

**DECLARATION OF EASEMENTS  
AND PROTECTIVE COVENANTS  
FOR  
BUCKEYE FIELDS ESTATES**

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THIS DECLARATION OF EASEMENTS AND PROTECTIVE COVENANTS FOR BUCKEYE FIELDS ESTATES ("Declaration") is made this 17 day of December 2004, by BUCKEYE FIELDS, LLC., an Ohio limited liability company (the "Declarant"), under the following circumstances:

A. Declarant is currently the fee owner of all of the Lots in Buckeye Fields Estates, more particularly described in Exhibit "A" attached hereto and made a part hereof, and also as shown on the Record Plat for Buckeye Fields Estates ("Record Plat"), recorded in Plat Cabinet 65, Pages 65 & 66 of the Plat Records of Warren County, Ohio (collectively, the "Property"); and

B. Declarant desires that the Property be held, sold, used and conveyed subject to the covenants, conditions and restrictions contained in this Declaration; and

C. Declarant has formed the Buckeye Fields Estates Homeowners' Association, Inc., an Ohio nonprofit corporation (the "Association"), which shall be responsible for the maintenance, management and control of the Common Elements (as hereinafter defined) on the Property.

NOW, THEREFORE, in consideration of the premises and for the purpose of establishing and assuring a uniform plan for the development of the Property, and enhancing and protecting the value, desirability and attractiveness of the Property, Declarant hereby declares that the Property shall be held, sold, used and conveyed subject to this Declaration and the covenants, restrictions and liens provided herein, which shall run with the land and be binding upon all the Lot Owners (as hereinafter defined).

**ARTICLE 1**  
**DEFINITIONS**

The words in this Declaration which begin with capital letters, other than words which would be normally capitalized, unless the context otherwise requires, shall have the meanings set forth in this Article.

1.1. Additional Property. "Additional Property" means other real property in the vicinity of the Property which is owned and/or acquired by Declarant which may be annexed to Buckeye Fields Estates.

1.2. Annual Assessment. "Annual Assessment" means the charge established by Section 4.2 of this Declaration.

1.3. Annual Meeting. "Annual Meeting" means the annual meeting of the Members of the Association held within the last quarter of each calendar year, upon proper notice, at a date, time and at a place from time to time designated by the Board. The first Annual Meeting of the Members shall be held within one (1) year from the date of incorporation on such date as the initial Board shall determine.

1.4. Annual Organizational Board Meeting. "Annual Organizational Board Meeting" means the annual organizational board meeting of the Board which shall take place within ten (10) days after each Annual Meeting of the Members.

1.5. Articles and Articles of Incorporation. "Articles" and "Articles of Incorporation" mean those articles, filed with the Secretary of State of Ohio, incorporating the Buckeye Fields Estates Homeowners' Association, Inc., as a nonprofit corporation under the provisions of Chapter 1702 of the Ohio Revised Code, as the same may be amended from time to time.

1.6. Assessments. "Assessments" means Annual Assessment, Special Assessment, Individual Assessment and Working Capital Assessment.

1.7. Association. "Association" means Buckeye Fields Estates Homeowners' Association, Inc., an Ohio nonprofit corporation, which owns, operates and maintains the Common Elements, and any successor organization which owns, operates and maintains the Common Elements.

1.8. Board or Director(s). "Board" or "Director(s)" means the Board of Directors of the Association established pursuant to its Articles of Incorporation, Code of Regulations and this Declaration.

1.9. Builder. "Builder" means the Exclusive Builder and any other Person, approved in writing by Declarant, who acquires a Lot for the purpose of improving that Lot and erecting a Dwelling Unit thereon for resale to an Owner.

1.10. Class A Members. "Class A Members" means those members of the Association consisting of all Owners except, during the Development Period, Declarant.

1.11. Class B Member. "Class B Member" means, during the Development Period, Declarant, as a member of the Association.

1.12. Code of Regulations. "Code of Regulations" means the Code of Regulations of the Association, as the same may be amended from time to time, pursuant to the Code of Regulations and Ohio Revised Code.

1.13. Common Elements. "Common Elements" as defined in Section 9.1 of this Declaration.

1.14. Common Expenses. "Common Expenses" means expenditures made by, or financial liabilities of, the Association, together with any allocations to reserves, as is more particularly defined in Section 4.2 of this Declaration.

1.15. Common Expense Liability. "Common Expense Liability" means the liability for Common Expenses allocated to each Lot or Dwelling Unit pursuant to Section 4.8, of this Declaration.

1.16. Constituent Documents. "Constituent Documents" mean the Declaration, the Code of Regulations, the Articles of Incorporation, the Rules and Regulations, if any, the management agreement, if any, entered into between the Association and any professional manager of the Property, and any other basic documents used to create and govern the Property.

1.17. Declarant. "Declarant" means Buckeye Fields, LLC., an Ohio limited liability company, its successors and assigns.

1.18. Declaration. "Declaration" means this Declaration of Easements and Protective Covenants for Buckeye Fields Estates, as the same may from time to time be amended in the manner prescribed herein.

1.19. Default. "Default" means any violation or breach of, or any failure to comply with, the Restrictions, this Declaration or any other Constituent Documents.

1.20. Development. "Development" means all Lots which are subject to this Declaration.

1.21. Development Period. "Development Period" means the period commencing on the date on which this Declaration is recorded in the Warren County, Ohio Recorder's Office and terminating on the earlier to occur of (i) within thirty (30) days following the date when seventy-five percent (75%) of the Dwelling Units which may be built on the Property and the current residence located on the Additional Property have been deeded by Declarant, Exclusive Builder or Builder to a third party; or (ii) thirty (30) years from the date of recording of the Declaration..

1.22. Dwelling Unit. "Dwelling Unit" means any building or portion of a building situated upon the Property designed and intended for use and occupancy as a residence by a single person, a family or family-sized group of persons.

1.23. Exclusive Builder. "Exclusive Builder" means Flanigan Homes, Inc., an Ohio corporation, its successors and assigns.

1.24. Individual Assessment. "Individual Assessment" as defined in Section 4.3 of this Declaration.

1.25. Landscape Easements. "Landscape Easements" shall mean and refer to all landscape easements, including structures and any entrance monuments located on the Property in the locations as shown on the Record Plat. The areas within the easements are sometimes referred to as the "Landscape Easement Areas".

1.26. Lot(s). "Lot(s)" means each of the parcels of land shown as such upon the Record Plat of the Property.

1.27. Maintenance Standards. "Maintenance Standards" mean those standards adopted by Declarant and/or the Board pursuant to Article 8 of this Declaration as the same may from time to time be amended.

1.28. Members. "Members" means all Class A Members and the Class B Member.

1.29. Occupant. "Occupant" means any person in possession of a Lot or Dwelling Unit whether or not such possession is lawful and shall include but not be limited to, an Owner's family members, guests, invitees, Tenants and lessees.

1.30. Owner. "Owner" means, with respect to any Lot, the owner of record from time to time, whether one or more persons or entities, of an interest in fee simple, reversion, remainder or leasehold estate of 99 years or more, but shall not include the Association. Such term shall include contract sellers except those having an interest merely as security for the performance of an obligation.

1.31. Person. "Person" shall mean a natural person, a corporation, a partnership, a limited liability company, a trustee, or any other legal entity.

1.32. Private Utility Easements. "Private Utility Easements" shall mean and refer to any easements shown on the Record Plat to provide for the placement of underground utilities of water, electric, gas, telephone, cable and any other valid or permissible underground utility. These areas are for the benefit of all Lot Owners and any agency of Warren County, Ohio having jurisdiction over the respective utilities being installed.

1.33. Property. "Property" means that certain land in Turtle Creek Township, Warren County, Ohio, more particularly described in Exhibit A to this Declaration.

1.34. Record Plat. "Record Plat" means the plat of Buckeye Fields Estates, recorded in Plat Book \_\_\_\_\_, Pages \_\_\_\_\_ of the Warren County Records, and any subsequent phases of Buckeye Fields Estates.

1.35. Restrictions. "Restrictions" means all covenants, conditions, restrictions, easements, charges, liens and other obligations provided for in this Declaration, including, without limitation, the Maintenance Standards and all notices, Rules and Regulations issued in accordance with this Declaration.

1.36. Rules and Regulations. "Rules and Regulations" means all rules and regulations adopted by the Board regarding the administration, interpretation and enforcement of the Restrictions. Each such Rule and Regulation shall be consistent with and designed to further the purposes outlined in this Declaration.

1.37. Special Assessment. "Special Assessment" means the charge established by Section 4.4 of this Declaration.

1.38. Structure. "Structure" means:

(a) any thing or object (other than trees, shrubbery, landscaping and hedges which are less than two feet high) the placement of which upon any part of the Property may affect the appearance of the Property, including, without limitation, porch, shed, barn, storage facility, covered or uncovered patio, fence, curbing, paving, wall, signboard or any other temporary or permanent improvement; and

(b) any excavation, fill, ditch, dam or other thing or device which affects or alters the natural flow of surface waters from, upon or across any part of the Property, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any part of the Property.

1.39. Subdivision. "Subdivision" means all phases or articles of the Record Plat for Buckeye Fields Estates, a subdivision in Turtle Creek Township, Warren County, Ohio, and consisting of all the property from time to time made subject to the provisions of this Declaration.

1.40. Supplemental Declaration. "Supplemental Declaration" shall mean an amendment or supplement to this Declaration executed by or consented to by Declarant which subjects all or any portion of the Additional Property to this Declaration; imposes, expressly or by reference, additional restrictions and obligations on the land subject to this Declaration.

1.41. Tenant. "Tenant" means any person occupying any Lot pursuant to a written or oral lease agreement with the Owner thereof or with any other person or entity claiming under the Owner.

1.42. Working Capital Assessment. "Working Capital Assessment" as defined in Section 4.5 of this Declaration.

## **ARTICLE 2**

### **PROPERTY SUBJECT TO THIS DECLARATION**

The Property, each portion thereof, and all Dwelling Units thereon shall be held, transferred, sold, conveyed, leased, mortgaged and occupied subject to the terms, provisions, covenants and conditions of this Declaration.

