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Summit Fiscal Officer KRISTEN M. SCALISE, CPA, CFE

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

**OF**

**THE ENCLAVE AND THE SUMMIT AT  
FOREST LAKES HOMEOWNERS'  
ASSOCIATION, INC.**

**GREEN, OHIO**

**Being Developed By:**

**K. Hovnanian Forest Lakes, LLC,  
an Ohio limited company**

**This Instrument Prepared By:**

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**216-515-1651**

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

OF

**THE ENCLAVE AND THE SUMMIT AT FOREST LAKES  
HOMEOWNERS' ASSOCIATION, INC.**

**GREEN, OHIO**

**("Declaration")**

THIS DECLARATION of Covenants, Conditions, Easements and Restrictions (the "Declaration") is made as of the 28<sup>th</sup> day of January, 2021 by K. HOVNANIAN FOREST LAKES, LLC, an Ohio limited liability company (referred to herein as the "Declarant").

**PREAMBLE**

A. Declarant is the owner of real property situated in the City of Green (the "City"), Summit County, Ohio, on which Declarant desires to create a residential community (the "Community"), to be known collectively and informally as "Forest Lakes". A legal description of the first phase of the Community is attached hereto as Exhibit "A-1" (the "Legal Description"), along with the final approved plat of Forest Lakes Subdivision Phase 1 recorded in Reception No. 56564754 of Summit County Records attached hereto as "Exhibit A-2" (the "Plat"). The Legal Description and the Plat are collectively, the "Property". The Property may be expanded or contracted by Declarant pursuant to Section 1.3 and other applicable provisions of this Declaration.

B. Upon completion and the addition of all presently intended Additional Property, the Community is planned to consist of (however the Declarant is under no obligation to construct) Two Hundred Twenty-Three (223) single-family residences ("Homes") consisting of One Hundred Forty-Six (146) attached Homes ("Townhomes") and Seventy-Seven (77) detached homes ("Detached Homes"). The Community will also contain private roadways, driveways, and Common Elements to be developed within the Property. A copy of the approved preliminary subdivision plan showing the entire Property once all presently intended Additional Property is added to the Property is attached hereto as Exhibit "B" (the "Preliminary Community Plan"). In the event there are discrepancies between the Sublot numbers, Areas of Common Responsibility or any Conservation Areas or other items shown on the Preliminary Community Plan and those listed in the Legal Description and shown on the Plat, then the Legal Description and the Plat shall control.

C. Declarant desires to provide for: (a) the orderly development of the Property; (b) the establishment and maintenance of architectural and design controls and standards; (c) the use and maintenance of the Areas of Common Responsibility (as hereinafter defined); and (d) the protection of values within the Property. The foregoing is being provided so that the residents of the Property may enjoy a quality environment for themselves and their families. For such purpose, the Declarant has prepared this Declaration to define the manner in which the Property shall be governed and administered.

D. A master association will be required to regulate, administer and govern the Property for the fulfillment of the foregoing purposes with the power to levy and collect assessments from Owners (as hereafter defined) within the Property and to pay the cost and expense of operating, maintaining, repairing and replacing the Areas of Common Responsibility. The Declarant will assign such functions to the **The Enclave and The Summit at Forest Lakes Homeowners' Association, Inc.**, a not-for-profit corporation that shall be created under the laws of the State of Ohio (the "**Association**").

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

#### **ARTICLE I**

#### **PREAMBLE; PROPERTY SUBJECT TO THIS DECLARATION; 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 as described in **Exhibit "A"**.

##### **Section 1.3 - Expansion and Contraction of the Property**

(a) The Declarant reserves the right from time to time to add additional property to the Property and to subject the same to the provisions of this Declaration ("**Additional Property**"). To add Additional Property, the Declarant shall execute and record a Subsequent Amendment to this Declaration expressly provides that the land described therein shall become

a part of the Property and shall be subject to the Covenants and Restrictions set forth in this Declaration, except as the same may be modified by the Subsequent Amendment.

(b) The Declarant reserves the right from time to time to delete lands from the Property 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 Covenants and Restrictions set forth in this Declaration.

## **ARTICLE II** **EXHIBITS AND DEFINITIONS**

### **Section 2.1 - Exhibits**

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

<b><u>EXHIBIT "A-1":</u></b>	Legal Description
<b>EXHIBIT "A-2":</b>	Plat
<b><u>EXHIBIT "B":</u></b>	Preliminary Community Plan
<b><u>EXHIBIT "C":</u></b>	Form Certificate of Compliance (See 7.25 of this Declaration)
<b><u>EXHIBIT "D":</u></b>	Code of Regulations of the Forest Lakes 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) **"Affiliate of Declarant"**. Any person who controls, is controlled by, or is under common control with the Declarant. 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 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 of the capital of the Declarant. 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 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 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.

(b) **"Areas of Common Responsibility"**. The Areas of Common Responsibility shall mean and refer to the following:

- (1) **Common Elements**: The Common Elements and all facilities and improvements constructed thereon, including maintenance, repair and replacement of such Common Elements, and snow removal from roadways, driveways, and parking areas, as provided in Section 6.1(c) herein.
- (2) **Landscaping**: Maintenance of all landscaping, landscaping irrigation systems, and retaining walls within the Common Elements.
- (3) **Public Sidewalks**: Maintenance and replacement of public sidewalks adjacent to the Property along Tabs Drive and Forest Lakes Drive to the extent required by the City (including snow removal from such public sidewalks to the extent required by the City).
- (4) **Storm Water Management**: Maintenance, repair and replacement of all Stormwater Management Facilities, including storm drainage facilities within Property whether such facilities serve the Common Elements or Sublots to the point any such storm drainage facilities or lines become the responsibility of the Association or Owner, if no Association exists. The City shall be responsible for the storm sewer system only within the public right-of-way. The City shall be granted easements to take corrective action in a situation where the Association or Owners do not respond. In such an event, the City shall have the right to charge the Association or Owners for the services rendered.
- (5) **Sanitary Sewers**: Maintenance, repair and replacement of all sanitary sewer lines if such lines: (i) exclusively serve the Common Elements, or (ii) serve more than one Home, or (iii) serve only one Home, from the last clean out access point in such line within the Home (with each Home Owner responsible for the maintenance, repair and replacement of all sanitary sewer lines exclusively serving their Home that are located within their Home to the last clean out access point in such line within the Home. The Association's obligation with respect to sanitary sewer lines shall end at the point such lines connect to the main sewer line which is the responsibility of any governmental body having jurisdiction.

- (6) **Other Utility Lines:** Maintenance, repair, and replacement of all other utility lines, including domestic water lines, natural gas lines, electric lines, telecommunications lines (including telephone, television, and internet access lines) and other such utility lines if such lines: (i) exclusively serve the Common Elements, or (ii) serve more than one Home, or (iii) serve only one Home, from the point of demarcation hereinafter set forth (with each Home Owner responsible for the maintenance, repair and replacement of all other utility lines exclusively serving their Home that are located within their Home to the last point of demarcation hereinafter set forth. The Association's obligation with respect to all such utility lines shall end at the point such utility lines become the responsibility of the providing public or private utility company, City, or other governmental body having jurisdiction. The point of demarcation between Owner responsibility and Association responsibility for such other utility lines that exclusively serve only one Home shall be as follows:
- (a) **Domestic Water Supply Lines and Gas Supply Lines:** The first valve or fitting on the supply line after it enters a Home or Sublot, which valve or fitting shall be maintained by the Owner, however any submeter on a water line, wherever located, shall be the maintenance obligation of the Association.
  - (b) **Electric Service:** The electric supply line to its first point of connection to any other device, switch, breaker, or panel within a Home or Sublot shall be maintained by the Association, with such other device, switch, breaker, or panel within a Home or Sublot being maintained by the Owner.
  - (c) **Telecommunications Lines:** Telecommunications lines, if not maintained by the providing utility company, to their first point of connection to any other device, switch, breaker, or panel within a Home or Sublot shall be maintained by the Association, with such other device, switch, breaker, or panel within a Home or Sublot being maintained by the Owner.
- (7) **Association Property:** Maintenance of all real and personal property owned by the Association.
- (8) **Property with Board Consent:** Maintenance of real and personal property not owned by the Association but determined by the Board to be the responsibility of the Association, if any, including all exterior portions of Homes set forth as the Association's responsibility in Section 6.1 herein.
- (9) **Property by Contract or Operation of Law:** Together with those areas, if any, which by contract with any commercial establishment, other association, or any local governmental authority become the responsibility of the Association. Any public rights-of-way within or adjacent to the Property, may become part of the Areas of Common Responsibility.

(10) **Townhome Exterior Maintenance**: Maintenance of the exterior components of Townhomes as provided herein.

(c) **"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.

(d) **"Assessments"**. The assessments levied by the Association against Owners of Homes to fund Common Expenses.

(e) **"Association"**. The Enclave and The Summit at Forest Lakes Homeowners' Association, Inc., a non-profit Ohio corporation, its successors and assigns, which has been created to govern, operate, control and administer the Areas of Common Responsibility and to supervise and enforce this Declaration.

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

(g) **"City"**. The City of Green, Ohio.

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

(i) **"Code"**. The Code of Regulations of the Association attached hereto and incorporated herein as **Exhibit "D"**.

(j) **"Common Elements"**. All real and personal property now or hereafter owned by the Association or otherwise held or maintained for the common use and enjoyment of the Owners or Occupants. Common Elements shall include those areas of land intended for the common use, benefit and enjoyment of all Occupants of the Property, and shall include all driveways, roadways, Stormwater Management Facilities, and/or Common Elements identified on the Plat or any other plat creating Sublots within the Property. Common Elements does not mean or imply that the public at large acquires any easement of use or enjoyment therein.

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

(l) **"Conservation Areas"**. Those areas within the Property designated as such on the Plat.

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

(n) **"Declarant"**. **K. Hovnanian Forest Lakes, LLC**, an Ohio limited liability company, and the specifically designated successors or assigns of any of its 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 this Declaration unless and until such person or entity has been specifically so designated by the Declarant herein by an instrument in writing and placed of record, and such party shall be deemed a successor and assign of Declarant only to the particular rights and interests of Declarant under this Declaration or under a supplement to this Declaration.

(o) **"Detached Home"**. A Detached Home is a Home that is not connected to any other Home by a Party Wall.

(p) **"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, including Homes and Sublots that have given written notice of their desire to obtain the status as Eligible Mortgage Holders to the Association.

(q) **"Home"**. A Home is a single-family home within the Property and includes both Townhomes and Detached Homes. The term Home shall also include all portions of the Sublot owned as a part of any structure thereon. For the purposes of this Declaration, a Home shall come into existence when the improvements constructed thereon are sufficiently complete to reasonably permit the habitation thereof, whether or not a certificate of occupancy has been issued for the Home by the governmental authority having jurisdiction over the same, and the Home has been conveyed to a person other than the Declarant.

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

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

(t) **"Original Declarant"**. **K. Hovnanian Forest Lakes, LLC**, an Ohio limited liability company.

(u) **"Owner"**. The record Owner of fee simple title in a Sublot and the Home situated thereon, including the Declarant (except as otherwise provided herein) with respect to any unsold Sublot, but Owner shall exclude in all cases any party holding an interest merely as security

for the performance of an obligation. If a Home 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 Homes that are rented to others shall be as follows: for the purpose of votes and Assessments, the record Owner of the Home; for the purpose of use and enjoyment of common facilities and amenities which are part of the Common Elements, the Tenant residing in the Home. Every Owner shall be treated for all purposes as a single Owner for each Home held irrespective of whether such ownership is joint or in common.

(v) **"Ownership Interest"**. The entire right, title and interest of any Owner in all of the freehold and leasehold estates of such Owner in his or her Home.

(w) **"Party Wall"**. Each wall (and the roof above such wall) of a Townhome that is situated along the property line between two adjacent and connected Townhomes.

(x) **"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.

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

(z) **"Rules"**. Rules and regulations that govern the operation and use of the Homes and the Areas of Common Responsibility, including the Common Elements and any other property owned by the Association, as such rules and regulations may be adopted from time to time by the Board or the Design Review Committee to implement and carry out the provisions and intent of this Declaration.

(aa) **"Special Declarant Rights"**. 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 expand or contract the Property in accordance with Section 1.3 of this Declaration; (2) to maintain sales offices, management offices, customer services offices, and signs identifying and/or advertising the Property; (3) to use easements through the Common Elements for the purpose of making improvements within the Property; and (4) to appoint or remove any Board Members or officers of the Association during the Class "B" Control Period, as defined in Article III, Section 2 of the Code.

(bb) **"Stormwater Management Facilities"**. The stormwater management ponds and underground stormwater management facilities, including watercourses, ditches, waterways, courses, swales, retention basins, detention basins, spillway flow paths, storm sewers, concrete gutters, mechanical devices, and drainage pipes within the Property.

(cc) **"Sublot"**. A platted single-family lot upon which a Home has been or may be constructed, as shown on the Plat or any amendment thereto.

(dd) **"Subsequent Amendment"**. An amendment to this Declaration made pursuant to Section 1.3 herein which either 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.

(ee) **"Tenant"**. Any person(s) having a possessory leasehold estate in a Home other than an Owner.

(ff) **"Townhome"**. A Townhome is a single-family Home within the Property connected by a Party Wall or other structural connection to one or more other Townhomes.

(gg) **"Townhome Maintenance Assessments"** Townhome Maintenance Assessments are a subcategory of Assessments to be collected only from the Owners of Townhomes, to be expended only on the Association's exterior maintenance of Townhomes as provided herein.

### **ARTICLE III** **EASEMENTS**

#### **Section 3.1 - Utility Easements**

There is hereby reserved in favor of Declarant and granted to the Association, the providing utility or service company, and their successors and assigns, a non-exclusive easement upon, across, over, through and under the Property, including Sublots and Homes, for ingress, egress, installation, replacement, repair and maintenance of all utilities and service lines and systems including, but not limited to, water, sewer, energy, drainage, gas, telephone, electricity, television, cable and communication lines and systems, and for access to all utility meters, sub-meters, and related equipment, wherever located within the Property, including within individual Sublots or Homes. By virtue of this easement, it shall be expressly permissible for Declarant and the Association and their successors and assigns, or the providing utility or service company, to install and maintain facilities and equipment on the Property provided that such facilities shall not materially impair or interfere with any Homes, Sublots, or Common Element improvements, and provided further that any areas disturbed by such installation and maintenance are restored to substantially the condition in which they were found. In addition, easements are reserved and granted through each Townhome to the Association and Owners of the other Townhomes in the same building for the re-installation, maintenance, repair and replacement of any water, sewer, gas, electric, or telecommunications facilities serving any Townhome which may be installed within another Townhome during the original construction of the Townhomes by the Declarant. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, fire sprinkler 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 the Plat or a subsequently recorded plat. UTILITIES SOLELY

SERVING ONE TOWNHOME MAY RUN THROUGH ADJACENT TOWNHOMES PURSUANT TO THE PROVISIONS OF THIS EASEMENT, AND THE ASSOCIATION'S MAINTENANCE RESPONSIBILITIES FOR SUCH UTILITIES ARE AS SET FORTH IN SECTIONS 2.2(b) (4), (5), AND (6) HEREIN. There is hereby reserved in favor of the Declarant and the Association the right (but not the obligation) to grant neighboring property owners' easements for utility purposes so long as the granting of such easements does not overburden the utilities serving the Property.

