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DocId:10057252

Tx:40112692

RECORD NUMBER:

**2023R024233**

RECORDED:

12/04/2023 02:02:01 PM

BECKY LYNCH, RECORDER

LAKE COUNTY OHIO

REC FEE: 714.00

TOTAL PAGES: 87

DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS  
AND RESTRICTIONS

OF

ENCLAVE AT LITERARY POINTE  
SUBDIVISION

WILLOUGHBY, LAKE COUNTY, OHIO

ProBuilt Homes, Inc.  
An Ohio corporation

P.O. Box 384  
Mentor, Ohio 44061-0384  
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This Instrument Prepared By:

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DECLARATION  
ACKNOWLEDGMENT OF AUDITOR

Submitting the property known as Enclave at Literary Pointe Subdivision,  
being located in Willoughby, Lake County, Ohio,  
to the provisions of Chapter 5312 of the Ohio Revised Code.

This will certify that copies of this Declaration, together with Exhibits thereto,  
have been filed in the Office of the Auditor, Lake County, Ohio.

Dated: \_\_\_\_\_, 2023

Lake County Auditor

\_\_\_\_\_  
Deputy Auditor

ENCLAVE AT LITERARY POINTE  
HOMEOWNERS' ASSOCIATION, INC.

DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS  
AND RESTRICTIONS

ENCLAVE AT LITERARY POINTE SUBDIVISION, WILLOUGHBY,  
LAKE COUNTY, OHIO

THIS DECLARATION, (the "Declaration") is made this 14<sup>th</sup> day of November, 2023, by and between PROBUILT HOMES, INC., an Ohio corporation (hereinafter referred to as "Declarant"), and ENCLAVE AT LITERARY POINTE HOMEOWNERS' ASSOCIATION, INC., an Ohio not-for-profit corporation (hereinafter referred to as the "Association").

PREAMBLE

- A. The Declarant is the owner of real property known and described as follows:
- PPN 27-A-026-D-00-061-0 consisting of 1.5722<sup>+/-</sup> acres located between River and Center Streets in Willoughby, Lake County, Ohio and consisting of, or to-be-subdivided into, Sublots 1 through 7, inclusive, all as shown on the Site Plan(s) (the "Subdivision"), which parcel is legally described in Exhibit "A" attached hereto and incorporated herein by this reference (the "Property");
- B. The Declarant desires to create a separate planned residential community pursuant to Ohio Revised Code Chapter 5312 (the Ohio Planned Community Law) on the Property which, upon completion, is planned to consist of (however the Declarant is under no obligation to construct) seven (7) Dwelling Units (hereafter defined) to be constructed on individual Sublots (hereafter defined) to be subject to management and maintenance by the Association (hereafter defined) for the benefit of the Owners (hereafter defined) of the Dwelling Units;
- C. The Declarant has deemed it desirable for the efficient preservation of the values and amenities in the Property to create an agency to which should be delegated and assigned the powers of maintaining and administering the Areas of Common Responsibility within the Property and administering and enforcing the covenants and restrictions of this Declaration, and collecting and disbursing the assessments and charges created therein, and to this end has incorporated under the laws of the State of Ohio, as a non-profit corporation, being ENCLAVE AT LITERARY POINTE HOMEOWNERS' ASSOCIATION, INC. (Ohio entity no. 5118675), (hereinafter referred to as the "Association") for the purposes of exercising the functions aforesaid;

- D. The Association joins in this Declaration for the purpose of accepting the duties and responsibilities imposed upon it by the protective covenants and restrictions herein contained; and
- E. Declarant declares that the Property, as the same may be expanded from time to time, shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charges and liens (sometimes referred to as "Covenants and Restrictions") hereinafter set forth, and further specified that this Declaration shall constitute covenants to run with the land and shall be binding upon Declarant, and its successors and assigns and all other owners of any part of said real Property, together with their grantees, successors, heirs, executors, administrators or assigns.

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

1.1 Preamble.

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

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" as the "Property" (PPN 27-A-026-D-00-061-0) and shown graphically on Exhibit "B."

1.3 Expansion and Contraction of the Property.

1.3.1 The Declarant reserves the right from time to time to add additional property to the Property and to subject the same to the provisions of this Declaration. To add any additional property, the Declarant shall execute and record a Subsequent Amendment to this Declaration which expressly provides that the land described therein shall become a part of the Property and shall be subject to the Covenants and Restrictions, except as the same may be modified by the Subsequent Amendment. The additional property may be any adjacent or contiguous real property (the "Additional Property").

1.3.2 The Declarant 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 Declarant may be deleted from the Property only with the written consent of the title owner thereof. To delete such lands, the Declarant shall execute and record a Subsequent Amendment to this Declaration which expressly provides that the land described therein shall no

longer be a part of the Property and shall no longer be subject to the provisions set forth in this Declaration.

1.4 Developer's Right to Divide and Combine the Property During Class "B" Control Period.

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

1.5 Creation of Successor Associations.

After the expiration of the Class "B" Control Period, the Board shall have the right, with the consent of one hundred percent (100%) of each class of Members of the Association and approval of the City, as may be required by Code, to divide the Property into two or more properties governed by separate associations, or to combine any other community with the Property pursuant to § 1.4 above, in which case the resulting Property may, as approved by one hundred percent (100%) of each class of Members of the Association, be governed by either the Association or by any other association governing another community thereby being combined. To accomplish such division or combination the Association shall execute and record a Subsequent Amendment to this Declaration.

ARTICLE II  
EXHIBITS AND DEFINITIONS

2.1 Exhibits.

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

EXHIBIT "A":	Legal description of PPN 27-A-026-D-00-061-0
EXHIBIT "B":	Site Plan
EXHIBIT "C":	Landscape Plan
EXHIBIT "D":	Form Certificate of Compliance (See, § 7.6(g) herein)
EXHIBIT "E":	Code of Regulations (Bylaws) of Enclave at Literary Pointe Homeowners' Association, Inc.

2.2 Definitions.

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

2.2.1 "Act" means Ohio Revised Code Chapter 5312 (the Ohio Planned Community Law).

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

2.2.3 "Areas of Common Responsibility" means and refers to: (1) Common Areas, if any; (2) the Common Elements; (3) water, sewer, and storm water lines (except service lines to each Dwelling Unit); and (4) any real and personal property owned by the Association.

2.2.4 "Articles" or "Articles of Incorporation" are the legal document(s) filed with the Secretary of State of Ohio to create the Association.

2.2.5 "Assessments" means the assessments levied against all Owners of Dwelling Units to fund Common Expenses.

2.2.6 "Association" means Enclave at Literary Pointe 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.

2.2.7 "Board" means the Board of Directors of the Association.

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

2.2.9 "Building" refers to the entirety of each structure comprised of more than one Dwelling Unit (those being the two duplex and one triplex structures to be constructed).

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

2.2.11 "City" means Willoughby, Lake County, Ohio.

2.2.12 "Class 'B' Control Period" means the period of time during which the Class "B" Member (the Declarant) is entitled to appoint a majority of the members of the Board, as provided in Article V, § 5.22(b).

2.2.13 "Common Areas" means all real property now or hereafter owned by the Association or otherwise held for the common use and enjoyment of the Owners or Occupants. Common Areas shall include all portions of the Property not part of a Sublot, and not part of a dedicated right-of-way. The Common Areas are depicted on the Plat and designated variously as Blocks "A" through "D" and the "Private Driveway" which collectively comprise 0.796<sup>+/-</sup> acres (this being subject, however, to Declarant's rights pursuant to § 1.3). The Common Areas are intended for the common use, benefit and enjoyment of all Occupants of the Property. Any Owner may delegate, in accordance with the Bylaws and subject to reasonable rules, regulations, and limitations as may be adopted in accordance therewith, his or her right of enjoyment to the Common Areas and facilities to the members of his or her family, tenants, and social invitees and shall be deemed to have made a delegation of all such rights to the Occupants of any leased Dwelling Unit. Common Areas does not mean or imply that the public at large acquires any easement of use or enjoyment therein. The Common Areas are not for use by the general public, but are solely for the common use and enjoyment of the Owners and Occupants of Dwelling Units within the Property.

2.2.14 "Common Element(s)" means real and personal property not owned by the Association but the legal responsibility of the Association to the extent set forth in this Declaration and upon which the Association has the irrevocable assignment of the Owners as well as easement rights for their maintenance, repair, and replacement coupled together with the power of assessment, these include (but are not necessarily exhaustive of those set forth in this Declaration) the following:

- (a) Drive aprons to the Property situated off public or private streets that abut the Property, private roads, interior driveways, sidewalks, and exterior parking spaces;
- (b) Storm drainage that generally serves the Property and that is not the responsibility of the City or the County, including storm water retention/detention and management areas (including such areas outside the Property over which an easement has been granted to the Association), if any;
- (c) Roofs, gutters and downspouts;
- (d) Exterior finish materials, inclusive of trim and decorative architectural elements;
- (e) Exterior permanent lighting fixtures, poles and standards;
- (f) Patios;
- (g) Windows, doors, and garage doors; and
- (h) Landscaping.

2.2.15 "Common Expenses" means 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 Bylaws, and the Articles of Incorporation of the Association. Unless otherwise provided in this Declaration, all costs the Association incurs in the administration, governance and maintenance of the Property are Common Expenses and all costs of administration, inspection, operation, maintenance, repair and replacement of Areas of Common Responsibility are Common Expenses, and as they may be subject to apportionment between Dwelling Units as detailed in specific sections of these Declarations.

2.2.16 "County" means Lake County, Ohio.

2.2.17 "Declarant" means ProBuilt Homes, Inc., an Ohio corporation, and the specifically designated successors or assigns of any rights as Declarant under the Declaration or under any supplement to the Declaration involving the Property as the same may be expanded or contracted from time to time. No person, real or corporate, shall be deemed to be a successor, alternate or additional Declarant for the purposes of the Declaration unless and until such person or entity has been specifically so designated by Declarant herein, by instrument in writing and placed of record, and shall be deemed a successor and assign of Declarant only to the particular rights and interests of Declarant under the Declaration or under a supplement to the Declaration. The Declarant is also sometimes referred to herein as the "Original Declarant."

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

2.2.19 "Eligible Mortgage Holders" means banks, savings and loan associations, insurance companies and other institutional lenders, holders, insurers or guarantors of first mortgages on the Property or portions thereof.

2.2.20 "Exterior finish materials" means all exterior brick, siding, trim, and architectural detail elements (for example, cornices, brackets, and the like) and their anchors, adhesive materials, and underlayment.



2.2.21 "Landscape Plan" means the approved plan for vegetation and hardscape improvements on the Property which are to be permanently maintained. The approved Landscape Plan for the Property is shown in Exhibit "C."

2.2.22 "Member" means a person or entity entitled to membership in the Association, as provided in the Declaration and Bylaws.

2.2.23 "Occupant" means a person in possession of a Dwelling Unit including, without limitation, an Owner or any guest, invitee, lessee, tenant, or family member of an Owner occupying or otherwise using a Dwelling Unit.

2.2.24 "Open Spaces" means any land that is assigned for open space use and owned and administered by the Association.

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

2.2.26 "Ownership Interest" means the entire right, title and interest of any Owner in all of the freehold and leasehold estates of such Owner in his/her Dwelling Unit.

2.2.27 "Person" means 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.

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

2.2.29 "Property" means the land described in Exhibit "A" of this Declaration, as the same may from time to time be amended.

2.2.30 "Proposed Dwelling Unit" means and refers to Dwelling Units proposed but not yet constructed or Dwelling Units under construction as shown on preliminary plans submitted by the Declarant or a Builder and any subsequent plans approved by the City.

2.2.31 "Roof" means all components of a roofing system, including shingles, vents, underlayment, ice guards, and decking.

2.2.32 "Rules" means the rules and regulations promulgated by the Board that govern the operation and use of the Sublots, Dwelling Units, Areas of Common Responsibility, and any property owned by the Association.

2.2.33 "Sign" means any visual display that uses any color, form, graphic, illumination, symbol, or writing to advertise, announce the purpose of, or identify the purpose of a person or entity, or to convey information or attract attention.

2.2.34 "Site Plan" means the site plan of the Property dated February 20, 2023, prepared by Barrington Consulting Group, Inc. The Site Plan may be supplemented and amended from time to time. The Site Plan shows the Property described in Exhibit "A".

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

2.2.36 "Subdivision" means the Enclave at Literary Pointe Subdivision as shown and graphically depicted on the Site Plan.

2.2.37 "Sublot" means a platted single-family lot upon which a Dwelling Unit has been or may be constructed.

2.2.39 "Subsequent Amendment" means an amendment to this Declaration which adds additional property to that covered by this Declaration or deletes property from that which is covered by this Declaration. A Subsequent Amendment may but is not required to: (i) impose, expressly or by reference, additional restrictions and obligations on the land submitted by such Subsequent Amendment to the provisions of this Declaration; and/or (ii) otherwise amend this Declaration and/or the Bylaws.

2.2.40 "Tenant" means any person(s) having a possessory leasehold estate in a Dwelling Unit, other than an Owner.

ARTICLE III  
EASEMENTS

3.1 Utility Easements.

There is hereby reserved in favor of Declarant and granted to the Association, its successors and assigns, a non-exclusive easement upon, across, over, through and under the Property for ingress, egress, installation, replacement, repair and maintenance of all utilities and service lines and systems including, but not limited to, water, storm and sanitary sewers, energy, drainage, gas, telephone, electricity, television, cable and communication lines and systems. By virtue of this easement, it shall be expressly permissible for the Declarant and/or the Association and their successors and assigns, or the providing utility or service company, to install and maintain facilities and equipment on the Property provided that such facilities shall not materially impair or interfere with any Dwelling Units and provided further that any areas disturbed by such installation and maintenance are restored to substantially the condition in which they were found. Notwithstanding anything to the contrary contained in this § 3.1, no sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or located except as approved by the Declarant or the Board or unless the same are shown on a recorded plat. There is hereby reserved in favor of the Declarant and the Association the right (but not the obligation) to grant neighboring property owners easements for utility purposes so long as the granting of easements for utility purposes does not overburden the utilities serving the Property. Any conflicts between the provisions of this § 3.1 and a plat granting similar easements shall be resolved in favor of the plat.

3.2 Easement for Ingress and Egress.

There is hereby created a non-exclusive easement upon, across, over and through all roadways, sidewalks, walkways, pathways and parking areas constructed within the Property in favor of Declarant and the Association, all Owners, Occupants, and their respective guests, licensees and invitees for vehicular and pedestrian ingress and egress, to and from all of the various portions of the Property. Notwithstanding the foregoing, the Declarant and/or the Association may limit this right of ingress and egress by a Subsequent Amendment. There is hereby reserved in favor of the Declarant or the Association the right (but not the obligation) to grant neighboring property owners easements for roadway access purposes so long as the granting of an easement does not overburden the roadways serving the Property.

3.2.1 Easement for Ingress and Egress to PPN 27-A-026-D-00-062-0.

There is hereby created a non-exclusive easement upon, across, over and through the roadway constructed within the Property in favor of all current and future owners of PPN 27-A-026-D-00-062-0, their respective guests, licensees and invitees, successors and assigns, and, the easement rights herein granted are and shall extend to all current and future owners of parcels subdivided from PPN 27-A-026-D-00-062-0, their respective guests, licensees and invitees, successors and assigns, for vehicular and pedestrian ingress and egress to and from

PPN 27-A-026-D-00-062-0 (and as the same may be subdivided) and Center Street. No right, claim or demand for this right of ingress and egress may be made against any current and future owners of PPN 27-A-026-D-00-062-0, their respective guests, licensees and invitees, successors and assigns nor from all current and future owners of parcels subdivided from PPN 27-A-026-D-00-062-0, their respective guests, licensees and invitees, successors and assigns, except, there is and shall be no waiver of any claims related to damage(s) caused by any intentional, reckless, or negligent actions.

