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

OF

HARBOR WALK ON THE BLACK RIVER

A Residential Planned Unit Development

LORAIN, OHIO

Being Developed By:

**ZAREMBA BLACK RIVER DEVELOPMENT, LLC
an Ohio Limited Liability Company**

NO TRANSFER NECESSARY 737 Bolivar Road
Cleveland, Ohio 44115

**MARK R. STEWART
LORAIN COUNTY AUDITOR** (216) 274-0099

6/5/02 mm

DEPUTY

This Instrument Prepared By:

**Richard A. Rosner, Attorney at Law
Kahn, Kleinman, Yanowitz & Arnson Co., L.P.A.
Suite 2600, The Tower At Erieview
1301 East Ninth Street
Cleveland, Ohio 44114-1824
(216) 696-3311**

DECLARATION

Submitting the property known as HarborWalk on the Black River, with open spaces and other common areas, being located in the City of Lorain, Lorain County, Ohio.

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

Date: _____, 2002.

Lorain County Recorder

By: _____

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DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS

OF

HARBORWALK ON THE BLACK RIVER

A Residential Planned Unit Development

LORAIN, OHIO

("Declaration")

THIS DECLARATION (the "**Declaration**") is made as of the 29th day of April, 2002 by ZAREMBA BLACK RIVER DEVELOPMENT, LLC, an Ohio limited liability company (referred to herein as the "**Builder**").

PREAMBLE

A. Spitzer Great Lakes Ltd., an Ohio corporation (the "**Developer**") is the owner of (or, with respect to the Property, as hereinafter defined, has conveyed to the Builder) real property consisting of approximately 61.8 acres situated south of East Erie Avenue, southwest of Colorado Avenue, and northeast of and adjacent to the Black River, in the City of Lorain (the "**City**"), Lorain County, Ohio, on which Developer and Builder desire to create a residential Planned Unit Development (the "**Development**"), to be known as "HarborWalk on the Black River". The Developer intends to convey portions of the Development to the Builder in Phases. The Development is to be developed and constructed in accordance with the requirements of the Planning and Zoning Code of the City of Lorain, the Revised Riverfront Urban Renewal Plan as approved by the Council of the City of Lorain June 7, 1999 by Ordinance No. 90-99 (as amended by Ordinance No. 102-00 passed by Council of the City of Lorain June 5, 2000, and as may be further amended from time to time) (the "**Urban Renewal Plan**"), in accordance with the Development Agreement entered into between Developer and the City of Lorain on July 28, 2000, as amended by the First Amendment to Development Agreement dated December 6, 2001 (the "**Development Agreement**"), and in accordance with the Memorandum of Understanding entered into between the City, Developer, Builder, and The Huntington National Bank on December 20, 2001 (the "**Memorandum of Understanding**") as the same may be amended from time-to-time.

B. Upon completion, the Development is planned to consist of (however the Developer and the Builder are under no obligation to construct) 379 detached and attached single-family homes, approximately 36 apartment units, a community clubhouse, 5.2 acres of public parks, and public streets and alleys.

C. Developer intends to convey portions of the Development to Builder in phases, and Developer and Builder intend that Builder shall thereafter submit such portions of the Development property conveyed to Builder to the provisions of this Declaration, and shall construct residential
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housing and related improvements on said portions of the Development property in accordance with the Urban Renewal Plan and the Development Agreement. The first such portion of the Development conveyed by Developer to Builder is the Property (as hereinafter defined).

D. The first phase of the Development is Builder's construction of single-family attached Townhomes on Sublot 1 as shown on the Plat of Riverfront Urban Renewal Subdivision, recorded as Vol. 67, Page 28, Lorain County records, and on Sublots 2 and 7, as shown on the Plat of Riverfront Urban Renewal Subdivision recorded as Vol. 71, Pages 34 – 37, Lorain County records. Sublots 1, 2, and 7 are hereafter known as the "**Property**", which Property is more fully described in the legal descriptions attached hereto and incorporated herein as **Exhibit A**. The Townhomes to be constructed on the Property are hereafter collectively known as the "**Living Units**".

