act in the place and stead of the president in the event of his absence, inability or refusal to act; and shall exercise and discharge such other duties as may be required of him or her by the Board.

(c) Secretary: The secretary shall record the votes and keep the minutes of all meetings and proceedings of the Board and of the Members; serve notice of meetings of the Board and of the Members; keep appropriate current records showing the Members of the Association together with their addresses, and shall perform such other duties as required by the Board.

(d) Treasurer: The treasurer shall receive and deposit in appropriate bank accounts all monies of the Association and shall disburse such funds as directed by resolution of the Board; shall sign all checks and promissory notes of the Association; keep proper books of account; cause an annual audit or review of the Association books to be made by a public accountant at the completion of each fiscal year; and shall prepare an annual budget and a statement of income and expenditures to be represented to the membership at its regular annual meeting, and deliver a copy of each to the Members.

Section 9. **Agreements, Contracts, Deeds, Easements, Leases, Checks.** All agreements, contracts, deeds, easements, leases, checks, and other instruments of the Association authorized by the Declaration or the Act, shall be executed by any two (2) officers of the Association or by such other Person or Persons as may be designated by resolution of the Board.

Article VIII
Committees

Section 1. **Appointment of Committees.** The Board shall appoint a Design Review Committee, as provided in the Declaration, and a Nominating Committee and a Covenants Committee, as provided below in this Code. In addition, the Board shall appoint other committees as deemed appropriate in carrying out its purpose.

Section 2. **Design Review Committee.** The Board shall appoint a Design Review Committee ("DRC") consisting of three (3) Persons. The structure and the functions of the DRC shall be in accordance with Article VIII of the Declaration.

Section 3. **Covenants Committee.** The Board may appoint a Covenants Committee consisting of three (3) Members. Acting in accordance with the provisions of the Declaration, this Code, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Article VIII of this Code.

Article IX
Finances of Association (Assessments)

Section 1. **Preparation of Estimated Budget.** On or before the filing with the Medina County Recorder of the Declaration, and on or before December 15 of each year thereafter, the Association shall prepare a preliminary estimated budget of the total amount necessary to pay the Assessments referred to in Article IX of the Declaration for the balance of the calendar year in which the Declaration is filed and, thereafter, for each succeeding calendar year together with a reasonable amount considered by the Association to be necessary for a reserve for contingencies and replacements, and the amounts, if any, which may be received from special assessments, concessions, contracts for special services and facilities, and other sources. Within 45 days of the date of the preliminary estimate, the Association will prepare a final estimated budget and shall notify each Member in writing as to the amount of such estimates, and shall send a copy of such notice to each holder of a first mortgage upon the Ownership Interest of a Member who has made a request in writing for such notification. The failure of the Association to comply strictly with the above time requirements shall not be deemed to be a waiver and shall not prevent the Association from collecting Assessments. The net of the aggregate amounts of such estimates (herein called the "Estimated Cash Requirements") of the next calendar year shall be assessed to those Members required to pay the Assessments according to and as specifically set forth in Article IX of the Declaration. Each Member required to pay Assessments shall pay to the Association or as it may direct, the Assessment made pursuant to this Section on or before the first day of each calendar year, except that the Board may elect to collect annual Assessments semi-annually, quarterly, or monthly, in advance. On or before the date of each annual meeting, the Association shall furnish to all

Members an itemized accounting of the expenditures for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided, by special Assessments, or otherwise, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited to the last maturing monthly installments due from the Members under the current year's estimate, pro rata. Any net shortage shall be added pro rata to the next installment due after the rendering of the accounting.

In addition to such regular monthly Assessments, each Class "A" Member shall be required to make, at the time such Member acquires title to a Sublot and upon each re-sale of a Sublot, an initial capital contribution to the Association of \$ 350.00 for each Sublot purchased, one-half (1/2) of said sum shall be held by the Association in the Association's working capital account and the balance of said sum shall be held by the Association as a reserve for contingencies and replacements. The general purpose of this contribution is to provide the Association with funds for working capital and/or contingency reserve purposes. Such funds may be used for certain prepaid items (e.g., insurance premiums, utility deposits and organization, equipment and supply costs) and for such other purposes as the Board may determine. This initial capital contribution is not an escrow or an advance, is not refundable and shall not be required of the Declarant, but only from those Persons who purchase a Sublot from the Declarant or re-sell a Unit to a third party.