### 3.3 Owner's Easement of Enjoyment.

Declarant, every Owner, an Occupant and the guest of such parties shall have a right and non-exclusive easement of use and enjoyment in and to the Property which shall be appurtenant to and shall pass with the title to every Sublot, subject to the following provisions: (i) the right of the Association to suspend the voting rights of an Owner for any period during which any assessment against his/her Sublot remains unpaid; and, (ii) for a period not to exceed sixty (60) days for any infraction of the Rules.

### 3.4 Easements for Construction, Alteration, etc.

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

### 3.5 Parking; Off-Street Parking Spaces.

There shall be no exterior parking of vehicles except within the driveway located immediately adjacent to a Sublot's garage by the Owner of that Sublot, except, to the extent reasonably necessary for transient purposes such as deliveries/pick-up, vehicles may park in a drive apron, drive aisle, or other area for which the Owners have a right of ingress/egress.

### 3.6 Emergency and Service Easements.

There is hereby granted to the City an easement for access to the Property for emergency purposes or in the event of nonperformance of maintenance of improvements

affecting the public interest. Advance notice is not required for emergency entrance onto the Property. Fire, police, health, sanitation, medical, ambulance, school buses, utility company, mail service and other public or quasi-public emergency and service personnel and their vehicles shall have an easement for ingress and egress over and across all roads or drives within the Property for the performance of their respective duties.

3.7 Drainage Rights and Authority to Transfer Drainage and other Easement Rights to the City.

The Declarant, each Owner, and the Association shall have the non-exclusive right and easement in common to utilize storm detention and/or retention areas (if any), storm sewers and drainage pipes in, over, and upon the Property for the purposes of drainage of surface waters on the Property, said right and easement being hereby established for said purpose. It shall be the obligation of the Association to properly maintain, repair, operate and control such drainage systems which serve the entirety of the Property, unless and until those easement areas are dedicated by the Association and accepted by the City and/or the County or other governmental authority having jurisdiction by formal action of the City and/or County. No Person shall interfere with, by means of constructing any structure or otherwise, the free flow of water through any drainage ditches, swales, storm water easements or storm sewers within the Property, without the written consent of the Association or governmental agency of jurisdiction.

3.8 Easement to Maintain Sales Offices, Models, Signage, etc.

Notwithstanding any provisions contained in this Declaration to the contrary, so long as the construction and sale of Dwelling Units by the Declarant (or an Affiliate of the Declarant or the holder of Special Declarant Rights) is continuing within the Property, it shall be expressly permissible for the Declarant to maintain and carry on upon portions of the Property owned and/or controlled by Declarant such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction and/or sale of Dwelling Units within the Property, including, but not limited to, administrative/customer services, construction offices/trailers, parking signs, identification signs, sales signs, and sales and resales offices, and the Declarant, its guests, licensees and invitees shall have an easement for access to all such facilities. The right to maintain and carry on such facilities and activities shall specifically include the right to use Dwelling Units owned by the Declarant as models and sales offices. The Declarant further reserves the right for itself and its successors, assigns, contractors, material suppliers and others performing work and furnishing materials to construct Dwelling Units and other improvements upon the Property to conduct business and carry-on construction/site development activities during business hours that are customary within the Northeast Ohio area. This § 3.8 may not be amended or modified without the express written consent of the Declarant.

3.9 Maintenance Easement.

There is hereby reserved for the benefit of the Association and its agents, contractors, inspectors, employees, successors, and assigns, an alienable, transferable, and perpetual right

and easement (but not the duty, except as expressly required by this Declaration) to enter upon any Sublot for the purpose of maintenance and/or maintaining reasonable standards of health, fire safety, and appearance within the Property; provided that such right and easement shall not impose any duty or obligation upon Declarant or the Association to perform any actions not otherwise required by this Declaration.

### 3.10 Environmental Easement.

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

### 3.11 Scope of Easements and Dedication of Utilities.

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

### 3.12 Owner's Right to Ingress and Egress.

Each Owner shall have the perpetual right as an appurtenance to such Owner's Dwelling Unit to ingress and egress over, upon and across the entrances to the Property and all drive aisles as necessary for access to his/her Dwelling Unit and such rights shall be appurtenant to and pass with the title to the Dwelling Unit. Without limiting the foregoing, there exists no ingress/egress easement with respect to the driveway immediately adjacent to the garage of a Dwelling Unit except as necessary for transitory vehicular turn-around(s).

### 3.13 Fire Separation Easement.

Each Owner shall have the perpetual right as an appurtenance to such Owner's Dwelling Unit to an undivided interest in the air space between their Dwelling Unit and the adjacent Dwelling Unit(s), which space exists pursuant to Fire Code. No Owner shall perform any act

compromising the integrity of this air space and both the adjacent Dwelling Unit Owner and Association shall have all rights at law and in equity to seek the correction of any conditions compromising its integrity.

3.14 Easements to Run with the Land.

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

ARTICLE IV  
OWNERSHIP AND OPERATION OF COMMON AREAS

4.1 Conveyances of Common Areas.

Subject to § 1.3, Declarant shall convey the Common Areas to the Association on or before termination of the Class "B" Control Period. Such conveyance shall be by limited warranty deed and shall have priority over all liens and encumbrances whatsoever except the easements, covenants, restrictions and provisions of this Declaration; easements, covenants, restrictions, conditions and other similar matters of record; real estate taxes and assessments which are a lien but are not due and payable at the time of said conveyance; and zoning and other ordinances, if any. The Association shall hold title to said parcel(s) subject to the provisions of this Declaration. After title to the Common Areas are transferred to the Association, except as otherwise provided herein (including the reservation by Declarant of easement rights), the Declarant shall have no greater ownership or control over the Common Areas than the ownership or control of Owners or Occupants within the Property, or the Additional Property as the same is added to the Property. The Declarant reserves the right to sign a transfer tax exemption form on behalf of the Association during or after the Class "B" Control Period.

4.2 Use of Common Areas.

Any Owner may delegate, in accordance with the Bylaws and subject to reasonable rules, regulations, and limitations as may be adopted in accordance therewith, and in further

accordance with all City zoning restrictions, his or her right of enjoyment to the Common Areas to the members of his or her family, tenants, and social invitees and shall be deemed to have made a delegation of all such rights to the Occupants or Tenants of any leased Dwelling Unit.

#### 4.3 Alteration of Common Areas.

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

### ARTICLE V THE ASSOCIATION

#### 5.1 Existence.

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

#### 5.2 Membership and Voting Rights.

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

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



- (b) Class "B" Membership. The Declarant shall automatically be the sole Class "B" Member of the Association.

#### 5.2.2 Voting Rights.

- (a) Class "A" Member. Class "A" Members shall be entitled to one (1) equal vote for each Sublot in which they hold the interest required for membership under § 5.2.1(a) hereof; there shall be only one (1) vote for each Sublot. In any situation where a Member is entitled to exercise a vote and more than one (1) Person holds the interest in such Sublot required for membership, the vote for such Sublot shall be exercised as those Persons determine among themselves and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the vote of the Sublot shall not be recorded as either "Yes" or "No" upon the question or act if more than one (1) Person seeks to exercise the vote, instead, the vote shall be recorded as an "Abstain" upon the records of the Association. In the case of a Sublot owned or held in the name of a corporation, partnership, limited partnership, limited liability company, trust or other entity, a certificate signed by such Owner shall be filed with the Secretary of the Association naming the Person authorized to cast a vote for such Sublot, which certificate shall be conclusive until a subsequent substitute certificate is filed with the Secretary of the Association. If such certificate is not on file, the vote of such entity shall not be considered, nor shall the presence of a Person purporting to act on behalf of such entity at a meeting be considered in determining whether the quorum requirement for such meeting has been met, instead, the vote shall be recorded as an "Abstain" upon the records of the Association. 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.
- (b) Class "B" Member. The Class "B" member shall be the Declarant and shall be entitled to a weighted vote equal to four (4) votes for each Sublot owned. The Class "B" membership shall cease at such time as the Declarant or a successor designated by the Declarant is no longer an Owner of a fee simple interest in the Property. The period during which the Class "B" Membership exists is referred to as the "Class 'B' Control Period."

For purposes of determining the number of votes allowed under this Section the total number of Sublots shall be seven (7), which is the total number of Sublots which the Declarant intends to (but is not obligated to) submit to the provisions of this Declaration.

5.3 Board and Officers of the Association.

The Board shall be comprised of seven (7) members (the "Directors") (unless a lesser number is required by the Bylaws), each an Owner of a Sublot to be designated and exercise voting rights in accordance with with the Bylaws.

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

5.4 Powers of the Association.

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

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

5.4.2 To enter or authorize its agents, contractors, and inspectors 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.

5.4.3 To grant or obtain or dedicate to public use easements and rights-of-way (i) for access and easements for the construction, extension, installation, maintenance or replacement of utility services and facilities, or (ii) to or from a public utility or governmental authority, and to or from any body or agency which has the power of eminent domain or condemnation over any portion of the Property; provided, however, that after the Class "B" Control Period no such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer be signed by one hundred percent (100%) of the Members has been recorded. Prior to the termination of the Class "B" Control Period the Declarant has the exclusive authority to exercise the right of dedication or transfer.

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

ARTICLE VI  
RESPONSIBILITIES OF THE ASSOCIATION

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

6.1 Maintenance of Areas of Common Responsibility.

The Association shall maintain the Areas of Common Responsibility identified in this Article VI 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 maintenance (including landscape maintenance).

All work performed by the Association under this Article shall be performed in a good and workmanlike manner. All repairs and replacements shall be of like-kind and quality as the original construction, inclusive of style and color. In the event exact product matches are no longer available in the market or, due to weathering, repairs cannot be performed to exactly match pre-existing materials, the Association shall endeavor to have work performed with materials as closely matching those being replaced as is practical.

The following are the Areas of Common Responsibility:

(a) Vehicular Drives and Paved Surfaces. The operation, maintenance, repair and replacement of (i) all drive aprons at all entrances to the Property from public and private roadways as well as (ii) all roads, drive aisles, turnouts, and driveways (to the point of entrance to a Dwelling Unit's garage), inclusive of snow removal from all of these areas as per § 6.1(b).

These costs and expenses shall be Common Expenses allocated between the Owners in accordance with § 9.8.2.

(b) Snow Removal. The Association shall seasonally contract for snow removal from all paved areas of the Property (inclusive of driveways serving only one Dwelling Unit) and shall further have the right to pile snow upon areas of improved and improved surfaces even if the pile(s) may burden a Sublot(s) more than others; provided, however, that no snow piles shall interfere with an Owner's ingress and egress nor their ability to park vehicles in the driveway serving their Dwelling Unit. The Association's contract shall further provide for hauling snow away from the Property when its has accumulated to the point that it can no longer be piled on the Property without interfering with vehicular ingress and egress (and including ingress and egress by emergency public safety vehicles and apparatus).

These costs and expenses shall be Common Expenses shared by all Owners in accordance with § 9.8.2.

Notwithstanding the foregoing, an Owner shall be solely responsible for snow removal from their patios and any walkways within their Sublot.

(c) Storm Water Drainage. The maintenance of all piping, culverts, drains, storm water detention and retention basins, and other facilities now or hereafter situated upon any portion of the Property that are not the responsibility of the City or the County and which are

intended to benefit the entire Property in the collection, retention, detention, transmittal or disposal of stormwater in clean and sanitary condition and to so maintain them in good order and repair and to make all replacements and renewals necessary to so maintain the same.

These costs and expenses shall be Common Expenses allocated between the Owners in accordance with § 9.8.2.

(d) Roofs. The ensure the roofs of the Buildings are maintained, repaired, and replaced in a manner which (i) protects the health, safety and general welfare of all the building's Dwelling Units, and (ii) both the materials and aesthetic values (to wit: color and style) of the roofs are at all times as uniform as possible, the Association shall contract on behalf of the Unit Owners for all such maintenance, repairs, and replacements and shall do so even in the event only one Dwelling Unit shall be affected by the need for maintenance, repair or replacement.

These costs and expenses shall be Common Expenses allocated between the Owners of a Building in accordance with § 9.8.3, or, if applicable, to only one or more Dwelling Units pursuant to § 9.8.4.

(e) Gutters and Downspouts. In order to ensure the gutters and downspouts are maintained (including annual cleaning, if determined necessary by the Association), repaired, and replaced in a manner in which stormwater is properly managed such that detrimental effects of improper maintenance and repair to adjacent Dwelling Units is avoided, the Association shall contract on behalf of the Unit Owners for all such maintenance, repairs, and replacements and shall do so even in the event only one Dwelling Unit shall be affected by the need for maintenance, repair or replacement.

These costs and expenses shall be Common Expenses allocated between the Owners of a Building in accordance with § 9.8.3.

(f) Exterior Finish Materials. In order to ensure the exterior finish materials of the Buildings are maintained, repaired, and replaced in a manner in which both the materials and aesthetic aspects (to wit: color and style) of the exterior finish materials are at all times as uniform as possible, the Association shall contract on behalf of the Unit Owners for all such maintenance, repairs, and replacements even in the event only one Dwelling Unit shall be affected by the need for maintenance, repair or replacement.

These costs and expenses shall be Common Expenses allocated between the Owners of a Building in accordance with § 9.8.3, or, if applicable, to only one or more Dwelling Units pursuant to § 9.8.4.

(g) Patios and Walkways. In order to ensure the patios and walkways, inclusive of fencing, of the Buildings are maintained, repaired, and replaced in a manner in which both the materials and aesthetic aspects (to wit: color and style) of the patios, walkways, and fencing are at all times as uniform as possible, the Association shall contract on behalf of the Unit Owners for all such maintenance, repairs, and replacements even in the event only one Dwelling Unit shall be affected by the need for maintenance, repair or replacement.

These costs and expenses shall be Common Expenses allocated pursuant to § 9.8.4.

(h) Landscaping. The Association shall provide maintenance, repair, and replacement of the lawn and landscaping situated within the Property as shown on the approved Landscape Plan. Such maintenance may include, but not be necessarily limited to, irrigation, mowing and edging of lawn areas, weeding, fertilizing, replacement of dead plant material, reseeding and re-mulching.

These costs and expenses shall be Common Expenses shared by all Owners in accordance with § 9.8.2.

## 6.2 Taxes and Assessments.

The Association shall not be responsible for any taxes and assessments levied against the Sublots or portions thereof including, without limitation, general real estate taxes and special assessments certified by the applicable public authority.

Taxes and assessments levied against the Common Areas owned by the Association will be equally apportioned (1/7<sup>th</sup>) by the County Auditor against the Sublots and due and payable by each Sublot together general real estate taxes and special assessments. In the event the Auditor for any reason whatsoever does not apportion real estate taxes and assessments directly against each of the Sublots and instead the Association is placed upon the tax duplicate and charges said taxes and assessments for the Common Areas, then in such event the taxes and assessments for the Common Areas shall be apportioned equally (1/7<sup>th</sup>) between the Sublots by the Association and added to the Common Assessment as per § 9.8.2.

## 6.3 Utilities.

The Association shall have to right to utilize the water and/or electrical service for a Sublot if necessary to perform the Association's responsibilities set forth in this Article VI, provided however, the Association shall reimburse the Owner for such use when the cost is greater than a de minimis amount. "De minimis" means less than Five Dollars (\$5.00 USD). If the water or electrical use can be metered, then the Association shall reimburse the actual cost or, if metering is not possible or practical, then the Association shall pay the reasonable estimated cost.

Nothing in this section shall be construed to prohibit the emergency use of utility services when necessary for immediate preservation of life or property from injury or calamity.

## 6.4 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 Owners and may, but shall not be required to:

- (a) Adopt Rules;
- (b) Engage employees and agents, including without limitation, attorneys, accountants, consultants, inspectors, maintenance firms and contractors; and

(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 reasonable compensation. Upon the expiration of each management agreement, the Association may renew said management agreement or enter into a different agreement with the same or a different managing agent, provided that no management agreement or renewal thereof shall be for a period longer than one (1) year (subject to the right of either party to terminate the management contract without cause and without payment of a termination fee, upon ninety (90) days' written notice to the other party), and provided, further, that the Board may designate a different managing agent with whom the Association shall enter into an agreement after the end of the then existing management agreement.