## **ARTICLE 3**

### **ASSOCIATION**

3.1. Formation of the Association. The Declarant has caused or will cause to be chartered in accordance with Chapter 1702 of the Ohio Revised Code, a nonprofit corporation to be known as the Buckeye Fields Estates Homeowners' Association, Inc., an Ohio not-for-profit corporation. The purpose of the Association is to provide for the administrative governance, maintenance, management and upkeep of the Property and to promote the general health and welfare of the Owners and Occupants of the Property.

3.2. Board of Directors. Until the Development Period Special Meeting (as hereinafter defined), the Board shall consist of three (3) Directors appointed by Declarant, who shall serve until their respective successors are appointed and qualified. Directors appointed by Declarant need not be Members of the Association. A Director elected by the Class A Members must be an Owner of a Lot or Dwelling Unit or a spouse of an Owner of a Lot or Dwelling Unit, except that if an Owner is a corporation, partnership, joint venture, or other entity, the Owners may elect as a Director an officer, partner, joint venturer, or like individual affiliated with this Owner.

Not more than thirty (30) days after the earlier of the following events occurs, the President of the Association shall call a special membership meeting ("Development Period Special Meeting"):

- (a) the expiration of the Development Period; or
- (b) Declarant gives up, in writing, the right to appoint Directors.

Notwithstanding anything above to the contrary, the Declarant may, by written notice to the Board, at or before any Annual Meeting, relinquish to the Owners, the Declarant's right to elect one or more Directors at such Annual Meeting pursuant to this Section.

At the Development Period Special Meeting, the Directors appointed by Declarant shall be deemed removed from office, and the Members, including Declarant if it is then an Owner, shall elect a new Board, in accordance with the terms of the Articles of Incorporation and Code of Regulations. The Association, after the Development Period Special Meeting, shall have not less than three (3) nor more than five (5) Directors.

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

3.4. Members Rights and Duties. Each Member shall have the rights, duties and obligations set forth in this Declaration and all amendments duly made hereto in accordance with the terms herein.

3.5. Professional Management Contracts. The Association may delegate all or any portion of its authority to discharge its responsibilities herein to a manager or managing agent. Any management agreement shall not exceed three (3) years and shall provide for termination by either party without cause and without payment of a termination fee on ninety (90) days or less written notice.

#### **ARTICLE 4** **ASSESSMENTS**

4.1. Purpose of the Assessments. The Assessments are established for the benefit and use of the Association and shall be used in covering the costs of its Common



Expenses and for such other purposes as hereinafter set forth.

4.2. Annual Assessment. There are hereby established for the benefit of the Association, its successors and assigns, and all Owners on the Property, as a charge on each Lot or Dwelling Unit, a general annual assessment ("Annual Assessment"), which shall be used in covering all of the cost of the Association's operation, insurance, maintenance and repair obligations including, without limitation thereto, the cost of repairing and maintaining the entrance way and improvements thereon; the cost of repairing, maintaining and replacing any roadways located on the Property; landscaping; street lighting, real estate taxes and assessments on the Common Elements; the cost of operation, maintenance and repair of Common Elements; the cost of reasonable reserves for contingencies, replacements and working capital; management fees; organizational costs; legal costs for the enforcement of liens and covenants in this Declaration and all other costs incurred by Declarant or the Board in the exercise of its powers and duties pursuant to this Declaration (collectively "Common Expenses"). The Annual Assessment shall be estimated initially in accordance with Section 4.6 of this Declaration. The obligation to pay the Annual Assessment shall not in any manner be dependent on or discharged, or otherwise affected by the use or non-use of the Common Elements or the actual occupancy of any Lot or Dwelling Unit of the Property. Each Owner, by acceptance of a deed, covenants and agrees to pay such Annual Assessment, except the Declarant, Exclusive Builder and/or Builder shall have no obligation to pay the Annual Assessment unless the Dwelling Unit is occupied.

4.3. Individual Assessment. The Association after approval by a majority of the members of the Board shall have the right to assess an individual Lot or Dwelling Unit for any of the following ("Individual Assessment"):

(a) any costs incurred for maintenance or repair caused through the willful or negligent act of an Owner or Occupant or their family, Tenants, guests or invitees, including attorney fees, court costs and other expenses incurred; and/or

(b) any costs associated with the enforcement of this Declaration or the Rules and Regulations, if any, of the Association, including, but not limited to attorneys fees, witness fees and costs, and court costs.

4.4. Special Assessments. In addition to the other Assessments authorized herein, and to the extent that the reserve fund is insufficient, the Association may levy special assessments for the following reason ("Special Assessments"):

(a) The amount of any operating deficit incurred in any calendar year may be paid by means of a Special Assessment sufficient in an amount so as to allow the Association to satisfy such deficit in part or in whole, provided that any such Special Assessment shall have been approved in accordance with this Section 4.4.

(b) To the extent that the capital budget is insufficient, the Association may levy Special Assessments to construct, structurally alter, or replace capital

improvements which are a part of the Common Elements in any fiscal year.

So long as the total amount of Special Assessments allocable to each Lot or Dwelling Unit does not exceed One Hundred Twenty Percent (120%) of the Annual Assessment for that fiscal year, the Board may impose the Special Assessment. Any Special Assessments which would cause the amount of Special Assessments allocable to any Lot or Dwelling Unit to exceed this limitation shall be effective only if approved by a majority vote of the Members present and voting at a meeting duly called for such purpose. Special Assessments shall be paid as determined by the Board, and the Board may permit Special Assessments to be paid in installments extending beyond the fiscal year in which the Special Assessment is imposed.

4.5. Working Capital Assessment. At the time of closing on the sale of each Lot from Declarant to a third party purchaser, the purchaser shall be required to pay to the Association a sum equal to two hundred and 00/100 Dollars (\$200.00) as such purchaser's initial capital contribution to the working capital of the Association ("Working Capital Assessment"). This Working Capital Assessment shall be used by the Association for its operating expenses. Such Working Capital Assessment is not an advance payment of the Annual Assessment or any other Assessment established herein, and it will not be held in any sort of trust or reserve account. Declarant, Exclusive Builder and/or Builder shall be exempt from paying the Working Capital Assessment collected pursuant to this Section.

4.6. Association Budget; Amount of Assessment. Declarant or the Association shall budget for the current year's projected costs for the Common Expenses. In addition, Declarant or the Association shall build up and maintain a reasonable reserve for contingencies and for the periodic maintenance, repair and replacement of the Common Elements. The amount of the Assessment shall be determined from year to year in accordance with the following:

(a) The Annual Assessment shall be determined by the Board in an amount which the Board estimates will be adequate to pay the Common Expenses for the current year and any unpaid deficits for prior years, plus an adequate capital reserve account for the capital replacement as needed.

(b) The Board shall determine the Association's budget and the amount of the Annual Assessment for the immediately following year on or before December 1 of each year, taking into account the proportion of developed Lots to undeveloped Lots subject to a reduced portion of the Annual Assessment, and shall give written notice to all Lot Owners of the Annual Assessment applicable to their Lot not later than January 1 of the following year.

(c) The Annual Assessment chargeable to each Lot Owner shall be the proportion of one to the total number of Lots then subject to this Declaration and each Lot Owner shall be charged with the payment of that portion of the total Annual Assessment except as provided in the following sentence. The Lots shall be assessed on an equal basis regardless of any variations in the sizes or values of the Lots, except that for the period of time during which Declarant, Exclusive



Builder and/or Builder owns a Lot, Declarant, Exclusive Builder and/or Builder shall have no obligation to pay the Annual Assessment unless the Dwelling Unit is occupied.

(d) At the closing on the purchase of a Lot from Declarant, Exclusive Builder or Builder, the purchaser of such Lot shall pay a pro-rata share of the Annual Assessment due for that installment period.

(e) The failure of the Board to meet the time deadlines imposed herein shall have no effect on the obligation of the Lot Owners to pay their proportionate share of the Annual Assessment when determined. If, during the course of the year, the Board determines that the amount of the Annual Assessment is or will be inadequate to cover any and all such costs described below, the Board may adjust the amount of the Annual Assessment by giving written notice to Lot Owners not less than twenty (20) days before the effective date of the adjustment.

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

(a) Creation. The lien for Assessments is created by this Declaration and shall be a charge and a continuing lien on each Lot or Dwelling Unit which shall run with the land. All Persons acquiring an interest in a Lot or Dwelling Unit after the recording of this Declaration shall take such interest subject to the lien.

(b) Effective Dates. The lien for the Common Expense Liability for each Lot or Dwelling Unit as set forth in the Annual Assessment shall be effective on the first day of the recording of the Declaration. The lien for other Assessments shall be effective on the first day notice is sent of its levy on the Owners affected.

(c) Perfection. Recording of this Declaration constitutes notice and perfection of the lien.

(d) Notice of Lien. The Association may file a notice of lien with the Recorder of Warren County, Ohio. Such notice shall not be required for the Association to enforce its lien.

(e) Priority of the Lien. The lien created by this Section shall be superior to all liens and encumbrances recorded subsequent to this Declaration, except the lien for real estate taxes and assessments and the lien of any first mortgage filed of record. Mortgagees shall have no obligation to collect Assessments.

(f) Subordination and Mortgagee Protection. The mortgagee of a first mortgage of record on a Lot shall have no obligation hereunder to collect any Assessments chargeable to such Lot. Failure of a Lot Owner to pay any

Assessments imposed in this Declaration shall not automatically be deemed a default under the first mortgage of record on that respective Lot. In addition, when the mortgagee of a first mortgage of record, or other purchaser of a Lot as a result of judicial execution, acquires title to the Lot as a result of foreclosure of the first mortgage or by deed in lieu of foreclosure, such acquirer of title, his, her or its heirs, successors and assigns, shall not be solely liable for the share of the Assessments chargeable to such Lot which became due prior to the acquisition of title to such Lot by such acquirer. Any lien against such Lot shall be canceled and voided, and shall become unenforceable. Such unpaid share of Assessments shall be deemed to be Common Expenses collectible from all of the Lots, including that of such acquirer, his, her or its heirs, successors or assigns.