### **Section 3.2 - Easement for Ingress and Egress**

There is hereby created a non-exclusive easement upon, across, over and through the common roadways, driveways, sidewalks, walkways, and parking areas that serve more than one Home in favor of Declarant, the Association, all Owners, Occupants, and their respective guests, licensees and invitees for pedestrian and vehicular ingress and egress, as the case may be, to and from all of the various portions of the Property. Notwithstanding the foregoing, the Declarant and/or the Association may limit this right of ingress and egress by a Subsequent Amendment.

### **Section 3.3 - Common Elements**

Declarant, every Owner and Occupant, and the guests of any of such parties shall have a right and non-exclusive easement of use and enjoyment in and to the Common Elements 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 of an Owner for any period during which any Assessment against his or her Sublot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its Rules, unless the infraction is ongoing;

(b) the right of the Association to dedicate or transfer all or any part of the Common Elements to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Board. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been signed by two-thirds (2/3rds) of the Members and has been recorded with the Summit County Recorder.

### **Section 3.4 - Easements for Construction, Alteration, etc.**

Easements are hereby created in favor of the Declarant, the Association, all Owners, and their respective agents and contractors upon portions of the Common Elements and Sublots as reasonably necessary in connection with the construction, alteration, rebuilding, restoration, maintenance, and repair of any Home 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 Home 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, and maintenance and shall repair any damage caused in connection with such activities to substantially the condition that existed prior to such activities.

**Section 3.5 - Emergency and Service Easements / Public Sidewalk Easement**

(a) There is hereby granted to the City an easement for access to the Common Elements for emergency and service purposes. Fire, police, health, sanitation, medical, ambulance, utility companies, 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 driveways, sidewalks, and parking areas within the Common Elements for the performance of their respective duties.

(b) There is hereby granted to the public an easement for pedestrian use of the sidewalk constructed along Tab Drive and Forest Lakes Drive if and where such sidewalk may be located within the Property and not within the public right-of-way.

**Section 3.6 – No Parking in Common Elements; Off-Street Parking Spaces**

There shall be no parking of motor vehicles within other areas of the roadways, driveways, or other Common Elements other than in designated striped parking spaces (if any) and in designated on-street parking spaces (if any) in accordance with signage or other markings, unless permitted by the Association. The Declarant and/or the Association reserve the right and easement to create additional off-street parking spaces to be situated within the Common Elements.

**Section 3.7 - Easements for Encroachments**

If by reason of the construction, repair, restoration, partial or total destruction and rebuilding, or settlement or shifting of any of the Townhomes: (a) a Party Wall of a Townhome shall encroach upon the Sublot of the Townhome sharing the Party Wall, easements are hereby created in favor of the Owner of such encroaching Party Wall for the maintenance of such encroachment; or (b) any other part of a Townhome shall encroach upon any part of the Common Elements or any part of an adjacent Sublot, easements in favor of the Owner of the encroaching Townhome are hereby established for the maintenance of such encroachment; provided, however, in no event shall a valid easement for any encroachment be created in favor of an Owner if such encroachment occurs due to his or her willful conduct.

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

(a) The Declarant, each Owner, the Association and the City shall have the non-exclusive right and easement in common to utilize the Stormwater Management Facilities within the Property, including, but not limited to, common storm sewers and drainage pipes in, over, and upon the Property for the purposes of drainage of surface waters on the Property, said rights-

of-ways and easements being hereby established for said purpose. The Association shall maintain and administer the Stormwater Management System in accordance with the guidelines as may be promulgated from time to time by the State of Ohio, Summit County and/or the City. The Association shall have primary responsibility for the maintenance of the Stormwater Management System and for compliance with the SWPPP Maintenance Plan. For the purpose solely of performing the maintenance required or authorized herein, the Declarant and/or the Association, through their duly authorized agents or employees, or subcontractors, shall have the right, after reasonable notice to a Sublot Owner, to enter upon such Sublot at reasonable hours on any day. In case of emergency, no notice shall be required to enter upon a Sublot. Notwithstanding any obligations of the Declarant or Association with respect to the Stormwater Management Areas, each Owner shall maintain that portion of the Stormwater Management System that is located within and serves only that Owner's Sublot. Each Owner shall have primary responsibility for grass cutting and vegetation control within the Stormwater Management Areas located on his or her Sublot. Such responsibility shall include keeping these easement areas clean and unobstructed. If any portion of the Stormwater Management System which serves only one Sublot is damaged, the Owner of that portion shall promptly cause it to be repaired. No Owner shall use or permit any other persons to use the Stormwater Management System in any manner which would constitute a nuisance, hazard or unsanitary condition or be in violation of any local, state, or federal law ordinance, rule, regulation or statute or inconsistent with the terms of this Declaration. Stormwater Management System areas shall be restricted against the planting in said areas any trees, shrubbery, or other woody growth; against the construction therein of buildings, fences, walls, and other structures that may obstruct the free flow of storm water and the passage of inspectors and maintenance equipment; and against the changing of final grade from that described by the final grading plan approved by the City and/or County.

(b) The Declarant and (after transfer of the Common Elements) the Association shall have the right to grant easements for the installation, maintenance, use, repair, and replacement of water lines, fire sprinkler lines, sanitary sewers, storm sewers, and drainage, including the Stormwater Management Facilities within the Property, to the City or any other governmental authority having jurisdiction. No Owner shall in any way hinder or obstruct the operation or flow of the Stormwater Management System. No structures, plantings, or other materials shall be placed or permitted to remain within such Stormwater Management System areas which may damage or interfere with the installation, use repair, replacement, and/or maintenance of such improvements in such Stormwater Management System areas or which may change, retard, or increase the flow of water through the respective Stormwater Management System areas. The Stormwater Management System areas and all improvements therein shall be maintained continuously by the Association unless those easement areas are accepted by the City or other governmental authorities having jurisdiction by formal action.

**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 Homes by the Declarant, 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 and its designated representatives to maintain and carry on upon portions of the Common Elements such facilities and activities as, in the sole opinion of Declarant may be reasonably required, convenient, or incidental to the construction or sale of Homes within the Property, including, but not limited to, administrative/customer services, construction offices/trailers, parking signs, identification signs, sales signs and banners, model units, outdoor events, sales and resales offices, and parking areas, and the Declarant, its guests, licensees and invitees shall have an easement for access to and use of all such facilities. The right to maintain and carry on such facilities and activities shall specifically include the right to use Homes 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 Homes and other improvements upon the Property to conduct business and carry on construction/site development activities during customary business hours. This Section may not be amended or modified without the express written consent of the Declarant.

### **Section 3.10 - Maintenance Easements**

There is hereby reserved for the benefit of the Association and its agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement to enter upon any Sublot for the purpose of taking any maintenance or repair obligations of the Association required herein, and undertaking any right or responsibility of the Association as provided in this Declaration.

There is also hereby reserved for the benefit of the Association and its agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement to enter upon any Sublot for the purpose of maintaining or repairing the improvements thereon pursuant to the provisions of Sections 2.2(b) and 7.1 herein, and for the purpose of mowing, removing, clearing, cutting, or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash and debris in order to maintain reasonable standards of health, fire safety, and appearance within the Property, provided that such easement shall not impose any duty or obligation upon Declarant or the Association to perform any such actions; and provided, further, that in the exercise of its rights hereunder the Association shall be entitled to be reimbursed by such Owner pursuant to Article VII hereof.

As a Home may be constructed directly adjacent to the property line of its Sublot, an easement is hereby granted across the Common Elements and all adjacent Sublots for the benefit of the Owner of a benefited Home on an adjacent Sublot, to allow the benefited Owner, and his or her agents, employees, and/or contractors, to enter the burdened Common Element or Sublot at all reasonable times as may be required to perform maintenance, repair, replacement, and improvement activities with respect to the benefited Owner's Home. In the exercise of such easement rights, the benefited Owner shall use reasonable care to avoid damage to the burdened Owner's property, shall return all such property to substantially the same condition it was in prior to such benefited Owner's exercise of such rights, and shall indemnify and save harmless the burdened Owner from and against any and all losses, damages, liabilities, claims

and expenses, including reasonable attorneys and paralegals fees resulting from any such maintenance, repair, replacement, and improvement activities.

An Owner shall permit agents or employees of the Association and other Owners access through the Owner's Sublot and Home for the purpose of fulfilling the Association's duties and obligations. Any damage to the Common Elements, Sublot, or Home due to that access is the responsibility of the Owner that caused the damage or the Association if it is responsible for the damage. That Owner, or the Association, is liable for the prompt repair of any damage and, if not repairable, for the value of the damaged property or item as it existed immediately prior to that damage.

### **Section 3.11 - Scope of Easements and Dedication of Roadways and Utilities**

As the improvements to be located within the Property for the easement rights granted or reserved under Sections 3.1 and 3.2 are definable within specific areas, the 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) to: (a) limit such easements to specific areas and purposes, and record a document or documents releasing the balance of the lands from the burden of such easements; and/or (b) record a plat or other document or documents setting forth the specific areas subjected to such easements; and/or (c) dedicate to public or private use specific areas (and the improvements contained therein) within the Property to meet the requirements of the City, and other public authorities having jurisdiction over the same. The 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, except, however, for a dedication of improvements to the City, which dedication can only be effective upon acceptance of the City in accordance with law.

### **Section 3.12 –Conservation and Open Space Restriction**

The Conservation Area (including portions within Common Areas and/or Sublots) shall forever and in perpetuity be preserved, protected, and maintained by the Association as a scenic, natural area, as a natural environmental system suitable for wild native and naturalized flora and fauna of all types, as the natural state of the Conservation Area, restricting all other further subdivision or development, permitting the use of the Property not within the Conservation Area as single-family residences and Common Elements as otherwise permitted herein. The Declarant and/or the Association shall erect and maintain boundary markers where the boundary of the Conservation Area crosses the property line of each Sublot, said markers clearly identifying the limits of the Conservation Area to avoid degradation of the Conservation Area. The Declarant specifically reserves, for Declarant and the Association, and their respective successors and assigns, the rights (to be performed in full conformance with all applicable City, State, or Federal regulations) to plant native and naturalized vegetation, to perform restoration activities to wetland areas and vegetation, to maintain, repair and replace any existing storm management facilities pursuant to easements otherwise granted herein, and make other alterations to the Conservation Area as may be necessary or advisable to maximize the value of the Conservation

Area for providing natural habitat to native and naturalized flora and fauna. The Homes that may be constructed on the Property adjacent to the Conservation Area may be maintained, demolished, repaired, remodeled, constructed and reconstructed all in accordance with the terms of this Declaration, provided that any building, structure or improvement may not be constructed within the Conservation Area. The following activities and uses are expressly prohibited in the Conservation Area: (i) no buildings or other structures, including but not limited to decks, patios, steps, and fences, shall be hereafter erected within or placed on the Conservation Area; (ii) there shall be no dumping of soil, trash, ashes, garbage, waste, tree limbs, branches, firewood, lawn clippings, landscaping debris, or other unsightly, offensive or harmful material on or in the Conservation Area, and no changing of its topography through the placing of soil or other substance or material such as land fill or dredging spoils; (iii) except as set forth herein with respect to the initial construction of the project and/or any wetlands restoration or similar activities, there shall be no fillings, excavation, dredging, mining, drilling or removal of loam, gravel, soil, rock, sand, minerals, or other materials, nor any building of roads or pathways or other change in the general topography of the land on the Conservation in any manner; (iv) there shall be no removal, destruction, or cutting, of trees, shrubs, or other vegetation on the Conservation Area except as may be needed for good husbandry practices, which may include the removal of dead or damaged trees or branches that present a safety hazard, removal of invasive, non-native, or toxic species, or other circumstances specified in this document; (v) no manipulation or alteration of natural water courses, marshes, or other water bodies or activities or use detrimental to water purity, providing there is reserved the right, however, to remove brush, trees, and silt from water courses as they grow and accumulate to the extent that the natural flow is impeded and there exists the potential of flooding of adjoining privately owned property, and (vi) there shall be no operation of snowmobiles, all-terrain vehicles (ATVs), motorcycles, or any motorized vehicles on the Conservation Area. The Declarant and the Association are hereby each granted a non-exclusive easement to enter onto the Property and the Conservation Area to ensure continuing compliance with the provision of this Section 3.12. Should the Declarant and/or Association notify any Owner of any violations of the requirements of this Section 3.12 the Declarant and/or Association may cure such violation at the sole cost and expense of such Owner.

### **Section 3.13 - Easements To Run With the Land**

All easements and rights described herein are easements appurtenant to the Property, including the Sublots, Homes, and the Common Elements, 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 Owner, Tenant, Occupant, purchaser, mortgagee, the City or other Person having an interest in the Property, or any part or portion thereof. Reference to the easements and rights described in any part of this Declaration, in any deed of conveyance, lease, mortgage, trust deed, declaration for another type of residential association, or other evidence of obligation, shall be sufficient to grant such easements and rights to the respective grantees, lessees, mortgagees or trustees of such property, or any portion thereof, and to reserve to the grantor or lessor therein, their successors and assigns, as easements appurtenant to the remainder of the such properties, easements created by this Declaration for the benefit of any

Owner, Tenant, Occupant, purchaser, mortgagee, the City or other Person in respect to any portion of the Property as fully and completely as though such easements and rights were recited fully as set forth in their entirety in such document.

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

**Section 4.1 - Conveyances of Common Elements**

The Declarant shall transfer title to the Common Elements to the Association not later than the date the last Home is conveyed to an Owner other than the Declarant. 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 Declarant shall cause the mortgagee of the Common Elements to subordinate its mortgage on such areas in favor of this Declaration. The Association shall hold title to the Common Elements subject to the provisions of this Declaration. After title to the Common Elements is transferred to the Association, or its successors and assigns, except as otherwise provided herein the Declarant shall have no greater ownership or control over the Common Elements than the ownership or control of Owners or Occupants within the Property, or Additional Property as the same is added to the Property.

**Section 4.2 - Use of Common Elements**

Any Owner may delegate, in accordance with the provisions of this Declaration and 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 Elements 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 Home.

**ARTICLE V**  
**THE ASSOCIATION**

**Section 5.1 - Existence**

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

**Section 5.2 - Membership and Voting Rights**

(a) Classes of Membership

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

(1) Class "A" Membership. Each Owner of a Home (including, without limitation, the Declarant if the Declarant is the record titleholder of a Home) shall automatically be a Class "A" Member of the Association. Furthermore, membership in the Association is mandatory of all Owners of Homes and Sublots within the Property. The Class "A" Membership is appurtenant to the ownership of each Home and shall not be separable from the ownership of any Home and shall be deemed to have been terminated with any voluntary or involuntary conveyance of any Home, whether or not such membership is expressly referred to in the instrument effecting such conveyance, at which time the new Owner or other successor in interest shall immediately and automatically become a Member of the Association with all rights and responsibilities relative thereto. No Owner, whether one or more persons, shall have more than one membership per Home 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 Home 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 Home.

