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

OF

**FULTON LANDINGS,
A Planned Unit Development**

CANAL FULTON, STARK COUNTY, OHIO

Being Developed By:

**FULTON LANDINGS DEVELOPMENT LLC,
an Ohio limited liability company**

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DECLARATION

Submitting the property known as Fulton Landings, with open spaces and other common areas, being located in the City of Canal Fulton, Stark County, Ohio.

(This will certify that copies of this Declaration, together with Exhibits thereto, have been filed in the Office of the County Recorder, Stark County, Ohio).

Date: May __, 2008.

Stark County Recorder

By: _____



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

OF

**FULTON LANDINGS
A Planned Unit Development**

CITY OF CANAL FULTON, OHIO

("Declaration")

THIS DECLARATION is made as of the 3 day of JUNE, 2008 by FULTON LANDINGS DEVELOPMENT LLC, an Ohio limited liability company (referred to herein as the "**Developer**").

PREAMBLE

A. The Developer is the owner of real property consisting of approximately 15.21 acres situated off of High Street (formerly Erie Avenue), a public right-of-way, in the City of Canal Fulton, Stark County, Ohio, as described in the legal description attached hereto and incorporated herein as **Exhibit "A"** (the "**Property**").

B. The Developer desires to create on the Property a planned residential community consisting of forty-eight sublots ("**Sublots**") to be created within the Property pursuant to a Subdivision Plat recorded in the Stark County Map Records. The remainder of the Property not divided into Sublots will be common area (the "**Common Area**"), which Common Area will contain open space, private vehicular roadways and storm water management areas and/or storm water retention or detention ponds and/or storm water quality control ponds and may, at Developer's sole election, contain a recreation area.

C. The Developer desires to provide for: (a) the orderly development of the Property; (b) the establishment and maintenance of architectural and design controls and standards; (c) the use and maintenance of the Areas of Common Responsibility (hereinafter defined); (d) the compliance with the Planning and Zoning Code and all other applicable rules and regulations of the City of Canal Fulton and other governmental authorities having jurisdiction over the Property; and (e) the protection of values within the Property. The foregoing is being provided so that the residents of the Property may enjoy a quality environment for themselves and their families. For such purpose, the Developer has prepared this Declaration to define the manner in which the Property shall be governed and administered.

D. A central association will be required to regulate, administer and govern the Property for the fulfillment of the foregoing purposes with the power to levy and collect assessments from Owners (hereinafter defined) within the Property and to pay the cost and expense of operating, maintaining, repairing and replacing the Areas of Common Responsibility. The Developer will assign such functions to Fulton Landings Homeowners' Association, Inc., a

corporation not-for-profit, that Developer shall cause to be created under the laws of the State of Ohio (the "Association").

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

ARTICLE I
PREAMBLE; PROPERTY SUBJECT TO THIS DECLARATION; DEVELOPER'S
RIGHT TO ADD LAND

Section 1.1 - Preamble

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

Section 1.2 - Property

The Property which is and shall be owned, held, transferred, sold, used and occupied subject to this Declaration is the real property described in **Exhibit "A"**.

Section 1.3 - Expansion and Contraction of the Property

(a) The Developer reserves the right from time to time to add additional property to the Property and to subject the same to the provisions of this Declaration. To add additional property, the Developer shall execute and record a Subsequent Amendment to this Declaration which expressly provides that the land described therein shall become a part of the Property and shall be subject to the Covenants and Restrictions set forth in this Declaration, except as the same may be modified by the Subsequent Amendment.

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

ARTICLE II
EXHIBITS AND DEFINITIONS

Section 2.1 - Exhibits

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

EXHIBIT "A": A legal description of the Property.

EXHIBIT "B": A Preliminary Plat of the Property.

EXHIBIT "C": Form Certificate of Compliance (See 7.26 of this Declaration).

EXHIBIT "D": Form of Code of Regulations for Association.

EXHIBIT "E": Chart of Maintenance Responsibilities.

Section 2.2 - Definitions

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

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

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

(1) the Common Areas and all facilities and improvements constructed thereon, including maintenance, repair and replacement of, and snow removal from the Association Roads (as hereinafter defined), and including all street signage and street lights therein;

- (2) the entrance to the Property situated off of High Street (the “**Entrance**”) and all associated landscaping, lighting, entrance signs, and other improvements at the Entrance;
- (3) any walls and fences and related improvements within the Common Areas;
- (4) maintenance, repair and replacement of all storm water management areas and storm drainage facilities that generally serve the Property, including but not limited to the storm water management areas and/or stormwater retention or detention basins and or storm water quality control ponds shown on the Plat (hereinafter defined) (the “**Retention Basins**”);
- (5) off-street guest parking spaces along the Association Roads;
- (6) sidewalks/walkways within Common Areas, but only if sidewalks/walkways are required by the City;
- (7) maintenance of other improvements within the Common Areas, including the recreation area (if one is created by Developer) and irrigation systems, if any, with the Common Areas;
- (8) sanitary sewer facilities within the Property, the maintenance of which are not the responsibility of the City, any other governmental or private body having jurisdiction or Owners of Living Units and water system facilities within the Property, the maintenance of which are not the responsibility of the City, any other governmental or private body having jurisdiction or Owners of Living Units;
- (9) maintenance, repair and replacement of all domestic water lines, electric lines, gas lines, and other utility lines from the point they begin to serve a Living Unit to the point they become the responsibility of the providing utility company, the City, or other governmental or private body having jurisdiction;
- (10) snow removal from the Association Roads and the driveways running off the Association Roads to Living Units;
- (11) maintenance of landscaping in accordance with Section 6.4 hereof (See 2.2);
- (12) maintenance, repair and replacement of any sprinkler system serving the Common Areas;
- (13) real and personal property owned by the Association;
- (14) real and personal property not owned by the Association but determined by the Board to be the responsibility of the Association;
- (15) together with those areas, if any, which by contract with any commercial establishment or association, or with any local governmental authority become the

responsibility of the Association. Any public rights-of-way within or adjacent to the Property, may be part of the Areas of Common Responsibility.

(c) **“Articles” or “Articles Of Incorporation”**. The Articles of Incorporation of the Association which are filed with the Secretary of State of Ohio to create the Association.

(d) **“Assessments”**. The assessments levied against all Owners of Sublots to fund Common Expenses.

(e) **“Association”**. Fulton Landings Homeowners’ Association, Inc., a non-profit Ohio corporation, its successors and assigns, created to govern, operate, control and administer the Areas of Common Responsibility and to supervise and enforce this Declaration.

(f) **“Association Roads”**. Any private street (including common ingress/egress easement areas shown on the Plat) which is at any time constructed on the Property which the Developer at any time offers to dedicate by easement, deed, plat or otherwise, to the Association (whether the same is denominated as a street, avenue, boulevard, drive, place, court, road, circle, lane, walk or other designation) including any curbs and gutters adjacent to any such street or other thoroughfare. An Association Road shall be titled in the name of the Association. The Association Roads, as shown on the Plat, consist of Alexis Lane and Alissa Lane.

(g) **“Board”**. The Board of Directors of the Association. The Board is sometimes also referred to as the “Directors”.

(h) **“Builder”**. Builder shall mean any Person who (1) purchases a Sublot within the Property for the purpose of the construction and sale of one or more Living Units, such Builder also being an Owner during the period such Builder owns title to the Sublot; or (2) is retained by an Owner to construct a Living Unit or any addition thereto.

(i) **“City”**. The City of Canal Fulton, Ohio.

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

(k) **“Code”**. The Code of Regulations of the Association attached hereto as **Exhibit “D”**.

(l) **“Common Areas”**. All real and personal property now or hereafter owned by the Association or otherwise held for the common use and enjoyment of the Owners or Occupants (hereinafter defined). Common Areas shall include the Entrances, the Association Roads, Open Spaces and those areas of land intended for the common use, benefit and enjoyment of all Occupants of the Property, and may include a recreation area. Any Owner may delegate, in accordance with the Code and subject to reasonable rules, regulations, and limitations as may be adopted in accordance therewith, his or her right of enjoyment to the Common Areas and facilities to the members of his or her family, tenants, and social invitees and shall be deemed to have made a delegation of all such rights to the Occupants of any leased Living Unit. Common

Areas does not mean or imply that the public at large acquires any easement of use or enjoyment therein.

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

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

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

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

(q) **“Living Units”**. All units of residential housing to be situated on the Property. Without limiting the generality of the foregoing, Living Unit shall mean a portion of the Property intended for any type of independent ownership for use and occupancy as a single family residence and shall, unless otherwise specified, include within its meaning (by way of illustration, but not by way of limitation) single family houses on separately platted lots, as may be developed, used and defined as herein provided or as provided in Subsequent Amendments; provided, further, the term Living Unit shall also include all portions of the lot owned as a part of any structure thereon.

For the purposes of this Declaration, a Living Unit shall come into existence when the improvements constructed thereon are sufficiently complete to reasonably permit the habitation thereof, whether or not a certificate of occupancy has been issued for the Living Unit by the governmental authority having jurisdiction over the same, and the Living Unit has been conveyed to a person other than the Developer.

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

(s) **“Occupant”**. A person in possession of a Living Unit including, without limitation, an Owner or any guest, invitee, lessee, Tenant (hereinafter defined), or family member of an Owner occupying or otherwise using a Living Unit.

(t) **“Open Space”**. Land that is assigned in perpetuity as private open space, including “open space” required by the City Planning and Zoning Code. Open Space shall be administered by the Association and shall be available and accessible to all Occupants.

(u) **“Originally Installed Landscaping”**. The landscaping installed in connection with the construction of a Living Unit on a Sublot in accordance with the landscape plan approved by the Design Review Committee and denominated by the Design Review Committee as Originally Installed Landscaping.

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

(w) **“Ownership Interest”**. The entire right, title and interest of any Owner in all of the freehold and leasehold estates of such Owner in his or her Living Unit.

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

(y) **“Plat”**. The Subdivision Plat of Fulton Landings filed with the Office of the County Recorder of Stark County, Ohio on March 13, 2008 as Instrument No. 200803130011005, a reduced copy of which is attached hereto as **Exhibit “B”**. The Plat may from time to time be supplemented and/or amended.

(z) **“Property”**. The land described in **Exhibit “A”** of this Declaration and as shown on the Plat, as the same may from time to time be amended.

(aa) **“Rules”**. Rules and regulations that govern the operation and use of the Living Units and the Areas of Common Responsibility, including the Common Areas and any other property owned by the Association, as such rules and regulations may be adopted from time to time by the Board or the Association to implement and carry out the provisions and intent of this Declaration.

(bb) **“Special Developer Rights”**. Those rights reserved for the benefit of the Developer as provided for in this Declaration and the Code, and shall include, without limitation, the following rights: (1) to expand or contract the Property in accordance with Section 1.3 of this Declaration; (2) to maintain sales offices, management offices, customer services offices, signs identifying and/or advertising the Property; (3) to use easements through the Common Areas for the purpose of making improvements within the Property; and (4) to appoint or remove any

Board Members or officers of the Association during the period that the Developer has the right to elect or designate members of the Board of Directors.

(cc) **“Sublot”**. A platted single-family lot upon which a Living Unit has been or may be constructed. The term Sublot does not include platted Common Areas.

(dd) **“Subsequent Amendment”**. An amendment to this Declaration which adds additional property to that covered by this Declaration. A Subsequent Amendment may, but is not required to: (i) impose, expressly or by reference, additional restrictions and obligations on the land submitted by such Subsequent Amendment to the provisions of this Declaration; and/or (ii) otherwise amend this Declaration and/or the Code.

(ee) **“Subsidy Period”**. The three (3) year period beginning on the date that this Declaration is filed with the Office of the County Recorder of Stark County, Ohio.

(ff) **“Tenant”**. Any person(s) having a possessory leasehold estate in a Living Unit, other than an Owner.

ARTICLE III
EASEMENTS

Section 3.1 - Utility Easements

There is hereby reserved in favor of Developer and granted to the Association, its successors and assigns, an easement upon, across, over, through and under the Property for ingress, egress, installation, replacement, repair and maintenance of all utilities and service lines and systems including, but not limited to, water, sewer, energy, drainage, gas, telephone, electricity, television, cable and communication lines and systems. By virtue of this easement, it shall be expressly permissible for Developer and the Association and their successors and assigns, or the providing utility or service company, to install and maintain facilities and equipment on the Property provided that such facilities shall not materially impair or interfere with any Living Units and provided further that any areas disturbed by such installation and maintenance are restored to substantially the condition in which they were found. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or located except as approved by the Developer or the Design Review Committee or unless the same are shown on the Plat. There is hereby reserved in favor of the Developer, so long as the Developer is the Class “B” Member of the Association, and thereafter, either the Developer or the Association, the right (but not the obligation) to grant neighboring property owners easements for utility purposes so long as the granting of such easements does not overburden the utilities serving the Property and provided, further, such neighboring property is either submitted to the Declaration by a Subsequent Amendment or, if not submitted, pays its fair share of the cost of such utilization based on the number of Sublots situated on the neighboring property benefited by such utility or easement compared to the total number of Sublots benefiting from such utility or easement.



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Section 3.2 - Easement for Ingress and Egress

There is hereby created a non-exclusive easement upon, across, over and through the Association Roads, sidewalks/walkways (if any), and parking areas in favor of Developer and the Association, all Owners, Occupants, and their respective guests, licensees and invitees for pedestrian and vehicular ingress and egress, as the case may be, to and from all of the various portions of the Property. Notwithstanding the foregoing, the Developer and/or the Association may limit this right of ingress and egress by a Subsequent Amendment.

Section 3.3 - Common Areas

Developer, all Owners, Occupants and the guests of such parties shall have the right to enter upon, use and enjoy the Common Areas for their intended purposes in accordance with this Declaration and the applicable Rules which shall be appurtenant to and shall pass with the title to every Sublot, subject to the right of the Association (and/or the Developer, for so long as Developer is a Class "B" Member) to dedicate or transfer any part of the Common Areas to the City and any other public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Developer or the Board, as the case may be. For so long as the Developer is the Class "B" Member, the Developer may exercise such right in its sole discretion without the necessity of obtaining the consent or approval of the Association, Board or Members. After the expiration of the Developer's Class "B" Membership, no such dedication or transfer by the Association shall be effective unless an instrument agreeing to such dedication or transfer has been signed by a majority of the Members and has been recorded with the Stark County Recorder.

Section 3.4 - Easements for Construction, Alteration, etc.

Easements are hereby created in favor of the Developer, the Association, all Owners, and their respective agents, contractors, and employees upon such portions of the Common Areas and Sublots as may be reasonably necessary for access thereto in connection with the construction, alteration, rebuilding, restoration, maintenance and repair of any Living Unit or other structures and improvements within the Property or serving the Property; provided, however, that in the exercise of any rights under this easement, there shall be no unreasonable interference with the use of any Living Unit or other structure or improvement on the Property. Any Person benefiting from the foregoing easement shall indemnify and save harmless the Developer, the Association and each Owner and Occupant from and against any and all losses, damages, liabilities, claims and expenses, including reasonable attorneys' and paralegals' fees resulting from any such construction, rebuilding, alteration, restoration, maintenance and shall repair any damage caused in connection with such activities to substantially the condition that existed prior to such activities.

Section 3.5 - Emergency and Service Easements

There is hereby granted to the City an easement for access to the Common Areas for emergency purposes. Fire, police, health, sanitation, medical, ambulance, school buses, utility company, mail service and other public or quasi-public emergency and service personnel and

their vehicles shall have an easement for ingress and egress over and across the Association Roads for the performance of their respective duties.

Section 3.6 - Easements for Encroachments

If by reason of the construction, repair, restoration, partial or total destruction and rebuilding, or settlement or shifting of any of the Living Units, any part of a Living Unit shall encroach upon any part of the Common Areas or any part of an adjacent Sublot, easements in favor of the Owner of the Living Unit are hereby established for the maintenance of such encroachment; provided, however, in no event shall a valid easement for any encroachment be created in favor of an Owner if such encroachment occurs due to his willful conduct.

Section 3.7 - Parking in Common Areas; Off-Street Parking Spaces

Parking of motor vehicles on the Association Roads shall be limited to one side of the Association Roads, opposite fire hydrants. There shall be no parking on Association Roads between the hours of 2:00 a.m. and 6:00 a.m., nor at any time that weather conditions necessitate snow plowing on Association Roads. Furthermore, any off-street parking spaces off of the Association Roads shall be utilized only for temporary guest parking and shall not be used for overnight parking without the permission of the Developer and/or the Association. The Developer and/or the Association reserve the right and easement to create additional off-street parking spaces to be situated within the Common Areas and to create additional rules and regulations relating to motor vehicle parking within the Property.