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

(h) Estoppel Certificate. Upon request of any mortgagee or Owner and upon payment in full of all Assessments and other charges permitted by this Declaration that are due to the Association, the Association shall execute and deliver to such mortgagee or Owner an estoppel certificate. Such certificate shall be in recordable form and shall note the payment of the outstanding Assessments and charges and that the Association is estopped from the enforcement of its lien with respect to Assessment and charges becoming due and payable prior to the date of the certificate. The Association may charge a reasonable fee for the preparation of such certificate.

4.8. Allocation of Assessments. The Common Expense Liability of each Lot or Dwelling Unit shall be a portion of the Common Expense. The Common Expense Liability and the Annual Assessment chargeable to each Owner of a Lot or Dwelling Unit shall be the proportion of one to the total number of Lots and Dwelling Units (if more than one Dwelling Unit is situated on a Lot) then subject to this Declaration and each Owner shall be charged with the payment of that portion of the total Annual Assessment.

4.9. Common Surplus. If the Annual Assessment collected in any given year is in excess of the actual Common Expenses for that year, the Board may, at its sole discretion (a) return each Owner's share of the Common Surplus; (b) credit each Owner's share of the Common Surplus to each Owner's payment as for the Annual Assessment for the following year; or (c) apply the Common Surplus to the reserve.

4.10. Payment. Unless otherwise established by the Board, the Annual Assessment shall be paid in bi-annual installments in advance on the first (1<sup>st</sup>) day of January and the first (1<sup>st</sup>) day of June. The Board shall have the power at any time to adopt such billing, collection and payment procedures and payment time schedules as it shall deem appropriate. Additionally, any Special Assessment or Individual Assessment

imposed by the Board shall become due upon the date designated in the notice, but not more than thirty (30) days after the mailing of the notice to the Owner by United States mail.

4.11. Delinquency and Acceleration. Any installment of an Assessment provided for by this Declaration shall become delinquent if not paid on the due date as established by this Declaration or by the Board. With respect to each installment of an Assessment not paid within ten (10) days of its due date, the Board may, at its election, require the Owner to pay a reasonable late charge, costs of collection, reasonable attorney fees and interest at the rate provided in Section 1343.03 of the Ohio Revised Code (and as amended from time to time). Interest shall be calculated from the date of delinquency to the date full payment is received by the Association. If any installment of an Assessment is not paid within thirty (30) days of its due date, the Board may, at its election, declare all of the unpaid balance of the Assessment for the then current fiscal year, attributable to that Lot or Dwelling Unit, to be immediately due and payable without further demand. The Association may enforce the collection of the full Assessment and all charges thereon in any manner authorized by law, this Declaration or the Code of Regulations. The filing of any petition for relief pursuant to the United States Bankruptcy Code by an Owner whose Assessment has been accelerated shall operate as a restoration of the Assessment to its prior status as if it has been accelerated.

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

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

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

4.15. No Waiver of Liability for Common Expenses. No Owner may exempt himself or herself from liability for payment of the Common Expenses by waiver of the use or enjoyment of the Common Elements or by abandonment of the Lot or Dwelling Unit against which the Assessments are made.

4.16. Books and Records of the Association.

(a) Inspection by Members. The membership book, account books and minutes of the Association, the Board and any committee shall be made

available for inspection and copying by any Member 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 Cincinnati, Ohio, as the Board shall prescribe.

(b) Rules for Inspection.

- (i) notice to be given to the custodian of the records by the Members desiring to make the inspection;
- (ii) hours and days of the week when such inspection may be made; and
- (iii) payment of the cost of reproducing copies requested by a Member.

(c) Inspection by Directors. Every Director 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 Director includes the right to make extracts and copies of documents at the expense of the Association.

**ARTICLE 5**  
**DECLARANT'S REQUIRED APPROVAL OF PLANS AND SPECIFICATIONS**  
**OF DWELLING UNITS**

Declarant contemplates that Exclusive Builder shall construct Dwelling Units on all of the Lots making up the Property. As of the date hereof, Declarant has approved a number of plans prepared by or on behalf of the Exclusive Builder for the Dwelling Units to be constructed on the Lots. In the event that Declarant elects, in its sole discretion, to allow a Dwelling Unit to be constructed on a Lot by a Builder other than the Exclusive Builder, each contract to sell such Lot and each deed conveying such Lot shall require that each Purchaser/Owner of a Lot secure the Declarant's approval of a site plan and plans and specifications prior to commencement of construction of a Dwelling Unit and other improvements and Structures on a Lot. In addition to other remedies available to the Declarant under such contract(s), and at law or in equity, the Declarant shall have all legal and equitable remedies available under this Declaration and particularly Section 13.2 of this Declaration to enforce the "plan approval" and other provisions of such contracts against the Owner(s) thereunder and successors in title to the Owner(s) thereunder with regard to each Lot.

**ARTICLE 6**  
**ARCHITECTURAL REVIEW**

6.1. Alteration of Dwelling Unit and Structures. Except with respect to the initial construction of Dwelling Units and accessory Structures by Exclusive Builder or Builder and the Common Elements by Declarant, no Structure shall be commenced, constructed, erected, placed, moved onto or permitted to remain on any Lot, nor shall any

Dwelling Unit and/or Structure on any Lot be remodeled, painted or altered or expanded in any way which changes the exterior appearance thereof, unless detailed plans and specifications therefore shall have been submitted to and approved in writing by the Board. Such plans and specifications shall be in such form and shall contain such information as the Board may reasonably require, including but not limited to any or all of the following: a site plan; proposed landscaping; patio and walkway locations; description of materials; location of lighting; exterior colors; architectural plans including cross-sections, floor plans and elevations; and evidence of conformity with building codes. The Board shall either (a) approve the plans and specifications; (b) disapprove them; or (c) approve them with conditions or qualifications.

6.2. Approval of Plans and Specifications. The Board shall approve plans and specifications submitted to it with respect to any Lot (or subdivision of Lots) if it finds that they (a) comply with the requirements of Section 6.1 above, and (b) conform to any Design and Use Standards adopted by the Board (as set forth in Section 6.14 below). Upon final approval thereof, a certified copy of the detailed plans and specifications shall be deposited for permanent record with the Board and a copy bearing the written approval of the Board shall be returned to the applicant. Approval by the Board of plans and specifications with respect to any Lot shall not impair the Board's right subsequently to approve a requested amendment of such plans and specifications relating to such Lot (subject to the requirements of this Section) or to amend the Design and Use Standards.

No approvals of plans and specifications and no publication standards shall be construed as representing or implying that such plans and specifications or standards will, if followed, result in properly designed improvements. Such approvals in standards shall in no event be construed as representing a guarantee that any structure or other improvement built in accordance therewith will be built in a good and workmanlike manner. Neither the Declarant nor the Association shall be responsible or liable for any defects in the plans or specifications submitted, revised or approved, pursuant to the terms of this Section, any loss or damage to any Person arising out of the approval or disapproval of any plans or specifications, any loss or damage arising from the non-compliance of such plans and specifications with any governmental ordinances and regulations, nor any defects in construction undertaken pursuant to such plans and specifications

6.3. Disapproval of Plans and Specifications. If plans and specifications (whether schematic, preliminary or detailed) submitted to the Board with respect to any Lot do not comply with (a) the Design and Use Standards (and/or will not further the purposes outlined in Section 6.14 hereof); or (b) the requirements of Section 6.1 as to the information required to be included in the plans and specifications, the Board shall either disapprove such plans and specifications or approve them subject to such conditions and qualifications as the Board may deem necessary to achieve compliance.

6.4. Failure of the Board to Act. If the Board shall fail to act upon any plans and specifications submitted to it within thirty (30) days after submission thereof, such plans and specifications shall be deemed to have been approved as submitted, and no further action by the Board shall be required.

6.5. Proceeding with Work. Upon approval of the Board, the Owner shall diligently proceed with the commencement and completion of all work so approved. Work must be commenced within six (6) months from the date of the approval. If the Owner fails to comply with the provisions of this Section, the approval given shall be deemed revoked unless the Board extends the time for commencement. Any request for an extension shall be in writing. No extension shall be granted unless the Board finds that there has been no change in the circumstances under which the original approval was granted.

6.6. Failure to Complete Work. Completion of the work approved must occur in the six (6) month period following the approval of the Structure unless the Board determines that completion is impossible or would result in great hardship to the Owner due to strike, fires, national emergencies, natural calamities or other supervening forces beyond the control of the Owner or his agents. If the Owner fails to complete the work within the six (6) month period, the Board shall proceed in accordance with the provisions of Section 6.7(b) below

6.7. Determination of Compliance. Any Structure which has been constructed, whether or not the Owner obtained proper approvals, shall be inspected and a determination of compliance shall be made as follows:

(a) Upon the completion of any work performed by an Owner for which approval was required, the Owner shall give written notice of completion of the Board. If the Owner fails to give the notice of completion of work performed for which approval was required, the Board may proceed upon its own motion.

(b) Within sixty (60) days the Board shall inspect the work performed and determine whether it was performed in substantial compliance with the approval granted. If the Board finds that the work was not performed in substantial compliance with the approval granted or if the Board finds that the approval required was not obtained, the Board shall notify the Owner in writing of the non-compliance. The notice shall specify the particulars of non-compliance and shall require the Owner to remedy the non-compliance.

6.8. Failure to Remedy the Noncompliance. If the Board has determined that a Owner has not constructed a Structure consistent with the specifications of the approval granted or has constructed a Structure without the required approval and if the Owner fails to remedy such non-compliance in accordance with the provisions of the notice of noncompliance, then after the expiration of thirty (30) days from the date of such notification, the Board shall provide a hearing to consider the Owner's continuing noncompliance. At the hearing, if the Board finds that there is no valid reason for the continuing non-compliance, the Board shall determine the estimated cost of correcting it. The Board shall then require the Owner to remedy or remove the same within a period of not more than forty-five (45) days from the date of the Board's determination. If the Owner does not comply with the Board's ruling within such period or within any extension of such period as the Board, in its discretion, may grant, the Board may either remove the noncomplying Structure or remedy the non-compliance. The costs of such



action shall be assessed against the Owner as an individual assessment.