In any situation where a Member is entitled to exercise a vote and more than one (1) Person holds the interest in such Home required for membership, the vote for such Home shall be exercised as those Persons determine among themselves and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the vote of the Home shall be suspended if more than one (1) Person seeks to exercise it. In the case of a Home 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 Home, 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. The rights of the Class "B" Member, including the right to approve actions taken under this Declaration and the Code, are specified elsewhere in the Declaration and the Code. The Class "B" Member shall be entitled to appoint a majority of the members of the Board during the Class "B" Control Period, as specified in Article III, Section 2 of the Code. After termination of the Class "B" Control Period, the Declarant shall retain the right to

disapprove actions of the Board and any committee as provided in Article III, Section 3, of the Code. The Class "B" membership shall terminate and become converted to Class "A" membership in accordance with Article III, Section 2 of the Code. For purposes of determining the number of votes allowed under this Section the total number of Sublots shall be two hundred twenty three (223), which is the maximum number of Sublots which the Declarant intends to (but need not) submit to the provisions of this Declaration. If Declarant at any time makes a final determination that more or less than two hundred twenty three (223) Homes will be constructed within the Property and any Additional Property, Declarant may amend this Section 5.2(b)(2) pursuant to Section 16.12 herein to reflect the actual number of Homes to be constructed.

### **Section 5.3 - Board and Officers of the Association**

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

### **Section 5.4 - Rights of the Association**

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

(a) To borrow money from time to time for the purpose of improving the Common Elements and for other expenses deemed reasonably necessary by the Board, and may secure said financing with a mortgage or mortgages upon all or any portion of property owned by the Association in accordance with its Articles and Code and subject to the provisions of this Declaration or by a partial assignment of Assessments. The Association may not assign the right to Assessments, or the future income from those Assessments unless seventy-five per cent (75%) of the voting power of the Association approves such assignment. The Board, on behalf of the Association, has all powers necessary and appropriate to affect such an encumbrance including the power to execute a deed, mortgage, or other instrument.

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

(c) To convey the Common Elements or a portion thereof, to a successor; provided, however, that any such conveyance shall require the vote of seventy five percent (75%) of the Class "A" Members and the vote of the Class "B" Member, and provided further that, if so required by the Association, such successor shall agree, in writing, to be bound by the easements, covenants, restrictions and spirit of this Declaration. The Board, on behalf of the Association, has

all powers necessary and appropriate to affect such a conveyance including the power to execute a deed or other instrument.

(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.

**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 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 Areas of Common Responsibility are as stated herein, and include:

(a) Common Elements. To maintain all improvements and landscaping situated within the Common Elements (including, but not limited to, sidewalks, roadways, driveways, retaining walls, signage, pavement, lighting, common utilities, pavilions, and mailbox structures) in a good and attractive condition, for the use and enjoyment of Owners. The obligations set forth in this subsection shall be deemed to run with and burden the party accepting any such deed and title to the Common Elements. The Association shall accept a deed to and hold title to the Common Elements and shall be deemed to have accepted title to the Common Elements upon the recording of such deed. The Common Elements as shown on the Plat or any subsequent plat shall remain as such.

(b) Landscaping. To maintain all landscaping, landscaping irrigation systems, and retaining walls situated within the Common Elements and/or Townhome Sublots (except landscaping which has been added by an Owner within a Townhome Sublot, as permitted herein) in a good and attractive condition. The Association shall maintain landscaping shielding electric

meters and/or electric transformers as required by the City. All grassy and landscaped and other open areas within the Common Elements (other than those areas designated by Declarant or the Association to remain in their natural state) shall be cut, pruned, trimmed and otherwise maintained on a regular basis, replacing any grass and landscaping as required to keep such areas neat, trimmed, and aesthetically pleasing. For purposes of this Article VI, "landscaping" shall be deemed to mean all permanent plantings such as grass, trees and shrubs; provided, however, that if a shrub or tree requires replacement, the Board shall determine whether to substitute a new plant of like or different kind or type, or whether to replace with grass, beds or otherwise, at such discretion of the Board.

(c) Snow Removal. To remove snow from the driveways, roadways, and parking spaces within Common Areas or exclusively serving the Townhomes, and, at the discretion of the Board, from common sidewalks within the Property, from public sidewalks adjacent to the Property, and/or private sidewalks serving only one Home as reasonably required to keep the same reasonably free from such snow and ice as the circumstances may reasonably permit. (Snow Removal from private walks serving only one Home, and sidewalks adjacent to public or private roadways in front of Sublots is, in the absence of the Association's election from time to time to be responsible therefor, the sole responsibility of the Home Owner or Occupant.) **EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND AGREES THAT UNDER THE COMMON LAW OF THE STATE OF OHIO, NO OWNER OF REAL PROPERTY IS OBLIGATED TO REMOVE THE NATURAL ACCUMULATIONS OF ICE AND SNOW AND IS NOT LIABLE FOR INJURIES CAUSED AS A RESULT OF THE SNOW OR ICE. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND AGREES ON BEHALF OF THE OWNER, THE OWNERS HEIRS, SUCCESSORS AND ASSIGNS AND ALL OCCUPANTS, THAT THE ASSOCIATION'S RESPONSIBILITY WITH RESPECT TO SNOW REMOVAL HEREUNDER SHALL NOT BE CONSTRUED AS AN ASSUMPTION OF THE OBLIGATION TO REMOVE ALL SNOW AND ICE. THE ASSOCIATION, IN ITS SOLE DISCRETION, SHALL DETERMINE THE NEED FOR SNOW AND/OR ICE REMOVAL. THE ASSOCIATION, ITS TRUSTEES, AGENTS, CONTRACTORS AND ASSIGNS, SHALL NOT BE LIABLE FOR ANY INJURY CAUSED AS A RESULT OF SNOW OR ICE, UNLESS IN BREACH OF THE DUTY AS SET FORTH HEREIN.**

(d) Common Element 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 or illuminating the Common Elements, 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.

(e) Drainage System. To maintain all common piping, culverts, drains, and other drainage facilities now or hereafter situated upon any portion of the Property which are intended for the collection, retention, detention, transmittal or disposal of storm-water in clean and sanitary condition and in good order and repair and to make all replacements and renewals necessary to so maintain the same, provided, however, the maintenance of any publicly dedicated drainage facilities shall be the responsibility of the City (if so accepted by the City), and the maintenance of any such drainage system exclusively serving a single Home or Sublot shall

be the responsibility of the Owner thereof.

(f) Utilities. To maintain, repair and replace the portions of the sanitary sewer lines, water supply lines, fire sprinkler lines, gas supply lines, electric, telephone, television, and other telecommunications wires serving the Common Elements (if any) that are not the responsibility of the supplying utility company, the City, or other governmental authorities having jurisdiction. The Association shall maintain and repair utilities serving Homes, either as a group, or individually, as provided in Sections 2.2(b) (4), (5), and (6) herein, and following notice from an Owner or otherwise that such utility services require repair, the Association shall make reasonable efforts to contract with the necessary contractors or vendors within not more than eight hours after receipt of notice that such repair is needed.

(g) 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 to maintain the same.

(h) Ground Settlement. The Association shall repair and restore any ground or concrete settlement occurring over storm and sanitary sewers, water lines, gas, electric, television or cable lines and other utility facilities located within the Community.

(i) Street Trees. Street trees shall be provided by the Declarant within the public right-of-way and along private roadways. Such street trees shall be of a species that is acceptable to the City and shall be submitted to the City for approval. One installed, street trees shall not be relocated from their original planting location without the approval of the City. The Declarant shall guarantee the street trees for a period of one (1) year commencing on the date of the installation. The Association or Sublot Owners shall be responsible for the tree replacement as needed after the one (1) year period. The City shall assume the primary maintenance responsibility for street trees within the right-of-way. This shall include all trimming, pruning, and removal of dead or damages trees, as necessary. The Association and/or Sublot Owners may proceed with such maintenance upon prior approval from the City Service Director. The Association and/or Sublot Owners shall be responsible for the replacement of any trees removed by the City or, if desired, the planting of new/additional trees. Any replacement trees or new/additional trees shall be approved by the City Service Director relative to species, location, and installation timeframe.

## **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 due and payable 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. The Association shall also pay or reimburse the Declarant for any real estate taxes and assessments assessed with respect to any such Common

Elements, commencing on the date the first Home is conveyed to an Owner other than the Declarant.

### **Section 6.3 - Utilities**

(a) Utilities Serving Common Elements. 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 by, and metered and billed through the Association.

(b) Storm Water Charges. Should the Property as a whole be subject to payment of any storm water runoff related charges, such charges shall be a Common Expense of the Association.

(c) Street Lights. The Association shall pay for the maintenance and operation of street lights along the portion of Tabs Drive and Forest Lake Drive within the Property. Such street lights shall be metered and paid by the Association directly to applicable utility entity or authorized power provider.

### **Section 6.4 - Insurance**

The insurance which shall be carried by the Association shall be governed by the following provisions:

(a) Casualty Insurance.

(1) The Association shall carry casualty insurance on all insurable improvements comprising the Common Elements. The Association shall also carry casualty insurance on all personal property owned by the Association and for which the Association is responsible. To the extent commercially available, and subject to reasonable deductibles, the Association's casualty insurance shall be in an amount not less than one hundred percent (100%) of the insurable replacement cost of such Common Elements, with a "Guaranteed Replacement Cost Endorsement" (excluding excavation and foundation costs and other items normally excluded from coverage), amount of insurance shall initially be based on cost of construction and shall be adjusted annually for inflation. The cost of the appraisal shall be a Common Expense.

(2) If available at a reasonable cost as determined by the Board, the Association's casualty policy shall contain 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 "Loss Assessment Coverage" or its equivalent.

- (3) The Association shall carry insurance coverage against such other risks as the Board may determine from time to time may be customary with respect to improvements similar to the Common Elements 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 Ten Thousand Dollars (\$10,000) or one percent (1%) of the policy amount, except that the deductible amount shall not exceed two percent (2%) of the policy amount for earthquake coverage if a one percent (1%) deductible for earthquake coverage is not available at a reasonable cost. The deductible amounts shall be treated as a Common Expense unless the casualty is the result of the negligence or willful act of a Home Owner, his or her Occupants, tenants, or the guests or invitees of such parties, in which event the deductible amount shall be paid by the Home Owner, and such amount shall be a Special Assessment against such Owner's Home.
- (4) The Association's casualty insurance shall provide that the coverage thereof shall not be terminated for non-payment of premiums without at least ten (10) days' written notice to the Association. All Association casualty insurance policies shall be purchased by the Association for the benefit of the Declarant, the Association, the Home Owners and their respective mortgagees, as their interests may appear, and shall provide (i) for the issuance of certificates of insurance with mortgagee endorsements to the holders of mortgages on the Homes requiring such endorsements, if any; (ii) to the extent available at a reasonable cost, that the insurer waives its rights of subrogation against Home Owners, Occupants of Homes, and the Association; (iii) that the Association's casualty insurance will not be prejudiced by any acts or omissions of Home Owners that are not under the control of the Association; and (iv) the policy is primary, even if a Home Owner has other insurance that covers the same loss.

(b) Liability Insurance. The Association shall insure itself, the members of the Board, and the Owners and Occupants of Homes 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 Elements and/or the actions or omissions of the Association, including, without limitation, water damage, legal liability, hired automobile, non-owner automobile and off-premises employee coverage, such insurance to afford protection to a limit of not less than One Million Dollars (\$1,000,000.00) in respect to personal injury, disease, illness or death suffered by any one person, and to the limit of not less than Two Million Dollars (\$2,000,000.00)

in respect to any one occurrence, and to the limit of not less than One Million Dollars (\$1,000,000.00) in respect to damage to or destruction of property arising out of any one accident. Reasonable amounts of "umbrella" liability insurance coverage in excess of the primary limits shall also be obtained in an amount of not less than Five Million Dollars (\$5,000,000). All Association liability insurance policies shall contain cross-liability endorsements to cover liabilities of the Home Owners as a group to a Home Owner and shall further provide that the coverage thereof shall not be terminated for non-payment of premiums without at least ten (10) days written notice to the Association. In the event the insurance effected by the Association on behalf of the Owners and Occupants of Homes who are not Owners against liability for personal injury or property damage arising from or relating to the Common Elements shall, for any reason, not fully cover any such liability, the amount of any deficit shall be a Common Expense to the Owners. The Association shall also obtain directors (trustees) and officers liability coverage, if reasonably available. The minimum coverages set forth herein may be adjusted by the Board of the Association from time to time as they determine to be reasonable, without the need to amend this Declaration.

(c) Directors and Officers Liability Insurance - Fidelity Bonds. The Association shall obtain Directors and Officers liability insurance covering the members of the Board of Directors of the Association. To the extent available for a reasonable premium, the Association may elect to purchase a fidelity bond or other form of employee dishonesty coverage indemnifying the Association, the Board and the Home Owners for loss of funds resulting from fraudulent or dishonest acts of any employee of the Association or of any other person handling the funds of the Association (including a managing agent, a management company and its employees who control or disburse funds of the Association), the Board or the Home Owners. A managing agent or management company that is responsible for the funds held or administered by the Association must be covered by a fidelity bond for the maximum amount to protect those funds. The Association has the standing to make a loss claim against the Board or a managing agent or management company as a party covered under the bond. For the purpose of this subsection, the fidelity bond must be in at least the full amount of Association funds and reserves in the custody of the Association or the management company or managing agent, but in no event shall the amount of the bond be less than an amount equal to three (3) months' Assessments. The fidelity bond shall name the Association as the obligee, and the premium for such bond shall be a Common Expense. Such bond shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression. Such bond shall provide that it may not be canceled for non-payment of any premiums or otherwise substantially modified without at least ten (10) days prior written notice to the Association and to all Eligible Mortgage Holders.

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

(e) 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.

(f) 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.

(g) Casualty Insurance to be Carried by a Home Owner.

(1) Each Home Owner shall carry casualty insurance on all of the improvements comprising his or her Home, and such casualty insurance to be provided by each Home Owner is hereinafter referred to as "**Home Owner Casualty Insurance**". To the extent commercially available, and subject to reasonable deductibles, the Home Owner Casualty Insurance to be purchased hereunder by each Home Owner shall be in an amount not less than one hundred percent (100%) of the insurable replacement cost of such Home, with a "Guaranteed Replacement Cost Endorsement", the amount determined and the insurance to be reviewed annually and adjusted if necessary. Such Home Owner Casualty Insurance policy shall include the following coverages: (a) Loss or damage by fire and other hazards covered by the standard extended coverage endorsement; (b) If available at a reasonable cost, 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 "Loss Assessment Coverage" or its equivalent; (c) Loss or damage from such other risks customarily covered with respect to buildings similar to the Buildings in construction, location and use, including, but not limited to, debris removal, vandalism, malicious mischief, windstorm and water damage, and flood insurance (if such insurance is available) subject to such deductible amounts as the Board shall determine, provided, however, such deductible amounts shall not exceed the lesser of One Thousand Dollars (\$1,000) or one-half percent (1/2%) of the policy amount. The Home Owner shall be solely responsible for payment of deductible amounts.