Notwithstanding the provisions of this Section 1, the Board shall have the authority to establish payment of Assessments, quarterly or semi-annually or annually (rather than monthly).

Section 2. Reserve for Contingencies and Replacements; Special Assessments. The Association shall build up and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual estimate which may be necessary for the year, shall be charged first against such reserve. If the "Estimated Cash Requirements" proves inadequate for any reason, including nonpayment of any Member's Assessment, the deficiency and any extraordinary expenditures in excess of the reserves therefor shall be assessed to the Members required to pay assessments, pro rata. The Association shall also make any necessary or desirable special Assessments, from time to time which shall be payable at the time or times the Board deems necessary or desirable. The Association shall serve notice of such further Assessments on Members required to pay Assessments, by a statement in writing giving the amount and reasons therefor, and such further assessment shall be payable by the date and upon the terms stated in the notice, which date shall be not less than ten (10) days after the delivery or mailing of such notice of further Assessment. The reserve set forth above shall include any expenses pertaining to any bridges and associated pathways located within the Property.

Section 3. Failure to Prepare Annual Budget. The failure or delay of the Association to prepare or deliver to a Member any annual or adjusted estimate shall not constitute a waiver or release in any manner of such Member's obligation to pay his share of the Assessments, as herein provided, whenever the same shall be determined, and in the absence of any annual estimate or adjusted estimate, the Member required to pay Assessments pursuant to Section 9.2 of the Declaration shall continue to pay the current charge at the existing rate

established for the previous period until the Association mails or delivers notice of the new payment due as a result of the determination of the new annual or adjusted estimate.

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

Section 5. **Status of Funds Collected by Association.** All funds collected hereunder shall be held and expended solely for the purposes designated herein and (except for such special Assessments as may be levied hereunder against less than all of the Members and for such adjustments as may be required to reflect delinquent or prepaid Assessments) shall be deemed to be held for the use, benefit and account of all Members required to pay Assessments pursuant to Section 10 of the Declaration.

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

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

Section 8. **Remedies for Failure to Pay Assessments.** If an Owner shall be in default in the payment of any of the aforesaid Assessments, the Association shall have all of the remedies set forth in the Declaration, in the Code or at law or equity to collect such Assessments and all costs associated therewith.

Article X
Hearing Procedure; Compliance and Non-Monetary Default

Section 1. **Enforcement.** In the event of a violation by any Member or any Tenant or other Occupant of a Dwelling Unit (other than the nonpayment of Assessments or charges, which are governed by Articles X and XI of the Declaration) of any of the provisions of the Declaration, the Code, or the Rules, the Association or a committee created by the Code (e.g., the DRC or the Covenants Committee) or by the Board shall make a reasonable effort to notify the Member and any Tenant or other Occupant of the violation, by written notice. If such violation is not cured as soon as is reasonably practical and in any event within seven (7) days after the

date of such written notice, or if the violation is not capable of being cured within such seven (7) day period, if the Member or Tenant or other Occupant fails to commence and diligently proceed to completely cure such violation as soon as is reasonably practical within seven (7) days after the date of the written demand by the Association or such committee, or if any similar violation is thereafter repeated, the Association or such committee may, at its option:

(a) Impose an Enforcement Assessment against the Member or Tenant or other Occupant as provided in Subsection (b) of this Section; and/or

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

(c) The Association may itself perform any act or work required to correct such failure and, either prior to or after doing so, may charge the Member with all reasonable costs incurred or to be incurred by the Association in connection therewith, plus a service fee equal to twenty percent (20%) of such costs. In connection with the foregoing, the Association may perform any maintenance or repairs required to be performed, may remove any change, alteration, addition or improvement which is unauthorized or not maintained in accordance with the provisions of the Declaration, remove any improperly parked, disabled, and/or wrecked vehicle (motorized or otherwise), or trailer without liability, and may take any and all other action reasonably necessary to correct the applicable failure; and/or