6.9. Waiver. Approval of any plans, drawings or specifications for any work proposed, or for any other matter requiring approval, shall not be deemed to constitute a waiver of any right to deny approval of any similar plan, drawing specification or matter subsequently submitted for approval.

6.10. Estoppel Certificate. Within thirty (30) days after written demand is delivered to the Board by any Owner, and upon payment to the Association of a reasonable fee (as fixed from time to time by the Association), the Board shall record an estoppel certificate, executed by any two (2) Directors certifying that as of the date thereof, either: (a) the work completed complies with this Declaration, or (b) the work completed does not comply. In the latter situation, the certificate shall also identify the particulars of the non-compliance. Any successor in interest of the Owner shall be entitled to rely on the certificate with respect to the matters set forth. The certificate shall be conclusive as between the Association, Declarant and all Owners and such Persons deriving any interest through any of them.

6.11. Liability. If the Declarant or the Directors have acted in good faith on the basis of such information possessed by them, neither the Declarant nor Board nor any Director shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed due to: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (b) the construction or performance of any work whether or not pursuant to approved plans, drawings, and specifications; or (c) the execution and filing of any estoppel certificate, whether or not the facts therein are correct.

6.12. Right of Entry. The Board through its authorized officers, employees, and agents, shall have the right to enter upon any Lot at all reasonable times for the purpose of ascertaining whether such Lot or the construction, erection, placement, remodeling, or alteration of any Structure thereon is in compliance with the provisions of this Section, without the Board or such officer, employee or agent being deemed to have committed a trespass or wrongful act solely by reason of such action or actions.

6.13. Fees. The Board may charge reasonable fees for the processing of plans and specifications. Such fees may cover the cost of such processing, including inspection costs. Such fees shall be payable at the time of submission of the respective item for approval and shall be paid to the Board.

6.14. Design and Use Standards.

(a) In order to assure the continued maintenance and development of the Property as a residential community of high aesthetic quality, the Board may adopt and may, from time to time, amend Design and Use Standards for the improvement, maintenance, and alteration of and construction of all Structures subsequent to initial construction of a Dwelling Unit and related Structures on the Property in furtherance of the following purposes: the compliance with all zoning and similar governmental regulations; the promotion of the health, safety and

welfare of all Owners and Tenants; the preservation, beautification and maintenance of the Property and all Structures thereon, as a development of high quality; the preservation and promotion of environmental quality; and the assurance of adequate water, sewage and drainage facilities and other utilities and services. The Design and Use Standards shall not apply to initial construction of Dwelling Units by Exclusive Builder and any other Builder and construction of Common Elements by the Declarant.

(b) The Design and Use Standards may establish requirements relating to land use, architectural features, site planning, lighting, landscaping and signage. The Design and Use Standards may include, but shall not be limited to, provisions as to the following subject matters: the permitted uses of Lots and Structures; provided, however, that no standards shall permit any use or activity which is prohibited by any applicable zoning laws; the placement of Structures on Lots, including front, side and rear yard requirements; the specification of materials, design, architectural style, color schemes, screening structures and other details affecting the exterior appearance of Structures; the reservation of utility, visual and other easements; the installation, location and maintenance of utility lines and facilities, including water, gas, electricity, sanitary and storm sewage, telephone, cable television and other communication systems; the planting and preservation of gardens, trees and other landscaping; the size and location of driveways; the size, construction materials, color and design schemes, and location of fences, walls, walks and outdoor furniture; the character, location and direction of exterior lighting; any activity which may be considered noxious or offensive by reason of odor, sound, appearance or sight, or which may be or become a nuisance or annoyance to the community; and any activity which impairs the purposes outlined in Section 6.14(a).

(c) Declarant shall have the right to amend the Design and Use Standards at any time provided such amendments do not effect any plans and specifications previously approved by the Board. The Design and Use Standards shall not be construed as permitting any action prohibited by any applicable zoning or other statute, ordinance, resolution, regulation or order of the State of Ohio or any political subdivision or governmental instrumentality of the State of Ohio or any other applicable covenant, condition, restriction or reservation of easement contained in any recorded instrument. If any inconsistency exists between or among any provision of the Design and Use Standards and any governmental requirements or recorded instruments with respect to any Lot, the more restrictive provision shall apply.

6.15. Approval of Plans by Declarant. Notwithstanding anything to the contrary in this Article 6, during the Development Period (which may still be in effect even after the Development Period Special Meeting as provided in Section 3.2 above), the plans and specifications for the initial construction of a Dwelling Unit shall be subject only to Declarant's approval and do not need to be approved by the Board.

## ARTICLE 7

## **COVENANTS AND RESTRICTIONS OF USE AND OCCUPANCY**

7.1. **Purposes.** In order to promote the health, safety and welfare of all Owners, Members and Occupants, and to preserve, beautify and maintain the Property and all Structures thereon as a subdivision of high quality and to preserve and promote a good environmental quality, the following covenants, restrictions and limitations as to use and occupancy are hereby adopted, declared and established. These covenants and restrictions shall hereinafter burden and benefit all Lots on the Property, shall run with the land, be binding on current and successor Lot Owners, for the benefit of all Lot Owners and all Lots on the Property.

7.2. **Covenants and Restrictions.** The following are the covenants and restrictions and limitations as to use and occupancy to which the Property is hereby subjected:

(a) **Land Use.** Except as otherwise provided in this Declaration, no part of the Property other than Common Elements shall be used for other than residential housing and any Dwelling Unit constructed on a Lot shall be used only as a residence for a single family. Only one single family Dwelling Unit with a private garage for no fewer than two cars attached to the Dwelling Unit shall be permitted to be constructed and to remain on each Lot. Dwelling Units shall not exceed two stories in height, excluding the basement. Any Dwelling Unit which is one story in height shall have at least 2,200 square feet of living area. Any Dwelling Unit which is two stories in height shall have at least 2,650 square feet of living area. To the extent permitted by law, an Owner of a Lot may use a portion of a Dwelling Unit located thereon for his/her office or studio provided that the activities therein shall not interfere with the quiet enjoyment or comfort of any other Owner or Occupant; and provided further that such activities do not increase the normal flow of traffic or individuals in and out of the Property or in and out of said Owner's Lot. The foregoing notwithstanding, Declarant, its successors, assigns and affiliates, and Exclusive Builder may use Lots and Dwelling Units for construction trailers, sales purposes (i.e. model homes), and as offices to meet with prospective purchasers of Dwelling Units.

(b) **Materials for Construction of Dwelling Unit.** The exterior of any Dwelling Unit shall be covered with drop siding, wood, stone, rock or brick. Aluminum and vinyl shall only be used with approval of the Architectural Committee for rear portions of Structures or for trim and other purposes that do not make up a substantial portion of the exterior Structure. No asphalt base exterior siding is permitted. The roof shall be covered with wood, composition, fiberglass or asphalt shingles or approved building up roofing. Roll roofing is not permitted. Frame exteriors of all Structures shall be stained, varnished or painted with at least two coats of paint. Structures shall be fully completed within a period of one year from the time construction is commenced. Concrete block exterior and cinder block houses are not permitted.

(c) **Garages.** No garages with a front entry will be permitted. Vehicular access to any garage, attached or otherwise, shall be from the side or

rear of the Structure and such access shall not be directly visible from the street.

(d) Other Structures. No Structures of a temporary character, trailer, or other temporary outbuilding shall be used or erected on any Lot after the permanent residence on each Lot has been completed, except for children's and marquee tents, which may be erected only in the rear yard of each Lot and not for a period longer than three (3) consecutive days. No Structure shall be constructed or erected upon any Lot prior to the construction of the Dwelling Unit. In addition, no Structures may be placed on any Lot without the Board's prior written approval, as provided in Article 6 above. Any outbuilding must be to the rear of the Dwelling Unit, must be of conventional construction, permanent in nature and may not be made of unsightly material or boxes or similar lumber. Outbuildings must be kept painted and maintained and constructed of approved material as provided in Section 7.2(b) above.

(e) Driveways. All driveways shall be surfaced with concrete, asphalt, brick or paving stone or similar material.

(f) Parking. No parking spaces nor other part of the Common Elements nor any Lot upon which a Dwelling Unit is constructed shall be used for parking of any motorcycle, scooter, trailer, truck, boat, or anything other than operative automobiles; provided, however, that the Board may permit parking of such vehicles upon the Lot away from the Dwelling Unit so long as the streetscape remains ecologically and aesthetically pleasing. The Board may require landscaping or screening at the Owner's expense so that the vehicle may not be seen from the street or adjacent properties. Any of such vehicles may, however, be stored or parked in an enclosed garage. The word "trailer" shall include trailer coach, house trailer, mobile home, automobile trailer, campcar, camper or any other vehicle, whether or not self-propelled, constructed or existing in such a manner as would permit the use and occupancy thereof for human habitation, for storage, or the conveyance of machinery, tools or equipment, whether resting on wheels, jacks, tires or other foundation. The word "truck" shall include and mean every type of motor vehicle other than passenger cars, pick-up trucks which do not exceed ½ tons (provided said trucks do not have any type of commercial logo on the exterior), and mini-vans which are used as a principal vehicle by an Owner of a Dwelling Unit or his/her family. No junk or derelict vehicle or other vehicle on which current registration plates are not displayed shall be kept upon any portion of the Property. Vehicle repairs and storage of vehicles are permitted on the Property only if in garages or if expressly permitted by the Board. It is provided, however, that vehicles being used for the purpose of construction, delivery or repair work upon any Lot or Dwelling Unit may be permitted to park on any Lot and street on the Property of which it is working during working hours, but shall not be permitted to be parked overnight. Notwithstanding anything herein to the contrary, during the Development Period, Declarant, Exclusive Builder and/or Builder may be permitted to park any type of vehicle on the Property, twenty-four (24) hours a day, for development/construction purposes.

(g) Nuisances. No offensive odors or unsightly nuisances are permitted on any Lot which may be construed to be detrimental to the neighborhood. No vehicular maintenance or repair of any type shall be performed on the public streets or on private driveways. No Lot Owner shall permit anything to be done or kept in a Dwelling Unit or other approved Structure on any Lot that would be in violation of any law. No waste shall be committed in or to any of the Common Elements.

