

Type: DEE  
Kind: PLAT  
Recorded: 01/23/2013 03:03:47 PM  
Fee Amt: \$482.40 Page 1 of 48  
Montgomery County, OH  
Willis E. Blackshear County Recorder  
File# 2013-00004872

NO TRANSFER NEEDED  
13 JAN 23 PM 2:56  
KARL L. KEITH  
AUDITOR

DECLARATION OF COVENANTS

CONDITIONS AND RESTRICTIONS

FOR

RUBICON SQUARE HOMEOWNER'S ASSOCIATION, INC.

THIS INSTRUMENT PREPARED BY:  
DAVID H. MONTGOMERY, ESQ.  
PICKREL, SCHAEFFER & EBELING CO., L.P.A.  
2700 KETTERING TOWER,  
40 NORTH MAIN STREET  
DAYTON, OHIO 45423

## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION, creating covenants, conditions and restrictions is made on the date hereinafter set forth by SIMMS RUBICON SQUARE, LTD., an Ohio limited liability company, (hereinafter referred to as "Declarant"), under the circumstances summarized in the following Recitals which utilize capitalized terms as defined in Article I of this Declaration.

### RECITALS

A. Declarant is the owner of the Property and it is the desire and intent of the Declarant to develop and maintain the Property as a single family residential planned community consisting of Lots on which Dwelling Units are to be constructed, together with Common Element, for the use, enjoyment and benefit of the Owners.

B. Pursuant to Chapter 5312 of the Ohio Revised Code, being the Planned Community Act (the "Act") Declarant desires to establish a plan of covenants, conditions, restrictions, and private assessments to provide for the preservation of the values and amenities in the Property. To accomplish these ends, Declarant is making this Declaration and has formed the Association to own the Common Element and any amenities located therein and to enforce and administer the provisions hereof.

### DECLARATIONS

NOW, THEREFORE, Declarant hereby declares that all of the Property, and any Additional Property added to this plan shall be held, sold and conveyed subject to the following easements, restrictions, covenants, conditions and assessments, all of which are for the purpose of enhancing and protecting the value, desirability and attractiveness of the Property. These easements, covenants, conditions, restrictions and assessments, unless otherwise specifically limited herein, shall run with the Property and any additions thereto, and shall be binding on all parties having or acquiring any right, title or interest in the Property or any part thereof and additions thereto, and shall inure to the benefit of each Owner.

### ARTICLE I DEFINITIONS

1.01 General. The following terms used herein are defined as hereinafter set forth. The singular wherever used shall be construed to mean the plural when applicable.

1.02 Additional Property shall mean real property adjoining the Property which the Declarant owns and/or has a right to acquire, and which, together with improvements thereon, may be added to the Property.

1.03 Amendment and/or Amendments shall mean an instrument executed with the same formalities of the Declaration and Recorded for the purpose of amending the Declaration, the By-Laws or any other Exhibits.

1.04 Annual Assessments shall mean those assessments allocated, levied and assessed against all Lots and Owners for the purpose of paying the Common Expenses.

1.05 Articles and Articles of Incorporation shall mean the articles filed with the Secretary of State of Ohio incorporating the Association as an Ohio not-for-profit corporation under the provisions of Chapter 1702 of the Ohio Revised Code, as the same may be lawfully amended from time to time. A of copy which is attached hereto as Exhibit "C".

1.06 Association shall mean Rubicon Square Homeowner's Association, Inc., an Ohio not-for-profit corporation, its successors and assigns.

1.07 Association Easements shall mean any easements granted to or reserved by the Association pursuant to the provisions of this Declaration or the Plat.

1.08 Builder shall mean any Person who has been conveyed a Lot for the purpose of constructing a Dwelling Unit and attendant improvements thereon.

1.09 By-Laws shall mean the By-Laws of the Association which also serve as the code of regulations of the Association under and pursuant to the provisions of Chapter 1702 of the Ohio Revised Code. A of copy which is attached hereto as Exhibit "C".

1.10 Common Element shall mean that part of the Property which shall be conveyed to and owned by the Association for the common use, enjoyment, and benefit of the Association and shall include without limitation any detention or retention areas, any common parking areas and drive aisles, any area designated as "green space", and any amenities located in the Common Element, and to the extent applicable any Association Easements.

1.11 Common Expenses shall mean those costs and expenses set forth in Section 5.02 hereof.

1.12 Declarant shall mean Simms Rubicon Square, Ltd. an Ohio limited liability company, and its respective successors and assigns.

1.13 Declaration shall mean this instrument and unless the context prohibits, any and all Amendments hereto.

1.14 Design Review Committee shall mean the committee created and established pursuant to Article XII for the purposes stated therein.

1.15 Design Standards shall mean the standards or criteria set forth in Exhibit "D" attached hereto and any amendments thereto.

1.16 Development Period shall mean a period of time seven (7) years from the date on which this Declaration is Recorded, or when the Declarant voluntarily relinquishes control of the Association, or when Declarant has sold all of the Lots to Owners, whichever first occurs.

1.17 Dwelling Unit shall mean a single family residential building or the portions of a building, and other improvements situated upon a Lot designed and intended for the use and occupancy by a person or persons as a residence, by a single household or family.

1.18 Eligible First Mortgagee shall mean any First Mortgagee who has provided the Association written notice of its right to receive notices or other information from the Association.

1.19 Exhibit shall mean any document or instrument attached to the Declaration.

1.20 First Mortgagee shall mean the holder of any valid Recorded mortgage on the Property.

1.21 Landscaping shall mean the landscaping installed by the Declarant and/or the Association on any Common Element or Landscaping Easement.

1.22 Landscaping Easement shall mean the Landscaping Easement depicted on any Plat and/or granted to the Association.

1.23 Limited Common Element shall mean a Common Element that the Declaration designates as reserved for the exclusive use of a Lot or Lots, to the exclusion of others.

1.24 Lot shall mean those parcels of the Property on which Dwelling Units are to be constructed or currently exist, and which are designated on the Plat and as set forth in Exhibit "A". For purposes hereof, the Common Element shall not be included in this definition.

1.25 Majority of Owners shall mean those Owners holding fifty one percent (51%) of the voting power of the Association.

1.26 Managing Agent shall mean a person or entity retained or employed by the Association to act as a manager or managing agent for the Association.

1.27 Member shall mean an Owner of one or more Lots who is subject to the Declaration.

1.28 Occupant shall mean any Person and their guests and invitees, who resides, either temporarily or permanently, in a Dwelling Unit.

1.29 Organizational Documents shall mean this Declaration, the Articles, the By-Laws, Rules and Regulations, and the Plat Restrictions, including any amendments thereto.

1.30 Owner shall mean the named person(s), as titled owner of any Lot on which Dwelling Units have been or are to be constructed and for purposes thereof shall include any Builder. A vendee, purchaser or tenant under a land contract, purchase contract or lease shall not be deemed an Owner, but shall be an Occupant.

1.31 Person shall mean a natural individual, corporation, limited liability company, partnership, trustee or other legal entity capable of holding title to real property.

1.32 Plat shall mean a Recorded plat or subdivision of the Property pursuant to Chapter 711 of the Ohio Revised Code, and any amendments thereto.

1.33 Plat Restrictions shall mean any covenants, conditions or restrictions set forth in the Plat.

1.34 Property shall mean the real property subject to this Declaration as described in Section 2.01 hereof and on Exhibits "A" and "B" attached hereto and incorporated herein.

1.35 Quorum shall mean the presence in person or by proxy of a Majority of Owners.

1.36 Recorded shall mean the filing of a document or instrument with the Recorder of Montgomery County, Ohio.

1.37 Rules and Regulations shall mean those rules and regulations, as may be amended from time to time, adopted by the Board of Directors pursuant to the provisions set forth in the Declaration and By-Laws.

1.38 Special Individual Lot Assessment shall mean those assessments levied and assessed against a particular Owner pursuant to Section 5.13 hereof.

## ARTICLE II DESCRIPTION OF PROPERTY

2.01 General. The Property is described in Sections 2.02 and 2.03 and Exhibits "A" and "B" attached hereto and incorporated herein.

2.02 Dwelling Units. The Dwelling Units are to be or have been constructed on the following described real property with one (1) Dwelling Unit per Lot. A Dwelling Unit may be located within a single shell of a building, which building contains multiple Dwelling Units within its boundary.

See Exhibit "A"

2.03 Common Element. The Common Element shall consist of the following described real property and to the extent applicable any Association Easements whether or not depicted on the Plat:

See Exhibit "B"

2.04 Conveyance of Common Element. Declarant agrees that prior to the expiration of the Development Period it will convey the Common Element to the Association, free and clear of all liens and encumbrances, except general real estate taxes not then due and payable, easements granted for public utilities, easements of record or as set forth in the Organizational Documents, or easements for other public purposes consistent with the intended use of the Property under this Declaration. All improvements to the Common Element shall be fully installed, completed and operational at the time of such conveyance.

### ARTICLE III ASSOCIATION

3.01 Organization. The Association was formed as an Ohio not for profit corporation pursuant to the provisions of Chapters 1702 and 5312 of the Ohio Revised Code, by the filing of its Articles with the Secretary of the State of Ohio. On the date of its incorporation, the Association duly adopted a set of administrative operating rules called By-Laws. The Articles and By-Laws are attached hereto as Exhibit "C".

3.02 Membership. Each Owner upon acquisition of title to a Lot, shall automatically become a Member of the Association. Membership is appurtenant to and shall not be separated from any ownership interest of a Lot. Such membership shall terminate upon the sale or other disposition by such Member of his Lot ownership, at which time the new Owner automatically shall become a Member of the Association. When more than one Person is an Owner of a Lot, all such Persons shall be Members in proportionate share to their respective ownership interest. In no event shall a vendee, purchaser or tenant be deemed to have Membership to, or be deemed a Member of, the Association, until the Lot is titled in their name.

3.03 Voting Rights. Each Owner shall be entitled to the number of votes in the affairs of the Association that equals the number of Lots owned by that Owner. If such Lots are owned by more than one Person, each such Person shall have a fraction of a vote equal to his, her or its

undivided interest in that Lot. Each Lot shall have its Owners, in the aggregate, equal to no more than one (1) collective vote.

3.04 Administration of Property. The administration of the Property shall be in accordance with the provisions of the Organizational Documents. Each Owner, tenant, invitee, guest, or Occupant of a Lot shall, at all times, comply with the provisions of the Organizational Documents, and the decisions and resolutions of the Association or its designated representative.

3.05 Board of Directors. The Board of Directors, elected as provided by the By-Laws, shall exercise the powers, discharge the duties and be vested with the rights conferred by operation of law, and the Organizational Documents, except as otherwise specifically provided. In the event any such power, duty, or right shall be deemed exercisable or dischargeable by, or vested in a member of the Board of Directors, he shall be deemed to act in such capacity to the extent required to authenticate his acts and to carry out the purposes of the Organizational Documents.

3.06 Declarant's Rights. During the Development Period the powers, rights, duties and functions of the Association shall be exercised by a Board of Directors, the members of which shall be appointed and removed by Declarant in its sole discretion. Declarant reserves the right to relinquish such right to control at anytime.

3.07 Delegation to Managing Agent. The Association may delegate all or any portion of its authority to discharge its responsibility to a Managing Agent; subject to the limitations that:

- (a) Any such delegation shall be by a written contract with a term of no longer than two (2) years in duration.
- (b) That any such contract shall be terminable by either party, without cause, upon sixty (60) days prior written notice without any termination charges or other penalties.

3.08 First Meeting. The first meeting of the Association shall occur not later than the expiration of the Development Period.

#### **ARTICLE IV** **EASEMENTS**

4.01 Easements for Repair, Maintenance and Restoration. The Association shall have a right of access and an easement to, over and through each Lot during reasonable hours and upon giving reasonable notice for ingress and egress and all other purposes which enable the Association to perform its obligations, rights and duties with regard to maintenance, repair,

restoration or servicing of any items, Lots, things or areas of, or on, the Property, including the removal, correction or abatement of any violation or breach of any attempted violation or breach of the covenants and restrictions herein.

4.02 Easement for Telephone, Utilities on Common Element and Lots. The Association may hereafter grant temporary or permanent easements, licenses on behalf of Owners to entities for telephone and utility purposes for the benefit of the Common Element and Property, and also the installation and maintenance of cable television, gas, water and/or electric utility lines for the benefit of the Property and/or individual Lots. Each Owner grants to the other Owners whose Dwelling Unit is located within the same building, a temporary easement for utility repair of gas and electric lines that service another Dwelling Unit, but where all or part of said utility lines may be located within said granting Owner's Dwelling Units. Each Owner shall be granted a license for one (1) assigned parking space per Dwelling Unit by the Association.

4.03 Association Easements. The Owner of any Lot hereby grants, conveys and assigns to the Association, its agents and employees, and other Owners, an easement and right of way over and through his Lot and Dwelling Unit for the purpose of operating, maintaining, repairing and replacing the Common Element, including any amenities or improvements associated therewith, the entranceway feature, signage, fencing, lighting, lawn and landscaping installed or constructed by the Declarant and/or the Association for the benefit to the Association on his Lot whether or not within those specifically designated easement areas depicted on any Plat. Per either this Section or Section 4.02 hereof, any damage to the Common Elements, Lot, or Dwelling Unit due to the access granted in said Sections is the responsibility of the Owner or the Association that caused the damage. The party responsible for the damage shall promptly repair the same in a good and workmanlike manner, and if not reparable, such party shall be liable for the value of the damaged property as it existed immediately prior to that damage.