Section 3.8 - Easements for Community Signs and Entrance Improvements

Easements are created over the Common Areas to install, maintain, repair, replace and illuminate signs that are for the general benefit of the Property or for the identification of the Association Roads. The type, size and location of the signs shall be subject to the approval of the Design Review Committee and subject to the laws of the County, City and other governmental authorities having jurisdiction. Easements are further created or reserved to the Developer and the Association as shown on the Plat or as set forth by separate easement document, at the intersection of High Street and Alexis Lane for entrance improvements, including landscaping, irrigation, signage, and lighting.

Section 3.9 - Drainage Rights and Authority to Transfer Drainage and other Easement Rights to the City

The Developer, each Owner, the Association and the City shall have the non-exclusive right and easement in common to utilize the storm sewers and drainage pipes in, over, and upon the Common Areas for the purposes of drainage of surface waters on the Property, said rights-of-ways and easements being hereby established for said purpose. It shall be the obligation of the Association to properly maintain, repair, operate and control such drainage system on the Common Areas.

The Developer and (after transfer of the Common Areas) the Association shall have the right to grant easements upon, across, over, through and under the Common Areas for the installation and maintenance of sanitary sewers, storm sewers and drainage to the City or any

other governmental authority having jurisdiction. No owner shall in any way hinder or obstruct the operation or flow of the drainage system. No structures, plantings or other materials shall be placed or permitted to remain within such easement areas which may damage or interfere with the installation and/or maintenance of such improvements in such easement areas or which may change, retard or increase the flow of water through the respective easement areas. The easement areas and all improvements therein shall be maintained continuously by the Association unless those easement areas are accepted by the City or other governmental authorities having jurisdiction by formal action.

Section 3.10 - Easement to Maintain Sales Offices, Models, Signage, etc.

Notwithstanding any provisions contained in this Declaration to the contrary, so long as the construction and sale of Living Units by the Developer or an Affiliate of Developer or the holder of Special Developer Rights is continuing within the Property, it shall be expressly permissible for the Developer to maintain and carry on upon portions of the Common Areas (and any Sublot owned by the Developer) such facilities and activities as, in the sole opinion of Developer, may be reasonably required, convenient, or incidental to the construction or sale of Living Units within the Property, including, but not limited to, administrative/customer services, construction offices/trailers, parking signs, identification signs, sales signs, model units, and sales and resales offices, and the Developer, its guests, licensees and invitees shall have an easement for access to all such facilities. The right to maintain and carry on such facilities and activities shall specifically include the right to use Living Units owned by the Developer, as models and sales offices. The Developer further reserves the right for itself and its successors, assigns, contractors, material suppliers and others performing work and furnishing materials to construct Living Units and other improvements upon the Property to conduct business and carry on construction/site development activities during customary business hours. This Section may not be amended or modified without the express written consent of the Developer.

Section 3.11 - Maintenance Easement

There is hereby reserved for the benefit of the Association and its agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement to enter upon any Sublot for the purpose of maintaining Association Landscaping and for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash and debris in order to maintain reasonable standards of health, fire safety, and appearance within the Property, provided that such easements shall not impose any duty or obligation upon Developer or the Association to perform any such actions (unless otherwise provided herein - e.g. see Section 6.4); and provided further that in the exercise of its rights hereunder the Association shall be entitled to be reimbursed by such Owner pursuant to Article VII hereof.

Section 3.12 - Owner's Right to Ingress and Egress

Each Owner shall have the perpetual right as an appurtenance to such Owner's Living Unit to ingress and egress over, upon and across the Common Areas necessary for access to his or her Living Unit, including the exclusive right to use that portion of the driveway area adjacent to his or her Living Unit that provides access from the garage to the roadway, and to any

Common Areas designated for use in connection with his or her Living Unit, and such rights shall be appurtenant to and pass with the title to the Living Unit.

Section 3.13 - Environmental Easement

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

Section 3.14 - Scope of Easements and Dedication of Roadways and Utilities

As the improvements to be located within the Property for the easement rights granted or reserved under Sections 3.1 and 3.2 are definable within specific areas, the Developer or the Association (with the Developer's prior written consent so long as Developer is a Class "B" Member) shall have the right (but not the obligation) to: (a) further limit such easements to specific areas and purposes, and record a document or documents releasing the balance of the lands from the burden of such easements; and/or (b) record a plat or other document or documents setting forth the specific areas subjected to such easements; and/or (c) dedicate to public or private use specific areas (and the improvements contained therein) within the Property to meet the requirements of the City, and other public authorities having jurisdiction over the same. The Developer or the Association may exercise any of such rights without the necessity of obtaining the consent or approval of Owners and other Persons for whose benefit the easement rights are granted or reserved.

Section 3.15 - Easements To Run With the Land

All easements and rights described herein are easements appurtenant to the Property, including the Sublots, Living Units, and the Common Areas, shall run with said lands, perpetually and at all times shall inure to the benefit of and be binding upon the Developer, its successors and assigns, and any Owner, Tenant, Occupant, purchaser, mortgagee, the City or other Person having an interest in the Property, or any part or portion thereof. Reference to the easements and rights described in any part of this Declaration, in any deed of conveyance, lease, mortgage, trust deed, declaration for another type of residential association, or other evidence of obligation, shall be sufficient to grant such easements and rights to the respective grantees, lessees, mortgagees or Directors of such property, or any portion thereof, and to reserve to the grantor or lessor therein, their successors and assigns, as easements appurtenant to the remainder of the such properties, easements created by this Declaration for the benefit of any Owner, Tenant, Occupant, purchaser, mortgagee, the City or other Person in respect to any portion of the Property as fully and completely as though such easements and rights were recited fully as set forth in their entirety in such document.

ARTICLE IV
OWNERSHIP AND OPERATION OF COMMON AREAS

Section 4.1 - Conveyance of Common Areas

Developer shall convey the Common Areas to the Association not later than the date the last Living Unit is conveyed by the Developer to an Owner other than the Developer. Such conveyance shall be by limited warranty deed and shall have priority over all liens and encumbrances whatsoever except the easements, covenants, restrictions and provisions of this Declaration; easements, covenants, restrictions, conditions and other similar matters of record; real estate taxes and assessments which are a lien, but are not due and payable at the time of said conveyance; and zoning and other ordinances, if any. Developer shall cause any mortgagee of the Common Areas to release its mortgage on such areas in favor of this Declaration. The Association shall hold title to said parcel(s) subject to the provisions of this Declaration.

Section 4.2 - Use of Common Areas

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

ARTICLE V
THE ASSOCIATION

Section 5.1 - Existence

The Association will be an Ohio not-for-profit corporation. The Association shall be established before any Living Unit is occupied.

Section 5.2 - Membership and Voting Rights

(a) **Classes of Membership**

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

- (1) **Class "A" Membership.** Each Owner of a Living Unit shall automatically be a Class "A" Member of the Association. Furthermore, membership in the Association is mandatory of all Owners of Living Unit within the Property. The Class "A" Membership is appurtenant to the ownership of each Living Unit and shall not be separable from the ownership of any Living Unit and shall be deemed to have been terminated with any voluntary or involuntary conveyance of any Living Unit, whether or not such membership is expressly referred to in the instrument effecting such conveyance, at which time the new Owner or other successor in interest shall immediately and automatically become a Member of the Association with all rights and responsibilities relative thereto. No Owner,

whether one or more persons, shall have more than one membership per Living Unit owned.

- (2) Class "B" Membership. The Developer shall automatically be the sole Class "B" Member of the Association.
- (b) Voting Rights
- (1) Class "A" Member. Class "A" Members shall be entitled to one (1) equal vote for each Living Unit in which they hold the interest required for membership under Section 5.2(a)(1) hereof; there shall be only one (1) vote for each Living Unit.

In any situation where a Member is entitled to exercise a vote and more than one (1) Person holds the interest in such Living Unit required for membership, the vote for such Living Unit shall be exercised as those Persons determine among themselves and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the vote of the Living Unit shall be suspended if more than one (1) Person seeks to exercise it. In the case of a Living Unit owned or held in the name of a corporation, partnership, limited partnership, limited liability company, trust or other entity, a certificate signed by such Owner shall be filed with the Secretary of the Association naming the person authorized to cast a vote for such Living Unit, which certificate shall be conclusive until a subsequent substitute certificate is filed with the Secretary of the Association. If such certificate is not on file, the vote of such entity shall not be considered, nor shall the presence of a person purporting to act on behalf of such entity at a meeting be considered in determining whether the quorum requirement for such meeting has been met. When a fiduciary or other legal representative of an Owner has furnished to the Association proof of such person's authority, such person may vote as though he or she were the Owner.

- (2) Class "B" Member. The Class "B" Member shall be the Developer. The rights of the Class "B" Member, including the right to approve actions taken under this Declaration and the Code, are specified elsewhere in the Declaration and the Code. The Class "B" Member shall be entitled to appoint a majority of the members of the Board during the Class "B" Control Period, as specified in Article III(A), Section 2 of the Code. After termination of the Class "B" Control Period in accordance with Article III(A), Section 2 of the Code, if the Developer continues to own any Sublot, the Developer shall have a right to disapprove actions of the Board and any committee as provided in Article III(A), Section 3 of the Code.

Section 5.3 - Board and Officers of the Association

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

Section 5.4 - Rights of the Association

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

(a) To borrow money from time to time for the purpose of improving the Common Areas or for meeting its obligations with respect to the Areas of Common Responsibility, and may secure said financing with a mortgage or mortgages upon all or any portion of property owned by the Association in accordance with its Articles and Code and subject to the provisions of this Declaration or by a partial assignment of Assessments.

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

(c) To convey the Common Areas or a portion thereof, to a successor; provided, however, that any such conveyance shall require the vote of a majority of the Class "A" Members and the vote of the Class "B" Member, and provided further that such successor shall agree, in writing, to be bound by the easements, covenants, restrictions and spirit of this Declaration.

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

(e) To grant or obtain or dedicate to public use easements and rights-of-way (i) for access and easements for the construction, extension, installation, maintenance or replacement of utility services and facilities, or (ii) to or from a public utility or governmental authority, and to or from any body or agency which has the power of eminent domain or condemnation over any portion of the Property.

ARTICLE VI
RESPONSIBILITIES OF THE ASSOCIATION

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

Section 6.1 - Maintenance of Areas of Common Responsibility

The Association shall maintain the Areas of Common Responsibility in a clean, safe, neat, healthy and workable condition, and in good repair, and shall promptly make all necessary repairs and replacements, structural and nonstructural, ordinary as well as extraordinary, subject only to the provisions of this Declaration. The Association may provide equipment and supplies necessary for the maintenance (including landscape maintenance) and enjoyment of such property. All work performed by the Association under this Article shall be performed in a good and workmanlike manner. The following are included among such Areas of Common Responsibility:

(a) Entrance Area; Sprinkler System. To operate, and to maintain, repair and replace, the improvements adjacent to the entrance area, and all associated landscaping and other related facilities such as walkways, signs, lighting, traffic control devices, decorative or screening walls and fences situated at or in the vicinity of the entrance to the Property. If a sprinkler system is installed to serve the Common Areas, the Association shall operate, maintain, repair and replace the sprinkler system serving the Common Areas. The Association shall unconditionally accept a deed to and hold title to the Common Areas and the improvements thereon that are the Association's responsibility to maintain.

(b) Fences and Walls. To maintain, repair and replace any fences, walls and gates situated within the Common Areas.

(c) Association Roads and Median Strips; Parking. To accept and hold title to the Association Roads and to maintain (including snow and ice removal, dust control, drainage, tree trimming, etc. of Association Roads), repair and replace all such Association Roads, bridges, culverts and other crossings (as well as all signs and devices for the control of traffic within the rights of way of such Association Roads), to maintain (including snow removal) sidewalks/walkways (if any) within Common Areas and to pay all real estate taxes, if any, assessed with respect thereto. Further, to maintain in good and attractive condition all parts of any landscaping adjacent to any Association Roads and any landscaping, signage or other improvements within any median strip or island now or hereafter along or within the Association Roads. Off-street parking spaces (if any) off of Association Roads shall be utilized only for temporary guest parking.

(d) Street Lighting. With respect to all parts (including, but not limited to, poles, standards, fixtures) of a street lighting system (if any) which may be installed by or at the direction of Developer or the Association in the rights-of-way of any portion of any of the Association Roads, to maintain the same in good order and condition, to make all replacements and renewals necessary to so maintain the same, and to operate and to pay all costs of operating the same. Each Owner shall be responsible for maintenance of any yard or other light situated on such Owner's Sublot.

(e) Drainage System. To maintain all piping, culverts, drains, storm water retention or detention basins, water quality control ponds and other facilities now or hereafter situated upon any portion of the Property which are intended for the collection, retention, detention, transmittal or disposal of storm-water in clean and sanitary condition and in good order and repair and to make all replacements and renewals necessary to so maintain the same.

(f) Common Areas. To maintain the Common Areas (including Open Space) in good and attractive condition, for the use and enjoyment of Owners. The Association shall accept a deed to and hold title to the Association Roads. The obligations set forth in this subsection shall be deemed to run with and burden the party accepting any such deed and title to the Common Areas. The Common Areas on the final Plat shall remain as such.

(g) Community Signs. To install, maintain, repair, replace and , if so desired by the Developer, illuminate signs located on any portion of the Property which are for the general benefit of the Property.

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

(i) Rubbish Removal. If the City does not provide rubbish removal services, the Association may provide rubbish removal services, the cost of which services shall be a Common Expense.

Section 6.2 - Taxes and Assessments

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

Section 6.3 - Utilities

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

If the City repairs or replaces any of the water lines or sanitary sewer lines serving the Property, then the Association shall be responsible for all surface restoration, including but not limited to replacement of pavement, curb cuts, private driveways, sidewalks and landscaping following such repairs.

Section 6.4 - Maintenance Responsibilities

In addition to the maintenance and repair of the Common Areas, the Association shall provide snow removal from driveways of each Living Unit, maintenance of Originally Installed Landscaping on each Sublot and gutter cleaning of each Living Unit up to twice annually, as needed. The specific allocation of maintenance responsibilities between the Association and the Owners of Living Units is more particularly set forth on Exhibit "E" attached hereto and incorporated herein. The Association, through its duly authorized agents, employees and contractors, shall have the right and license to enter upon any Sublot at reasonable hours and the Association shall charge the a reasonable fee for said maintenance, as part of any assessments charged by the Association hereunder.

Section 6.5 - Insurance and Reconstruction

(a) Insurance. The insurance that shall be carried upon the Common Areas shall be governed by the following provisions:

- (1) Property Insurance. The Association shall carry Commercial property insurance covering the building, fixtures, equipment, and all personal property as may be owned by the Association and for which the Association is responsible.

Commercial property insurance shall, at minimum, cover the perils insured under the ISO broad causes of loss form (CP 10 20). Commercial property insurance shall cover the replacement cost of the property insured. The amount insured shall equal the full estimated replacement cost of the property insured. Any coinsurance requirement in the policy shall be eliminated through the attachment of an agreed amount endorsement, the activation of an agreed value option, or as is otherwise appropriate under the particular policy form.

- (2) Liability Insurance. The Association shall insure itself, the members of the Board, the Owners and Occupants of Sublots against liability by maintaining commercial general liability (“CGL”) and, if necessary, commercial umbrella insurance with a limit of not less than \$2,000,000 each occurrence. CGL insurance shall be written on Insurance Services Office (“ISO”) occurrence form CG 00 01 12 04 (or a substitute form providing equivalent coverage) and shall cover liability arising from premises, operations, independent contractors, products-completed operations, personal and advertising injury, and liability assumed under an insured contract (including the tort liability of another assumed in a business contract). An endorsement adding Owners of Living Units as additional insureds, ISO Form CF 20 04 (or a substitute form providing equivalent coverage) shall be included. The Association shall increase the coverage in the future in an amount to be determined to be commercially reasonable at said time. In the event the insurance effected by the Association on behalf of the Owners and Occupants of Sublots who are not Owners against liability for personal injury or property damage arising from or relating to the Common Areas shall, for any reason, not fully cover any such liability, the amount of any deficit shall be a Common Expense to the Owners. The Association shall also obtain directors and officers liability coverage if reasonably available.

- (3) Fidelity Bonds. To the extent available for a reasonable premium, the Association shall obtain a fidelity bond indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any employee of the Association or of any other person handling the funds of the Association, the Board or the Owners in such amount as the Board shall deem desirable, but in no event shall the amount of the bond be less than an amount equal to three (3) months' Assessments. The fidelity bond shall name the Association as the obligee, and the premium for such bond shall be a Common Expense. Such bond shall contain waivers of any defense based on the exclusion of persons who serve without compensation from any definition of “employee” or similar expression. Such bond shall provide that it may not be canceled for non-payment of any premiums or otherwise substantially modified without ten (10) days prior written notice to the Association and to all Eligible Mortgage Holders.