(h) Oil and Mining Operations. No oil drilling, quarrying, or mining operations shall be permitted on any Lot.

(i) Garbage Removal. All trash, garbage or other rubbish shall be kept at all times in each Owner's garage, except on the days which the trash, garbage or other rubbish is collected by the local waste removal authorities or as otherwise directed and instructed by the Association. Any trash containers placed outside by the Dwelling Unit Owners to be collected by the local waste removal authorities shall only remain outside for a period not to exceed twenty-four (24) hours and may not be placed at the curb any earlier than 6:00 p.m. the day before the trash is scheduled to be removed.

(j) Open Fires. Except in connection with construction of the initial Dwelling Unit, no burning of any trash and no accumulation or storage of litter, refuse, bulk materials, building materials or trash of any kind shall be permitted on any Lot. Open burning is not permitted on the Property, except that outdoor fireplaces, grills, and chimneys may be used if equipped with fire screens to prevent the discharge of embers or ashes.

(k) Mailboxes. Declarant, Exclusive Builder or Builder reserves the right to establish a standard design for mailboxes for use by all Lot Owners. The decision of the type of material to be used by each Owner shall be at sole discretion of Declarant, Exclusive Builder and/or Builder. Lot Owners shall be responsible for maintenance of their individual mailboxes. Declarant, Exclusive Builder and/or Builder may however, waive this right or establish the use of cluster mailboxes.

(l) Antennas. No apparatus, free standing antennas or satellite dishes shall be constructed or used on any Lot; provided, however, that a satellite dish not exceeding twenty-four inches (24") in diameter may be placed on a roof top of a Dwelling Unit or in the rear of the Lot, provided it is not visible from the street in front of the Dwelling Unit. All television and radio antennae, including CB radio antennae, must be enclosed within the Dwelling Unit located on the Lot. All telephone, electric and other wires of all kinds must be underground

(m) Signs. No permanent sign shall be permitted on any Lot or building on the Property. An Owner of a Dwelling Unit is permitted to place and maintain a standard "For Sale" or "For Rent" sign on his Lot; provided, however it is of a typical size within the industry. An Owner must obtain the prior written consent of the Board in the event said Owner desires to maintain a "For Sale" or

"For Rent" sign which is not of a typical size within the industry, or desires to maintain other displays or advertising, unless otherwise provided for under the rules and regulations, if any. This sign restriction shall not apply to signs used by Declarant, Exclusive Builder or their assigns, while Declarant is selling Lots in the subdivision, or to traffic, street names, Common Elements or subdivision identification signs.

(n) Animals. The maintenance, keeping, boarding or raising of animals, livestock, fowl, rabbits, poultry or reptiles of any kind, regardless of number, is prohibited on any Lot or upon the Common Elements, except that the keeping of guide animals and orderly domestic pets (e.g., dogs, cats, fish or caged birds) without the approval of the Board, is permitted, subject to the Rules and Regulations adopted by the Board. Such pets are not to be kept or maintained for commercial purposes or for breeding. Any such pet causing or creating a nuisance or unreasonable disturbance or noise may be permanently removed from the Property upon ten (10) days written notice from the Board. Dogs and cats and other domestic pets must be kept within the confines of the Owner's Dwelling Unit or Lot, except when being held on a hand leash by a person attending the animal. Any Owner or Tenant who keeps or maintains any pet upon any portion of the Property shall be deemed to have indemnified and agreed to hold the Association, each Owner and the Declarant, free and harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Property. All pets which may leave an Owner's Dwelling Unit or Lot shall be licensed and inoculated as required by law.

(o) Prohibited Activities. Except as otherwise provided in this Declaration, the Code of Regulations and the Rules and Regulations, no industry, business, trade, occupation or profession of any kind, commercial, religious, educational, or otherwise, designated for profit, altruism, exploration, or otherwise, shall be conducted, maintained, or permitted on any part of the Property. Notwithstanding the above, an Owner may conduct a business activity within the Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from the exterior of the Lot or Dwelling Unit; (b) the business activity conforms to all zoning requirements for the Property; and (c) the business activity is consistent with the residential character of the Property.

(p) Obstruction of Common Elements; Laundry or Rubbish. No clothes, sheets, blankets, laundry or any kind or other articles shall be hung out or exposed on any part of a Lot or any part of the Property. Each Lot, including all Common Elements located thereto, shall be kept free and clear of rubbish, debris and other unsightly materials. No Person shall obstruct any of the Common Elements or otherwise impede the rightful access of any other Person on any portion of the Property upon which such Person has the right to be. No Person shall place or cause or permit anything to be placed on or in any of the Common Elements without the approval of the Board. No Lot shall be used for the storage of displaced buildings, lumber or materials of any nature, except insofar as is



necessary during the actual construction of a Structure upon the Lot, but in no case for more than one year.

(q) Rental of Dwelling Units. The Owners of the respective Dwelling Units or any first mortgagees in possession thereof shall have the right to lease the same subject to the covenants and restrictions in the Declaration and the Code or Regulations and rules and regulations, if any. However, neither a Lot Owner nor any first mortgagee in possession shall lease less than an entire Dwelling Unit nor shall any Dwelling Unit be leased for a term of less than one (1) year. The respective Dwelling Unit shall not be rented for transient or hotel purposes, which shall be defined as (i) rental for any period less than ninety (90), or (ii) any rental if the occupants of the Dwelling Units are provided customary hotel service such as room service or food and beverage, maid service and furnishing of laundry and linen. All leases of any Dwelling Unit shall be in writing. All such leases shall provide that they are subject to all the provisions of the Declaration, the Code of Regulations and the rules and regulations, if any, and that any failure of the lessee to comply with any such provision shall constitute a default under the lease. A copy of each such lease shall be given to the Association immediately after it is executed.

(r) Swimming Pools. No above-ground swimming pools shall be constructed, erected, placed or permitted to remain upon any Lot. The definition of "above-ground swimming pools" shall not include portable wading pools used by small children not more than one foot (1') in height. However, any portable wading pools shall be placed in the rear of a Lot. In-ground swimming pools are permitted provided it is approved by the Board in accordance with Sections 5 and 6 above.

(s) Air Conditioning Wall Units. No through the wall air conditioning units of any kind shall be permitted in a Dwelling Unit.

(t) Fencing. No fence or wall of any kind, specifically including the use of a hedge or other growing plants as a fence, and for any purpose, except a retaining wall, shall be erected or built on any part of any Lot between the rear of the building constructed thereon and the street in front of the building. Fences erected on said Lot from the rear of the building and the back property line shall not be in excess of four (4) feet in height and shall be decorative PVC or decorative metal. Barbed wire, chain link or similar fences shall be prohibited. No fence or wall of any kind shall be permitted on a corner Lot. Notwithstanding the foregoing, no fencing (including invisible dog-type fencing), walls or any type of landscaping shall be permitted on any part of the Common Elements, with the exception of those installed by Declarant, Exclusive Builder or any other Builder, without the prior written consent of the Association.

(u) Swing Sets, Basketball Hoops and Play Areas. Swing sets, basketball hoops and play areas may be erected on a Lot only after the location and materials of those Structures are approved in writing by the Board in

accordance with Article 6 above.

(v) Lawns. No weeds, underbrush or unsightly growths or objects of any kind shall be permitted to remain on any Lot. All lawn areas and plant beds shall be maintained in a neat and orderly manner and shall be mowed and maintained on a regular basis. In the event any Owner fails to maintain his/her Lot in a neat and orderly manner, the Association reserves the right to have the grass cut, shrubs trimmed and/or weeds removed on the Lot and bill the respective Owner for the costs thereof, which shall be due and payable by the Owner upon receipt of an invoice. Notwithstanding the foregoing, this restriction shall not apply to vacant Lots owned by Declarant, Exclusive Builder or Builder.

(w) Garage and Yard Sales. There shall be no more than two (2) garage or yard sales held by the Owner or residents of any Lot during any twelve (12) month period.

(x) Holiday Lights. Holiday-type lights shall be erected no sooner than four (4) weeks prior to and removed not later than two (2) weeks after the subject holiday.

(y) Obligation to Keep Structure in Good Condition. Each Lot Owner or Occupant shall keep all Structures located on his/her Lot in good condition and repair.

(z) Obstruction of Easement Areas. No structure, planting, or other material other than driveways or sidewalks shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement of the installation or maintenance of utilities or which may change, obstruct, or retard direction or flow of any drainage channels in the easement area. The easement area of each Lot and all improvements in the easement area shall be maintained by the Owner of the Lot except for those improvements for which a public authority or utility company is responsible.

(aa) Discrimination. No Owner (including the Declarant, Exclusive Builder or Builder), or any employee, agent or representative thereof, shall discriminate upon the basis of sex, race, age, color, creed, familial status, or national origin in the sale, lease or rental of any Dwelling Unit nor in the use of the Common Elements.

(bb) Storm Water Drainage. Natural storm water drainage ways shall be maintained by the Owner of each Lot in such a manner that does not interfere with the normal flow of water.

7.3. Variances. In order to avoid unnecessary hardship and/or overcome practical difficulties in the application of certain provisions of the Declaration, the Board shall have the authority to grant reasonable variances from the provisions of Section 7.2 above. Additionally, so long as Declarant owns one or more Lots on the Property, the Declarant, or its designee, may grant reasonable variances from the provisions of Section

7.2 above. No variance shall materially injure or materially adversely affect any other part of the Property or any other Owner or occupant. No variance granted pursuant to the authority of this Section 7.3 shall constitute a waiver or any provision of the Declaration as applied to any other party or other part of the Property, and no variance may be granted to permit anything that is prohibited by applicable law.