4.04 Service Easement. Declarant and each Owner hereby grants a nonexclusive easement to all law enforcement officers, firemen, ambulance operators, mailmen, deliverymen, garbage and trash removal personnel, and all other similar persons, and to local governmental authorities, but not to the public in general, to enter upon the Common Element in the performance of their duties.

4.05 Consent to Easements. Each Owner hereby grants, and the transfer of title to an Owner shall be deemed to grant, the Declarant and/or the Association an irrevocable power of attorney to execute, acknowledge and record, for and in the name of such Owner and his mortgagee or mortgagees, such instruments as may be necessary to effectuate any easements granted or reserved by the Declarant and/or the Association in this Article.

4.06 Easements Shall Run With Land. All easements and rights described are easements appurtenant, running with the land, perpetually in full force and effect, and at all times



shall inure to the benefit of and be binding on the Declarant, and any Owner, purchaser, vendee, mortgagee and any other person having an interest in the Property or any part or portion thereof. Failure to refer specifically to any or all of the easements described in this Declaration in any deed of conveyance or in any mortgage or other evidence of obligation shall not defeat or fail to reserve said easement but same shall be deemed conveyed or encumbered along with the Lot.

**ARTICLE V**  
**ASSESSMENTS**

5.01 Creation of Lien and Personal Obligation of Assessments. For each Lot owned within the Property, Declarant hereby covenants, and each Owner, by acceptance of a deed therefor, whether it shall be so expressed in such deed, is deemed to covenant and agrees to pay the Association: (a) Annual Assessments; and (b) Special Individual Lot Assessments, such assessments to be established and collected as hereinafter provided. Such assessments, together with interest, costs, reasonable attorney's fees, paralegal fees, and any other costs and/or expenses as permitted by law, incurred by the Association in the collection thereof shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made. Each such assessment, together with interest and costs, shall also be the personal obligation of the Person who was the Owner of such Lot at the time when the assessment became due.

5.02 Purpose of Annual Assessment. The Annual Assessments shall be used exclusively to promote the recreation, health, safety and welfare of the residents of the Property and the enforcement of these restrictions. The assessments shall include, without limitation, the following Common Expenses:

- (a) Maintenance and repair of those items which have been assigned to the Association hereunder, including, but not limited to the Common Element areas, including any assigned outdoor parking space provided to an Owner via a license, or if the same is deemed a Limited Common Element on the Plat and any detention/retention facilities on the Property.
- (b) Insurance premiums for insurance obtained by the Association, including property insurance on, and liability insurance pertaining to, the Common Element.
- (c) Taxes and assessments (both general and special and including any payments in lieu of taxes) on the Common Element, if any.
- (d) Costs for the operation, management and administration of the Association, including without limitation, fees for property management,

fees for legal and accounting services, fidelity bonds, and premiums for directors and officers liability insurance, cost of mailing and postage.

- (e) A general operating reserve to assure the availability of funds for the purposes hereunder.

5.03 Owner's Share of Annual Assessments. Each Owner's share of the Annual Assessment shall be equal to a fraction; the numerator of which is the total number of Lots owned by such Owner, and the denominator of which is the total number of all Lots on the Property, excluding any Lot that is designated Common Element or owned by the Association. As Additional Property is subjected to this Declaration the denominator shall be increased by the number of Lots on such Additional Property at the time of filing an Amendment hereto adding such Additional Property.

5.04 Preparation of Estimated Budget. On or before December 1st of every year, the Association shall prepare an estimate of the total amounts necessary to pay the cost of wages, materials, insurance, services and supplies which will be required during the ensuing calendar year for the rendering of all services, together with a reserve for contingencies and replacements, unless such reserve is waived as provided in Section 5.06 hereof. On or before December 15th of each year, each Owner shall be notified in writing as to the amount of such estimate, with reasonable itemization thereof. On or before the date of the annual meeting in each calendar year, the Association shall supply to all Owners an itemized accounting of the maintenance expenses actually incurred for the preceding calendar year, together with a tabulation of the amounts collected pursuant to the estimate provided, and showing the net amount over or short of the actual expenditures, plus any reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited according to each Owner's share of the assessments to the next payment due from the Owners during the current year's estimate, until exhausted, and any net shortage shall be added according to each Owner's share of the assessments to the payment next due after rendering of the accounting.

5.05 Fiscal Year Option. In lieu of the calendar year format, the Board of Directors may elect to adopt a fiscal year. In such event, the requirement for the preparation of the estimated budget shall be the first day of the month immediately preceding the beginning of such fiscal year and notices of such estimate shall be forwarded on or before the fifteenth (15th) day of such month. In such event, assessments shall commence on the first (1st) day of the fiscal year and payments shall be adjusted accordingly.

5.06 Reserve for Contingencies and Replacements. The Association shall build up and maintain a reasonable reserve for contingencies and replacement of capital items in the normal course of operation, unless such reserve is waived by a Majority of the Owners. Any reserve waiver shall be valid for only the then current fiscal year or for the estimated budget set forth in Section 5.04, but any such waiver of a reserve shall be valid for no more than twelve (12)

consecutive calendar months. Extraordinary expenditures not originally included in the annual estimate which may be necessary for the year shall be charged first against such reserve. If said estimated cash requirement proves inadequate for any reason, including non payment of any Owner's assessment, the same shall be assessed to the Owners according to each Owner's share of the assessments. The Association shall serve notice of such further assessment on all Owners by a statement in writing giving the amount and reasons therefor, and such further assessment shall become effective within ten (10) calendar days after the delivery or mailing, whichever is earlier, of such notice of further assessment. All Owners shall be obligated to pay the adjusted amount as provided for herein.

5.07 Budget for First Year. When the first Board of Directors takes office after the turnover of the Association by Declarant, the Association shall determine the estimated cash requirement, as hereinabove defined, for the period commencing thirty (30) calendar days after said election and ending on December 31st of the calendar year in which such election occurs.

5.08 Failure to Prepare Annual Budget. The failure or delay of the Association to prepare or serve the annual or adjusted estimate on the Owner shall not constitute a waiver or release in any manner of such Owner's obligation to pay the maintenance costs, assessments, and necessary reserves, as herein provided, whether the same shall be determined. In the absence of any annual estimate or adjusted estimate, the Owner shall continue to pay the maintenance charge at the existing rate established for the previous period until the maintenance payment which occurs more than ten (10) calendar days after such new annual or adjusted estimate shall have been mailed or delivered.

5.09 Books and Records of the Association. The Association shall keep correct and complete books and records of account, specifying the receipts and expenditures relating to the Common Elements and other common receipts and expenses, together with records showing the allocation, distribution and collection of the common profits, losses and expenses among and from the Owners; records of the names and addresses of the Owners; and minutes of the proceedings of the Association and Board of Directors. Such books and records shall be open for inspection, or copying, subject to reasonable standards as outlined within the Organizational Documents or pertinent to the Rules and Regulations, by any Owner or any representative of an Owner duly authorized in writing, at reasonable times and upon request by an Owner. If by terms of a first mortgage an Owner has authorized such mortgagee to inspect such books and records, the presentation to the Secretary of the Association by a representative of such mortgagee of a copy of the mortgage containing such authorization shall constitute written authorization of such inspection. Upon ten (10) calendar days prior notice to the Board of Directors and upon payment of a reasonable fee, to be determined by the Board of Directors and applied to all Owners making such a request, any Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such Owner.

5.10 Commencement of Assessments. Annual Assessments shall begin with respect to each Lot on the date on which the deed transferring title to such Lot from Declarant to an Owner is recorded. On such date, the amount payable shall be a pro rated amount determined as of such date until the next payment date.

5.11 Payment of Assessments. Annual Assessments shall be payable in monthly installments commencing on the first (1st) day of each month or, on a quarterly, semi annual or annual basis as determined by the Board of Directors. The Association shall credit any payments received for an annual or special assessment in the following order: (1) to interest which has accrued and is due and owing; (2) to any late fee, administrative fee, or enforcement assessment, in the order listed; (3) to collection costs, court costs, attorney, and paralegal fees the Association incurred in collecting the amount; and (4) to the oldest principal amount the Owner owes to the Association for Common Expenses.

5.12 Declarant's and Builder's Obligations to Pay Assessments. Notwithstanding any provisions hereof, Declarant shall have no obligation to pay Annual Assessments for the Lots owned by it, except that Declarant will pay to the Association an amount equal to the difference between the actual operating expenses of the Association and the aggregate of the yearly assessments paid by the Owners, other than Declarant. Declarant's obligation to pay said deficiency shall cease when Declarant relinquishes control of the Board of Directors, at which time Declarant shall pay the yearly assessment for each Lot owned by it which either has been issued an occupancy certificate, or is being offered for sale or rent. Any Builder, unless such Builder is Declarant or Charles V. Simms Development Corporation, who owns a Lot shall be subject to the Annual Assessments for all Lots owned by it.

5.13 Special Individual Lot Assessment. Notwithstanding anything to the contrary herein, if the Association shall incur any cost or expense for or on account of any item of: (a) maintenance, repair or other matter directly or indirectly occasioned or made necessary by any wrongful, willful, or negligent act or omission of any Owner or Owners, including any Occupant of a Lot, an Owner's family, guest, or invitee, including, but not limited to, attorney's fees, court costs, and other expenses; (b) issue an enforcement assessment and Individual Lot Assessment for utility services, including expenses incurred by the Board in collecting said assessment; (c) costs associated with the enforcement of the Declaration and the Rules and Regulations, including, but not limited to, attorney's fees, court costs and other expenses or; (d) costs and charges permitted by the Declaration. Such cost or expense shall be borne by such Owner or Owners and not by the Association, and if paid by the Association shall be paid or reimbursed to the Association by such Owner or Owners as a Special Individual Lot Assessment. A Special Individual Lot Assessment shall be due upon receipt, by Owner. Prior to imposing a charge for damages or an enforcement assessment, the Board shall give written notice to Owner as provided for in Section 5312.11 (C) of the Ohio Revised Code. An Owner who receives such notice shall have the right to a hearing with the Board of Directors pursuant to the procedures of the Board of Directors, and Section 5312.11 (D) of the Ohio Revised Code.

5.14 Abandonment. In the event more than one Owner is responsible for any cost or expense as herein described, as determined by the Board of Directors or a court of competent jurisdiction, such cost or expense, including the Association attorney fees, court costs and other expenses, shall be borne equally by the respective Owners involved, jointly and severally, unless otherwise determined. No Owner may exempt himself from liability for his contribution toward the Common Expenses by the abandonment or surrender of his Lot.

**ARTICLE VI**  
**REMEDIES FOR NON PAYMENT OF ASSESSMENT**

6.01 Late Charges. If any assessment is not paid within ten (10) calendar days after the same has become due, the Board of Directors, at its option and without demand or notice, may charge a late charge not to exceed Twenty and 00/100 Dollars (\$20.00) and compound interest on any unpaid balance, at the rate of twelve percent (12%) per annum. Said late charge shall accrue on a monthly basis until the unpaid balance is paid in full.

6.02 Lien of Association. The Association shall have a lien upon the estate or interest in any Lot or the thereof for the payment of the portion of the assessments chargeable against such Lot which remain unpaid for ten (10) calendar days after the same have become due and payable from the time a certificate therefor, subscribed by the President of the Association, or other designated representative of the Association is Recorded pursuant to authorization given by the Board of Directors. Such certificate shall contain a description of the Lot, the name or names of the record Owner(s) thereof and the amount of such unpaid portion of the assessments. Such lien shall be a continuing lien subject to subsequent adjustments, remain valid for a period of five (5) years from the date it is recorded, unless sooner released or satisfied in the same manner provided by law for the release and satisfaction of mortgages on real property or discharged by the final judgment or order of the court having jurisdiction in an action brought to discharge such lien as hereinafter provided.

6.03 Priority of Association's Lien. The lien provided for herein shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of First Mortgages which have been filed for record, and may be foreclosed in the same manner as a mortgage on real property in an action brought by the Association. In any such foreclosure action, the Owner(s) of the Lot affected shall be required to pay a reasonable rental for such Lot during the pendency of such action to the Association, and the plaintiff in such action is entitled to the appointment of a receiver to collect the same. Any rental payment a receiver collects during a pending foreclosure shall first be applied to the payment of Common Expenses charged against the Lot during the foreclosure action per Section 5312.12 (c) of the Ohio Revised Code. In any such foreclosure action, the Association shall be entitled, but not required, to become a purchaser at the foreclosure sale.

6.04 Dispute as to Common Expenses. Any Owner who believes that the portion of assessments chargeable to his Lot for which a certificate of lien has been filed by the Association has been improperly charged against him or his Lot, may bring an action in the Court of Common Pleas for Montgomery County, Ohio for the discharge of such lien.

6.05 Non Liability of First Mortgagee for Past Due Assessments. When a First Mortgagee acquires title to a Lot as a result of a foreclosure of any lien, such First Mortgagee shall not be liable for the share of assessment by the Association chargeable to such Lot which became due prior to the acquisition of title to such Lot by such First Mortgagee. Such unpaid share of assessments shall be deemed to be assessments collectible from all of the Lots, and the respective Owners of the same, including that of such First Mortgagee.