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

Section 2. Enforcement Assessments. The amount of any Enforcement Assessment shall be a reasonable amount as determined in the sole discretion of the Board, the DRC or the Covenants Committee. Prior to imposing any fine, the Member or Tenant or other Occupant shall be afforded an opportunity for a hearing after making a reasonable effort to provide a written notice to the Member or Tenant or other Occupant of not less than ten (10) days, which notice shall include (i) a statement of the date, time and place of the hearing, (ii) a statement of the provisions of the Declaration, this Code or Rules which have allegedly been violated, (iii) a short and plain statement of the matters asserted by the Association or the committee, (iv) the amount of the proposed charge or Enforcement Assessment, (v) a statement that the Owner has the right to a hearing before the Board or committee to contest the proposed Enforcement Assessment, (vi) a statement setting forth the procedure to request a hearing, and (vii) a statement that the Owner has the right to cure the violation in accordance with Section 1 above. Prior to the effectiveness of any sanction hereunder, proof of notice of the mailing or attempted delivery, and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and attempted manner of delivery is entered by the officer, Board Member, committee Member or agent who attempted delivery of such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the hearing. The minutes of the hearing shall contain a written statement of the hearing and the sanction, if any, imposed. The Member or Tenant or other Occupant shall have an opportunity to respond, to present evidence, and to provide written and oral arguments on all issues involved and shall have an opportunity at the hearing to review,

challenge and respond to any material considered by the Association. At the hearing, the Board or committee shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred, and if the Board or committee so determines, it may impose such fine as it deems appropriate by written notice to the Member or Tenant or other Occupant. The Board or committee shall set any time limitations for all written and oral arguments or presentations by any Persons appearing at the hearing(s). The Board shall not levy a Enforcement Assessment before holding a hearing pursuant to this Section. If the Member or Tenant or other Occupant fails to attend the hearing as set by the Board or committee, the Member or Tenant or other Occupant shall be deemed to have admitted the allegations contained in the notice to the Member or Tenant or other Occupant. Within thirty (30) days following a hearing at which the Board imposes an Enforcement Assessment, the Board shall deliver a written notice of the Enforcement Assessment to the Owner. Any Enforcement Assessment imposed by the Board or committee shall be due and payable within ten (10) days after written notice of the imposition of the Enforcement Assessment, or if a hearing is timely requested, within ten (10) days after written notice of the Board's or committee's decision at the hearing. Any Enforcement Assessment levied against a Member shall be deemed an Assessment and if not paid when due all of the provisions of the Declaration relating to the late payment of Assessments shall be applicable. If any Enforcement Assessment is levied against a Tenant and is not paid within ten (10) days after same is due, the Association shall have the right to evict the Tenant as hereinafter provided. The Association shall have the right to offset the deposit made to the Association in accordance with the Declaration. Any written notice that this Section requires shall be delivered to the Owner or Occupant of the Dwelling Unit by personal delivery, by certified mail, return receipt requested, or by regular mail. The Association shall have the right to file a Certificate of Lien for in accordance with Article X of the Declaration.

Section 3. **Negligence.** A Member shall be liable and may be charged by the Association for the expense of any towing charges, storage charges, maintenance, repair or replacement cost rendered necessary by his act, neglect or carelessness, but only to the extent that such expense is not met by the proceeds of insurance (i.e., such as the insurance deductible) carried by the Association. Such liability shall include any increase in fire insurance rates occasioned by use, misuse, occupancy or abandonment of a Sublot, Dwelling Unit or its appurtenances or of the Common Areas.

Section 4. **Responsibility of Members for Tenants.** Each Member shall be responsible for the acts and omissions, whether negligent or willful, of his Tenant, and for all employees, agents and invitees of the Member or any such Tenant, and in the event the acts or omissions of any of the foregoing shall result in any damage to the Common Areas, or any liability to the Association, the Member shall be charged for same, limited where applicable to the extent that the expense or liability is not met by the proceeds of insurance (i.e., insurance deductibles) carried by the Association. Furthermore, any violation of any of the provisions of the Declaration, this Code, or any Rule, by any Tenant, or any employees, agents or invitees of a Member or any Tenant of a Dwelling Unit, shall also be deemed a violation by the Member, and shall subject the Member to the same liability as if such violation was that of the Member.

