

VICKI D. PEGG  
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DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
BAY POINTE, A PLANNED UNIT DEVELOPMENT

TRANSMISSION

1987 JUN -2 AM 9:03

DEPT. OF REVENUE  
HARRISBURG, PA.

THIS INSTRUMENT PREPARED BY:

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Dayton, Ohio 45402

For Plat See: Book 131, Page 5

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## DECLARATION OF COVENANTS, CONDITIONS AND RESTRICTIONS

THIS DECLARATION creating covenants, conditions and restrictions, made on the date hereinafter set forth, by CHARLES V. SIMMS DEVELOPMENT CORPORATION, an Ohio corporation, hereinafter referred to as "Declarant".

### RECITALS

A. Declarant is the owner in fee simple of the following described real estate situated in the Township of Washington, County of Montgomery, State of Ohio:

Lots Numbered 1 through 16, inclusive, and Lot 73 of Bay Pointe, Section One, A Planned Unit Development as recorded in Plat Book 131, Page 5 of the Plat Records of Montgomery County, Ohio.

B. The above described real property is hereinafter referred to as the "Property", and it is the desire and intent of the Declarant to develop such property as a residential community consisting of dwelling units in buildings together with green space, open land, driveways, parking and other common areas.

C. Declarant is also the owner of the real property described in Exhibit "B" hereof, and contemplates submitting such property to the provisions of this Declaration, by an amendment or amendments hereto.

D. 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 these ends Declarant is making this Declaration, and has caused to be formed Bay Pointe Homeowners' Association, Inc., an Ohio not-for-profit corporation to own the Common Area and to enforce and administer the provisions hereof.

### DECLARATIONS

NOW, THEREFORE, Declarant hereby declares that all of the Property, and any additional property to be added to this plan as hereinafter provided, 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 such property. These easements, covenants, conditions, restrictions and assessments, unless otherwise specifically limited herein, shall run with such property submitted hereby, 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 or any part thereof.

ARTICLE I  
DEFINITIONS

The following terms used herein are defined as follows:

- 1.01 Additional Property, shall mean property which is described in Exhibit "B" of this Declaration, and which, together with improvements thereon, may be added to the Property.
- 1.02 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.
- 1.03 Association, shall mean and refer to Bay Pointe Homeowners' Association, Inc., an Ohio not-for-profit corporation, its successors and assigns.
- 1.04 By-Laws, shall mean and refer to 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.
- 1.05 Common Area, shall mean and refer to that part of the Property which shall be conveyed to and owned by the Association for the common use, enjoyment and benefit of the membership of the Association and described in Section 2.03 and shall include, among other things, any retention and/or detention ponds or areas.
- 1.06 Declarant, shall mean and refer to Charles V. Simms Development Corporation, an Ohio corporation, its successors and assigns.
- 1.07 Dwelling Unit, shall mean a unit which is designated in Section 2.02 as a Dwelling Unit and intended for the use and occupancy of a person or persons as a residence.
- 1.08 Lot, shall mean and refer to those parcels of real property on which Dwelling Units are to be constructed as set forth in Section 2.02.
- 1.09 Member, shall mean and refer to an Owner that is subjected hereto.
- 1.10 Owner, shall mean and refer to the Owner of any Lot on which Dwelling Units have been or are to be constructed thereon and for purposes thereof shall include Declarant.
- 1.11 Property, shall mean and refer to the real property subject to this Declaration as described in Recital A hereof.

ARTICLE II  
DESCRIPTION OF PROPERTY

2.01 A legal description of the Property subject to this Declaration is set forth in Recital A hereof.

2.02 Unless or until amended, Dwelling Units are constructed on the following described Lots with one (1) Dwelling Unit to a Lot:

Situate in the Township of Washington, County of Montgomery, State of Ohio and being Lots Numbered 1 through 16, inclusive of Bay Pointe, Section One, A Planned Unit Development as recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_ of the Plat Records of Montgomery County, Ohio.

2.03 The Common Area shall consist of the following described Property which shall include any detention or retention ponds, to wit:

Situate in the Township of Washington, County of Montgomery, State of Ohio and being Lot Numbered 73 of Bay Pointe, Section One, A Planned Unit Development as recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_ of the Plat Records of Montgomery County, Ohio.

ARTICLE III  
ASSOCIATION

3.01 Organization. The Association was formed as an Ohio not-for-profit corporation pursuant to the provisions of Chapter 1702 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 collectively as Exhibit "A".

3.02 Membership. Each Owner within the Property, 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 ownership 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 (1) person is an Owner of a Lot, all such persons shall be Members.

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 (1) person, each such person shall have a fraction of a vote equal to his, her or its undivided interest in that Lot.

3.04 Administration of Property. The administration of the Property shall be in accordance with the provisions of this Declaration, the Articles, and the By-Laws. Each Owner, tenant, or occupant of a Lot shall comply with the provisions of this Declaration, the Articles, and the By-Laws, decisions and resolutions of the Association or its representative, and failure to comply with such provisions, decisions or resolutions shall be grounds for an action to recover sums due for damages or for injunctive relief.

3.05 Board of Trustees. The Board of Trustees, 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, the Articles, the By-Laws and by this Declaration upon the Association, except as otherwise specifically provided; provided, however, that 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 Trustees, he shall be deemed to act in such capacity to the extent required to authenticate his acts and to carry out the purposes of this Declaration, the Articles, and the By-Laws.

3.06 Declarant's Rights. Until such time as the sale of seventy-five percent (75%) of all Dwelling Units to Owners have been consummated, or for a period of five (5) years from the date on which this Declaration is filed for record, whichever first occurs, the powers, rights, duties and functions of the Association shall be exercised by a Board of Trustees selected by Declarant, with at least two (2) of the persons so selected being Owners, other than Declarant, its agents or representatives. Declarant reserves the right to relinquish such right to control at any time. For purposes of this Section, the percentage of Dwelling Units sold shall be determined by comparing the Dwelling Units sold to the total number of Dwelling Units which may be created pursuant to Article XVI.

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

- (a) Any such delegation be by a written contract with a term of no longer than one (1) year in duration;
- (b) That any such contract be terminable by either party without cause, upon sixty (60) days written notice without any termination charges or other penalties;
- (c) That any such contract entered into by the Declarant prior to the time it releases or relinquishes control of the Association shall terminate when the Declarant releases or relinquishes such control unless such contract is renewed by a vote of the Unit Owners at the meeting called for purposes of turning over control of the Association.



ARTICLE IV

CONVEYANCE OF COMMON AREA

4.01 General. Declarant agrees that prior to the time that any Lot is conveyed to any Owner, it will convey the Common Area 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 or for other public purposes consistent with the intended use of the Property under this Declaration. All improvements to the Common Area shall be fully installed, completed and operational at the time of such conveyance.

ARTICLE V

EASEMENT

5.01 Owner's Easements of Enjoyment. Every Owner shall have a right and easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot subject to:

- (a) The right of the Association to suspend the voting rights and right to use the Common Area, other than for purposes of ingress, egress or parking, for any period during which any assessment against his Lot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its published rules and regulations after hearing by the Board of Trustees.
- (b) The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Members. No such dedication or transfer shall be effective unless an instrument signed by two-thirds (2/3) of the Members, agreeing to such dedication or transfer has been recorded.

5.02 Delegation of Use. Any Owner may delegate, in accordance with the By-Laws, his right of enjoyment in and to the Common Area to the members of his family, his tenants, or contract purchasers who reside on the Property.

5.03 Restricted Common Area Easement. If delineated on the plat or plats creating a Lot within the Property, or alternatively, if specifically described in this Declaration, or in any amendment hereto, such Lot or Lots shall have an easement in the Common Area immediately adjacent to the exterior boundaries of such Dwelling Unit for the purpose of landscaping, placement of air conditioning and/or heating equipment servicing a Dwelling Unit, and the construction of a patio, deck or partition fence.

The exact dimensions and layout of such easement will be delineated on such plat or plats, or described in the Declaration or amendment. Unless constructed by the Declarant, any improvements on such easement shall be subject to prior approval as provided for in Article IX of this Declaration.

5.04 Easements for Repair, Maintenance and Restriction. 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 violations or breach of any attempted violation or breach of the covenants and restrictions herein.

5.05 Easements for Construction. Declarant hereby reserves, for itself a right and easement to enter upon the Common Area to do all things necessary to complete construction and to complete the development of the Property, including the Additional Property which may be subjected hereto.

5.06 Easements for Telephone, Utilities and Cable Television. The Association may hereafter grant easements on behalf of Owners to entities for telephone and utility purposes for the benefit of the Property, and also the installation and maintenance of cable television lines for the benefit of the Property and/or individual Lots. Each Owner hereby grants, and the transfer of title to an Owner shall be deemed to grant, the Association an irrevocable power of attorney to execute, acknowledge and record, for and in the name of such Owner, such instruments as may be necessary to effectuate the foregoing.