(2) The Home Owner Casualty Insurance shall provide that the coverage thereof shall not be terminated for non-payment of premiums without at least ten (10) days' written notice to the Home Owner, the Association, and to the first mortgagee of such Home, if any.

(3) All Home Owner Casualty Insurance policies shall provide: (i) that the insurer waives its right of subrogation against other Home Owners, Occupants of other Homes, and the Association; (ii) that the insurance will not be prejudiced by any acts or omissions of Owners or Occupants of the Home or other Homes; and (iii) the Home Owner Casualty Insurance policy is primary with respect to casualty to the Home, even if the Association's casualty insurance policy obtained by the Association covers the same loss.

(4) Copies of each Home Owner Casualty Insurance policy and any endorsements thereto, as the same are issued, renewed, and/or revised, shall be deposited with the Association.

(5) All Home Owner Casualty Insurance policies shall provide that all proceeds payable as a result of casualty losses to the Home or the personal property of the Home Owner shall be paid to the Home Owner and/or each holder of a mortgage on the Home as required in such mortgage. All Home Owner Casualty Insurance policies shall provide that such policies shall be without contribution against the Association casualty insurance purchased by the Association, or shall be written by the carrier of such Association's casualty insurance.

(h) Responsibility for Reconstruction or Repair.

(1) If any portion of the Common Elements shall be damaged by perils covered by the Association's casualty policy, the Association shall cause such damaged portion to be promptly reconstructed or repaired to the extent of the funds made available to the Association and any such reconstruction or repair shall be substantially in accordance with the original construction.

(2) Each Owner shall be responsible for the repair of his or her Home after a casualty that is not covered by the Association's casualty policy.

(i) Procedure for Reconstruction or Repair.

(1) Immediately after a casualty causing damage to any portion of the Common Elements the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as the condition of the property before the casualty. Such costs may include professional fees of public adjuster firms and others and premiums for such bonds as the Board deems necessary.

(2) If the proceeds of the Association's casualty policy are not sufficient to defray the estimated costs of reconstruction and repair by the Association (including the aforesaid fees and premiums, if any,) one or more special assessments shall be made against all Home Owners in sufficient amounts to provide funds for the payment of such costs, and the proceeds of such special assessments shall be deposited with the Association.

(3) The proceeds of the Association's casualty policy and the sums deposited from collections of special assessments against Owners on account of such casualty, shall constitute a construction fund which shall be disbursed to the Association and be applied to the payment of the cost of reconstruction and repair of the portion of Property that is covered by the Association's casualty insurance policy from time to time as the work progresses, but not more frequently than once in any calendar month. The Association

shall make such payments upon receipt of a certificate, dated not more than fifteen (15) days prior to such request, signed by the architect or contractor in charge of the work, who shall be selected by the Association, setting forth (a) that the sum then requested is justly due to contractors, subcontractors, materialmen, architects, or other persons who have rendered services or furnished materials in connection with the work, giving a brief description of the services and materials, and that the sum requested does not exceed the value of the services and materials described in the certificate, (b) that except for the amount stated in such certificates to be due as aforesaid less any prescribed holdback of funds, and for work subsequently performed, there is no outstanding indebtedness known to the person signing such certificate after due inquiry which might become the basis of a vendor's, mechanic's, materialmen's or similar lien arising from such work, and (c) that the cost as estimated by the person signing such certificate of the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining in the hands of the Association after the payment of the sum so requested. It shall be presumed that the first monies disbursed in payment of such costs of reconstruction and repair shall be from insurance proceeds; and if there is a balance in any construction fund after payment of all costs of the reconstruction and repair for which the fund is established (the "**Excess Balance**"), the Excess Balance shall be refunded to the Home Owners.

(j) **Negligence of an Owner** Each Owner shall be liable for the expenses of any maintenance, repair or replacement (or payment of any deductible amount required by any insurance policy) rendered necessary by his or her negligence or by that of any member of his or her family or his or her or their guests, employees, agents or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by his or her use, misuse, occupancy or abandonment of his or her Home or its appurtenances or of the Common Elements.

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

### **Section 6.5 - Management**

The Association, through its Board, 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 three (3) years, and provided, further, that the Board may designate a different managing agent with whom the Association shall enter into an agreement after the end of the then existing management agreement; and
- (d) The management agreement may be with an entity owned by or associated with the Declarant, or owned by, associated with, controlled or employed by any partner, shareholder, officer, director, agent or employee of the Declarant, and may be for a period of time not to exceed three (3) years, in Declarant's sole discretion (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). The compensation payable to the Declarant or its affiliate shall be comparable to compensation paid to unrelated management companies located in the Northeast Ohio area for similar types of communities.

#### **Section 6.6 - Upgrading**

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

#### **Section 6.7 - Enforcement**

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

#### **Section 6.8 - 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 or her family, guests, Tenants or by his or her co-Owners or the family, guests or Tenants of such co-Owners. Furthermore, the Association, through the Board, may, by contract or other agreement, enforce City ordinances or permit the City or other governmental authorities having jurisdiction to enforce all applicable laws, rules, regulations, and ordinances of governmental authorities on the Property for the benefit of the Association and its Members.

#### **Section 6.9 - General**

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

#### **Section 6.10 - Original Declarant's Rights**

During the Class "B" Control Period, the Declarant shall have the right to exercise all or any of the powers and rights of the Association, and the obligation to perform the 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 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 Home for unpaid assessments in the manner and to the extent granted to the Association as herein provided.

#### **Section 6.11 – Security**

NEITHER THE ASSOCIATION OR THE DECLARANT IS UNDER ANY OBLIGATION OR DUTY TO PROVIDE ANY SECURITY FOR OR ON BEHALF OF ANY OWNER, OCCUPANT, OR RESIDENCE. NEITHER THE ASSOCIATION NOR THE DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE SECURITY. ALL OWNERS, TENANTS, OCCUPANTS, GUESTS, AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE DECLARANT AND ASSOCIATION ARE NOT INSURERS AND THAT EACH OWNER, TENANT, OCCUPANT, GUEST, AND INVITEE ASSUMES ALL RISK OF LOSS OR DAMAGE TO PERSONS, RESIDENCES, AND THE CONTENTS OF HOMES AND FURTHER ACKNOWLEDGE THAT NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, TENANT, GUEST, OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND REGARDING SECURITY, NONE HAVE BEEN MADE BY ANYONE, AND NONE SHALL BE IMPLIED IN LAW. NOTWITHSTANDING THE ABOVE, THE ASSOCIATION SHALL HAVE THE RIGHT (BUT NOT THE OBLIGATION) ACTING THROUGH THE BOARD TO PROVIDE ANY SECURITY MEASURES IT DEEMS DESIRABLE FROM TIME TO TIME.

### **Section 6.12 – Compliance with Ohio Revised Code**

The terms of this Declaration and the Code of Regulations shall be interpreted to be in conformance with the provisions of Ohio Revised Code Section 5312 (the "**Ohio Planned Community Law**"). To the extent the Ohio Planned Community Law requires any provisions of the Declaration and the Code of Regulations not incorporated herein, said provisions shall be deemed incorporated herein. The Board shall fulfill all obligations mandated by the Ohio Planned Community Law and shall conduct all business in conformance with the requirements of the Ohio Planned Community Law. However, should a provision of the Ohio Planned Community Law be permissive, and not obligatory, and such provision is not addressed herein, such provision shall not be incorporated herein nor binding on the Board.

## **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, 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 Element facilities. This authority shall include, without limitation, the power to regulate the speed and flow of traffic on private drives within the Property (if any). Such regulations and use restrictions shall be binding upon all Owners, land contract vendees, Tenants, and Occupants.

### **Section 7.1 - Covenant of Good Maintenance**

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

(a) **Maintenance and Repair.**

(1) Each Owner and Occupant of a Home (whether a Detached Home or a Townhome) shall maintain the entirety of the interior and exterior of their Home (including, but not limited to all windows, doors, trim, siding, masonry, and roofing materials) in good condition and repair and shall keep the adjacent Common Elements free from debris, rubbish, rubble, and other conditions created by such Owners or Occupants or their guests. Such maintenance shall include the cleaning, maintenance, repair, and replacement of gutters and downspouts attached to Homes. Such maintenance shall also include maintenance of all patios, decks, or improvement within

the interior of any fenced-in area, screened enclosure, or other such enclosure constructed around or over exterior rear patios, decks, and any improvements or landscaping installed by an Owner within a Sublot.

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

(b) Snow Removal. Regardless of whether such services are also provided by the Association, each Home Owner and Occupant shall keep the walks leading to the front of the Home, sidewalks adjacent to private or publicly dedicated roadways in front of their Sublot, and any porches, stoops, stairways and steps free of unreasonable accumulations of snow and ice.

#### **Section 7.2 - Trailers**

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

#### **Section 7.3 - Fences, Walls, Landscaping, Mail Boxes**

Fences, walls, trees, hedges, and shrub plantings shall be maintained in a sightly and attractive manner. Fences, walls of any kind, and landscaping of any kind shall not be erected, begun or permitted to remain upon any portion of the Property unless approved by the Design Review Committee as provided in Section 8.2 herein, or unless originally constructed by Declarant or installed by the Association. All mail boxes shall be uniform in appearance with the size, type, color and location prescribed by the Declarant or the Design Review Committee.

#### **Section 7.4 - Nuisance**

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

#### **Section 7.5 - Animals**

No animals, livestock, or poultry of any kind shall be raised, bred or kept on any portion of the Property (including the Homes), except that dogs, cats, birds, fish, and other customary

household pets may be kept, subject to Rules adopted by the Board, provided that they are not kept, bred, or maintained for any commercial purpose and provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance or annoyance shall be permanently removed from the Property upon three days' written notice from the Board. Dogs shall at all times whenever they are outside a Home be confined on a leash held by a responsible person. Each Owner shall immediately clean up after his or her dog. No more than three (3) cats, dogs, or combination thereof shall be kept in any one Home. The Rules may further limit the number of pets which may be kept in any one Home. The Board shall have absolute power to prohibit a pet from being kept on the Property or within a Home if the Board finds a violation of this Section.

#### **Section 7.6 - Signs**

No sign or other advertising device of any nature shall be placed upon any portion of the Property except for "For Sale" signs and non-commercial opinion signs (which are permitted if in compliance with all City ordinances and regulations) and other 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. Notwithstanding the foregoing, the restrictions of this Section 7.6 shall not apply to Declarant.

#### **Section 7.7 - Storage of Material and Trash Handling**

No lumber, metals, bulk material, refuse or trash shall be burned, whether in indoor incinerators or otherwise (excluding the burning of firewood in a fireplace), kept, stored or allowed to accumulate on any portion of the Property, except normal residential accumulation pending pick-up and except building materials during the course of construction or reconstruction of any approved building or structure, except firewood may be stored within Homes, on patio areas or other areas designated by the Board if a Home contains a fireplace, the installation of which shall be approved by the Board. If trash or other refuse is to be disposed of by being picked up and carried away on a regular recurring basis, containers may be placed in the open on any day that a pick-up is to be made, thereby providing access to persons making such pick-up. All such trash containers shall have an integral attached lid, shall comply with all municipal regulations, and shall be set out only during times as permitted by the City. At all other times such containers shall be stored in the Owner's garage. No dumping of rubbish shall be permitted on any portion of the Property. Anything herein to the contrary notwithstanding, the Association or the Board may adopt a Rule or Rules which permit burning, incineration or storage of refuse or trash if the same becomes reasonably necessary for the safety, health or welfare of the Occupants, and is permitted by law.

#### **Section 7.8 - Commercial or Professional Uses**

Except as expressly permitted in this 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 in any Home or on any Sublot containing or

designated to contain any Home; provided, however, an Occupant may use a portion of his or her Home for his office or studio, so long as the activities therein shall not interfere with the quiet enjoyment or comfort of any other Occupant and that such use does not result in the Home becoming principally an office, school or studio as distinct from a residential home. Furthermore, no trade or business may be conducted in or from any Home without the written approval of the Board (or Covenants Committee referred to in the Code) first obtained. Such approval shall be granted so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from outside the Home; (b) the business activity conforms to all City zoning requirements; (c) the business activity does not involve employees who do not reside in the Property; (d) the business activity does not involve persons coming onto the Property who do not reside in the Property except by appointment only; (e) the business activity does not involve door-to-door solicitation of Occupants of the Property; and (f) the business activity is consistent with the residential character of the Property and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of the Property, as may be determined in the sole discretion of the Board (or a Covenants Committee). The Board may adopt Rules which intensify, relax or amend the prohibitions of this Article. Nothing in this Section shall preclude the leasing of a Home by the Declarant or an Owner; the right of the Declarant or the Board (or a firm or agent employed by the Declarant or Board) to approve commercial activities such as charity events, temporary food and beverage operations, the right of the Declarant to maintain brokerage offices for sales of Sublots and for new sales of Homes within the Property, and resales of Homes and the right of the Declarant to utilize a Home for model Home and/or for office purposes.

#### **Section 7.9 - Storage of Vehicles and Machinery**

No truck (except a two-axle truck with no more than four tires), camper, camper trailer, recreation vehicle, boat, boat trailer, all-terrain vehicle, airplane, snowmobile, commercial vehicle, mobile home, tractor, bus, farm equipment, off-road vehicles or other vehicle of any kind, licensed or unlicensed, shall be stored on any driveway or other area in or upon the Property, except for in the confines of the garages.

No machinery of any kind shall be placed or operated upon any portion of the Property except such machinery which is customarily required for the maintenance of the Property, related improvements, lawns, and landscaping.

#### **Section 7.10 - Firearms; Preservation of Wildlife**

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

### **Section 7.11 - Control of Trucks, Commercial Vehicles**

No tractor trailers, commercial tractors, commercial vehicles, road machinery or excavating equipment (collectively, "**Commercial Vehicles**") shall be permitted to remain on any portion of the Property for any period of time whatsoever, except for the following:

- (a) Commercial Vehicles shall be permitted while making deliveries or performing services on the Property,
- (b) Commercial Vehicles shall be permitted as necessary for the construction, reconstruction, or repair of buildings or structures on the Property, and
- (c) Commercial Vehicles that are two-axle only, shall be permitted to remain on the Property provided such vehicle is parked in the garage overnight, a completed application is submitted to the Association's Board in the manner and form prescribed by the Association, and provided the Association's Board has given express written consent to such applicant for said Commercial Vehicles on the Property.