Section 5. **Costs and Attorney's Fees.** In any legal proceedings commenced by the Association or a committee to enforce the Declaration, this Code and/or the Rules, as said

documents may be amended from time to time, the Association or committee shall be entitled to recover the costs of the proceeding and reasonable attorneys' and paralegal fees. Any such costs or attorneys' and paralegals' fees awarded to the Association or committee in connection with any action against any Member shall be charged to the Member.

Section 6. **Declarant Assessments for Legal Expenses.** Declarant shall not be required to pay any assessments or monies to finance any claim or litigation against Declarant.

Section 7. **No Waiver of Rights.** The failure of the Association or a committee or any Member to enforce any covenant, restriction or any other provision of the Declaration, this Code, or the Rules, as the said documents may be amended from time to time, shall not constitute a waiver of the right to do so thereafter.

Section 8. **Appeal.** Following a hearing before a committee, the violator shall have the right to appeal the decision to the Board. To perfect this right, a written notice of appeal must be received by the President or Secretary of the Association within thirty (30) days after the date of receipt of the decision of the committee. No later than thirty (30) days after receipt of the notice of appeal, the Board shall review the minutes of the hearing. The affirmative vote of two-thirds (2/3rds) of the Members of the Board shall be required to reverse or modify the decision of the committee.

Section 9. **Additional Enforcement Rights.** Notwithstanding anything to the contrary herein contained, the Association, acting through the Board, may elect to enforce any provision of the Declaration, this Code, or the Rules and Regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or Occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees incurred by the Association in so acting to enforce such rights.

Article XI **Indemnification**

Each member of the Board and each officer of the Association, and each former member of the Board and officer of the Association, shall be indemnified by the Association against the costs and expenses reasonably incurred by him in connection with the defense of any pending, threatened or completed action, suit or proceeding, criminal, civil, administrative, or investigative, to which he is or may be made a party by reason of his being or having been such member of the Board or officer of the Association (whether or not he is a member or officer at the time of incurring such costs and expenses), unless such Board member or officer (or former Board member or officer) failed to act in good faith and in a manner he reasonably believed to be in, or not opposed to, the best interests of the Association and, with respect to any criminal proceeding, he had no reasonable cause to believe his action was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement or conviction shall not create, of itself, a presumption that the Person did not act in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any

criminal action or proceeding, a presumption that the Person had reasonable cause to believe that his conduct was unlawful. The determination of whether the Board member's or officer's conduct failed to qualify for indemnification shall be made either by (1) the opinion of independent counsel selected by the Association, (2) by a majority vote of the disinterested members of the Board of the Association, or (3) a majority vote of the disinterested members of a meeting of the Association at which a quorum of Members are present in Person or by proxy. The phrase "disinterested members" shall mean all members of the Board or of the Association other than (i) any member of the Board or officer of the Association who is a party to or threatened with such action, suit or proceeding; (ii) any corporation or organization of which such member of the Board or officer referred to in (i) above owns of record or beneficially ten percent (10%) or more of any class of voting securities; (iii) any firm of which such member of the Board or officer referred to in (i) above is a partner or member; and (iv) any spouse, child, parent, brother or sister of any such member of the Board or officer referred to in (i) above. The foregoing rights of indemnification shall inure to the benefit of the heirs and legal representatives of each such member of the Board or officer and shall not be exclusive of other rights to which any member of the Board or officer may be entitled to or granted pursuant to Section 1702.12(E) of the Ohio Revised Code, as a matter of law, or under the Declaration, Articles, this Code, any vote of Association members or any agreement.