5.07 Tie-In Easements. Declarant reserves the right and easement over, on, and under the Common Area and to any Lots, to use, tie into and extend all existing utility lines for purposes of serving the Additional Property which may be submitted to this Declaration as hereinafter provided.

5.08 Service Easements. An easement is hereby granted to all police, firemen, ambulance operators, mailmen, deliverymen, garbage and trash removal personnel, and all other similar persons, and to the local governmental authorities, but not the public in general, to enter upon the Common Area in the performance of their duties.

5.09 Water Easement. The Association shall have a right of easement to the exterior water taps or faucets of any Lot for the purpose of watering the Common Area landscaping; provided, however, that such use shall be reasonable and the Association shall reimburse the Owner of such Lot for any excessive use of water.

5.10 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, its successors and assigns, and any Owner, purchaser, 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 trust deed 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 VI**  
**ASSESSMENTS**

6.01 Creation of Lien and Personal Obligation of Assessments. Declarant, for each Lot owned within the Property, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agrees to pay the Association: (1) annual assessments; (2) insurance assessments; (3) special individual Lot Assessments; and (4) periodic assessments, such assessments to be established and collected as hereinafter provided. Such assessments, together with interest and costs shall be a charge on the land and shall be a continuing lien upon the Lot against which each such assessment is made as provided for in Article VII. 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.

6.02 Purpose of Annual Assessment. The annual assessments levied by the Association shall be used exclusively to promote the recreation, health, safety, and welfare of the residents of the Property, and for the maintenance and improvement of the Common Area, and the enforcement of these restrictions. The assessments shall include without limitation the following expenses:

- (a) Maintenance and repair of the Common Area.
- (b) Maintenance and repair of the Lots as set forth herein.
- (c) Taxes and assessments on the Common Area.
- (d) Water, sewer, electricity, telephone or any other utility service as may be provided to the Common Area, or to any group of Lots by use of a common meter or meters.
- (e) Acquisition of furnishings and equipment for the Common Area.

- (f) Insurance premiums for insurance obtained by the Association pursuant to the provisions of Article XII for Common Area improvements, and pursuant to Article XIII.
- (g) 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, cost of mailing, and postage.
- (h) A general operating reserve to assure the availability of funds for the purposes hereunder.

**6.03** 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 number of Dwelling Units owned by such Owner and the denominator shall be the total number of Dwelling Units constructed on the Property. As Additional Property is subjected to this Declaration pursuant to the provisions of Article XVI, the denominator shall be increased by the number of Dwelling Units to be constructed on such Additional Property at the time of filing an amendment hereto adding such Additional Property.

**6.04** Insurance Assessment. The cost of insuring the Dwelling Units pursuant to the provisions of Article XII hereof shall be pro-rated between the Owners on the basis of replacement value. Each Owner's share of the insurance assessment shall be equal to a fraction, the numerator of which is the replacement value of the Dwelling Units owned by such Owner and the denominator shall be the total replacement value of all the Dwelling Units constructed on the Property. For purposes hereof the replacement value of a Dwelling Unit shall be the replacement value assigned to that Dwelling Unit pursuant to the contract of insurance obtained pursuant to Article XII hereof. As Additional Property is subjected to this Declaration pursuant to the provisions of Article XVI hereof, the denominator shall be increased by the replacement value of the Dwelling Units constructed on such Additional Property.

**6.05** 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 thereof. 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 direct, one-twelfth (1/12) of his share of the assessment made pursuant to this paragraph. 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. 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 monthly installment 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 installments due in the succeeding six months after rendering of the accounting.

**6.06**      Fiscal Year Option. In lieu of the calendar year format, the Board of Trustees 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 day of such month. Assessments shall in such event commence on the first day of the fiscal year.

**6.07**      Reserve for Contingencies and Replacements. The Association shall build up and maintain a reasonable reserve for contingencies and replacement. 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 with the first monthly maintenance payment which occurs more than ten (10) days after the delivery or mailing of such notice of further assessment. All Owners shall be obligated to pay the adjusted monthly amount.

**6.08**      Budget for First Year. When the first Board of Trustees hereunder take office, the Association shall determine the estimated cash requirement, as hereinabove defined, for the period commencing thirty (30) days after said election and ending on December 31st of the calendar year in which such election occurs. Assessments shall be levied against the Owners during said period as provided in Section 6.05.

**6.09**      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, whether 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) days after such new annual or adjusted estimate shall have been mailed or delivered.

6.10 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 Area 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; minutes of the proceedings of the Owners and Board of Trustees. Such books and records shall be open for inspection 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) days notice to the Board of Trustees and upon payment of a reasonable fee, 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.

6.11 Commencement of Assessments. Monthly assessments shall begin with respect to each Lot upon the conveyance of title to such Lot by Declarant to an Owner other than Declarant. If any Additional Property is included in the Property, pursuant to the annexation provisions of this Declaration, then the assessments for the Lots herein shall commence upon the conveyance of title to such additional Lots by Declarant to an Owner other than Declarant.

6.12 Declarant's Obligations to Pay Assessments. Notwithstanding any provisions hereof, Declarant shall have no obligation to pay monthly assessments for the Lots owned by it, except that Declarant will pay to the Association a monthly amount equal to the difference between the actual operating expenses of the Association and the aggregate of the monthly 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 Trustees at which time Declarant shall pay the monthly assessment for each Dwelling Unit owned by it which either has been issued an occupancy certificate, or is being offered for sale or rent.

6.13 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 maintenance, repair or other matter directly or indirectly occasioned or made necessary by any wrongful or negligent act or omission of any Owner, such cost or expense shall be borne by such Owner and not by the Association, and if paid by the Association shall be paid or reimbursed to the Association by such Owner as a special individual Lot forthwith upon the Association's demand.

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

6.15 Non-Use of Facilities. No Owner may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the Common Area or by the abandonment of his Lot.

## ARTICLE VII

### REMEDIES FOR NON-PAYMENT OF ASSESSMENT

7.01 Acceleration and Late Charges. If any monthly or other assessment is not paid within ten (10) days after the same has become due, the Board of Trustees, at its option, without demand or notice may: (a) declare the assessment and if a monthly assessment, such monthly assessment plus all monthly assessments remaining on the then current budget, immediately due and payable; and (b) charge a late charge not to exceed \$20.00 and/or interest on any unpaid balance, at the rate of twelve percent (12%) per annum.

7.02 Lien of Association. The Association shall have a lien upon the estate or interest in any Lot of the Owner thereof for the payment of the portion of the assessments chargeable against such Lot which remain unpaid for ten (10) days after the same have become due and payable from the time a certificate therefor, subscribed by the President of the Association, is filed with the Recorder of Montgomery County, Ohio, pursuant to authorization given by the Board of Trustees of the Association. Such certificate shall contain a description of the Lot, the name or names of record Owner or Owners thereof and the amount of such unpaid portion of the assessments. Such lien shall remain valid for a period of five (5) years from the time of filing thereof 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 in an action brought to discharge such lien as hereinafter provided.

7.03 Priority of Association's Lien. The lien provided for in Section 7.02 shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of bona fide 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 or Owners of the Lot affected shall be required to pay a reasonable rental for such Lot during the pendency of such action, and the plaintiff in such action is entitled to the appointment of a receiver to collect the same. In any such foreclosure action, the Association shall be entitled to become a purchaser at the foreclosure sale.

7.04 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.

7.05 Non-Liability of Foreclosure Sale Purchaser or an Acquirer of Title in Lieu of Foreclosure for Past Due Assessments. Where the mortgagee of a first mortgage of record or other purchaser of a Lot acquires title to the Lot as a result of a foreclosure of any lien or a deed in lieu of foreclosure of the first mortgage, such acquirer of title, his successors and assigns, 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 acquirer. Such unpaid share of assessments shall be deemed to be assessments collectible from all of the Lots, including that of such acquirer, his successors or assigns.