- (4) Automobile Insurance. The Association shall maintain automobile liability and, if necessary, commercial umbrella liability insurance with a limit of not less than \$2,000,000 each accident. Such insurance shall cover liability arising out of any auto (including owned, hired, and nonowned autos). Coverage as required in paragraph 1.2 above shall be written on ISO form CA 00 01 or a substitute form providing equivalent liability coverage.
- (5) Workers Compensation. The Association shall maintain workers compensation and employers stop gap liability insurance. The commercial umbrella and/or employers liability limits shall not be less than \$2,000,000 each accident for bodily injury by accident or \$2,000,000 each employee for bodily injury by disease.
- (6) Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association at least thirty (30) days prior to the expiration date of such policies and shall be assessed as Common Expenses.
- (7) Living Unit Owner Insurance. Each Owner shall, at his or her own expense, obtain insurance: (i) covering his or her Living Unit; and (ii) covering the contents of his or her Living Unit. In addition, each Owner may, at his or her own expense, obtain public liability insurance for personal injuries or damage arising out of the use and occupancy of his or her Living Unit or Sublot.
- (8) Rating of Insurance Company. All policies for insurance of the Association shall be written with a company licensed to do business in Ohio and holding a rating of A-/VII or better in the Financial Category as established by A. M. Best Company, Inc. if reasonably available, or, if not available, the most nearly equivalent rating.

Section 6.6 - Management

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

- (a) Adopt Rules;
- (b) Engage employees and agents, including without limitation, security personnel, attorneys, accountants and consultants, maintenance firms and contractors;
- (c) Delegate all or any portion of its authority and responsibilities to a manager, managing agent, or management company. Such delegation may be evidenced by a management contract which shall provide for the duties to be performed by the managing agent and for the payment to the managing agent of a reasonable compensation. Upon the expiration of each management agreement, the Association may renew said management agreement or enter into a different agreement with the same or a different managing agent, provided that no management agreement or renewal thereof shall be for a period longer than three (3) years, and provided,

further, that the Board may designate a different managing agent with whom the Association shall enter into an agreement after the end of the then existing management agreement; and

(d) The management agreement may be with an entity owned by or associated with Original Developer or owned by, associated with, controlled or employed by any partner, shareholder, officer, director, agent or employee of Original Developer, and may be for a period of time not to exceed three (3) years, in Original Developer's sole discretion. The compensation payable to the Original Developer or its affiliate shall be comparable to compensation paid to unrelated management companies located in the Stark County, Ohio area for similar types of developments.

Section 6.7 - Upgrading

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

Section 6.8 - Enforcement

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

Section 6.9 - Rules and Regulations

The Association, through the Board, may make and enforce reasonable rules and regulations governing the Areas of Common Responsibility, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines and suspension of the right to vote. Imposition of sanctions shall be as provided in the Code of the Association. An Owner shall be subject to the foregoing sanctions in the event of a violation by such Owner, his or her family, guests, Tenants or by his or her co-Owners or the family, guests or Tenants of such co-Owners. Furthermore, the Association, through the Board, may, by contract or other agreement, enforce City ordinances or permit the City or other governmental authorities having jurisdiction to enforce ordinances on the Property for the benefit of the Association and its Members.

Section 6.10 - General

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

Section 6.11 - Original Developer's Rights

During the Class "B" Control Period, the Original Developer shall exercise all or any of the powers, rights, duties and functions of the Association, including, without limitation, the right to levy special assessments as authorized herein, the right to enter into a management contract, the right to obtain insurance under Original Developer's blanket policy (if any), the right to perform each duty and obligation of the Association set forth herein, the right to collect

assessments and disburse all funds of the Association, and the right to have a lien (and to foreclose said lien) on a Sublot for unpaid assessments in the manner and to the extent granted to the Association as herein provided.

Section 6.12 - Indemnification of City

The Association shall indemnify, defend and hold harmless the City and other governmental bodies for any and all claims of any kind and nature that may arise or are related to the Common Areas.

ARTICLE VII
COVENANTS AND RESTRICTIONS

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

The Association, acting through the Board, shall have authority to make and to enforce standards and restrictions governing the use of the Property in addition to those contained herein, and to impose reasonable user fees for use of Common Area facilities. This authority shall include, without limitation, the power to regulate the speed and flow of traffic on private drives within the Property. Such regulations and use restrictions shall be binding upon all Owners, land contract vendees, lessees, tenants and Occupants.

Section 7.1 - Covenant of Good Maintenance

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

- (a) Maintenance and Repair.
 - (1) Except as provided in Section 6.4 hereof, each Owner and Occupant of a Living Unit shall maintain such Living Unit and all appurtenances thereto, including, without limitation, the driveway, driveway apron, walk(s), patio(s) and deck(s), if any, serving such Living Unit in good condition and repair and, subject to the Association's responsibilities set forth herein, shall keep the exterior and interior of such Living Unit, including the driveway, driveway apron, walk(s), deck(s) or patio(s) serving the Living Unit, and shall keep adjacent Common Areas, free from debris, rubbish, rubble and other conditions created by such Owners or Occupants or their guests or others. WITHOUT LIMITING THE FOREGOING, EXCEPT AS PROVIDED IN SECTION 6.4 HEREOF, ALL REPAIRS OR REPLACEMENTS TO A LIVING UNIT, WHETHER EXTERIOR OR INTERIOR AND WHETHER STRUCTURAL OR NON-STRUCTURAL, AND

ALL REPAIRS OR REPLACEMENTS OF GLASS SURFACES, DECK(S), PATIO(S), DRIVEWAY, DRIVEWAY APRON OR WALK(S) SERVING A LIVING UNIT, SHALL BE THE EXCLUSIVE RESPONSIBILITY OF THE OWNER AND OCCUPANT OF SUCH LIVING UNIT AND NOT THE ASSOCIATION. To the extent the same is not the responsibility of the City, County or other governmental agency, each Owner and Occupant shall be responsible for the maintenance, repair and replacement of the water line, storm line and/or sanitary sewer line exclusively serving his or her Living Unit.

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

(b) Snow Removal. Each Owner and Occupant of a Living Unit shall be responsible for snow and ice removal from the walks leading from the front and rear of the Living Unit and any porches, stoops, stairways and steps.

(c) Gutter Cleaning. If gutters and downspouts need cleaning more than twice a year (the Association provides cleaning twice a year), each Owner and Occupant of a Living Unit shall perform or cause to be performed such cleaning at such Owner's expense with no charge to the Association.

Section 7.2 - Trailers, Sheds, Etc.

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

Section 7.3 - Construction of Living Units

The plans and specifications for each Living Unit constructed on the Property shall be subject to the prior review and approval of DRC (defined below) as set forth in Article VIII below. In addition, all Living Units shall be subject to all applicable restrictions imposed by the City or any other governmental authority having jurisdiction over the Property.

Section 7.4 - Fences, Walls and Hedges; Mail Boxes

Fences, walls, trees, hedges, and shrub plantings shall be maintained in a sightly and attractive manner. Fences, walls of any kind, and landscaping of any kind shall not be erected, begun or permitted to remain upon any portion of the Property except for fences and landscaping (a) approved by the Association or (b) originally constructed by Developer. All mailboxes shall be centrally located in a location designated by Developer and/or the local post office.

Section 7.5 - Nuisance

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

Section 7.6 - Animals

No animals, livestock, or poultry of any kind shall be raised, bred or kept on any portion of the Property (including the Living Units situated thereon) without the approval of the Board, except that dogs, cats, birds, fish and other customary household pets approved by the Board may be kept, subject to Rules adopted by the Board, provided that they are not kept, bred or maintained for any commercial purpose and provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance or annoyance shall be permanently removed from the Property upon three days' written notice from the Board. Dogs shall at all times whenever they are outside a Living Unit be confined on a leash held by a responsible person or contained by an "invisible fence" system. Each Owner shall immediately clean up after his or her dog. The Rules may limit the number of pets which may be kept in any one Living Unit. The Board shall have absolute power to prohibit a pet from being kept on the Property or within a Living Unit if the Board finds a violation of this Section.

Section 7.7 - Signs

No sign or other advertising device of any nature shall be placed upon any portion of the Property except for temporary "For Sale" signs (which are permitted if in compliance with all City ordinances and regulations and do not exceed 24" by 36" in size) and other signs and advertising devices installed by or at the direction of the Association, or which the Association approves as to color, location, nature, size and similar characteristics. Notwithstanding the foregoing, the restrictions of this Section 7.7 shall not apply to Developer.

Section 7.8 - Storage of Material and Trash Handling

No lumber, metals, bulk material, refuse or trash shall be burned, whether in indoor incinerators or otherwise (excluding the burning of firewood in a fireplace), kept, stored or allowed to accumulate on any portion of the Property, except normal residential accumulation pending pick-up and except building materials during the course of construction or reconstruction of any approved building or structure, except firewood may be stored within Living Units, on patio areas or other areas designated by the Board if a Living Unit contains a fireplace, the installation of which shall be approved by the Board. If trash or other refuse is to be disposed of by being picked up and carried away on a regular recurring basis, containers may be placed in the open on any day that a pick-up is to be made, thereby providing access to persons making such pick-up. At all other times such containers shall be stored in such manner that they cannot be seen from adjacent and surrounding property. No dumping of rubbish shall be permitted on any portion of the Property. Anything herein to the contrary notwithstanding, the Association or the Board may adopt a Rule or Rules which permit burning, incineration or

storage of refuse or trash if the same becomes reasonably necessary for the safety, health or welfare of the Occupants, and is permitted by law.

Section 7.9 - Commercial or Professional Uses

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

Section 7.10 - Storage of Vehicles and Machinery; No Parking on the Association Roads

No truck (except a non-commercial two-axle truck for personal use), camper, camper trailer, recreation vehicle, boat, boat trailer, all terrain vehicle, airplane, snowmobile, commercial vehicle, commercial van, mobile home, tractor, bus, farm equipment, off-road vehicles or other non-passenger vehicle of any kind, licensed or unlicensed, shall be stored on any driveway or other area in or upon the Property, except within the confines of garages. No machinery of any kind shall be placed or operated upon any portion of the Property except such machinery which is customarily required for the maintenance of the Property, related improvements, lawns, snow removal and landscaping. Furthermore, there shall be no parking of motor vehicles on the Association Roads, except as set forth in Section 3.7 above.



Section 7.11 - Firearms; Preservation of Wildlife

Firearms, ammunition and explosives of every kind shall not be discharged nor shall any traps or snares be set, nor shall any hunting or poisoning of wildlife of any kind be permitted in or upon the Property, except in case of emergency or with the prior written approval of the Board.

Section 7.12 - Control of Trucks, Commercial Vehicles

No tractor trailers, commercial tractors, commercial vehicles, road machinery or excavating equipment shall be permitted to remain on any portion of the Property for any period of time whatsoever, except while making deliveries or performing services thereon and except as necessary for the construction, reconstruction or repair of buildings or structures on the Property.

Section 7.13 - Traffic Regulations

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

Section 7.14 - Poles, Wires and Antennae; Flag Poles and Flags

(a) Poles, Wires and Antennae. Subject to applicable easement rights, no facilities, including poles and wires, for the transmission of electricity, telephone messages, ham radio messages and the like shall be placed or maintained above the surface of the ground in any portion of the Property without the prior approval of the DRC. This provision shall not apply for temporary facilities for the construction or repair of any building or other structure. A Digital or Direct Satellite System ("DSS System"), one meter (approximately 39 inches) or less in circumference, may be attached to a Living Unit in conformance with FCC regulations so long as the prior approval of the location of the DSS System is given by the DRC, provided, however, the criteria used to approve the location of such DSS System shall not cause the Owner unreasonable delay in installation; cause the Owner to incur unreasonable installation, maintenance or usage costs; nor shall the criteria cause unreasonable interference with a broadcast signal.

(b) Flag Poles and Flags. Pursuant to Section 5301.072 of the Ohio Revised Code, the placement of a flagpole that is used for the purpose of displaying of the flag of the United

States shall be permitted within the Sublot of the Owner and shall be permitted on the exterior of the Owner's Living Unit in accordance with the following:

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

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

- (A) The size of the flag shall not exceed 3 feet by 5 feet;
- (B) The display of a flag on a flagpole shall only be permitted within the Sublot of the Owner displaying the flag or the display of a flag on the exterior of an Owner's Living Unit. The Board shall have the right to designate the precise location of the exterior of the Living Unit from which the flag may be displayed;
- (C) No exterior lighting of the flag shall be permitted; and
- (D) If displayed immediately adjacent to the exterior side of the Owner's Living Unit, screws or nails holding the flag shall be made into wood and not into vinyl or other non-wood siding, nor into brick or stone. The Owner shall be responsible for the prompt repair of any damage to the Living Unit caused by such installation.

(3) Pursuant to Section 5301.072(B) of the Ohio Revised Code, a covenant, condition, restriction, rule regulation, bylaw, governing document or agreement of the construction of any of these items that violates Subsection (1) above is against public policy and unenforceable in any court of this state to the extent it violates said Subsection (1) above.

Section 7.15 - Exterior Appearance, and Lights for Exteriors of Residences

The exterior of any building or structure in the Property shall not be altered, modified, changed or redecorated in such a way as to change the appearance or decor of the structure, nor shall any of the landscaping appurtenant to such building or structure be materially changed without the express written authorization of the Design Review Committee. The provisions of this paragraph are subject to the provisions of Article VIII of this Declaration. For the purpose of providing security, each Owner shall keep the bulb(s) in all exterior lights originally attached to the exterior of his or her Living Unit in good working order.

Section 7.16 - Grading

No Person shall change the grade on any portion of the Property without first obtaining the consent of the Design Review Committee.

Section 7.17 - Storm Drainage

No Person shall interfere with the free flow of water through any drainage system or storm sewers within the Property. The City or other governmental authority having jurisdiction shall have the right to enter upon the Common Areas of the Property to repair and maintain all storm, drainage, courses, structures and appurtenances for the purpose of relieving any flooding condition or threatened flooding condition which might be harmful to other property within the City. This Section supplements Section 3.9 hereof.

Section 7.18 - Resubdivision of Sublots

No Sublot shall be subdivided or its boundary lines changed except with the proper written approval of the Board or except as expressly authorized herein. Developer, however, hereby expressly reserves the right to replat any Sublot owned by Developer. Any such division, boundary line change, or replatting shall not be in violation of applicable City regulations.

Section 7.19 - Compliance with City Codes

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

Section 7.20 - Use of the Name "Fulton Landings"

No Person shall use the word "Fulton Landings" or any derivative thereof in any printed or promotional material without the prior written consent of Developer. However, Owners may use the name "Fulton Landings" in printed and promotional material where such word is used solely to specify that particular property is located within Fulton Landings.

Section 7.21 - Sale, Leasing or Other Alienation of Sublots

(a) Owner's Right of Transfer. The Association shall have no right of first refusal with respect to the purchase or lease of a Sublot, and an Owner shall be able to transfer his or her Sublot freely by sale, gift, devise, lease or otherwise without restriction except as provided in subsection (b) below.

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

(c) Names of Owners and Occupants of Living Units. To enable the Association to maintain accurate records of the names, addresses and phone numbers of Owners and other Occupants of Living Units, each Owner agrees to notify the Association in writing, within five (5) days after such Owner's Living Unit has been transferred or leased to another person. In addition, each Owner agrees to provide to a purchaser or lessee of such Owner's Living Unit a copy of this Declaration, the Code, the Rules and other relevant documents. Owners may request additional copies of the Declaration, the Code and the Rules from the Association for an amount determined by the Board (currently \$25.00).

Section 7.22 - Waiver of Subrogation

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

Section 7.23 - Violation of this Article

If any Person required to comply with the foregoing Covenants and Restrictions is in violation of any one of same, including, but not by way of limitation, design review criteria or standards established by the DRC. The Developer (as long as the Developer is a Class "B"

Member of the Association) or the Board, the Developer and/or the DRC shall have the right to give written notice to such Person to terminate, remove or extinguish such violation. Such notice shall expressly set forth the facts constituting such violation.