#### 6.5 Rules and Regulations.

The Association, through the Board, may make and enforce reasonable rules and regulations governing the Areas of Common Responsibility, which rules and regulations shall be consistent with the rights and duties established by this Declaration. Sanctions may include reasonable monetary fines and suspension of the right to vote. The Board shall, in addition, have the power to seek relief in any court for violations or to abate nuisances. Imposition of sanctions shall be as provided in the Bylaws of the Association. An Owner shall be subject to the foregoing sanctions in the event of a violation by such Owner, his/her family, guests, Tenants or by his/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 or County codes or permit the City, County or other governmental authority having jurisdiction to enforce codes on the Property for the benefit of the Association and its Owners.

#### 6.6 Original Declarant's Rights.

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

#### 6.7 Enforcement of Covenants.

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

6.8 Design Review.

6.8.1 Powers of the Board. The Board is hereby granted authority for the purpose of architectural and engineering control to secure and maintain an attractive, harmonious residential community. The Declarant shall function as and grant all approvals provided for herein until the Declarant conveys the last Sublot the Declarant owns within the Property to a third-party Owner (i.e., other than an Affiliate of the Declarant). After the Declarant has conveyed the last Sublot, the Board shall assume the authority of this § 6.8. A vote of the majority of members of the Board then entitled to vote pursuant to the Bylaws shall be required for approval. This § 6.8 may not be amended without the Declarant's written consent so long as the Declarant (or an Affiliate of the Declarant) owns any Sublot that is subject to the Declaration.

6.8.2 Operation of Design Review. No Dwelling Unit shall be altered, modified or changed in any way which changes exterior or the appearance thereof, nor shall any Dwelling Unit be rebuilt, nor shall an addition be made, or deck/patio added or modified, to a Dwelling Unit, nor shall any grading be changed unless an application, plans and specifications for the proposed alteration, modification, change or addition shall have been submitted to and approved in writing by the Board. As set forth above, any changes to the grading or drainage on the Property must also be submitted to, and reviewed and approved by, the City. Furthermore, no landscaping shall be installed by the Owner(s) of a Dwelling Unit(s) unless an application, plan and specifications for such installation shall have been submitted to and approved in writing by the Board; and the Board may impose as a condition of such approval that the maintenance and replacement of such landscaping shall be the responsibility of such Owner(s) and not the responsibility of the Association as otherwise required by these Declarations with respect to the approved Landscape Plan. Board approval is discretionary and not subject to review. Provided, however, the provisions of this § 6.8.2 requiring submission of plans and specifications to and obtaining approval from the Board shall not be applicable to the Declarant, nor an Affiliate of the Declarant.

6.8.3 Inspection. A Board Designee may inspect work being performed with its permission to assure compliance with this Declaration and applicable regulations. The presence of the Board Designee on any Sublot shall not be deemed a trespass so long as the presence is in furtherance of said Designee's duties.

6.8.4 Violations and Remedies. Should any Dwelling Unit be altered, constructed, or an addition be made thereto within the Sublot, or related improvements be reconstructed or removed from or upon any Sublot, or should the use thereof be modified in any way from the use originally constructed or installed without first obtaining prior written approval of the Declarant or Board as provided in this Article, such act shall be deemed to be a violation of this Article and this Declaration. Any party violating this Article shall, immediately upon the receipt of written notice of such violation from the Declarant or Board, 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 fail to immediately take such remedial action as aforesaid, then and in such event, the Association shall have the right, but not the obligation, in addition to any and all other rights or

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

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

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

(c) Seek Reimbursement. Seek full and complete reimbursement from any party committing any of the aforesaid acts in contravention of this Article, of any costs, damages and expenses (including without limitation court costs, attorneys' 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 be an Occupant and should such Occupant fail to immediately pay the full amount of all costs, damages, and expenses referred to 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.

#### 6.9 Rehabilitation of Existing Buildings, Structures and Other Improvements.

The Association may, by the affirmative vote of Owners entitled to exercise not less than one hundred percent (100%) of the voting power, determine that the Property is obsolete in whole or in part, and elect to have the same renewed and rehabilitated. The Board shall thereupon proceed with such renewal and rehabilitation and the cost thereof shall be a Common Expense.

#### 6.9 Reserve Funds.

6.9.1 The Association may, by two-thirds (2/3<sup>rd</sup>s) vote of the Members, create one or more reserve funds for the anticipated future costs and expenses of replacements, renewals, and rehabilitations to Areas of Common Responsibility in order to lessen sudden financial impacts and burdens upon the Owners. The Members shall concurrently vote, and it shall likewise require passage by two-thirds (2/3<sup>rd</sup>s) of the Members, on the questions of (i) the specific amount(s) to ultimately be placed into the reserve fund(s) and, (ii) the number and monetary amount of installment payments. Funds may be further segregated into sub-funds for restricted use (for example, a roof fund, a driveway fund, and so forth) and/or to funds that are reserved for a specific Building. If funds are reserved for a specific Building, there shall be no



transfer between that reserve fund and any reserve fund for another Building(s). Inter-funds transfers shall require the unanimous consent of the Members.

6.9.2 Upon passage by the Members for the creation of a reserve fund(s) pursuant to § 6.9.1, the Board shall assess reserve fund charges pursuant to the pertinent provisions of Article IX.

6.9.3 Reserve funds are not subject to refund as per § 9.12.2.

## ARTICLE VII COVENANTS AND RESTRICTIONS

### 7.1 Purpose and Intent.

7.1.1 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.

7.1.2 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, provided however, that they shall not be in conflict with this Declaration except upon approval of an Amendment of same. Such regulations and use restrictions shall be binding upon all Owners, Land Contract Vendees, Lessees, Tenants and Occupants.

### 7.2 Covenant of Good Maintenance and Encroachments.

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

7.2.2 No Owner shall build or place any improvement (temporary or permanent) or place anything in any easement area contrary to the rights of the easement grantee(s). Such Owner violating the previous sentence shall be responsible to remove such violation and return the easement to its original condition. The violation of this provision shall give the Association,

Original Declarant, and their designated agent(s) the right, in addition to all other rights set forth herein and provided by law, (a) to enter upon the Dwelling Unit or Sublot or portion thereof upon which, or as to which, such violation or breach exists, and summarily abate and remove such violation at the expense of the Owner and the Association, Original Declarant, and their designated agent(s) 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' fees incurred in connection with the exercise by the Association of any remedies hereunder, the same to be deemed "Costs of Collection" under § 11.3 hereof.

### 7.3 Building and Site Improvements.

7.3.1 Patios. No Owner shall enclose any portion of their Dwelling Unit's patio, whether temporary or otherwise, except with approved fencing/screening, including any awning or roof, whether permanent or otherwise, except upon prior approval of the Board pursuant to § 6.8 and further in conformity with applicable City code(s). No Owner shall remove/demolish, in whole or in part, their Dwelling Unit's patio.

#### 7.3.2 Windows and Exterior Doors.

(a) Repairs of all windows and doors (inclusive of garage doors) shall be performed promptly. If the repair work may alter the design, materials (including exterior finish), quality of construction, and/or aesthetic values (to wit: color and, in the case of windows, transparency) of those used in the original construction, then the repair shall be treated as a replacement pursuant to § 7.3.2(b).

(b) Replacements of any windows or doors (inclusive of garage doors) may only occur after approval has been given by the Board pursuant to § 6.8. All replacements shall to the greatest extent possible match the design, materials (including exterior finish), quality of construction, and aesthetic values (to wit: color and, in the case of windows, transparency) of those used in the original construction. In the event of the replacement of the entirety of all windows and/or doors for one or more Buildings, the Board may approve deviations from the original construction, provided all required City approvals have been first obtained.

7.3.3 Fences, Walls and Hedges. Fences (permanent or temporary), walls, trees, hedges, and/or other plantings are not permitted on any Sublot except those shown on the approved Site Plan and/or Landscape Plan. This prohibition does not apply to small planters kept on a patio area.

7.3.4 Play Sets, Basketball Hoops, and Recreational Apparatuses.

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

(b) Basketball hoops of any kind (and regardless of whether they are portable in design or temporary) are not permitted within a Sublot.

7.3.5 Swimming Pool, Hot Tub, and Spa Restrictions. No swimming pools, hot tubs, or spas (including all derivations of those terms), whether permanent or portable and whether above or in-ground, are permitted on any Sublot. This prohibition is intended to and shall include all equipment and installations falling as broadly as possible within these classifications, including wading ("kiddie") pools and one (or two) person hot tubs.

7.3.6 Fire Pits, Grills, Outdoor Heating Sources.

(a) Fire pits may not be installed or used within any Sublot.

(b) Grills utilizing a flame may only be used on the improved surface of a Sublot's rear patio and at least ten feet (10') away from the Dwelling Unit unless a greater distance separation is required by City Code. All propane canisters shall be properly stored in accordance with recommended safety standards and practices.

(c) At no time shall any Dwelling Unit be heated pursuant to an outdoor source.

7.3.7 Mailboxes. The Declarant installs mailboxes in its discretion and in accordance with the rules and regulations established by the appropriate governmental authorities, including the United States Postal Service (the "USPS"). With regard to the Subdivision, there shall be cluster box units (CBU), which are utilized as central mailboxes for each Sublot. Such cluster box units have or will be installed at the discretion of the Declarant (with approval from the USPS), including the location, design, size, type, color and style.

7.3.8 Poles, Wires, Antennae, DDS Satellite System, Solar Energy Collection.

(a) Subject to applicable easement rights, no facilities, including poles and wires, for the transmission of electricity, telephone messages, ham radio messages and the like shall be placed or maintained above the surface of the ground in any portion without the prior approval of the Board and subject to City Code. This provision shall not apply for temporary facilities for the construction or repair of any building or other structure. A Digital or Direct Satellite System ("DDS System"), thirty-nine inches (39") or less in diameter, may be attached to a Dwelling Unit so long as the DDS System is not visible from the street, and so long as the prior approval of the location of the DDS System is given by the Board and the same complies with City Code.

(b) The installation of solar energy collection devices is prohibited. "Solar energy collection device" means any device manufactured and sold for the sole purpose of facilitating the collection and beneficial use of solar energy, including passive heating panels or building components and solar photovoltaic apparatus.

7.3.9 Alterations to Exterior of Dwelling Units. The exterior of any building or structure in the Property shall not be altered, modified, changed or redecorated in such a way as to change the appearance or decor of the structure, nor shall any of the landscaping appurtenant to such building or structure be materially changed without the express written authorization of the Board.

7.3.10 Grading and Drainage. No Person shall change the grade on any portion of the Property without first obtaining the consent of the Board. In addition, any changes to the grading or drainage on the Property must also be submitted to, and reviewed and approved by, the City. No Person shall interfere with the free flow of water through any drainage ditches or storm sewers within the Property. The City, County or other governmental authority having jurisdiction shall have the right (but not the obligation) to enter upon the Property to repair and maintain all storm, drainage, courses, ditches, structures and appurtenances for the purpose of relieving any flooding condition or threatened flooding condition which might be harmful to other property.

7.3.11 Landscaping on Sublot. The initial installation of the landscaping in accordance with the Landscape Plan shall be at the sole cost and expense of the Declarant. Any subsequent changes to the approved Landscape Plan (or layout of the landscaping in general) by an Owner must be approved by the Board and paid for by the Owner.

#### 7.4 Health, Safety, and Sanitation.

7.4.1 Nuisance. No noxious or any activity constituting an unreasonable source of discomfort or annoyance shall be carried on upon any portion of the Property (including the Dwelling Units situated thereon), nor shall anything be done thereon that may be or become a nuisance or annoyance to other Owners. The Board shall have final decision-making authority to determine what is "reasonable" and what is "unreasonable" under this § 7.4.1 except that the Board's determination shall not bind the City, County, or other governmental agency in enforcing nuisance laws.

7.4.2 Trailers, Sheds and Temporary Structures. No temporary building, shed, trailer, recreation vehicle, garage, tent, or any similar structure shall be used on any part of the Property at any time. Subject to City Code, Declarant shall have the right to maintain a temporary trailer on the property in accordance with Article III, § 3.8 hereof. No shack, barn, shed or any type of "outbuilding" shall be permitted on any Sublot. Except for use by the Declarant, at no time shall a temporary (portable) storage container be located on a Sublot for more than seventy-two (72) consecutive hours, and, provided that its use is solely to facilitate relocation of personal property to or from the Dwelling Unit.

#### 7.4.3 Storage of Material and Trash Handling.

(a) No lumber, metals, bulk material, refuse or trash shall be burned, whether in indoor incinerators or otherwise (excluding the burning of firewood in a fireplace), kept, stored or allowed to accumulate on any portion of the Property, except normal residential accumulation pending pick-up and except, subject to City Code, building materials during the course of construction or reconstruction of any approved building or structure, except firewood may be stored within Dwelling Units, but not outside Dwelling Units (and not on balconies or patios). If trash or other refuse is to be disposed of by being picked up and carried away on a regular recurring basis, containers may be placed in the open on any day that a pick-up is to be made, thereby providing access to persons making such pick-up. At all other times such containers shall be stored inside of the Dwelling Unit's garage.

(b) No dumping of rubbish shall be permitted on any portion of the Property.

(c) No clothing, laundry or other household items may be hung outside Dwelling Units.

#### 7.4.4 Animals.

(a) No animals, livestock, reptiles or poultry of any kind shall be raised, bred or kept on any portion of the Property (including the Dwelling Units situated thereon) except that dogs, cats, birds and such other customary household pets may be kept, subject to Rules adopted by the Board, provided that they are not kept, bred or maintained for any commercial purpose and, provided further, any pet causing or creating a nuisance or unreasonable disturbance or annoyance shall be permanently removed from the Property upon three (3) days' written notice from the Board.

(b) Dogs shall not be chained or otherwise kept outdoors. Dogs shall be on a leash held by a responsible person at all times they are outside the confines of a Dwelling Unit. Persons responsible for pets must immediately clean up and properly dispose of any pet waste.

(c) Service animals other than customary household pets shall be reviewed on a case-by-case basis by the Board solely to ensure the subject animal is a bona fide service animal for a current Occupant. The Board shall have the authority to request and shall be provided documentation confirming the animal's status as a service animal for the current Occupant. The requesting party may request and the Board shall provide a confidentiality agreement with standard non-disclosure terms and conditions to maintain the confidentiality of any information so provided.

7.5 Vehicles and Machinery.

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

7.5.2 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 or on the public right-of-way adjoining any portion of the Property for any period of time whatsoever, except while making deliveries or performing services thereon and except as necessary for the improvement, construction, reconstruction or repair of buildings or structures or other improvements on the Property, subject to compliance with City Code.

7.5.3 Inoperable and Unlicensed Vehicles. No inoperable, junk, disabled or unlicensed vehicles may be stored outside of any garage nor be parked outside for a period greater than forty (48) hours.

7.6 Use Restrictions.

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

7.6.2 Signs. No sign of any nature shall be placed upon any portion of the Property, including but not limited to "For Rent" signs, except "For Sale" signs are permitted with the prior written approval of the Board as to type, size and location of such signs but subject to City Code requirements. Notwithstanding the foregoing, the restrictions of this § 7.6(b) shall not apply to Declarant. Further, seasonal holiday decorations are permitted provided they are timely removed at the end of the pertinent holiday season.

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

- (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 Dwelling 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) Compliance with the regulations set forth below.

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

- (f) The size of the flag shall not exceed 3 feet by 5 feet.
- (g) The display of a flag on a flagpole (not to exceed twenty feet in height) shall only be permitted within the Sublot of the Owner displaying the flag or the display of a flag on the exterior of an Owner's Dwelling Unit. The Board shall have the right to designate the precise location of the exterior of the Dwelling Unit from which the flag may be displayed.
- (h) No exterior lighting of the flag shall be permitted.
- (i) If displayed immediately adjacent to the exterior side of the Owner's Dwelling Unit, screws or nails holding the flag shall be made into wood and not into vinyl or other non-wood siding, nor into brick or stone. The Owner shall be responsible for the repair of any damage to the Dwelling Unit caused by such installation.
- (j) A total of no more than one flag may be displayed on a Sublot or a Dwelling Unit.