7.06 Liability for Assessments Upon Voluntary Conveyance. In a voluntary conveyance of a Lot other than a conveyance in lieu of foreclosure, 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 Trustees of the Association 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 VIII

### REMEDIES FOR BREACH OF COVENANTS AND RESTRICTIONS

8.01 Abatement and Enjoinment. The violation of any restriction or condition or regulation adopted by the Board of Trustees of the Association, or the breach of any covenant or provision contained in this Declaration or in the By-Laws of the Association attached hereto as Exhibit "A", shall give the Board of Trustees the right, in addition to the rights hereinafter set forth in this section: (a) to enter upon the Lot or Dwelling Unit upon which, or 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 this Declaration and



the By-Laws of the Association, and the Board of Trustees, or its Agents, shall not be thereby deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

8.02 Involuntary Sale. If any Owner, either by his own conduct or by the conduct of any other occupant of his Dwelling Unit violate any of the covenants or restrictions or provisions of this Declaration, or of the By-Laws of the Association attached hereto as Exhibit "A", or the regulations adopted by the Board or by the Board of Trustees of the Association, and such violation shall continue for thirty (30) days after notice in writing from the Board of Trustees, or shall occur repeatedly during any thirty (30) day period after written notice or request from the Board of Trustees to cure such violation, then the Board of Trustees shall have the power to issue to the defaulting Owner a ten (10) day notice in writing to terminate the rights of said defaulting Owner to continue as an Owner and to continue to occupy, use or control his Dwelling Unit and thereupon an action in equity may be filed by the Board of Trustees against the defaulting Owner for: (a) a decree of mandatory injunction against the Owner or occupant or, in the alternative; (b) subject to the prior consent in writing of any mortgagee having a security interest in the Lot ownership of the defaulting Owner, a decree declaring the termination of the defaulting Owner's right to occupy, use or control the Dwelling Unit owned by him on account of the breach of covenant, and ordering that all the right, title and interest of the Owner in the property shall be sold, subject to the lien of any existing mortgage, at a judicial sale upon such notice and terms as the court shall establish, except that the court shall enjoin and restrain the defaulting Owner from re-acquiring his interest at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, master's or commissioner's fees, and all other expenses of the proceedings, and all such items shall be taxes against the defaulting Owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder or any liens, other than that of the first mortgage, may be paid to the Owner. Upon the confirmation of such sale, the purchaser thereat shall thereupon be entitled to a deed to the Lot ownership and to immediate possession of the Dwelling Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession and it shall be a condition of any such sale, and the decree shall so provide that the purchaser shall take the interest in the property sold subject to this Declaration.

## ARTICLE IX

### ARCHITECTURAL CONTROL

9.01 General. No building, fence, wall, patio, deck, or other structure or improvement shall be commenced, erected, or maintained on the Property, 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 Board of Trustees, or by an architectural committee composed of three (3) or more representatives appointed by the Board of Trustees. In the event said Board of Trustees, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

## ARTICLE X

### USE RESTRICTIONS

10.01 Use. The Property shall be used for residential purposes and for no other purpose except for purposes reserved to Declarant herein and except as herein specifically provided otherwise. It shall be expressly permissible for Declarant to maintain during the period of its sale of Lots or Dwelling Units, upon those portions of the Property as it deems desirable, those facilities it deems reasonably required, convenient or incidental to the construction and sale of Lots or Dwelling Units, and improvements thereof including, without limiting the generality of the foregoing, a sales office, storage area, models, and parking areas.

10.02 Rental. No Lot or any Dwelling Unit thereon shall be rented or leased unless: (a) the lease or rental agreement is in writing; (b) is for a term of at least sixty (60) days in duration; and (c) the lease or rental agreement specifically provides that the terms of the lease or rental agreement and of the tenancy thereby created shall be subject in all respects to the terms of this Declaration, the Articles, and the By-Laws, and any failure to comply therewith shall be a default under the lease or rental agreement. The Owner of any Lot shall provide the Association with a copy of any lease or rental agreement entered into for the lease or rental of any Dwelling Unit, prior to the commencement of such lease or rental term.

10.03 Exterior of Lots. Nothing shall be permitted to be hung, displayed or stored on the outside of windows or placed on the outside walls of a Dwelling Unit or on the exterior walls of patios, or otherwise outside of a Dwelling Unit or any part thereof, except in enclosed patios, and no sign, awning, canopy, shutter, radio or television antenna or any other device or ornament shall be affixed to or placed upon the exterior walls, roof or the exterior patio walls, or otherwise on the Lot areas visible to the public, other than originally provided by Declarant or as authorized by the Board of Trustees, or its committee as hereinbefore provided.

10.04 Common Area. No part of the Common Area shall be used by anyone other than the Association for the storage or maintenance of any signs, goods, machinery, material or other item or device, nor shall clothes, sheets, blankets, laundry or other articles of any kind be hung cut or exposed on any part thereof visible from the outside, nor shall there be playing, lounging, parking of baby carriages or playpens, bicycles, wagons, toys, vehicles, benches or chairs on any part of the Common Area, except in accordance with rules and regulations therefor adopted from time to time by the Board of Trustees. In addition, no use shall be made of the driveway areas that would prohibit free and unimpeded ingress and egress by a member and his motor vehicles to and from his garage and the drives of the Common Area.

10.05 Vehicles. The parking of motor vehicles on the Common Area shall be subject to such rules and regulations as the Board of Trustees may from time to time establish, which may include the assignment of exclusive parking spaces to each Owner. No boats, trailers, trucks or other like vehicles shall be permitted to be parked on the Common Areas or visible part of any Lot, nor shall mechanical work on vehicles be permitted thereon.

10.06 Nuisances. No noxious or offensive activity shall be carried on or upon any Lot or Dwelling Unit or the Common Area nor shall anything be done thereon which may in any way or for any purpose endanger the health or unreasonably disturb the occupant of a Dwelling Unit or interfere with the full use of a Dwelling Unit.

10.07 Structural Integrity. Nothing shall be done on any Lot or in, on or to the Common Area which will impair or change the structural integrity of any improvement located thereon.

10.08 Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other out building shall be used on any Lot or on the Common Area at any time as a residence either temporarily or permanently.

10.09 Signs. No sign of any kind shall be displayed to the public view on the Property, except signs used by the client to advertise lots for sale during the construction and sales period, and professional signs as limited by rules and regulations adopted by the Board of Trustees.

10.10 Animals. Except as hereinafter provided, no animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot or the Common Area. Notwithstanding the foregoing, household domestic pets, not in excess of the total of two (2), not bred or maintained for commercial purposes, may be maintained on a Lot, provided that: (a) no such animal shall be permitted in any portion of the Common Area, except by a leash maintained by a responsible person; (b) the permitting of attended leashed animals on the Common Area shall be subject to such rules and

regulations as the Board of Trustees may from time to time establish; and (c) the right of a member to maintain an animal on a Lot shall be subject to termination if the Board of Trustees, in its full and complete discretion, determines that the maintenance of the animal constitutes a nuisance.

10.11 Garbage and Refuse Disposal. No Lot or the Common Area shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

10.12 Water Supply. No individual water supply system shall be permitted on any Lot.

10.13 Sewage Disposal. No individual sewage disposal system shall be permitted on any Lot.

10.14 Rules and Regulations. The Board of Trustees of the Association may establish and enforce rules and regulations as to the use of the Common Area, and the same as promulgated from time to time, shall be enforceable in the same manner and to the same extent as other restrictions herein.

10.15 Arbitration. In the event of any dispute between members as to the application of these restrictions or any rule or regulation to any particular circumstance, the party agreed shall submit a complaint in writing to the Board of Trustees specifying the dispute. The Board of Trustees shall set a time, date and place for hearing thereon within twenty (20) days thereafter, and give written notice to the party thereof no less than three (3) days in advance. The Board of Trustees 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) days thereafter. No action of law may be instituted by the party to such dispute unless arbitration pursuant hereto has first been had.

## ARTICLE XI MAINTENANCE

11.01 Association. Unless otherwise provided for herein, the Association shall maintain, repair and make all necessary replacements to the Common Area and any improvements thereon, including but not limited to any recreational facilities, utility facilities (including without limitation sanitary, sewer, and water laterals), detention and/or retention areas, lawns, shrubs, trees, driveways, roadways, parking areas and walkways.

The Association shall also provide exterior maintenance upon each Dwelling Unit, i.e., paint, repair, replace and care for roofs, gutters, downspouts, exterior surfaces and other exterior improvements. Such responsibility shall not include any glass surfaces, doors, doorways, windows and window frames.

The Association shall further provide exterior maintenance upon each Lot, except for any maintenance, repair or replacement which is the responsibility of the Owner hereunder.

11.02 Owner. The Owner of each Lot shall furnish and be responsible for, at his expense, all maintenance, repairs, decorating and replacements within his Dwelling Unit, including without limitation, the heating and air conditioning system and any partitions and interior walls.

The Owner shall also be responsible for the maintenance, repair and replacement of any patios or decks, patio area or deck area, bulb replacement for exterior lighting fixtures to his Lot, glass surfaces, doors, doorways, <sup>TV, M</sup> windows and window frames, shrubs, trees and other landscaping on his Lot, snow removal on those areas not blacktopped, and any and all other maintenance, repair and replacements of the improvements on his Lot unless otherwise provided herein. garage door

11.03 Exterior Surfaces. Any exterior maintenance, repair or replacements to be performed by the Owner hereunder shall be subject to the prior approval of the Board of Trustees, or its delegated committee. The Board of Trustees may adopt guidelines or other criteria setting forth standards for such maintenance, repair or replacement. Pursuant to such standards the Board of Trustees, or its committee, may require that only certain types and/or manufacturers be used for replacements to the exterior surfaces in order to assure similarity and conformity.