6.06 Liability for Assessments Upon Voluntary Conveyance. In a voluntary conveyance of a Lot the grantee of the Lot shall be jointly and severally liable with the grantor for all unpaid assessments by the Association against the grantor and his Lot for his share of the assessments up to the time of the grant or conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such grantee and his mortgagee shall be entitled to a statement from the Board of Directors setting forth the amount of all unpaid and current assessments against the grantor due the Association, and such grantee shall not be liable for nor shall the Lot conveyed be subject to a lien for any unpaid assessments made by the Association against the grantor in excess of the amount set forth in such statement for the period reflected in such statement.

## ARTICLE VII

### REMEDIES FOR BREACH OF COVENANTS AND RESTRICTIONS, RULES AND REGULATIONS

7.01 Abatement and Enjoinment. The violation of any provision of the Organizational Documents shall give the Board of Directors the right, in addition to the rights hereinafter set forth in this section to: (a) enter upon the Lot as to which such violation or breach exists and to summarily abate and remove, at the expense of the defaulting Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions of the Organizational Documents, and in such event, the Board of Directors, or its agents, shall not be deemed guilty in any manner of trespass; and (b) in addition to any Owner, shall be entitled to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach. Such legal action may include a claim for damages and any and all court costs and reasonable attorney fees as provided for in Section 2312.13 of the Ohio Revised Code. The Board of Directors may impose an enforcement assessment, which shall be deemed a Special Individual Lot Assessment as set forth in Section 5.13 hereof.

7.02 Charges for Damages or Enforcement Assessment. Prior to imposing a charge for damages or an enforcement assessment, the Board of Directors shall give the subject Owner a written notice that includes all of the following: (1) Description of the property damage, or

violation of the Organizational Documents; (2) the amount of the proposed charge or assessment; (3) notification to the Owner that he has a right to a hearing before the Board of Directors to contest the proposed charge or assessment; (4) a statement setting forth the necessary procedures for the Owner to request a hearing before the Board of Directors; and (5) a reasonable date by which the Owner must cure a continuing violation of the Organizational Documents to avoid the proposed charge or assessment, if such an opportunity to cure is applicable, as determined by the Board of Directors in its sole discretion.

- (a) To request a hearing as set forth in this Section 7.02 as it relates to a charge for damages or an enforcement assessment, the Owner shall deliver a written notice to the Board of Directors not later than the tenth (10<sup>th</sup>) day after such Owner's receipt of the Board of Directors' notice described above. In the event the Owner fails to make a timely request for a hearing, the right to such hearing is forever waived, and the Board of Directors may immediately impose a charge for damages or an enforcement assessment pursuant to this Article. In the event an Owner requests a hearing, then at least seven (7) calendar days prior to the hearing, the Board of Directors shall provide the Owner with a written notice that includes the date, time, and location of the hearing. In the event an Owner's request for a hearing is timely received, the Board of Directors shall not levy a charge for damages or an enforcement assessment before holding such hearing. Within thirty (30) calendar days following the date of the hearing, the Board of Directors shall provide written notice to the Owner of its decision regarding the charge for damages or enforcement assessment, and if applicable, such notice shall state such charge for damages or enforcement assessment as imposed by the Board of Directors. For purposes of this Section, any written notice shall be delivered to the Owner or any Occupant of the Dwelling Unit by personal delivery, certified mail/return receipt requested, or by regular mail. Mail service may be provided to the address of the Owner that is on record with the Association, or to the address of the subject Dwelling Unit.

#### **ARTICLE VIII** **RULES AND REGULATIONS**

8.01 General. The Board of Directors may, by majority vote, adopt reasonable Rules and Regulations and amend the same from time to time which the Board of Directors may deem advisable for the maintenance, conservation, protection and beautification of the Common Element and Property, and for the health, comfort, safety and general welfare of the Owners and Occupants of the Property. Such Rules and Regulations may include reasonable fines and penalties for violations of the Organizational Documents. Written notice of the Rules and

Regulations will be forwarded to all Owners and copies thereof shall be available to all Owners, upon request.

8.02 Conflict. In the event of any conflict between the Rules and Regulations and the provisions of the Declaration, the provisions of the Declaration shall prevail and govern.

8.03 Dispute Resolution. In the event of any dispute between Members as to the application of these restrictions or any Rule or Regulation, the party aggrieved shall submit a complaint in writing to the Board of Directors and within ten (10) days of the Member's receipt of written notice from the Board of Directors of a violation, specifying the dispute. The Board of Directors shall set a time, date, and place for hearing thereon within twenty (20) calendar days thereafter, and give written notice to the party thereof no less than seven (7) calendar days in advance, and setting forth the date, time, and location of the hearing. The Board of Directors shall thereupon hear such evidence on the dispute as the board deems proper and render a written decision on the matter to each party within thirty (30) calendar days thereafter. No action of law may be instituted by the party to such dispute unless a dispute resolution hearing pursuant hereto has first been had. The aggrieved party shall be bound by the decision of the Board of Directors, as provided for herein, unless otherwise decided by a court of competent jurisdiction.

#### ARTICLE IX MAINTENANCE

9.01 General. Subject to the exceptions and provisions contained herein, the general allocation of maintenance, repair and replacement between the Association and the Owners are as follows:

(a) The Association shall maintain, repair and make all necessary replacements to the Common Element and any improvements thereon, including without limitation, interior drive aisles and parking areas, walkways, snow and ice removal, mowing, weeding, and landscaping, repaving, restriping and exterior lighting. Except as otherwise provided herein, the Association shall also be responsible for the maintenance, repair and replacement of the driveways, exterior surface of any building in which a Dwelling Unit is located, including the roof, gutters, downspouts, exterior building surfaces and siding, but excluding any doors, garage doors, windows, door jambs, and door checks, all outdoor parking spaces assigned to a Dwelling Unit whether by license or as Limited Common Element, patios, decks, and porches, bulb replacement for exterior lighting fixtures on a Lot and any ground surface, paving, walls, or vegetation to the extent located on or as part of a Lot, except as otherwise set forth in this Declaration.

(b) An Owner shall maintain, repair and make all necessary replacements to his Dwelling Unit including interior walls in common with another Dwelling Unit and Lot, except as set forth in 9.01 (a). The Owner of each Lot shall furnish and be



responsible for the following: all maintenance, repairs and replacements of any shrubs, trees and other landscaping or any other improvements installed on his Lot, including utility line and fixtures, devices or appurtenances exclusively serving the Dwelling Unit.

(c) Common Walls:

(1) General Rules of Law to Apply. Each wall which is built as a part of the original construction of the homes upon the Properties and placed on the dividing line between the Lots shall constitute a party wall, and, to the extent not inconsistent with the provisions of this Article, the general rules of law regarding party walls and liability for property damage due to negligence or willful acts or omissions shall apply thereto.

(2) Sharing of Repair and Maintenance. The cost of reasonable repair and maintenance of a party wall shall be shared by the Owners who make use of the wall in proportion to such use; provided, however, that to the extent the need for such repair or maintenance is caused or results from acts or failure to act of the Owner, residents or invitees of only one (1) Dwelling Unit, whether or not there was negligence or a willful act, the Owner of such one (1) Lot shall be solely responsible for the cost of such repair and the maintenance.

(3) Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, any Owner who has used the wall may restore it, and if the other Owners thereafter make use of the wall, they shall contribute to the cost of restoration thereof in proportion to such use and such contribution shall be due when the reconstruction costs are due and payable. The obligation and enforcement of such contribution shall be without prejudice, however, to the right of any such Owners to call for a larger contribution from the others under any rule of law regarding liability for negligent or willful acts or omissions or under provisions of Section 2 of this Article.

(4) Weatherproofing. Notwithstanding any other provision of this Article, an Owner who by his negligent or willful act causes the party wall to be exposed to the elements shall solely bear the whole cost of furnishing the necessary protection against such elements.

(5) Right to Contribution Runs With Land. The right of any Owner to contribution from any other Owner under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title to the Lot.

9.02 Failure to Maintain. to the event an Owner shall fail to maintain his Lot and improvements situated thereon, to such an extent that in the opinion of the Board of Directors the

conditions require maintenance, repair or service for purposes of protecting the public safety or residents in, or visitors to, the Property, or in order to prevent or avoid damage to or destruction of any part, portion, or aspect of the value thereof, the Association shall have the right, upon approval of the majority of the Board of Directors, to enter upon that Lot and maintain, repair or service the same. The cost of such maintenance, repair or service shall be added to and become a Special Individual Lot Assessment, chargeable to the Lots they maintained, repaired or serviced.

**ARTICLE X**  
**LIABILITY AND OTHER INSURANCE**

10.01 Liability Insurance. The Association, as a Common Expense, shall insure itself, the Board of Directors, all Owners and Members of their respective families and other persons residing with them in the Property, their tenants, and all persons lawfully in the possession or control of any Dwelling Unit, against liability for bodily injury, disease, illness or death and for injury to or destruction of property occurring upon, in or about, or arising from destruction of property occurring upon, in or about, or arising from the Common Element, such insurance to afford protection to a limit of not less than One Million Dollars (\$1,000,000.00) in respect to bodily injury, disease, illness or death suffered by any one person, and to the limit of not less than One Million and 00/100 Dollars (\$1,000,000.00) in respect to any one occurrence, and to the limit of not less than One Hundred Thousand and 00/100 Dollars (\$100,000.00) in respect to damage to or destruction of property arising out of any one accident. Such policy shall not insure against liability for personal injury or property damage arising out of or relating to the individual Lots or Dwelling Units located thereon.

10.02 Other Insurance. As a Common Expense, the Association shall obtain such insurance as the Board of Directors considers necessary, including without limitation, fidelity bonds for anyone who either handles or is responsible for funds held or administered by the Association. The amount of such fidelity bond shall be equal to, at a minimum, the maximum funds that will be in the custody of the Association at any time such bond is in effect. In addition, such fidelity bond coverage must equal one quarter (1/4) of the Annual Assessments, together with the reserve funds, if any.

10.03 Notice of Cancellation or Substantial Changes. Any insurance coverage obtained by the Association shall contain a provision requiring the insurer to notify the Association and any mortgagee named in the mortgage clause, if applicable, in writing of the cancellation or a substantial change of coverage at least fifteen (15) calendar days prior to such cancellation or substantial change.

10.04 Annual Review. The amounts and coverage of each insurance policy obtained by the Association shall be reviewed annually by the Board of Directors or its designated agent. Each Owner shall provide a copy of the declaration page of its homeowner's insurance to the Board of Directors, within five (5) calendar days of such policy's issuance and/or renewal date.

10.05 Homeowner's Insurance. Each Owner shall purchase and maintain an individual policy of homeowner's insurance for a Dwelling Unit constructed on said Owner's Lot and provide evidence of such policy to the Association, as provided herein. Such insurance shall provide against loss or damage by fire, lightning and such perils as are typical for a homeowner's policy with no co-insurance and in an amount not less than one hundred percent (100%) of the replacement value thereof. Said policy shall contain provisions requiring the issuance of Certificates of Coverage and the issuance of written notice not less than fifteen (15) days prior to any expiration or cancellation of such coverage to the Owner, Association, and any mortgagee or mortgagees of such Lot. In the event the Association shall receive notice of an intended cancellation or expiration of any such policy, then in such event, the Association shall have the right, but not the obligation, to advance premiums necessary to continue such coverage in effect. Any amounts so advanced by the Association shall constitute a special assessment to be paid by the Owner with interest at twelve percent (12%) per annum, until paid in full. The Association shall have a right to file a lien for any such advancement consistent with the provisions of this Declaration.

#### ARTICLE XI AMENDMENT

11.01 General. Unless otherwise provided, this Declaration, including the attached By-Laws, may be amended only with the approval of Owners exercising not less than seventy-five percent (75%) of the voting power of the Association. Any such Amendment shall be in writing and effective on the date when it is Recorded. In no event shall this Declaration be amended whereby the Association surrenders, forfeits, or abandons its obligation for the maintenance, repair or replacement of the Common Element including, but not limited to any detention or retention areas and systems, or any amenities or improvements located in said Common Element. Notwithstanding the foregoing, any vote to terminate the applicability of this Declaration, and to dissolve the Association, requires the unanimous (100%) consent of all Owners.

11.02 Declarant's Rights. Notwithstanding the foregoing, Declarant hereby reserves the right and power, and each Member by acceptance of a deed to a Lot is deemed to and does give and grant to Declarant a power of attorney, which right and power is coupled with an interest and runs with title to a Lot and is irrevocable during the Development Period, to amend this Declaration and any Plat and to execute any and all documents deemed necessary or desirable by Declarant to conform to its present or future development plans, including without limitation the development of the Additional Property or a portion, to correct scrivener, typographical and drafting errors, and to conform to the requirements of any lending institution.

11.03 Right of First Refusal. Any Amendment attempting to or giving the Association or any Owners a right of first refusal on the sale, transfer or other disposition of a Lot shall contain a provision exempting such right of first refusal as to any Lot, the title of which is

obtained by a First Mortgagee pursuant to remedies provided in the mortgage, or foreclosure of the mortgage, or a deed to such mortgage in lieu of foreclosure. Notwithstanding any provision hereof, this provision and the requirement herein cannot be amended without unanimous written consent of all Owners and First Mortgagees.