## **ARTICLE 8**

### **MAINTENANCE STANDARDS**

8.1. Adoption and Amendment. The Declarant during the Development Period, and after the Development Period, the Board shall have the right to adopt, and may from time to time amend, Maintenance Standards pertaining to the maintenance, repair and appearance of all Lots, and the exterior of all Dwelling Units and Structures thereon. If any provision of any applicable building inspection, or similar maintenance statute, ordinance, resolution, regulation or order of the State of Ohio, any other political Development or governmental instrumentality of the State of Ohio, or the Board, is more stringent with regard to a Lot than a comparable provision of the Maintenance Standards, such more stringent provision shall be deemed incorporated in the Maintenance Standards. The Maintenance Standards shall provide, among other things, that:

(a) except as otherwise hereinafter provided, the Association shall be responsible for maintenance, repair and replacement of the Common Elements and all Structures thereon;

(b) each Owner shall maintain, repair and replace at his/her expense all portions of the Common Elements which may be damaged or destroyed by reason of her own intentional or negligent act or omission or by the intentional or negligent act or omission of any invitee, lessee, licensee, employee, agent, family member, guest, and/or pet(s) of such Owner;

(c) the obligation of the Association and of the Owners to repair, maintain and replace the portions of the Property for which they are respectively responsible shall not be limited, discharged or postponed by reason of the fact that any maintenance, repair or replacement may be necessary to cure any latent or patent defects in material or workmanship in the construction of the Property;

(d) notwithstanding the fact that the Association and/or any Owner may be entitled to the benefit of any guarantee of material and workmanship furnished by any construction trade responsible for any construction defects, or to benefits under any policies of insurance providing coverage for loss or damage for which they are respectively responsible, the existence of any construction guarantee or insurance coverage shall not excuse any delay by the Association or by any Owner in performing its or his obligation hereunder; and

(e) except as otherwise provided above in Section 8.1(a), each Owner shall maintain, repair and replace at his/her expense all portions of each Dwelling Unit and Structure located on each Lot owned by him/her and all internal and external installations of such Lot such as appliances, heating, plumbing, electrical

and air conditioning fixtures or installations, and any portion of any other utility service facilities located within the boundaries of or serving the Lot.

8.2. Obligation to Keep Premises in Good Repair. Each Owner during his/her period of ownership and, during his/her tenancy, each Tenant leasing a Lot, shall keep each Lot, Dwelling Unit and all Structures thereon owned or leased by him/her in such maintenance, repair and appearance as shall comply with the Maintenance Standards.

8.3. Periodic Inspection. Periodically as needed, the Association may inspect each Lot and the exterior of the Dwelling Unit and all Structures thereon to determine whether each complies with the Maintenance Standards. After each such inspection, the Association shall, if any defects are found, issue an inspection report to the Owner with a copy to the Tenant, if applicable, listing such defects, if any, and the reasonable time within which they may be corrected. Such Owner shall correct such defects or cause them to be corrected within such reasonable period as is stated in the inspection report.

8.4. Drainage. Neither the Owner nor anyone claiming under the Owner shall, except in an emergency, alter the location or grade of any storm water drainage way or the elevations and grades established by the Declarant for any Lot without the written approval of the Declarant (or its designees) during the Development Period; and, the written approval of the Board after the Development Period has expired. The purpose of this Restriction is to insure that the surface drainage plan originally established by the Declarant for sheet surface drainage and drainage swales over the yard areas of Lots is not altered or impeded.

8.5. Right of Entry. The Declarant and the Association, through its authorized officers, employees, and agents, shall have the right to enter upon any Lot and/or Structure (except the Dwelling Unit which the Declarant and Association shall not be permitted to enter for any reason whatsoever) at all reasonable times and upon reasonable advance notice for the purpose of making inspections required by this Article without the Declarant or the Association or such officer, employee or agent being deemed to have committed a trespass or wrongful act solely by reason of such entry or such action or actions. Any bona fide utility company, through its authorized officers, employees, and agents, shall have the right to enter upon the Common Elements or upon any utility easements located on any Lots, for the purpose of installing, repairing or servicing any of its equipment, or for reading meters, without Board approval; provided, however, that if any such activities by the utility require alteration to or displacement of any waterscaping, landscaping, grass, sidewalks, fences, garages, or other Structures, then the prior approval of the Board shall be required.

8.6. Failure to Comply. Failure to comply with the Maintenance Standards or to correct the defects listed in any inspection report issued by the Association or to pay any fee hereunder shall constitute a Default, in which event the Declarant or the Board shall have the right to enforce this Article by any proceedings authorized in this Declaration, Code of Regulations or Rules and Regulations, if any.

## ARTICLE 9

## **COMMON ELEMENTS AND EASEMENTS**

9.1. **Description of Common Elements.** The Common Elements in the Development shall include, but not be limited to: the Landscape Easements; Private Utility Easements; all as are or may be located, described and shown on the Record Plat (collectively, the "Common Elements"). Developer may also create other Common Elements not now in existence but that might in the future be added, located and shown on any subsequent Record Plat to be recorded and creating additional Lots to be subjected to this Declaration.

9.2. **Rights of Enjoyment in Common Elements.** Except as herein otherwise provided, each Owner shall have a right and nonexclusive easement for use and enjoyment of the Common Elements, and such right and easement shall be appurtenant to, and shall pass with the title to his/her Lot. Each Tenant shall have a nontransferable right to use and enjoy the Common Elements, if any, which right shall terminate when such person ceases to have the status of a Tenant. Such rights and privileges shall be subject, however, to the following:

(a) The right of the Board, with the approval by seventy-five percent (75%) of the votes cast by the Class A Members who are voting in person or by proxy at a meeting duly called for such purpose at which a quorum is present, and the Class B Member voting in person or by proxy at such meeting, to borrow money for the purpose of constructing, equipping, improving and maintaining the Common Elements and in aid thereof to mortgage the Common Elements.

(b) The right of the Board to adopt and enforce and from time to time amend reasonable limitations upon use and Rules and Regulations pertaining to the use of the Common Elements, including regulations limiting guests of Owners and Tenants who may use the Common Elements at any one time.

(c) The right of the Board to suspend the right of any Owner or the privilege of any Occupant to use such of the Common Elements that are recreational in nature as determined by the Board for any infraction of the Rules and Regulations relating to the Common Elements for a period not to exceed sixty (60) days for each such infraction, or for nonpayment or delinquency of the Assessments against such Owner's Lot for a period not to exceed the period of such nonpayment or delinquency.

(d) Such rights as the Board may have to grant easements or rights of way to any public utility corporation or public agency.

(e) All applicable provisions of valid agreements of the Association relating to the Common Elements.

(f) Such rights as the Board may have under the Declaration to convey or lease all or any part of the Common Elements.

(g) All other easements, restrictions and rights to which the Property is

subject.

(h) The right of the Association to grant permits, licenses, and easements over the Common Elements for utilities, roads and other purposes reasonably necessary or useful for the proper maintenance or operation of the Property.

9.3. Conveyance of Common Elements to the Association. Declarant represents and warrants to all Owners that within sixty (60) days after the transfer of the first Lot in the Subdivision to a third party purchaser, Declarant shall convey to the Association, by limited warranty deed, title to any Common Elements owned in fee simple by the Declarant, free and clear of all liens, rights to take liens, and encumbrances whatsoever, except (a) the Declaration, the Code of Regulations and the Rules and Regulations of the Association; (b) all easements, covenants and restrictions of record; and (c) real estate taxes and assessments not yet due and payable.

9.4. Subordination to Mortgage or Other Lien. The rights and privileges provided in this Article shall be subordinate to any mortgage or other lien given by the Association for the purposes of acquiring, improving or maintaining the Common Elements.

9.5. Conveyance or Lease of Common Elements. Upon authorization by the Board and upon the approval by seventy-five percent (75%) of the votes cast by the Class A Members who are voting in person or by proxy at a meeting duly called for such purpose at which a quorum is present, and the Class B Member voting in person or by proxy at such meeting, the Association may at any time convey or lease all or a part of the Common Elements to any public agency, authority, or utility or to any private entity, upon such terms and conditions as shall be agreed upon by the other party and Board, including, without limitation, terms and conditions providing for the use of such Common Elements by the public in general and terms and conditions pertaining to the maintenance and repair of such Common Elements and the assessments of Owners and/or Tenants for the costs of such maintenance and repair.

9.6. Maintenance and Management of Common Elements. The Board shall provide for the management of all Common Elements and shall keep all Common Elements in such maintenance, repair and appearance as shall comply with the Maintenance Standards. The Association may fulfill this responsibility by contracting with any professional management company (including, without limitation, Declarant or an affiliate or associate of Declarant) (hereinafter "Manager") for the management, maintenance and repair of the Common Elements upon such terms and conditions including terms as to reasonable compensation as shall be agreed upon by the Association and the Manager. Declarant reserves the right, at any time during the Development Period, to execute a management contract with a Manager whereby such Manager will assume the management, on behalf of the Association, of the Common Elements for an agreed upon management fee. Notwithstanding the foregoing, any such contract with Declarant or an affiliate or associate of Declarant shall not exceed one (1) year in duration.



9.7. Use of Common Elements by Declarant. Declarant and its affiliates and associates shall have the same rights of use and enjoyment of the Common Elements as the Class A Members during the Development Period, and shall have the right to use the Common Elements for promotional, sales and similar purposes until all of the Lots have been sold.

9.8. Easements.

(a) In the event that, by reason of the construction, settlement or shifting of any of the Dwelling Units or other Structures located on Lots or by reason of the partial or total destruction and rebuilding of the buildings, any part of the Common Elements presently encroach or shall hereafter encroach upon any part of a Lot; or any part of a Dwelling Unit presently encroaches on or shall hereafter encroach upon any part of the Common Elements or any other Lot; or, if by reason of the design or construction of utility systems, any main pipes, ducts or conduits serving more than one Dwelling Unit presently encroach or shall hereafter encroach upon any part of any Dwelling Unit or Lot, valid easements for the maintenance of each encroachment and for the use of such adjoining space are hereby established. These easements shall exist during the term of this Declaration for the benefit of such Lot or Dwelling Unit and the Common Elements, as the case may be. However, in no event shall a valid easement for any encroachment be created in favor of any Owner if such encroachment occurred due to the willful conduct of said Owner.