11.04 Failure to Maintain. In 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 Trustees, 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 Trustees, 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 XII  
HAZARD INSURANCE

12.01 Fire and Extended Coverage Insurance. The Association shall obtain and maintain for the benefit of the Association, all Owners and mortgagees insurance on all Dwelling Units constructed

on the Lots within the Property and on all improvements constructed on the Common Area, against loss or damage by fire, lightning and such perils as are at this time comprehended within the term "extended coverage" with no coinsurance and in an amount not less than one hundred percent (100%) of the replacement value thereof. In the event such policy contains coinsurance provisions, such policy shall contain an agreed amount endorsement. Such insurance shall be written in the name of, and the proceeds thereof shall be payable to the Association. The policy providing such coverage shall provide that no mortgagee shall have any right to apply the proceeds thereof to the reduction of any mortgage debt. Such policy shall provide coverage for built-in installed fixtures and equipment in an amount not less than one hundred percent (100%) of the replacement value thereof and shall also provide that the insurer shall have no right to contribution from any insurance which may be purchased by any Owner as herein-after permitted.

No Owner may purchase an individual policy of fire and extended coverage insurance for any Dwelling Units constructed on his Lot. If irrespective of this prohibition an Owner purchases an individual policy insuring such Dwelling Unit, said Owner shall be responsible to the Association for any loss or expense that such policy may cause in adjusting the Association's insurance, and such amount of loss shall be a lien on his Lot and enforced in the manner provided for in the By-Laws.

Such policy of insurance shall contain provisions requiring the issuance of certificates of coverage and the issuance of written notice not less than ten (10) days prior to any expiration or cancellation of such coverage to any mortgagee or mortgagees of any Lot.

Such insurance by the Association shall be without prejudice to the right of any Owner or occupant of a Dwelling Unit to obtain individual contents or chattel property insurance.

Such policy shall also provide for the release by the insurer thereof of any and all rights of subrogation or assignment and all causes and rights of recovery against any Owner, member of his family, his tenant, or other occupant of the Property for recovery against any one of them for any loss occurring to the insured Property resulting from any of the perils insured against under such insurance policy.

If the required insurance coverage under this Section 12.01 ceases to exist for any reason whatsoever, any mortgagee of any portion of the Property may remedy that lack of insurance by purchasing policies to supply the insurance coverage. The funds so advanced shall be deemed to have been loaned to the Association; shall bear interest at a per annum rate two percent (2%) higher than the basic interest rate in any note secured by the mortgagee's mortgage against a portion of the Property; and shall be due and payable to the mortgagee by the Association

immediately. The repayment of said obligation shall be secured by a special assessment against all Owners and shall not require a vote of the members of the Association, anything to the contrary in this Declaration notwithstanding.

12.02 Sufficient Insurance. In the event that the improvements on the Common Area, the Dwelling Units constructed on the Lots within the Property, or any Dwelling Unit constructed on a Lot within the Property, shall suffer damage or destruction from any cause or peril insured against and the proceeds of any policy or policies insuring against such loss or damage and payable by reason thereof shall be sufficient to pay the cost of repair or restoration or reconstruction, then such repair, restoration or reconstruction, shall be undertaken by the Association and the insurance proceeds shall be applied by the Association in payment therefor; provided, however, that in the event within thirty (30) days after such damage or destruction, the Owners, if they are entitled to do so pursuant to Section 12.04 shall elect to withdraw the same from the provisions of this Declaration, then such repair, restoration or reconstruction shall not be undertaken.

12.03 Insufficient Insurance. In the event that the improvements on the Common Area, the Dwelling Units constructed on the Lots within the property, or any Dwelling Unit constructed on a Lot within the Property, shall suffer damage or destruction from any cause or peril which is not insured against, or, if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction thereof, unless the Owners shall within ninety (90) days after such damage or destruction, they are entitled to do so pursuant to Section 12.05, elect to withdraw the Property from the provisions of this Declaration, such repair, restoration or reconstruction of the Dwelling Units so damaged or destroyed shall be undertaken by the Association at the expense of all the Owners of the Units in the same proportions in which they shall share in the insurance assessments. Should any Owner refuse or fail after reasonable notice to pay his share of such cost in excess of available insurance proceeds, the amount thereof may be advanced by the Association and the amount so advanced by the Association shall be assessed to such Owner and such assessment shall have the same force and effect, and, if not paid, may be forced in the same manner as hereinbefore provided for the non-payment of assessments.

12.04 Non-Restoration of Damage or Destruction. In the event of substantial damage to or destruction of two-thirds (2/3) or more of the Dwelling Units constructed on the Lots within the Property, the Owners by the affirmative vote of those entitled to exercise not less than seventy-five percent (75%) of the voting power may elect not to repair or restore such damage or destruction. Upon such election, all of the Property shall be subject to an action for sale as upon partition at the suit of any Owners.

In the event of any such sale or sales of the Property after such election by agreement of all Owners, the net proceeds of the sale together with the net proceeds of insurance, if any, and any other indemnity arising because of such damage or destruction, shall be considered as one fund and shall be distributed to all Owners in proportion to their share of the insurance assessments. No Owner, however, shall receive any portion of his share of such proceeds until all liens and/or encumbrances on his Lot have been paid, released or discharged.

12.05 Rights of Association. Upon the termination of or the relinquishment by Declarant of its right to control the Association, the Association shall have the right to terminate and cancel any insurance obtained by the Declarant upon first obtaining replacement insurance. Any policy procured by the Association, when Declarant is in control, shall contain a provision recognizing such right.

### ARTICLE XIII

#### LIABILITY AND OTHER INSURANCE

13.01 Liability Insurance. The Association as a common expense shall insure itself, the Board of Trustees, 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 Area, 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 Dollars (\$1,000,000.00) in respect to any one occurrence, and to the limit of not less than One Hundred Thousand 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.

13.02 Other Insurance. The Association as a common expense shall also obtain such additional insurance as the Board of Trustees 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 the sum of 3 months assessments, together with the reserve funds, if any.



13.03 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 10 days prior to such cancellation or substantial change.

13.04 Annual Review. The amounts and coverage of each insurance policy obtained by the Association shall be reviewed annually.

**ARTICLE XIV**  
**CONDEMNATION**

14.01 General. In the event that by reason of the exercise by appropriate public authority of the right of eminent domain any portion of the Common Area is appropriated, the net proceeds received therefrom shall be prorated and distributed among the Owners in the same proportions as their share of the insurance assessments are charged, subject to the right of any holder of the first mortgage to the portion of the proceeds applicable to the Lot mortgaged to such mortgagee.

**ARTICLE XV**  
**AMENDMENT**

15.01 General. Except as hereinafter provided, this Declaration may be amended only with the approval of members exercising not less than seventy-five percent (75%) of the voting power of the entire membership. Any such amendment shall be in writing and effective on the date when it is filed of record with the Recorder of the county in which the Property is situated.

15.02 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 for a period of two (2) years from the date hereof, to amend this Declaration and to execute any and all documents deemed necessary or desirable by Declarant to conform to requirements of any lending institution, the Federal Housing Administration, or the Veterans Administration; provided, however, that any such amendment must be approved by either the Federal Housing Administration or the Veterans Administration.

15.03 Federal Housing Administration and/or Veterans Administration. As long as the Declarant maintains and asserts control of the Board of Trustees, any amendment annexing additional property, dedicating Common Areas or amending this Declaration shall require the approval of either the Federal Housing Administration or the Veterans Administration.

15.04 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 mortgage 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 the holders of any first mortgages.

15.05 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. These rights include without limitation the right to control the Association and the right to add additional property.

15.06 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 XVI

### ANNEXATION

16.01 Contemplated Annexation by Declarant. Declarant is the owner in fee simple or has a right to acquire the real property described in Exhibit "B", and contemplates constructing thereon additional Dwelling Units and reserving certain portions of it for green space, open areas, parking and other recreational lands and facilities. Declarant, further contemplates submitting the land in Exhibit "B", with any improvements thereon, to the provisions of this Declaration, so that the same will become in all respects part of the Property.

16.02 Reservation of Right to Annex Additional Property. Declarant hereby reserves the right at any time within a period of ten (10) years, commencing on the date this Declaration is filed for record to take the action so contemplated in submitting the land described in Exhibit "B", and to construct thereon

a maximum number of additional Dwelling Units equal to that permitted under applicable zoning ordinances, which is, unless or until amended, 56 Dwelling Units, together with Common Areas, so that the same will become in all respects part of the Property.

16.03 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 real property described in Exhibit "B" and the improvements constructed thereon as part of the Property.

16.04 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 of 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, including without limiting the generality of the foregoing, the amendment of this Declaration by Declarant in the manner provided in Section 16.05, 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.

16.05 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 property described in Exhibit "B" hereof to the Property pursuant to the provisions of this Item. 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 a consent to any such amendment.

## ARTICLE XVII

### PARTY WALLS

17.01 General Rules of Law to Apply. Each wall which is built as a part of the original construction of the Dwelling Units upon the Property 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.

17.02 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.

17.03 Destruction by Fire or Other Casualty. If a party wall is destroyed or damaged by fire or other casualty, an 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 of the wall, 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.

17.04 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 bear the whole cost of furnishing the necessary protection against such elements.