11.04 Amendment Affecting Declarant's Rights. Any Amendment affecting or attempting to affect the Declarant's rights in the Declaration must be consented to by the Declarant in writing prior to such Amendment taking effect. These rights include, without limitation, the right to control the Association, and the right to add Additional Property.

11.05 Mortgage or Mortgagee. Any Amendment which adversely affects the value, priority, or the security of any mortgagee of record shall require the written consent of such mortgagee of record. Any Amendment affecting the underwriting requirements of any mortgagee shall require the written consent of such mortgagee and also F.H.L.M.C. or F.N.M.A., if required by such mortgagee. Any Amendment of language specifically referring to mortgagees shall require the written consent of all mortgagees of record.

## **ARTICLE XII**

### **ARCHITECTURAL CONTROL AND USE RESTRICTIONS**

12.01 General. No building, or structure, either temporary or permanent, swimming pool, tennis court, fence, wall, patio, deck or other structure or improvement shall be commenced, erected or maintained on the Common Element, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, color, height, materials and location of the same shall have been submitted to and approved in writing as to harmony of external design and location in relation to surrounding structures and topography by the unanimous vote of the Board of Directors, or by an Design Review Committee ("DRC") composed of three (3) or more representatives appointed by the Board of Directors.

12.02 Design Review Committee. During the Development Period the rights, powers and functions of the Board of Trustees or its delegated committee as set forth in Section 8.01 shall be exercised by Declarant or its representative. Declarant reserves the right to relinquish such right to the Board of Trustees at any time during the Development Period, at its sole discretion.

12.03 Specific Restrictions and Design Standards. Notwithstanding the foregoing, the restrictions and/or covenants set forth in the Design Standards shall apply to the improvements on the Property and any Lot as described therein.

12.04 Use Restrictions. So as to help preserve and protect the equity of the Lots, individual Owners and preserve the character of the neighborhood as a residential Owner-occupied community, the following use restrictions for the Property shall be observed:

- (a) Unit Occupancy. The occupancy of a one (1) bedroom Dwelling Unit is limited to no more than two (2) adult individuals; the occupancy of a two (2) bedroom Dwelling Unit is limited to no more than four (4) adult individuals. Compliance with City of Dayton zoning codes must be adhered to at all times. City of Dayton zoning codes currently state that no more than three (3) unrelated parties can dwell in a residence at any given time.
- (b) Leasing of Units. In order to protect the equity of the individual property Owners in the Association, carry out the purposes for which the Association was formed by preserving the character of the Association as a homogeneous residential planned community neighborhood of predominantly owner-occupied homes and by preventing the Association from assuming the character of a renter-occupied apartment complex; and comply with the eligibility requirements for financing in the secondary mortgage market, insofar as such criteria provide that the project be substantially owner-occupied, leasing of the Units shall be governed by the restrictions imposed in this Section. Except as otherwise provided in this Section for the case of undue hardship, the leasing of Dwelling Units shall be prohibited.

The Board of Directors shall be empowered to allow reasonable leasing of any Dwelling Units to avoid undue hardship, including, but not limited to:

- (i) where an Owner must relocate his or her residence and cannot, within one hundred eighty (180) days from the date the Dwelling Unit was placed on the market at not more than the current appraised market value, sell the Dwelling Unit for at least 85% of the current appraised market value, after having made reasonable and prudent effort to do so;
- (ii) where the Owner dies and the Dwelling Unit is being administered by his or her estate; and
- (iii) where the Owner takes a leave of absence or temporarily relocates and intends to return to the Dwelling Unit, in which case the Owner must reapply to the Board of Directors at the end of each lease term for renewal of the hardship exception. No lease term shall exceed one year in duration, and Board approval shall be a condition precedent to any lease agreement, such approval not to be unreasonably withheld or delayed.

The Board of Directors shall have the power to make and enforce reasonable Rules and Regulations and to levy Enforcement Assessments, in accordance with the Declaration and By-Laws, to enforce the provisions of this Section. Any transaction which does not

comply with this Section shall be void unless subsequently approved by the Board of Directors in writing.

No Dwelling Unit may be leased for transient or hotel purposes, which shall include, without limitation, rental for any period less than thirty (30) consecutive calendar days; or any rental where the Occupants of the Dwelling Unit are provided customary hotel service such as room service, maid service, furnishing of laundry and linens, etc.

Any lessee or tenant of a Dwelling Unit shall in all respects be subject to the Declaration, By-Laws, and all Rules and Regulations as are from time to time promulgated by the Association or Board of Directors as though such lessee or tenant were an Owner. The lease for any Dwelling Unit shall be in writing and in a form preapproved by the Board. Such lease shall provide that the violation of any provision of the Declaration, By-Laws, or the Rules and Regulations promulgated thereunder shall constitute a default under the lease giving the Association the right to evict the lessee. In the event such lease does not include such provision, then, by means of this covenant, such provision shall be deemed automatically included in such lease. Each Owner agrees, furthermore, to cause his or her lessee or Occupant or with such lessee or Occupant to comply with the Declaration, By-Laws, and the Rules and Regulations promulgated thereunder and is responsible and liable for all violations and losses caused by such tenant or lessee, notwithstanding the fact that such Occupants of the Dwelling Units are fully liable for any violation of the Organizational Documents. Any Enforcement Assessments levied against a lessee or Owner and not paid by said lessee or Owner shall constitute a lien against the Dwelling Unit as provided for in the Organizational Documents.

Those Owners who are leasing their Dwelling Units upon the effective date of this Declaration (date of recording with the Montgomery County Recorder) may continue to do so and shall not be required to demonstrate undue hardship as a prerequisite for same. However, upon any conveyance of the Dwelling Unit, any grantee thereof shall be subject to the provisions of this Section, in addition to all other provisions of the Declaration, By-Laws, and Rules and Regulations adopted by the Board.

Any first mortgagee of a Dwelling Unit, as well as CityWide Development Corp., Miami Valley Hospital and/or the University of Dayton (such three entities, the "Genesis Partners"), who becomes the Owner of a Dwelling Unit, shall be permitted to lease the Dwelling Unit without having to demonstrate undue hardship (provided, however, that this exception in favor of the Genesis Partners shall apply only to any Dwelling Unit(s) acquired by them prior to the initial sale of such Dwelling Unit(s) to an owner-occupant).

- (c) Third Party Beneficiaries. Declarant and the Association acknowledge that the development of the Property as an owner-occupied project was a material consideration in the conveyance of the Property to Declarant by Miami Valley

Hospital, an adjoining property owner, and was enabled through the support of Genesis Partners, the public-private partnership involved in the redevelopment of the residential area around Miami Valley Hospital as a non-transient neighborhood of owner-occupants. Declarant and the Association acknowledge and agree that the Genesis Partners are intended to be, and are hereby declared as, third party beneficiaries of the restrictions set forth in this Article XII, Section 12.04. The provisions of this Article XII, Section 12.04 may not be amended or terminated without the prior written consent of the Genesis Partners. Further, in the event of a violation of the restrictions set forth in this Article by an Owner or Occupant of a Dwelling Unit, the Genesis Partners are each hereby granted the right to enforce these restrictions through actions for injunction or eviction, or the exercise of other available remedies, as fully as though the provisions of this Article XII had been established as independent covenants running with the land for the benefit of Miami Valley Hospital, and its successors and assigns as owner of the hospital facilities that adjoin the Property, and CityWide Development Corp. and the University of Dayton, and their respective successors and assigns as owner/redeveloper of other properties in the vicinity of the Property.

### **ARTICLE XIII** **ANNEXATION**

13.01 Contemplated Annexation by Declarant. Declarant contemplates submitting the Additional Property if any, to the provisions of this Declaration so that the same will become in all respects part of the Property.

13.02 Reservation of Right to Annex Additional Property. Declarant hereby reserves the right at any time during the Development Period to take the action so contemplated in submitting the Additional Property and to develop thereon a maximum number of additional Lots equal to that permitted under applicable zoning ordinances so that the same will become, in all respects, part of the Property.

13.03 Reservation of Right to Amend Declaration. Declarant hereby reserves the right to amend this Declaration in the manner hereinafter provided in such respects as Declarant may deem advisable in order to effectuate the generality of the foregoing, the right to amend this Declaration so as to include the Additional Property and the improvements constructed thereon as part of the Property.

13.04 Consent and Approval for Annexation Amendments. Declarant, on its own behalf as the Owner of all Lots in the Property, and on behalf of all subsequent Owners, hereby consents and approves and each Owner and his mortgagee, by accepting a deed conveying such ownership, or a mortgage encumbering such interest, as the case may be, hereby consents and approves the provisions of this Article, and all such Owners and their mortgagees, upon request

of Declarant, shall execute and deliver from time to time all such instruments and perform all such acts as may be deemed by Declarant to be necessary or proper to effectuate said provisions.

13.05 Power of Attorney Coupled with an Interest. Each Owner and his respective mortgagees, by the acceptance of a deed conveying such ownership, or a mortgage encumbering such interest, as the case may be, hereby irrevocably appoints Declarant his attorney in fact, coupled with an interest for the purpose of adding the Additional Property to the Property, pursuant to the provisions of this Section. Such Owner authorizes such attorney to execute, acknowledge and record for and in his name an Amendment to this Declaration for the purpose of adding such Additional Property. Such mortgagee authorizes such attorney to execute, acknowledge and record for and in its name consent to any such Amendment.

#### **ARTICLE XIV** **GENERAL**

14.01 Covenants Running with the Land. The covenants, conditions, restrictions, easements, reservations, liens and charges created by this Declaration shall run with and bind the land, and each part thereof, and shall be binding upon and inure to the benefit of all parties having any right, title or interest in or to all or any part of the Property, and their respective heirs, executors, administrators, successors and assigns, for a term of fifty (50) years from the date this Declaration is Recorded, after which time it shall automatically extend for successive periods of ten (10) years, unless amended as herein provided, and subject to the provisions of Article XI of this Declaration.

14.02 Enforcement. In addition to any other remedies provided in this Declaration, Declarant, the Association or any Member shall have the right to enforce, in a court of competent jurisdiction by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens and charges set forth herein or now or hereafter imposed by or through the Rules and Regulations and the Plat Restrictions. Failure by Declarant, the Association or by any Member to proceed with such enforcement shall in no event be deemed a waiver of the right to enforce at a later date the original violation or a subsequent violation nor shall the doctrine of laches nor any statute of limitations bar the enforcement of any such restriction, condition, covenant, reservation, easement, lien or charge. The Association shall not deliberately refuse to enforce the provisions hereof or discontinue operations, or attempt to terminate its operation without giving thirty (30) calendar days prior written notice to all Members and all Eligible First Mortgagees.

14.03 Notice to Mortgagees. Notwithstanding any other provisions hereof, the Association shall notify any Eligible First Mortgagee in writing of any default by the Owner of such Lot in performance of that Owner's obligations under the Organizational Documents which is not cured within thirty (30) calendar days.



14.04 Severability. Invalidation of any one or more of these covenants, conditions, restrictions or easements by judgment or court order shall not in any way affect any other provisions hereof, all of which shall remain in full force and effect.

14.05 Gender and Grammar. Any necessary grammatical changes required to make the provisions hereof apply either to corporations, partnerships or individuals, male or female, shall in all cases be assumed as though in each case fully expressed herein.

14.06 References. Unless otherwise specified, all references to a particular Article or Section shall refer to such Article or Section of the Declaration.

14.07 Compliance with Requirements. The Declaration and the plan of ownership created hereby, as been created and is existing in full compliance with all applicable requirements of local, state and all other applicable ordinances and laws.

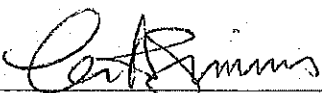
REMAINDER OF THIS PAGE LEFT BLANK INTENTIONALLY  
SIGNATURE PAGE FOLLOWS IMMEDIATELY

IN WITNESS WHEREOF, SIMMS RUBICON SQUARE, LTD., an Ohio limited liability has caused this instrument to be executed this 15<sup>th</sup> day of November 2012.

**DECLARANTS:**

SIMMS RUBICON SQUARE LTD., AN OHIO LIMITED LIABILITY

BY: CHARLES V. SIMMS DEVELOPMENT CORPORATION,  
ITS SOLE MEMBER

BY:   
\_\_\_\_\_  
CHARLES H. SIMMS, PRESIDENT

STATE OF OHIO                    }  
  } SS:  
COUNTY OF MONTGOMERY    }

The foregoing instrument was acknowledged before me this 15 day of November 2012, by CHARLES H. SIMMS, PRESIDENT of CHARLES V. SIMMS DEVELOPMENT CORPORATION, sole member of SIMMS RUBICON SQUARE LTD., the Declarant, on behalf of the company.

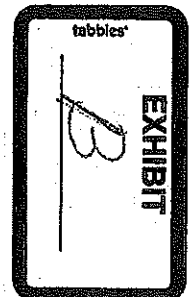
  
\_\_\_\_\_  
NOTARY PUBLIC

GERALD L. McDONALD, Attorney at Law  
Notary Public, State of Ohio  
My Commission has no expiration date.  
Section 147.03 O. R. C.