Except in the case of an emergency situation, the violating party shall have fifteen (15) days after written notice of the violation to take reasonable action to cause the removal, alleviation or termination of same. In the case of an emergency situation, or in the case of the failure of the violating party to comply with the provisions hereof after notice, the Developer and/or the Association shall have the right, through their respective agents and employees, to enter upon the land where the violation exists and to summarily terminate, remove or extinguish the violation. In addition to the foregoing, the Developer and/or the Association shall have the right to obtain an injunction from any court having jurisdiction for the cessation of such violation or attempted violation of this Article. The rights and remedies of the Association and Developer contained in this Article shall be nonexclusive and in addition to any other right or remedy available at law or in equity, including a claim or action for specific performance and/or money damages (including punitive damages), and attorneys' and paralegals' fees. Furthermore, the failure or neglect to enforce any term, covenant, condition, restriction, right or procedure herein shall in no event and under no circumstances be construed, deemed or held to be a waiver with respect to any subsequent breach or violation thereof. Subject to the provisions of the Section of the Code entitled, "Hearing Procedure", a Person in violation of this Article VII shall be obligated to the Association and/or Developer for money damages and for the full amount of all costs and expenses, including attorneys' and paralegals' fees, incurred to remedy any such violation. If said amounts are not paid within ten (10) calendar days following said notification, then said amount shall be deemed "delinquent", and shall, upon perfection as provided in Section 9.4, become a continuing lien upon the portion of the Property owned or occupied by such Person(s) and a personal obligation of the Person(s) violating this Article. In addition, the Owner of any portion of the Property shall be liable jointly and severally for any obligations of any Occupant of such Owner's property.

Section 7.24 - Restrictions of Other Documents

Nothing contained in these Restrictions shall preclude the imposition of more stringent restrictions imposed elsewhere in this Declaration, restrictions imposed on Sublots within subdivisions, restrictions imposed in deeds conveying the Property or portions thereof and restrictions imposed by the Association so long as such restrictions are not inconsistent with restrictions imposed by the this Declaration, created by the Association or adopted by the Board.

Section 7.25 - Certificate of Compliance with Restrictions in Connection with Resales of Sublots

Upon an Owner's reconveyance of his/her/their Sublot or an interest therein, such Owner (i.e. seller) shall request the Association to issue a Certificate of Compliance stating that the Association has no record of a violation of this Article and stating the unpaid Assessments and amount of monthly (or quarterly) Assessments attributable to such Sublot. A Certificate of Compliance may be relied upon by all persons for all purposes. Neither the Board, nor such officer or agent shall have any liability to the seller, buyer or mortgagee of a Sublot or to others if the Certificate of Compliance issued hereunder is not correct. The Association may require the

advance payment of a reasonable processing fee determined by the Board (currently \$50.00) for the issuance of the Certificate of Compliance. The Certificate shall be substantially in the form of Exhibit "C".

ARTICLE VIII
DESIGN REVIEW COMMITTEE

Section 8.1 - Power and Structure of Committee

There is hereby created a Design Review Committee ("DRC") for the purpose of architectural and engineering control to secure and maintain an attractive, harmonious residential community. The Declarant shall function as the DRC and grant all approvals provided for herein until the Declarant conveys the last Sublot the Declarant owns in the Property, except that the Declarant may elect to delegate and assign such duties and responsibilities to the DRC prior to that time. The DRC appointed by the Declarant need not be made up of members of the Association. After control of the DRC has been transferred over to the Association, the DRC shall be composed of no less than three (3) individuals appointed by the Board to serve at the Board's pleasure. A vote of the majority of members of the DRC shall be required to constitute the decision of the DRC.

Section 8.2 - Operation of Committee

No Living Unit shall be altered, modified or changed in any way which changes exterior or the appearance thereof, nor shall any Living Unit be rebuilt, nor shall an addition be made to a Living Unit, nor shall any grading or landscaping be changed, replaced or altered, nor shall any Owner construct a patio or deck within his Sublot unless an application, plans and specifications for the proposed alteration, modification, change or addition shall have been submitted to and approved in writing by the DRC. Any addition to a Living Unit, must be wholly constructed within the Sublot. In addition to the requirements under this Article, all alterations, modifications, changes and additions to a Living Unit must comply with local building and zoning ordinances, rules and regulations referred to in Section 8.5 hereof. The rights of the DRC set forth in this subsection are in addition to the rights of the DRC as set forth elsewhere in this Declaration. Furthermore, no landscaping within a Sublot shall be installed by the Owner of a Living Unit unless an application, plans and specifications for such installation shall have been submitted to and approved in writing by the DRC; and the DRC may impose as a condition of such approval that the maintenance and replacement of such landscaping shall be the responsibility of such Owner, and not the responsibility of the Association. In addition, no artificial yard ornaments such as bird baths, animals or birds shall be installed within the yard area of a Sublot without the approval of the DRC. If the DRC fails to approve or disapprove said application, plans and specifications within thirty (30) days after the same was submitted to it, approval will not be required and this Section will be deemed to have been fully complied with. The provisions of this subsection requiring submission of plans and specifications to and obtaining approval from the DRC shall not be applicable to the Developer, nor any entity related to or affiliated with the Developer or designated by the Developer as being subject to the provisions of this subsection.



Section 8.3 - Construction of Living Units

(a) No construction shall be performed on any Sublot except by Builders who have first been approved by the DRC in writing, it being the intent of the Developer to maintain the high quality of Living Units by permitting construction only by Builders who have, in the judgment of the DRC, the ability and experience to build quality, custom homes in accordance with the general plan for Fulton Landings. Notwithstanding the foregoing, neither Developer nor any officer, employee or representative of Developer shall have any liability or responsibility for the satisfactory completion of any Living Unit or any part thereof, nor for inspection during construction, nor for any acts on the part of any Owner or any contractors, subcontractors or material suppliers to be performed in the construction of such Living Unit.

(b) Owners and Builders who are not Owners shall be responsible for keeping grass and weeds cut and the area free of any trash or debris, and keep all debris and mud off of the Association Road. The Owner and Builder shall comply with all federal, state, county, municipal and other governmental statutes, laws, ordinances, rules and regulations (the "**Legal Requirements**"), including, without limitation, the Federal Water Pollution Control Act, with respect to erosion control and storm water pollution prevention. In addition, each Builder shall maintain all construction areas in a neat and clean condition according to applicable Legal Requirements, as befitting a first-class residential community, which may include seeding of land.

(c) Each Owner and Builder shall indemnify and save harmless the Association and Developer and all of their agents, employees and contractors, from and against any and all losses, damages, costs, fines, penalties, liabilities, costs and expenses, including, without limitation, attorney fees, arising out of the failure of the Owner or Builder to comply with all Legal Requirements or the requirements set forth in this Declaration.

(1) In addition to the indemnity set forth above, each Builder shall deposit with the Developer the sum of Five Hundred Dollars (\$500) for each Living Unit being constructed by such Builder (the "**Security Fund**"), to be held by the Developer as security for the performance of all of the duties and covenants of the Builder set forth in this Declaration. The Security Fund shall be in cash or in such other form as may be reasonably acceptable to Developer. If a Builder shall violate any covenant set forth herein, the Developer or the Association shall have the right, after giving notice of such violation to the Owner and/or Builder (except in an emergency) and the failure of the Builder to cure such defect within a time period specified in such notice, shall have the right to cause such compliance and the Builder shall pay to the Developer or the Association the cost thereof, together with reasonable supervision charges which may be collected by the Developer and/or the Association. If the Builder fails to reimburse the Developer and/or the Association within seven (7) days following the rendering of an invoice, the Developer and/or the Association shall have the right to use such Security Fund; but the Builder shall immediately replenish any part of the Security Fund used by the Developer and/or the Association.

- (2) After the Builder shall have completed construction of the Living Unit and the Living Unit shall be occupied by an Occupant, and after the Builder shall have complied with all of the duties and provisions set forth in this Declaration, then the Developer and/or the Association, as the case may be, shall return to the Builder the balance of the Security Fund then held for such purpose, without interest. If there is a deficiency in such Security Fund with respect to any particular Living Unit, a Builder shall not be permitted to continue construction or commence any new construction until the Security Fund is replenished. In no event shall the Developer or Association be required to pay any interest with respect to such Security Fund.
- (3) The design and construction of each Living Unit shall comply with the requirements of the DRC and with the design and construction requirements imposed by the City in connection with City's approval of the Property. No Owner or Builder shall apply to the City for a building permit until and unless the DRC shall have approved the plans and specifications for the construction contemplated by the Builder or Owner. In addition, no Builder or Owner shall commence any proceedings before the City Board of Zoning Appeals, City Planning Commission, City Architectural Board, City Council or other required governmental authority or agency until the DRC shall have approved the construction desired by such Owner or Builder.
- (4) If the Developer (or an affiliate entity having common ownership with Developer) constructs Living Units, such entity shall be exempt from the Security Fund requirements of this Section.
- (5) The Developer reserves the right to file a declaration of covenants and building and use restrictions to supplement this Article VIII.

Section 8.4 - Inspection

The DRC may inspect work being performed with its permission to assure compliance with this Declaration and applicable regulations. The presence of the Developer or a member of the Association, or an agent of either, on any Sublot, shall not be deemed a trespass so long as the presence is in furtherance of said Person's duties as Developer or a member of the DRC. The DRC shall have access to a Living Unit at reasonable times and upon reasonable notice to the Owner of such Living Unit.

Section 8.5 - Violations and Remedies

Should any Living Unit be constructed, altered, or related improvements be reconstructed or removed from or upon any Sublot, or should the use thereof be modified in any way from the use originally constructed or installed without first obtaining the prior written approval of the Developer or Association as provided in this Article VIII, such act shall be deemed to be a violation of this Article VIII and this Declaration. Any party violating this Article VIII shall, immediately upon the receipt of written notice of such violation from the DRC, cease and desist from the commission of any such act and immediately commence to take such steps as will

alleviate or remedy any such condition of default and shall continue with all due diligence thereafter until the satisfactory completion of same. Should the party committing such act in contravention of this Article VIII fail to immediately take such remedial action as aforesaid, then and in such event, the Association shall have the right, but not the obligation, in addition to any and all other rights or remedies available to it at law or in equity, each of which remedies shall be deemed to be nonexclusive, to do any of the following:

- (a) Abate Violation: Without liability to the Owner of the Sublot, cause its agents and employees to enter upon the Sublot and/or the Living Units for the purpose of summarily abating any such use and/or removing any such building or structure or other improvement.
- (b) Seek Injunction: Apply to a court having jurisdiction over the Property for the purpose of obtaining an injunction directing the violating party to abate any such use and/or removing any such building or structure wherever located on the Property.
- (c) Seek Reimbursement. Seek full and complete reimbursement from any party committing any of the aforesaid acts in contravention of this Article VIII, of any costs, damages and expenses (including without limitation court costs, attorneys' and paralegals' fees, litigation costs, and costs to collect such sum) incurred by the Association with respect to its exercise of any of its rights for the purpose of remedying any such condition of default.
- (d) Treat as Assessment: Should the party committing any acts in contravention of this Article VIII be an Occupant and should such Occupant fail to immediately pay the full amount of all costs, damages, and expenses referred to in above, the Association shall be entitled to treat such amount as an Assessment against the Sublot of which such Occupant is or was the Owner, a member of the Owner's family or a guest or invitee of such Owner.

ARTICLE IX
ASSESSMENTS

Section 9.1 - Definition of Assessments

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

- (a) All expenditures required to fulfill the responsibilities of the Association, including, but not limited to, expenditures relating to maintenance fees;
- (b) All amounts incurred in collecting Assessments, including all legal and accounting fees;
- (c) Reserves for uncollectible Assessments, unanticipated expenses, replacements, major repairs and contingencies;
- (d) Annual capital additions and improvements and/or capital acquisitions (but not repairs or replacements) having a total cost in excess of Five Thousand Dollars (\$5,000), without in each case the prior approval of the Class "B" Member and the vote of at least a majority of the

Class "A" Members. In case of an emergency requiring prompt action to avoid further loss, the Board shall have the discretion to expend whatever is necessary to mitigate such loss.

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

Section 9.2 - Responsibility for Payment of Assessments

The Developer or the Board shall prepare or cause the preparation of an annual operating budget for the Association and shall fix the amount of the Assessments. Written notice of the Assessments shall be sent to the Owner of each Sublot. Payment of Assessments may be required by the Developer or Board on a quarterly, semi-annual or annual basis. As Sublots are improved with Living Units, the Owners thereof shall commence payment of the Assessments, except a Builder shall commence paying Assessments on a Sublot upon the Builder's acquisition of title to such Sublot. The amount of Assessments attributable to Living Units shall be established as of January 1 of each year and each Living Unit shall be charged an equal amount of the assessment. During the Subsidy Period, Developer shall pay all Common Expenses which are not covered by the annual Assessments payable by Owners of Sublots as set forth above. This obligation may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of both. The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services or materials or a combination of services and materials with Developer or other entities for the payment of some portion of the Common Expenses during the Subsidy Period. An Eligible Mortgage Holder acquiring title to all or any portion of the Property as a result of: (A) a foreclosure sale; or (B) a deed in lieu of foreclosure, shall not be responsible for the Developer's obligation for payment of the Common Expenses which are not covered by the annual Assessments payable by Owners of Sublots and Developer during the Subsidy Period.

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

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

Section 9.4 - Creation of Lien and Personal Obligation

Each Owner hereby covenants and agrees by acceptance of the deed to a Sublot whether or not it shall be so expressed in any such deed or other conveyance, to pay to the Association all Assessments levied against such Owner in accordance with this Declaration on or before the due date for any such Assessment. In the event that the Assessment is not paid by the tenth (10th) day of the month, then such Assessment shall be "delinquent" and the Assessment, together with the Costs of Collection (hereinafter defined) shall, upon "Perfection" as provided in Section 10.1, become a continuing lien upon the interest of such Person in his or her Sublot and shall bind such Owner, his or her heirs, devisees, personal representatives, successors and assigns. A co-Owner

of a Sublot shall be personally liable, jointly and severally, with all other co-Owners for all Assessments made by the Association with respect to said Sublot.

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

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

Section 9.6 - Liability for Assessments on Voluntary Conveyance

Upon the voluntary conveyance of an Ownership Interest the grantee of the Ownership Interest shall be jointly and severally liable with the grantor for all unpaid Assessments levied pursuant to this Declaration against the grantor of his or her Ownership Interest prior to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such prospective grantee, upon written request delivered to the Association, shall be entitled to a statement from the Board or an officer of the Association setting forth the amount of all unpaid Assessments due the Association with respect to the Ownership Interest to be conveyed and such grantee shall not be liable for, nor shall the Ownership Interest conveyed be subject to a lien, for any unpaid Assessments which become due prior to the date of the making of such request if the same are not set forth in such statement. The statement referred to herein shall be included in the Certificate of Compliance with Restrictions referred to in Section 7.25 of this Declaration. The Association may require the advance payment of a processing fee for the issuance of the Certificate of Compliance. A devise of an Ownership Interest or the distribution of said Ownership Interest pursuant to the Statute of Descent and Distribution shall be deemed to be a voluntary conveyance. An unpaid Assessment shall not be deemed a charge or lien against the Ownership Interest until perfected as such pursuant to Article X.

Section 9.7 - Additional Assessments

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

Section 9.8 - Exempt Property

Notwithstanding anything to the contrary herein, Sublots owned by the Developer and the Common Areas shall be exempt from payment of Assessments or Additional Assessments.

ARTICLE X
LIENS

Section 10.1 - Perfection of Lien

If any Owner or a Developer shall fail to pay an Assessment or Additional Assessment levied in accordance with this Declaration (such Owner hereinafter referred to as the "Delinquent Owner") when due and such Assessment or Additional Assessment is delinquent, or if an Owner or a Developer shall violate any rule or breach any restriction, covenant or provision contained in this Declaration or in the Code, the Board may authorize the perfection of a lien on the Ownership Interest of the delinquent and/or violating Owner or Developer by filing for record with the Recorder of Stark County, a Certificate of Lien. The Certificate of Lien shall be in recordable form and shall include the following:

- (a) The name of the delinquent Owner.
- (b) A description of the Ownership Interest of the delinquent Owner.
- (c) The entire amount claimed for the delinquency and/or violation, including interest thereon and Costs of Collection (defined in Section 11.3).
- (d) A statement referring to the provisions of this Declaration authorizing the Certificate of Lien.

Section 10.2 - Duration of Lien

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

Section 10.3 - Priority

A lien perfected under this Article X shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of bona fide mortgagees which have been heretofore filed for record. A lien perfected pursuant to this Article may be foreclosed in the same manner as a mortgage on real property in an action brought by the Association after authorization from the Board. In any such foreclosure action, the affected Owner shall be required to pay reasonable rental for such Ownership Interest during the pendency of such action and the plaintiff in such action shall be entitled to the appointment of a receiver to collect the same. Any funds received at the judicial sale of the delinquent Owner

or Developer's Ownership Interest in excess of mortgage liens, court costs and the taxes and assessment liens shall be paid over to the Association to the extent of its lien.