17.05 Right to Contribution Runs With Land. The right of any Member to contribute from any other Member under this Article shall be appurtenant to the land and shall pass to such Owner's successors in title.

17.06 Arbitration. In the event of any dispute arising, concerning a party wall, or under the provisions of this Article, each party shall choose one arbitrator, and such arbitrators shall choose one additional arbitrator, and the decision shall be by a majority of all the arbitrators.

## ARTICLE XVIII

### GENERAL

18.01 Covenants Running With 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 hereinafter provided.

18.02 Enforcement. In addition to any other remedies provided in this Declaration, Declarant, the Association, or any member, shall have the right to enforce, 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 Association's rules and regulations. 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) days prior written notice to all of the holders of first mortgage liens on Lots.

18.03 Notice to Mortgagees. Notwithstanding any other provisions hereof, the Association shall notify the holder of the first mortgage lien on the Lot, in writing, of any default by the Owner of such Lot in performance of that Owner's obligations under this Declaration, the Articles or the By-Laws which is not cured within thirty (30) days.

18.04 Partition. There shall be no judicial partition of the Common Area, nor shall Declarant, or any Owner or any person acquiring any interest in the Property or any part thereof, seek judicial partition thereof. However, nothing contained herein shall be constructed to prevent judicial partition of any Lot owned in co-tenancy.

18.05 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.

18.06 Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the 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.

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

18.08 Taxes, Assessments and Charges. The first mortgagee of any Lot, either singly or jointly with other holders of first mortgages on any Lot, at its or their option, may pay taxes, real estate assessments or other charges which are in default and which may or have become a charge against the Common Area. The funds so advanced shall be deemed to have been loaned to the Association; shall bear interest at a per annum rate two percent (2%) higher than the basic interest rate on any note secured by the mortgagee's mortgage against a portion of the Property; and shall be due and payable to the mortgagee by the Association immediately. The repayment of said obligation shall be secured by a special assessment against all Owners and shall not require a vote of the Member of the Association, anything to the contrary in the Declaration notwithstanding.

18.09 Compliance With Requirements. The Declaration, and the plan of ownership commonly known as a Planned Unit Development ("P.U.D.") created hereby, has been created and is existing in full compliance with all applicable requirements of local, state and all other applicable ordinances and laws.

IN WITNESS WHEREOF, the undersigned, the Declarant herein, an Ohio corporation, by its duly authorized officer has caused this instrument to be duly executed this 27 day of May, 1987.

Signed and acknowledged  
in the presence of:

**CHARLES V. SIMMS  
DEVELOPMENT CORPORATION**

Cynthia L. Lukins  
Cynthia J. Summers

By: Hans H. Soltau  
Its Vice President

STATE OF OHIO, COUNTY OF MONTGOMERY, SS:

The foregoing instrument was acknowledged before me this 27 day of May, 1987, by Hans H. Soltau, Vice President of CHARLES V. SIMMS DEVELOPMENT CORPORATION, an Ohio corporation, on behalf of the corporation.

Cynthia L. Lukins  
Notary Public

OPTIONAL FORM NO. 10  
MAY 1982 EDITION  
STATE OF OHIO

THIS INSTRUMENT PREPARED BY:

HANS H. SOLTAU  
Attorney at Law  
124 East Third Street  
Dayton, Ohio 45402

TRAVELERS  
1987 JUN -2 AM 9:03  
MONTGOMERY CO. OHIO

EXHIBIT "A"

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BY-LAWS  
OF  
BAY POINTE HOMEOWNERS' ASSOCIATION, INC.

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## HOMEOWNERS' ASSOCIATION BY-LAWS

The within By-Laws are executed and attached to the Declaration creating covenants, conditions and restrictions for Fox Ridge Villas, a Planned Unit Development. Their purpose is to provide for the establishment of an Association for the administration of the Property in the manner provided by the Declaration and by these By-Laws. All present or future Owners or tenants or their 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 of Trustees of the Association. The mere acquisition or rental of any of the Dwelling Units, located on the Lots within the Property and any amendments thereto, 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.

### ARTICLE I

#### THE ASSOCIATION

1.01 Name of the Association. The Association shall be an Ohio corporation not-for-profit and shall be called the BAY POINTE HOMEOWNERS' ASSOCIATION, INC.

1.02 Membership. Each Owner upon acquisition of title to a Lot shall automatically become a member of the Association. Such membership shall terminate upon the sale or other disposition by such member of his Lot ownership, at which time the new Owner of such Lot shall automatically become a member of the Association. Membership in the Association is limited to Lot owners within the Property.

1.03 Voting Rights. There shall be one (1) vote for each of the Lots within the Property. The Owner or Owners of each Lot shall be entitled to one (1) vote for their Lot. In the event a Lot has been acquired by the Association in its own name or in the name of its agent, designee or nominee on behalf of all Lot owners, the voting rights of such a Lot shall not be exercised so long as it continues to be so held. If two (2) or more persons, whether fiduciaries, tenants in common or otherwise, own undivided interests in a Lot, each may exercise the proportion of the voting power of all the Owners of his Lot that is equivalent to his proportionate interest in the Lot.

1.04 Majority of Owners. As used in these By-Laws, the term "majority of Owners" shall mean those Owners holding fifty-one percent (51%) of the votes in the Association.

1.05 Quorum. Except as otherwise provided in these By-Laws, the presence in person or by proxy of a majority of Owners as defined in Section 1.04 shall constitute a quorum.

1.06 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. 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.

1.07 Place of Meetings. Meetings of the Association shall be held at such place upon the Property, or at such other place, as may be designated by the Board of Trustees and specified in the notice of the meeting, at 8:00 p.m., or at such other time as may be designated by the Board of Trustees and specified in the notice of the meeting.

1.08 First Meeting. The first meeting of members of the Association shall be held within the time limits prescribed by the Declaration and shall be considered the first annual meeting.

1.09 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 of Trustees 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 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.

1.10 Notice of Meeting. 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 time and place where it is to be held, to each Owner of record, at least fourteen (14) days, but not more than twenty-eight (28) days, prior to such meeting. The Owners of record will be determined as of the day preceding the day on which notice is given.

1.11 Waiver of Notice. Notice of the time, place and purposes of any meeting of members of the Association may be waived in writing, either before or at the commencement of such meeting, by any members of the Association, which writing shall be filed with or entered upon the records of the meeting. The attendance of any members of the Association 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.

1.12 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 Section 1.10 at least five (5) days prior to the circulation of the action for unanimous written consent among the Unit Owners and shall specify the action proposed to be so taken.

1.13 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 Trustees.
- (h) Unfinished business.
- (i) New business.
- (j) Adjournment.

## ARTICLE II

### BOARD OF MANAGERS

2.01 Number and Qualification. The affairs of the Association shall be governed by a Board of Trustees composed of five (5) persons, all of whom must be Owners of Lots in the project or occupants of a Dwelling Unit who are related to an Owner by a marital or fiduciary relationship. If, at any one time, one bank or lending institution shall hold mortgages upon more than fifty percent (50%) of the Dwelling Units, such lending institution may designate its representative who shall be a sixth member of the Board of Trustees. Such representative need not be an Owner or occupier of a Dwelling Unit.

2.02 Election of Trustees. The required Trustees shall be elected at each annual meeting of members of the Association. Only persons nominated as candidates shall be eligible for election as Trustees 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 of Trustees due to the expiration of their terms. Provided, however, that a vacancy in the position of a representative of a lending institution as provided in Section 2.01, if any, shall be filled by such lending institution.

2.03 Vacancies During the Term. In the event of the occurrence of any vacancy or vacancies in the Board of Trustees during the term of such Trustee or Trustees the remaining Trustees though less than a majority of the whole authorized number of Trustees 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 a lending institution as provided in Section 2.01, if any, shall be filled by such lending institution.

2.04 Term of Office; Resignations. Each Trustee shall hold office until his term expires, or until his earlier resignation, removal from office or death. Any Trustee may resign at any time by oral statement to that effect made at a meeting of the Board of Trustees 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 Trustee may specify. At the first annual meeting of the members of the Association, the term of office of three (3) Trustees shall be fixed so that such term will expire one (1) year from and after the date of the next following annual meeting of members of the Association. The term of office of the remaining two (2) Trustees shall be fixed so that such term will expire at the date of the next following annual meeting of members of the Association. At the expiration of such initial term of office of each respective Trustee, his successor shall be elected to serve for a term of two (2) years.

2.05 Removal of Trustees. At any regular or special meeting duly called, any one or more of the Trustees 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 the Trustee, if any, acting as a representative of a lending institution, may not be removed by such vote. Any Trustee whose removal has been proposed by the members of the Association, shall be given the opportunity to be heard at such meeting. In the event that a Trustee is removed by such vote, his successor shall then and there be elected to fill the vacancy thus created.

2.06 Organization Meeting. Immediately after each annual meeting of members of the Association, the newly elected Trustees and those Trustees 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.