This Instrument Prepared By: David H. Montgomery, Esq., Pickrel, Schaeffer & Ebeling Co., L.P.A., 2700 Kettering Tower, 40 North Main Street, Dayton, Ohio 45423 1B69278

**EXHIBIT A**  
**LEGAL DESCRIPTION**

Situated in the City of Dayton, County of Montgomery and State of Ohio and being all of Lots Numbered Eighty-four Thousand Six Hundred Forty-nine (84649), Eighty-four Thousand Six Hundred Fifty (84650), Eighty-four Thousand Six Hundred Fifty-one (84651), Eighty-four Thousand Six Hundred Fifty-two (84652), Eighty-four Thousand Six Hundred Fifty-three (84653), Eighty-four Thousand Six Hundred Fifty-four (84654), and Eighty-four Thousand Six Hundred Fifty-five (84655), and Eighty-four Thousand Six Hundred Fifty-six (84656), of the Record Plan for Rubicon Square, recorded in Plat Book 221, Page 11, of the Plat Records of Montgomery County, Ohio.



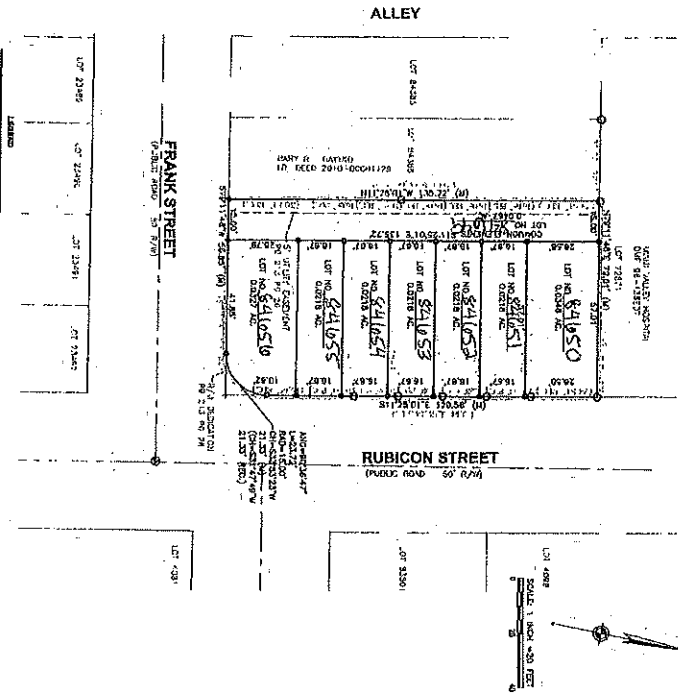
**RECORD PLAN**  
**RUBICON SQUARE**  
 REPLAT OF LOTS 8437 THRU 8439  
 REVISED AND CONSECUTIVE NUMBERS OF LOTS  
 ON THE PLAT OF THE CITY OF DAYTON  
 SECTION 3, TOWN 4, RANGE 7 E.  
 MONTGOMERY COUNTY  
 STATE OF OHIO  
 CONTAINING 0.2232 ACRES TOTAL

ALSO KNOWN AS PART OF THE GENESIS II-A PLAT  
 AS RECORDED IN P.B. 213 PG. 26

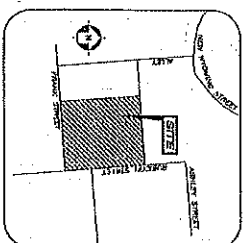
**NOTICE:** THE UNDERSIGNED, BEING AN ATTORNEY AT LAW, HEREBY CERTIFY THAT THE INFORMATION CONTAINED IN THIS RECORD PLAN IS TRUE AND CORRECT TO THE BEST OF MY KNOWLEDGE AND BELIEF, AND THAT I AM A MEMBER OF THE BAR OF THE SUPREME COURT OF THE STATE OF OHIO. I AM NOT PROVIDING THIS INFORMATION AS AN OFFER OF INVESTMENT OR AS A GUARANTEE OF ANY KIND. THE INFORMATION CONTAINED HEREIN IS FOR INFORMATIONAL PURPOSES ONLY AND SHOULD NOT BE RELIED UPON FOR ANY OTHER PURPOSE. THE UNDERSIGNED IS NOT PROVIDING ANY FINANCIAL, LEGAL, OR TAX ADVICE. THE UNDERSIGNED IS NOT PROVIDING ANY GUARANTEE OF ANY KIND. THE INFORMATION CONTAINED HEREIN IS FOR INFORMATIONAL PURPOSES ONLY AND SHOULD NOT BE RELIED UPON FOR ANY OTHER PURPOSE. THE UNDERSIGNED IS NOT PROVIDING ANY FINANCIAL, LEGAL, OR TAX ADVICE.

**APPROVED BY:**  
 [Signature]  
 [Signature]  
 [Signature]

**DATE:** [Date]



THE RECORDING AGENCIES WILL BE ADVISED OF THE REVISIONS OF THIS RECORD PLAN BY THE RECORDING AGENCIES. THE RECORDING AGENCIES WILL BE ADVISED OF THE REVISIONS OF THIS RECORD PLAN BY THE RECORDING AGENCIES. THE RECORDING AGENCIES WILL BE ADVISED OF THE REVISIONS OF THIS RECORD PLAN BY THE RECORDING AGENCIES.



**STATEMENT OF APPLICANT:**  
 I, the undersigned, hereby certify that the information contained in this record plan is true and correct to the best of my knowledge and belief, and that I am a member of the bar of the Supreme Court of the State of Ohio. I am not providing this information as an offer of investment or as a guarantee of any kind. The information contained herein is for informational purposes only and should not be relied upon for any other purpose. The undersigned is not providing any financial, legal, or tax advice.

**APPROVED BY:**  
 [Signature]  
 [Signature]  
 [Signature]

**DATE:** [Date]

**REVISIONS:**

No.	DATE	REVISION
1	08/01/12	DATE, DES, DR, CHD

**NOTICE:** THE RECORDING AGENCIES WILL BE ADVISED OF THE REVISIONS OF THIS RECORD PLAN BY THE RECORDING AGENCIES. THE RECORDING AGENCIES WILL BE ADVISED OF THE REVISIONS OF THIS RECORD PLAN BY THE RECORDING AGENCIES. THE RECORDING AGENCIES WILL BE ADVISED OF THE REVISIONS OF THIS RECORD PLAN BY THE RECORDING AGENCIES.

EXHIBIT C

**RUBICON SQUARE HOMEOWNER'S ASSOCIATION, INC.  
BY-LAWS**

These By-Laws are executed and attached to the Declaration pursuant to the Ohio Planned Communities Act, Chapter 5312 of the Ohio Revised Code. Their purpose is to provide for the establishment of an owner's association for the administration of the Common Element and Property in the planned community known as the Rubicon Square residential development in the manner provided by the Declaration and by these By-Laws. All present or future owners or tenants or their guests, invitee, employees, and any other person who might use the facilities of the Property in any manner shall be subject to any restrictions, conditions or regulations hereafter adopted by the Board. The mere acquisition or rental of any of the Dwelling Units located within the Property described in the Declaration or the mere act of occupancy of any of the Dwelling Units will constitute acceptance and ratification of the Declaration and of these By-Laws. The terms used herein shall have the same meaning as defined in the Declaration.

**ARTICLE I  
THE ASSOCIATION**

**1.01 Name of Association.** The Association shall be an Ohio corporation, not-for-profit, and shall be called **RUBICON SQUARE HOMEOWNER'S ASSOCIATION, INC.**, and the principal office of which shall be located in the City of Dayton, Montgomery County, Ohio.

**1.02 Membership and Voting Rights.** Membership requirements and the voting rights of its Members are set forth in the Declaration.

**1.03 Proxies.** Votes may be cast in person or by proxy. The person appointed as proxy need not be an Owner. Proxies must be in writing and filed with the Secretary of the Association before the appointed time of each meeting or action taken. Unless otherwise provided, all proxies shall be revocable at any time by delivering written notice of such revocation to the Secretary of the Association, or as therein stated within the written proxy itself. If, by the terms of a First Mortgage, an Owner has designated such mortgagee as his proxy, the presentation to the Secretary of the Association by a representative of such mortgagee of a copy of the mortgage containing such proxy designation shall constitute notice of such proxy designation and if the mortgage so states, notice of the irrevocability of such designation.

**1.04 Place of Meetings.** Meetings of the Association shall be held at such place upon the Property or at such other place within Montgomery County, Ohio, as may be designated by the Board and specified in the notice of the meeting at 7:30 p.m., or at such other time as may be designated by the Board and specified in the notice of the meeting.

**1.05 First Meeting.** The first meeting of the Members shall be held within the time limits prescribed by the Declaration and shall be considered the first annual meeting.

**1.06 Special Meetings.** It shall be the duty of the President of the Association to call a special meeting of the Owners as directed by resolution of the Board or upon a petition signed by a majority of the Owners and having been presented to the Secretary. 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 unless by consent of four-fifths (4/5) of the Owners present, either in person or by proxy.

**1.07 Notice of Meetings.** It shall be the duty of the Secretary of the Association to mail a notice of each annual or special meeting, stating the purpose thereof, as well as the date, time, and place where it is to be held, to each Owner of record, at the address on record with the Association, at least fourteen (14) calendar days but not more than twenty-eight (28) calendar days prior to such meeting. The Owners of record will be determined as of the day preceding the day on which notice is given.

**1.08 Waiver of Notice.** Notice of the date, time, place, and purpose of any meeting of Members may be waived in writing, either before or at the commencement of such meeting by any Members, which writing shall be filed with, or entered upon the records of the meeting. The attendance of any Members at any such meeting without protesting, prior to, or at the commencement of the meeting the lack of proper notice, shall be deemed to be a waiver by him of notice of such meeting.

**1.09 Action by Unanimous Written Consent of the Owners.** Any action which may be authorized or taken at a meeting of the Owners may be authorized or taken without a meeting in a writing or writings signed by all of the Owners. The writing or writings evidencing such action taken by the unanimous written consent of the Owners shall be filed with the records of the Association. Written notice of any action proposed to be taken by the unanimous written consent of the Owners shall be sent to all persons entitled to notice under these By-Laws at least five (5) calendar days prior to the circulation of the action for unanimous written consent among the Owners and shall specify the action proposed to be so taken.

**1.10 Quorum.** The presence at the meeting of Members entitled to cast, or of proxies entitled to cast, fifty-one percent (51%) of the votes of membership shall constitute a quorum for any action except as otherwise provided for in the Articles of Incorporation ("Articles"), Declaration, or By-Laws. If, however, such quorum shall not be 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 represented.

**1.11 Order of Business.** The order of business at all meetings of the Owners shall be as follows:

- (a) Roll call
- (b) Proof of notice of meeting or waiver of notice
- (c) Reading of minutes of preceding meeting
- (d) Reports of officers
- (e) Report of committees
- (f) Election of inspectors of election
- (g) Election of directors
- (h) Unfinished business
- (i) New business
- (j) Adjournment

**ARTICLE II**  
**GENERAL POWERS OF THE ASSOCIATION**

**2.01 General.** The Association shall have the following authority and power

(a) Hire and fire managing agents, attorneys, accountants and other independent contractors and employees that the Board determines are necessary or desirable in the management of the Common Element Property and the Association;

(b) Commence, defend, intervene in, settle or compromise any civil, criminal or administrative action or proceeding that is in the name of, or threatened against, the Association, the Board, or the Property and Common Element, or that involves two (2) or more Owners and relates to matters affecting the Property

(c) Enter into contracts and incur liabilities relating to the operation of the Property and the Association;

(d) Regulate the use, maintenance, repair, replacement, modification, and appearance of the Common Element (including all outdoor parking spaces on the Property even if deemed Limited Common Element or subject to a license) and Property;

(e) Adopt Rules and Regulations that regulate the use or occupancy of Dwelling Units, the maintenance, repair, replacement, modification and appearance of the buildings Common Elements and Limited Common Elements when the actions regulated by those rules affect Common Elements or other Dwelling Units;

(f) Cause additional improvements to be made as part of the Common Elements;

(g) Purchase, encumber, and convey Dwelling Units and, subject to the requirements set forth in this Declaration, acquire an interest in other real property and encumber or convey that interest. All expenses incurred in connection with the acquisition, encumbrance, use and operation of that interest are common expenses;

(h) Acquire, encumber and convey or otherwise transfer personal property;

(i) Hold in the name of the Association the real property and personal property acquired pursuant to subsections (g) and (h) of this section;

(j) Grant easements, leases, licenses and concessions through or over the Common Elements, and as otherwise provided in the Declaration;

(k) Impose and collect fees or other charges for the use, rental or operation of the Common Elements or for services provided to Owners;

(l) Impose interest and late charges for the late payment of assessments and impose returned check charges;

(m) Promulgate and, pursuant to the provisions of the Organizational Documents, impose reasonable enforcement assessments for violations of the Organizational Documents and Rules and Regulations, and reasonable charges for damage to the Common Elements or other property;

(n) Adopt and amend rules that regulate the collection of delinquent assessments and the application of payments of delinquent assessments;

(o) Impose reasonable charges for preparing, recording or copying Amendments, resale certificates or statements of unpaid assessments and the books and records of the Association;

(p) Enter into a Dwelling Unit for bona fide purposes when conditions exist that involve an imminent risk of damage or harm to Common Elements, another Dwelling Unit, or to the health or safety of the occupants of that Dwelling Unit or another Dwelling Unit;

(q) To borrow funds, as needed, and pledge such security and rights of the Association as may be necessary or desirable to obtain any such loan including, without limitation, the pledge or assignment of the Association's right to future income and the Association's right to levy assessments upon the Members;



(r) Suspend the voting privileges and use of recreational facilities of an Owner or the Occupants, the Owners of which are delinquent in the payment of assessments for more than thirty (30) calendar days;

(s) Purchase insurance and fidelity bonds required by the Underwriters, or such other insurance and fidelity bonds as the directors consider appropriate or necessary;

(t) Invest excess funds in investments that meet standards for fiduciary investments under Ohio law;

(u) Exercise powers that are:

- (1) Conferred by the Organizational Documents, or Ohio law;
- (2) Necessary to incorporate or reincorporate the Association as an Ohio not-for-profit corporation
- (3) Permitted to be exercised in Ohio by a not-for-profit corporation;
- (4) Necessary and proper for the government and operation of the Association.

