

**DECLARATION OF COVENANTS  
EASEMENTS, RESTRICTIONS AND ASSESSMENTS AND ASSESSMENT LIENS  
FOR  
JEROME DEL WEBB**

**Submitted in conjunction with Preliminary Plat application requirements only**

**August 2024**

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**DECLARATION OF COVENANTS, EASEMENTS, RESTRICTIONS AND  
ASSESSMENTS AND ASSESSMENT LIENS FOR JEROME DEL WEBB**

This Declaration of Covenants, Easements, Restrictions and Assessments and Assessment Liens (the “**Declaration**”) is made on or as of this \_\_\_\_\_ day of \_\_\_\_\_, 2021, by DEVELOPER, INC., an Ohio corporation, whose address is 475 Metro Place S., Dublin, Ohio 43017 (“**Developer**”).

**Background**

1. Developer is the owner in fee simple of the real estate identified and described on Exhibit A, attached hereto and made a part hereof by this reference (the “**Subject Property**”).

2. The Subject Property is being developed and built as a residential subdivision of lots for single-family homes known as the JEROME DEL WEBB (the “**Community**”) and may include public or private streets, associated improvements, landscaped areas, entranceway and community border features, reserves, open or green spaces, and storm water drainage facilities.

3. Developer desires hereby to restrict the use and occupancy of the Subject Property and provide for the preservation of the values of and amenities in the Community for the benefit of the present and future Owners of the Lots and the Improvements constructed on them.

4. Developer hereby declares that all of the Subject Property shall be encumbered with the following covenants, easements, restrictions and conditions which shall run with the land and be binding on all parties having any right, title or interest in the Subject Property, or any part thereof, their heirs, successors and assigns, including the future Owners of any Lot, the Developer, the Developer’s successors and assigns, and any utility companies, whether public or private, who are granted rights herein.

5. Further, Developer deems it desirable for the accomplishment of these objectives to create an association to which is delegated and assigned the non-exclusive right and obligation to administer and enforce the provisions hereof, to own certain property, to have easement rights with respect to certain property, to administer such property, and to collect and disburse funds necessary to accomplish these objectives. Accordingly, Developer shall cause to be incorporated a homeowners’ association under and pursuant to the laws of Ohio, whose Members are and will be all of the Owners of a Lot or Lots in the Community.

**COVENANTS, EASEMENTS, RESTRICTIONS,  
ASSESSMENTS AND ASSESSMENT LIENS**

NOW THEREFORE, in pursuance of a general plan for the protection, benefit, and mutual advantages of the property in the Community, Developer hereby declares that all of the Subject Property shall be held, developed, improved, encumbered, sold, conveyed and occupied subject to the following covenants, easements, and restrictions:

## 1. DEFINITIONS.

The following terms used in this Declaration shall have these meanings, unless the context requires otherwise:

- (a) **“Additional Easement Areas”** -- those areas, whether or not shown on the plat of the Community, which Developer has determined shall be subject to further easements for the benefit of the Community.
- (b) **“Additional Property”** -- property that may in the future be subjected to the plan for the Community provided hereby, and consists of such property as Developer, in its sole discretion, may from time to time determine and designate as Additional Property.
- (c) **“Architectural Review Committee”** -- the group of individuals having the power and authority to establish and enforce architectural standards governing the construction of Improvements in the Community.
- (d) **“Articles” and “Articles of Incorporation”** -- the articles, when filed with the Secretary of State of Ohio, incorporating JEROME DEL WEBB Homeowners’ Association, Inc. (the **“Association”**) as a non-profit corporation under the provisions of Chapter 1702 of the Revised Code of Ohio (**“Chapter 1702”**).
- (e) **“Assessments”** - charges levied by the Association on Lots and their Owners, consisting of Operating Assessments, Special Assessments, and Individual Lot Assessments.
- (f) **“Association”** -- an association of all of the Owners of Lots in the Community, at any time, except Owners of Exempt Property with respect to that property. The Association is being incorporated as an Ohio non-profit corporation named “JEROME DEL WEBB Homeowners’ Association, Inc.”
- (g) **“Board”** -- the Board of Directors of the Association.
- (h) **“Code of Regulations”** and **“Code”** -- the Code of Regulations of the Association (sometimes referred to as “bylaws”) created under and pursuant to the provisions of Chapter 1702, providing certain operating rules and procedures for the Association.
- (i) **“Common Elements”** -- all real and personal property now or hereafter acquired by the Association, or benefited by easement to it, pursuant to the provisions hereof, or otherwise, for the common use and the enjoyment of the Owners, or for the operation of the Association. The Common Elements may include open spaces, Reserves, entranceway and community border features, detention areas, and other property designated by Developer or the Board (as the Board will be constituted following the Turnover Date) to be Common Elements, and benefiting the Owners of the Lots in the Community.
- (j) **“Common Expense”** - costs and expenses incurred by the Association in fulfilling its functions pursuant to the provisions of the Governing Documents.

- (k) **“Community”** or **“JEROME DEL WEBB”** – all property that at any time has been subjected to the provisions of this Declaration, and initially includes all of the property described in Exhibit A, and which may be expanded to encompass all or any part of the Additional Property.
- (l) **“Developer”** -- DEVELOPER, Inc. and any successor or assign to which it specifically assigns any of its rights and which assumes its obligations hereunder by a written instrument.
- (m) **“Exempt Property”** -- means the portion of the real property comprising the Community (a) now or hereafter dedicated to common public use or owned by the United States, the State of Ohio, the County, the City, any school board, or similar governmental body, or any instrumentality or agency or any such entity, for so long as any such entity or any such instrumentality or agency shall be the owner thereof, or (b) owned by the Association; provided in either such case, the same is not utilized as a residence.
- (n) **“Governing Documents”** -- the Association’s Articles of Incorporation, Code of Regulations, its Rules, and all amendments thereto, this Declaration, and all amendments thereto, and applicable building and zoning laws and ordinances.
- (o) **“Improvements”** -- all buildings, outbuildings, garages and structures; overhead, aboveground and underground installations, including without limitation, utility facilities and systems, lines, pipes, wires, towers, cables, conduits, poles, antennae and satellite dishes; flagpoles; swimming pools; swing-sets, playground equipment, playhouses and forts; tennis and all other types of permanently installed recreational courts, fixtures and facilities; slope and drainage features, structures and conditions; roads, driveways, uncovered parking areas and other paved areas; fences, trellises, walls, retaining walls, exterior stairs, decks, patios and porches; planted trees, hedges, shrubs and other forms of landscaping; and all other improvements and/or structures of every type.
- (p) **“Individual Lot Assessment”** -- an assessment that the Board may levy upon a Lot and its Owners to reimburse the Association for costs incurred solely on behalf of that Lot, or the Owners thereof, including without limitation, costs associated with making repairs that are the responsibility of the Owner of that Lot; costs of additional insurance premiums reasonably allocable to an Owner because of use of Improvements on that Lot; costs of any utility expenses chargeable to an Owner but not separately billed by the utility company; administrative charges for violations of the Governing Documents, late charges, and interest on delinquent assessments, and costs of collection of delinquent obligations to the Association, including attorneys fees and court costs, and all other charges reasonably determined to be chargeable solely to a Lot and its Owners.
- (q) **“Lot”** -- a separate parcel of real property now or hereafter identified upon a recorded subdivision plat of property in the Community, or any portion thereof, or recorded re-subdivision thereof, and any other separate parcel of real property designated as a Lot by Developer, and subjected to the provisions of this Declaration, excluding the Common Elements and any portion of the Community dedicated for public use.