### **Section 7.12 - Traffic Regulations**

All vehicular traffic shall be subject to the provisions of the laws of the State of Ohio and the City concerning operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic within the private streets, and driveways including reasonable safety measures and speed limits. The Association shall be entitled to enforce the same by establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof. In the event of a conflict between such provisions of the laws of the State of Ohio or the City, and such rules and regulations promulgated by the Association, the more restrictive rules and regulations shall govern. Only drivers licensed to operate motor vehicles by the State of Ohio or by any other state in the United States may operate any type of motor vehicle within the Property. All vehicles of any kind and nature which are operated within the Common Elements shall be operated in a careful, prudent, safe, and quiet manner.

### **Section 7.13 - Poles, Wires and Antennae**

Subject to applicable easement rights, no facilities, including poles and wires, for the transmission of electricity, telephone messages, ham radio messages, and the like shall be placed or maintained above the surface of the ground in any portion of the Property without the prior approval of the Design Review Committee. This provision shall not apply for temporary facilities for the construction or repair of any building or other structure. A Digital or Direct Satellite System ("**DSS System**"), one meter (approximately 39 inches) or less in circumference, may be attached to a Home in conformance with FCC regulations so long as the prior approval of the location of the DSS System is given by the Design Review Committee, provided, however, the criteria used to approve the location of such DSS System shall not cause the Owner unreasonable

delay in installation, cause the Owner to incur unreasonable installation, maintenance or usage costs, nor shall the criteria cause unreasonable interference with a broadcast signal. DDS System components shall be removed and all damage to the building repaired promptly upon the disuse, disconnection, obsolescence or abandonment of the DDS system components.

**Section 7.14 - Exterior Appearance, Lights for Exteriors of Residences, Window Treatments**

The exterior of any Home, 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 Home, building or structure be materially changed without the express written authorization of the Design Review Committee as provided in Section 8.2 herein. The provisions of this paragraph are subject to the provisions of Article VIII of this Declaration. For the purpose of providing security, all exterior lights shall be operational at all times, and shall remain lit from dusk until dawn each night. No curtains, drapes, shades or blinds shall be displayed in or from any window or glass door of a Home without the prior written consent of the Design Review Committee unless the part thereof within view from the exterior of the Home is neutral in color.

**Section 7.15 – Grading**

No Person shall change the grade on any portion of the Property without first obtaining the consent of the Design Review Committee and approval of the City pursuant to all applicable ordinances and codes.

**Section 7.16 – Storm Drainage**

No Person shall interfere with the free flow of water through any drainage system or storm sewers within the Property, including the Stormwater Drainage Facilities. The Association shall maintain the Stormwater Drainage Facilities in accordance with all agreements with, or requirements of, the City. The City or other governmental authority having jurisdiction shall have the right to enter upon the Property to repair and maintain all storm, drainage, courses, structures, including the Stormwater Drainage Facilities and to be reimbursed by the Association for all costs incurred by the City in undertaking such repairs or maintenance.

**Section 7.17 – Re-subdivision of Sublots**

No Sublot shall be subdivided or its boundary lines changed except with the proper written approval of the Board or except as expressly authorized herein. Declarant, however, hereby expressly reserves the right to replat any Sublot owned by Declarant. Any such division, boundary line change, or re-platting shall not be in violation of, and must be approved by the City in accordance with, all applicable City ordinances or regulations.

**Section 7.18 - Compliance with City Codes**

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

**Section 7.19 - Use of Names Associated with the Property**

No Person shall use the phrase "Forest Lakes" or any derivative thereof in any printed or promotional material without the prior written consent of Declarant. However, Owners may use the aforementioned names in printed and promotional material where such word is used solely to specify that particular property is located within the Community.

**Section 7.20 - Sheds**

No shed, tent, shack, barn or any similar structure shall be used, temporarily or permanently, as a residence, office, or storage facility on any part of the Property at any time. Declarant shall have the right to maintain a temporary trailer on the Property in accordance with the provisions of this Declaration. No shack, barn, shed, or similar structure of any kind shall be permitted on any Sublot.

**Section 7.21 – Swimming Pool Restrictions**

No swimming pools are permitted on the Property.

**Section 7.22 - Sale, Leasing or Other Alienation of Homes**

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

(b) **Names of Owners and Occupants of Homes.** To enable the Association to maintain accurate records of the names, addresses and phone numbers of Owners and other Occupants of Homes, each Owner agrees to notify the Association in writing, within five (5) days after such Owner's Home has been transferred or leased to another person. In addition, each Owner agrees

to provide to a purchaser or lessee of such Owner's Home a copy of this Declaration, the Code, the Rules and other relevant documents.

(c) **No Occupancy by Sexually Oriented Offender.** No person who is classified a Tier II or Tier III sexual offender/child-victim offender, or any future equivalent classification and for whom they County Sheriff or other government entity must provide community notification of the sex offender's residence is prohibited from residing in or occupying a Home nor shall any Owner permit a Home 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 provisions of this restriction.

### **Section 7.23 - Party Walls**

(a) Each wall (and the portion of the roof above it) which is built as part of the original construction of a Townhome upon the Property and placed on the dividing line between two Townhome Sublots shall constitute a Party Wall, and, to the extent not inconsistent with the provisions of this Section, the Owners sharing a Party Wall shall be jointly and severally responsible for the maintenance, repair and replacement of such Party Wall, and shall be jointly and severally responsible to maintain insurance on the Party Wall.

(b) Each Owner sharing a Party Wall shall have the full right to use the Party Wall for the support of beams, joists, trusses, and other structural components, or in any other lawful manner not prohibited hereby; provided, however, that such use shall not injure, impair the strength of, or endanger the Party Wall, foundation or other portion of the Townhome of the other Owner, and shall not impair or endanger the Party Wall benefits and supports to which the adjoining Townhome is entitled.

(c) Neither Owner of a Townhome sharing a Party Wall may extend or increase the height of the Party Wall except upon the written approval of the other Owner and the Design Review Committee. No such extension or increase in height may be made which impairs the strength or injures the existing Party Wall or the foundation of the buildings. In the event of such extension or increase in the height of the Party Wall, the other Owner shall have the right to use the extended or heightened part of the Party Wall by paying to the constructing party one-half of the costs of such part of the Party Wall, as he or she shall use. Any extension or increased height of the Party Wall shall be a Party Wall, become part of the existing Party Wall and be subject to the terms hereof.

(d) The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners who make use of the Party Wall.

(e) If a Party Wall is destroyed or damaged by fire or other casualty, any Owner who has used the Party Wall may restore it and if other Owner thereafter makes use of the Party Wall such other Owner shall contribute equally to the cost of restoration thereof without prejudice,

however, to the right of any such Owner to call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

(f) Notwithstanding any other provision of this subsection, an Owner who by his or her negligent or willful act causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.

(g) The right of any Owner to contribution from any other Owner under this subsection shall be appurtenant to the land and shall pass to such Owners successors in title.

(h) In the event of any dispute arising concerning a Party Wall, or under the provisions of this Section, such dispute shall be submitted to arbitration pursuant to Section 16.9 of this Declaration.

#### **Section 7.24 - 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 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 at least ten (10) 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 circumstances be construed, deemed or held to be a waiver with respect to any subsequent breach or violation thereof. Subject to the provisions of the Section of the Code entitled, "Hearing Procedure", a Person in violation of this Article VII shall be obligated to the Association and/or the 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

9.4, become a continuing lien upon the portion of the Property owned or occupied by such Person(s) and a personal obligation of the Person(s) violating this Article. In addition, the Owner of any portion of the Property shall be liable jointly and severally for any obligations of any Occupant of such Owner's property.

**Section 7.25 - Certificate of Compliance with Restrictions in Connection with Resales of Homes**

Upon an Owner's conveyance of his/her/their Home 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 monthly (or quarterly) Assessments attributable to such Home. 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 Home 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 as the Board may establish from time-to-time for the issuance of the Certificate of Compliance. The Certificate shall be substantially in the form of **Exhibit "C"**.

**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 in 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 control of the Property has been transferred over to the Association, 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.

**Section 8.2 - Operation of Design Review Committee**

No Home shall be altered, modified or changed in any way which changes the exterior or the appearance thereof, nor shall any Home be rebuilt, nor shall any grading or landscaping for a Sublot be changed unless an application, plans and specifications for the proposed alteration, modification or change shall have been submitted to and approved in writing by the Design Review Committee. The rights of the Design Review Committee set forth in this subsection are in addition to the rights of the Design Review Committee as set forth elsewhere in this Declaration. Furthermore, no landscaping within a Common Element or Sublot shall be installed

by an Owner unless an application (including plans and specifications as may be reasonably required by the Design Review Committee) for such installation shall have been submitted to and approved in writing by the Design Review Committee. The Design Review Committee shall 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. 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 any entity related to or affiliated with the Declarant or designated by the Declarant as being not subject to 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. The Design Review Committee shall have access to a Home at reasonable times and upon reasonable notice to the Owner of such Home.

### **Section 8.4 - Violations and Remedies**

Should any Home be altered, constructed, or related improvements be reconstructed or removed from or upon any Sublot, or should the use thereof be modified in any way from the use originally constructed or installed without first obtaining the prior written approval of the Declarant or Design Review Committee as provided in this Article VIII, such act shall be deemed to be a violation of this Article VIII and this 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 at law or in equity, each of which remedies shall be deemed to be nonexclusive, to do any of the following:

(a) **Abate Violation**: Without liability to the Owner of the Sublot, cause its agents and employees to enter upon the Sublot and/or the Homes 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 on the Property.

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

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

## **ARTICLE IX** **ASSESSMENTS**

### **Section 9.1 - Definition of Assessments**

As used in this Declaration, "**Assessments**" shall mean Assessments levied by the Association for all of the costs and expenses incurred by the Association in the exercise of its obligations with respect to the Areas of Common Responsibility.

(a) **Common Expenses** shall be assessed against all Homes and shall include, without limitation, assessments for:

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

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

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

(4) Annual capital additions and improvements and/or capital acquisitions (but not repairs or replacements) without in each case the prior approval of the Class "B" Member. 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.

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

(b) "**Townhome Assessments**" shall be assessed only against all Townhomes and shall include all expenditures required for the Association to fulfill its obligation to (i) maintain

landscaping within Townhome sublots as provided in Section 6.1(b) herein, and (ii) to provide snow removal services with respect to Townhomes as provided in Section 6.1 (c) herein.

(c) **"Enforcement Assessments"** shall be reasonably assessed at the Board's discretion if any Owner or Tenant (either by his or her conduct or by the conduct of any occupant or guest of his or her Home) will violate any provision of this Declaration, Code, or rules. The Board may also levy reasonable charges for damage to the Common Elements or any part of the Property for which the Association is responsible to maintain. Said Owner or Tenant will pay to the Association, in addition to any other sums due, any Enforcement Assessments, any charges for damage, and all fees, including attorney fees, costs, and expenses the Association incurs in connection with the enforcement of any provision of the Declaration, Code, or rules and/or repair of damage. Said Enforcement Assessments, charges for damages, fees, costs, and expenses will be charged as any other assessment against the Owner. The Association, in addition to all other remedies available, will have the right to place a lien on the Home or interest of said Owner as further set forth in R.C. Section 5312.12(A).

### **Section 9.2 -Responsibility for Payment of Assessments**

(a) All Owners of Homes shall be responsible for paying Assessments levied against such Homes. 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 between all Homes (except for Townhome Assessments, which shall be equal between all Townhomes only and shall not be assessed against Detached Homes) and shall equal to the amount of such annual budget divided by the number of Homes. Written notice of the Assessments shall be sent to the Owner of each Home. Payment of Assessments may be required by the Declarant or Board on a monthly, quarterly, semi-annual or annual basis. As Sublots are improved with Homes the Owners thereof shall commence payment of the 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 Homes 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: (A) a foreclosure sale; or (B) 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 Homes during the Class "B" Control Period. After the Class "B" Control Period, the amount of Assessments attributable to Homes shall be established by the Board as of January 1 of each year, and each Owner of a Home shall pay an equal amount of such Assessments.

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

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

### **Section 9.4 - Creation of Lien and Personal Obligation**

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

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

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

### **Section 9.6 - Liability for Assessments on Voluntary Conveyance**

Upon the voluntary conveyance of an Ownership Interest the grantee of the Ownership Interest shall be jointly and severally liable with the grantor for all unpaid Assessments levied pursuant to this 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 of Directors 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 7.25 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 9.7 - Additional Assessments**

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

#### **Section 9.8 - Exempt Property**

Notwithstanding anything to the contrary herein, Sublots owned by the Declarant and the Common Elements shall be exempt from payment of Assessments and Additional Assessments levied by the Association.

### **ARTICLE X** **LIENS**

#### **Section 10.1 - Perfection of Lien**

The Association has a lien upon the estate or interest in any Home or Sublot for the payment of any Assessment or charge levied in accordance with section 5312.11 of the Revised Code, this Declaration, or the Code, as well as any related interest, administrative late fees, enforcement assessments, collection costs, attorneys fees, and paralegals fees, that are chargeable against the Home or Sublot and that remain unpaid ten days after any portion has become due and payable. All of the following apply to a lien charged against a Home or Sublot pursuant to this section:

(a) The lien is effective on the date that a certificate of lien is filed for record in the office of the Summit County recorder pursuant to authorization by the Board. The certificate shall contain a description of the Sublot property, the name of the record Owner of the Sublot, and the amount of the unpaid Assessment or charge. It shall be subscribed to by the President of the Board or other designated representative of the Association.

(b) The lien is a continuing lien upon the Sublot against which each Assessment or charge is made, including any Home thereon, subject to automatic subsequent adjustments

reflecting any additional unpaid interest, administrative late fees, enforcement assessments, collection costs, attorneys fees, paralegal fees, and court costs.

(c) The lien is valid for a period of five years from the date of filing, unless it is sooner released or satisfied in the same manner provided by law for the release and satisfaction of mortgages on real property or unless it is discharged by the final judgment or order of a court in an action brought to discharge the lien as provided in this section.

(d) The lien is prior to any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments of political subdivisions and liens of first mortgages that have been filed for record prior to the recording of the lien, and may be foreclosed in the same manner as a mortgage on real property in an action brought by the Association.

(e) 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 Sublot. 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.

(f) Following any foreclosure action, the Association or an agent the Board authorizes is entitled to become a purchaser at the foreclosure sale.

(g) 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.

(h) An Owner may commence an action for the discharge of the lien in the Summit County Court of Common Pleas if the Owner believes that the liability for the unpaid Assessment or charge for which the Association filed a certificate of lien was improperly charged. In the action, if it is finally determined that the unpaid amount of the Assessment or charge was improperly charged to the Owner or the Sublot, 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 attorneys fees to the Owner.

### **Section 10.2 - 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 10.3 - Personal Obligations**

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

**ARTICLE XI**  
**REMEDIES OF THE ASSOCIATION**

**Section 11.1 - Denial of Voting Rights**

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

**Section 11.2 - Specific Remedies**

The violation of any Rule, or the breach of any restriction, covenant or provision contained in this Declaration or in the Code, shall give the Association and the Original Declarant the right, in addition to all other rights set forth herein and provided by law, (a) to enter upon the Home 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 of the Ownership Interest in the property 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 Assessment**", not to exceed fifteen percent (15%) of the amount of the delinquency or One Hundred Dollars (\$100.00), whichever amount is greater, said amount to be determined by the Board provided, however, in no event shall said amount exceed the highest interest rate chargeable to individuals under applicable law. Said Enforcement Assessment shall be in addition to interest, the expenses of collection incurred by the Association, such as attorneys fees, paralegals fees, court costs and filing fees. The actual expenses of collection and the Enforcement Assessment 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.