### **ARTICLE III** **BOARD OF DIRECTORS**

**3.01 Number and Qualification.** The affairs of the Association shall be governed by a Board composed of three (3) Persons, all of whom must be Owners or spouses of Owners, or if the Dwelling Unit is not owned by an individual, then any principal, member of a limited liability company, partner, director, officer, employee, trustee of such Owner may be nominated and serve on the Board. If, at any one time one (1) Eligible First Mortgagee shall hold mortgages upon more than fifty percent (50%) of the Dwelling Units, such Eligible First Mortgagee may designate its representative who shall be a sixth (6th) member of the Board. Such representative need not be an Owner or spouse of Owner.

**3.02 Election of Directors.** The required directors shall be elected at each annual meeting of the Members. The Declarant may appoint and remove the initial members of the Board of Directors until such time as the Association is turned over to the Owners, or concurrent with or prior to the expiration of the Development Period, whichever is earlier in time. Only persons nominated as candidates shall be eligible for election as directors and the candidates receiving the greatest number of votes shall be elected. Each Member may vote for as many candidates as there are vacancies in the Board due to the expiration of their terms; provided, however that a

vacancy in the position of a representative of an Eligible Holder, if any, shall be filled by such Eligible First Mortgagee.

**3.03 Vacancies During the Term.** In the event of the occurrence of any vacancy or vacancies on the Board during the term of such director(s), the remaining directors, though less than a majority of the whole authorized number of directors, may, by the vote of a majority of their number, fill any such vacancy for the unexpired term; provided, however that a vacancy in the position of a representative of an Eligible First Mortgagee, if any, shall be filled by such Eligible First Mortgagee.

**3.04 Term of Office; Resignation.** Each director shall hold office until his term expires or until his earlier resignation, removal from office or death. Any director may resign at any time by oral statement to that effect made at a meeting of the Board, or in a writing to that effect delivered to the Secretary of the Association; such resignation to take effect immediately, or at such other time as the director may specify. At the first annual meeting of the Members the term of office of the three (3) directors shall be fixed so that such terms shall expire one (1) year, two (2) years, and three (3) years respectively, from and after the date of the next following annual meeting of the Members. At the expiration of such initial term of office of each respective director, his successor shall be elected to serve for a term of three (3) years.

**3.05 Removal of Directors.** At any regular or special meeting duly called, any one or more of the directors may be removed with or without cause by the vote of Members entitled to exercise at least seventy-five percent (75%) of the voting power of the Association, except that a director, if any, acting as a representative of a lending institution may not be removed by such vote. Any director whose removal has been proposed by the Members shall be given an opportunity to be heard at such meeting prior to a vote for removal being taken. In the event that a director is removed by vote, his successor shall then and thereby be elected to fill the vacancy thus created.

**3.06 Organization Meeting.** Immediately after each annual meeting of the Members the newly elected directors and those directors whose terms hold over shall hold an organization meeting for the purpose of electing officers and transacting any other business. Notice of such meeting need not be given.

**3.07 Regular Meetings.** Regular meetings of the Board may be held at such time and place as shall be determined by a majority of the directors, but at least four (4) such meetings shall be held during each year.

**3.08 Special Meetings.** Special Meetings of the Board may be held at any time upon call by the President or any two (2) directors. Written notice of the time and place of each such meeting shall be given to each director either by personal delivery, mail, telegram, facsimile, or telephone, at least two (2) calendar days before the meeting, which notice shall specify the purpose of the meeting; provided, however that attendance of any director at any such meeting

without protesting prior to or at the commencement of the meeting the lack of proper notice, shall be deemed to be a waiver by him of notice of such meeting and such notice may be waived in writing, either before, or at the commencement of such meeting. If all the directors are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

**3.09 Boards' Quorum.** At all meetings of the Board a majority of the directors shall constitute a quorum for the transaction of business and the acts of the majority of the directors present at a meeting at which a quorum is present shall be the acts of the Board. If at any meeting of the Board there be less than a quorum present, the majority of those present may adjourn the meeting from time to time. At the continuation of any such adjourned meeting, any business which might have been transacted at the meeting, as originally called, may be transacted without further notice.

**3.10 Electronic Communication.** Meetings of the Board may be held by any method of communication, including electronic, videographic, or telephonic communications, provided that each director can hear, or read, participate and respond in real time to every other member.

**3.11 Action by Unanimous Written Consent of the Board.** Any action which may be authorized to be taken at a meeting of the Board may be taken or authorized without a meeting in a writing or writings signed by all of the members of the Board. The writing or writings evidencing such action taken by the unanimous written consent of the Board shall be filed with the records of the Association.

**3.12 Fidelity Bonds.** The Board shall require that all officers and employees of the Association handling or responsible for the Association funds shall furnish adequate fidelity bonds. The premiums for such bonds shall be paid by the Association.

**3.13 Owner Participation.** No Owner other than a Director may participate in any discussion or deliberation of a meeting of the Board at either a regular or special Board meeting unless the Board expressly authorizes that Owner to attend or participate.

**3.14 Compliance with Anti-Discrimination Laws.** The Board shall comply with all applicable state and federal laws concerning the 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 Code. 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 IV**  
**POWERS OF THE BOARD**

**4.01 General.** The Board shall exercise all powers and authority, under law, and under the provisions of the Organizational Documents, that are not specifically and exclusively reserved to the Owners by law or by other provisions thereof, and without limiting the generality of the foregoing, the Board shall have the right, power and authority to:

- (a) take all actions deemed necessary or desirable to comply with all requirements of law, and the Organizational Documents;
- (b) obtain insurance coverage no less than that required pursuant to the Declaration and other Organizational Documents;
- (c) enforce the covenants, conditions and restrictions set forth in the Declaration;
- (d) repair, maintain and improve the Common Elements;
- (e) establish, enforce, levy and collect assessments as provided in the Declaration including for the payment of Common Expenses;
- (f) adopt and publish Rules and Regulations:
  - (i) governing the use of the Common Elements and the personal conduct of Owners, Occupants and their guests and invitees thereon;
  - (ii) detailing the procedures for discharging the Association's responsibilities with regard to the administration of the Property and Common Elements;
  - (iii) governing any aspect of the Property and Common Elements that is not required by statute to be governed by the Organizational Documents; and
  - (iv) establishing penalties for the infraction thereof and the Organization Documents;
- (g) suspend the voting rights of an Owner during any period in which such Owner 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) calendar days for each infraction of published Rules and Regulations or of any provisions of the Organizational Documents;

(h) declare the office of a member of the Board to be vacant in the event such Director shall be absent from three (3) consecutive regular meetings of the Board;

(i) authorize the officers to enter into one or more agreements necessary or desirable to fulfill the purposes and objectives of the Association and to facilitate the efficient operation of the Property and Common Elements, which includes without limitation, the ability to hire and terminate managing agents, attorneys, accountants, and other independent professionals and employees deemed necessary for such purposes. It shall be the primary purpose of such management agreements and service agreements to provide for administration, management, repair and maintenance as provided in the Declaration, and the receipt and disbursement of funds as may be authorized by the Board. The terms of any management agreements shall be as determined by the Board to be in the best interest of the Association, subject, in all respects, to the provisions of the Organizational Documents;

(j) cause funds of the Association to be invested in such reasonable investments as the Board may, from time to time, determine;

(k) borrow funds, as needed, and pledge such security and rights of the Association as might be necessary or desirable to obtain any such loan including, without limitation, the pledge of the Association's right to levy assessments upon the Members; and

(l) do all things and take all actions permitted to be taken by the Association by law, or the Organizational Documents not specifically reserved thereby to others.

**ARTICLE V**  
**DUTIES OF THE BOARD**

**5.01 General.** 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 Owners at each annual meeting of Owners, or at any special meeting when such statement is requested in writing by Owners representing a Majority of the Owners;

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

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

(i) fix the amount of assessments against each Dwelling Unit and Lot;

(ii) give written notice of each assessment to every Owner subject thereto within the time limits set forth therein; and

(iii) foreclose the lien against any property for which assessments are not paid within a reasonable time after they are authorized by the Declaration to do so, or bring an action at law against the Owner(s) personally obligated to pay the same, or both;

(d) issue, or to cause an appropriate representative to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid;

(e) procure and maintain insurance and bonds as provided in the Declaration, and as the Board deems advisable;

(f) cause the property, both real and personal, subject to the Association's jurisdiction to be maintained within the scope of authority provided in the Declaration;

(g) cause the restrictions created by the Declaration to be enforced; and

(h) take all other actions required to comply with all requirements of law and the Organizational Documents.

## ARTICLE VI OFFICERS

**6.01 Designation.** The principal officers of the Association shall be a President, a Vice President, a Secretary and a Treasurer, all of whom shall be elected by and from the Board. The offices of Treasurer and Secretary may be filled by the same person.

**6.02 Term of Office; Vacancies.** The officers of the Association shall hold office until the next organization meeting of the Board and until their successors are elected, except in case of resignation, removal from office or death. The Board may remove any officer at any time, with or without cause, by a majority vote of the directors then in office. Any vacancy in any office may be filled by the Board.

**6.03 President.** The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Association and of the Board. Subject to directions of the Board, the President shall have general executive supervision over the business and affairs of the Association. He may execute all authorized deeds, contracts, Association liens and other obligations of the Association and shall have such other authority and shall perform such other duties as may be determined by the Board or otherwise provided for in the Organizational Documents.

**6.04 Secretary.** The Secretary shall keep the minutes of all meetings of the Board and the minutes of all meetings of the Association. He shall have charge of such books and papers as the Board may direct. He shall be in charge of sending any notices and shall, in general, perform all the duties incident to the office of Secretary.

**6.05 Treasurer.** The Treasurer shall have the responsibility for Association funds and securities and shall be responsible for keeping full and accurate accounts of all receipts and disbursements in books belonging to the Association. He shall be responsible for the deposit of all monies and other valuable effects in the name and to the credit of the Association in such depositories as may, from time to time, be designated by the Board.

## ARTICLE VII BOOKS

**7.01 General.** The Association shall maintain correct and complete books, records and financial statements of the Association, including, without limitation, the Organizational Documents; current Rules and Regulations; names and addresses of the Owners; actions and Board resolutions, minutes of all meetings of Members and the Board, documents relating to its financial condition, all receipts and expenditures, budget, financial statements showing the allocation, distribution and collection of the common profits, common losses and common expenses among and from the Owners and annual audited financial statements when such are prepared.

**7.02 Availability.** Any Owner, duly authorized agent of any Owner, duly authorized prospective purchaser, Eligible First Mortgagee, insurer or guarantor of a first mortgage on a Dwelling Unit, may examine and copy any of the foregoing books, records and financial statements pursuant to reasonable standards established in the Organizational Documents or by Rules and Regulations which may include, without limitation, standards governing the type of documents that are subject to examination and copying, the times and locations at which those documents may be examined or copied, and the specification of a reasonable fee for copying the documents.

**7.03 Limitations.** Notwithstanding the foregoing section, the Association shall not be required to permit the examination and copying of any of the following:

- (a) information that pertains to Property related personnel matters;
- (b) communications with legal counsel or attorney work product pertaining to pending litigation or other Property and Common Elements related matters;

(c) 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;

(d) information that relates to the enforcement of the Organizational Documents or Rules and Regulations of the Association against Owners; or

(e) information the disclosure of which is prohibited by a confidentiality and non-disclosure agreement, state or federal law.

**ARTICLE VIII**  
**PURPOSE OF ASSESSMENTS**

**8.01 Payments from Maintenance Funds.** The Association shall establish and shall pay for out of the maintenance funds, the following:

(a) Utility Services for Common Elements and to Dwelling Units when Measured by Common Meter. The cost of water, sewer services, waste removal, electricity, telephone, heat, power or any other necessary utility service to or for the Common Elements, plus the costs or charges for any utility service to individual Dwelling Units which are being serviced by a common meter, (i.e., water and sewer services which are being supplied to all of the Dwelling Units of a building and measured through one (1) meter). The Association reserves the right to levy additional assessments against any Owner and/or Lot to reimburse it for excessive use, as shall be determined by the Board, by such Owner of any utility service having been charged against or to the maintenance fund.

(b) Care of Common Elements. The cost of landscaping, gardening, snow and ice removal, paving, painting, cleaning, maintenance, decorating, repair and replacement of the Common Elements including all outdoor parking spaces whether the same are deemed Limited Common Element or are assigned by license to a specific Dwelling Unit.