- (r) **“Manager”** -- the person or entity retained by the Board to assist in the management of the Association.
- (s) **“Member”** -- any person or entity meeting the requirement for membership in the Association.
- (t) **“Occupant”** -- a person lawfully residing in a dwelling on a Lot, regardless of whether that person is an Owner.
- (u) **“Operating Assessments”** -- an assessment that the Board may levy upon all Lots, other than Exempt Property, and their Owners, pursuant to the terms of this Declaration, to provide funds to pay Common Expenses, that is, funds needed to meet cash requirements of the Association for its operations and reasonable reserves.
- (v) **“Owner”** and **“Lot Owner”** -- the record Owner, whether one or more Persons, of fee simple title to a Lot, excluding vendors under recorded land installment contracts, but including the vendees, and excluding the Developer and all others having an interest merely as security for performance of an obligation.
- (w) **“Person”** -- a natural individual, trustee, corporation, partnership, limited liability company, or other legal entity capable of holding title to real property.
- (x) **“Reserves”** -- one or more of the Reserves or open spaces in the Community, as delineated and shown on a recorded plat and subjected to the provisions hereof.
- (y) **“Rules”** -- the rules and regulations governing use of property in the Community as may be established by the Board from time to time.
- (z) **“Special Assessment”** -- an assessment that the Board may levy upon all Lots, except Exempt Property, to pay for unanticipated operating deficiencies, or to pay for capital expenditures not regularly budgeted and not to be paid out of monetary reserves, such as costs for major capital improvement replacements and for major new capital improvements, or any other similar purpose determined appropriate by the Board.
- (aa) **“Turnover Date”** -- the date on which Developer relinquishes its exclusive right to appoint all members of the Board, which date shall be no later than the date when the Community has been fully developed, and all Lots have been deeded to bona fide purchasers, provided Developer reserves the right, in its sole and unfettered discretion, to turn over control of the Association, or selected functions thereof, at such earlier time as it determines in its sole discretion.

## 2. GOALS.

The covenants, easements, conditions and restrictions contained in this Declaration are declared to be in furtherance of the following purposes:



- (a) Promotion of the health, safety and welfare of all Owners and Occupants of property in the Community;
- (b) Ownership, administration, preservation, beautification and maintenance of the Community's Common Elements and all Improvements thereon;
- (c) Enforcement of architectural controls and restrictions applicable to the Community;
- (d) Compliance with all zoning and similar governmental regulations applicable to the Community; and
- (e) Provide for mandatory membership of Lot Owners in the Community, as it may be constituted, from time to time, in the Association, and the assessment and collection of funds to fulfill its objectives.

### **3. THE ASSOCIATION.**

#### **3.1. Purposes.**

The Association shall apply all funds received by it pursuant hereto, and all other funds and property received by it from any source, to the fulfillment of the purposes of the Association as hereinbefore provided. The purposes of the Association are to:

- (a) To own, repair, maintain, regulate the use of, and to have easements with respect to various facilities and amenities in the Community that benefit all of the Community and its Owners and Occupants, including, without limiting the generality of the foregoing, the Common Elements and such other Improvements and amenities as designated to be Common Elements by Developer, and after the Turnover Date, by the Board;
- (b) administer and enforce the provisions of the Governing Documents; and
- (c) assess, collect and disburse funds necessary to fulfill these purposes.

#### **3.2. Mandatory Membership.**

Every Lot Owner shall be a Member of the Association. In the case of a Lot that is the subject of a recorded land installment contract, the vendee or vendees under that installment contract and not the vendor shall, while holding such interest, be a Member of the Association. There shall only be one membership per Lot. In the event the fee simple interest in a Lot, or ownership of the vendee interest in a Lot, is held by more than one Person, the co-interest holders of such interests while holding such interests shall have only one membership in the Association as tenants-in-common, with respect to that Lot. Such membership is appurtenant to and inseparable from such interests. Status as a Member shall automatically transfer to the transferee of that interest at the time the fee simple interest is transferred of record. Initially those Lots to which these membership provisions apply shall be those Lots that are subjected hereby to the provision of this Declaration, but as portions of the Additional Property or additional portions of the Community are subdivided and platted into Lots, and the Lots therein

subjected by amendments hereto to the plan hereof, membership in the Association shall extend to and encompass the holders of fee simple interests in those Lots, and holders of vendee interests under recorded land installment contracts with respect to those Lots, on the same basis as set forth herein for membership. The foregoing is not intended to include Persons who hold an interest merely as security for the performance of an obligation and the giving of a security interest or mortgage shall not terminate the membership of any Owner, provided further, there shall not be a membership appurtenant to a Lot dedicated to common public use or owned by any governmental body, instrumentality or agency for so long as such body, instrumentality or agency owns that Lot and so long as it is not utilized as a residence, nor for a Lot, if any, that becomes a Common Element, for so long as it remains a Common Element. Voting and all other matters regarding the governance and operation of the Association shall be as set forth in the Governing Documents.

### **3.3. Powers; Authority; Duties.**

The Association shall have all the rights, powers, and duties established, invested, or imposed in it pursuant to the Governing Documents, and the laws of the State of Ohio applicable with respect to Ohio non-profit corporations. Among other things, the Association, through its Board, shall have the power to acquire, own and convey real estate, hold easements with respect to, and maintain the Common Elements, enforce and administer the Declaration, Rules, restrictions and covenants applicable to the Community, sue and be sued, levy and collect assessments, collect and maintain reserves for replacements or anticipated expenditures, enter into contracts, mortgage and pledge all revenue received and to be received and/or to assign and pledge all revenues received or to be received by it under any provisions of these covenants, including, but not limited to, the proceeds of the assessments payable hereunder, and take such other actions as it deems appropriate to its purposes. The Association shall not be obligated to spend in any particular time period all the sums collected or received by it in such time period or in any other time period and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply any such surpluses to the reduction of the amount of the assessment in any year, but may carry forward from year to year and time to time such surplus as the Board in its absolute discretion may determine to be desirable for the greater financial security of the Association and the effectuation of its purposes.

### **3.4. Other Agreements.**

The Association shall have the power and authority to contract with any person, corporation, firm or other entity, for the exercise of any one or more of the various powers and authority granted to and duties to be performed by the Association hereunder, and to delegate such powers and authority to any agent or employee of the Association, and the exercise of those powers and authority by such person, corporation, firm, entity, agent or employee shall be deemed the exercise of those powers and authority by the Association, except that no independent contractor shall be deemed by virtue of these provisions to be the agent of the Association. There shall be no requirement of any bond or surety for the Association, its agents, employees, or others assuring the exercise of the powers and authority granted hereunder, except as the Board shall in its sole discretion deem necessary or desirable for the safeguarding of any funds received by the Association. The Association may enter into agreements with other community, subdivision and condominium associations and/or master associations pursuant to

which the Association agrees (i) to share in the cost of maintaining, repairing and replacing landscaping, storm water retention facilities, mounding, fencing and any other improvements or services that benefit the Community or the Members; and (ii) grant reciprocal rights, licenses and/or easements to members of each such associations to use and enjoy each other's common elements, subject to such rules and regulations, restrictions and fees as the Association may determine from time to time.

### **3.5. Rules and Regulations.**

The Association may make and enforce reasonable Rules governing the use, operation and/or maintenance of the property which is a part of the Community, which shall be consistent with the other provisions of the Governing Documents. The Association shall have the power to impose sanctions on Members and Owners for any infraction of the Governing Documents, including the provisions hereof and the Rules, which such sanctions may include without limitation: (i) reasonable monetary administrative charges which shall be considered Individual Lot Assessments; (ii) suspension of the right to vote as a Member of the Association; and (iii) suspension of the right of the Owner and that Owner's Occupants, licensees, and invitees, to use the Common Elements or any part thereof. In addition, the Board shall have the power to seek relief, including injunctive relief, in any court for violations or to abate violations of the provisions of the Governing Documents. If the Board expends funds for attorneys' fees or litigation expenses in connection with the enforcement of any provision of the Governing Documents, the amount so expended shall be due and payable by the Owner of the Lot whose Owner, Occupant, licensee or invitee violated the provisions of the Governing Documents, and the same shall be an Individual Lot Assessment against such Owner's Lot.