(b) The Association may hereafter grant easements for utility purposes for the benefit of the Property, including the right to install, lay, use, maintain, repair and replace water mains and pipes, sewer lines, gas mains, telephone wires and equipment, and electrical conduits and wires over, under, along and on any portion of the Common Elements, and each Owner hereby grants the Association an irrevocable power of attorney to execute, acknowledge, deliver and record, for and in the name of such Owner, such instruments as may be necessary to effectuate the foregoing.

(c) A non-exclusive easement is hereby reserved and/or granted in favor of the Declarant and/or the Association in, on, over and through the Common Elements, Dwelling Units and Lots for the purposes of maintaining, cleaning, repairing, improving, regulating, operating, policing, replacing and otherwise dealing with the Common Elements, Dwelling Units and Lots, including all improvements thereon.

(d) A non-exclusive easement is hereby reserved and/or granted in favor of Declarant and/or the Association in, on, over and through any and all easements set forth on the Record Plat, including, but not limited to, the Landscape Easements and Private Utility Easements. Any area designated on the Record Plat within the Landscape Easements and Private Utility Easement shall be maintained by the Association as a Common Expense.

(e) Appurtenant to each Dwelling Unit and/or Lot is an easement over

any Common Elements for necessary pedestrian and vehicular ingress and egress to and from any such Dwelling Unit over the Common Elements, to and from a thoroughfare. The easement shall be over such walkways, driveways, or other ways as are designated by the Declarant and/or the Association.

(f) All easements and rights described in the Declaration are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on Declarant, its successors and assigns, and any Owner, purchaser, mortgagee and other party now or hereafter having an interest in the Property, or any part or portion thereof. After the Development Period, the Association shall be deemed to be the successor of Declarant and, as such, shall be deemed to be the grantee of said easements provided in this Section, and shall hold such easements for the use, benefit and enjoyment of all Lot Owners of the Property. All notes on the Record Plat that are pertinent to the specific easements set forth herein are incorporated herein by reference.

(g) All easements and rights described in the Declaration are easements appurtenant, running with the land, perpetually in full force and effect, and at all times shall inure to the benefit of and be binding on Declarant, its successors and assigns, and any Owner, purchaser, mortgagee and other party now or hereafter having an interest in the Property, or any part or portion thereof. After the Development Period, the Association shall be deemed to be the successor of Declarant and, as such, shall be deemed to be the grantee of said easements provided in this Section, and shall hold such easements for the use, benefit and enjoyment of all Lot Owners in the Development. All notes on the Record Plat that are pertinent to the specific easements set forth herein are incorporated herein by reference.

## **ARTICLE 10**

### **INSURANCE AND CASUALTY LOSSES**

10.1. Insurance. The Board or its duly authorized agent shall have the authority to and shall obtain insurance for all insurable improvements on the Common Elements against loss or damage by fire, other hazards, including all risk coverage, vandalism and malicious mischief. This insurance shall be in an amount sufficient to cover the full replacement cost of any repair or reconstruction in the event of damage or destruction from any such hazard. The Board shall also obtain a public liability policy covering the Common Elements, the Association, and its members for all damage or injury caused by the negligence of the Association or any of its members or agents, and if reasonably available, trustees' and officers' liability insurance. The public liability policy shall have such coverages as the Board in its discretion may decide to be reasonable after due consideration of all factors involved. Premiums for all insurance on the Common Elements, public liability and trustees' and officers' insurance shall be Common Expenses of the Association. The policy may contain a reasonable deductible and the amount thereof shall be added to the face amount of the policy in determining whether the insurance equals the full replacement cost.

Cost of insurance coverage obtained for the Common Elements, public liability, and trustees' and officers' shall be included in the Annual Assessment, as defined in Section 4.2 above.

All such insurance coverage obtained by the Board shall be written in the name of the Association, as Director, for the respective benefitted parties, as further identified below. Such insurance shall be governed by the provisions hereinafter set forth:

- (a) All policies on the Common Elements shall be for the benefit of the Owners and their mortgagees as their interests may appear;
- (b) Exclusive authority to adjust losses under policies in force on the Property obtained by the Association shall be vested in the Board; provided, however, that no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto;
- (c) In no event shall the insurance coverage obtained by the Board hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their mortgagees, and the insurance carried by the Association shall be primary; and
- (d) The Board shall be required to make every reasonable efforts to secure insurance policies that will provide for the following:
  - (i) a waiver of subrogation by the insurer as to any claims against the Board, its manager (if any), the Owners and their respective tenants, servants, agents, and guests;
  - (ii) a waiver by the insurer of its rights to repair and reconstruct instead of paying cash;
  - (iii) that no policy may be canceled, invalidated, or suspended on account of the acts of any one or more individual Lot Owners;
  - (iv) that no policy may be canceled, invalidated, or suspended on account of the conduct of any trustee, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner or mortgagee; and
  - (v) that any "other insurance" clause in any policy exclude individual Owner's policies from consideration.

10.2. Disbursement of Proceeds. Proceeds of insurance policies shall be disbursed as follows:

- (a) If the damages or destruction for which the proceeds are paid is to be repaired or reconstructed, the proceeds, or such portion thereof as may be

required for such purpose, shall be disbursed in payment of such repairs or reconstruction as hereinafter provided. Any proceeds remaining after defraying such costs of repairs or reconstruction is made after making such settlement as is necessary and appropriate with the affected Owner of Owners and their mortgagee(s), as their interest may appear, if any Lot is involved, shall be remained by and for the benefit of the Association. This is a covenant for the benefit of any mortgagee of a Lot and may be enforced by such mortgagee.

(b) If it is determined, as provided for in Section 10.3(b) of this Article, that the damage or destruction of the Common Elements for which the proceeds are paid shall not be repaired or reconstructed such proceeds shall be disbursed in the manner as provided for excess proceeds in Section 10.2(a) hereof.

#### 10.3. Damage or Destruction.

(a) Immediately after the damage or destruction by fire or other casualty to all or any part of the Property covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair or reconstruction of the damaged or destroyed property. Repair or reconstruction, as used in the paragraph, means repairing or restoring the Property to substantially the same condition in which it existed prior to the fire or other casualty.

(b) Any damage or destruction to the Common Elements shall be repaired or reconstructed unless at least seventy-five percent (75%) of the total vote of the Association shall decide within sixty (60) days after the casualty not to repair or reconstruct. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or reconstruction, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, that such extension shall not exceed sixty (60) days. No mortgagee shall have the right to participate in the determination of whether the Common Elements damage or destruction shall be repaired or reconstructed.

(c) In the event that it should be determined by the Association in the manner described above that the damage or destruction of the Common Elements shall not be repaired or reconstructed and no alternative improvements are authorized, then and in that event that property shall be restored to its natural state and maintained as an undeveloped portion of the Common Elements by the Association in a neat and attractive condition.

10.4. Repair and Restoration. If the damage or destruction for which the insurance proceeds are paid is to be repaired or reconstructed and such proceeds are not sufficient to defray the cost thereof, the Board shall, without the necessity of a vote of the Members, levy a Special Assessment against all Owners. Additional Assessments may

be made in like manner at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the cost of repair, such excess shall be deposited to the benefit of the Association.

## **ARTICLE 11**

### **CONDEMNATION**

11.1. Whenever all or any part of the Common Elements shall be taken (or conveyed in lieu of an under threat of condemnation of the Board, acting on its behalf or on the written direction of all Owners of Lots subject to the taking, if any) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto, unless otherwise prohibited by law. The award made for such taking shall be payable to the Association, as trustee for all Owners, to be disbursed 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 and at least seventy-five percent (75%) of the Member 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 be extent lands are available therefore, in accordance with plans approved by the Board. If such improvements are to be repaired or restored, the above damage or destruction which is to be repaired shall apply. If the taking does not involved any or if there are net funds remaining after such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

## **ARTICLE 12**

### **COVENANT FOR STAGED DEVELOPMENT**

12.1. Staged Development. Declarant hereby reserves the right at any time within the Development Period to remove any portion of the Property from the scope of the Declaration or to submit, make subject to or annex the Additional Property to this Declaration without the consent of the Members of the Association. However, Declarant is not bound to annex any of the Additional Property to this Declaration, and until such time as any of the Additional Property is annexed, the same shall not be subject to the provisions of this Declaration.

12.2. Supplemental Declaration for Staged Development. Any annexations made pursuant to this Article 12, or otherwise, shall be made by recording a supplement to this Declaration with the Recorder of Warren County, Ohio, which supplementary Declaration shall extend this Declaration to such annexed property. The supplementary Declaration may contain additional covenants, conditions, restrictions, easements and liens as Declarant shall deem appropriate for the purpose of completing the development of the Property. Owners of Lots subject to such supplemental Declaration shall be Owners as defined by this Declaration.

## **ARTICLE 13**

## **ENFORCEMENT**

13.1. **Curing Defaults; Lien.** In the event of any Default with respect to any Lot under this Declaration, the Board shall give written notice to the Owner thereof, with a copy of such notice to each Tenant in Default and a copy to any first mortgagee of the Lot who has requested to receive such notices, setting forth with reasonable particularity the nature of such Default, and the specific action or actions required to remedy the Default. If the Owner or Tenant shall fail to take the specific action or actions within thirty (30) days after the mailing of the notice, the Board may, but shall not be required to exercise any or all of its rights hereunder. The Board may exercise without notice any of its rights hereunder with respect to any Default if it determines that an emergency exists requiring immediate action.

Costs incurred by the Association in exercising any of its rights with respect to any Lot shall be a binding personal obligation of the Owner thereof which shall be payable on demand. If the Owner fails to pay such costs within thirty (30) days after demand, the Association shall enter the amount of the obligation, the name of the Owner as it appears on its records and the description of the Lot in a lien record book to be maintained by the Board at its main office, together with the date of such entry. The Association shall have a prior lien on such Lot for such amount until paid and such lien shall have priority from the date of such entry over all other liens and encumbrances thereon whatsoever, excepting real estate taxes and assessments, liens of record as of the date of such entry and liens of the United States of America, the State of Ohio, and all other political Developments or governmental instrumentalities of the State of Ohio to the extent made superior by applicable law, all bona fide recorded first mortgages and the lien of any first mortgagee who comes into possession of a Lot pursuant to mortgage foreclosure or by deed in lieu thereof. The lien provided in this Section shall be recordable and shall be enforceable as provided in Article 4 hereof.