E. The City, Developer, and Builder desire to provide for: (a) the orderly development of the Property; (b) the establishment and maintenance of architectural and design controls and standards; (c) the preservation and maintenance of the Parks (as hereafter defined); (d) the use and maintenance of the Areas of Common Responsibility (as hereafter defined); (e) the compliance with the Planning and Zoning Code, Subdivision Code, Urban Renewal Plan, Development Agreement, and rules and regulations of the City of Lorain and other governmental authorities having jurisdiction over the Property; (f) the provision of certain covenants and restrictions required by the Development Agreement to effect the Property, and (g) the protection of values within the Property. The foregoing is being provided so that the residents of the Property may enjoy a quality environment for themselves and their families. For such purpose, the Builder has prepared this Declaration to define the manner in which the Property shall be governed and administered.

F. A central association will be required to regulate, administer and govern the Property for the fulfillment of the foregoing purposes with the power to levy and collect assessments from Owners (as hereafter defined) within the Property and to pay the cost and expense of operating, maintaining, repairing and replacing the Areas of Common Responsibility. The Builder will assign such functions to The HarborWalk Community Association, Inc., a not-for-profit corporation that shall be created under the laws of the State of Ohio (the "**Association**"). The Builder reserves for itself, and grants to the Developer the right to create (or permit the creation of) additional second tier sub-associations to develop, maintain and administer the Living Units and/or Common Areas of individual portions of the Property and/or condominium development(s) formed within the Property (if any), and the Builder and/or Developer may also impose additional covenants and building use restrictions (as mutually agreed upon by Builder and Developer) to supplement those contained in this Declaration pertaining to such individual portions of the Property and/or condominium development(s). Such additional covenants and restrictions shall not be less restrictive than those contained herein, and, in the case of conflict, the more restrictive provision shall control.

G. The Developer and Builder intend, from time-to-time, that the Builder, upon taking title to such property from the Developer, shall submit additional portions of the Development to the provisions of this Declaration by Subsequent Amendment (as hereafter defined), such additional portions of the Development known hereafter as the "**Additional Property**" (as such is more fully described in the legal description attached hereto and incorporated herein as **Exhibit B**).

NOW, THEREFORE, Builder declares that the Property, and any Additional Property as may be subsequently added to and subjected to this Declaration, shall be owned, held, transferred, sold,

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

ARTICLE I
PREAMBLE; PROPERTY SUBJECT TO THIS DECLARATION;
RIGHT TO ADD AND DELETE LAND

Section 1.1 - Preamble

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

Section 1.2 - Property

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

Section 1.3 - Expansion and Contraction of the Property

(a) The Builder reserves the right from time to time, as such portions of the Additional Property are conveyed from Developer to Builder, to add all or a portion of the Additional Property described in **Exhibit "B"** to the Property and to subject the same to the provisions of this Declaration. Builder grants to Developer the right to add any portion of the Additional Property described in **Exhibit "B"** to the provisions of this Declaration if such portion of the Additional Property is not conveyed to Builder. If any portion of the Additional Property is not conveyed to Builder but is submitted to the provisions of this Declaration by the Developer, the Developer shall thereby assume (and Builder shall be deemed to have assigned and be fully released from) all of the rights, responsibilities, and duties of Builder pursuant to this Declaration with respect to such portion of the Additional Property so added. Builder reserves the right, from time to time, to add to the Property any other additional property as Builder may deem desirable, and to subject the same to the provisions of this Declaration, however such addition may only be made with the written consent of Developer. Builder grants to Developer the right to add to the Property any other additional property as Developer may deem desirable, and to subject the same to the provisions of this Declaration, however such addition may only be made with the written consent of Builder, and the Developer shall thereby assume (and Builder shall be deemed to have assigned and be fully released from) all of the rights, responsibilities, and duties of Builder pursuant to this Declaration with respect to such additional property then added. To add the Additional Property or any other additional property, the Builder (or the Developer, as permitted herein) shall execute and record a Subsequent Amendment to this Declaration which expressly provides that the land described therein shall become a part of the Property and shall be subject to the Covenants and Restrictions set forth in this Declaration, except as the same may be modified by the Subsequent Amendment.