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

- (1) To interest owed to the Association;
- (2) To administrative late fees or Enforcement Assessments owed to the Association;
- (3) To collection costs, attorneys fees, and paralegal fees the Association incurred in collecting the Assessment;
- (4) To the oldest principal amounts the Owner owes to the Association for the Common Expenses chargeable against the Home.

#### **Section 11.4 - 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 Section 9.5 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 Elements 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 Elements 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 Elements 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 Elements 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 Elements, 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 Homes 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 Eligible Mortgage Holder 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 Common Elements or which affects any Home 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 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 Mortgage 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 Common Elements 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 at least fifty-one percent (51%) of the Homes 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 at least fifty-one percent (51%) of the Homes.

#### **Section 14.3 - Amendments to Documents**

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

(a) The consent of at least sixty-seven percent (67%) of the Class "A" Members and of the Class "B" Member and the approval of the Eligible Mortgage Holders to which at least sixty-seven percent (67%) of the votes of Homes 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 shall be required to amend any provisions of the Declaration, Code, or Articles of Incorporation of the Association, or to add any provisions thereto, unless the approval of Eligible Mortgage Holders is also required pursuant to Section 14.3(c) below.

(c) 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 Homes 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 (but not including the amount of such);
- (3) reserves for maintenance, repair, and replacement of the Common Elements (but not including the amount of such);
- (4) responsibility for maintenance and repair;
- (5) insurance or fidelity bonds;
- (6) rights to use of the Common Elements;
- (7) leasing of Homes;
- (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 Home (this provision is subject and subordinate to any provision in an agreement for the sale by the Declarant.);
- (9) establishment of self-management by the Association, but only if professional management has been required by an Eligible Mortgage Holder by written notice to the Association;
- (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, annexation, or withdrawal 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 of Incorporation which are for the express benefit of Eligible Mortgage Holders on Homes.

If an Eligible Mortgage Holder fails to return a response to any written request for approval of 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 amendment shall be deemed assumed, provided, the notice was delivered by certified or registered mail, with a "return receipt" requested.

#### **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 Element 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 Element and may pay overdue premiums of casualty insurance policies or secure new casualty insurance coverage upon the lapse of a policy, for the Common Elements and first mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

### **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 records of Summit County. The instrument is not effective unless executed by both the transferor and transferee.

#### **Section 15.2 - Liability of Transfer of Special Declarant Rights**

Upon transfer of any Special Declarant Right, the liability of a transferor Declarant is as follows:

(a) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon the transferor Declarant. Lack of privity (direct contractual relationship) does not deprive the Association or any Owner of standing to bring an action to enforce any obligation of the transferor.

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

(c) If a transferor retains any Special Declarant Rights, but transfers other Special Declarant Rights to a successor who is not an Affiliate of 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.

(d) 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 Declarant.

### **Section 15.3 - Acquisition of Special Declarant Rights**

Unless otherwise provided in a mortgage held by a first mortgagee, in case of foreclosure of a mortgage (or deed in lieu of foreclosure), tax sale, judicial sale, or sale under the Bankruptcy Code or receivership proceedings, of any Homes owned by a Declarant in the Property, a person acquiring title to all the Homes being foreclosed (or deed in lieu of foreclosure) or sold, but only upon his request, succeeds to all Special Declarant Rights related to such Homes, 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 Homes or Property owned by a Declarant; (1) the Declarant ceases to have any Special Declarant Rights, and (2) right of a 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 that 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 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 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 a Special Declarant Right 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 Declarant, may not exercise any other Special Declarant Right, 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 Declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to Homes 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 Home 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 transferor to control the Board of Directors in accordance with the provisions of this Declaration or 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 those 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 - Duration**

Unless sooner terminated as hereinafter provided, the Easements, Covenants and Restrictions of this Declaration shall continue for a term of fifty (50) years from the date this Declaration is recorded, after which time, said covenants and restrictions shall automatically be extended for successive periods of ten (10) years each unless terminated by an instrument signed by Members entitled to exercise not less than seventy-five percent (75%) of the Class "A" Members. No restriction or condition herein shall be materially altered or terminated unless such alteration or termination is consistent with the controlling regulations of the City and other applicable governmental bodies. No easement shall be unilaterally altered or terminated without the written consent of the party to whom such easement runs.

#### **Section 16.3 - Notices**

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 Home or mailed, postage prepaid, to the last known address of such Person or principal place of business if a corporation, or via email with proof of delivery and read receipt, provided, however, that a notice of "delinquency" of any payment due hereunder shall be made by personal delivery to such Home or principal place of business if a corporation, or by certified or registered mail, return receipt requested, or by telegram, or via email with proof of delivery and read receipt.

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 K. Hovnanian Forest Lakes, LLC, 3296 Columbia Road, Richfield, Ohio 44286.

#### **Section 16.4 – Enforcement-Waiver**

Enforcement of the Easements, Covenants and Restrictions may be by any proceeding at law or in equity against any Person or Persons violating or attempting to violate any Easement, Covenant or Restriction, either to restrain violation or to recover damages and against the Person or Ownership Interest, or to enforce any lien perfected pursuant to this Declaration. The failure by the Association or any one permitted by this Declaration to enforce any Easement, Covenant

or Restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

**Section 16.5 – 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 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 interests of the Declarant(s), Owners, Tenants and Occupants to the end that the Property shall be preserved and maintained as a high quality, residential community.

**Section 16.6 – 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 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 or covenants 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 covenants and 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 Homes 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 Section 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 16.7 – Assignability by Original Declarant**

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

**Section 16.8 – Severability**

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

**Section 16.9 – Arbitration**

Unless otherwise provided in this Declaration, any controversy, dispute or claim arising out of or relating to this Declaration or the breach thereof shall be settled by arbitration in Cleveland, Ohio in accordance with the Real Estate Industry Rules of the American Arbitration Association and the judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction hereof. Depositions may be taken and other discovery obtained during such arbitration proceedings to the same extent as authorized in civil judicial proceedings for compensatory damages and the arbitrator(s) shall have no authority to award punitive, exemplary or similar type damages. The prevailing party in the arbitration proceeding shall be entitled to recover its expenses, including the costs of the arbitration proceeding, and reasonable attorneys fees.

**Section 16.10 – Validity of Mortgages**

No violation of any Easement, Covenant or Restriction 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 16.11 – 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 Declarant shall be entitled from time to time, without additional consents of Owners or Eligible Mortgage Holders, 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 real property, if in its judgment, the development or lack of development of the Property requires such modification or waiver, or if in its judgment the purposes of the general plan of development of the Homes will be better served by such modification or waiver, provided no such amendment, modification or waiver shall materially and adversely affect the value of existing Homes or shall prevent a Home from being used by the Owner in the same manner that said Home was used prior to the adoption of said amendment, modification or waiver. To modify the Declaration in accordance with this paragraph, the Declarant shall file a supplement to this Declaration setting forth the Amendment, which supplement need not be but shall, at the 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 Home or other real property, hereby appoints Declarant his or her attorney-in-fact, coupled with an interest, to execute on his or her behalf any such amendments. Each amendment shall be effective when signed by the Declarant and filed for record with the Recorder of Summit County.

(b) This Declaration may also be amended by the Declarant or the Association at any time and from time to time, without additional consents of Owners or Eligible Mortgage Holders, 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 legislative or judicial determination, including, but not limited to the provisions of Chapter 5312 of the Ohio Revised Code (the Ohio Planned Community Law); 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 Declarant to vote in favor of, make and record a Subsequent Amendment. To effect said amendment, the Declarant shall file a supplement to the Declaration setting forth the Subsequent Amendment which shall be signed by the Declarant and shall be effective upon the filing of the Subsequent Amendment with the Summit County Recorder.

(c) Original Declarant, without additional consents of Owners or Eligible Mortgage Holders, shall have the right to amend this Declaration at any time and from time to time in accordance with or in implementation of any of the rights granted to or reserved by Original Declarant in this Declaration.

(d) Except as expressly provided in this Declaration (including with respect to such matters requiring an affirmative vote of a greater majority as provided in Section 14.3 herein), 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 the Class "B" Member and the vote of at least a majority of the voting power of the Class "A" Members unless a greater percentage of vote is required pursuant to this Declaration or in accordance with the statutes of the State of Ohio; provided, however, that any amendment which would terminate or materially affect the easements set forth in Article III of this Declaration shall not be amended (except as expressly provided to the contrary in this Declaration) unless all persons whose rights are terminated or materially affected shall affirmatively 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 Summit County Recorder.

#### **Section 16.12 – Interest Rates**

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

#### **Section 16.13 – Headings**

The heading of each Article and of each paragraph 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.



**EXHIBIT "A-1"**  
**LEGAL DESCRIPTION**

Situated in the City of Green, County of Summit, and State of Ohio and known as Sublot Nos. 1-55, Blocks A & B, and the private drives in the plat of Forest Lakes Subdivision Phase 1, being part of the Southeast Quarter of Section 9 of Original Green Township, as recorded in Reception No. 56564754 of Summit County Records, as appears by said plat, be the same more or less, but subject to all legal highways.

**Permanent Parcel Numbers:**

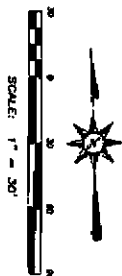
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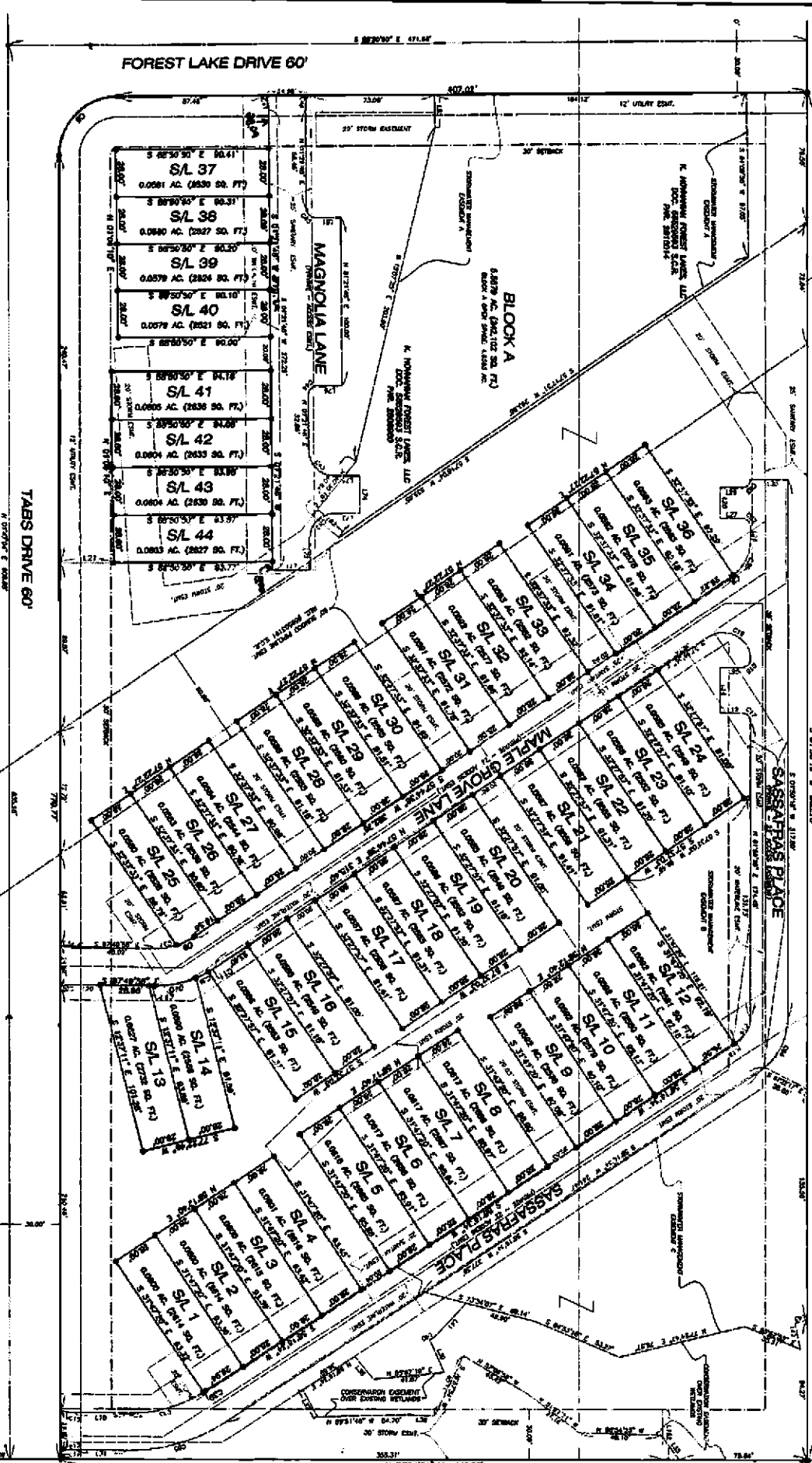
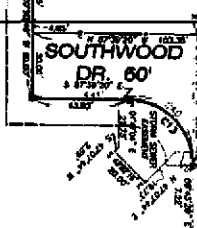
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~SEE SHEET 5 FOR LINE AND CURVE TABLES AND EASEMENT DETAILS~



ABBREVIATIONS  
S/L - Sublot  
SA - Subarea  
E - Easement  
C - Conveyance  
R - Right-of-Way  
U - Utility  
D - Drive  
W - Water  
G - Gas  
E - Electric  
S - Sewer  
M - Mechanical  
P - Plumbing  
H - Heating  
A - Air Conditioning  
L - Landscaping  
I - Irrigation  
T - Telephone  
C - Cable  
F - Fire  
O - Other

LEGEND  
• 1/4" = 1' (SEE SHEET 5 FOR DETAILS)  
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EX TABS DRIVE 60  
12' UTILITY EASEMENT  
12' UTILITY EASEMENT