THE ASSOCIATION SHALL INDEMNIFY, DEFEND AND HOLD HARMLESS THE DECLARANT, ANY BUILDER AND THEIR PARTNERS, MEMBERS, DIRECTORS, OFFICERS, EMPLOYEES AND AGENTS AND DECLARANT'S SUCCESSORS AND ASSIGNS (COLLECTIVELY, THE "DECLARANT PARTIES") FROM AND AGAINST ALL CLAIMS, CAUSES OF ACTION, DAMAGES, COSTS AND EXPENSES, INCLUDING, WITHOUT LIMITATION, ATTORNEYS' FEES AND COSTS, IN CONNECTION WITH ANY THREATENED, INITIATED OR FILED CLAIM, SUIT, ARBITRATION OR OTHER PROCEEDING (INCLUDING THE SETTLEMENT OF ANY CLAIM, SUIT, ARBITRATION OR OTHER PROCEEDING) ASSERTED AGAINST ANY OF THE DECLARANT PARTIES OR TO WHICH ANY OF THEM MAY BECOME A PARTY ARISING OUT OF OR RELATED TO THE MANAGEMENT OR OPERATION OF THE ASSOCIATION, INCLUDING WITHOUT LIMITATION, THE ENFORCMENT OF THE GOVERNING DOCUMENTS, THE COLLECTION OF ASSESSMENTS, AND THE OPERATION, MAINTENANCE AND REPAIR (OR FAILURE TO OPERATE, MAINTAIN OR REPAIR) THE COMMON AREAS.

Article XII
Amendments to this Code of Regulations

Prior to the sale and conveyance of the first Dwelling Unit, Declarant may unilaterally amend this Code. After such sale and conveyance, the Declarant may unilaterally amend this Code so long as it owns any portion of the Property or adjacent lands for development and so long as the amendment has no material adverse effect upon the rights of any Member. Thereafter and otherwise, this Code may be amended only by the affirmative vote or written consent of Class "A" Members representing a majority of the voting power of the Association, which shall include a majority of votes of Members other than the Declarant or, where the two class voting structure is still in effect, shall include the Class "B" Member and a majority of the

voting power of the Class "A" Members. However, the percentage of votes necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. No amendment to this Code is effective until filed in the office of the Medina County Recorder.

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

Article XIII
Miscellaneous

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

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

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

Section 4. **Books and Records.**

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

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

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

(c) Limitations on Inspections by Owners. Unless approved by the Board, an Owner may not examine or copy any of the following from books, records, and minutes:

- (1) Information that pertains to personnel matters;

(2) Communications with legal counsel or attorney work product pertaining to potential, threatened or pending litigation, or related matters;

(3) Information that pertains to contracts or transactions currently under negotiation, or information that is contained in a contract or other agreement containing confidentiality requirements and that is subject to those requirements;

(4) Information that relates to the enforcement of the Declaration, the Code, or Rules against other Owners;

(5) Information, the disclosure of which is prohibited by state or federal law.

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

Section 5. **Notices.** Unless otherwise provided in this Code, all notices, demands, bills, statements, or other communications under this Code shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by regular U.S. mail or by certified U.S. mail, return receipt requested, first class postage prepaid or by Federal Express or another nationally recognized courier that guarantees next day delivery and provides a receipt:

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

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

Section 6. **Owner Information.**

(a) Owner Information. Within thirty (30) days after an Owner obtains an Ownership Interest, the Owner shall provide the following information in writing to the Association through the Board:

(1) The home and business mailing addresses, and home and business telephone numbers of the Owner and all Occupants of the Dwelling Unit; and/or

(2) The name, business address and business telephone number of any Person who manages the Owner's Dwelling Unit as an agent of that Owner.

(b) Change of Information. Within thirty (30) days after a change in any of the information that (a) of this Section requires, an Owner shall notify the Association, through the Board, in writing, of the change. When the Board requests, a Unit Owner shall verify or update the information.

Section 7. **Headings.** The heading of each Article and of each Section in this Code is inserted only as a matter of convenience and for reference and in no way defines, limits or describes the scope or intent of this Code or in any way affects this Code.

Section 8. **Conflicts.** If there are conflicts or inconsistencies between the mandatory provisions of Ohio law, the Articles, the Declaration, and this Code, the mandatory provisions of Ohio law, the Declaration, the Articles, and the Code (in that order) shall prevail.

Section 9. **Rule Against Perpetuities.** If any of the options, privileges, covenants or rights created by this Code shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common-law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of Joseph Biden, President of the United States of America, and Kamala Harris, Vice President of the United States of America.

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