2.07 Regular Meetings. Regular meetings of the Board of Trustees may be held at such times and places as shall be determined by a majority of the Trustees but at least four (4) such meetings shall be held during each year.

2.08 Special Meetings. Special meetings of the Board of Trustees may be held at any time upon call by the President or any three (3) Trustees. Written notice of the time and place of each such meeting shall be given to each Trustee either by personal delivery, or by mail, or telegram or telephone at least two

(2) days before the meeting, which notice shall specify the purpose of the meeting; provided, however, that attendance of any Trustee 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, by any Trustee, which writing shall be filed with or entered upon the records of the meeting. If all the Trustees are present at any meeting of the Board, no notice shall be required and any business may be transacted at such meeting.

2.09 Board of Trustees' Quorum. At all meetings of the Board of Trustees a majority of the Trustees shall constitute a quorum for the transaction of business, and the acts of the majority of the Trustees present at a meeting at which a quorum is present shall be the acts of the Board of Trustees. If, at any meeting of the Board of Trustees 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.

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

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

### ARTICLE III

#### OFFICERS

3.01 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 of Trustees. The offices of Treasurer and Secretary may be filled by the same person.

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

3.03 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 of Trustees. Subject to directions of the Board of Trustees the President shall have general executive supervision over the business and affairs of the Association. He may execute all authorized deeds, contracts 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 of Trustees or otherwise provided for in the Declaration or in these By-Laws.

3.04 Vice President. The Vice President shall perform the duties of the President whenever the President is unable to act and shall have such other authority and perform such other duties as may be determined by the Board of Trustees.

3.05 Secretary. The Secretary shall keep the minutes of all meetings of the Board of Trustees and the minutes of all meetings of the Association, he shall have charge of such books and papers as the Board of Trustees may direct, and he shall, in general, perform all the duties incident to the office of Secretary.

3.06 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 of Trustees.

#### ARTICLE IV

##### GENERAL POWERS OF THE ASSOCIATION

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

(a) Utility Services. The cost of water, waste removal, electricity, telephone, heat, power or any other necessary utility service for the Common Areas. The Association reserves the right to levy additional assessments against any Owner to reimburse it for excessive use, as shall be determined by the Board of Trustees by such Owner of any utility service having been charged against or to the maintenance fund.

(b) Care of the Common Areas, Lots and Dwelling Units. The cost of landscaping, gardening, snow removal, painting, cleaning, maintenance, decorating, repair and replacement of the Common Areas and those items of maintenance, repair and replacement to the Lots and Dwelling Units as set forth in the Declaration.

(c) Certain Maintenance of Dwelling Units. The cost of the maintenance and repair of any Dwelling Unit, if such maintenance or repair is necessary, in the discretion of the Association, to protect the Common Area, or any other portion of the Property, and the Owner or Owners of said Dwelling Units have failed or refused to perform said maintenance or repair within a reasonable time after written notice of the necessary 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 for the cost of such maintenance or repair.

(d) Casualty Insurance. The premium upon a policy or policies of fire insurance, with extended coverage, vandalism and malicious mischief 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 of Trustees and the Owners against any liability to the public or to the Owners of Dwelling Units, their invitees or tenants, incident to the ownership and/or use of the Common Areas, 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 Manager or managing agent for the Property and legal and/or accounting services necessary or proper in the operation of the Property or the enforcement of the Declaration and these By-Laws 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 laws.

(h) Discharge of Mechanic's Liens. Any amount necessary to discharge any mechanic's lien or other encumbrance levied against the entire Property or any part thereof which may, in the opinion of the Association, constitute a lien against the entire Property 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 and any costs incurred by the Association by reason 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 or pay for, pursuant



to the terms of the Declaration and these By-Laws, or which, in its opinion, shall be necessary or proper for the maintenance and operation of the Property as a first class project, or for the enforcement of the Declaration and these By-Laws.

4.02 Capital Additions and Improvements. The Association powers described in Section 4.01 are limited in that the Association shall have no authority to pay for, out of the maintenance fund, any capital additions and improvements having a total cost in excess of Two Thousand Dollars (\$2,000.00), unless it is for the purpose of replacing or restoring portions of the Common Areas. The Association shall not authorize any structural alterations, capital additions to, or capital improvements of the Common Areas requiring any expenditure in excess of Two Thousand Dollars (\$2,000.00), without, in each case, the prior approval of a majority of the members of the Association.

4.03 Rules and Regulations. The Board of Trustees may, by majority vote, adopt such reasonable rules and regulations and may amend the same which the Board of Trustees may deem advisable for the maintenance, conservation and beautification of the Property, and for the health, comfort, safety and general welfare of the Owners and occupants of the Property. Written notice of such rules and regulations shall be given to all Owners and occupants, and the Property shall at all times be maintained subject to such rules and regulations. In the event that adopted rules and regulations conflict with any provisions of the Declaration and of these By-Laws, the provisions of the Declaration and of these By-Laws shall govern.

4.04 No Active Business to be Conducted for Profit. Nothing herein shall be construed to give the Association authority to conduct active business for profit on behalf of the Owners or any of them.

4.05 Delegation of Duties. The Association, through its Board of Trustees 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 of Trustees shall from time to time specify, and to provide for reasonable compensation for the performance of such duties and responsibilities.

4.06 Right of Entry. An Owner shall grant the right of entry to the Association or its agent, in case of any emergency originating in or threatening his Dwelling Unit, whether the Owner is present at the time or not.

4.07 Special Services. The Association may arrange for the providing of any special services and facilities for the benefit of any Owners that may desire to pay for the same. Fees for such special services and facilities shall be determined by the Board of Trustees and will be charged directly to the participating Owners.

## ARTICLE V

### COMMITTEES

5.01 General. The Board of Trustees may appoint an architectural control committee, as provided in the Declaration, and shall appoint other committees as deemed appropriate in carrying out its purpose.

## ARTICLE VI

### AMENDMENT

6.01 General. These By-Laws may be amended, at a regular or special meeting of the Members, by a vote of members exercising a majority 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 been first obtained.

## ARTICLE VII

### GENERAL PROVISIONS

7.01 Declarant's Rights Pending the Sale of Seventy-Five Percent of all Lots. Until such time as the sale of seventy-five percent (75%) of all Dwelling Units to Owners, have been consummated, or for a period of five (5) years from the date on which the Declaration is filed for record, whichever first occurs, the powers, rights, duties and functions of the Association shall be exercised by a Board of Trustees selected by Declarant, with at least two (2) of the persons so selected being Owners, other than Declarant, its agents or representatives. The percentage of Dwelling Units sold shall be determined as provided for in the Declaration. Declarant reserves the right to relinquish such right at any time.

7.02 Requirement for Trustee or Managing Agent. A Trustee or managing agent may be required by any lending institution holding mortgages on over fifty-one percent (51%) of the Dwelling Units, or by any group of lending institutions who in the aggregate hold mortgages on over fifty-one percent (51%) of the Dwelling Units. The Association shall provide such mortgagee or mortgagees, as the case may be, with a copy of any management agreement entered into by the Association and such Trustee or management company.

7.03 Copies of Notices to Mortgage Lenders. Upon written request to the Board of Trustees, the holder of any duly recorded mortgage against any Unit ownership, shall be given a copy of any and all notices and other documents permitted or required by the Declaration or these By-Laws to be given to the Owner or Owners whose Lot ownership is subject to such mortgage, and a copy of any lien filed by the Association.

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

7.05 Non-Waiver of Covenants. No covenants, restrictions, conditions, obligations or provisions contained in the Declaration or these By-Laws 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.

7.06 Agreements Binding. All agreements and determinations lawfully made by the Association, in accordance with the procedure established in the Declaration and these By-Laws, shall be deemed to be binding on all Owners, their successors, heirs and assigns.

7.07 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.

7.08 Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply to either corporations, partnerships, or individuals, male or female, shall in all cases be assumed as though in each case fully expressed herein.

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

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- (f) Insurance premiums for insurance obtained by the Association pursuant to the provisions of Article XII for Common Area improvements, and pursuant to Article XIII.
- (g) 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, cost of mailing, and postage.
- (h) A general operating reserve to assure the availability of funds for the purposes hereunder.

**6.03**      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 number of Dwelling Units owned by such Owner and the denominator shall be the total number of Dwelling Units constructed on the Property. As Additional Property is subjected to this Declaration pursuant to the provisions of Article XVI, the denominator shall be increased by the number of Dwelling Units to be constructed on such Additional Property at the time of filing an amendment hereto adding such Additional Property.

**6.04**      Insurance Assessment. The cost of insuring the Dwelling Units pursuant to the provisions of Article XII hereof shall be pro-rated between the Owners on the basis of replacement value. Each Owner's share of the insurance assessment shall be equal to a fraction, the numerator of which is the replacement value of the Dwelling Units owned by such Owner and the denominator shall be the total replacement value of all the Dwelling Units constructed on the Property. For purposes hereof the replacement value of a Dwelling Unit shall be the replacement value assigned to that Dwelling Unit pursuant to the contract of insurance obtained pursuant to Article XII hereof. As Additional Property is subjected to this Declaration pursuant to the provisions of Article XVI hereof, the denominator shall be increased by the replacement value of the Dwelling Units constructed on such Additional Property.