Pursuant to § 5301.072(B) of the Ohio Revised Code, a covenant, condition, restriction, rule regulation, bylaw, governing document or agreement of the construction of any of these items that violates Subsection (a) above is against public policy and

unenforceable in any court of this state to the extent it violates said Subsection (a) above.

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

7.7 Legal.

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

7.7.2 Use of the Name "Enclave at Literary Pointe". No Person shall use the name "Enclave at Literary Pointe" or any derivative thereof in any printed or promotional material without the prior written consent of Declarant. However, Owners may use the name "Enclave at Literary Pointe" in printed and promotional material where such word is used solely to specify that particular property is located within the Property.

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

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

7.7.5 Violation of this Article. If any Person required to comply with the foregoing Covenants and Restrictions is in violation of any one of same, the Declarant (as long as the Declarant is a Class "B" Member of the Association) or the Board 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 Declarant and/or the Association shall have the right, through their respective agents and employees, to enter upon the land where the violation exists and to summarily terminate, remove or extinguish the violation. In addition to the foregoing, the Declarant and/or the Association shall have the right to obtain an injunction from any court having jurisdiction for the cessation of such violation or attempted violation of this Article. The rights and remedies of the Association and Declarant contained in this Article shall be nonexclusive and in addition to any other right or remedy available at law or in equity, including a claim or action for specific performance and/or money damages (including punitive damages), and attorneys' fees. Furthermore, the failure or neglect to enforce any term, covenant, condition, restriction, right or procedure herein shall in no event and under no circumstance be construed, deemed or held to be a waiver with respect to any subsequent breach or violation thereof. Subject to the provisions of the section of the Bylaws entitled, "Hearing Procedure," a Person in violation of this Article VII shall be obligated to the Association and/or Declarant for money damages and for the full amount of all costs and expenses, including attorneys' 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 § 10.1, 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.

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

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

ARTICLE VIII  
INSURANCE AND RECONSTRUCTION

8.1 Purpose and Intent.

The provisions of this Article VIII are intended to provide for the preservation of the Property in perpetuity as a first-class residential development and as part of the fabric of a dynamic, historic downtown mixed-use district. These purposes shall be accomplished by all Owners and the Association acting in concert such that (i) there are no lapses in insurance coverage for all Insured Property (as defined in § 8.2.1), (ii) potential liability risks adversely affecting the Association are insured against, and (iii) a flexible framework exists for Owners to individually and/or by and through the Association obtain insurance coverage upon the best terms and conditions available, inclusive of premium costs and quality of coverage.

8.2 Insurance.

8.2.1 General Requirements. Each Owner shall obtain for their benefit, the benefit of the Association, as detailed herein, and their respective mortgagees, as their interest may appear, and thereafter maintain in full force and effect at all times insurance affording protection against loss or damage by fire, lightning and such other perils as are now or hereafter covered by the standard form extended coverage endorsement commonly issued in Lake County, Ohio and such other risks as from time to time customarily covered with respect to buildings, structures, improvements and facilities similar in construction, location and use as the buildings, structures, improvements and facilities comprised as part of their Dwelling Unit and Sublot (the "Insured Property"), including without limitations, vandalism, malicious mischief, windstorm, plate glass and water damage, subject to such deductible amounts not in excess of Five Thousand Dollars (\$5,000.00 USD) unless a greater deductible amount should be duly approved by the Board and uniformly permitted for all Owners.

8.2.2 Coverage Amount. The casualty insurance to be purchased hereunder shall be in an amount equal to not less than one hundred percent (100%) of the full replacement cost of the Insured Property, exclusive of excavations and foundations. The amount of casualty insurance shall be reviewed annually and adjusted, if necessary. Such casualty insurance shall provide (1) for the issuance of certificates of insurance to the Association, (2) for the issuance of certificates of insurance to the holders of mortgages on the Dwelling Unit, (3) that the insurer waives all defenses based upon an "increase in the hazard insured against" provision, co-insurance, invalidity arising by acts of an insured, or similar defenses and waiving the so-called "vacancy" clause, (4) that the insurer waives its right to elect to restore the Dwelling Unit, or any part thereof, in lieu of making a cash settlement in the case of the termination of the Property as provided for in § 8.4.3, and (5) that coverage under such insurance will not be terminated, canceled or materially modified without ten (10) days' prior written notice to the Association, and including each mortgagee holding a mortgage encumbering a Dwelling Unit. The Owner shall pay the premiums for the insurance herein required at least thirty (30) days prior to the expiration date thereof. Certificates of such insurance, together with proof of payment of the premium therefor, shall be delivered by the Owners to the Association in the event the insurer will not do so directly at least ten (10) days prior to the expiration of the then current policy(s).

8.2.3 Association's Right to Obtain Coverage. The Association shall have the right, but not the obligation, to obtain on behalf of an Owner(s) the casualty insurance coverage required of the Owner pursuant to this § 8.2 in the event the Owner(s) should fail after reasonable prior demand by the Association to obtain the required coverage. In that event, each Owner(s) hereby irrevocably appoints the then serving President of the Board or, in the event of a conflict-of-interest, the then serving Vice-President of the Board, as his/her attorney-in-fact authorizing said Board President (or Vice-President, if applicable) acting with authority of the Association pursuant to this Declaration to purchase the insurance in the name of the Owner(s) with a company of his/her choosing but meeting the requirements of § 8.8 and upon the terms and conditions required herein. In said event, the premium cost shall be assessed as a lien against the Dwelling Unit pursuant to the provisions of Article X and, in addition, the Owner(s) shall be personally liable to the Association for the sums so paid to obtain coverage. The Association shall further impose an administrative charge equal to twenty percent (20%) of the premium amount but no greater than five hundred dollars (\$500.00) to compensate the Association for the time expended to purchase the policy of insurance and for advance of the premium cost. Interest on the unpaid amount shall accrue at an annual rate of eighteen percent (18%) unless a lesser percentage rate is mandated by applicable law. This remedy shall not be exclusive and the Association shall have such further rights and remedies available to it pursuant to law, equity, and/or the Declaration and Bylaws.

8.2.4 Common Areas – Casualty. The Association shall carry casualty insurance on all insurable improvements comprising the Common Areas and all personal property as may be owned by the Association and for which the Association is responsible (the "Casualty Policy"). Such insurance shall be written in the name of, and the proceeds thereof shall be payable to the Association. The casualty insurance to be purchased hereunder by the Association shall be in an amount not less than one hundred percent (100%) of the insurable replacement cost of such improvements, with a "Guaranteed Replacement Cost Endorsement" (excluding excavation and foundation costs and other items normally excluded from coverage), as determined by a qualified appraiser, the amount determined and the insurance to be reviewed annually and adjusted if necessary. The cost of the appraisal shall be a Common Expense. Such insurance shall include the following coverages:

- (a) loss or damage by fire and other hazards covered by the standard extended coverage endorsement;
- (b) such policy shall include, if reasonably available, a "Construction Code Endorsement" or its equivalent, a "Demolition Cost Endorsement" or its equivalent, an "Increased Cost of Construction Endorsement" or the equivalent, a "Contingent Liability from Operation of Building Laws Endorsement," or its equivalent, and an "Agreed Amount and Inflation Guard Endorsement" or its equivalent; and
- (c) such other risks (including flood insurance if such insurance is available) as from time to time customary shall be covered with respect to improvements similar to those within the Common Areas in construction, location and use, including, but not limited to, debris removal, vandalism, malicious mischief, windstorm and water damage, subject to such

deductible amounts as the Board shall determine, provided, however, such deductible amounts shall not exceed the lesser of Five Thousand Dollars (\$5,000) or one percent (1%) of the policy amount. Deductible amounts shall be treated as a Common Expense.

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

8.2.6 Alternate Provision for the Association to Obtain Available Casualty Insurance for Areas of Common Responsibility / Buildings. In the event casualty insurance is available to the Association for Areas of Common Responsibility (in addition to the Common Areas) and/or the Building(s), in whole or in material part(s), then the Board may solicit from one or more insurers quotes for a policy(ies) covering Areas of Common Responsibility and/or the Building(s). The Owners shall concurrently obtain price quotes for their respective Insured Property with and without inclusion of those improvements the Board is considering insuring via common policy(ies) (and, to obtain quotes upon the minimum terms and conditions required by this Declaration (e.g., deductible limit)). Once this information has been compiled, the Board shall determine by simple majority vote whether the Association will proceed with acquiring insurance coverage for any of the Areas of Common Responsibility and/or Building(s).

Prior to making any such decision to acquire casualty insurance, the Board shall consult with the holders of all first mortgages on any of the Sublots to ensure that the Association's obtaining insurance will not violate any of their terms and conditions. In the event that the Association's act of obtaining casualty insurance should be an act of default pursuant to any of the terms of conditions of a first mortgage upon any of the Sublots and no consent from that mortgage holder(s) can be obtained, then the Association shall be prohibited from proceeding to obtain such coverage.

It is the purpose and intent of this § 8.2.6 to provide a flexible mechanism for Property casualty coverage that will be responsive to market conditions, the availability of insurance products in the marketplace, premium costs, deductible(s), coverage exclusions, the cost associated with special endorsements, if needed (e.g., earthquake and other disasters), and the

relative quality of the company(ies) from which coverage may be obtained. The Board's decision may be based upon any combination of these factors and not merely the cost of coverage.

#### 8.2.7 Insurance Beneficiaries.

##### (a) Damage or Destruction to Areas of Common Responsibility.

All casualty insurance policies purchased by either the Owners or the Association providing coverage for any of the Insured Property shall be for the benefit of the Owners and their respective mortgagee(s), as their respective interests may appear. The casualty insurance policies shall provide that all proceeds payable as a result of losses to any of the Areas of Common Responsibility shall be paid to the Association as trustee for the Owner(s) and their respective mortgagee(s).

In the event an insurer will not for whatever reason make proceeds payable directly to the Association for losses to any of the Areas of Common Responsibility, then, the Owner(s) shall distribute the insurance proceeds in advance to the Association such sum as necessary to meet the Association's costs and expenses to repair, restore and/or replace, as applicable, the losses to the applicable Areas of Common Responsibility.

The Board shall have the authority to modify the provisions of this § 8.2.7 in response to the lending requirements of any bank, savings and loan, or other institutional mortgagee holding mortgages on two (2) or more Dwelling Units.

##### (b) Other Damage or Destruction.

For all Property casualties outside the scope of § 8.2.7(a), the Owners shall provide that all proceeds payable as a result of such losses shall be applied as per the provisions of § 8.4.

#### 8.3 Additional Insurance.

The Association may upon Board approval from time-to-time purchase other insurance that it deems necessary for the protection of the Association, including directors and officers (D&O) coverage.

#### 8.4 Repair and Restoration.

The following provisions shall govern in the event of any damage or destruction to the Property:

8.4.1 In the event of any damage or destruction to any of the Areas of Common Responsibility, the Dwelling Units and/or Sublots, if the proceeds of any policy(ies) insuring against such damage or destruction and payable by reason thereof shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction shall be undertaken by the Owner(s) or Association, as applicable, and the insurance proceeds

shall be applied in payment therefor; provided, however, that in the event within ninety (90) days after such damage or destruction, the Owners, if they are entitled to do so pursuant to § 8.4.3 shall elect not to repair, restore or reconstruct, then such repair, restoration or reconstruction shall not be undertaken.

8.4.2 In the event the damage or destruction to any of the Areas of Common Responsibility shall be attributed to any cause or peril which is not insured against, or if insured against, the insurance proceeds the insurance proceeds shall not be sufficient to pay the cost of repair, restoration or reconstruction, then ((i) unless the Unit Owners shall within ninety (90) days after such damage or destruction, if they are entitled to do so pursuant to § 8.4.3, elect not to repair, restore or reconstruct such Insured Property, or (ii) if caused by negligent act(s) such that the provisions of § 8.5 apply) such deficiency shall be provided either by means of Common Assessments or by means of an appropriation from the reserve maintenance fund, or such other fund as may be established for the purpose of providing for the restoration and replacement of the Areas of Common Responsibility or any combination of the foregoing methods, as the Board in its sole discretion may determine.

8.4.3 Immediately after any damage or destruction to all or any part of the Areas of Common Responsibility for which an Owner(s) or the Association has carried insurance, the Owner(s), Board, or duly authorized agent shall proceed with the filing and adjustment of all claims arising under such insurance and obtain reliable and detailed estimates of the cost of repair, restoration or reconstruction of the damaged or destroyed property. Such costs may include professional fees of attorneys, public insurance adjusters and others and premiums for bonds. "Repair, restore or reconstruct," as used in this subsection, means repairing, reconstructing or restoring the Insured Property to substantially the same condition to which it existed prior to such damage or destruction. Each Owner upon acquisition of title to his/her Dwelling Unit, shall be deemed to have delegated, to the Declarant, prior to the formation of the Association, and thereafter to the Board, or their respective agents, his/her right to adjust with insurance companies all losses under the casualty insurance carried by the Association pursuant to this Article, if any.

8.4.4 Except as otherwise provided in this Declaration, if all or any part of the Insured Property shall be damaged or destroyed, the Owner(s) or Association, as applicable, shall cause the same to be restored substantially in accordance with the Building's original construction drawings and specifications, excepting for the current requirements of any Fire and Building Codes which mandate deviations from the original construction.

8.4.5 Each Owner shall repair and restore that portion of his/her Dwelling Unit not required to be covered under the casualty insurance required to be carried by the Owner or, if applicable, the Association pursuant to this Declaration.

8.4.6 With respect to all policies of insurance obtained by the Association and by the Owners, the Association and each Owner do hereby waive (to the extent permitted by such policy, but only to the extent of the proceeds payable in connection therewith) all rights of recovery and causes of action against each other, the Owners, the members of the family of each Owner and his/her tenants and any other Occupants of the Property, the Association, the Board, and managing agent(s), if any, for any loss which may result from any of the perils insured against

under any such policies; and each such policy shall provide for a release by the insurance company issuing such policy of such of its rights of subrogation thereunder as shall be co-extensive with the foregoing waivers.

8.4.7 The proceeds of insurance collected on account of a casualty, and the Assessments on account of such casualty and/or appropriations from any funds set aside for such purpose, shall constitute a construction fund which shall be disbursed by the Association in payment of the cost of repair, restoration or reconstruction, from time to time as the work progresses. The Association shall make such disbursements upon its receipt of certificates from the architect or general contractor selected by it to be in charge of the repair, restoration or reconstruction. Said certificates shall: (i) state that the sum requested is justly due to the contractors, subcontractors, materialmen, architects or other persons who rendered services or furnished materials in connection with the work; (ii) give a brief description of the services and materials for which such progress payment is requested; (iii) state that the sum requested does not exceed the value of the services and materials described in the certificate; (iv) state that except for the amount stated in such certificate to be due as aforesaid and for work subsequently performed, there is no outstanding indebtedness known to the person signing such certificate after due inquiry which might become the basis of a mechanics', materialman's, or other lien for such work upon the Property or any Sublot thereof; and (v) state that the cost of the work remaining to be done subsequent to the date of said certificate, does not exceed the amount of the construction fund remaining with the Association after the payment of the sums so requested. If there is a balance in the construction fund after payment of all costs of repair, reconstruction or restoration, such balance shall be distributed jointly to the Owners and their respective mortgagees who are the beneficial owners of the funds.

#### 8.5 Negligence of Unit Owner.

Each Owner shall be liable for the expenses of any maintenance, repair or replacement to any of the Areas of Common Responsibility rendered necessary by his/her negligence or by that of any member of his/her family or his/her/their guests, employees, agents or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Owner or Association, if applicable. An Owner shall pay the amount of any increase in insurance premiums occasioned by his/her use, misuse, occupancy or abandonment of his/her Dwelling Unit or its appurtenances or Areas of Common Responsibility.