### **3.6. Implied Rights.**

The Association may exercise any other right or privilege given to it expressly by the laws of the State of Ohio or any provision of the Governing Documents, and every other right or privilege reasonably implied from the existence of any right or privilege granted thereby, or reasonably necessary to effect any such right or privilege.

### **3.7. Managing Agent.**

The Board may retain and employ on behalf of the Association a Manager, which may be Developer, and may delegate to the Manager such duties as the Board might otherwise be authorized or obligated to perform. The compensation of the Manager shall be a Common Expense. The term of any management agreement shall not exceed one year and shall allow for termination by either party, without cause and without penalty, upon no more than ninety (90) days prior written notice.

### **3.8. Insurance.**

- (a) Fire and Extended (Special Form) Coverage. The Association shall, with respect to insurable property or interests owned by it, obtain and maintain insurance for all buildings, structures, fixtures and equipment and common personal property, now or at any time hereafter constituting a part of the Common Elements, against loss or damage

by fire, lightning, and such other perils as are ordinarily insured against by standard coverage endorsements, with such limits, deductibles, and coverage as is deemed appropriate by the Board. This insurance:

- (i) shall provide that no assessment may be made against a first mortgage lender, or its insurer or guarantor, and that any assessment under such policy made against others may not become a lien on any Lot, or other property, and its appurtenant interest, superior to the lien of a first mortgage;
  - (ii) shall be obtained from an insurance company authorized to write such insurance in the State of Ohio which has a current rating of Class A-/VIII, or better, as determined by the then latest edition of Best's Insurance Reports or its successor guide;
  - (iii) shall be written in the name of the Association;
  - (iv) shall not be cancelled upon less than thirty (30) days notice to the Association; and
  - (v) unless otherwise determined by the Board, shall contain a waiver of subrogation of rights by the carrier as to the Association, its officers and directors, and all Owners.
- (b) Liability Coverage. The Association shall obtain and maintain a Commercial General Liability policy of insurance covering all of the Common Elements and the functions of the Association insuring the Association, the directors, and its Members, with such limits as the Board may determine, but no less than the greater of (a) the amounts generally required by private institutional mortgage investors for projects similar in construction, location and use, and (b) \$1,000,000, for bodily injury, including deaths of persons, and property damage, arising out of a single occurrence. This insurance shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of any Member because of negligent acts of the Association, the Board, or other Members, and shall include, without limitation, coverage for legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of the Common Elements, and other legal liability, including liability under contractual indemnity clauses and liability arising out of lawsuits related to any employment contracts of the Association. Each such policy must provide that it may not be canceled or substantially modified by any party, without at least thirty (30) days prior written notice to the Association.
- (c) Other. The Association may, in the Board's discretion, obtain and maintain the following insurance: (a) fidelity bond coverage for all officers, directors, Board members and employees of the Association and all other persons handling or responsible for handling funds of the Association, (b) officers' and directors' liability insurance, (c) workers' compensation insurance, (d) additional insurance against such other hazards and casualties as is required by law, and (e) any other insurance the Board deems necessary.

- (d) Use of Proceeds. In the event of damage or destruction of any portion of the Common Elements, the Association shall promptly repair or replace the same, to the extent that insurance proceeds are available. Each Member hereby appoints the Association as its attorney-in-fact for such purpose. If such proceeds are insufficient to cover the cost of the repair or replacement, then the Board may levy a Special Assessment pursuant to the provisions hereof to cover the additional costs.

### **3.9. Condemnation.**

The Association shall represent the Members in any condemnation proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of the Common Elements, or any portion thereof. Each Member hereby irrevocably appoints the Association as its attorney-in-fact for such purpose. The awards or proceeds of any condemnation action shall be payable to the Association, to be held and used for the benefit of the Members, as determined by the Board.

### **3.10. Books; Records.**

Upon reasonable request of any Member, the Association shall be required to make reasonably available for inspection by any Member all books, records and financial statements of the Association, except for those items deemed privileged, protected, or confidential in accordance with applicable law, rules or regulations. The Association may charge a reasonable fee to cover the administrative costs of handling, copying, delivering, etc., the requested documents.

## **4. THE COMMON ELEMENTS.**

Developer may, from time to time, at Developer's option, convey to the Association, for the use and benefit of the Association and the Owners and Occupants, real or personal property, or any interest therein, as part of the Common Elements, provided that property is free and clear of all encumbrances except real estate taxes and assessments, if any, not presently due and payable, zoning and building laws, ordinances and regulations, legal highways and restrictions, conditions, easements of record, including, to the extent Developer so determines, those contained herein, and all other liens and encumbrances of record or otherwise affecting the property. All such Common Elements shall consist solely of property (i) benefiting two or more Lots, Owners, and/or Occupants in the Community, as the same may from time to time be constituted; or (ii) as required by zoning. In addition, the Developer may also grant such easements to the Association as the Developer, in its sole discretion, determines to be of benefit to the Community, as the Community may be constituted from time to time. The Association may also acquire, hold, manage, operate, maintain, improve, mortgage and dispose of tangible and intangible personal property and real property in addition to that property conveyed to it by Developer.

## **5. ASSESSMENTS.**

### **5.1. Types of Assessments.**

Subject to the provisions of this Article, each Lot Owner, shall be subject to the following Assessments, which by acceptance of a deed to a Lot (whether or not it shall be so expressed in such deed) covenants and agrees to pay to: (a) Operating Assessments, (b) Special Assessments, and (c) Individual Lot Assessments, all of which are to be established and collected as hereinafter provided. No Owner may gain exemption from liability for any Assessment by waiving or foregoing the use or enjoyment of any of the Common Elements or by abandoning that Owner's Lot.

### **5.2. Operating Assessments.**

For the purposes of providing funds to pay:

- the cost of the maintenance, repair, replacement, and other services to be provided by the Association;
- the costs for insurance and bond premiums to be provided and paid for by the Association;
- the cost for utility services, if any, charged to or otherwise properly payable by the Association;
- the costs for construction of new capital improvements on Common Elements not replacing capital improvements installed by Developer;
- the estimated amount required to be collected to maintain a general operating reserve to assure availability of funds for normal operations of the Association, in an amount deemed adequate by the Board;
- an amount deemed adequate by the Board to maintain a reserve for the cost of unexpected repairs and replacements of capital improvements and for the repair and replacement of major improvements for which cash reserves over a period of time in excess of one year ought to be maintained; and
- the costs for the operation, management and administration of the Association, including, but not limited to, fees for property management, landscaping, mowing, planting, lighting, pavement maintenance, snow and ice removal and mitigation, fees for legal and accounting services, costs of mailing, postage, supplies and materials for operating the Association, and the salaries, wages, payroll charges and other costs to perform these services, and any other costs of operations of the Association not otherwise specifically excluded;

the Board shall establish, levy and collect Operating Assessments against each Lot and its Owners subject to the same, an equal pro rata share of such costs, in accordance with the following:

- (a) **Initial Period.** Commencing the first day of the first full month after a Lot with a dwelling constructed thereon has been conveyed by Developer to a home purchaser, each Lot Owner shall be subject to and pay to the Association an Operating Assessment for the remainder of the calendar year, as determined by the Board, prorated in the proportion that the number of full calendar months remaining in the calendar year from the date of the closing of the conveyance of the Lot is to twelve (12). This amount may have been prepaid by the Developer and if so, a credit back to the Developer will be collected at the closing on the Lot.
- (b) **Subsequent Calendar Year.** Prior to January 1 (or a reasonable time thereafter) of each calendar year thereafter, the Board shall establish a budget for anticipated operating expenses for the next following Operating Assessment period commencing January 1 and ending the following December 31, and apportion the amount so determined in equal shares among all Lots in the Community that have had a dwelling constructed thereon and that have been conveyed to a bona fide home purchaser, and assess each such Lot and its Owner or Owners for the apportioned amount.
- (c) **Due Dates.** The Operating Assessments shall be due in monthly, quarterly, semi-annual, or annual installments, as the Board may determine. Except for the initial payment of Operating Assessments, notice of Operating Assessments, or if payable in installments, the dates those installments are due, shall be given to a Lot Owner not less than thirty (30) days prior to the date the Operating Assessment, or first installment thereof, is due.