**6.05**      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 thereof. 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 direct, one-twelfth (1/12) of his share of the assessment made pursuant to this paragraph. 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. 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 monthly installment 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 installments due in the succeeding six months after rendering of the accounting.

**6.06** Fiscal Year Option. In lieu of the calendar year format, the Board of Trustees 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 day of such month. Assessments shall in such event commence on the first day of the fiscal year.

**6.07** Reserve for Contingencies and Replacements. The Association shall build up and maintain a reasonable reserve for contingencies and replacement. 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 with the first monthly maintenance payment which occurs more than ten (10) days after the delivery or mailing of such notice of further assessment. All Owners shall be obligated to pay the adjusted monthly amount.

**6.08** Budget for First Year. When the first Board of Trustees hereunder take office, the Association shall determine the estimated cash requirement, as hereinabove defined, for the period commencing thirty (30) days after said election and ending on December 31st of the calendar year in which such election occurs. Assessments shall be levied against the Owners during said period as provided in Section 6.05.

**6.09** 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, whether 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) days after such new annual or adjusted estimate shall have been mailed or delivered.

6.10 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 Area 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; minutes of the proceedings of the Owners and Board of Trustees. Such books and records shall be open for inspection 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) days notice to the Board of Trustees and upon payment of a reasonable fee, 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.

6.11 Commencement of Assessments. Monthly assessments shall begin with respect to each Lot upon the conveyance of title to such Lot by Declarant to an Owner other than Declarant. If any Additional Property is included in the Property, pursuant to the annexation provisions of this Declaration, then the assessments for the Lots herein shall commence upon the conveyance of title to such additional Lots by Declarant to an Owner other than Declarant.

6.12 Declarant's Obligations to Pay Assessments. Notwithstanding any provisions hereof, Declarant shall have no obligation to pay monthly assessments for the Lots owned by it, except that Declarant will pay to the Association a monthly amount equal to the difference between the actual operating expenses of the Association and the aggregate of the monthly 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 Trustees at which time Declarant shall pay the monthly assessment for each Dwelling Unit owned by it which either has been issued an occupancy certificate, or is being offered for sale or rent.

6.13 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 maintenance, repair or other matter directly or indirectly occasioned or made necessary by any wrongful or negligent act or omission of any Owner, such cost or expense shall be borne by such Owner and not by the Association, and if paid by the Association shall be paid or reimbursed to the Association by such Owner as a special individual Lot forthwith upon the Association's demand.

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

6.15 Non-Use of Facilities. No Owner may exempt himself from liability for his contribution toward the common expenses by waiver of the use or enjoyment of any of the Common Area or by the abandonment of his Lot.

## ARTICLE VII

### REMEDIES FOR NON-PAYMENT OF ASSESSMENT

7.01 Acceleration and Late Charges. If any monthly or other assessment is not paid within ten (10) days after the same has become due, the Board of Trustees, at its option, without demand or notice may: (a) declare the assessment and if a monthly assessment, such monthly assessment plus all monthly assessments remaining on the then current budget, immediately due and payable; and (b) charge a late charge not to exceed \$20.00 and/or interest on any unpaid balance, at the rate of twelve percent (12%) per annum.

7.02 Lien of Association. The Association shall have a lien upon the estate or interest in any Lot of the Owner thereof for the payment of the portion of the assessments chargeable against such Lot which remain unpaid for ten (10) days after the same have become due and payable from the time a certificate therefor, subscribed by the President of the Association, is filed with the Recorder of Montgomery County, Ohio, pursuant to authorization given by the Board of Trustees of the Association. Such certificate shall contain a description of the Lot, the name or names of record Owner or Owners thereof and the amount of such unpaid portion of the assessments. Such lien shall remain valid for a period of five (5) years from the time of filing thereof 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 in an action brought to discharge such lien as hereinafter provided.

7.03 Priority of Association's Lien. The lien provided for in Section 7.02 shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of bona fide 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 or Owners of the Lot affected shall be required to pay a reasonable rental for such Lot during the pendency of such action, and the plaintiff in such action is entitled to the appointment of a receiver to collect the same. In any such foreclosure action, the Association shall be entitled to become a purchaser at the foreclosure sale.

7.04 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.

7.05 Non-Liability of Foreclosure Sale Purchaser or an Acquirer of Title in Lieu of Foreclosure for Past Due Assessments. Where the mortgagee of a first mortgage of record or other purchaser of a Lot acquires title to the Lot as a result of a foreclosure of any lien or a deed in lieu of foreclosure of the first mortgage, such acquirer of title, his successors and assigns, 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 acquirer. Such unpaid share of assessments shall be deemed to be assessments collectible from all of the Lots, including that of such acquirer, his successors or assigns.

7.06 Liability for Assessments Upon Voluntary Conveyance. In a voluntary conveyance of a Lot other than a conveyance in lieu of foreclosure, 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 Trustees of the Association 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 VIII

### REMEDIES FOR BREACH OF COVENANTS AND RESTRICTIONS

8.01 Abatement and Enjoinment. The violation of any restriction or condition or regulation adopted by the Board of Trustees of the Association, or the breach of any covenant or provision contained in this Declaration or in the By-Laws of the Association attached hereto as Exhibit "A", shall give the Board of Trustees the right, in addition to the rights hereinafter set forth in this section: (a) to enter upon the Lot or Dwelling Unit upon which, or 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 this Declaration and



the By-Laws of the Association, and the Board of Trustees, or its Agents, shall not be thereby deemed guilty in any manner of trespass; or (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach.

8.02 Involuntary Sale. If any Owner, either by his own conduct or by the conduct of any other occupant of his Dwelling Unit violate any of the covenants or restrictions or provisions of this Declaration, or of the By-Laws of the Association attached hereto as Exhibit "A", or the regulations adopted by the Board of Trustees of the Association, and such violation shall continue for thirty (30) days after notice in writing from the Board of Trustees, or shall occur repeatedly during any thirty (30) day period after written notice or request from the Board of Trustees to cure such violation, then the Board of Trustees shall have the power to issue to the defaulting Owner a ten (10) day notice in writing to terminate the rights of said defaulting Owner to continue as an Owner and to continue to occupy, use or control his Dwelling Unit and thereupon an action in equity may be filed by the Board of Trustees against the defaulting Owner for: (a) a decree of mandatory injunction against the Owner or occupant or, in the alternative; (b) subject to the prior consent in writing of any mortgagee having a security interest in the Lot ownership of the defaulting Owner, a decree declaring the termination of the defaulting Owner's right to occupy, use or control the Dwelling Unit owned by him on account of the breach of covenant, and ordering that all the right, title and interest of the Owner in the property shall be sold, subject to the lien of any existing mortgage, at a judicial sale upon such notice and terms as the court shall establish, except that the court shall enjoin and restrain the defaulting Owner from re-acquiring his interest at such judicial sale. The proceeds of any such judicial sale shall first be paid to discharge court costs, master's or commissioner's fees, and all other expenses of the proceedings, and all such items shall be taxes against the defaulting Owner in said decree. Any balance of proceeds, after satisfaction of such charges and any unpaid assessments hereunder or any liens, other than that of the first mortgage, may be paid to the Owner. Upon the confirmation of such sale, the purchaser thereat shall thereupon be entitled to a deed to the Lot ownership and to immediate possession of the Dwelling Unit sold and may apply to the court for a writ of assistance for the purpose of acquiring such possession and it shall be a condition of any such sale, and the decree shall so provide that the purchaser shall take the interest in the property sold subject to this Declaration.

## ARTICLE IX

### ARCHITECTURAL CONTROL

9.01 General. No building, fence, wall, patio, deck, or other structure or improvement shall be commenced, erected, or maintained on the Property, 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 Board of Trustees, or by an architectural committee composed of three (3) or more representatives appointed by the Board of Trustees. In the event said Board of Trustees, or its designated committee, fails to approve or disapprove such design and location within thirty (30) days after said plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with.

## ARTICLE X

### USE RESTRICTIONS

10.01 Use. The Property shall be used for residential purposes and for no other purpose except for purposes reserved to Declarant herein and except as herein specifically provided otherwise. It shall be expressly permissible for Declarant to maintain during the period of its sale of Lots or Dwelling Units, upon those portions of the Property as it deems desirable, those facilities it deems reasonably required, convenient or incidental to the construction and sale of Lots or Dwelling Units, and improvements thereof including, without limiting the generality of the foregoing, a sales office, storage area, models, and parking areas.