#### 8.6 Fidelity Bonds.

To the extent available for a reasonable premium (or, if (i) it is required by operation of law pursuant to the Act and any future amendments to the Act, and/or (ii) to comply with lending standards as detailed in § 16.10(b)), a fidelity bond indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any employee of the Association, a Board member, an Owner or of any other person handling the funds of the Association (including a managing agent, a management company and its employees who control or dispense the funds of the Association), in such amount as the Board shall deem desirable upon the exercise by the Board of its best business judgment, but in no event shall the amount of the bond be less than an amount equal to three (3) months' Assessments, plus

reserves in the custody of the Association, managing agent or management company. The fidelity bond shall name the Association as the obligee, and the premium for such bond shall be a Common Expense. Such bond shall contain an endorsement and/or waivers of any defense based on the exclusion of persons who serve without compensation from any definition of "employee" or similar expression by virtue of being non-salaried board members, volunteers, association managers, or any other persons with access to assets but not technically "employees." 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.

#### 8.7 Premiums.

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

#### 8.8 Rating of Insurance Company.

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

#### 8.9 Annual Review of Policies.

All policies for insurance shall be reviewed annually by the Board to determine whether the coverage contained in the policies is sufficient to make any and all necessary repairs or replacement of the Areas of Common Responsibility which may have been damaged or destroyed.

#### 8.10 Waiver of Subrogation.

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



ARTICLE IX  
ASSESSMENTS

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, repairs, replacements, upgrades, and including service contracts entered into by the Association;
- (b) All amounts incurred in collecting Assessments, including all legal and accounting fees;
- (c) All expenditures incurred in the management and governance of the Association, including accounting, tax preparation, legal counsel and insurance consultants;
- (d) Reserves for uncollectible Assessments, unanticipated expenses, replacements, major repairs and contingencies;
- (e) Annual capital additions and improvements and/or capital acquisitions; and
- (f) Such other costs, charges and expenses which the Association determines to be necessary and appropriate within the provisions of this Declaration.

9.2 Working Capital Funds; Initial Assessments.

9.2.1 There is hereby assessed against each Sublot the sum of One Thousand Dollars (\$1,000.00 USD) to be paid by the original Owner upon the event of the purchase of their Sublot from the Declarant or Builder, as applicable, to be paid at the time of Closing. This initial assessment is as and for an initial capital contribution to the working capital fund of the Association. These Assessments shall be used by the Association for its operating expenses. This Assessment is not an advance payment of the Annual General Assessment, will not be held in any sort of trust or reserve account, and shall not be refundable or credited to the account of the contributing Owner, all in accordance with § 9.12.2.

9.2.2 There is hereby assessed against each Sublot the sum of Two Thousand One Hundred Fifty Dollars (\$2,150.00 USD) to be paid by the original Owner upon the event of the purchase of their Sublot from the Declarant or Builder, as applicable, to be paid at the time of Closing. This initial assessment is as and for an initial capital contribution to a water/sewer fund of the Association. These Assessments shall be used by the Association for repairs, replacements and other capital expenditures for the common water and sewer infrastructure serving the Property (but not water/sewer infrastructure serving only a single Dwelling Unit). This Assessment is not an advance payment of the Annual General Assessment, will not be held in any sort of trust or reserve account, and shall not be refundable or credited to the account of the contributing Owner, all in accordance with § 9.12.2.

### 9.3 Responsibility for Payment of Assessments.

9.3.1 All Owners of Sublots (other than the Declarant) shall be responsible for paying Assessments levied against such Sublots; provided, however, notwithstanding any other provision set forth herein, a Builder shall not be responsible for paying Assessments until the Dwelling Unit located on the applicable Sublot is conveyed from the Builder to a third-party Owner that will occupy or lease the Dwelling Unit contained thereon. The Declarant or the Board shall prepare or cause the preparation of an annual operating budget for the Association and shall fix the amount of the Assessments, which shall be apportioned based upon the applicable formulas set forth in § 9.8. Written notice of the Assessments shall be sent to the Owner of each Sublot. Payment of Assessments may be required by the Declarant or Board on a monthly, quarterly, semi-annual or annual basis.

9.3.2 During the Class "B" Control Period, the Declarant shall determine the Assessments to be paid by the Owners, and the Declarant shall pay all Common Expenses which are not covered by the annual Assessments payable by Owners of Dwelling Units other than the Declarant as set forth above. This obligation may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of both. The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services or materials or a combination of services and materials with Declarant or other entities for the payment of some portion of the Common Expenses during the Class "B" Control Period.

9.3.3 An Eligible Mortgage Holder acquiring title to all or any portion of the Property as a result of: (i) a foreclosure sale or (ii) a deed in lieu of foreclosure, shall not be responsible for the Declarant's obligation for payment of the Common Expenses which are not covered by the annual Assessments payable by Owners of Dwelling Units during the Class "B" Control Period. After the Class "B" Control Period, the amount of Assessments attributable to Dwelling Units shall be established by the Board as of January 1 of each year, and each Owner of a Dwelling Unit shall pay an equal amount of such Assessments.

### 9.4 Creation of the Lien and Personal Obligation of Assessments.

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

9.5 Purpose of Assessments.

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

9.6 Special Assessments.

9.6.1 In addition to the annual Assessments authorized herein, the Association may levy, in any Assessment year, a special Assessment applicable to that year only for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair or replacement of a capital improvement upon Areas of Common Responsibility, including fixtures and personal property related thereto, and/or to meet any other emergency or unforeseen expenses of the Association, provided that any such special Assessment shall have the assent of two-thirds (2/3<sup>rd</sup>s) of the votes of each class of Members who are voting in person or by proxy at a meeting duly called for this purpose.

9.6.2 Special Assessments shall be due as provided by the Board.

9.7 Notice and Quorum for any Action Authorized Under § 9.6.

Written notice of any meeting called for the purpose of taking any action authorized under § 9.6 shall be sent to all Members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At the first such meeting called, the presence of Members or of proxies entitled to cast two-thirds (2/3<sup>rd</sup>s) of all the votes of each class of membership shall constitute a quorum. If the required quorum is not present, another meeting may be called subject to the same notice requirement. No such subsequent meeting shall be held more than sixty (60) days following the preceding meeting.

9.8 Uniform and Non-Uniform Rate of Assessment.

9.8.1 General Principals.

The apportionment of Assessments, both annual and special, provided by this § 9.8 are intended to both equitably divide expenses where appropriate and to concurrently account for the economic and management benefits of common service contracts. Assessments for the Areas of Common Responsibility are therefore divided into common assessments (for example, but not necessarily by way of limitation, Property landscaping and snowplowing), Building-specific assessments (for example, but not necessarily by way of limitation, for roof replacements), and Dwelling Unit-specific assessments based upon the best estimation of benefits accruing to each Dwelling Unit, although mathematical precision is not contemplated for both practical reasons as well as for the convenience of governance of the Association.

#### 9.8.2 Common Assessments.

Assessments for the Areas of Common Responsibility as stated in Article VI and which reference this § 9.8.2, both annual and special, shall be fixed at a uniform rate for all Dwelling Units (to wit: 1/7<sup>th</sup> per Dwelling Unit) and may be collected on a monthly, quarterly, semi-annual or annual basis, or other periodic basis not more often than monthly or less often than annually as determined by the Board.

#### 9.8.3 Building-Specific Assessments.

Assessments for the Areas of Common Responsibility as stated in Article VI and which reference this § 9.8.3, both annual and special, shall be fixed at a rate specific to the Building that is the subject of the Assessment, to wit:

(a) For the 2-Unit Buildings, each Dwelling Unit shall be equally assessed for one-half (1/2) of the total assessment amount attributed to the Phase 1 Building.

(b) For the 3-Unit Building, each Dwelling Unit shall be equally assessed for one-third (1/3) of the total assessment amount attributed to the Phase 2 Building.

These § 9.8.3 Assessments are for Areas of Common Responsibility where all Building Dwelling Units are affected. By way of example only and not limitation, a Building's roof replacement. These Assessments may be collected on a monthly, quarterly, semi-annual or annual basis, or other periodic basis not more often than monthly or less often than annually as determined by the Board.

#### 9.8.4 Unit-Specific Assessments.

Assessments for the Areas of Common Responsibility as stated in Article VI and which reference this § 9.8.4, shall be assessed against only the Dwelling Unit(s) that is the subject of the Assessment. By way of example only and not limitation, repairs to the roof(s) of less than all of the Dwelling Units in a Building. When the Assessment pursuant to this § 9.8.4 is made against more than one Dwelling Unit, the Board shall attempt to reasonably apportion the Assessment against the Dwelling Units on a case-by-case basis by taking into account 1) costs of materials used on each Dwelling Unit, 2) labor costs incurred on each Dwelling Unit, and 3) any other monetary costs the Association may incur. The Board's decision with respect to the apportionment need not be made with mathematical precision, may take into account reasonable assumptions, may resolve uncertainties as the Board should decide is equitable, and shall be final.

#### 9.8.5 Assessments for Other Common Expenses.

Assessments, both annual and special, for the Areas of Common Responsibility which may not be expressly identified in Article VI but which are the responsibility of the Association pursuant to this Declaration, and as it may be amended from time to time, shall be made by the

Board in accordance with either section § 9.8.2, § 9.8.3 or § 9.8.4 by virtue of characterizing the nature of the expense with the purposes and intent stated in § 9.8.1 and further by considering which of the Areas of Common Responsibility detailed in Article VI it is most closely analogous to and which of sections § 9.8.2, § 9.8.3 or § 9.8.4 applies to those analogous expenses.

9.9 Date of Commencement of Annual Assessments: Due Dates.

9.9.1 The annual Assessment provided for herein shall commence as to Dwelling Units on the first date of the month following the conveyance to an Owner of the first Dwelling Unit. The first annual Assessment shall be adjusted according to the number of months remaining in the calendar year. The Board shall fix the amount of the annual Assessment against each Dwelling Unit at least thirty (30) days' in advance of each annual Assessment period. Written notice of the annual Assessment shall be sent to every Owner subject thereto. The due dates shall be established by the Board.

9.9.2 The Association shall, upon demand, and for a reasonable charge furnish a Certificate of Compliance in the form of Exhibit "D" of this Declaration signed by an officer of the Association setting forth the amount of the Assessment on a specified Dwelling Unit and setting forth whether the Assessment has been paid. A properly executed Certificate of Compliance of the Association as to the status of Assessments on a Sublot is binding upon the Association as of the date of its issuance.

9.10 Effect of Nonpayment of Assessments; Remedies of the Association.

Any Assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the rate of eighteen percent (18%) per annum (not to exceed the highest interest rate chargeable to individuals under applicable law) and shall be subject to the remedies available to the Association as set forth in § 10.1 of this Declaration. In addition, the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose a lien against the Owner's Sublot. Failure to pay any Assessment(s) shall not constitute default under an insured mortgage.

9.11 Subordination of the Lien to Mortgages.

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

9.12 No Exemption; No Refund of Reserves.

9.12.1 An Owner may not exempt himself/herself or otherwise escape from liability from Assessments levied against him/her by waiver of any rights and/or privileges as a Member of

the Association, by non-use of Areas of Common Responsibility, and/or by abandonment of such Owner's Dwelling Unit.

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

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

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

9.14 Liability for Assessments on Voluntary Conveyance.

Upon the voluntary conveyance of an Ownership Interest the grantee of the Ownership Interest shall be jointly and severally liable with the grantor for all unpaid Assessments levied pursuant to this Declaration against the grantor of his/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 § 9.9.2 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.

9.15 Additional Assessments.

If the Assessments shall for any reason prove to be insufficient to cover the actual expenses incurred by the Association, the Association shall, at such time as it deems it necessary and proper, levy an additional assessment (the "Additional Assessment") against the

Owners of Dwelling Units. Each such Owner shall pay their share (as ascertained pursuant to § 9.8) of each such Additional Assessment as if the Additional Assessment were part of the original Assessment.

## ARTICLE X LIENS

### 10.1 Perfection of Lien.

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

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

### 10.2 Duration of Lien.

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

### 10.3 Priority.

A lien perfected under this Article X shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of first mortgagees against Dwelling Units. A lien perfected pursuant to this Article may be foreclosed in the same manner as a mortgage on real property in an action brought by the

Association after authorization from the Board. In any such foreclosure action, the affected Owner shall be required to pay reasonable rental for such Ownership Interest during the pendency of such action and the plaintiff in such action shall be entitled to the appointment of a receiver to collect the same. Any funds received at the judicial sale of the delinquent Owner or Declarant's Ownership Interest in excess of a first mortgage lien, court costs and the taxes and assessment liens shall be paid over to the Association to the extent of its lien.

10.4 Dispute as to Assessment.

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

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.

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

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 of such Owner's Dwelling Unit shall not be entitled to vote on Association matters or to receive certain services from the Association until said Assessment is paid in full.

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 Bylaws, shall give the Association, the Original Declarant



and their designated agent the right, in addition to all other rights set forth herein and provided by law, (a) to enter upon the Dwelling Unit or Sublot or portion thereof upon which, or as to which, such violation or breach exists, and summarily abate and remove, at the expense of the Owner 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 Bylaws, 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 § 11.3 hereof.

#### 11.3 Costs of Collection.

If any Owner fails to pay any Assessment when due or upon delinquency in the payment of any sums or costs 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 (\$100.00 USD), 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, court costs and filing fees. The actual expenses of collection and the administrative fee shall hereinafter be referred to as "Cost of Collection."

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

#### 11.4 Application of Payments.

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

- (i) Interest owed to the Association; then
- (ii) Administrative late fees or Enforcement Assessments owed the Association; then
- (iii) Costs of Collection; and finally to

- (iv) The oldest principal amounts the Owner owes the Association for Common Expenses chargeable to the Dwelling Unit or Sublot.

11.5 Binding Effect.

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

ARTICLE XII  
NO FURTHER SUBDIVISION / NO CONSOLIDATION

Except as expressly permitted in this Declaration or in any Amendment(s) hereto, there shall be no further subdivision, re-subdivision (e.g., lot line adjustments), or consolidation of any Dwelling Unit, Sublot or any part thereof with any other Dwelling Unit and/or Sublot (or, with any adjacent lands outside of the Property).

ARTICLE XIII  
CONDEMNATION

Whenever all or any part of the Property shall be taken (or conveyed in lieu of and under threat of condemnation) by any authority having the power of condemnation or eminent domain, that part of the award made for taking Areas of Common Responsibility shall be payable to the Association as trustee for all Owners to be disbursed as follows:

That portion of the award attributable to damage to the residue (that being Property not taken) shall be used by the Association to cure the damage to the residue by virtue of restoring or replacing such improvements so damaged on the remaining Property to the extent land is available therefor, to occur in accordance with an amended Site Plan and/or Landscape Plan, as applicable. By way of example only and not limitation, if condemnation or eminent domain requires relocation or modification of an access drive, the award would be used for all costs and expenses necessary for its relocation/modification.

Any remaining portion of the award not used by the Association to cure the damage to the residue shall be divided equally between each of the Owners of the Building whose portion of the Property was the subject of the taking and resulting damages.

ARTICLE XIV  
MORTGAGEES' RIGHTS

The following provisions are for the benefit of holders, insurers, or guarantors of first mortgages on Dwelling Units and Sublots. To the extent applicable, necessary, or proper, the provisions of this Article shall apply to both this Declaration and to the Bylaws. 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.

#### 14.1 Notices of Action.

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

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

#### 14.2 Other Provisions for First Lien Holders.

To the extent possible under Ohio law:

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

Eligible Mortgage Holders of first mortgages of the Class "A" Members and the Class "B" Member, subject to mortgages held by such Eligible Mortgage Holders, as allocated.

#### 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 § 14.2(a) and (b) of this Article:

(a) The consent of at One Hundred Percent (100%) of the Class "A" Members and of the Class "B" Member and the approval of the Eligible Mortgage Holders to which at least sixty-seven percent (67%) of the votes of Dwelling Units subject to a mortgage appertain, shall be required to terminate the Association.