(c) Certain Maintenance of Limited Common Elements and Buildings. The cost of the maintenance and repair of any Limited Common Elements (including all outdoor parking spaces whether the same are deemed Limited Common Element or are assigned by license to a specific Dwelling Unit) and buildings, parts of which include the respective Dwelling Units, if such maintenance or repair is necessary in the discretion of the Association to protect the Common Elements or the Property, or any other portion of a building, and the Owner or Owners of a Dwelling Unit have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Association to said Owner or Owners, provided the Association shall levy a Special Individual Lot Assessment against such Owner(s) and Lot(s) for the cost of said maintenance or repair.



(d) Casualty Insurance. The premium upon a policy or policies of fire insurance with extended coverage, vandalism and malicious endorsements, as provided in the Declaration, the amount of which insurance shall be reviewed annually.

(e) Liability Insurance. The premium upon a policy or policies insuring the Association, the members of the Board and the Owners against any liability to the public or to the Owners, their invites or tenants, incident to the ownership and/or use of the Common Elements, as provided in the Declaration, the limits of which policy shall be reviewed annually.

(f) Wages and Fees for Services. The fees for services of any person or firm employed by the Association, including but not limited to, the services of a person or firm to act as a Managing Agent and legal and/or accounting services necessary or proper in the operation of the Property or the enforcement of the Organizational Documents and for the organization, operation and enforcement of the rights of the Association.

(g) Workmen's Compensation. The costs of workmen's compensation insurance to the extent necessary to comply with any applicable law.

(h) Discharge of Mechanic's Liens. Any amount necessary to discharge any mechanic's lien or other encumbrance levied against the Property or any part thereof, including Common Elements, which may in the opinion of the Association constitute a lien against the entire Property, or a portion thereof, rather than merely against the interests therein of particular Owners, it being understood however, that the foregoing authority shall not be in limitation to any statutory provisions relating to the same subject matter. Where one or more Owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it. Any costs incurred by the Association because of said lien or liens shall be specifically assessed to said Owners.

(i) Additional Expenses. The cost of any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance, common expenses or assessments which the Association is required to secure to pay for pursuant to the terms of the Organizational Documents, or which, in its opinion, shall be necessary or proper for the maintenance and operation of the Property as a first class single family residential project, or for the enforcement of the Organizational Documents.

8.02 Delegation of Duties. The Association, through its Board and officers, has the authority to delegate to persons, firms or corporations of its choice, such duties and responsibilities of the Association as the Board shall from time to time specify, and to provide for reasonable compensation for the performance of such duties and responsibilities.

**ARTICLE IX**  
**DETERMINATION AND PAYMENT OF ASSESSMENTS**

**9.01 The Determination and Payment of Assessments.** The following shall apply for the determination and payment of assessments:

(a) Each Member is obligated to pay to the Association their share of the costs to upkeep the Property as determined by the decisions of the Board as set forth in the annual estimated budget, which are secured by a continuing lien upon the property against which the assessment is made. If any assessment is not paid within ten (10) days after the due date, the assessment shall bear interest from the date of delinquency at the rate of twelve percent (12%) per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same or foreclose the lien against the property. Interest, costs, and reasonable attorney's fees and paralegal fees and other expenses incurred of any such action shall automatically be added to the amount of such assessment. No Owner may waive or otherwise escape personal liability for the assessment provided for herein by non-use of the Common Element, the private roadway right-of-way easement or abandonment of his/her Lot.

(b) The Association shall credit any payment from a Lot Owner for an assessment in the following order: (a) to the interest owed on the outstanding balance; (b) to administrative late fees or enforcement assessments owed to the Association; (c) to collection costs, attorney fees, paralegal fees, and recording costs the Association incurred in collecting the assessment; and (d) to the oldest principal amounts the Owner owes to the Association for the Common Expenses, general or special assessments, as the case may be, chargeable against the Dwelling Unit or Lot.

**9.02 Preparation of Estimated Budget.** The Association shall, on or before December 1st of every year, prepare an estimate of the total amounts necessary to pay the cost of wages, materials, insurance, services and supplies which will be required during the ensuing calendar year for the rendering of all services, together with a reserve for contingencies and replacements. On or before December 15th, each Owner shall be notified in writing as to the amount of such estimate, with reasonable itemization thereto. On or before January 1st of the ensuing year and the 1st of each and every month of said year each Owner shall be obligated to pay to the Association, or as it may otherwise direct, one-twelfth (1/12) of the assessment made pursuant to this Section. On or before the date of the annual meeting, in each calendar year the Association shall supply to all Owners an itemized accounting of the maintenance expenses actually incurred for the preceding calendar year, together with a tabulation of the amounts collected pursuant to the estimate provided, and showing the net amount over or short of the actual expenditures plus reserves.

**9.03 Reserve for Contingencies and Replacements.** The Association shall build up and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual estimate which may be necessary for the year shall be

charged first against such reserve, unless the same is waived as provided for in the Organizational Documents and as permitted by Ohio law. If said estimated cash requirement proves inadequate for any reason, including non-payment of any Owner's assessment, the same shall be assessed equally to the Owners according to each Owner's number of Lots with the development, or as otherwise stated in the Declaration. The Association shall serve notice of such further assessment on all Owners by a statement in writing giving the reasons therefore, the amounts and the date or dates when such further assessment may be payable in a lump sum or in installments.

**9.04 Periodic Assessments.** Notwithstanding any provision in this Article IX, the Board may, at its sole option, elect that certain expenses such as insurance, water and sewer be paid by periodic assessments based on the billing date of such expenses. If the Board so elects, such expenses shall be separately stated in the budget specifying the amount and due date thereof.

**9.05 Budget for First Year.** When the first Board hereunder takes office after the Association is turned over by the Declarant, the Association shall determine the estimated cash requirement, as hereinabove defined, for the period commencing thirty (30) calendar days after said election and ending on December 31st of the calendar year in which said election occurs. Assessments shall be levied against the Owners during said period as previously provided for.

**9.06 Failure to Prepare Annual Budget.** The failure or delay of the Association to prepare or serve the annual or adjusted estimate on the Owner shall not constitute a waiver or release in any manner of such Owner's obligation to pay the maintenance costs and necessary reserves as herein provided, whenever the same shall be determined. In the absence of any annual estimate or adjusted estimate the Owner shall continue to pay the monthly maintenance charge at the existing monthly rate established for the previous period until the first monthly maintenance payment which occurs more than ten (10) calendar days after such annual or adjusted estimate shall have been mailed or delivered.

**9.07 Assessments.** Monthly assessments shall begin as provided for in the Organizational Documents and shall be paid pursuant to the terms thereof.

**9.08 Audit.** Upon the written request of any Eligible First Mortgagee on over fifty-one percent (51%) of the Dwelling Units, or by any group of Eligible First Mortgagee who in the aggregate hold mortgages on Over fifty-one percent (51%) of the Dwelling Units, or upon written request executed by a majority of Owners, the books of the Association shall be audited, but not more than once every three (3) years by an independent registered or Certified Public Accountant. The results of such audit shall be sent to every Owner of record, and the holder of any duly recorded mortgage against any ownership who requests in writing a copy thereof.

**9.09 Remedies for Failure to Pay Assessments.** If an Owner is in default in the monthly payment of the aforesaid charges, the Members of the Board may avail themselves of the lien rights and other rights provided for in the Declaration, or as otherwise permitted by law.

**ARTICLE X**  
**GENERAL PROVISIONS**

**10.01 Amending the By-Laws.** These By-Laws may be amended at a regular or special meeting of the Members, by a vote of Members exercising seventy-five percent (75%) of the voting power of Members, and if material to the rights of a mortgagee, the approval of all holders of first mortgage liens on Lots has first been obtained. No amendment to these By-Laws shall be deemed effective until Recorded in the office of the Montgomery County Recorder.

**10.02 Controlling Documents.** In the case of a conflict between the Articles and the By-Laws, the Articles shall control. In the case of a conflict between the Declaration and the By-Laws, the Declaration shall control.

**10.03 Dissolution of the Association.** Any vote to terminate the applicability of the Declaration, dissolve the Association, or dissolve the planned community shall require the unanimous consent of all Owners.

**10.04 Copies of Notices to Eligible First Mortgagee.** Upon written request to the Board, Eligible First Mortgagees shall be given a copy of any and all notices and other documents permitted or required by the Organizational Documents to be given to the Owner(s) whose Lot ownership is subject to such mortgage, and a copy of any lien filed by the Association.

**10.05 Service of Notices on the Board.** Notices required to be given to the Board or to the Association may be delivered to any member of the Board or officer of the Association, either personally or by mail, addressed to such member or officer at his Dwelling Unit.

**10.06 Non-Waiver of Covenants.** No covenants, restrictions, conditions, obligations or provisions contained in the Organizational Documents shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

**10.07 Agreements Binding.** All agreements and determinations lawfully made by the Association in accordance with the procedures established in the Condominium Organizational Documents shall be deemed to be binding on all Owners, their successors, heirs, legal representatives, and assigns.

**10.08 Severability.** The invalidity of any covenant, restriction, condition, limitation or any other provision of these By-Laws, or of any part of the same, shall not impair or affect in any manner the validity, enforceability or effect of the rest of these By-Laws.

**10.09 Gender and Grammar.** Any necessary grammatical changes required to make the provisions hereof apply either to corporations, limited liability companies, partnerships, trusts, individuals, male or female, shall in all cases be assumed as in each case fully expressed herein.

EXECUTED on the date set forth in the acknowledgement of the signature below.

**RUBICON SQUARE HOMEOWNER'S ASSOCIATION, INC.**

BY: SIMMS RUBICON SQUARE LTD.

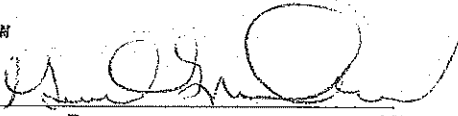
BY: CHARLES V. SIMMS DEVELOPMENT CORPORATION,  
ITS SOLE MEMBER

BY:   
\_\_\_\_\_  
CHARLES H. SIMMS, PRESIDENT

STATE OF OHIO                    )  
COUNTY OF MONTGOMERY    ) SS:

The foregoing instrument was acknowledged before me this 15 day of November, 2012 by CHARLES H. SIMMS, PRESIDENT of CHARLES V. SIMMS DEVELOPMENT CORPORATION, the sole member of SIMMS RUBICON SQUARE HOMEOWNER'S ASSOCIATION, INC., an Ohio not-for-profit corporation, on behalf of such corporation.

GERALD L. McDONALD, Attorney at Law  
Notary Public, State of Ohio  
My Commission has no expiration date.  
Section 147.03 O. R. C.

  
\_\_\_\_\_  
NOTARY PUBLIC

This instrument prepared by: David H. Montgomery, Esq., Pickrel, Schaeffer and Ebeling Co., L.P.A., 2700 Kettering Tower, Dayton, Ohio 45423.

**EXHIBIT D**  
**DESIGN STANDARDS**

1. General.

1.1 The capitalized terms herein, unless otherwise specified, shall mean, and be defined as, those terms set forth in the Declaration of Covenants, Conditions and Restrictions for Patterson Square (the "Declaration").

1.2 The purpose of these Design Standards is two-fold. First, to establish certain criterion and guidelines for a Dwelling Unit and other improvements on the Property; and secondly, to establish a procedure and requirement for the plans and specifications to be submitted to the Design Review Committee.

2. Dwelling Unit Requirements.

2.1 All Dwelling Units shall be maintained aesthetically, to be of an attractive first class and character for a single family residential planned community. All exterior surfaces of a Dwelling Unit shall be maintained in harmony with other Dwelling Units within the Development, and shall have a uniform and consistent appearance of other Dwelling Units located on the Property.

2.2 Any changes to the exterior of any Dwelling Unit in any building must have prior approval of the Design Review Committee.

2.3 The Board of Directors shall have the ability to establish Rules and Regulations and modifications to these Design Standards from time to time.

3. Walkways.

3.1 All walkways located on a Lot shall be constructed of concrete, stamped concrete, or brick, and shall be a minimum of three feet (3') wide. Walkways shall be kept free and clear of weeds, and shall be maintained in a sightly manner at all times.

4. Windows.

4.1 Shall be vinyl. The exterior color shall be subject to design review on all Lots, but shall be consistent with all Dwelling Units located within any one building. Any replacement or new windows installed after the initial construction of the Dwelling Unit shall be preapproved by the Design Review Committee.

5. Exterior Doors.

5.1 All exterior doors to a Dwelling Unit shall be natural wood, fiberglass, or metal, and shall reasonably match and conform to the exterior doors of the other Dwelling Units located within a building, all of which shall create a reasonably uniform appearance throughout the Development.

6. Garage Doors.

6.1 All garage doors shall be natural wood or paneled metal. Garage doors may be insulated, and may be with or without glass windows.

7. Exterior Lighting.

7.1 Submitted specifications must be shown to the Design Review Committee prior to installation, identifying the location, model, and design of exterior lighting fixtures.

8. Fencing.

8.1 Fences will be constructed by builder on each Lot with a Dwelling Unit at the time of initial construction. Any additional fencing must be preapproved by the Design Review Committee.

9. Landscaping.

9.1 Any landscaping/vegetation installed on a Lot that has become diseased, or has subsequently died shall be removed by the Association, and replaced within a reasonable time with a similar species. In the event it is determined by the Board that the landscaping died as a result of an action or failure to act by the Lot Owner, then in such instance the Owner shall be responsible, at its cost, to replace the landscaping/vegetation as provided herein.