### **5.3. Special Assessments.**

The Board may levy against all Lots subject to Operating Assessments, and their Owners, Special Assessments to pay for capital expenditures, interest expense on indebtedness incurred for the purpose of making capital expenditures and not to be paid out of reserves, unanticipated operating deficiencies or any other purpose determined appropriate by the Board in furtherance of its functions hereunder. Those Special Assessments shall be allocated among Lots on the same basis as Operating Assessments are to be allocated, and shall be due and payable on such basis and at such times as the Board directs, provided that no such Special Assessment shall be due and payable on fewer than thirty (30) days written notice.

### **5.4. Individual Lot Assessments.**

The Board may levy an Individual Lot Assessment against any Lot Owner to reimburse the Association for costs incurred on behalf of that Lot, or as a consequence of any act or omission by any Owner, Occupant, or invitee thereof, including without limitation, costs associated with making repairs that are the responsibility of the Owner; costs of additional insurance premiums specifically allocable to an Owner; costs of any utility expenses chargeable to an Owner but not separately billed by the utility company; and all other administrative and enforcement charges, including attorneys' fees, incurred by the Association reasonably

determined to be an Individual Lot Assessment by the Board. By way of illustration, and not of limitation, the Board may levy an Individual Lot Assessment in the nature of an administrative charge reasonably determined by the Board against any Lot Owner who violates any provision of the Governing Documents, or who suffers or permits the Members, guests, invitees or tenants of that Owner's Lot to violate the same or any provision of the Governing Documents, including the restrictions contained herein and in the Rules. Upon its determination to levy an Individual Lot Assessment, the Board shall give the affected Lot Owner written notice and the right to be heard by the Board or a duly appointed committee thereof in connection with such Individual Lot Assessment no fewer than ten (10) days prior to the effective date of the levy of any such Lot Assessment.

### **5.5. Remedies.**

- (a) Acceleration. If any installment of an Assessment, or portion thereof, is not paid within ten (10) days after the same has become due, the Board, at its option, without demand or notice, may call the entire balance of the Assessment due.
- (b) Late Charge. If any portion of any Assessment remains unpaid for ten (10) days after all or any part thereof shall become due and payable, the Board may charge interest on the entire unpaid balance from and after that date at the lesser of (i) the "prime rate" charged locally by a nationally recognized bank in the Columbus area plus five percent (5%) per annum or (ii) the highest rate permitted by law, together with a reasonable administrative collection charge, as established by the Board.
- (c) Liability for Unpaid Assessments. Each Assessment or installment of an Assessment, together with interest thereon and any and all costs of collection, including reasonable attorneys' fees, shall become the joint and several personal obligation of the Owners of the Lot charged the same, beginning on the date the Assessment or installment thereof becomes due and payable. The Board may authorize the Association to institute and prosecute to completion an action at law on behalf of the Association against the Owner or Owners personally obligated to pay any delinquent Assessment, and/or an action to foreclose the Association's lien or liens against a Lot or Lots for unpaid Assessments owed by that Lot and the Owner or Owners thereof. In any such action, interests and costs of such action, including reasonable attorneys' fees, shall be added to the amounts owed by the Owner or Owners and the Lot to the extent permitted by Ohio law.
- (d) Liens. All unpaid Assessments, or portions thereof, together with any interest and charges thereon or costs of collection, shall constitute a continuing charge in favor of the Association and a lien on the Lot against which the Assessment was levied. If any Assessment, or portion thereof, remains unpaid for ten (10) days after it is due, then the Board may authorize any Officer or appointed agent of the Association to file a certificate of lien for all or any part of the unpaid balance of that Assessment, together with interest and collection costs, including attorneys' fees, with the appropriate governmental office. The certificate shall contain a description of the Lot which the lien encumbers, the name of the Owner or Owners of that Lot, and the amount of the unpaid portion of the Assessment. The certificate may be signed by any Officer, authorized agent or the Manager of the Association or its authorized representative. Upon the filing of the



certificate, the subject Lot shall be encumbered by a continuing lien in favor of the Association. The Assessment lien shall remain valid for a period of five (5) years from the date such certificate is duly filed, unless the lien is released earlier or satisfied in the same manner provided by the law of the State of Ohio for the release and satisfaction of mortgages on real property, or until the lien is discharged by the final judgment or order of any court having jurisdiction.

- (e) Subordination of Lien. The lien of the Assessments provided for herein shall be subject and subordinate to the lien of any duly executed first mortgage on a Lot recorded prior to the date on which such lien of the Association is perfected by recording a certificate of lien, and any holder of such first mortgage which comes into possession of a Lot pursuant to the remedies provided in the mortgage, foreclosure of the mortgage, or deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale, shall take the property free of any claims for unpaid Assessments against the mortgaged Lot which became due and payable prior, in the case of foreclosure, to the date of the sale, and, in all other cases, to the date legal title vested in the successor Owner.
- (f) Contested Lien. Any Owner or Owners who believe that an Assessment chargeable to that Owner or Owner's Lot, and for which a certificate of lien has been filed by the Association has been improperly charged against that Lot or Unit, may bring an action in the Court of Common Pleas in the county where the Subject Property is located for the discharge of that lien and/or for a declaratory judgment that such Assessment was unlawful. The filing of such action shall not be grounds for an offset or to withhold payment. In any such action, if it is finally determined that all or a portion of the Assessment has been improperly charged to that Lot, the Court shall make such order as is just, which may provide for a discharge of record of all or a portion of that lien and a refund of an Assessment or portion thereof determined to be unlawful.
- (g) Estoppel Certificate. The Board shall, within a reasonable time following receipt of a written demand and for a reasonable charge, furnish a certificate signed by the President or other designated representative of the Association, setting forth whether the Assessments on a specified Lot have been paid. This certificate shall be conclusive evidence of payment of any Assessment therein stated to have been paid.
- (h) Suspension of Vote and Use of Common Elements. If any Assessment remains unpaid for thirty (30) days after it becomes due, then the delinquent Owner's voting rights upon Association matters and privileges to use the Common Elements, shall be suspended until such Assessment is paid. In any case, suspension of any such rights shall be subject to the right of an Owner, Occupant, or their licensees or invitees, to necessary ingress and egress to and from that Owner's Lot.

## **6. MAINTENANCE.**

### **6.1. Maintenance by Association.**

Subject only to budgetary limitations and the right of the Board to exercise reasonable business judgment, the Association shall maintain and keep the Common Elements in good,

clean, attractive, and sanitary condition, order and repair. This maintenance shall include, without limitation, maintenance, repair, and replacement of all Improvements situated upon the Common Elements, including but not limited to the Reserves, any open spaces, signage, entranceways, community border areas, the maintenance, repair and replacement of any Additional Easement Areas (except as provided for in 6.5 below), and the maintenance, repair and replacement of all personal property used in connection with the operation of the Association.

## **6.2. Maintenance by Owner.**

Each Owner or Occupant shall repair, replace, and maintain in good order and condition, at that Person's expense, all portions of Improvements on and equipment and components located upon that Owner's Lot. This maintenance responsibility includes, without limitation, promptly furnishing all necessary materials and performing or causing to be performed at that Owner's expense all maintenance, repairs and replacements of Improvements on such Lot. No Lot or other Improvement shall be permitted to become overgrown, unsightly or fall into disrepair. Each Owner shall maintain that Owner's Lot in accordance with the Rules and the requirements set forth by the Association as provided for herein.