(b) The vote of at least two-thirds (2/3<sup>rd</sup>s) of the Class "A" Members and the consent of the Class "B" Member and the approval of Eligible Mortgage Holders to which at least fifty-one percent (51%) of the votes of Dwelling Units subject to mortgages appertain, shall be required to materially amend any provisions of the Declaration, Bylaws, 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 replacements; (4) responsibility for maintenance and repair; (5) insurance or fidelity bonds; (6) leasing of the Dwelling Units; (7) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Sublot (this provision is subject and subordinate to any provision in an agreement for the sale by the Declarant of a Sublot); (8) establishment of self-management by the Association where professional management has been required by an Eligible Mortgage Holder; (9) restoration or repair of the Property (after hazard damage or partial condemnation) in a manner other than that specified in this Declaration; (10) any action to terminate the legal status of the Property after substantial destruction or condemnation occurs; (11) expansion or contraction of the Property, or the addition of the Property other than as provided in § 1.3 of this Declaration; or (12) any provisions included in this Declaration, Bylaws, or Articles which are for the express benefit of Eligible Mortgage Holders on Sublots.

#### 14.4 Special Federal Home Loan Mortgage Corporation Provisions.

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

(a) Unless two-thirds (2/3<sup>rd</sup>s) of the first mortgagees or Owners give their consent, the Association shall not: (1) by act or omission seek to abandon, 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 losses for other than repair, replacement or reconstruction of such properties.

(b) The provisions of this § 14.4 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 Areas of Common Responsibility and may pay overdue premiums of casualty insurance policies or secure new casualty insurance coverage upon the lapse of a policy, for the Areas of Common Responsibility and first mortgagees making such payments shall be entitled to immediate reimbursement from the Association, provided the Association had directly contracted to obtain insurance coverage per operation of § 8.2.4.

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

#### 14.5 Special Ohio Provisions.

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

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

### ARTICLE XV TRANSFER OF SPECIAL DECLARANT RIGHTS

#### 15.1 Instrument Transferring Special Declarant Rights.

A Declarant may transfer Special Declarant Rights created or reserved in this Declaration or in the Bylaws 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.

## 15.2 Liability of Transferor of Special Declarant Rights.

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

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

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

## 15.3 Acquisition of Special Declarant Rights.

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

## 15.4 Termination of Special Declarant Rights.

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

## 15.5 Liabilities of a Transferee of Special Declarant Rights.

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

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

(b) A successor to any Special Declarant Right, other than a successor described in paragraphs (c) or (d) of this subsection, who is not an Affiliate of a Declarant, is subject to all

obligations and liabilities imposed by the Declaration and Bylaws: (i) on a Declarant which relate to such Declarant's exercise or non-exercise of Special Declarant Rights; or (ii) on the transferor, other than: (1) misrepresentations by any previous Declarant; (2) warranty obligations on improvements made by any previous Declarant, or made before this Declaration is recorded; (3) breach of any fiduciary obligation by any previous Declarant or appointees to the Board of Directors; or (4) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

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

(d) A successor to all Special Declarant Rights held by the transferor who is not an Affiliate of that Declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to sublots or Dwelling Units under this § 15.5(b), may declare the intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all Special Declarant Rights to any person acquiring title to any Dwelling Unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by the Bylaws for the duration of the period that a Declarant has the right to elect or designate Board members, and any attempted exercise of this rights is void. So long as a Successor Declarant may not exercise Special Declarant Rights under this § 15.5(d), such successor Declarant is not subject to any liability or obligation as a Declarant.

#### 15.6 Limitation on Liability of Transferee of Special Declarant Rights.

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

### ARTICLE XVI GENERAL PROVISIONS

#### 16.1 Covenants Run with the Property; Binding Effect.

16.1.1 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.

16.1.2 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/herself, his/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/her interest in any real property subject hereto.

## 16.2 Notices.

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

16.2.2 Notices to the Declarant shall be deemed given only when received and must be either hand delivered or mailed by certified or registered mail, postage prepaid, to ProBuilt Homes, Inc. (Declarant), P.O. Box 384, Mentor, Ohio 44061-0384, with a copy to Joseph P. Szeman, Esq., Hennig, Szeman & Klammer Co., L.P.A., 8500 Station Street, Suite 245, Mentor, Ohio 44060.

## 16.3 Enforcement - Waiver.

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

## 16.4 Construction of the Provisions of this Declaration.

The Declarant or Association shall have the right to construe and interpret the provisions of this Declaration and in the absence of an adjudication by arbitrator(s) or a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all Persons or property which benefit or which are bound by the provisions hereof. Any conflict between any construction or interpretation of the Declarant, 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 Declarant or the Association, as the case may be.



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 the Rules and in making any final 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 interest of the Declarant(s), Owners, Tenants and Occupants to the end that Townhomes at Literary Pointe Subdivision shall be preserved and maintained as a high-quality residential community.

16.5 Reservations by Original Declarant - Exempt Property.

16.5.1 Original Declarant reserves the right and easement for itself and Owners of nearby lands to whom Original Declarant, in Original Declarant's sole discretion, may grant the same, the right and easement to tie into, use, repair, maintain and replace without charge any and all common lines, pipes, utilities, conduits, ducts, wires, cables 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.

16.5.2 Original Declarant hereby reserves the right to grant to or enter into any easements for the installation, maintenance, service or operation of any and all common lines, pipes, utilities, conduits, ducts, wires, cables 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.

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

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

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

16.5.6 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 and rights-of-way intended for the use of or used by more than one Owner. Any easements or rights referred to in this Article, whether granted by Original Declarant prior to the filing of this Declaration or subsequent thereto, shall at all times have priority over the provisions of this Declaration and any lien created under this Declaration.

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

16.6 Assignability by Original Declarant.

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

16.7 Severability.

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

16.8 Litigation.

16.8.1 No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by the vote of 2/3<sup>ds</sup> of the Board members entitled to vote on the question, and, during the Class "B" Control Period, the Class "B" Member. This § 16.8 shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Articles IX and X hereof, (c) proceedings involving challenges to real estate taxation, or (d) counterclaims brought by the Association in proceedings instituted against it, all of which shall only require authorization by a simple majority of the Board members entitled to vote on the question. This § 16.8 shall not be amended unless

such amendment is made by the Declarant or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

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

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

#### 16.9 Validity of Mortgages.

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

#### 16.10 Amendment of Declaration.

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

(a) For so long as the Declarant or a successor designated by the Declarant is the Owner of a fee simple interest in the Property, the Original Declarant shall be entitled from time to time to amend or modify any of the provisions of this Declaration or to waive any of the provisions, either generally or with respect to particular portion of the Property, if in its judgment the development or lack of development of the Property requires such amendment, modification or waiver, or if in its judgment the purposes of the general plan of development of the Dwelling Units will be better served by such amendment, modification, or waiver, provided no such amendment, modification, or waiver shall materially and adversely affect the value of existing Dwelling Units or shall prevent a Dwelling Unit from being used by the Owner in the same manner that said Dwelling Unit was used prior to the adoption of said amendment, modification, or waiver. To amend or modify the Declaration in accordance with this paragraph, Original Declarant shall file a supplement to this Declaration setting forth the amendment or modification, which supplement need not be but shall, at Original Declarant's request, be executed by the

Association and all Owners of real property within the Property. Each such Owner, by accepting a deed to his/her Dwelling Unit or other real property, hereby appoints Original Declarant his/her attorney-in-fact, coupled with an interest, to execute on his/her behalf any such amendments. Each amendment or modification shall be effective when signed by the Original Declarant and filed for record with the Recorder of the County.

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

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

(d) Except as expressly provided in this Declaration, and after expiration of the period set forth in (a) of this Article, any provision of this Declaration may be amended or repealed following a meeting of the Members held for such purpose, by the affirmative vote of at least a majority of the voting power of the Class "A" Members unless a greater percentage of vote is required pursuant to this Declaration or in accordance with the Act or other statutes of

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

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

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

#### 16.11 Interest Rates.

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

#### 16.12 Headings.

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

#### 16.13 Gender.

The use of only the male or female gender herein or in the Bylaws is wholly inadvertent and shall be deemed to include the masculine, feminine and neutral genders, as the case may be, and the use of singular shall be deemed to include the plural wherever the context so requires.


#### 16.14 Liberal Interpretation.

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

16.15 Rule Against Perpetuities.

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

PROBUILT HOMES, INC.

By:   
George E. Davis, III, its President

STATE OF OHIO            )  
  )     ss.  
COUNTY OF LAKE        )

No oath or affirmation was administered to the signer with regard to the notarial act.

On this 14<sup>th</sup> day of November, 2023 before me, a Notary Public in and for said County and State, personally appeared, George E. Davis, III, and in his capacity as President of ProBuilt Homes, Inc., the individual who executed the foregoing instrument and acknowledged that the same is his free and voluntary act and deed and that of ProBuilt Homes, Inc.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.



**JENNA CARTER**  
Notary Public, State of Ohio  
My Commission Expires  
May 21, 2028

  
NOTARY PUBLIC

EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY

Situated in the City of Willoughby, County of Lake and State of Ohio and known as being a subdivision of PPN: 27A-026-D-00-032-0, lands conveyed to the Willoughby Union Point Associates LLC, as recorded in Instrument No. 2018R022338 of Lake County Recorders, and further known as being part of Sublot No.15 and part of Sublot No. 14 in Charles W. Wrights Survey in the Village of Willoughby as recorded in Volume A, Pages 43 and 44 of Lake County Plat Records together with a part of Original Lot No.1, Tract No. 13 in the Ninth Township of the Tenth Range in the Connecticut Western and is more particularly known as being parts of Lots No. 30 and No. 31 in Merchant's Survey now in said City of Willoughby and is bounded and described as follows:

Beginning in the northerly line of Wilson Avenue, 50 feet in width, at a 5/8 inch iron pin found marking its intersection with the easterly line of Euclid Avenue, 60 feet in width;

Thence, South 74°43'52" East, along said northerly line of Wilson Avenue, at 482.68 feet passing through a 1 inch iron pipe found at its intersection with the westerly line of Center Street, 40 feet in width, as shown by said plat of Wrights Survey, a total distance of 522.68 feet to its intersection with the easterly line of said Center Street;

Thence, North 15°27'03" East, along said easterly line of Center Street, a distance of 381.27 feet to a 5/8" iron pin found North 66°37'38" West a distance of 0.16 feet, to the northwesterly corner of PPN: 27-A-023 J-00-052-0, lands conveyed to Laurene Hughes as recorded in Instrument No. 2004R007194 of Lake County Records, and the Principal Place of Beginning of the following described parcel of land:

THENCE, North 15°27'03" East, continuing along the easterly line of Center Street, a distance of 32.19 feet to point and a 5/8 inch capped iron pin set;

THENCE, South 74°32'57" East, leaving said easterly line of Center Street and creating a new line, a distance of 133.35 feet to a 5/8" capped iron pin set;

THENCE, South 46°01'15" East, a distance of 142.43 feet to a 5/8" capped iron pin set;

THENCE, North 43°07'22" East, a distance of 33.11 feet to a 5/8" capped iron pin set;

THENCE, South 46°52'38" East, a distance of 21.56 feet to a 5/8" iron pin found (0.14'NE.) at the northwesterly corner of PPN: 27-A-026-D-00-028-0, lands conveyed to Jeffrey S. Watson, Tr., as recorded in Instrument No. 2015R034129 of Lake County Records;

THENCE, South 46°52'38" East, along the southwesterly line of said Watson lands and along the prolongation of the same, a distance of 290.58 feet to on the northwesterly line of

PPN: 27-A-026-D-00-022-0, lands conveyed to Adam Wilson, as recorded in Instrument No. 2017R015239 of Lake County Records and a 5/8" capped iron pin found therein;

THENCE, South 43°47'00" West, along the northwesterly line of said Wilson, a distance of 105.27 feet to the northerly line of PPN: 27-A-026-D-00-006-0, lands conveyed to Judy C. Widgren, as recorded in Instrument No. 2000R036678 of Lake County Records, and a 5/8 inch capped iron pin found therein;

THENCE, South 89°50'51" West, along the northerly line of said Widgren, said line also being the northerly line of Original Lot No.1, and the prolongation of the same, a distance of 112.17 feet to the northeasterly line of PPN: 27A-026-D-00-001-0, lands conveyed to Kenneth B. Sanford, as recorded in Volume 870, Page 642 of Lake County Records, and a 5/8" capped iron pin found;

THENCE, North 47°22'03" West, along the northeasterly line of said Sanford, a distance of 130.27 feet to an angle point therein and a 5/8" capped iron pin found;

THENCE, North 48°50'25" West, continuing along said Sanford line, a distance of 80.28 feet to a point on the northeasterly line of PPN: 27A-023-J-00-049-0, lands conveyed to Kirk A. Stemple, as recorded in Instrument No. 2006R003395 of Lake County Records, and a 5/8" capped iron pin set;

THENCE, North 01°40'28" West, along said northeasterly line of Stemple and the prolongation of the same, a distance of 172.93 to the northeasterly corner of PPN 27A-023-J-00-052-0, lands conveyed to aforementioned Laurene Hughes, and a 5/8" capped iron pin found;

THENCE, North 69°03'53" West, along the northerly line of said Hughes, a distance of 153.87 feet to the easterly line of Center Street and the Principal Place of Beginning and containing 1.5722 Acres (68,488.4 sq.ft.) of land, based on a survey conducted in October of 2018 by John R. Alban, Ohio Professional Surveyor 7651.

Bearings are based upon an assumed meridian and are to be used for reference only.

All pins set are 5/8" x 30" rebar with yellow cap marked "J. Alban 7651".

PPN: 27A-026-D-00-061-0





EXHIBIT "C"

APPROVED LANDSCAPE PLAN

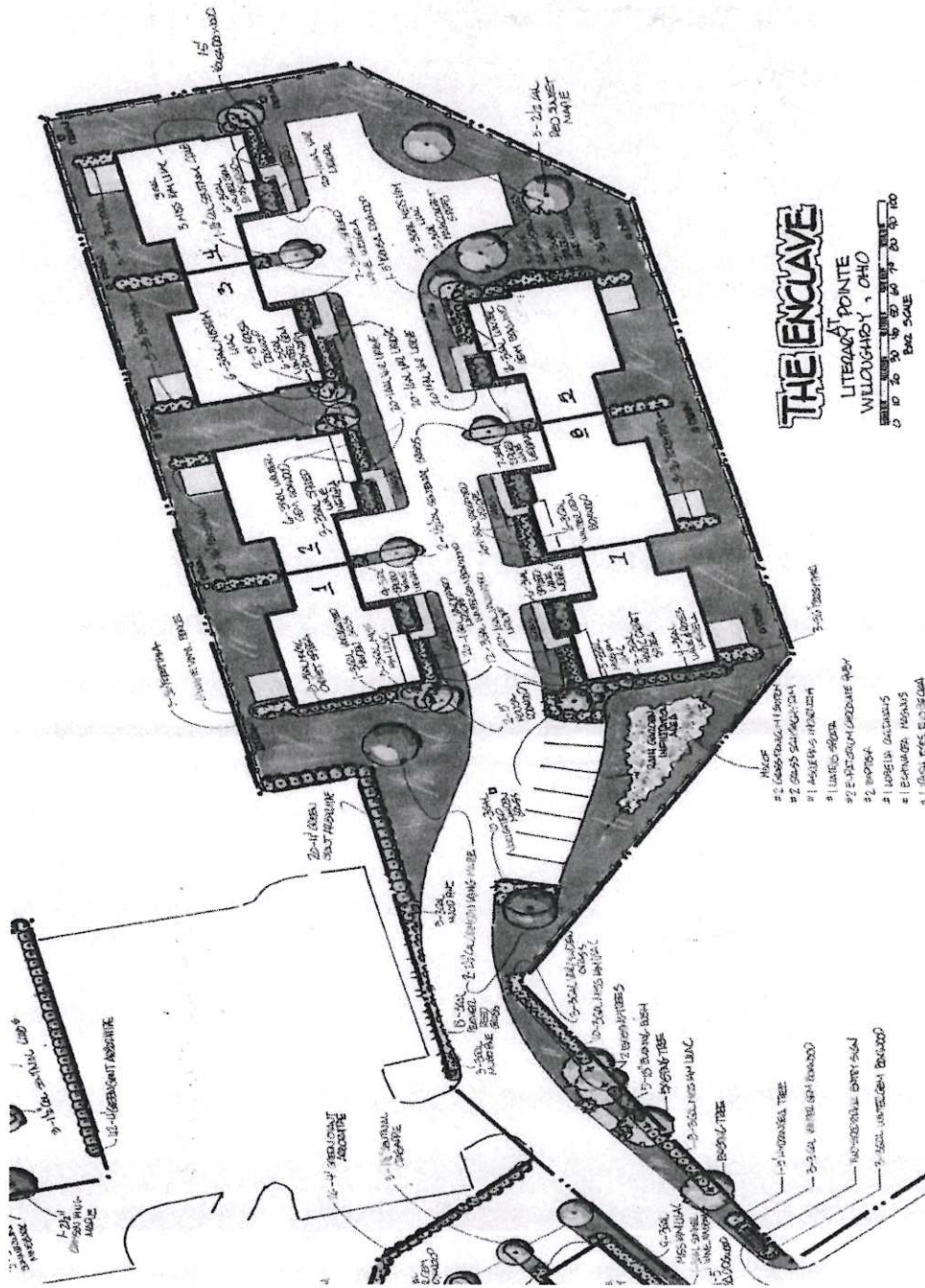


EXHIBIT "D"