Section 10.4 - Dispute as to Assessment

The Developer or any Owner or Developer who believes that an Assessment levied by the Association against him for which a Certificate of Lien has been filed by the Association has been improperly determined, may bring an action under the Arbitration Provisions contained in Section 17.9 of this Declaration for the discharge of all or any portion of such lien; but the lien shall continue until the actual amount of the lien so determined is paid in full or otherwise be fully discharged.

Section 10.5 - No Waiver Implied

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

Section 10.6 - Personal Obligations

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

ARTICLE XI
REMEDIES OF THE ASSOCIATION

Section 11.1 - Denial of Voting Rights

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

Section 11.2 - Specific Remedies

The violation of any Rule, or the breach of any restriction, covenant or provision contained in this Declaration or in the Code, shall give the Association and the Original Developer the right, in addition to all other rights set forth herein and provided by law, (a) to enter upon the Living Unit or Sublot or portion thereof upon which, or as to which, such violation or breach exists, and summarily abate and remove, at the expense of the Owner or Developer of the Ownership Interest where the violation or breach exists, any structure, thing, or condition that may exist thereon, which is contrary to the intent and meaning of this Declaration, the Code, or the Rules, and the Association, or its designated agent shall not thereby be deemed guilty in any manner of trespass; (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach; (c) to commence and prosecute an action for specific performance or an action to recover any damages which may have been sustained by the Association or any of its Members as well as an action for punitive damages if warranted; and/or (d) to collect costs of suit and reasonable attorneys' and paralegals' fees

incurred in connection with the exercise by the Association of any remedies hereunder, the same to be deemed "Costs of Collection" under Section 11.3 hereof.

Section 11.3 - Cost of Collection

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

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

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

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

Section 11.4 - Binding Effect

The remedies provided in this Article XI against a Delinquent Owner or Developer may also be pursued against the heirs, executors, administrators, successors and assigns and grantees of such Owner or Developer, except as specifically provided in Section 9.5 of this Declaration.

ARTICLE XII **NO PARTITION**

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

ARTICLE XIII **CONDEMNATION**

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

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

ARTICLE XIV **MORTGAGEES' RIGHTS**

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

Section 14.1 - Notices of Action

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

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

If an Eligible Mortgage holder fails to submit a response to any written proposal for an amendment under this Article XIV within thirty (30) days after it receives proper notice of the proposal, the implied approval of such Eligible Mortgage Holder to the proposal shall be deemed

assumed, provided, the notice was delivered by certified or registered mail, with a "return receipt" requested.

Section 14.2 - Other Provisions for First Lien Holders

To the extent possible under Ohio law:

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

(b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Mortgage Holders on Sublots of at least fifty-one percent (51%) of the votes of Sublots and the Eligible Mortgage Holders of first mortgages of the Class "A" Members and the Class "B" Member, subject to mortgages held by such Eligible Mortgage Holders, are allocated.

Section 14.3 - Amendments to Documents

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

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

(b) The vote of at least sixty-seven percent (67%) of the Class "A" Members and the consent of the Class "B" Member and the approval of Eligible Mortgage Holders to which at least fifty-one percent (51%) of the votes of Sublots subject to mortgages appertain, shall be required to materially amend any provisions of the Declaration, Code, or Articles of Incorporation of the Association, or to add any material provisions thereto, which establish, provide for, govern, or regulate any of the following:

- (1) voting rights;
- (2) Assessments, Additional Assessments, assessment liens, or priority assessment liens;
- (3) reserves for maintenance, repair, and replacement of the Common Areas;
- (4) responsibility for maintenance and repair;
- (5) insurance or fidelity bonds;

- (6) rights to use of the Common Areas;
- (7) leasing of Living Units;
- (8) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Sublot (this provision is subject and subordinate to any provision in an agreement for the sale by the Developer of a Sublot.);
- (9) establishment of self-management by the Association where professional management has been required by an Eligible Mortgage Holder;
- (10) restoration or repair of the Property (after hazard damage or partial condemnation) in a manner other than that specified in this Declaration;
- (11) any action to terminate the legal status of the Property after substantial destruction or condemnation occurs;
- (12) expansion or contraction of the Property, or the addition, annexation, or withdrawal of the Property other than as provided in Section 1.3 of this Declaration; or
- (13) any provisions included in this Declaration, Code, or Articles of Incorporation which are for the express benefit of Eligible Mortgage Holders on Sublots.

Section 14.4 - Special Federal Living Unit Loan Mortgage Corporation Provisions

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

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

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

(c) First mortgagees may, jointly or singularly, pay taxes or other charges which are in default or which may or have become a charge against the Common Area and may pay overdue premiums of casualty insurance policies or secure new casualty insurance coverage

upon the lapse of a policy, for the Common Areas and first mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

(d) Mortgagees shall not be required to collect Assessments. Nonpayment of Assessments shall not constitute a default under any insured mortgage.

ARTICLE XV
TRANSFER OF SPECIAL DEVELOPER RIGHTS

Section 15.1 - Instrument Transferring Special Developer Rights

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

Section 15.2 - Liability of Transfer of Special Developer Rights

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

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

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

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

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

Section 15.3 - Acquisition of Special Developer Rights

Unless otherwise provided in a mortgage held by a first mortgagee, in case of foreclosure of a mortgage (or deed in lieu of foreclosure), tax sale, judicial sale, or sale under the Bankruptcy Code or receivership proceedings, of any Sublots owned by a Developer in the Property, a person acquiring title to all the Sublots being foreclosed (or deed in lieu of foreclosure) or sold, but only upon his or her request, succeeds to all Special Developer Rights related to such Sublots, or only to any rights reserved in the Declaration and/or Code to maintain models, sales

offices, customer service offices and signs. The judgment or instrument conveying title shall provide for transfer of only the Special Developer Rights requested.

Section 15.4 - Termination of Special Developer Rights

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

Section 15.5 - Liabilities of A Transferee of Special Developer Rights

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

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

(b) A successor to any Special Developer Right, other than a successor described in paragraphs (3) or (4) of this subsection, who is not an Affiliate of Developer, is subject to all obligations and liabilities imposed by the Declaration and Code: (i) on a Developer which relate to such Developer's exercise or non-exercise of Special Developer Rights; or (ii) on the transferor, other than: (A) misrepresentations by any previous Developer; (B) warranty obligations on improvements made by any previous Developer, or made before this Declaration is recorded; (C) breach of any fiduciary obligation by any previous Developer or appointees to the Board of Directors; or (D) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

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

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

Section 15.6 - Limitation on Liability of Transferee of Special Developer Rights

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

ARTICLE XVI
REQUIREMENTS OF THE CITY

Section 16.1 - Provisions Required by City

The following provisions are required by the Planning and Zoning Code of the City (the "Code") are provided in this Declaration as follows:

(a) The Association and the Owners of Living Units are responsible and liable for the control and maintenance of the Associations Roads and sidewalks/walkways (if any) pursuant to Section 1117.19 of the Code. Pursuant to Sections 1117.19(b) and 1117.19(c) of the Code, the deed for each Sublot shall contain the following language:

The undersigned grantee(s) hereby acknowledge(s) that (he, she, they) understand that the premises described herein is located upon a non-dedicated right-of-way. And further, the grantee(s) understand that no government body is responsible or liable for care and maintenance of said right-of-way and the grantee shall indemnify, defend and hold harmless all governmental bodies for any and all claims of any kind or nature that may arise or be related to such right-of-way.

No government body is responsible or liable for care, repair, replacement or maintenance of said sidewalks/walkways and the Owners Association for such development shall indemnify, defend and hold harmless all governmental bodies for any and all claims of any kind or nature that may arise or be related to such sidewalks/walkways.

(b) Pursuant to Section 1117.19(b) of the Code, the Association shall control and maintain Association Roads. See Section 6.1(c) hereof.

(c) Pursuant to Section 1117.19(c) of the Code, sidewalks and walkways (if any) within Common Areas shall be maintained by the Association. See Section 2.2(b) and Section 6.1(c) hereof.

(d) Pursuant to Section 1117.19(f)(1) of the Code, Open Space created through the subdivision process shall remain undivided and shall be owned and managed by the Association. See Section 6.1(f) hereof.

(e) Pursuant to Section 1117.19(f)(1) of the Code, the Association shall be responsible and liable for any and all construction, repair, replacement, maintenance, insurance, taxes and costs of any kind or nature on Common Areas including, but not limited to, Open Space, recreation facilities and Association roads. See Section 6.1(c)(f) and Section 6.2 hereof.

(f) Pursuant to Section 1117.19(f)(1) of the Code, the Association shall indemnify, defend and hold harmless the City for any and other governmental bodies for any and all claims of any kind or nature that may arise or are related to the Common Areas. See Section 6.12 hereof. Also, pursuant to Section 1117.19(f)(1) of the Code, the Association shall at all times maintain general liability coverage on the Common Areas in an amount of not less than one million dollars (\$1,000,000), and shall increase coverage in the future in an amount determined to be commercially reasonable at that time. See Section 6.5(a)(2) hereof.

(g) Pursuant to Section 1117.19(f)(2) of the Code, the Association shall be established before any Sublot is sold or any Living Unit is occupied. See Section 5.1 hereof.

(h) Pursuant to Section 1117.19(f)(2) of the Code, all Owners must be Members of the Association. See Section 5.2(a)(1) hereof.

(i) Pursuant to Section 1117.19(f)(2) of the Code, each Owner must pay a prorata share of required costs of any Assessment levied by the Association, and such Assessment shall become a lien if not paid. See Section 9.2 and Section 9.4 hereof.

(j) Pursuant to Section 1114.03(b) of the Code, the Owner or Builder of each Sublot shall pay to the City a fee of two hundred dollars \$200 prior to the issuance of a zoning permit, as such fee may be adjusted from time to time by the City.

(k) The Association shall be responsible for any and all surface restoration following any repairs by the City to the sanitary sewer lines and water lines. See Section 6.3 hereof.

(l) This Article shall not be amended without the written approval of the City.

ARTICLE XVII **GENERAL PROVISIONS**

Section 17.1 - Covenants Run With the Property; Binding Effect

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

(b) Each grantee accepting a deed or Tenant accepting a lease (whether oral or written) which conveys any interest in any portion of the Property that is submitted to all or any portion of this Declaration, whether or not the same incorporates or refers to this Declaration,

covenants for himself, his or her heirs, personal representatives, successors and assigns to observe, perform and be bound by all provisions of this Declaration and to incorporate said Declaration by reference in any deed, lease or other agreement of all or any portion of his or her interest in any real property subject hereto.

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

Section 17.2 - Duration

Unless sooner terminated as hereinafter provided, the Easements, Covenants and Restrictions of this Declaration shall continue for a term of fifty (50) years from the date this Declaration is recorded, after which time, said covenants and restrictions shall automatically be extended for successive periods of ten (10) years each unless terminated by an instrument signed by Members entitled to exercise not less than seventy-five percent (75%) of the Class "A" Members and by the Class "B" Member. No easement, restriction or condition herein shall be materially altered or terminated unless such alteration or termination is consistent with the controlling regulations of the City and other applicable governmental bodies.

Section 17.3 - Notices

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

(b) Notices to the Developer shall be deemed given only when received and must be either hand delivered or mailed by certified or registered mail, postage prepaid, to Developer, c/o The Levin Group, Inc., 1505 Ohio Savings Plaza, Cleveland, Ohio 44114, with a copy to Richard A. Rosner, Esquire, Kahn Kleinman, LPA, 1301 East Ninth Street, Suite 2600, Cleveland, Ohio 44114.

Section 17.4 - Enforcement-Waiver

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

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

Section 17.5 - Construction of the Provisions of this Declaration

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

(b) The Association, to the extent specifically provided herein, may adopt and promulgate Rules regarding the administration, interpretation and enforcement of the provisions of this Declaration. In so adopting Rules and in making any finding, determination, ruling or order, or in carrying out any directive contained herein relating to the issuance of permits, authorizations, approvals, rules or regulations, the Association shall take into consideration the best interests of the Developer(s), Owners, Tenants and Occupants to the end that the Property shall be preserved and maintained as a high quality, residential community.

Section 17.6 - Reservations by Original Developer - Exempt Property

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

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

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

(d) Original Developer reserves the right to perform or cause to be performed such work as is incident to the completion of the development and improvement of the Property (as the Property may be expanded by a Subsequent Amendment), owned or controlled by the Original Developer, notwithstanding any covenant, easement, restriction or provision of this Declaration or its exhibits, which may be to the contrary.

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

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

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

Section 17.7 - Assignability by Original Developer

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

Section 17.8 - Severability

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

Section 17.9 - Arbitration

Unless otherwise provided in this Declaration, any controversy, dispute or claim arising out of or relating to this Declaration or the breach thereof shall be settled by arbitration in

Cleveland, Ohio in accordance with the Commercial Rules of the American Arbitration Association and the judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction hereof. Depositions may be taken and other discovery obtained during such arbitration proceedings to the same extent as authorized in civil judicial proceedings for compensatory damages and the arbitrator(s) shall have no authority to award punitive, exemplary or similar type damages. The prevailing party in the arbitration proceeding shall be entitled to recover its expenses, including the costs of the arbitration proceeding, and reasonable attorney's fees.

Section 17.10 - Validity of Mortgages

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

Section 17.11 - Amendment of Declaration

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

(a) For so long as the Developer or a successor designated by the Developer is the Owner of a fee simple interest in the Property, the Original Developer shall be entitled from time to time to amend or modify any of the provisions of this Declaration or to waive any of the provisions, either generally or with respect to particular real property, if in its judgment, the development or lack of development of the Property requires such modification or waiver, or if in its judgment the purposes of the general plan of development of the Living Units will be better served by such modification or waiver, provided no such amendment, modification or waiver shall materially and adversely affect the value of existing Sublots or shall prevent a Sublot from being used by the Owner in the same manner that said Sublot was used prior to the adoption of said amendment, modification or waiver. To modify the Declaration in accordance with this paragraph, Original Developer shall file a supplement to this Declaration setting forth the Amendment, which supplement need not be but shall, at Original Developer's request, be executed by the Association and all Owners of real property within the Property. Each such Owner, by accepting a deed to his or her Sublot or other real property, hereby appoints Original Developer his or her attorney-in-fact, coupled with an interest, to execute on his or her behalf any such amendments. Each amendment shall be effective when signed by the Original Developer and filed for record with the Recorder of Stark County.

(b) This Declaration may also be amended by Original Developer or the Association at any time and from time to time for the purpose of: (1) complying with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Living Unit Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public entity, or private insurance company which performs (or may in the future perform) functions similar to those currently performed by

such entities; or (2) inducing any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages; or (3) correcting clerical or typographical or obvious factual errors in this Declaration or any Exhibit hereto or any supplement or amendment hereto; or (4) complying with the underwriting requirements of insurance companies providing casualty insurance, liability insurance or other insurance coverages for the Association; or (5) bringing any provision hereof into compliance or conformity with the provisions of any applicable governmental statute, ordinance, rule or regulation or any judicial determination; or (6) correcting obvious factual errors within this Declaration and other documents governing the Property and correcting any inconsistencies between this Declaration and other documents governing the Property, the correction of which would not materially impair the interest of any Owner or Eligible Mortgage Holder; or (7) enabling a title insurance company to issue title insurance coverage with respect to the Property or any portion thereof; or (8) complying with the requirements of the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and the Ohio Environmental Protection Agency. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Developer and/or to the Board to vote in favor of, make, or consent to a Subsequent Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting any portion of the Property and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of the power to the Original Developer to vote in favor of, make and record a Subsequent Amendment. To effect said amendment, Original Developer shall file a supplement to the Declaration setting forth the Subsequent Amendment which shall be signed by Original Developer and shall be effective upon the filing of the Subsequent Amendment with the Stark County Recorder.

(c) Original Developer shall have the right to amend this Declaration at any time and from time to time in accordance with or in implementation of any of the rights granted to or reserved by Original Developer in this Declaration.

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

(e) Article XVI (Requirements of the City) shall not be amended without the approval of the City.

Section 17.12 - Interest Rates

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

Section 17.13 - Headings

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

Section 17.14 - Rule Against Perpetuities

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

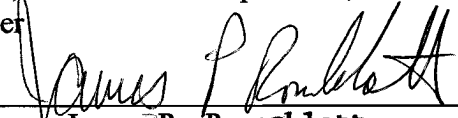


Instr: 200806130026885
 P: 58 of 90 F: \$732.00 06/13/2008
 Rick Campbell 9:58AM COND
 Stark County Recorder T20080023214

IN WITNESS WHEREOF, the parties have signed this document this _____ day of June 3, 2008, ~~2007~~.