## **6.3. Right of Association to Repair Lot.**

In the event any Owner fails to maintain that Owner's Lot in the manner required herein, and that Lot remains in disrepair for a period of thirty (30) days after notification by Developer or the Association to said Owner, and if the Board or Developer determines that any maintenance of that Lot or Improvements thereon is necessary to ensure public safety, to permit reasonable use or enjoyment of the Common Elements by Owners, to prevent damage to or destruction of any other part of the Common Elements, to preserve the value of the Community, or to comply with the Rules or the terms of this Declaration, then the Board or Developer may authorize its employees or agents to enter the Lot at any reasonable time to complete the necessary maintenance, and the Board may levy an Individual Lot Assessment for all reasonable expenses incurred or, if performed by Developer, those expenses shall be reimbursed by the Owner to Developer.

## **6.4. Damage to Common Elements By Owner or Occupant.**

In the event the need for maintenance or repair of any part of any Common Element is caused by the negligent or intentional act of any Lot Owner or Occupant, or that Person's licensees or invitees, or in the event any Common Element is damaged by any Owner or Occupant, or that Person's licensees, or invitees, then the Board may maintain, repair, and/or replace the same and the cost thereof shall constitute an Individual Lot Assessment against such Lot and its Owner. The determination that such maintenance, repair or replacement is necessary and/or has been caused so caused, shall be made by the Board in its sole discretion. The Association shall be entitled to enter a Lot to repair or maintain any Common Elements adjacent to such Lot.

#### **6.5. Additional Easement Areas.**

The Additional Easement Areas shown on Exhibit B attached hereto shall be maintained as follows: [*to be determined as necessary*].

### **7. ARCHITECTURAL STANDARDS.**

All property at any time subject to the provisions hereof shall be governed and controlled by the following:

#### **7.1. Architectural Review Committee.**

The Architectural Review Committee shall be a committee consisting of three (3) persons. Until the Turnover Date, Developer shall have the sole and exclusive right to appoint and remove all three (3) members of the Architectural Review Committee, at will. After that date, the Board shall have the right to appoint all three (3) members to the Architectural Review Committee. The Architectural Review Committee shall have the exclusive authority, by action of two (2) or more of the members thereof, at a private or public meeting, to determine the architectural standards which shall govern the construction of Improvements on a Lot. Each Owner covenants and agrees by acceptance of a deed to a Lot, to comply with, and to cause that Owner's Lot and any Occupant thereof to comply with the standards adopted by the Architectural Review Committee. No Improvement shall be placed, erected or installed on a Lot, and no construction (which term shall include in its definition staking, clearing, excavation, grading and other site work) shall be commenced or continued until and unless the Owner first obtains the written approval thereof by the Architectural Review Committee and otherwise complies with any zoning and building regulations and all provisions hereof.

#### **7.2. Modifications.**

Except as otherwise provided herein, the Architectural Review Committee shall have jurisdiction over all construction, modifications, additions or alterations of Improvements on or to a Lot. No person shall construct any Improvement on any Lot, including without limitation, alter surfaces of existing Improvements, change paint colors or roofing materials, construct or modify fencing, install any permanent recreational device, swing-set, playground, basketball hoop, or other similar Improvement, change the grade or contour of any Lot, change the material of any driveway, modify the exterior lighting, change the mailbox or address marker, construct any porch, deck, patio, gazebo, or pool, modify any landscaping, install any signs or satellite dishes not otherwise permitted herein or by federal law, without the prior written consent of the Architectural Review Committee. Owners shall submit plans and specifications showing the nature, kind, shape, color, size, materials and location of Improvements and alterations to the Architectural Review Committee for its approval. Nothing contained herein shall be construed to limit the right of an Owner to remodel or decorate interior Improvements without such approval.

### **7.3. Variances.**

To avoid unnecessary hardship and/or to overcome practical difficulties in the application of the provisions of these provisions, the Architectural Review Committee shall have the authority to grant reasonable variances from the provisions hereof, provided that the activity or condition is not prohibited by applicable law, including but not limited to city zoning or county building regulations; and provided further that, in the judgment of the Architectural Review Committee, the variance is in the best interests of the community and is within the spirit of the standards of the Architectural Review Committee. No variance granted pursuant hereto shall constitute a waiver of any provision hereof as applied to any other person or any other part of the Community.

### **7.4. Improvements by Developer.**

Notwithstanding the foregoing to the contrary, all Improvements and landscaping constructed by the Developer, its agents, or its successors and/or assigns shall be deemed to comply in all respects with this Declaration and the requirements of the Architectural Review Committee, and the Developer, its successors and assigns, shall have the exclusive right to approve the initial construction of a residence upon any Lot even following the Turnover Date.

### **7.5. Liability Relating to Approvals.**

Neither Developer, the Association, the Board, the Architectural Review Committee, nor any member thereof, nor any of their respective heirs, personal representatives, successors and assigns, shall be liable to anyone submitting plans and specifications for approval by reason of mistakes of judgment, negligence, or nonfeasance arising out of, or in connection with the approval or disapproval or failure to approve the same. Every Person and Lot Owner who submits plans and/or specifications or otherwise requests approval from the Architectural Review Committee agrees, by submission thereof, that they will not bring any action or suit, seek damages, or otherwise attempt to compel the approval of the same. Each Lot Owner shall be responsible for ensuring that any Improvements constructed on their Lot comply with any zoning ordinances and any easements, covenants and conditions of record.

## **8. USE RESTRICTIONS.**

The following restrictions and covenants concerning the use of each Lot and occupancy of Improvements thereon shall run with the land and be binding upon the Developer and every Owner or Occupant, their respective heirs, successors and assigns, as well as their family members, guests, licensees and invitees:

### **8.1. Use of Lots.**

Except as otherwise specifically provided in this Declaration, no dwelling on a Lot, nor any portion of any Lot, shall be used for any purpose other than that of a residence for individuals living together as a single housekeeping unit, and uses customarily incidental thereto, Specifically, no dwelling may be used as a rooming house, group home, commercial foster home, fraternity or sorority house, or any similar type of lodging, care or treatment facility. In

addition, no building shall be erected, altered, placed, or permitted to remain on any Lot other than one single-family dwelling not to exceed two and one-half stories in height, and each such dwelling shall have an attached two car garage. No bi-level homes shall be permitted. As used herein, "bi-level home" shall mean a home having two levels with an integral garage on the lower level. No home shall be constructed on any Lot having a garage with a lower elevation than the street elevation such that the garage and/or driveway are depressed below the finished grade of the Lot. No structure of a temporary character, such as a trailer, tent, shack, vehicle port, barn, pet dwelling including pet fenced in pet areas behind houses, or other outbuilding shall be used on any Lot at any time as a residence either temporarily or permanently; provided, however, that nothing herein shall prevent the use of trailers or temporary buildings by Developer or builders approved by Developer, for sales and construction management and related uses during the construction and sale of homes in the Community or home remodeling after initial construction. All homes shall comply with material standards as approved under the applicable zoning text and/or by the City for this Community and by the Architectural Review Committee.

### **8.2. Minimum Square Footages.**

No dwelling shall be permitted on any Lot on which the floor area of the main structure is less than what is required by the applicable zoning and subdivision control requirements governing Lots located in the Community.

### **8.3. Use of Common Elements.**

The Common Elements may be used only in accordance with the purposes for which intended and for any reasonable purposes incidental to the residential use of Lots. All uses of the Common Elements shall benefit or promote the health, safety, welfare, convenience, comfort, recreation, and/or enjoyment of the Owners and/or Occupants, and shall comply with the provisions of this Declaration and all other Governing Documents, and the laws of the State.

### **8.4. Hazardous Actions or Materials.**

Nothing shall be done or kept in or on any Lot or in or on any portion of the Common Elements that is unlawful or hazardous, that might reasonably be expected to increase the cost of casualty or public liability insurance covering the Common Elements, or that might or that does unreasonably disturb the quiet occupancy of any Person residing on any other Lot. These provisions shall not be construed so as to prohibit Developer or any other builder in the Community from construction activities consistent with reasonable or customary residential construction practices.