10.02 Rental. No Lot or any Dwelling Unit thereon shall be rented or leased unless: (a) the lease or rental agreement is in writing; (b) is for a term of at least sixty (60) days in duration; and (c) the lease or rental agreement specifically provides that the terms of the lease or rental agreement and of the tenancy thereby created shall be subject in all respects to the terms of this Declaration, the Articles, and the By-Laws, and any failure to comply therewith shall be a default under the lease or rental agreement. The Owner of any Lot shall provide the Association with a copy of any lease or rental agreement entered into for the lease or rental of any Dwelling Unit, prior to the commencement of such lease or rental term.

10.03 Exterior of Lots. Nothing shall be permitted to be hung, displayed or stored on the outside of windows or placed on the outside walls of a Dwelling Unit or on the exterior walls of patios, or otherwise outside of a Dwelling Unit or any part thereof, except in enclosed patios, and no sign, awning, canopy, shutter, radio or television antenna or any other device or ornament shall be affixed to or placed upon the exterior walls, roof or the exterior patio walls, or otherwise on the Lot areas visible to the public, other than originally provided by Declarant or as authorized by the Board of Trustees, or its committee as hereinbefore provided.

10.04 Common Area. No part of the Common Area shall be used by anyone other than the Association for the storage or maintenance of any signs, goods, machinery, material or other item or device, nor shall clothes, sheets, blankets, laundry or other articles of any kind be hung cut or exposed on any part thereof visible from the outside, nor shall there be playing, lounging, parking of baby carriages or playpens, bicycles, wagons, toys, vehicles, benches or chairs on any part of the Common Area, except in accordance with rules and regulations therefor adopted from time to time by the Board of Trustees. In addition, no use shall be made of the driveway areas that would prohibit free and unimpeded ingress and egress by a member and his motor vehicles to and from his garage and the drives of the Common Area.

10.05 Vehicles. The parking of motor vehicles on the Common Area shall be subject to such rules and regulations as the Board of Trustees may from time to time establish, which may include the assignment of exclusive parking spaces to each Owner. No boats, trailers, trucks or other like vehicles shall be permitted to be parked on the Common Areas or visible part of any Lot, nor shall mechanical work on vehicles be permitted thereon.

10.06 Nuisances. No noxious or offensive activity shall be carried on or upon any Lot or Dwelling Unit or the Common Area nor shall anything be done thereon which may in any way or for any purpose endanger the health or unreasonably disturb the occupant of a Dwelling Unit or interfere with the full use of a Dwelling Unit.

10.07 Structural Integrity. Nothing shall be done on any Lot or in, on or to the Common Area which will impair or change the structural integrity of any improvement located thereon.

10.08 Temporary Structures. No structure of a temporary character, trailer, basement, tent, shack, garage, barn, or other out building shall be used on any Lot or on the Common Area at any time as a residence either temporarily or permanently.

10.09 Signs. No sign of any kind shall be displayed to the public view on the Property, except signs used by the client to advertise lots for sale during the construction and sales period, and professional signs as limited by rules and regulations adopted by the Board of Trustees.

10.10 Animals. Except as hereinafter provided, no animals, livestock, or poultry of any kind shall be raised, bred or kept on any Lot or the Common Area. Notwithstanding the foregoing, household domestic pets, not in excess of the total of two (2), not bred or maintained for commercial purposes, may be maintained on a Lot, provided that: (a) no such animal shall be permitted in any portion of the Common Area, except by a leash maintained by a responsible person; (b) the permitting of attended leashed animals on the Common Area shall be subject to such rules and

regulations as the Board of Trustees may from time to time establish; and (c) the right of a member to maintain an animal on a Lot shall be subject to termination if the Board of Trustees, in its full and complete discretion, determines that the maintenance of the animal constitutes a nuisance.

10.11 Garbage and Refuse Disposal. No Lot or the Common Area shall be used or maintained as a dumping ground for rubbish. Trash, garbage, or other waste shall not be kept except in sanitary containers. All incinerators or other equipment for the storage or disposal of such material shall be kept in a clean and sanitary condition.

10.12 Water Supply. No individual water supply system shall be permitted on any Lot.

10.13 Sewage Disposal. No individual sewage disposal system shall be permitted on any Lot.

10.14 Rules and Regulations. The Board of Trustees of the Association may establish and enforce rules and regulations as to the use of the Common Area, and the same as promulgated from time to time, shall be enforceable in the same manner and to the same extent as other restrictions herein.

10.15 Arbitration. In the event of any dispute between members as to the application of these restrictions or any rule or regulation to any particular circumstance, the party agreed shall submit a complaint in writing to the Board of Trustees specifying the dispute. The Board of Trustees shall set a time, date and place for hearing thereon within twenty (20) days thereafter, and give written notice to the party thereof no less than three (3) days in advance. The Board of Trustees 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) days thereafter. No action of law may be instituted by the party to such dispute unless arbitration pursuant hereto has first been had.

## ARTICLE XI

### MAINTENANCE

11.01 Association. Unless otherwise provided for herein, the Association shall maintain, repair and make all necessary replacements to the Common Area and any improvements thereon, including but not limited to any recreational facilities, utility facilities (including without limitation sanitary, sewer, and water laterals), detention and/or retention areas, lawns, shrubs, trees, driveways, roadways, parking areas and walkways.

The Association shall also provide exterior maintenance upon each Dwelling Unit, i.e., paint, repair, replace and care for roofs, gutters, downspouts, exterior surfaces and other exterior improvements. Such responsibility shall not include any glass surfaces, doors, doorways, windows and window frames.

The Association shall further provide exterior maintenance upon each Lot, except for any maintenance, repair or replacement which is the responsibility of the Owner hereunder.

11.02 Owner. The Owner of each Lot shall furnish and be responsible for, at his expense, all maintenance, repairs, decorating and replacements within his Dwelling Unit, including without limitation, the heating and air conditioning system and any partitions and interior walls.

The Owner shall also be responsible for the maintenance, repair and replacement of any patios or decks, patio area or deck area, bulb replacement for exterior lighting fixtures to his Lot, glass surfaces, doors, doorways, windows and window frames, shrubs, trees and other landscaping on his Lot, snow removal on those areas not blacktopped, and any and all other maintenance, repair and replacements of the improvements on his Lot unless otherwise provided herein.

garage door

11.03 Exterior Surfaces. Any exterior maintenance, repair or replacements to be performed by the Owner hereunder shall be subject to the prior approval of the Board of Trustees, or its delegated committee. The Board of Trustees may adopt guidelines or other criteria setting forth standards for such maintenance, repair or replacement. Pursuant to such standards the Board of Trustees, or its committee, may require that only certain types and/or manufacturers be used for replacements to the exterior surfaces in order to assure similarity and conformity.

11.04 Failure to Maintain. In 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 Trustees, 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 Trustees, 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 XII  
HAZARD INSURANCE

12.01 Fire and Extended Coverage Insurance. The Association shall obtain and maintain for the benefit of the Association, all Owners and mortgagees insurance on all Dwelling Units constructed

on the Lots within the Property and on all improvements constructed on the Common Area, against loss or damage by fire, lightning and such perils as are at this time comprehended within the term "extended coverage" with no coinsurance and in an amount not less than one hundred percent (100%) of the replacement value thereof. In the event such policy contains coinsurance provisions, such policy shall contain an agreed amount endorsement. Such insurance shall be written in the name of, and the proceeds thereof shall be payable to the Association. The policy providing such coverage shall provide that no mortgagee shall have any right to apply the proceeds thereof to the reduction of any mortgage debt. Such policy shall provide coverage for built-in installed fixtures and equipment in an amount not less than one hundred percent (100%) of the replacement value thereof and shall also provide that the insurer shall have no right to contribution from any insurance which may be purchased by any Owner as hereinafter permitted.

No Owner may purchase an individual policy of fire and extended coverage insurance for any Dwelling Units constructed on his Lot. If irrespective of this prohibition an Owner purchases an individual policy insuring such Dwelling Unit, said Owner shall be responsible to the Association for any loss or expense that such policy may cause in adjusting the Association's insurance, and such amount of loss shall be a lien on his Lot and enforced in the manner provided for in the By-Laws.

Such policy of insurance shall contain provisions requiring the issuance of certificates of coverage and the issuance of written notice not less than ten (10) days prior to any expiration or cancellation of such coverage to any mortgagee or mortgagees of any Lot.

Such insurance by the Association shall be without prejudice to the right of any Owner or occupant of a Dwelling Unit to obtain individual contents or chattel property insurance.

Such policy shall also provide for the release by the insurer thereof of any and all rights of subrogation or assignment and all causes and rights of recovery against any Owner, member of his family, his tenant, or other occupant of the Property for recovery against any one of them for any loss occurring to the insured Property resulting from any of the perils insured against under such insurance policy.

If the required insurance coverage under this Section 12.01 ceases to exist for any reason whatsoever, any mortgagee of any portion of the Property may remedy that lack of insurance by purchasing policies to supply the insurance coverage. The funds so advanced shall be deemed to have been loaned to the Association; shall bear interest at a per annum rate two percent (2%) higher than the basic interest rate in any note secured by the mortgagee's mortgage against a portion of the Property; and shall be due and payable to the mortgagee by the Association