13.2. **Remedies.** Nothing contained in this Article 13 shall be deemed to affect or limit the rights of Declarant, the Association, any Owner, Occupant, or their legal representatives, heirs, devisees, successors or assigns, by appropriate judicial proceedings, to enforce the restrictions, or recover damages for any Default. It is hereby declared that irreparable harm will result to beneficiaries of this Declaration by reason of a Default, and, therefore, each beneficiary shall be entitled to relief by way of injunction or specific performance to enforce the provisions of this Declaration, as well as any other relief available at law or in equity.

13.3. **Right and Easement of Entry.** The Association, through its authorized officers, employees, and agents, shall have the right and easement to enter upon any Lot at all reasonable times and to do anything thereon necessary to perform the action or actions specified in the notice to the Owner to abate, remedy, extinguish, remove or repair a Default, without the Association or such officer, employee or agent being deemed to have committed a trespass or wrongful act solely by reason of each entry or such action or actions as are carried out in accordance with the provisions of this Article 13, provided that no summary abatement or similar procedure may be utilized through non-judicial means to alter or demolish items of construction.



13.4. No Waiver. The failure of Declarant, the Association, any Owner, Tenant, or their legal representatives, heirs, devisees, successors or assigns, in any one or more instances, to insist upon compliance with any of the Restrictions, or to exercise any right or privilege conferred in this Declaration, shall not constitute or be construed as the waiver of such or any similar restriction, right or privilege, including the right to cure Default, but the same shall continue and remain in full force and effect as if no such forbearance had occurred.

#### **ARTICLE 14**

##### **REAL ESTATE TAXES AND ASSESSMENTS**

14.1. Real Estate Taxes. The Owner of a Lot shall be responsible for and shall pay all taxes and assessments, general and special, levied or imposed upon the Lot and its improvements.

14.2. Allocation. Prior to the time the Auditor of Warren County, Ohio establishes separate tax parcels for each Lot, Declarant shall allocate the real estate taxes and assessments upon the Property among and against the Lots and against the remainder of the Property in a fair and equitable manner so as to allocate the real estate taxes and assessments charged in common to the various Lots as well as the remainder of the Property within Development. The allocation by Declarant made in accordance with the terms hereof shall be binding upon all Owners.

14.3. Common Elements. Taxes and assessments, general and special, charged against the Common Elements shall be deemed a Common Expense. Assessments, charged against the Development shall be paid by the Owners as set forth in Article 4 hereof.

#### **ARTICLE 15**

##### **DURATION, AMENDMENT AND TERMINATION**

15.1. Duration. The Restrictions shall be covenants running with the land and shall bind the Property and every part thereof, and shall (regardless of whether any such beneficiary owns an interest in any Lot) inure to the benefit of and be enforceable by, the Board and each Owner and Tenant and their legal representatives, heirs, devisees, successors and assigns, and shall continue in full force and effect for twenty (20) years from the date on which this Declaration is recorded in the Recorder's Office of Warren County, Ohio. Thereafter the Restrictions shall be automatically renewed for successive ten-year periods unless amended or terminated as provided in this Article 15.

15.2. Amendment or Termination. Prior to the end of the Development Period, any provision of this Declaration may be amended in whole or in part or terminated by a recorded instrument executed by the President of the Association and Declarant and approved by the Owners of at least sixty-seven percent (67%) of all Lots located in the Property. After the end of the Development Period, any provision of this Declaration may be amended in whole or in part or terminated by a recorded instrument executed by the President of the Association and approved by the Owners of at least sixty-seven

percent (67%) of all Lots located in the Property.

The President of the Board shall determine whether the persons who have approved any amendments or termination of this Declaration constitute Owners of at least sixty-seven percent (67%) of all Lots. Promptly after the approval of any amendment or termination of any part of this Declaration, the President of the Board shall cause to be recorded the written instrument of amendment or termination executed in properly recordable form by the President of the Association and Declarant, if during the Development Period, and the President after the Development Period, and the President after the Development Period, along with a certificate of the President of the Association that the Owners of at least sixty-seven percent (67%) of all Lots have approved such instrument.

The Board shall maintain such copies filed with it by the President as a permanent record and shall make copies thereof available to any Owner at a reasonable cost.

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

## **ARTICLE 16**

### **MISCELLANEOUS**

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

16.2. Notices. Any notice required or permitted to be given to an Owner or Tenant by the Board pursuant to the provisions of this Declaration shall be deemed given when mailed by United States mail, postage prepaid, addressed to his or her last address as it appears on the records of the Association.

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

and entities benefitted or bound by the provisions of this Declaration.

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

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

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

16.7. Conflict. In the event of a conflict between the Restrictions or any one or more of them and other private restrictions which may be recorded before or after this Declaration, the more restrictive restriction, covenant, condition, easement or other obligation shall control.

16.8. Covenants Running with Land. This Declaration and all amendments hereto shall be, and shall be construed as, covenants running with the land, shall be binding upon Declarant, any mortgagee, the Association, its Members, each Owner, each Occupant and all claiming under each Owner or Occupant, and shall (regardless of whether or not any such beneficiary owns an interest in any Lot) inure to the benefit of and be enforceable by (i) Declarant, (ii) the Association, and (iii) each Owner and all claiming under each Owner.

16.9. Availability of Documents. The Association shall make available to Members, Owners, and lenders, and to holders, insurers, or guarantors of any first mortgage, current copies of the Declaration, rules and regulations, if any, and other rules concerning the Property. "Available" means available for inspection, upon request, during normal business hours or under other reasonable circumstances.

16.10. Right of Entry. The Association shall have a reasonable right of entry upon any Lot to make emergency repairs and to do other work reasonably necessary for the proper maintenance or operation of the Property.

*[The Remainder of this Page is Intentionally Left Blank]*

IN WITNESS WHEREOF, Declarant has caused this Declaration of Easements and Protective Covenants to be executed by its duly authorized officer as of the day and year first above written.

DECLARANT:

BOOK 3843 PAGE 651

BUCKEYE FIELDS LLC., an Ohio limited liability company

By:

Michael P. Flanigan

Michael Flanigan,  
as Managing Member

STATE OF ~~OHIO~~ Kentucky ) ss:  
COUNTY OF ~~HAMILTON~~ Campbell :

The foregoing instrument was acknowledged before me this 17<sup>th</sup> day of December 2004, by Michael Flanigan, as Managing Member of BUCKEYE FIELDS LLC., an Ohio limited liability company, on behalf of the corporation and limited liability company.

Jamie D. Ferguson

Notary Public

Jamie D. Ferguson, Notary Public  
State at Large, Kentucky  
My Commission Expires 4/17/2007

This instrument prepared by:

Jody T. Klekamp, Esq.  
Keating, Muething & Klekamp, PLL  
1400 Provident Tower  
One East Fourth Street  
Cincinnati, Ohio 45202

**EXHIBIT A**

**REAL ESTATE DESCRIPTION**

**CONSENT AND SUBORDINATION**

Situate in Section 20, Town 4,  
Range 4, Turtlecreek Township,  
Warren County, Ohio being  
Lots No. 1 thru 40 inclusive of  
Buckeye Field as recorded in  
P.B. 66 Pgs. 65 & 66

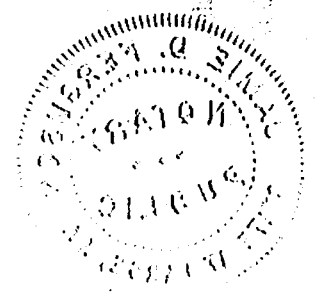
Design of U.S. Standards

Sept 21 1943

U.S. Bureau of Standards  
Washington, D.C.

Mr. J. H. ...  
Mr. ...

Enclosed for the Bureau of Standards are two copies of a report on the results of the investigation of the ...



J. H. ...

Very respectfully,  
J. H. ...

U.S. Bureau of Standards  
Washington, D.C.

Enclosed for the Bureau of Standards are two copies of a report on the results of the investigation of the ...  
J. H. ...

LOT #

1	09-20-300-036
2	09-20-300-037
3	09-20-300-038
4	09-20-300-039
5	09-20-300-040
6	09-20-300-041
7	09-20-300-042
8	09-20-300-043
9	09-20-300-044
10	09-20-300-045
11	09-20-300-046
12	09-20-300-047
13	09-20-300-048
14	09-20-300-049
15	09-20-300-050
16	09-20-300-051
17	09-20-300-052
18	09-20-300-053
19	09-20-300-054
20	09-20-300-055
21	09-20-300-056
22	09-20-300-057

LOT #

23	09-20-300-058
24	09-20-300-059
25	09-20-300-060
26	09-20-300-061
27	09-20-300-062
28	09-20-300-064
29	09-20-300-065
30	09-20-300-066
31	09-20-300-067
32	09-20-300-068
33	09-20-300-069
34	09-20-300-070
35	09-20-300-071
36	09-20-300-072
37	09-20-300-073
38	09-20-300-074
39	09-20-300-075
40	09-20-300-063

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# **HOA Budget**

Buckeye Field HOA Annual Financial Estimated Budget		Yearly Cost
Lawn Care	Regular cutting of all common grounds @ \$65 per cut Estimated 32 weeks	\$2,080.00
Landscaping	Maintenance and replacement of flowers at entrance and tree replacement	\$500.00
	(2 per year @300)	\$600.00
Snow Plowing	Removal for snow contracted with Turtlecreek for two years only. Estimated \$350 yearly	\$350.00
Electric	Service for 4 street lights charged to tax bill.	
Insurance	Directors & Officer's Insurance	\$1,000.00
	HOA Insurance	\$600.00
Miscellaneous	Clean out Storm Drains (Annual \$500)	\$500.00
	Clean out detention basin (Annual \$1000)	\$1,000.00
	Clean up Common area (Annual \$500)	\$500.00
	Mailing Expense / Documentation (Annual \$100)	\$100.00
	Banking fees (Annual \$360)	\$360.00
TOTAL		\$7,590.00
Per Lot		\$189.75
Per Month		\$15.81