9.2 The Design Review Committee may require certain minimal requirements for additional or replacement landscaping, including the planting of trees or shrubs as reasonably determined.

9.3 Window planting boxes are permitted with Design Review Committee approval. The maintenance of the window boxes and any plantings therein shall be the responsibility of the Lot Owner. In the event the window box is not maintained in a slightly and aesthetically pleasing manner, the Board is authorized to require the Owner to remove the same.

10. Satellite Dishes.

10.1 Satellite dish locations must be preapproved by the Design Review Committee, prior to installation. When possible and practical, satellite dishes shall not be mounted on the front (facing street) side of a Dwelling Unit. Irrespective of any other language contained in the Declaration, should an Owner attach a satellite dish to the exterior façade of a Dwelling Unit, the Owner shall be responsible for the cost of any maintenance, repair, or replacement required as a result of such installation, to either the exterior or interior of a Dwelling Unit, however, the Association shall repair the exterior of the Dwelling Unit and assess the cost thereof to the Owner. In no event shall any satellite dish be installed on the roof of a Dwelling Unit.

REMAINDER OF PAGE LEFT BLANK INTENTIONALLY



Type: DEE  
Kind: PLAT  
Recorded: 07/22/2013 10:53:04 AM  
Fee Amt: \$146.40 Page 1 of 6  
Montgomery County, OH  
Willis E. Blackshear County Recorder  
File# 2013-00050756

NO TRANSFER NEEDED

13 JUL 19 PM 3:02

KARL L. KEITH  
AUDITOR

FIRST AMENDMENT TO DECLARATION  
FOR  
RUBICON SQUARE HOMEOWNER'S ASSOCIATION, INC.  
(PHASE II)

I hereby certify that copies of the within First Amendment, together with attached Exhibits thereto, have been filed in the office of the Auditor, Montgomery County, Ohio.

Montgomery County Auditor

By: Karl L. Keith

Dated: July 19, 2013

PLAT REFERENCE:

Book: 222, Page(s): 21

<sup>BOX</sup>  
This instrument prepared by: David H. Montgomery, Esq., Pickrel, Schaeffer & Ebeling Co., L.P.A., 2700 Kettering Tower, Dayton, Ohio 45423.

**FIRST AMENDMENT TO DECLARATION  
FOR  
RUBICON SQUARE HOMEOWNER'S ASSOCIATION, INC.  
(PHASE II)**

---

This First Amendment to Declaration, hereinafter referred to as the "First Amendment", made on the date hereinafter set forth by SIMMS RUBICON SQUARE, LTD., an Ohio limited liability company, hereinafter referred to as "Declarant".

**RECITALS**

A. On the 23rd day of January 2013, certain premises hereinafter referred to as "Parcel A", located in the City of Dayton, Montgomery County, Ohio were submitted to the provisions of Chapter 5312 of the Ohio Revised Code for a planned community by filing with the Montgomery County Recorder, a legal instrument with attached Exhibits, titled, "Declaration of Covenants, Conditions, and Restrictions for Rubicon Square Homeowner's Association, Inc.", hereinafter referred to as the "Declaration". Said Declaration was previously filed with the Auditor of Montgomery County, Ohio.

B. The Declaration was recorded in the Official Records and Plat Records of Montgomery County, Ohio as follows:

<u>INSTRUMENT</u>	<u>INSTRUMENT NUMBER</u>	<u>PLAT BOOK</u>
Declaration	2013-004872	Book 211, Page 11

C. The Declarant is the owner of certain real property described in Section 1.02 of the Declaration, hereinafter referred to as "Additional Property", and has determined to submit such Additional Property and the improvements thereon to the provisions of the Declaration and to the provisions of Chapter 5312 of the Ohio Revised Code.

NOW, THEREFORE, pursuant to Sections 11.02 and 13.03 of the Declaration, Declarant herein amends the Declaration as follows:

1. All the terms used herein which are defined within the Declaration shall be interpreted to have the same meaning as defined in the Declaration, unless specifically hereinafter amended.

2. Declarant is the owner of the Additional Property, together with all improvements thereon, all easements, rights, appurtenances belonging thereto, and all articles of personal property.

existing thereon for the common use of the Owners, all of which is hereby submitted to the provisions of the Declaration and is hereby included and made part of the Rubicon Square residential development.

3. The Declaration is hereby amended in accordance with the provisions of Articles XI and XIII of the Declaration by the following:

A. The legal description referred to in Section 2.01 of the Declaration is hereby amended by adding thereto into Exhibit "A" of the Declaration, the real property, being the Additional Property described in Exhibit "A" attached hereto and incorporated herein.

B. The Plat attached as Exhibit "B" to the Declaration is hereby amended by adding thereto and making a part thereof the Plat attached to this First Amendment, as Exhibit "B" and incorporated herein, relating to the Additional Property, any existing buildings and all other improvements thereon.

4. Except as specifically herein amended, all of the provisions of the Declaration, the By-Laws and the Plat shall be and hereby are declared to remain in full force and effect, as originally drafted, or as otherwise amended.

This instrument was executed on the 12<sup>th</sup> day of July, 2013, as evidenced of the below signature and acknowledgment.

**DECLARANT**

SIMMS RUBICON SQUARE, LTD.  
BY: CHARLES V. SIMMS DEVELOPMENT  
CORP. ITS SOLE MEMBER

BY: Charles H. Simms  
CHARLES H. SIMMS, PRESIDENT

STATE OF OHIO )  
COUNTY OF MONTGOMERY )SS:

The foregoing instrument was acknowledged before me this 12<sup>th</sup> day of July, 2013, by CHARLES H. SIMMS, President of CHARLES V. SIMMS DEVELOPMENT CORP., the sole member of SIMMS RUBICON SQUARE, LTD., an Ohio limited liability company, on behalf of such company.



JENNIFER SAMAN, Notary Public  
In and for the State of Ohio  
My Commission Expires May 2, 2018

Jennifer Samaan  
NOTARY PUBLIC

This instrument prepared by: David H. Montgomery, Esq., Pickrel, Schaeffer & Ebeling Co., L.P.A., 2700 Kettering Tower, Dayton, Ohio 45423. PL.1CC7356

**EXHIBIT A**

DESCRIPTION OF RUBICON SQUARE – PHASE II  
CITY OF DAYTON, MONTGOMERY COUNTY, OHIO  
CONTAINING 0.294 ACRES  
JULY 10, 2013

Situate in the City of Dayton, County of Montgomery, Ohio and being all of Lots Numbered Twenty-Two Thousand Eight Hundred and Seventy-One (22871), Twenty-Two Thousand Eight Hundred and Seventy (22870), a portion of Lot Number Twenty-Two Thousand Eight Hundred and Sixty-Nine (22869) of the consecutive numbers of lots on the revised plat of the said City of Dayton, Ohio, together with a portion of an unnamed alley vacated per City Ordinance #31253-13 (all references to deeds, microfiche, plats, surveys, etc. refer to the records of the Montgomery County Recorder's Office, unless noted otherwise) and being more particularly bounded and described as follows:

Beginning at the northeast corner of Lot 84650 of Rubicon Square recorded in Plat Book 221 at Page 11 said point also being on the westerly right-of-way of Rubicon Street.

Thence South seventy-nine degrees eleven minutes and forty-six seconds West ( $S79^{\circ}11'46''W$ ) for a distance of one hundred thirty-two and 01/100 feet (132.01') to a point on said vacated, unnamed, 16 foot wide public alley;

Thence along said vacated, unnamed public alley for the following two (2) courses:

1. North eleven degrees twenty-five minutes one second West ( $N11^{\circ}25'01''W$ ) for nine and 44/100 feet (9.44') to a point;

2. South seventy-nine degrees eleven minutes forty-six seconds West ( $S79^{\circ}11'46''W$ ) for eight and 00/100 feet (8.00') to a point on the centerline of the public alley;

Thence along the centerline of the portion of the vacated alley North eleven degrees twenty-five minutes and one second West ( $N11^{\circ}25'01''W$ ) for eighty-two and 58/100 feet (82.58') to a point;

Thence departing said vacated public alley centerline for the following two (2) courses:

1. North seventy-nine degrees seventeen minutes twenty-one seconds East ( $N79^{\circ}17'21''E$ ) for a distance of one hundred twenty-nine and 08/100 feet (129.08') to a point;

2. Along a curve to the right with a radius of twenty-five and 17/100 feet (25.17') for an arc distance of eleven and 38/100 feet (11.38') {chord bearing North eighty-seven degrees four minutes twenty-eight seconds West ( $N87^{\circ}04'28''W$ ) for eleven and 29/100 feet (11.29'), delta angle of said curve being twenty-five degrees fifty-four minutes forty-three seconds ( $25^{\circ}54'43''$ )} to a point on the right-of-way line of Rubicon Street;

Thence along the westerly right-of-way line of Rubicon Street South eleven degrees twenty-five minutes and one second East (S11°25'01"E) for a distance of eighty-nine and 13/100 feet to the POINT OF BEGINNING, containing zero and 294/1000 (0.294) acres, more or less, subject however to all covenants, conditions, restrictions, reservations and easements contained in any instrument of record pertaining to the above described tract of land.

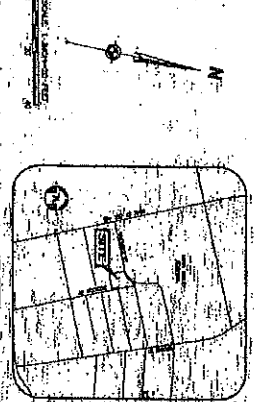
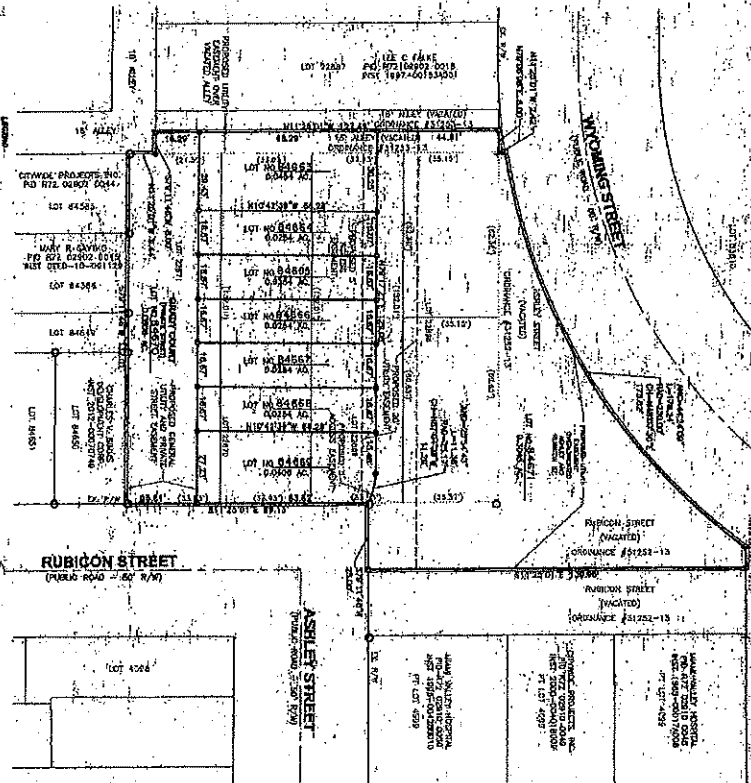
This description was prepared from a field survey performed by Woolpert, under the direct supervision of Steven W. Newell, Ohio Registered Surveyor No. 7212.

The above description does not meet the standards for Boundary Surveys for the State of Ohio as defined by the Ohio Administrative Code in Chapter 4733-37.

**EXHIBIT**  
**B**

blabber

RECORDED  
**RUBICON SQUARE - II**  
RELAT OF LOTS 2268 THRU 2287  
REVISED AND CONSOLIDATIVE NUMBERS OF LOTS  
ON THE PLAT OF THE CITY OF DAYTON,  
AND ADJACENT RUBICON STREET AND SHELBY STREET  
SECTION 3, TOWN 1, RANGE 7 E  
MONTGOMERY COUNTY,  
STATE OF OHIO  
CONTAINING 6.979 ACRES TOTAL



**NOTICE TO CONTRACTORS**  
The State of Ohio, Department of Public Safety, Division of Public Safety, is hereby advertising for proposals for the construction of the following project:

**RUBICON SQUARE - II**  
RECORD PLAN

**PREPARED BY:** [Signature]  
**DATE:** 08/22/2010

**REVISIONS:**

NO.	DATE	REVISION
1	08/22/2010	ISSUED FOR BIDDING

**SCALE:** 1" = 100'

**LEGEND:**

- Proposed
- Existing
- Easement
- Right-of-Way
- Utility
- Other

**NOTICE TO CONTRACTORS:**

The State of Ohio, Department of Public Safety, Division of Public Safety, is hereby advertising for proposals for the construction of the following project:

**RUBICON SQUARE - II**  
RECORD PLAN

**PREPARED BY:** [Signature]  
**DATE:** 08/22/2010

**REVISIONS:**

NO.	DATE	REVISION
1	08/22/2010	ISSUED FOR BIDDING

**SCALE:** 1" = 100'

**LEGEND:**

- Proposed
- Existing
- Easement
- Right-of-Way
- Utility
- Other