### **8.5. Signs.**

No signs of any character shall be erected, posted or displayed upon property in the Community, except: (i) marketing signs installed by Developer while marketing Lots and residences for sale; (ii) street and identification signs installed by the Association, Developer, or any governmental agency; (iii) on the Common Elements, signs regarding and regulating the use of the Common Elements, provided they are approved by the Board; (iv) on any Lot, one

temporary real estate sign not to exceed six (6) square feet in area advertising that such Lot is for sale; and (v) except to the extent preempted by federal law, up to three (3) temporary political signs of not more than six (6) square feet each, expressing support for or opposition to an individual candidate or issue which is the subject of a current election, provided the same comply with any local ordinances and any Rules established by the Board. No signs shall be placed in the Common Elements.

#### **8.6. Animals.**

Except as hereinafter provided, no animals, reptiles, livestock or poultry of any kind shall be raised, bred or kept on any Lot, or in or upon any part of the Common Elements. Notwithstanding the foregoing, household domestic pets, not bred or maintained for commercial purposes, may be maintained in a dwelling on a Lot, provided that: (i) the maintaining of animals shall be subject to such rules and regulations as the Board may from time to time promulgate, including, without limitation, the right to place limitations on the size, number and type of such pets, and the right to levy administrative and enforcement charges against persons who do not clean up after their pets; and (ii) the right of an Owner or Occupant to maintain an animal in a dwelling on a Lot shall be subject to termination if the Board, in its full and complete discretion, determines that maintenance of the animal constitutes a nuisance, creates a detrimental effect on the Community or other Lots or Occupants, or possession of which violates any law, rule or ordinance promulgated by a governmental or quasi-governmental entity. Any animal defined as “vicious” or “dangerous” pursuant to the provisions of Ohio Revised Code Chapter 955, as the same may be amended from time to time, is specifically prohibited. Outdoor doghouses, animal cages or runs are prohibited without the express prior approval of the Architectural Review Committee.

#### **8.7. Nuisances.**

No noxious or offensive trade or activity shall be permitted on any property in the Community or within any dwelling located on any Lot. No soil shall be removed for any commercial purpose.

#### **8.8. Business.**

No industry, business, trade, occupation or profession of any kind may be conducted, operated or established on any Lot, without the prior written approval of the Board. Notwithstanding the foregoing, (i) a “home office” use is permitted, provided such use does not entail any non-resident employees, generate any traffic or additional parking, require any signage, and is operated in compliance with all laws including any Rules established by the Board and applicable City regulations; (ii) an Owner or Occupant may maintain a personal or professional library, keep personal business or professional records or accounts, conduct personal business, make professional telephone calls or correspond in or from a residence; and (iii) during the construction and initial sales period, Lots, including dwellings and Improvements constructed thereon, and Common Elements may be used for construction and sales purposes, including the construction and operation of sales models and/or trailers by Developer and by builders and developers as approved by Developer, in its sole discretion, until dwellings have

been constructed on all Lots and all Lots with dwellings on them have been conveyed to bona fide residential home purchasers.

### **8.9. Storage.**

No storage buildings, barns or sheds of any kind are permitted on any Lot. This section shall not apply to any storage as may be necessary during the construction or remodeling of homes on the Lots.

### **8.10. Hotel/Transient Uses.**

No Lot or Improvement thereon may be used for hotel or transient uses, including without limitation, uses in which an Occupant is provided customary hotel services such as room service for food and beverage, maid service, furnishing laundry and linen, or similar services, or leases to roomers or boarders.

### **8.11. Vehicles.**

The Board is granted the power and the authority to create and enforce reasonable Rules concerning placement and the parking of any vehicle permitted on or in the Community. In addition to its authority to levy Individual Lot Assessments as administrative charges for the violation of the Rules, the Board shall be authorized to cause the removal of any vehicle violating this Declaration or such Rules.

Except as specified below, no trucks, no prohibited commercial vehicles, no boats, no trailers, no campers and no mobile homes shall be parked or stored on any street or on any Lot in the Community (except in the attached garage) for any time period longer than forty-eight (48) hours in any thirty (30) day period, provided, however, that nothing contained herein shall prohibit the reasonable use of such vehicles as may be necessary during construction of residences on the Lots.

For the purpose of this section, the terms “truck” and “prohibited commercial vehicle” shall include all vehicles that have a length of more than 21 feet and all vehicles that include any visible exterior storage of tools or materials; provided, however, that up to two (2) ladders may be visible. Dump trucks, tow trucks, flat bed car hauling trucks, panel trucks and vans larger than one-ton capacity, pickup trucks larger than one ton capacity, and semi type tractors and trailers, shall in every instance be considered to be to be a prohibited truck and/or a prohibited commercial vehicle. For the purpose of this section, the word “trailer” shall include landscaping trailer, open bed trailer, trailer coach, house trailer, mobile home, automobile trailer, camp car, camper or any other vehicle, whether or not self-propelled, constructed or existing in such a manner as would permit use and occupancy thereof, or for storage or the conveyance of personal property, whether resting on wheels, jacks, tires or other foundation.

Furthermore, no automobile, truck, or other motor-driven vehicle, or trailer, in a condition where it is unlicensed, unregistered, apparently inoperable, extensively damaged, disabled, dismantled, or otherwise not in a condition to be lawfully operated upon the public highway, or any vehicle component or part, shall be placed, parked or stored in any visible

location on or in front of a Lot or residence for a period of time longer than thirty (30) days. After this time the vehicle, trailer or part shall be deemed to be a nuisance, and shall be removed.

#### **8.12. Trash.**

Except for the reasonably necessary activities of Developer during the original development of the Community, no burning or storage of trash of any kind shall be permitted in the Community. All trash shall be deposited in covered, sanitary containers, and these containers shall at all times be screened from view from any other Lot or street, except when temporarily placed outside for trash collection. No emptied trash containers shall be allowed to remain visible for more than eight hours following the trash pick-up.

#### **8.13. Antennae.**

No outside television or radio aerial or antenna, or other aerial or antenna, including satellite receiving dishes, for reception or transmission, shall be maintained on a Lot, to the extent permissible under applicable statutes and regulations, including those administered by the Federal Communications Commission, except that this restriction shall not apply to satellite dishes with a diameter less than one (1) meter, erected or installed to minimize visibility from the street which the dwelling fronts. Notwithstanding the foregoing, roof-mounted satellite dishes are to be limited to the maximum extent possible by law.

#### **8.14. Utility Lines.**

All new utility lines in the Community shall be underground, subject only to the exceptions required by governmental authorities having jurisdiction, utility companies, Developer, and the Board.

#### **8.15. Tanks.**

No tanks for the storage of propane gas, fuel oil or any other combustible substance shall be permitted to be located above or beneath the ground of any Lot except that propane gas grills are permitted. This section shall not apply during the construction of any homes on the Lots or to any Lot containing Developer's sales trailer.

#### **8.16. Street Tree.**

Developer may designate one or more trees as deemed necessary by Developer along the street in front of each Lot at a ratio of 1 tree per 50' on center as a "street tree". If Developer determines to designate street tree(s) then each Lot Owner agrees to care for, and, if necessary, replace such tree or trees at the Owner's expense with a like type of tree having a caliper greater than or equal to 2".

#### **8.17. Central Mailbox Units.**

The USPS has required Central Mailbox Units (CBUs) be used for postal delivery to the homes in the Community. The Developer, with approval from the USPS and the City, will



designate locations for the installation of such CBUs. Such CBUs, and any appurtenant facilities, including but not limited to concrete pads, lighting facilities, covered shelters or other related items shall be Common Elements which are maintained by the Association.

#### **8.18. Yard Lights and Lamp Posts.**

All yard lights and lamp posts, if any, shall conform to the standards set forth by the approved Regulation Text in Zoning Plan. If a yard light or lamp post is damaged, destroyed or deteriorates, then each Owner, at such Owner's expense, shall repair or replace such yard light and/or lamp post with an identical yard light or lamppost, or if unavailable, with another of a like kind, design, pattern and color as the initial yard light and/or initial lamp post.