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

ARTICLE II EXHIBITS AND DEFINITIONS

Section 2.1 - Exhibits

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

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

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

EXHIBIT "C": Form Certificate of Compliance (See 7.27 of this Declaration)

EXHIBIT "D": Agreement for Dock Usage

Section 2.2 - Definitions

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

(a) **"Affiliate Of Builder"**. Any person who controls, is controlled by, or is under common control with the Builder. (1) A Person "controls" the Builder if the Person (a) is a general partner, officer, director, managing member or employer of the Builder, (b) directly or indirectly or acting in concert with one or more other Persons, or through one or more subsidiaries owns, controls, holds with power to vote, or holds proxies representing more than twenty percent of the voting interest in the Builder, (c) controls in any manner the election of a majority of the directors of the Builder, or (d) has contributed more than twenty percent of the capital of the Builder; (2) a Person "is controlled by" a Builder if the Builder (a) is a general partner, officer, director, or employer of the Person, (b) directly or indirectly or acting in concert with one or more other Persons, or through one or more subsidiaries, owns, controls, holds with power to vote, or holds proxies representing more than twenty percent of the voting interest in the Person, (c) controls in any manner the election of a

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majority of the directors of the Person, or (d) has contributed more than twenty percent of the capital of the Person. Control does not exist if the powers described in this subsection are held solely as security for an obligation and are not exercised.

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

(c) **"Apartment Units"**. An individual dwelling unit which is leased for residential housing purposes within any Apartment Building constructed within the Property. Apartment Units are considered Living Units hereunder, the residents of such Apartment Units are "Occupants" as defined herein, and the record owner of any apartment building is the Owner of such number of Living Units as there are Apartment Units.

(d) **"Areas Of Common Responsibility"**. The Areas of Common Responsibility shall mean and refer to the following:

- (1) the Common Areas and all facilities and improvements constructed thereon, including maintenance, repair and replacement of such Common Areas, and snow removal from parking areas, drives, and sidewalks within such Common Areas.
- (2) the entrances to the Property situated off of existing and future public streets that abut the Property (the "**Entrances**") and landscaping, lighting, entrance signs, sprinklers (if any) and other improvements at the Entrances;
- (3) any walls, fences and related improvements within the Common Areas;
- (4) maintenance, repair and replacement of all storm drainage facilities that generally serves the Property (except any storm drainage facilities which are the responsibility of the City or other governmental body having jurisdiction, or which exclusively serve any Sublot, Living Unit, or apartment building);
- (5) maintenance of all Originally Installed Landscaping (as herein defined) within the Property, including that adjacent to Townhome and that within the Common Areas, but excluding that within Detached Home Sublots;

- (6) maintenance of and snow removal from sidewalks, parking areas and driveways within Parks and Common Areas;
- (7) maintenance of the Parks, including landscaping therein;
- (8) maintenance of the Community Clubhouse and swimming pool constructed in the Common Area (if any);
- (9) all real and personal property owned by the Association;
- (10) real and personal property not owned by the Association but determined by the Board to be the responsibility of the Association;
- (11) together with those areas, if any, which by contract with any commercial establishment, other association, or any local governmental authority become the responsibility of the Association. Any public rights-of-way within or adjacent to the Property, may become part of the Areas of Common Responsibility.

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

(f) "**Assessments**". The assessments levied against all Owners of Living Units and Apartment Units to fund Common Expenses.

(g) "**Association**". The HarborWalk Community Association, Inc., a non-profit Ohio corporation, its successors and assigns, created to govern, operate, control and administer the Areas of Common Responsibility and to supervise and enforce this Declaration.

(h) "**Board**". The Board of Directors of the Association. The Board is sometimes also referred to as the "Directors".

(i) "**Builder**". Zaremba Black River Development LLC, and Ohio limited liability company, and the specifically designated successors or assigns of any of their rights as Builder under the Declaration or under any supplement to the Declaration involving the Property as the same may be expanded or contracted from time to time, and/or any other person or entity to which Developer shall sell a portion of the Additional Property and who shall thereafter construct Living Units or Apartment Units thereon and who shall assume the rights, responsibilities, and duties of Builder as set forth herein with respect to such portion of the Additional Property. No person, real or corporate, shall be deemed to be a successor, alternate or additional Builder for the purposes of the Declaration unless and until such person or entity has been specifically so designated by Builder herein or the Developer by instrument in writing and placed of record, and shall be deemed a successor and assign of Builder only to the particular rights and interests of Builder under the Declaration or under a supplement to the Declaration. The Builder is also sometimes referred to herein as the "**Original Builder**".