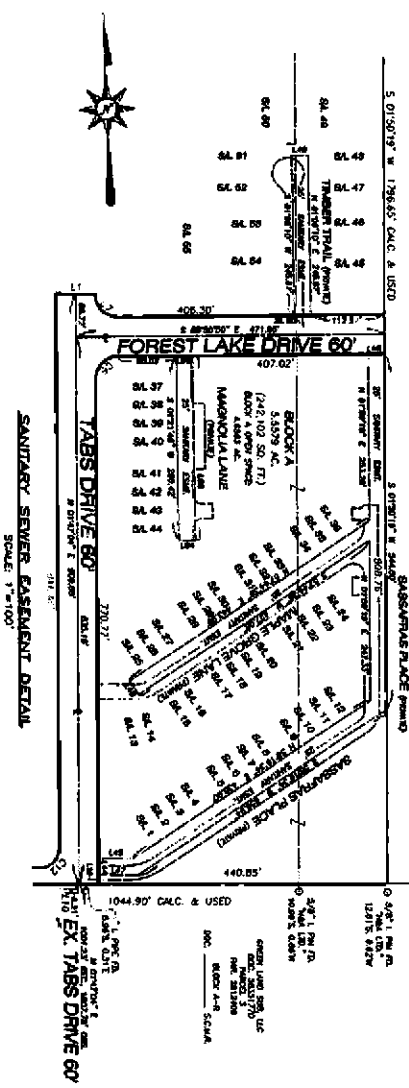
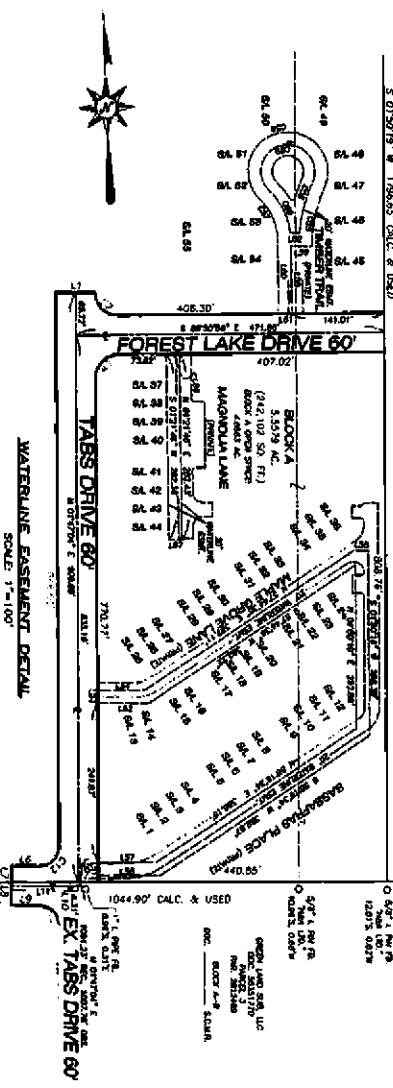
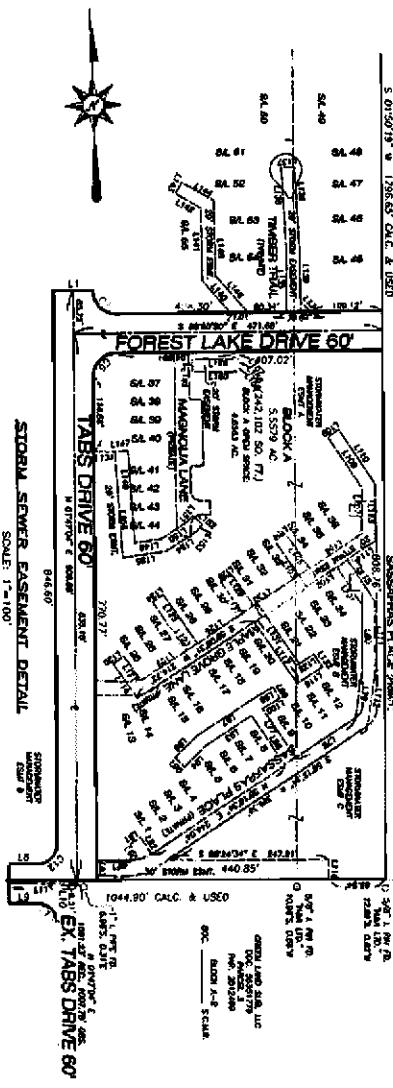
FOREST LAKES SUBDIVISION  
PHASE 1

\*Best Image Available

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FOREST LAKES SUBDIVISION  
PHASE 1

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**Ohio**  
**Utilities Publication**  
**STANDARD**  
**CONVENTIONS**  
 800-353-2764 or 6-1-1  
 www.oupps.org

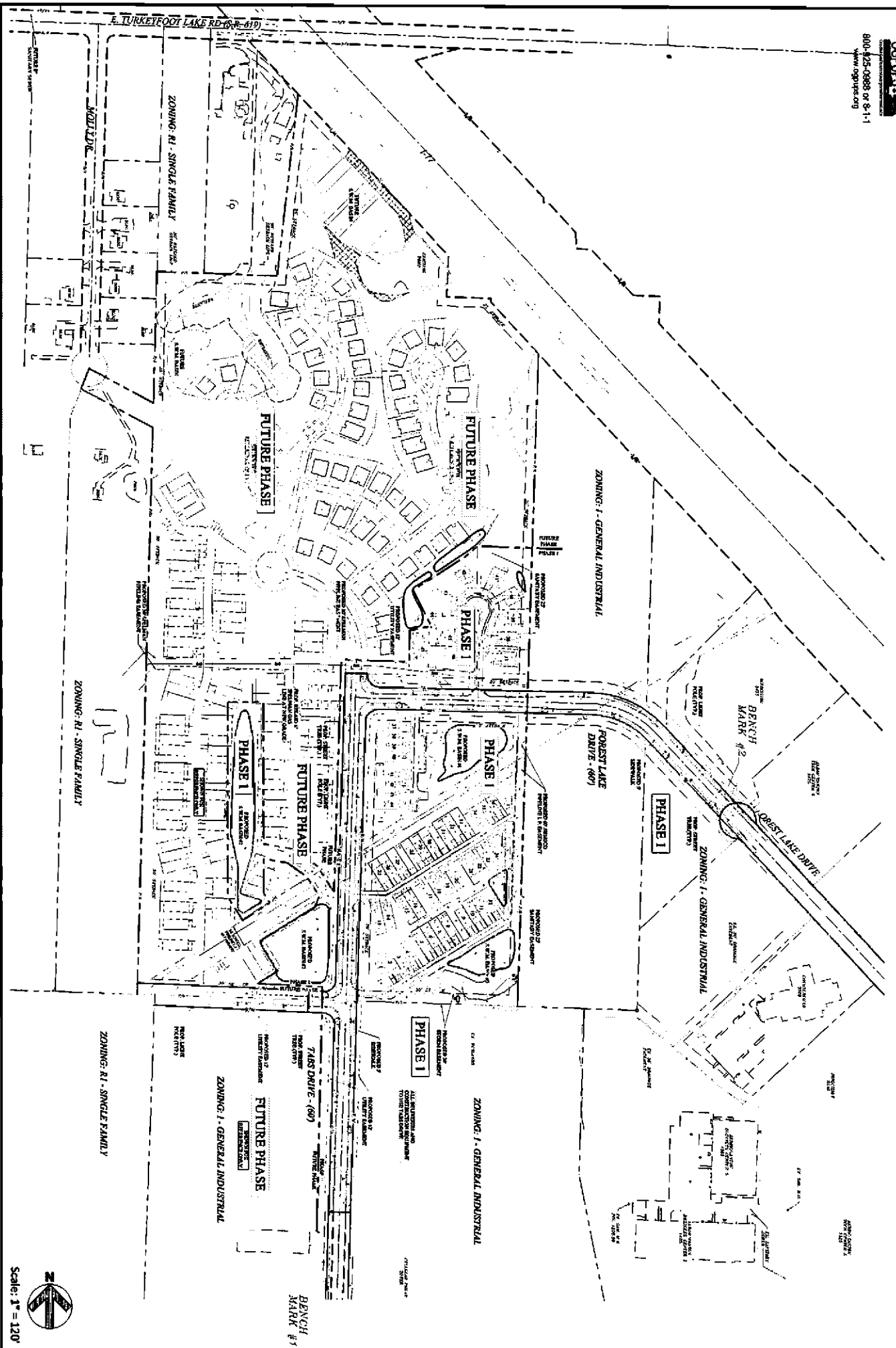
**OGPUPS**  
 800-425-0988 or 6-1-1  
 www.ogpups.org

**SITE DATA**  
 USE INTENT: **INDUSTRY PLANT ONLY (PLANNED DEVELOPMENT)**  
 SITE AREA: **0.88 AC**

**LEGEND**  
 Hatched: **EXISTING BUILDING FOOTPRINT**  
 Dotted: **EXISTING DRIVEWAY**  
 Dashed: **EXISTING DRIVEWAY**  
 Solid: **EXISTING DRIVEWAY**

**FLOOD ZONE**  
 Flood Zone: **100 Year Flood**  
 Flood Zone: **500 Year Flood**  
 Flood Zone: **100 Year Flood**  
 Flood Zone: **500 Year Flood**

**SITE BENCH MARK**  
 BENCH MARK #1  
 BENCH MARK #2  
 BENCH MARK #3



**WMA**  
**WATER MANAGEMENT ASSOCIATION**  
 2000 BAYVIEW BLVD., SUITE 200  
 CLEVELAND, OHIO 44115  
 216.276.2000  
 www.wma.org

**Reg. No.: 61709**

**CLIENT:**  
**K. HOVNANIAN**  
**FOREST LAKES, LLC**  
 3266 COLUMBIA ROAD  
 RICHFIELD, OHIO 44886  
 440-985-7223

**OWNER:**  
**BAYSIDE**  
**INVESTMENT**  
**GROUP, LTD**  
 261 LUDON CIRCLE  
 APERON, OHIO 44318  
 CONTACT: TODD WELTON

**Issue Date**  
 09-20-2015  
 10-28-2019  
 11-22-2019

**ISSUED BY:**  
 01-06-2020  
 01-22-2020  
 02-21-2020  
 03-11-2020  
 03-13-2020  
 03-19-2020  
 04-10-2020

**K. HOVNANIAN**  
**PHASE 1 ROAD & SANITARY EXT.**  
**GREEN, OHIO**

**OVERALL**  
**SITE PLAN**

**C102**  
 Project No. 2017-222

# Best image available



**EXHIBIT "C"**

**CERTIFICATE OF COMPLIANCE AND STATUS OF ASSESSMENTS**  
**WITH RESPECT TO THE RESALE OF A HOME AT**  
**THE ENCLAVE AND THE SUMMIT AT FOREST LAKES HOMEOWNERS' ASSOCIATION, INC.**

**GREEN, OHIO**

The Enclave and The Summit at Forest Lakes Homeowners Association, Inc., a non-profit Ohio corporation (the "**Association**"), created to govern, operate, control and administer the "Areas of Common Responsibility" for the Forest Lakes, Green, Ohio ("**Forest Lakes**") and to supervise and enforce the Declaration of Covenants, Conditions, Easements and Restrictions for Forest Lakes (the "**Declaration**") hereby certifies as follows:

1. The Association has received notice of a proposed sale of the Home located at \_\_\_\_\_, Green, Ohio.
2. The proposed purchaser(s) of the Home is (are) \_\_\_\_\_.
3. The present owner(s) of the Home (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 Common Assessment attributable to the Home is \$\_\_\_\_\_, payable at the rate of \$\_\_\_\_\_ per (month) (quarter); said Common Assessments being payable through \_\_\_\_\_ 20\_\_\_\_\_.
6. The current annual Townhome Assessment attributable to the Home (if the Home is a Townhome, and not a Detached Home) is \$\_\_\_\_\_, payable at the rate of \$\_\_\_\_\_ per (month) (quarter); said Townhome Assessments being payable through \_\_\_\_\_ 20\_\_\_\_\_.
7. A fee of \$\_\_\_\_\_ 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 7.25 of the Declaration.

THE ENCLAVE AND THE SUMMIT AT FOREST LAKES  
HOMEOWNERS ASSOCIATION, INC.

By: \_\_\_\_\_

Date: \_\_\_\_\_, 20\_\_\_\_\_

**EXHIBIT "D"****CODE OF REGULATIONS****OF****THE ENCLAVE AND THE SUMMIT AT FOREST LAKES HOMEOWNERS' ASSOCIATION, INC.****ARTICLE I****NAME, PRINCIPAL OFFICE, AND DEFINITIONS**

Section 1. **Name**. The name of the Association shall be THE ENCLAVE AND THE SUMMIT AT FOREST LAKES 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 shall be located in the City of Green, Summit County, Ohio. The Association may have such other offices, either within or without Green, as the Board of Directors ("**Board**") may determine or as the affairs of the Association may require.

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

**ARTICLE II****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. The Association shall keep records of the names and addresses of all Members of the Association.

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, including by electronic meeting capabilities, as may be designated by the Board either on the Property or as convenient thereto as possible and practical.

Section 3. **Annual Meetings**. The first meeting of the Members, whether a regular or special meeting, shall be held within thirty (30) days after the termination of the Class "B" Control Period specified in Article III, Section 2 hereof, unless the Declarant determines in its sole discretion to call a special meeting prior thereto. The next annual meeting shall be set by the

Board so as to occur no later than ninety (90) days after the close of the Association's fiscal year. Subsequent regular annual meetings of the Members shall be held within thirty (30) days of the same day of the same month of each year thereafter at an hour set by the Board. Subject to the foregoing, the annual meeting of the Members shall be held at a date and time as set by the Board.

Section 4. Special Meetings. The Declarant or 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 ten (10%) percent of the total votes of the Association. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 5. Notice of Meetings. A written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally, by mail, or through the use of electronic notices, 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 hour of the meeting, and, in the case of a special meeting, the purpose of the meeting. 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 Member at his or her 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.

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

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

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

Section 7. Adjournment of Meetings. If any meetings of the Association cannot be held because a quorum is not present, a majority of the Class "A" Members who are present at

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

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

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

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

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

Section 11. Quorum. Except as otherwise provided in this Code or in the Declaration, the number of Class "A" Members of the Association present in person or by proxy shall constitute a quorum at all meetings of the Association. Any provision in the Declaration concerning quorums is specifically incorporated herein.

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

Section 13. Action Without A Meeting. Any action required by law to be taken at a meeting of the Class "A" Members or 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, POWERS, MEETINGS**

A. Composition and Selection.

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

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

- (a) when all Homes to be constructed on the Property have been sold and conveyed to Persons other than the Declarant;
- (b) December 31, 2030; or
- (c) when, in its discretion, the Class "B" Member so determines.

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

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

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

- (a) The Class "B" Member shall have been given written notice of all meetings and proposed actions approved at meetings of the Board or any committee thereof by certified mail,

return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice complies as to the Board meetings with Article III, Sections 8, 9, and 10, of this Code and which notice shall, except in the case of the regular meetings held pursuant to this Code, set forth in reasonable particularity the agenda to be followed at said meeting; and

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

Section 4. Number of Directors. The number of Directors in the Association shall consist of three (3) Board members. The initial Board shall consist of three (3) Directors as identified in the Articles of Incorporation of the Association.

Section 5. Nomination of Directors. Except with respect to Directors selected by the Class "B" Member, nominations for election to the Board of Directors shall be made by a Nominating Committee. The Nominating Committee shall consist of a Chairman, who shall be a member of the Board of Directors, and two (2) Members of the Association. The Nominating Committee shall be appointed by the Board not less than thirty (30) days prior to each annual meeting of the Class "A" Members to serve a term of one (1) year or until their successors are appointed, and such appointment shall be announced at each such annual meeting. The Nominating Committee shall make as many nominations for election to the Board as it shall in its discretion determine, but in no event less than the number of positions to be filled. Nominations shall also be permitted from the floor. All candidates shall have a reasonable opportunity to communicate their qualifications to the Class "A" Members and to solicit votes.