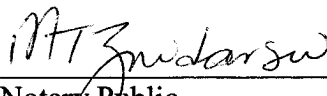
FULTON LANDINGS DEVELOPMENT LLC, an Ohio limited liability company

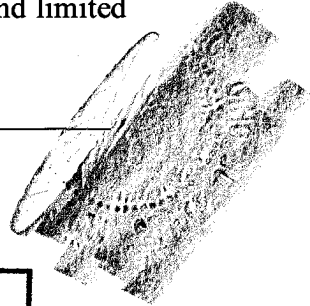
By: FULTON LANDINGS DEVELOPMENT CORP., an Ohio corporation, its sole member

By: 
 Name: James P. Rosenblatt
 Title: President

STATE OF OHIO)
) SS.
 COUNTY OF Cuyahoga)

On this 3rd day of June 2008, ~~2007~~, before me, a Notary Public in and for said County and State, personally appeared James P. Rosenblatt, the President of FULTON LANDINGS DEVELOPMENT CORP., an Ohio corporation, the sole member of FULTON LANDINGS DEVELOPMENT LLC, an Ohio limited liability company, who acknowledged that he did sign the foregoing instrument on behalf of the corporation and limited liability company.


 Notary Public
 My Commission Expires



This Instrument Prepared By:
 Richard A. Rosner, Attorney at Law
 Edward J. Leader, Attorney at Law
 Kahn Kleinman, LPA
 1301 East Ninth Street, Suite 2600
 Cleveland, Ohio 44114
 (216) 696-3311





Instr: 200806130026885
 P: 59 of 90 F: \$732.00 06/13/2008
 Rick Campbell 9:58AM COND
 Stark County Recorder T20080023214

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

Situated in the State of Ohio, County of Stark, and Township of Lawrence, (T-1, R-10) and being part of the Southeast Quarter of Section 4 of said Lawrence Township and being part of Out Lot 4 in the City of Canal Fulton and being part of the parcel now or formerly owned by Mary C. Beney (872-385) and being more fully described as follows:

Commencing for reference at a 1" bar with a 2" rounded top found at the southwest corner of said Southeast Quarter Section 4; Thence S 87° 38' 11" E along the south line of said southeast Quarter Section 4, a distance of 797.43 feet to a 5/8" rebar set at the place of beginning of the parcel herein described:

1. Thence N 31: 47' 38" W along the southwesterly line of said Beney parcel, a distance of 138.23 feet to a 5/8" rebar set;
2. Thence N 35° 45' 23" E, a distance of 137.30 feet to a 5/8" rebar set;
3. Thence N 62° 07' 18" E, a distance of 82.35 feet to a 5/8" rebar set;
4. Thence N 28° 08' 30" E, a distance of 305.00 feet to a 5/8" rebar set;
5. Thence N 73° 10' 07" E, a distance of 216.79 feet to a 5/8" rebar set;
6. Thence N 00° 38' 16" W, a distance of 325.00 feet to a 5/8" rebar set;
7. Thence S 86° 56' 06" E, a distance of 710.00 feet to a 5/8" rebar set;
8. Thence S 00° 46' 43" W along the west line of a 4.05 acre parcel now or formerly owned by R & L Kempe (4176:386) and a 2.34 acre parcel now or formerly owned by D & B Kmetko (3326.70) a distance of 613.10 feet to a 2" pipe found;
9. Thence N 87° 27' 34" W along the north line of a parcel now or formerly owned by I & Y Fabian (3144:336), a distance of 218.78 feet to a pipe found;
10. Thence S 03° 20' 44" W along the west line of said Fabian parcel and a parcel now or formerly owned by M. Rechel (3470:151), a distance of 320.14 feet to a + in a stone found
11. Thence S 03° 23' 51" W along the west line of a parcel now or formerly owned by W & M Rechel (2461:655), a distance of 139.27 feet to a + in a stone found;
12. Thence S 03° 23' 51" W along the west line of a parcel now or formerly owned by D & M Klatt (93-737), a distance of 190.03 feet to a 1" bolt found;
13. Thence N 87° 42' 06" W along the south line of said Out Lot 4, a distance of 662.24 feet to a 5/8" bar found;
14. Thence N 31° 47' 38" W along the southwesterly line of said Beney parcel, a distance of 39.74 feet;
15. Thence N 60° 35' 41" E along the southeasterly line of a 1.0 acre parcel now or formerly owned by A. Chapman (3229:124) a distance of 372.10 feet to a 1" pinched top pipe found;
16. Thence N 30° 57' 45" W along the northeasterly line of said Chapman Parcel, a distance of 115.00 feet to a 1" pinched top pipe found.
17. Thence S 60 deg 35' 41" W. along the northwesterly line of said Chapman parcel, a distance of 373.77 feet (passing over a 5/8" rebar set at a distance of 343.75 feet);
18. Thence N 31 deg 47' 38" W along the southerly line of said Beney parcel, a distance of 243.99 feet to the True Place of Beginning and containing 23.052 acres of which 18.154 acres are located in said southeast Quarter Section 4 and 4.898 acres are located in said Out Lot 4 as surveyed by Ronald C. Hinton, Surveyor S-6270 in May, 1991. Basis of Bearings from J. Chlebina Deeds (971-413 & 411 & 409 & 407) and Poggemeyey survey. subject to right of way of Erie Avenue.

Excepting Therefrom the Following Described Premises:

Situated in the State of Ohio, County of Stark and Township of Lawrence, (T-1, R-10) and being part of Out Lot 4 in the City of Canal Fulton and being part of a parcel now or formerly owned by Mary C. Beney (872-385) and being more fully described as follows:

Commencing for reference at a 1" bar with a 2" rounded top found at the southwest corner of the Southeast Quarter Section 4 of Said Lawrence Township; thence S 87° 38' 11" E. along the south line of said Southeast Quarter Section 4, a distance of 1260.41 feet to a 5/8" rebar set at the True Place of Beginning of the parcel herein described:

1. Thence S 87° 38' 11" E along the south line of said Southeast Quarter Section 4 and the north line of said Out Lot 4, a distance of 429.06 feet to a + in a stone found;
2. Thence S 03° 23' 51" W along the west line of a parcel now or formerly owned by W. & M. Rechel (2461;655), a distance of 139.27 feet to a + in stone found;
3. Thence S 03° 23' 51" W along the west line of a parcel now or formerly owned by D. & M. Klatt (93-737), a distance of 190.03 feet to a 1" bolt found;
4. Thence N 87° 42' 06" W along the south line of said Out Lot 4, a distance of 662.24 feet to a 5/8" bar found;
5. Thence N 31° 47' 38" W along the southwesterly line of said Beney parcel, a distance of 39.74 feet;
6. Thence N 60° 35' 41" E along the southeasterly line of a 1.0 acre parcel now or formerly owned by A. Chapman (3229;124), a distance of 372.10 feet to a 1" pinched top pipe found;
7. Thence N 30° 57' 45" W along the northeasterly line of said Chapman parcel, a distance of 115.00 feet to a 1" pinched top pipe found;
8. Thence N 60° 35' 41" E, a distance of 9.72 feet to the True Place of Beginning and containing 3.825 acres as surveyed by Ronald C. Hinton, Surveyor S-6270 in March, 1991.

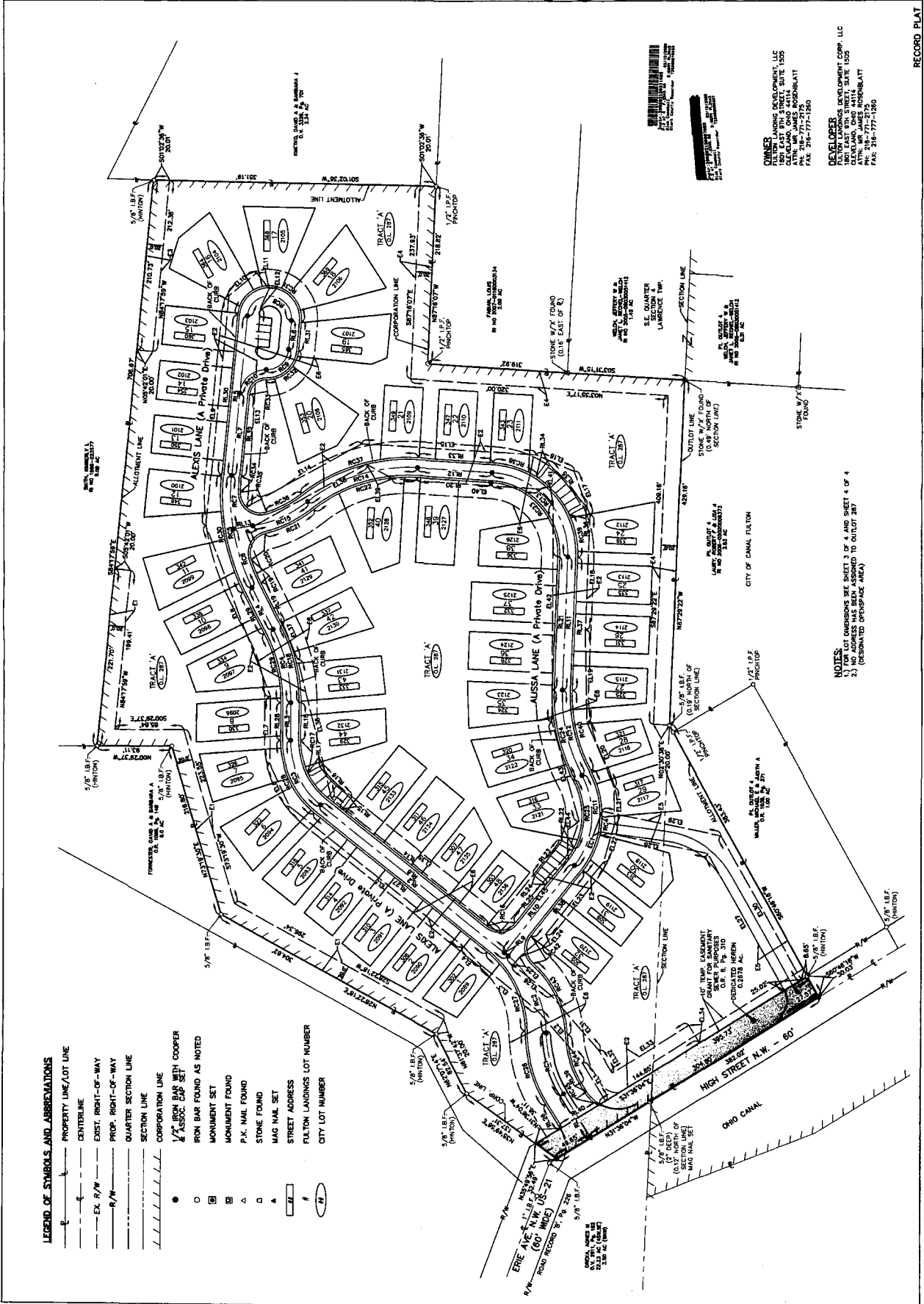
Basis of Bearing from Map of Survey by Hinton dated March, 1991. Subject to right of way of Eric Avenue

Further Excepting Therefrom the Following Described Premises:

Situated in the State of Ohio, County of Stark, and Township of Lawrence, (T-1, R-10) and known as being part of the Southeast Quarter of Section 4 and being part of a 23.052 acre parcel now or formerly owned by R. Benson (1089-391) and being further described as follows: Commencing for reference at a 1" bar found at the southwest corner of said Southeast Quarter Section 4 of said Lawrence Township; thence S. 87° 38' 11" E. along the South line of southeast Quarter Section 4, a distance of 1689.52 to a stone found; thence N. 03° 20' 44" E. along the West line of a 1.42 acre parcel now or formerly owned by Rechel (3470;151) and the west line of a 2.0 acre parcel now or formerly owned by L. & Y. Fabian (3144;336), a distance of 320.14 feet to a 1" pinched top pipe found; thence S. 87° 27' 34" E. along the north line of said L. & Y. Fabian parcel, a distance of 218.78 feet to a 2" pipe found thence N. 00° 46' 43" E. along the West line of a 2.344 acre parcel now or formerly owned by D. & B. Kmetko (3326;701), a distance of 349.10 feet to a 5/8" rebar set at the True Place of Beginning of the parcel herein described;

1. Thence N. 84° 18' 58" W. a distance of 706.29 feet to a 5/8" rebar set;
2. Thence N 00° 38' 16" W. along the easterly line of a 8.002 acre parcel now or formerly owned by D. & B. Forrester (1066;148), a distance fo 232.00 feet to a 5/8" bar found;
3. Thence S. 86° 56' 06" E. along the south line of said Forrester parcel, a distance of 710.00 feet to a 5/8" rebar found;
4. Thence S. 00° 46' 43" W. along the westerly line of a 4.05 acre parcel now or formerly owned by R. & L. Kempe (4176;386), a distance of 264.00 feet to the True Place of Beginning and containing 4.019 acres as surveyed by Ronald C. Hinton, S-6270 in March, 1993.

Leaving 15.208 acres.



LEGEND OF SYMBOLS AND ABBREVIATIONS

PROPERTY LINE/LOT LINE
 CENTERLINE
 EXIST. RIGHT-OF-WAY
 PROP. RIGHT-OF-WAY
 QUARTER SECTION LINE
 SECTION LINE
 CORPORATION LINE
 1/2" IRON BAR WITH COOPER & ASSOC. CAP SET
 IRON BAR FOUND AS NOTED
 MONUMENT SET
 MONUMENT FOUND
 P.K. NAIL FOUND
 STONE FOUND
 MAG NAIL SET
 STREET ADDRESS
 FULTON LANDINGS LOT NUMBER
 CITY LOT NUMBER

NOTES:
 1) THE LOT DIMENSIONS SEE SHEET 3 OF 4 AND SHEET 4 OF 4.
 2) THE DIMENSIONS SHOWN ARE TO BE USED TO LOCATE THE OUTLET POINT (RESERVED SPACE AREA).

OWNER:
 FULTON LANDINGS DEVELOPMENT, LLC
 1801 EAST 9TH STREET, SUITE 1505
 CLEVELAND, OHIO 44115
 PHONE: (216) 777-2725
 FAX: (216) 777-1260

DEVELOPER:
 FULTON LANDINGS DEVELOPMENT, LLC
 1801 EAST 9TH STREET, SUITE 1505
 CLEVELAND, OHIO 44115
 PHONE: (216) 777-2725
 FAX: (216) 777-1260



REVISIONS

NO.	DATE	DESCRIPTION

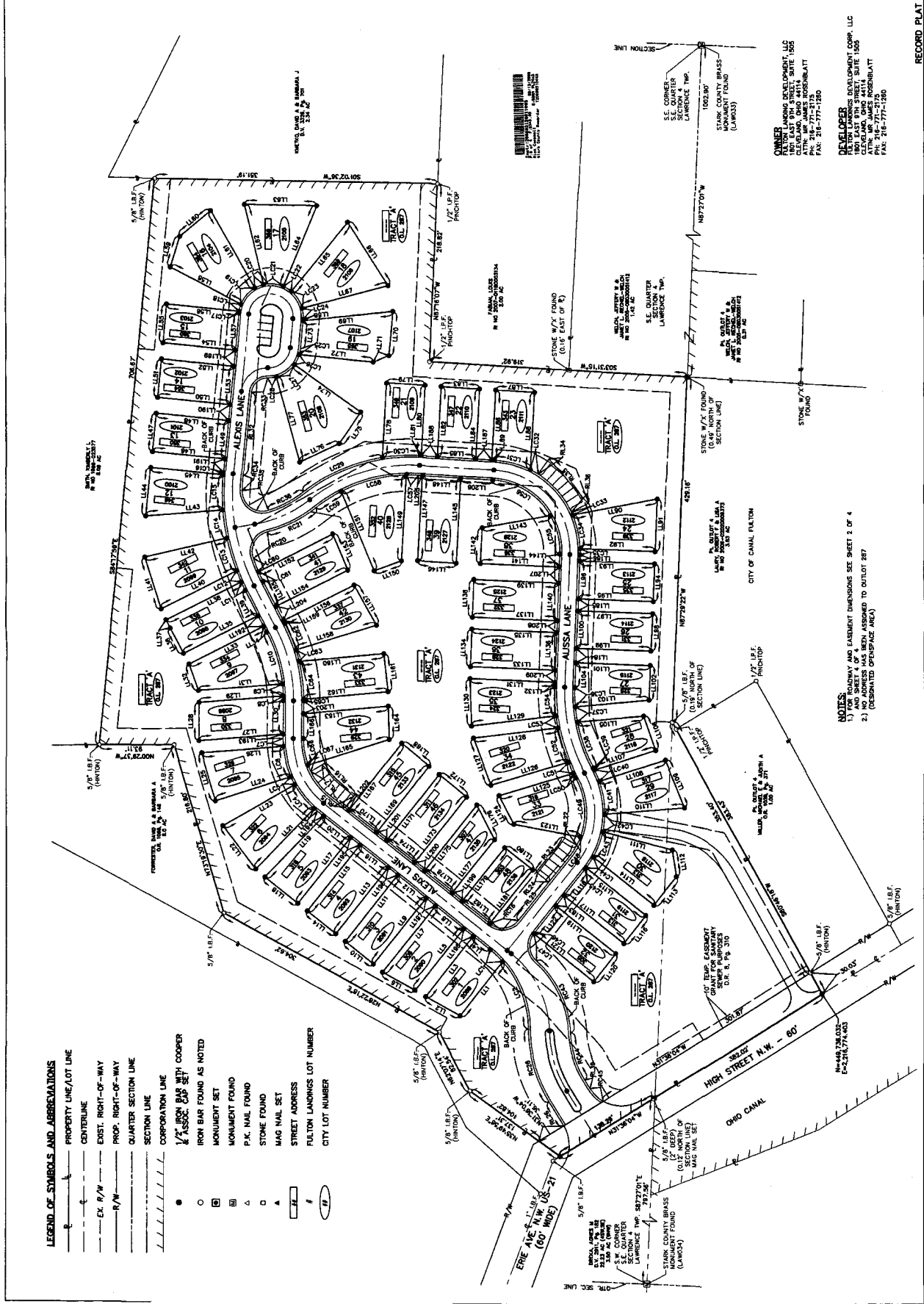
COOPER & ASSOCIATES, LLP
 ENGINEERS AND SURVEYORS
 BRYAN J. ADAMS
 ARNOLD E. ORB
 4715
 198 MARKET
 COLUMBUS OHIO
 PHONE (614) 462-0731
 FAX (614) 462-0731