#### **8.19. Fencing.**

No perimeter fencing shall be allowed on any Lot. Fencing may be permitted for privacy around decks, patios, hot tubs, etc., and shall not exceed 42 inches in height, but may be required to include landscaping screening where utilized by the Architectural Review Committee. No chain link and no wire fencing shall be permitted. Fence posts may be no higher than 6 inches above the top rail, with the exception of fencing around swimming pool which shall be a minimum of 54 inches in height. Fences shall be at least 50% open. Pool fencing may be aluminum or wrought iron and must comply with applicable City and County Codes. The Developer may install fencing as part of entry feature improvements and landscape buffering and/or screening along adjacent properties, which shall be maintained by the Association.

#### **8.20. Swimming Pools/Hot Tubs.**

No above-ground swimming pool extending twelve (12) inches or more above the finished grade of the Lot shall be permitted upon any Lot except that this restriction shall not prohibit the installation of a hot tub that is properly screened. In the event that an in-ground swimming pool is permitted to be installed on a Lot and applicable governmental safety regulations require a fence, then such fence shall be permitted notwithstanding any provision of Section 8.19 to the contrary, provided such fence shall be subject to prior written approval of the Architectural Review Committee as to design and location on the Lot.

#### **8.21. Compliance with Zoning.**

Certain provisions of this Declaration may have been included herein as a result of governmental requirements established through the zoning and development plan approval processes in the State, County, and/or City in which the Subject Property is located. Compliance with all such governmental requirements, for so long as such requirements are effective and binding, and as such requirements may be amended or modified, is required by this Declaration.

#### **8.22. Miscellaneous.**

The following Improvements shall not be permitted on any Lot in the Community:

- (a) outdoor clothes lines;

- (b) window air conditioning units on any window facing a street;
- (c) wind turbines or similar wind-powered energy generating equipment;
- (d) solar panels

**9. EASEMENTS AND LICENSES.**

**9.1. Easement of Access and Enjoyment Over Common Elements.**

Every Owner shall have a right and easement (in common with all other Owners) of enjoyment in, over, and upon the Common Elements, which rights shall be appurtenant to, and shall pass with the title to, that Person's Lot, subject to the terms and limitations set forth herein, and subject to the Rules. An Owner may delegate that Person's rights of access and enjoyment to Occupants, licensees and invitees.

**9.2. Right of Entry for Repair.**

The duly authorized agents, officers, contractors, and employees of the Association shall have a right of entry and access to the property subject hereto, including without limitation the Lots, for the purpose of exercising the Association's rights, or performing the Association's obligations as set forth herein. The Association may enter any Lot to remove or correct any violation of any provision hereof, or any Rule, or to maintain, repair, and replace the Common Elements and/or Additional Easement Areas, but only during reasonable hours and after providing reasonable advance notice to the Owner, except in cases of an emergency.

**9.3. Easement for Utilities and Other Purposes.**

The Board or Developer may convey easements over the Common Elements to any entity for the purpose of constructing, installing, maintaining, and operating poles, pipes, conduit, wires, ducts, cables, and other equipment necessary to furnish electrical, gas, sewer, water, telephone, cable television, and other similar utility or security services, whether of public or private nature, to the Community and to any entity for such other purposes as the Board or Developer deems appropriate; provided that such equipment or the exercise of such easement rights shall not unreasonably interfere with any Owners' use and enjoyment of that Owner's Lot. The Board or Developer may grant such easements over all portions of the Community for the benefit of adjacent properties as the Board or Developer deems appropriate; provided that the grant of such easements imposes no undue, unreasonable, or material burden or cost upon any property in the Community, and further provided that the Board or Developer may not convey any easement over a Lot without the prior written consent of the Owner of such Lot (which consent shall not be unreasonably withheld, delayed or conditioned).

**9.4. Easement for Services.**

A non-exclusive easement is hereby granted to all police, firemen, ambulance operators, mail carriers, delivery persons, cable and television repair personnel, garbage removal personnel,

and all similar persons, and to the local governmental authorities and the Association (but not to the public in general) to enter upon the Common Elements and the Lots to perform their duties.

#### **9.5. General.**

Unless specifically limited herein otherwise, the easements described herein shall run with the land and pass with the title to the benefited and burdened properties, shall be appurtenant to the properties benefited and burdened thereby, shall be enforceable by the owners of the properties benefited thereby, and shall be perpetual. The easements and grants provided herein shall in no way affect any other recorded grant or easement. Failure to refer specifically to any or all of the easements and/or rights described in this Declaration in any deed of conveyance or in any mortgage or other evidence of obligation shall not defeat or fail to reserve said rights or easements but the same shall be deemed conveyed or encumbered, as the case may be, along with the Lot.

#### **10. UTILITY SERVICES.**

Each Lot Owner by acceptance of a deed to a Lot agrees to pay for utility services separately metered or separately charged by the utility company to that Lot, and to reimburse the Association for that Owner's Lot's share of any utility cost that the Board, or its designee, reasonably determines is attributable to use by the occupants of that Owner's Lot. The Association shall arrange for the provision of utility services, if any, to the Common Elements and shall pay the costs of such services separately metered to the Association.

#### **11. MISCELLANEOUS.**

##### **11.1. Term.**

The provisions hereof shall bind and run with the land for a term of thirty (30) years from and after the date that this Declaration is filed for recording with the Recorder of Union County, Ohio and thereafter shall automatically renew forever for successive periods of ten (10) years each, unless earlier terminated with the consent of Members exercising not less than seventy-five percent (75%) of the voting power of all Members.

##### **11.2. Enforcement.**

The provisions hereof may be enforced by any proceeding at law or in equity by Developer, any Owner, the Association, the Architectural Review Committee, and each of their respective heirs, successors and assigns, against any Person(s) violating, or attempting to violate, any covenant, restriction, or Rule to restrain and/or to enjoin any violation, to obtain a decree for specific performance as to removal of any nonconforming Improvement, and to recover all damages, costs of enforcement and any other costs incurred (including without limitation reasonable attorneys' fees) in connection with any violation. The failure or forbearance to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of these rights.

### **11.3. Amendments.**

Until the Turnover Date, Developer may, in its sole and absolute discretion, unilaterally amend the provisions hereof at any time and from time to time, without the consent of any other Owners. Any such amendment may impose covenants, conditions, restrictions and easements in addition to those set forth herein including, without limitation, restrictions on use and covenants to pay additional charges with respect to the maintenance and improvement of any property in the Community. After the Turnover Date, Developer may unilaterally amend the provisions hereof, without the consent of any other Owners, if such amendment is: (a) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation or judicial order; (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots; (c) necessary to conform to the requirements of the United States Federal Housing Administration or the Veterans Administration, or (d) necessary to correct errors; provided, however, any such amendment shall not materially adversely affect the title to any Lot unless the Owner or Owners have thereof consented to such amendment in writing. No amendment may remove, revoke, or modify any right or privilege of Developer without the written consent of Developer or the assignee of such right or privilege. Developer shall have the right and power, but neither the duty nor the obligation, in its sole and absolute discretion and by its sole act, to subject all or any part of the Additional Property to the provisions hereof at any time and from time to time by executing and recording in the appropriate governmental office an amendment to this Declaration specifying that such Additional Property is part of the Community. An amendment hereby made by Developer shall not require the joinder or signature of the Association, other Owners, mortgagees, or any other person. In addition, such amendments to this Declaration may contain such supplementary, additional, different, new, varied, revised or amended provisions and memberships as may be necessary or appropriate, as determined by Developer, to reflect and address the different character or intended development of any such Additional Property.

In addition, this Declaration may be amended or modified after the Turnover Date with the approval of Owners holding not less than seventy-five percent (75%) of the voting power of all Owners in the Association; provided, however, that the consent of Developer shall be required for any amendment or modification which affects Developer's rights hereunder, and further provided that the consent of all Owners shall be required for any amendment which effects a change in the voting power of any Owner, the method of allocating Common Expenses among Owners, or the fundamental purpose for which the Association is organized. Any amendment to this Declaration adopted with the aforesaid consent shall be executed with the same formalities as to execution as observed in this Declaration by the president and the secretary of the Association, and shall contain their certifications that the amendment was duly adopted in accordance with the requirements of this paragraph. Any amendment so adopted and executed shall be effective upon the filing of the same with the County Recorder of the County in which the Community is located.