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

(a) Within thirty (30) days after the time Class "A" Members own at least one-third (1/3) of the Homes to be constructed in the Property, or whenever the Class "B" Member earlier

determines, the Class "B" Member may appoint an Owner of a Home as one (1) of the three (3) Directors, who shall replace one (1) of the Directors appointed by the Class "B" Member, as selected by the Class "B" Member. Said Home Owner Director shall serve at the discretion of the Class "B" Member acting alone shall serve until replaced by the Class "B" Member with another Director appointed by the Class "B" Member (who may or may not be a Home Owner), or until the termination of the Class "B" Control Period, whichever is shorter.

(b) At the first annual meeting of the membership after the termination of the Class "B" Control Period specified in Section 2 of this Article III, the Class "A" Members shall elect all such Directors. Immediately prior to such election, all persons previously elected or appointed, whether by the Declarant or by the Class "A" Members, shall resign; provided, however, that such persons shall be eligible for reelection to the Board of Directors.

- (i) One (1) Director shall be elected to serve a term of three (3) years; and
- (ii) One (1) Director shall be elected to serve a term of two (2) years; and
- (iii) One (1) Director shall be elected to serve a term of one (1) year.

Upon the expiration of the initial term of office of each such Director, a successor shall be elected to serve a term of three (3) years. Thereafter, all Directors shall be elected to serve three (3) year terms. For the purpose of the election of Directors, each Class "A" Member shall have one (1) equal vote, and the Class "B" Member shall also be entitled to a vote for each Home owned by the Class "B" Member, except as otherwise provided above.

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 7. Removal of Directors and Vacancies. Any Director elected by the Class "A" Members may be removed, with or without cause, by the vote of Class "A" Members holding a majority of the votes entitled to be cast for the election of such Director. Any Director whose removal is sought shall be given notice prior to any meeting called for that purpose. A Director who was elected solely by the votes of Class "A" Members other than the Declarant may be removed from office prior to the expiration of his or her term only by the votes of a majority of Class "A" Members other than the Declarant. 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 Board meetings or who is delinquent in the payment of any assessment or other charge due the Association for more than thirty (30) days may be removed by a majority of the 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.

**B. Meetings.**

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

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

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

Section 11. Waiver of Notice. The transactions of any meetings of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the members of the Board not present signs a written waiver of notice, a consent to holding

the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any member of the Board who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

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

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

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

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

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

Section 17. Action Without a Formal Meeting. Any action to be taken at a meeting of the Board or any action that may be taken at a meeting of the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be affirmatively consented to 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 included in the corporate records.

**C. Powers and Duties.**

Section 18. Powers. Except as set forth in the Declaration and in this Code, the Board shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or this Code directed to be done and exercised exclusively by the Class "A" Members or the membership generally. The Board shall comply in all instances with the provisions and requirements of Chapter 5312 of the Ohio Revised Code (the Ohio Planned Community Law).

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

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

- (a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the Common Expenses;
- (b) imposing 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 Common Assessment against the proportionate share of the Common Expenses shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for said month;
- (c) providing for the operation, care, upkeep, and maintenance of all of the Areas of Common Responsibility, including the Common Elements;
- (d) designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Association, its property, and the Common Elements, and where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;
- (e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association; provided, however, that any reserve fund may be deposited, in the Director's best business judgment, in depositories other than banks;
- (f) making and amending rules and regulations;

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

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

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

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

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

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

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

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

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

(p) take any actions permitted or required by the provisions and requirements of Chapter 5312 of the Ohio Revised Code (the Ohio Planned Community Law).

Section 19. Management Agent.

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

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

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

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

(b) accounting and controls should conform with established AICPA guidelines and principles, which require, without limitation, (i) a segregation of accounting duties, (ii) disbursements by check requiring two (2) signatures, and (iii) cash disbursements limited to amounts of One Hundred Dollars (\$100) and under;

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

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

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

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

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

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

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

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

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

(vi) a delinquency report listing all Owners who have been delinquent in paying the monthly installments of assessments at the time of the report and describing the status of any action to collect such installments which remain delinquent (an installment of the assessment shall be considered to be delinquent on the tenth (10<sup>th</sup>) day after it is due unless otherwise determined by the Board); and

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

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

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

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

(a) **Enforcement.** In the event of a violation by any Member or any Tenant or other occupant (other than the nonpayment of Assessments or charges, which is governed by Article IX of the Declaration) of any of the provisions of the Declaration, this Code, or the Rules, the Association or a committee created by this Code (e.g., the Covenants Committee) or by the Board

shall notify the Member and any Tenant or other occupant of the violation, by written notice. If such violation is not cured as soon as is reasonably practical and in any event within ten (10) days after such written notice, or if the violation is not capable of being cured within such ten (10) 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 ten (10) days after written demand by the Association or such committee, or if any similar violation is thereafter repeated, the Association or such committee may, at its option:

(1) Impose an enforcement assessment against the Member or Tenant or other occupant as provided in Subsection (b) of this Section; and/or

(2) 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

(3) 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. In connection with the foregoing, the Association may perform any maintenance or repairs required to be performed, may remove any change, alteration, addition or improvement which is unauthorized or not maintained in accordance with the provisions of the Declaration, and may take any and all other action reasonably necessary to correct the applicable failure; and/or

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

(b) Enforcement Assessments / Hearings. The amount of any Enforcement Assessment shall be a reasonable amount as determined by the Board or the Covenants Committee (as defined in Article V, Section 2). Prior to imposing any \ damage assessment or any Enforcement Assessment, the Board shall give the Owner a written notice that includes all of the following:

- (1) A description of the property damage or violation;
- (2) The amount of the proposed charge or Assessment;
- (3) A statement that the Owner has a right to a hearing before the Board to contest the proposed charge or assessment;
- (4) A statement setting forth the procedures to request a hearing;
- (5) A reasonable date by which the Owner must cure a continuing violation to avoid the proposed charge or Assessment, if such an opportunity to cure is applicable.

To request a hearing, the Owner shall deliver a written notice to the Board not later than the tenth (10<sup>th</sup>) day after receiving the notice. If the Owner fails to make a timely request for a hearing, the right to that hearing is waived, and the Board immediately may impose a charge for damages or an Enforcement Assessment. If an Owner requests a hearing, at least seven (7) days prior to the hearing the Board shall provide the Owner with a written notice that includes the date, time, and location of the hearing. The Board shall not levy a charge or Assessment before holding any hearing requested by the Owner. Within thirty (30) days following a hearing at which the Board imposes a charge or Assessment, the Association shall deliver a written notice of the charge or assessment to the Owner. Any such written notice shall be delivered to the Owner or any Occupant of the Home by personal delivery, by certified mail, return receipt requested, or by regular mail.

The Owner 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 Owner or other occupant. If the Owner or other Occupant fails to attend the hearing as set by the Board or committee, the Owner or other Occupant shall be deemed to have admitted the allegations contained in the notice to the Owner or other Occupant. Any fine imposed by the Board or committee shall be due and payable within ten (10) days after written notice of the imposition of the fine. Any fine levied against a Member shall be deemed an Assessment and if not paid when due all of the provisions of the Declaration relating to the late payment of Assessments shall be applicable. If any fine is levied against a Tenant and is not paid within ten (10) days after same is due, the Association shall have the right to evict the Tenant as hereinafter provided.

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

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

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

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

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

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

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

#### Section 24. Indemnification.

Each Director and each officer of the Association, and each former Director and officer of the Association, shall be indemnified by the Association against the costs and expenses reasonably incurred by him or her in connection with the defense of any pending, threatened or completed action, suit or proceeding, criminal, civil, administrative, or investigative, to which he or she is or may be made a party by reason of his or her being or having been such Director or officer of the Association (whether or not he or she is a Director or officer at the time of incurring such costs and expenses), unless such Director or officer (or former Director or officer) failed to act in good faith and in a manner he or she reasonably believed to be in, or not opposed to, the

best interests of the Association and, with respect to any criminal proceeding, he or she had no reasonable cause to believe his or her 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 or she 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 or her conduct was unlawful. The determination of whether the Director'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 Directors of the Association, or (3) a majority vote of the disinterested members of the Association. 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 Director or officer and shall not be exclusive of other rights to which any Director 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.

#### **ARTICLE IV** **OFFICERS**

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

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

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

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

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

Section 6. Agreements, Contracts, Deeds, Easements, Leases, Checks. All agreements, contracts, deeds, easements, leases, checks, and other instruments of the Association shall be executed by any one (1) officer of the Association during the Class "B" Control Period, and by any two (2) officers of the Association or by such other person or persons as may be designated by resolution of the Board after the expiration of the Class "B" Control Period.

#### **ARTICLE V** **COMMITTEES**

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

Section 2. Covenants Committee. The Board may appoint a Covenants Committee consisting of 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 III, Section 23 of this Code.

#### **ARTICLE VI** **FINANCES OF ASSOCIATION (ASSESSMENTS)**

Section 1. Preparation of Estimated Budget. On or before the filing with the Summit County Recorder of the Declaration, and on or before December 15 of each year thereafter, the Association shall estimate the total amount necessary to pay the Common Expenses referred to

in Article IX of the Declaration, and the required amount of Townhome Assessments for the balance of the calendar year in which the Declaration is filed and, thereafter, for each succeeding calendar year together with a reasonable amount considered by the Association to be necessary for a reserve for contingencies and replacements, and the amounts, if any, which may be received from special assessments, concessions, contracts for special services and facilities, and other sources. On or before December 21, the Association shall notify each Member in writing as to the amount of such estimates and shall send a copy of such notice to each first mortgagee 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 net calendar year shall be assessed to those Members required to pay the Assessments according to and as specifically set forth in Article IX of the Declaration. Each Member required to pay Assessments shall pay to the Association or as it may direct, the Assessment made pursuant to this Section on or before the first day of each calendar month. On or before the date of each annual meeting, the Association shall furnish to all Members an itemized accounting of the expenditures for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided, by special Assessments, or otherwise, and showing the net amount over or short of the actual expenditures plus reserves. At the sole discretion of the Board, any amount accumulated in excess of the amount required for actual expenses and reserves and/or to cover any shortages shall be credited to the last maturing monthly installments due from the Members under the current year's estimate, pro rata. Any net shortage shall be added pro rata to the next installment due after the rendering of the accounting.

In addition to such regular monthly assessments, each Class "A" Member shall be required to make, at the time such Member acquires title to a Home from the Declarant, an initial capital contribution to the Association equal to two times the amount of the annual Common Assessments. The general purpose of this contribution is to provide the Association with a portion of the necessary initial working capital and/or a contingency reserve. Such funds may be used for certain prepaid items (e.g., insurance premiums, utility deposits and organization, equipment and supply costs) and for such other purposes as the Board may determine. This initial capital contribution is not an escrow or advance, is not refundable and shall not be required of the Declarant, but only from those persons who or which purchase a Home or Homes from the Declarant.

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

Section 2. **Reserve for Contingencies and Replacements: Special Assessments.** The Association shall build up and maintain a reasonable reserve for contingencies and replacements and with respect to all other maintenance obligations of the Association. 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

and any extraordinary expenditures in excess of the reserves therefor shall be assessed to the Members required to pay assessments, pro rata. The Association shall also make any necessary or desirable special Assessments, from time to time which shall be payable at the time or times the Board deems necessary or desirable. The Association shall serve notice of such further Assessments on Members required to pay Assessments, by a statement in writing giving the amount and reasons therefor, and such further assessment shall be payable with the next regular monthly payment becoming due to the Association but not less than ten (10) days after the delivery or mailing of such notice of further Assessment.

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

**Section 4. Status of Funds Collected by Association.** All funds collected hereunder shall be held and expended solely for the purposes designated herein and (except for such special Assessments as may be levied hereunder against less than all of the Members and for such adjustments as may be required to reflect delinquent or prepaid Assessments) shall be deemed to be held for the use, benefit and account of all Members required to pay Assessments pursuant to Article 9.2 of the Declaration.

**Section 5. Depository.** The depository of the Association shall be such bank or banks and/or such savings and loan association or savings and loan associations and/or such money market fund(s) as shall be designated from time to time by the Board and in which the monies of the Association shall be deposited. Withdrawal of the monies from such accounts shall be only by check signed by such persons as are authorized by the Board.

**Section 6. 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 7. Remedies for Failure to Pay Assessments.** If an Owner shall be in default in the payment of any of the aforesaid Assessments, the Association (or Declarant if such Assessment was to be paid directly to Declarant) shall have all of the remedies set forth anywhere in the Declaration, in this Code or at law or equity to collect such Assessments and all costs associated therewith.

**ARTICLE VII**  
**MISCELLANEOUS**

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

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

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

Section 4. **Books and Records.**

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

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

- (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) **Inspection by Members of the Association.** Every member of the Association 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 Association includes the right to make extracts and copies of documents at the reasonable expense of the member. Notwithstanding any other provision of the Declaration or this Code, 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 property-related personnel matters;
- (2) Communications with legal counsel or attorney work product pertaining to potential, threatened or pending litigation, or other property-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, Code, or rules of the owners association against other owners;
- (5) Information, the disclosure of which is prohibited by state or federal law.

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

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Home 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. Amendment.** Prior to the sale and conveyance of the first Home, 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 for development and so long as the amendment has no material adverse effect upon the rights of any Member. Thereafter and otherwise, this Code may be amended only by the affirmative vote or written consent or any combination thereof, of Class "A" Members representing a majority of the total votes of the 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 Class "A" Members. However, the percentage of votes necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

No amendment may remove, revoke, or modify any right or privilege of 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. No amendment shall increase the financial burden of an Owner without the prior written consent of such Owner.

IN TESTIMONY WHEREOF, the undersigned Incorporator has caused these Codes to be duly adopted on or as of the \_\_\_\_ day of \_\_\_\_\_, 2021.

**THE ENCLAVE AND THE SUMMIT AT FOREST LAKES  
HOMEOWNERS ASSOCIATION, INC.**  
an Ohio non-profit corporation

\_\_\_\_\_, Incorporator

[NOTARY PAGE FOLLOWS]

STATE OF OHIO            )  
                                  ) SS  
COUNTY OF SUMMIT    )

BEFORE ME, a Notary Public in and for said County and State, personally appeared \_\_\_\_\_, the Incorporator of THE ENCLAVE AND THE SUMMIT AT FOREST LAKES HOMEOWNERS ASSOCIATION, INC., an Ohio nonprofit corporation, who acknowledged that he executed the within instrument and that such execution was the fee act and deed of said nonprofit corporation, and was his/her free act and deed both individually and in his/her capacity as officer of said nonprofit corporation.

IN TESTIMONY WHEREOF, I have herein set my hand and notarial seal this \_\_\_\_ day of January 2021.

\_\_\_\_\_  
NOTARY PUBLIC  
My Commission Expires: \_\_\_\_\_