FULTON LANDINGS
 RECORD PLAT
 FOR: FULTON LANDINGS DEVELOPMENT LLC

OWNER:
 FULTON LANDINGS DEVELOPMENT LLC
 180 EAST 10TH STREET, SUITE 1505
 CLEVELAND, OHIO 44114
 ATTENTION: JAMES ROSEBLATT
 PH: 216-771-2173
 FAX: 216-771-1260

RECORD PLAT
 SHEET 3 OF 4
 FILED 04-30-03



NOTES:
 1. ALL DIMENSIONS AND EASEMENT DIMENSIONS SEE SHEET 2 OF 4
 AND SHEET 3 OF 4, ARE ASSIGNED TO OUTLET 287
 2. (DESIGNATED OPENSPACE AREA)

- LEGEND OF SYMBOLS AND ABBREVIATIONS**
- PROPERTY LINE/LOT LINE
 - CENTERLINE
 - - - EX. R/W
 - - - PROP. RIGHT-OF-WAY
 - - - QUARTER SECTION LINE
 - - - SECTION LINE
 - CORPORATION LINE
 - 1/2" IRON BAR WITH COOPER & ASSOC. CAP SET
 - IRON BAR FOUND AS NOTED
 - MONUMENT SET
 - ⊠ P.K. NAIL FOUND
 - △ STONE FOUND
 - ▲ MAG NAIL SET
 - ▭ STREET ADDRESS
 - ▭ FULTON LANDINGS LOT NUMBER
 - ▭ CITY LOT NUMBER

Instr: 200806130026885
 P: 63 of 90 F: \$732.00 06/13/2008
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 Stark County Recorder T20080023214

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LINE #	LENGTH	BEARING	LINE #	LENGTH	BEARING	LINE #	LENGTH	BEARING
86.1	84.50	N87°31'00"W	118.1	85.00	N87°31'00"W	146.1	85.00	N87°31'00"W
86.2	84.50	N87°31'00"E	118.2	85.00	N87°31'00"E	146.2	85.00	N87°31'00"E
86.3	84.50	N87°31'00"S	118.3	85.00	N87°31'00"S	146.3	85.00	N87°31'00"S
86.4	84.50	N87°31'00"W	118.4	85.00	N87°31'00"W	146.4	85.00	N87°31'00"W
86.5	84.50	N87°31'00"E	118.5	85.00	N87°31'00"E	146.5	85.00	N87°31'00"E
86.6	84.50	N87°31'00"S	118.6	85.00	N87°31'00"S	146.6	85.00	N87°31'00"S
86.7	84.50	N87°31'00"W	118.7	85.00	N87°31'00"W	146.7	85.00	N87°31'00"W
86.8	84.50	N87°31'00"E	118.8	85.00	N87°31'00"E	146.8	85.00	N87°31'00"E
86.9	84.50	N87°31'00"S	118.9	85.00	N87°31'00"S	146.9	85.00	N87°31'00"S
87.0	84.50	N87°31'00"W	119.0	85.00	N87°31'00"W	147.0	85.00	N87°31'00"W

CURVE	LENGTH	RADIUS	DELTA	TANGENT	CHORD	BEARING
86.1	84.50	150.00	300.00	60.21	77.67	N72°24'24"E
86.2	84.50	150.00	300.00	60.21	77.67	N72°24'24"E
86.3	84.50	150.00	300.00	60.21	77.67	N72°24'24"E
86.4	84.50	150.00	300.00	60.21	77.67	N72°24'24"E
86.5	84.50	150.00	300.00	60.21	77.67	N72°24'24"E
86.6	84.50	150.00	300.00	60.21	77.67	N72°24'24"E
86.7	84.50	150.00	300.00	60.21	77.67	N72°24'24"E
86.8	84.50	150.00	300.00	60.21	77.67	N72°24'24"E
86.9	84.50	150.00	300.00	60.21	77.67	N72°24'24"E
87.0	84.50	150.00	300.00	60.21	77.67	N72°24'24"E

LINE #	LENGTH	BEARING	LINE #	LENGTH	BEARING	LINE #	LENGTH	BEARING
147.1	85.00	N87°31'00"W	119.1	85.00	N87°31'00"W	147.1	85.00	N87°31'00"W
147.2	85.00	N87°31'00"E	119.2	85.00	N87°31'00"E	147.2	85.00	N87°31'00"E
147.3	85.00	N87°31'00"S	119.3	85.00	N87°31'00"S	147.3	85.00	N87°31'00"S
147.4	85.00	N87°31'00"W	119.4	85.00	N87°31'00"W	147.4	85.00	N87°31'00"W
147.5	85.00	N87°31'00"E	119.5	85.00	N87°31'00"E	147.5	85.00	N87°31'00"E
147.6	85.00	N87°31'00"S	119.6	85.00	N87°31'00"S	147.6	85.00	N87°31'00"S
147.7	85.00	N87°31'00"W	119.7	85.00	N87°31'00"W	147.7	85.00	N87°31'00"W
147.8	85.00	N87°31'00"E	119.8	85.00	N87°31'00"E	147.8	85.00	N87°31'00"E
147.9	85.00	N87°31'00"S	119.9	85.00	N87°31'00"S	147.9	85.00	N87°31'00"S
148.0	85.00	N87°31'00"W	120.0	85.00	N87°31'00"W	148.0	85.00	N87°31'00"W

LOT	AREA	LOT #	LOT	AREA	LOT #	LOT	AREA
101	101.50	101.50	102	102.50	102.50	103	103.50
104	104.50	104.50	105	105.50	105.50	106	106.50
107	107.50	107.50	108	108.50	108.50	109	109.50
112	112.50	112.50	113	113.50	113.50	114	114.50
117	117.50	117.50	118	118.50	118.50	119	119.50
124	124.50	124.50	125	125.50	125.50	126	126.50
131	131.50	131.50	132	132.50	132.50	133	133.50
138	138.50	138.50	139	139.50	139.50	140	140.50
145	145.50	145.50	146	146.50	146.50	147	147.50
152	152.50	152.50	153	153.50	153.50	154	154.50
161	161.50	161.50	162	162.50	162.50	163	163.50
168	168.50	168.50	169	169.50	169.50	170	170.50
175	175.50	175.50	176	176.50	176.50	177	177.50
182	182.50	182.50	183	183.50	183.50	184	184.50
189	189.50	189.50	190	190.50	190.50	191	191.50
196	196.50	196.50	197	197.50	197.50	198	198.50
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490	490.50	490.50	491	491.50	491.50	492	492.50
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525	525.50	525.50	526	526.50	526.50	527	527.50
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553	553.50	553.50	554	554.50	554.50	555	555.50
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581	581.50	581.50	582	582.50	582.50	583	583.50
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644	644.50	644.50	645	645.50	645.50	646	646.50
651	651.50	651.50	652	652.50	652.50	653	653.50
658	658.50	658.50	659	659.50	659.50	660	660.50
665	665.50	665.50	666	666.50	666.50	667	667.50
672	672.50	672.50	673	673.50	673.50	674	674.50
679	679.50	679.50	680	680.50	680.50	681	681.50
686	686.50	686.50	687	687.50	687.50	688	688.50
693	693.50	693.50	694	694.50	694.50	695	695.50
700	700.50	700.50	701	701.50	701.50	702	702.50
707	707.50	707.50	708	708.50	708.50	709	709.50
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735	735.50	735.50	736	736.50	736.50	737	737.50
742	742.50	742.50	743	743.50	743.50	744	744.50
749	749.50	749.50	750	750.50	750.50	751	751.50
756	756.50	756.50	757	757.50	757.50	758	758.50
763	763.50	763.50	764	764.50	764.50	765	765.50
770	770.50	770.50	771	771.50	771.50	772	772.50
777	777.50	777.50	778	778.50	778.50	779	779.50
784	784.50	784.50	785	785.50	785.50	786	786.50
791	791.50	791.50	792	792.50	792.50	793	793.50
798	798.50	798.50	799	799.50	799.50	800	800.50
805	805.50	805.50	806	806.50	806.50	807	807.50
812	812.50	812.50	813	813.50	813.50	814	814.50
819	819.50	819.50	820	820.50	820.50	821	821.50
826	826.50	826.50	827	827.50	827.50	828	828.50
833	833.50	833.50	834	834.50	834.50		



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EXHIBIT "C"

CERTIFICATE OF COMPLIANCE AND STATUS OF ASSESSMENTS
WITH RESPECT TO THE RESALE OF A HOME
AT FULTON LANDINGS
CANAL FULTON, OHIO

Fulton Landings Homeowners' Association, Inc., an Ohio non-profit corporation (the "Association"), created to govern, operate, control and administer the "Areas of Common Responsibility" for Fulton Landings, Canal Fulton, Ohio ("Fulton Landings") and to supervise and enforce the Declaration of Covenants, Conditions, Easements and Restrictions for Fulton Landings (the "Declaration") hereby certifies as follows:

1. The Association has received notice of a proposed sale of Sublot No. _____, located at _____, Canal Fulton, Ohio.
2. The proposed purchaser of the Sublot is _____.
3. The owner(s) of the Sublot (is) (are) _____.
4. The Association has no record of a violation of the Covenants and Restrictions contained in the Declaration except _____ (if none, write "None").
5. The current annual assessment attributable to the Sublot is \$ _____.
6. The assessments are payable at the rate of \$ _____ per (month) (quarter); said assessments being payable through _____ 200__.
7. A fee of \$50.00 is payable to the Association upon the issuance of this Certificate in accordance with the terms of the Declaration.

This Certificate of Compliance is being issued pursuant to Section 7.25 of the Declaration.

**FULTON LANDING HOMEOWNERS'
 ASSOCIATION, INC.**

By: _____

Date: _____



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EXHIBIT "D"

**CODE OF REGULATIONS OF FULTON LANDINGS
HOMEOWNERS' ASSOCIATION, INC.**

CODE OF REGULATIONS

OF

FULTON LANDINGS HOMEOWNERS' ASSOCIATION, INC.,

A Non-Profit Ohio Corporation

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CODE OF REGULATIONS



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OF

FULTON LANDINGS HOMEOWNERS' ASSOCIATION, INC.

ARTICLE I

NAME, PRINCIPAL OFFICE, AND DEFINITIONS

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

Section 2. Principal Office. The principal office of the Association shall be located in the City of Canal Fulton, Stark County, Ohio. The Association may have such other offices, either within or without Canal Fulton, as the Board of Directors ("**Board**") may determine or as the affairs of the Association may require.

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

ARTICLE II

ASSOCIATION: MEETINGS, QUORUM, VOTING, PROXIES

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

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

Section 3. Annual Meetings. The first meeting of the Members, whether a regular or special meeting, shall be held within thirty (30) days after the termination of the Class "B" Control Period specified in Article IIIA, Section 2 hereof, unless the Developer determines in its sole discretion to call a special meeting prior thereto. The next annual meeting shall be set by the Board so as to occur no later than ninety (90) days after the close of the Association's fiscal year. Subsequent regular annual meetings of the Members shall be held within thirty (30) days of the same day of the same month of each year thereafter at an hour set by the Board. Subject to

the foregoing, the annual meeting of the Members shall be held at a date and time as set by the Board.

Section 4. Special Meetings. The Developer or the President of the Association may call special meetings. In addition, after the Developer is no longer a Class "B" Member, it shall be the duty of the President of the Association to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board or upon a petition signed by holders of at least twenty-five percent (25%) of the total votes of the Association. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

Section 5. Notice of Meetings. A written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than seven (7) nor more than sixty (60) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

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

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

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

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

The Class "A" Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of

enough Class "A" Members to leave less than a quorum, provided that at least twenty-five (25%) percent of the total votes of the Association remains present in person or by proxy, and provided further that any action taken shall be approved by at least a majority of the Members required to constitute a quorum.

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


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

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

Section 11. Quorum. Except as otherwise provided in this Code or in the Declaration, the presence in person or by proxy of at least one-third (1/3) of the voting power of the Class "A" Members of the Association shall constitute a quorum at all meetings of the Association. Any provision in the Declaration concerning quorums is specifically incorporated herein.

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

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


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ARTICLE III
BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS

A. COMPOSITION AND SELECTION.

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

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

- (a) when all Sublots on the Property have been sold and conveyed to Persons other than the Developer;
- (b) December 31, 2012; or
- (b) when, in its discretion, the Class "B" Member so determines.

Section 3. Right to Disapprove Actions. This Section 3 may not be amended without the express, written consent of the Developer as long as the Developer owns a Sublot within the Property.

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

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

- (a) The Class "B" Member shall have been given written notice of all meetings and proposed actions approved at meetings of the Board or any committee thereof by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice complies as to the Board meetings with Article IIIB, Sections 8, 9, and 10, of this Code and which notice shall, except in the case of the regular meetings held pursuant to this Code, set forth in reasonable particularity the agenda to be followed at said meeting; and



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

Section 4. Number of Directors. The number of Directors in the Association shall consist of three (3) Board members, as provided in Section 6 below.

Section 5. Nomination of Directors. Except with respect to Directors selected by the Class "B" Member, nominations for election to the Board of Directors shall be made by the Members. All candidates shall have a reasonable opportunity to communicate their qualifications to the Class "A" Members and to solicit votes.

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

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

(b) Within thirty (30) days after the time Class "A" Members own eleven (11) or more of the Sublots, or whenever the Class "B" Member earlier determines, the Association shall call a special meeting at which the Class "A" Members shall elect one (1) of the three (3) Directors. The remaining two (2) Directors shall be appointees of the Class "B" Member. The Director elected by the Class "A" Members shall not be subject to removal by the Class "B" Member acting alone and shall be elected for a term of two (2) years or until the happening of the event described in subsection (b) below, whichever is shorter. If such Director's term expires prior to the happening of the event described in subsection (b) below, a successor shall be elected for a like term.

(c) At the first annual meeting of the membership after the termination of the Class "B" Control Period specified in Section 2 of this Article IIIA, the Class "A" Members shall elect all three (3) Directors. Immediately prior to such election, all persons previously elected or appointed, whether by the Developer or by the Class "A" Members, shall resign; provided, however, that such persons shall be eligible for reelection to the Board of Directors. The first order of business at the first annual meeting of the membership, after proof of notice of the meeting and the determination that a quorum of Class "A" Members is present at the meeting is the election of the Board of Directors. The meeting will be conducted by a representative of the Developer. One (1) Director shall be elected to serve a term of three (3) years, one (1) Director shall be elected to serve a term of two (2) years, and one (1) Director shall be elected to serve a term of one (1) year. Upon the expiration of the initial term of office of each such Director, a successor shall be elected to serve a term of three (3) years. Thereafter, all Directors shall be elected to serve three (3) year terms. For the purpose of the election of Directors, each Class "A" Member shall have one (1) equal vote, and the Class "B" Member shall also be entitled to a vote for each Living Unit owned by the Class "B" Member, except as otherwise provided above.