CERTIFICATE OF COMPLIANCE AND  
STATUS OF ASSESSMENTS WITH RESPECT TO  
THE RESALE OF A DWELLING UNIT AT  
ENCLAVE AT LITERARY POINTE SUBDIVISION  
WILLOUGHBY, LAKE COUNTY, OHIO

Enclave at Literary Pointe Homeowners' Association, Inc., a non-profit Ohio corporation (the "Association"), created to govern, operate, control and administer the "Areas of Common Responsibility" for Enclave at Literary Pointe Subdivision, Willoughby, Lake County, Ohio ("Enclave at Literary Pointe") and to supervise and enforce the Declaration of Covenants, Conditions, Easements and Restrictions for Enclave at Literary Pointe Subdivision (the "Declaration") hereby certifies as follows:

1. The Association has received notice of a proposed sale of the Dwelling Unit located on Sublot No. \_\_\_\_\_, located at \_\_\_\_\_, Willoughby, Lake County, Ohio.
2. The proposed purchaser(s) of the Dwelling Unit is (are) \_\_\_\_\_.
3. The Owner(s) of the Dwelling Unit (is) (are) \_\_\_\_\_.
4. The Association has no record of a violation of the Covenants and Restrictions contained in the Declaration except \_\_\_\_\_ (if none, write "None").
5. The current annual assessment attributable to the Dwelling Unit is \$ \_\_\_\_\_.
6. The assessments are payable at the rate of \$ \_\_\_\_\_ per (month) (quarter) (annual); said assessments being payable through \_\_\_\_\_ 20\_\_\_\_.
7. A fee is payable to the Association upon the issuance of this Certificate in accordance with the terms of the Declaration.
8. This Certificate of Compliance is being issued per § 9.9.2 of the Declaration.

ENCLAVE AT LITERARY POINTE  
HOMEOWNERS' ASSOCIATION, INC.

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

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

EXHIBIT "E"

CODE OF REGULATIONS (BYLAWS)  
OF  
ENCLAVE AT LITERARY POINTE  
HOMEOWNERS' ASSOCIATION, INC.

CODE OF REGULATIONS (BYLAWS)  
OF  
ENCLAVE AT LITERARY POINTE  
HOMEOWNERS' ASSOCIATION, INC.

Article I  
Name, Principal Office, and Definitions

1.1 Name. The name of the Association is ENCLAVE AT LITERARY POINTE HOMEOWNERS' ASSOCIATION, INC., an Ohio non-profit corporation (hereinafter sometimes referred to as the "Association").

1.2 Principal Office. The principal office of the Association will be located in Willoughby, Lake County, Ohio.

1.3 Definitions. Capitalized terms used in this Code of Regulations ("Bylaws") shall have the same meaning as set forth in the Declaration of Covenants, Conditions, Easements and Restrictions for Enclave at Literary Pointe Subdivision, Willoughby, Lake County, Ohio (the "Declaration").

Article II  
Association: Meetings, Quorum, Voting, Proxies

2.1 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.

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

2.3 Annual Meetings. The first annual meeting of the Members shall be held within one hundred twenty (120) days after the termination of the Class "B" Membership in accordance with § 5.2.2(b) of the Declaration, and each subsequent annual meeting shall be held at 7:00 p.m. on the same day of the same month of each year thereafter, unless the Board designates a different date and/or time. If the day for the annual meeting of the Members is a legal holiday, the meeting will be held on the first day following that is not a legal holiday.

2.4 Special Meetings. The President of the Association may call special meetings. In addition, after the Declarant is no longer a Class "B" Member, it shall be the duty of the President to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board. 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.

2.5 Notice of Meetings. A written or printed notice stating the place, day, and time of any meeting of the Members shall be delivered, either personally or by mail, or by e-mail if authorized in writing by a Member, to each Member entitled to vote at such meeting, at least fifteen (15) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or Persons calling the meeting. Such notice shall specify the place, day and time of the meeting, and, in the case of a special meeting, the purpose of the meeting.

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/her address as it appears on the records of the Association, or supplied by such Member to the Association for the purpose of notice, with postage thereon prepaid.

2.6 Waiver of Notice. Waiver of notice of meeting by a Class "A" Member shall be deemed the equivalent of proper notice. Any Class "A" Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Class "A" Member, whether in Person or by proxy, shall be deemed a waiver by such Class "A" Member of notice of the time, date, and place thereof, unless such Class "A" Member 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.

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

The Class "A" Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Class "A" Members to leave less than a quorum, provided that at least forty (40%) percent of the voting power of the Association remains present in Person or by proxy.

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

2.9 Proxies. At all meetings of Members, each Class "A" Member may act or vote in Person or by proxy. The Person appointed as proxy need not be a Member of the Association. Designation by a Member or Members of a proxy to vote or act on his/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 and shall automatically cease upon conveyance by the Member of his/her Sublot. Notice to the Association in writing or in open meeting of the revocation of the designation of a proxy shall not affect any vote or act previously taken or

authorized. The presence at a meeting of the Person appointing a proxy does not revoke the appointment.

2.10 Majority. As used in these Bylaws, the term "majority" shall mean those votes totaling more than fifty (50%) percent of the total number.

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

2.12 Conduct of Meetings. The President of the Board 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.

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

### Article III

#### Board of Directors: Number and Term of Office

3.1 Number. During the Class "B" Control Period specified in § 5.2.2(b) of the Declaration, the affairs of this Association shall be managed by a Board of three (3) Directors who need not be Members of the Association. After the termination of the Class "B" Membership and in accordance with Article V, § 5.3 of the Declarations the Board shall consist of seven (7) Directors with each Dwelling Unit having one (1) seat on the Board of Directors. Only Members may serve as Directors.

No Dwelling Unit shall be represented on the Board by more than one (1) Person at the same time. No Person may represent more than one Dwelling Unit. If a Member is a corporation, partnership, limited liability company, trustee or other artificial entity, a certificate signed by such Member shall be filed with the Secretary of the Association naming such Director (or if there is no Secretary, then with the Person conducting the meeting), which certificate shall be conclusive until a subsequent substitute certificate is filed with the Secretary of the Association.

3.2 Term of Office. Prior to the termination of the Class "B" Control Period, the Class "B" Member shall elect one (1) Director for a term of one (1) year, and two (2) Directors for a term of two (2) years; and at each annual Meeting thereafter the Class "B" Member shall elect one (1) or two (2) Directors, as the case may be, for a term of two (2) years.

After the termination of the Class "B" Control Period, each Dwelling Unit shall submit a written designation of the Member who will be serving on the Board on behalf of that Dwelling Unit. A Dwelling Unit may modify its written designation as often as it sees fit whereupon the newly named Member shall be added to the Board immediately.

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

#### Article IV Vacancies and Disqualifications

In the event of the death, disability, resignation, or suspension (pursuant to §§ 5.2.2.(a), 11.1, or other applicable provision of the Declaration) of the voting rights of a Director, and until such time as the Dwelling Unit submits a written designation for a Member replacement, or, if applicable, until such time as the Dwelling Unit's voting rights have been restored, a vacant seat shall be declared by the Board and it may proceed with business with the vacant seat's vote being recorded as "Abstain" on all matters.

#### Article V Meetings of Directors

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

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

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

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



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

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

5.7 Action Without a Formal Meeting. Any action to be taken at a meeting of the Board or any action that may be taken at a meeting of the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the Directors, and such consent shall have the same force and effect as a unanimous vote.

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

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

6.1 Powers. The Board shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or these Bylaws prohibited or otherwise outside of the authority of the Board.

In addition to powers specified in the Declaration, including the powers set forth in § 5.4 of the Declaration, and in addition to the duties imposed by these Bylaws 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, by way of explanation, but not limitation:

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

(b) Exercise for the Association all powers, duties and authority vested in or delegated to the Association and not reserved to the membership by other provisions of these Bylaws, the Articles of Incorporation, or the Declaration;

(c) Declare the seat of a Director to be vacant in the event such Director shall be absent from three (3) consecutive regular meetings of the Board;

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

(e) Prepare and adopt an annual budget in which there shall be established the contribution of each Owner to the Common Expenses. The budget shall include reserves in an amount adequate to repair or replace major capital items in the normal course of operations without the necessity of special assessments, as may be approved and authorized by § 6.9 of the Declaration.

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

(g) Providing for the operation, care, upkeep, and maintenance of all of the Areas of Common Responsibility;

(h) Designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Areas of Common Responsibility 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;

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

(j) Making and amending Rules;

(k) Opening of bank accounts on behalf of the Association and designating the signatories required in accordance with Article VII, § 9 of these Bylaws;

(l) Making or contracting for the making of repairs, additions, and improvements to or alterations of the Areas of Common Responsibility in accordance with the provisions of the Declaration and these Bylaws after damage or destruction by fire or other casualty;

(m) Enforcing by legal means the provisions of the Declaration, these Bylaws, and the Rules adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

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

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

(p) 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;

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

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

(s) Such other rights as conferred by Ohio Revised Code Chapters 5312 and 1702 that do not conflict with the provisions of the Declaration or these Bylaws.

6.2 Limitation on Powers; Right of Declarant to Disapprove Actions. This § 6.2 may not be amended without the express, written consent of the Class "B" Member during the Class "B" Control Period.

During the Class "B" Control Period, the Class "B" Member shall have the right at its sole discretion to disapprove actions of the Board, as is more fully provided in this § 6.2. This right shall be exercisable only by the Class "B" Member, its successors, and assigns who specifically take this power in a recorded instrument. The right to disapprove shall be as follows:

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

(a) The Class "B" Member shall have been given written notice of all meetings and proposed actions approved at meetings of the Board or any committee thereof in accordance with § 16.2 of the Declaration, which notice shall, except in the case of the regular meetings held pursuant to these Bylaws, 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 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 Board. The Class "B" Member shall have the right to disapprove any action, policy, or program authorized by the Board and to be taken by the Board, the Association, or any individual member of the Association, if the Board or Association approval is necessary for such action. This right may be exercised by the Class "B" Member, its representatives, or agents at any time within thirty (30) days following the meeting held pursuant to the terms and provisions hereof. This right to disapprove may be used to block proposed actions but shall not extend to the requiring of any action or counteraction on behalf the Board or the Association. The Class "B" Member shall not use its right of disapproval to require a reduction in the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditures required to comply with applicable laws and regulations.

6.3 Duties. It shall be the duty of the Board to:

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

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

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

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

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

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

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

(e) Pursuant to Article VIII of the Declaration, procure and maintain adequate liability and hazard insurance on Property of the Association and adequate officers and directors indemnity insurance and cause all officers or employees having fiscal responsibilities to be bonded, as it may deem appropriate;

(f) Cause the Areas of Common Responsibility to be maintained;

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

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

Article VII  
Officers and Their Duties

7.1 Enumeration of Offices. The officers of the Association shall be a President and Vice-President, who shall at all times be Board Directors, a Secretary, and a Treasurer, and such other officers as the Board may from time to time by resolution create.

7.2 Election of Officers. The election of officers shall take place at the first annual meeting of the Board.

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

7.4 Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine so long as not in conflict with the Declaration or these Bylaws.

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

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

7.7 Multiple Offices. The offices of Secretary and Treasurer may be held by the same Person. No Person shall simultaneously hold more than one of any of the other offices except in the case of special offices created pursuant to this Article.

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

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

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

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

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

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

#### Article VIII Finances of Association (Assessments)

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

may direct, the Assessment made pursuant to this § 8.1 on or before the first day of each calendar year, except that the Board may elect to collect annual Assessments semi-annually, quarterly, or monthly, in advance. On or before the date of each annual meeting, the Association shall furnish to all Members an itemized accounting of the expenditures for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided, by special Assessments, or otherwise, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited to the last maturing monthly installments due from the Members under the current year's estimate, pro rata. Any net shortage shall be added pro rata (unless the Declaration requires a different allocation) to the next installment due after the rendering of the accounting.

Notwithstanding the provisions of this § 8.1, the Board shall have the authority to establish payment of Assessments, quarterly or semi-annually or annually (rather than monthly).

8.2 Reserve for Contingencies and Replacements; Special Assessments. The Association shall build up and maintain a reasonable reserve for contingencies and replacements upon action by the Members pursuant to § 6.9 of the Declaration. 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 (unless the Declaration requires a different allocation). The Association shall also make any necessary or desirable special Assessments, from time to time which shall be payable at the time or times the Board deems necessary or desirable. The Association shall serve notice of such further Assessments on Members required to pay Assessments, by a statement in writing giving the amount and reasons therefor, and such further assessment shall be payable by the date and upon the terms stated in the notice, which date shall be not less than ten (10) days after the delivery or mailing of such notice of further Assessment.

8.3 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/her 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 § 9.3 of the Declaration shall continue to pay the current charge at the existing rate established for the previous period until the Association mails or delivers notice of the new payment due as a result of the determination of the new annual or adjusted estimate.

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

8.5 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 IX of the Declaration.

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

8.7 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.

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

#### Article IX

##### Hearing Procedure; Compliance and Non-Monetary Default

9.1 Enforcement. In the event of a violation by any Member or any Tenant or other Occupant of a Dwelling Unit (other than the nonpayment of Assessments or charges, which are governed by Articles IX and X of the Declaration) of any of the provisions of the Declaration, the Bylaws, or the Rules, the Board shall make a reasonable effort to notify the Member and any Tenant or other Occupant of the violation, by written notice. If such violation is not cured as soon as is reasonably practical and in any event within seven (7) days after the date of such written notice, or if the violation is not capable of being cured within such seven (7) day period, if the Member or Tenant or other Occupant fails to commence and diligently proceed to completely cure such violation as soon as is reasonably practical within seven (7) days after the date of the written demand by the Board, or if any similar violation is thereafter repeated, the Board may, at its option:

(a) Impose an Enforcement Assessment against the Member or Tenant or other Occupant as provided in this Article IX; and/or



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

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

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

9.2 Enforcement Assessments. The amount of any Enforcement Assessment shall be a reasonable amount as determined in the sole discretion of the Board. Prior to imposing any fine, the Member or Tenant or other Occupant shall be afforded an opportunity for a hearing after making a reasonable effort to provide a written notice to the Member or Tenant or other Occupant of not less than ten (10) days, which notice shall include (i) a statement of the date, time and place of the hearing, (ii) a statement of the provisions of the Declaration, these Bylaws or Rules which have allegedly been violated, (iii) a short and plain statement of the matters asserted by the Association, (iv) the amount of the proposed charge or Enforcement Assessment, (v) a statement that the Owner has the right to a hearing before the Board to contest the proposed Enforcement Assessment, (vi) a statement setting forth the procedure to request a hearing, and (vii) a statement that the Owner has the right to cure the violation in accordance with § 9.1 above. Prior to the effectiveness of any sanction hereunder, proof of notice of the mailing or attempted delivery, and the invitation to be heard shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and attempted manner of delivery is entered by the officer, Board Member or agent who attempted delivery of such notice. The notice requirement shall be deemed satisfied if the alleged violator appears at the hearing. The minutes of the hearing shall contain a written statement of the hearing and the sanction, if any, imposed. The Member or Tenant or other Occupant shall have an opportunity to respond, to present evidence, and to provide written and oral arguments on all issues involved and shall have an opportunity at the hearing to review, challenge and respond to any material considered by the Association. At the hearing, the Board shall conduct a reasonable inquiry to determine whether the alleged violation in fact occurred, and if the Board so determines, it may impose such fine as it deems appropriate by written notice to the Member or Tenant or other Occupant. The Board shall set any time limitations for all written and oral arguments or presentations by any Persons appearing at the hearing(s). The Board shall not levy a Enforcement Assessment before holding a hearing pursuant to this § 9.2. If the Member or Tenant or other Occupant fails to attend the hearing as set by the Board, the Member or Tenant or other Occupant shall be deemed to have admitted the allegations contained in the notice to the Member or Tenant or other Occupant. Within thirty (30) days following a hearing at which the Board imposes an Enforcement

Assessment, the Board shall deliver a written notice of the Enforcement Assessment to the Owner. Any Enforcement Assessment imposed by the Board shall be due and payable within ten (10) days after written notice of the imposition of the Enforcement Assessment, or if a hearing is timely requested, within ten (10) days after written notice of the Board's decision at the hearing. Any Enforcement Assessment levied against a Member shall be deemed an Assessment and if not paid when due all of the provisions of the Declaration relating to the late payment of Assessments shall be applicable. If any Enforcement Assessment is levied against a Tenant and is not paid within ten (10) days after same is due, the Association shall have the right to evict the Tenant as hereinafter provided. The Association shall have the right to offset the deposit made to the Association in accordance with the Declaration. Any written notice that this § 9.2 requires shall be delivered to the Owner or Occupant of the Dwelling Unit by personal delivery, by certified mail, return receipt requested, or by regular mail. The Association shall have the right to file a Certificate of Lien in accordance with Article X of the Declaration.