### **11.4. Developer's Rights to Complete Development.**

Developer shall have the unrestricted right to: (a) complete the development, construction, promotion, marketing, sale, resale and leasing of properties; (b) construct or alter Improvements on any property owned by Developer; (c) construct, maintain and operate model

homes, offices for construction, sales or leasing purposes, storage areas, construction yards or similar facilities on any property owned by Developer or the Association; or (d) post signs incidental to the development, construction, promotion, marketing, sale and leasing of property within the Community, in compliance with City regulations. Further, Developer shall have the right of ingress and egress through the streets, paths and walkways located in the Community for any purpose whatsoever, including, but not limited to, purposes related to the construction, maintenance and operation of Improvements. Nothing contained herein shall limit the rights of Developer or require Developer to obtain approval to: (i) excavate, cut, fill or grade any property owned by Developer; (ii) construct, alter, remodel, demolish, replace, or use any Improvements on any Common Elements or any property owned by Developer as a construction office, model home or real estate sales or leasing office in connection with the sale of any property or Lot; or (iii) require Developer to seek or obtain the approval of the Association or the Architectural Review Committee for any activity or Improvement on any Common Elements or any property owned by Developer. Nothing in this Section shall limit or impair the reserved rights of Developer as elsewhere provided in this Declaration.

#### **11.5. Mortgagee Rights.**

A holder or insurer of a first mortgage upon any Lot, upon written request to the Association (which request shall state the name and address of such holder or insurer and a description of the Lot) shall be entitled to timely written notice of:

- (a) Any proposed amendment of this Declaration;
- (b) Any proposed termination of the Association; and
- (c) Any default under the provisions hereof which gives rise to a cause of action by the Association against the Owner of the Lot subject to the mortgage of such holder or insurer, where the default has not been cured in sixty (60) days following the date a notice describing a default is sent to an Owner.

Each holder and insurer of a first mortgage on any Lot shall be entitled, upon written request and at such mortgagee's expense, to inspect the books and records of the Association during normal business hours.

#### **11.6. Indemnification.**

The Association shall indemnify, defend and hold every Officer, Director, and agent of the Association harmless against any and all claims, liabilities, and expenses, including attorneys' fees, reasonably incurred by or imposed upon any Officer, Director, or agent in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the Board) to which he/she may be a party by reason of being or having been an Officer, Director, or agent. The Officers, Directors, and agents of the Association shall not be liable for any mistake of judgment, negligent or otherwise, except for their own individual willful misconduct, bad faith or gross negligence. The Officers, Directors, and agents of the Association shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and the Association shall

indemnify and forever hold each such Officer, Director, and agent free from and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided herein shall not be exclusive of any other rights to which any Officer, Director, or agent, or former Officer, Director, or agent may be entitled by law or the provisions of any other Governing Document.

#### **11.7. Mutuality.**

All restrictions, conditions and covenants contained herein are made for the direct, mutual, and reciprocal benefit of Developer, the Association, and the present and future Owners of Lots in the Community, and each part thereof, and their respective personal representatives, heirs, successors, and assigns; the provisions hereof shall create mutual equitable servitudes upon the property submitted to these restrictions and each part thereof in favor of each other part thereof; and any property referred to herein as benefited hereby; the provisions hereof shall create reciprocal rights and obligations between the respective Owners of all such property and privity of contract and estate between all Owners thereof; and the provisions hereof shall, as to the Owner of any such property and those Owners respective heirs, personal representatives, successors and assigns, operate as covenants running with the land for the benefit of all such property and the Owners thereof.

#### **11.8. Severability.**

If any article, section, paragraph, sentence, clause or word herein is held by a court of competent jurisdiction to be in conflict with any law, or unenforceable, then the requirements of such law shall prevail and the conflicting provision or language shall be deemed void in such circumstance; provided that the remaining provisions or language of this Declaration shall continue in full force and effect.

#### **11.9. Enforcement; Waiver.**

Failure of Developer, the Association or any Owner to enforce any provision of this Declaration or the Rules in any manner shall not constitute a waiver of any right to enforce any violation of such provision. By accepting a deed to a Lot, each Owner is deemed to waive the defenses of laches and statute of limitations in connection with the enforcement by the Association of the provisions hereof or the Rules.

#### **11.10. Notices.**

Notices, demands or other communications to an Owner shall be given in writing by personal delivery, or posting at the Lot if a residence has been constructed on such Lot, or by depositing such notice in the United States Mail, first class, postage prepaid, to the address of the Owner of the Lot as shown by the records of the Association, or as otherwise designated in writing by the Owner. Any demand, notice or other communication or action given or taken hereunder or by one of the joint Owners of a Lot shall be deemed to be given, taken, or received by all such joint Owners.

**11.11. Exhibits.**

The Exhibits hereto are a part of this Declaration as if set forth in full herein.

**11.12. Construction.**

In interpreting words and phrases herein, unless the context shall otherwise provide or require, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders. Any rule of construction to the effect that any ambiguities are to be resolved against the party who drafted the document shall not be utilized in interpreting this Declaration and the Exhibits hereto.

**11.13. Captions.**

The caption of each article, section and paragraph of this Declaration is inserted only for convenience and does not define, limit or describe the scope or intent of its provisions.

**11.14. Additional Disclosures.**

*[to be determined as necessary]*

**12. AGE RESTRICTION.**

**12.1 Age Restriction.**

(a) The Community is intended to provide housing primarily for persons 55 years of age or older, subject to the rights reserved to Declarant in Section 12.2. The Community shall be developed by Declarant as an age-restricted, single-family home community in accordance with the Fair Housing Amendments Act of 1988, as amended from time-to-time (“**FHAA**”), including but not limited to the provisions of the “Housing for Older Persons Act of 1995”, and all other applicable state and federal laws. Subject to Section 12.2, and except as otherwise required by law, each Dwelling Unit, if occupied, shall be occupied by at least one (1) individual 55 years of age or older; provided, however, that once a Dwelling Unit is occupied by an Age-Qualified Occupant, other Qualified Residents of that Dwelling Unit may continue to occupy the Dwelling Unit, regardless of the termination of the Age-Qualified Occupant’s occupancy. Notwithstanding the above, at all times, at least eighty percent (80%) of the Dwelling Units within the Property shall be occupied by at least one (1) individual 55 years of age or older.

(b) The age restriction hereby imposed upon the Community shall apply equally to homeowners, lessees, tenants, and occupants of any kind of any Dwelling Unit. The Owner of a Dwelling Unit shall include notice of the age restriction in any lease for the Dwelling Unit. All Owners shall be jointly and severally liable for fines, fees and costs under this Section 12.1 for any violation thereof by any lessee, tenant, or other occupant of the Owner’s Dwelling Unit.

## **12.2 SALES BY DECLARANT.**

Notwithstanding the restriction set forth in Section 12.1, Declarant reserves the right to sell Dwelling Units to Persons under the age of 55, provided such sales shall not affect the Community's compliance with all applicable state and federal laws under which the Property may be developed and operated as an age-restricted community.

*{Signatures on the following page}*



IN TESTIMONY WHEREOF, Developer has caused the execution of this Declaration on the date first set forth above.

DEVELOPER, INC.,  
an Ohio corporation

By: \_\_\_\_\_/DRAFT/\_\_\_\_\_

STATE OF OHIO           :  
                                  :  
COUNTY OF UNION     :

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 202\_\_, by

\_\_\_\_\_, \_\_\_\_\_ of DEVELOPER, Inc., an Ohio corporation, on behalf of that corporation.

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

**EXHIBIT A**  
**SUBJECT PROPERTY**

**EXHIBIT B**

**ADDITIONAL EASEMENT AREAS**