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

B. MEETINGS.

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

Section 9. Regular Meetings. During the Class "B" Control Period, regular meetings of the Board shall be held at such time and place as shall be determined from time to time by the Class "B" Member, but at least one (1) such meeting shall be held during each fiscal year. After the expiration of the Class "B" Control Period, the first annual meeting of the Members shall be held as provided in Article II, Section 3 herein, and thereafter regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Board, but at least two (2) such meetings shall be held during each fiscal year with at least one (1) per half. Notice of the time and place of the meeting shall be communicated to members of the Board not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any member of the Board who has signed a waiver of notice or a written consent to holding of the meeting.

Section 10. Special Meetings. Special meetings of the Board shall be held when called by written notice signed by the President, Vice President, or Secretary of the Association, or by any two (2) members of the Board. The notice shall specify the time and place of the

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

Section 11. Waiver of Notice. The transactions of any meetings of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the members of the Board not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any member of the Board who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

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

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

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

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

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

Section 17. Action Without a Formal Meeting. Any action to be taken at a meeting of the Board or any action that may be taken at a meeting of the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members of the Board, and such consent shall have the same force and effect as a unanimous vote. An explanation of the action taken shall be posted at a prominent place or places within the Common Areas within three (3) days after the written consents of all the members of the Board have been obtained.

C. POWERS AND DUTIES.

Section 18. Powers. Except as set forth in the Declaration and in this Code, the Board shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or this Code directed to be done and exercised exclusively by the Class "A" Members or the membership generally.

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

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

- (a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the Common Expenses;
- (b) imposing assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment; provided, however, that unless otherwise determined by the Board, the annual assessment against the proportionate share of the Common Expenses shall be payable in equal installments at such intervals as may be determined by the Board;
- (c) providing for the operation, care, upkeep, and maintenance of all of the Common Areas;
- (d) designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Association, its property, and the Common Areas and, where appropriate, providing for the compensation of such personnel and for the purchase of

equipment, supplies, and material to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association; provided, however, that any reserve fund may be deposited, in the Director's best business judgment, in depositories other than banks;

(f) making and amending rules and regulations;

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

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

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

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

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

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

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

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

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

Section 19. Management Agent.

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

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

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

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

(b) accounting and controls should conform with established AICPA guidelines and principles, which require, without limitation, a segregation of accounting duties and cash disbursements limited to amounts of One Hundred Dollars (\$100) and under. Disbursements by check shall only require the signature of either the President or Treasurer of the Association;

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

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

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

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

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

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

- (iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format;
- (iv) a balance sheet of an accounting date which is the last day of the preceding period;
- (v) a balance sheet as of the last day of the Association's fiscal year and an operating statement for said fiscal year, which shall be distributed within ninety (90) days after the close of a fiscal year;
- (vi) a delinquency report listing all Owners who have been delinquent in paying the installments of assessments at the time of the report and describing the status of any action to collect such installments which remain delinquent (an installment of the assessment shall be considered to be delinquent on the fifteenth (15th) day of the month it is due unless otherwise determined by the Board); and

(g) an annual report consisting of at least the following shall be distributed to all Class "A" Members within one hundred twenty (120) days after the close of the fiscal year: (1) a balance sheet as of the end of the fiscal year; (2) an operating (income) statement for the fiscal year; and (3) a statement of changes in financial position for the fiscal year. Said report shall be accompanied by the certificate of an authorized officer of the Association that the statements were prepared without audit from the books and records of the Association.

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

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

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

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

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

- (i) Impose a fine against the Member or Tenant or other occupant as provided in Subsection (b) of this Section; and/or
- (ii) Commence an action to enforce performance on the part of the Member or Tenant or other occupant, and to require the Member to correct such failure, or for such other relief as may be necessary under the circumstances, including injunctive relief; and/or
- (iii) The Association may itself perform any act or work required to correct such failure and, either prior to or after doing so, may charge the Member with all reasonable costs incurred or to be incurred by the Association in connection therewith, plus a service fee equal to fifteen percent (15%) of such costs. In connection with the foregoing, the Association may perform any maintenance or repairs required to be performed, may remove any change, alteration, addition or improvement which is unauthorized or not maintained in accordance with the provisions of the Declaration, and may take any and all other action reasonably necessary to correct the applicable failure; and/or
- (iv) Commence an action to recover damages or any other remedy available at law or in equity.

(b) **Fines.** The amount of any fine shall be a reasonable amount as determined by the Board or the Covenants Committee (as defined in Article V, Section 2). Prior to imposing any fine, the Member or Tenant or other occupant shall be afforded an opportunity for a hearing after reasonable notice to the Member or Tenant or other occupant of not less than ten (10) days, which notice shall include (i) a statement of the date, time and place of the hearing, (ii) a statement of the provisions of the Declaration, this Code or Rules which have allegedly been violated, and (iii) a short and plain statement of the matters asserted by the Association or the committee. Prior to the effectiveness of any sanction hereunder, proof of notice and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery is entered by the officer, Board member, committee member or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the hearing. The minutes of the hearing shall contain a written statement of the hearing and the sanction, if any, imposed. The Member or Tenant or other occupant shall have an opportunity to respond, to present evidence, and to provide written and oral arguments on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association. At the hearing, the Board or committee shall conduct a reasonable inquiry to

determine whether the alleged violation in fact occurred, and if the Board or committee so determines, it may impose such fine as it deems appropriate by written notice to the Member or Tenant or other occupant. If the Member or Tenant or other Occupant fails to attend the hearing as set by the Board or committee, the Member or Tenant or other Occupant shall be deemed to have admitted the allegations contained in the notice to the Member or Tenant or other Occupant. Any fine imposed by the Board or committee shall be due and payable within ten (10) days after written notice of the imposition of the fine, or if a hearing is timely requested, within ten (10) days after written notice of the Board's or committee's decision at the hearing. Any fine levied against a Member shall be deemed an Assessment and if not paid when due all of the provisions of the Declaration relating to the late payment of Assessments shall be applicable.

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

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

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

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

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

(h) **Appeal.** Following a hearing before a committee, the violator shall have the right to appeal the decision to the Board. To perfect this right, a written notice of appeal must be

received by the President or Secretary of the Association within thirty (30) days after the date of receipt of the decision of the committee. No later than thirty (30) days after receipt of the notice of appeal, the Board shall review the minutes of the hearing. The affirmative vote of two-thirds (2/3rds) of the members of the Board shall be required to reverse or modify the decision of the committee.

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

ARTICLE IV **OFFICERS**

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

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

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

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



delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

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

Section 6. Agreements, Contracts, Deeds, Easements, Leases. All agreements, contracts, deeds, easements, leases, and other instruments of the Association shall be executed by the President of the Association, or by such other person or persons as may be designated by resolution of the Board.

ARTICLE V **COMMITTEES**

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

Section 2. Covenants Committee. The Board may appoint a Covenants Committee consisting of three (3) members. Acting in accordance with the provisions of the Declaration, this Code, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Article IIIC, Section 23 of this Code.

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

Section 1. Preparation of Estimated Budget. On or before the filing with the Stark County Recorder of the Declaration, and on or before December 15 of each year thereafter, the Association shall estimate the total amount necessary to pay the Assessments referred to in Article IX of the Declaration for the balance of the calendar year in which the Declaration is filed and, thereafter, for each succeeding calendar year together with a reasonable amount considered by the Association to be necessary for a reserve for contingencies and replacements, and the amounts, if any, which may be received from special assessments, concessions, contracts for special services and facilities, and other sources. On or before December 21, the Association shall notify each Member in writing as to the amount of such estimates, and shall send a copy of such notice to each holder of a first mortgage upon the Ownership Interest of a Member who has made a request in writing for such notification. The failure of the Association to comply strictly with the above time requirements shall not be deemed to be a waiver and shall not prevent the Association from collecting Assessments. The net of the aggregate amounts of such estimates (herein called the "**Estimated Cash Requirements**") of the net calendar year shall be assessed to

those Members required to pay the Assessments according to and as specifically set forth in Article IX of the Declaration. Each Member required to pay Assessments shall pay to the Association or as it may direct, the Assessment made pursuant to this Section on or before the first day of each calendar month. On or before the date of each annual meeting, the Association shall furnish to all Members an itemized accounting of the expenditures for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided, by special Assessments, or otherwise, and showing the net amount over or short of the actual expenditures plus reserves. At the sole discretion of the Board, any amount accumulated in excess of the amount required for actual expenses and reserves and/or to cover any shortages shall be credited to the last maturing installments due from the Members under the current year's estimate, pro rata. Any net shortage shall be added pro rata to the next installment due after the rendering of the accounting.

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

Section 2. Reserve for Contingencies and Replacements: Special Assessments.

The Association shall build up and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual estimate which may be necessary for the year, shall be charged first against such reserve. If the "Estimated Cash Requirements" proves inadequate for any reason, including nonpayment of any Member's Assessment, the deficiency and any extraordinary expenditures in excess of the reserves therefor shall be assessed to the Members required to pay assessments, pro rata. The Association shall also make any necessary or desirable special Assessments, from time to time which shall be payable at the time or times the Board deems necessary or desirable. The Association shall serve notice of such further Assessments on Members required to pay Assessments, by a statement in writing giving the amount and reasons therefor, and such further assessment shall be payable with the next regular payment becoming due to the Association but not less than ten (10) days after the delivery or mailing of such notice of further Assessment.

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

Section 4. Books and Records of the Association.

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

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

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

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

Section 5. Status of Funds Collected by Association. All funds collected hereunder shall be held and expended solely for the purposes designated herein and (except for such special Assessments as may be levied hereunder against less than all of the Members and for such adjustments as may be required to reflect delinquent or prepaid Assessments) shall be deemed to be held for the use, benefit and account of all Members required to pay Assessments pursuant to Article 9.2 of the Declaration.

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

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

Section 8. Remedies for Failure to Pay Assessments. If an Owner shall be in default in the payment of any of the aforesaid Assessments, the Association (or Developer if

such Assessment was to be paid directly to Developer) shall have all of the remedies set forth anywhere in the Declaration, in this Code or at law or equity to collect such Assessments and all costs associated therewith.

ARTICLE VII **INDEMNIFICATION**

Section 1. In General The Association shall indemnify any member of the Board, officer, employee, or agent of the Association or any former member of the Board, officer, employee or agent of the Association and/or its or their respective heirs, executors and administrators, against reasonable expenses, including attorneys' fees, judgments, decrees, fines, penalties or amounts paid in settlement actually and necessarily incurred by him in connection with the defense of any pending or threatened action, suit, or proceeding, criminal or civil, to which he is or may be made a party by reason of being or having been such member of the Board, officer, employee or agent of the Association, provided it is determined in the manner hereinafter set forth (i) that such member of the Board, officer, employee or agent of the Association was not, and is not, adjudicated to have been grossly negligent or guilty of willful misconduct in the performance of his duty to the Association, (ii) that such member of the Board acted in good faith in what he reasonably believed to be in the best interest of the Association, (iii) that, in any matter the subject of a criminal action, suit or proceeding, such Board member had no reasonable cause to believe that this conduct was unlawful, and (iv) in case of settlement, that the amount paid in the settlement was reasonable. Such determination shall be made either by the members of the Board of the Association acting at a meeting at which a quorum consisting of members of the Board who are not parties to or threatened with any such action, suit or proceeding is present, or, in the event of settlement, by a written opinion of independent legal counsel selected by the members of the Board.

Section 2. Advance of Expenses . Funds to cover expenses, including attorneys' fees, with respect to any pending or threatened action, suit, or proceeding may be advanced by the Association prior to the final disposition thereof upon receipt of an undertaking by or on behalf of the recipient to repay such amounts unless it shall ultimately be determined that he is entitled to indemnification hereunder.

Section 3. Indemnification Not Exclusive; Insurance. The indemnification provided for in this Article VII shall not be exclusive, but shall be in addition to any other rights to which any person may be entitled under the Articles of Incorporation, Rules and Regulations of the Association, any agreement, any insurance provided by the Association, the provisions of Section 1702.12(E) of the Ohio Revised Code, or otherwise. The Association may purchase and maintain insurance on behalf of any person who is or was a member of the Board, officer, agent or employee of the Association against any liability asserted against him or her or incurred by him or her in any such capacity or arising out of his status as such whether or not the Association would have the power to indemnify him or her against such liability under the provisions of this Article.

Section 4. Indemnification by Owners. The members of the Board and officers of the Association shall not be liable to the Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Owners shall

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

Section 5. Cost of Indemnification. Any sum paid or advanced by the Association under this Article VII shall constitute an Expense and the Association and the Board shall have the power to raise and the responsibility for raising, by special assessment or otherwise, any sums required to discharge its obligations under this Article VII; provided, however, that the liability of any Owner arising out of any contract made by or other acts of any member of the Board, officer, employee or agent of the Association, or out of the aforesaid indemnity in favor of such member of the Board, officer, employee or agent of the Association, shall be limited to such proportion of the total liability hereunder as said Owner's membership interest in the Association bears to the total membership interest of all the Owners in the Association.

ARTICLE VIII **MISCELLANEOUS**

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

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

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

Section 4. Notices. Unless otherwise provided in this Code, all notices, demands, bills, statements, or other communications under this Code shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by U. S. mail, first class postage prepaid:

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

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

Section 5. Amendment.

(a) Prior to the sale and conveyance of the first Home, the Developer may unilaterally amend this Code.

(b) After the sale and conveyance of the first Home, the Developer may unilaterally amend this Code so long as it owns any portion of the Property for development, and so long as the amendment has no material adverse effect upon the rights of any Member.

(c) After the Developer no longer owns any portion of the Property for development, or if an amendment has a material adverse effect upon the rights of any Member, this Code may be amended only by the affirmative vote or written consent, or any combination thereof, of Class "A" Members representing a majority of the total votes of the Association, which shall include a majority of votes of Members other than the Developer or, where the two class voting structure is still in effect, shall include the Class "B" Member and a majority of the Class "A" Members. However, the percentage of votes necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

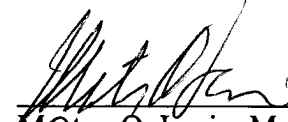
(d) No amendment may, at any time; (i) remove, revoke, or modify any right or privilege of the Developer without the written consent of the Developer or the assignee of such right or privilege; (ii) impair the validity or priority of the lien of an Eligible Mortgage Holder or impair the rights granted to an Eligible Mortgage Holder herein without the prior written consent of such Eligible Mortgage Holder; or, (iii) increase the financial burden of an Owner without the prior written consent of such Owner.




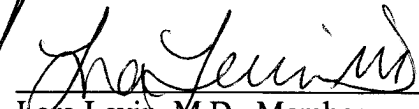
Instr: 200806130026885
P: 88 of 90 F: \$732.00 06/13/2008
Rick Campbell 9:58AM COND
Stark County Recorder T20080023214

IN TESTIMONY WHEREOF, the undersigned, being the members of the Board of Directors of the Association, have caused this Code of Regulations to be duly adopted on or as of the 5th day of June, 2008.

FULTON LANDINGS HOMEOWNERS'
ASSOCIATION, INC., an Ohio nonprofit
corporation



Morton Q. Levin, Member


James P. Rosenblatt, Member


Lora Levin, M.D., Member

This instrument prepared by:

*Richard A. Rosner, Attorney at Law
Kahn, Kleinman, LPA
2600 Erieview Tower
1301 East Ninth Street
Cleveland, Ohio 44114-1824
(216) 696-3311*


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P: 89 of 90 F: \$732.00 06/13/2008
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EXHIBIT "E"

CHART OF MAINTENANCE RESPONSIBILITIES

Item of Maintenance	Association Responsibility	Living Unit Owner Responsibility
Entrance Structure & Signage	All	None
Driveways	None	All
Foundations	None	All
Living Unit Exteriors	None	All
Roofs	None	All
Cleaning gutters	Up to twice annually	Any additional
Post Lights, including electric lines	None	All
Landscaping	All within Common Elements and all Originally Installed Landscaping	All landscaping installed by Owner
Grass Mowing	All	None
Snow Plowing	Driveways	Walks, Patios and Decks
Decks	None	All
Patios	None	All
Main sidewalk within Common Areas (if required by the City)	All	None
Main sidewalk within Sublots (if required by the City)	None	All
Sidewalks serving Living Units	None	All
Living Unit Interiors	None	All
Plumbing	None	All
Electric	None	All
Utility Lines	All within Common Elements	All within Sublots
Downspout Lines	None	All
Retaining Walls	All within Common Elements	All within Sublots that are installed by Owner
Street Lighting	All	None
Surface Water Management System: retention basins, including any pipes, concrete gutters or mechanical devices	All	None
Surface Water Management System: drainage swales	All	None
Surface restoration following City repairs to water and/or sanitary sewer lines	All	None