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

9.4 Responsibility of Members for Tenants. Each Member shall be responsible for the acts and omissions, whether negligent or willful, of his/her 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 Area of Common Responsibility, or any liability to the Association, the Member shall be charged for same, limited where applicable to the extent that the expense or liability is not met by the proceeds of insurance (i.e., insurance deductibles). Furthermore, any violation of any of the provisions of the Declaration, these Bylaws, or any Rule, by any Tenant, or any employees, agents or invitees of a Member or any Tenant of a Dwelling Unit, shall also be deemed a violation by the Member, and shall subject the Member to the same liability as if such violation was that of the Member.

9.5 Costs and Attorney's Fees. In any legal proceedings commenced by the Association to enforce the Declaration, these Bylaws and/or the Rules, as said documents may be amended from time to time, the Association shall be entitled to recover the costs of the proceeding and reasonable attorneys' fees. Any such costs or attorneys' fees awarded to the Association or committee in connection with any action against any Member shall be charged to the Member.

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

9.7 No Waiver of Rights. The failure of the Association or any Member to enforce any covenant, restriction or any other provision of the Declaration, these Bylaws, 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.

9.8 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, these Bylaws, or the Rules of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or Occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees incurred by the Association in so acting to enforce such rights.

Article X  
Indemnification

Each member of the Board and each officer of the Association, and each former member of the Board and officer of the Association, shall be indemnified by the Association against the costs and expenses reasonably incurred by him/her in connection with the defense of any pending, threatened or completed action, suit or proceeding, criminal, civil, administrative, or investigative, to which he/she is or may be made a party by reason of his/her being or having been such member of the Board or officer of the Association (whether or not he/she is a member or officer at the time of incurring such costs and expenses), unless such Board member or officer (or former Board member or officer) failed to act in good faith and in a manner he/she reasonably believed to be in, or not opposed to, the best interests of the Association and, with respect to any criminal proceeding, he/she had no reasonable cause to believe his/her action was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement or conviction shall not create, of itself, a presumption that the Person did not act in good faith and in a manner he/she reasonably believed to be in or not opposed to the best interests of the Association and, with respect to any criminal action or proceeding, a presumption that the Person had reasonable cause to believe that his/her conduct was unlawful. The determination of whether the Board member's or officer's conduct failed to qualify for indemnification shall be made either by (1) the opinion of independent counsel selected by the Association, or (2) by a majority vote of the disinterested members of the Board of the Association. The phrase "disinterested members" shall mean all members of the Board other than (i) any member of the Board or officer of the Association who is a party to or threatened with such action, suit or proceeding; (ii) any corporation or organization of which such member of the Board or officer referred to in (i) above owns of record or beneficially ten percent (10%) or more of any class of voting securities; (iii) any firm of which such member of the Board or officer referred to in (i) above is a partner or member; and (iv) any spouse, child, parent, brother or sister of any such member of the Board or officer referred to in (i) above. The foregoing rights of indemnification shall inure to the benefit of the heirs and legal representatives of each such member of the Board or officer and shall not be exclusive of other rights to which any member of the Board or officer may be entitled to or granted pursuant to § 1702.12(E) of the Ohio Revised Code, as a matter of law, or under the Declaration, Articles, or these Bylaws.

Article XI  
Amendments to this Code of Regulations

Prior to the sale and conveyance of the first Dwelling Unit, Declarant may unilaterally amend these Bylaws. After such sale and conveyance, the Declarant may unilaterally amend these Bylaws so long as it owns any portion of the Property or adjacent lands for development and so long as the amendment has no material adverse effect upon the rights of any Member. Thereafter and otherwise, these Bylaws may be amended only by the affirmative vote or written consent of Class "A" Members representing a majority of the voting power of the Association, which shall include a majority of votes of Members other than the Declarant or, where the two-class voting structure is still in effect, shall include the Class "B" Member and a majority of the voting power of the Class "A" Members. However, the percentage of votes necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. No amendment to these Bylaws is effective until filed in the office of the Lake County Recorder.

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

Article XII  
Miscellaneous

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

12.2 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 these Bylaws.

12.3 Conflicts. If there are conflicts or inconsistencies between the mandatory provisions of Ohio law, the Articles, the Declaration, and these Bylaws, the mandatory provisions of Ohio law, the Declaration, the Articles, and these Bylaws (in that order) shall prevail.

12.4 Books and Records.

(a) Inspection by Members and Mortgagees. The Declaration and these Bylaws, membership register, books of account, and minutes of meetings of the Members and the Board shall be made available for inspection and copying by any mortgagee, Member of the Association, or by his/her duly appointed representative at any reasonable time and for a purpose reasonably related to his/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) Limitations on Inspections by Owners. Unless approved by the Board, an Owner may not examine or copy any of the following from books, records, and minutes:

- (i) Information that pertains to personnel matters;
- (ii) Communications with legal counsel or attorney work product pertaining to potential, threatened or pending litigation, or related matters;
- (iii) Information that pertains to contracts or transactions currently under negotiation, or information that is contained in a contract or other agreement containing confidentiality requirements and that is subject to those requirements;
- (iv) Information that relates to the enforcement of the Declaration, the Bylaws, or Rules against other Owners;
- (v) Information, the disclosure of which is prohibited by state or federal law.

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

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

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

12.6 Owner Information.

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

- (i) The home and business mailing addresses, and home and business telephone numbers of the Owner and all Occupants of the Dwelling Unit; and/or
- (ii) The name, business address and business telephone number of any Person who manages the Owner's Dwelling Unit as an agent of that Owner.

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


12.7 Headings. The heading of each Article and of each Section ("§") in these Bylaws is inserted only as a matter of convenience and for reference and in no way defines, limits or describes the scope or intent of these Bylaws or in any way affects these Bylaws.

12.8 Conflicts. If there are conflicts or inconsistencies between the mandatory provisions of Ohio law, the Articles, the Declaration, and these Bylaws, the mandatory provisions of Ohio law, the Declaration, the Articles, and the Bylaws (in that order) shall prevail.

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

IN TESTIMONY WHEREOF, the undersigned, being the Declarant and sole Class "B" Member of the Association, has caused these Bylaws to be duly adopted on or as of the 14th day of November, 2023.

ENCLAVE AT LITERARY POINTE  
HOMEOWNERS' ASSOCIATION, INC.,  
an Ohio not-for-profit corporation

By:   
George E. Davis, III, in his capacity as  
President of ProBuilt Homes, Inc.,  
the Declarant and sole Class "B" Member

STATE OF OHIO            )  
                                  )  
COUNTY OF LAKE        )        ss.

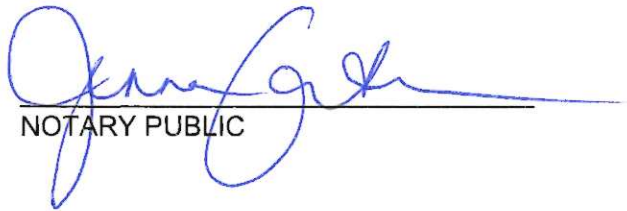
No oath or affirmation was administered to the signer with regard to the notarial act.

On this 14<sup>th</sup> day of November, 2023 before me, a Notary Public in and for said County and State, personally appeared, George E. Davis, III, and in his capacity as President of ProBuilt Homes, Inc., the individual who executed the foregoing instrument and acknowledged that the same is his free and voluntary act and deed and that of ProBuilt Homes, Inc.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal.

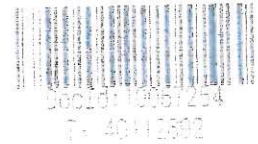


**JENNA CARTER**  
Notary Public, State of Ohio  
My Commission Expires  
May 21, 2028

  
NOTARY PUBLIC

THIS INSTRUMENT PREPARED BY:

Joseph P. Szeman, Esq.  
Hennig, Szeman & Klammer Co., L.P.A.  
8500 Station Street, Suite 245  
Mentor, Ohio 44060



RECORD NUMBER:  
**2023R024234**  
 RECORDED:  
 12/04/2023 02:02:02 PM  
 BECKY LYNCH, RECORDER  
 LAKE COUNTY OHIO  
 REC FEE: 42.00  
 TOTAL PAGES: 3

## STORMWATER MANAGEMENT/BMP FACILITIES AGREEMENT

City of Willoughby  
 Lake County, OH

Office of the Service Director  
 (440)953-4111

THIS AGREEMENT, made and entered into this 28<sup>th</sup> day of February, 2023, by and between (Insert Full Name of Owner) Probuilt Home Inc. hereinafter called the "Landowner", and the City of Willoughby, Ohio, hereinafter called the "City". WITNESSETH, that WHEREAS, the Landowner is the owner of certain real property described as (Lake County tax Map/Parcel Identification Number) 27-A-026-D-00-061-0 as recorded by deed in the land records of Lake County, Ohio, Deed Volume \_\_\_\_\_ Page \_\_\_\_\_, hereinafter called the "Property". WHEREAS, the Landowner is proceeding to build on and develop the property; and WHEREAS, the Site/Subdivision and Maintenance Plan known as The ENCLAVE AT LIVINGSTONE, (Name of Plan/Development) hereinafter called the "Plan", which is expressly made a part hereof, as approved or to be approved by the City, provides for detention of stormwater and maintenance of stormwater facilities within the confines of the property or recorded easements; and

WHEREAS, the City and the Landowner, its successors and assigns, including any Homeowners Association, agree that the health, safety, and welfare of the residents of the City of Willoughby, Ohio, require that on-site Stormwater Management/BMP facilities be constructed and maintained on the Property; and

WHEREAS, the City requires that on-site Stormwater Management/BMP facilities as shown on the Plan be constructed and adequately maintained by the Landowner, its successors and assigns, including any Homeowners Association.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The on-site Stormwater Management/BMP facilities shall be constructed by the Landowner, its successors and assigns, in accordance with the plans and specifications identified in the Plan. Said Plan shall not be modified without written approval of the Service Director, the City Engineer, and the Law Director and as provided in the Plan.
2. The Landowner, its successors and assigns, including any Homeowners Association, shall adequately maintain the Stormwater Management/BMP facilities. This includes all pipes and channels built to convey stormwater to the facility, as well as all structures, improvements, and vegetation provided to control the



quantity and quality of the stormwater. Adequate maintenance is herein defined as good working conditions such that these facilities are performing their design functions.

3. The Landowner, its successor and assigns, shall inspect the Stormwater Management/BMP facility and submit an Inspection Report annually using the latest Inspection Report form available. The purpose of the inspection is to assure safe and proper functioning of the facilities. The inspections shall cover the entire facilities, berms, outlet structure, pond areas, access roads, etc. Deficiencies shall be noted in the Inspection Report. The City shall maintain public records of the results of site inspections and any actions resulting from the inspections.

4. The Landowner, its successors and assigns, hereby grant permission to the City, its authorized agents and employees, to enter upon the Property, subsequent to reasonable notice, to inspect the Stormwater Management/BMP facilities whenever the City deems necessary. The purpose of inspection is to follow-up on reported deficiencies and/or to respond to citizen complaints. The City shall provide the Landowner, its successors and assigns, copies of the inspection findings and a directive to develop a plan for repairs and to commence with the repairs if necessary. All necessary repairs are to be completed within 90 days of said directive.

5. In the event the Landowner, its successors and assigns, fails to maintain the Stormwater Management/BMP facilities in good working condition acceptable to the City and fails to make necessary repairs within the appropriate time, the City may enter upon the Property to correct deficiencies identified in the Inspection Report and to charge direct and indirect costs of such repairs to the Landowner, its successors and assigns. This provision shall not be construed to allow the City to erect any structure of permanent nature on the land of the Landowner outside of the easement for the Stormwater Management/BMP facilities. It is expressly understood and agreed that the City is under no obligation to routinely maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the City.

6. The Landowner, its successors and assigns, will perform the work necessary to keep these facilities in good working order as appropriate. In the event a maintenance schedule for the Stormwater Management/BMP facilities (including sediment removal) is outlined on the approved plans, the schedule will be followed.

7. In the event the City performs any work, expends any money, or provides any materials as required by and authorized in Section 5, the City shall charge all costs to the Landowner and notify the Landowner of the total cost. The Landowner agrees to reimburse the City for the costs within sixty (60) days after receipt of the notification of the amount due the City. In the event the Landowner fails to remit to the City one hundred per cent (100%) of the amount due the City, the City shall certify the unpaid costs to the Auditor of Lake County, which amount shall be placed on the tax duplicate for collection on the next ensuing tax year encumbering the land on which the work was done, and on each lot in a subdivision where the association is responsible for the implementation of the plan.

8. The City is not liable for design, construction, and implementation of the Storm Water Facility(s). The Landowner agrees to indemnify and hold harmless the City from any claims, and demands of any kind and nature whatsoever, including reasonable attorney fees arising out of the construction, use, and implementation of the plan, negligent maintenance, or for any person claiming injury as a result of entering on the land for any reason whatsoever.

9. The Agreement shall be recorded in the office of the Recorder of Lake County, Ohio and shall be binding upon any person or entity, their administrators, successors, and assigns that now has or assumes responsibility imposed by this Agreement.

WITNESS the following signatures and seals:

ProBuilt Homes Inc.

Company/Corporation/Partnership Name (Seal)

By: [Signature]

George Davis  
(Type Name)

president  
(Type Title)



JENNA CARTER  
Notary Public

In and for the State of Ohio  
My Commission Expires

May 21, 2023 20th day of February, 2023

STATE OF Ohio

COUNTY OF Lake

The foregoing Agreement was acknowledged before me this 20th day of February, 2023

[Signature]  
NOTARY PUBLIC  
My Commission Expires: 5/21/2023

CITY OF WILLOUGHBY, OHIO

By: [Signature]  
Robert A. Fiala, Mayor

STATE OF OHIO

COUNTY OF LAKE

The foregoing Agreement was acknowledged before me this 7th day of March, 2023.

[Signature]  
NOTARY PUBLIC  
My Commission Expires: 5/23/24



CHERYLL LORY  
Notary Public - State of Ohio  
My Commission Expires  
May 23, 2024

Approved as to Form:

[Signature]  
Michael C. Lucas, Director of Law

A-4150

Prepared by  
City of Willoughby

K:\2018 Work\2018 Matters\STORMWATER MANAGEMENT BMP FACILITIES AGREEMENT - Final - 7-8-11 Revised.doc