- (j) **"City"**. The City of Lorain, an Ohio municipal corporation.
- (k) **"Class "B" Control Period"**. The period of time during which the Class "B" Member (the Builder) is entitled to appoint a majority of the members of the Board, as provided in Article III, Section 2 of the Code.
- (l) **"Code"**. The Code of Regulations of the Association.
- (m) **"Common Areas"**. All real and personal property now or hereafter owned by the Association or otherwise held for the common use and enjoyment of the Owners or Occupants. Common Areas shall include the Community Clubhouse and associated Swimming Pool, and those areas of land intended for the common use, benefit and enjoyment of all Occupants of the Property. Any Owner may delegate, in accordance with the Code and subject to reasonable rules, regulations, and limitations as may be adopted in accordance therewith, his or her right of enjoyment to the Common Areas and facilities to the members of his or her family, tenants, and social invitees and shall be deemed to have made a delegation of all such rights to the Occupants of any leased Living Unit or Apartment Unit. Common Areas does not mean or imply that the public at large acquires any easement of use or enjoyment therein.
- (n) **"Common Expenses"**. The actual and estimated expenses of operating the Association, both for general or special purposes, including reasonable reserves, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Code, and the Articles of Incorporation of the Association.
- (o) **"Design Review Committee"**. The Design Review Committee created by this Declaration and granted original jurisdiction to review and approve or disapprove exterior and structural improvements, landscaping, additions and changes within the Property.
- (p) **"Detached Home"**. A Detached Home is a Living Unit not connected by party wall or other structural connection to any other Living Unit. Detached Homes may, however, be "zero-lot line" Living Units, constructed directly up to the property line of the Sublot on which such Detached Home is situated. Detached Homes may also be referred to as "Garden Cottages" on development plans prepared by the Builder and/or Developer.
- (q) **"Developer"**. Spitzer Great Lakes Ltd., Company, an Ohio corporation, and the specifically designated successors or assigns of any of their rights as Developer under the Declaration or under any supplement to the Declaration involving the Property as the same may be expanded or contracted from time to time. No person, real or corporate, shall be deemed to be a successor, alternate or additional Developer for the purposes of the Declaration unless and until such person or entity has been specifically so designated by Developer herein, by instrument in writing and placed of record, and shall be deemed a successor and assign of Developer only to the particular rights and interests of Developer under the Declaration or under a supplement to the Declaration.
- (r) **"Development Agreement"** The Development Agreement entered into between Developer and the City of Lorain on July 28, 2000, as amended by the First Amendment to Development Agreement dated December 6, 2001, as the same may be amended from time to time.

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

(t) **"Living Units"**. All units of residential housing situated or to be situated on the Property, including Apartment Units (as defined herein),. Without limiting the generality of the foregoing, Living Unit shall mean a portion of the Property intended for any type of independent use and occupancy as a single family residence and shall, unless otherwise specified, include within its meaning (by way of illustration, but not by way of limitation) single family houses (including duplexes or townhouses) on separately platted lots, as may be developed, used and defined as herein provided or as provided in Subsequent Amendments; provided, further, the term Living Unit shall also include all portions of the Sublot owned as a part of any structure thereon. Living Unit shall also include any Apartment Unit. Living Units may be further classified as being either "Townhomes" or "Detached Homes" as further defined herein. Living Units may also include residential condominium units submitted to the provisions of O.R.C. Chapter 5311 (the Ohio Condominium Act).

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

(u) **"Marina"**. The commercial marina operation and property adjacent to the Development which is owned by the Developer, and which is situated on real property adjacent to the Property, but which is not a part of the Property, Development, nor subject to this Declaration. The property which constitutes the Marina includes, but is not limited to, all the boat slips, the boardwalk along the shoreline of the Black River, the yacht club building, the boat storage building, and the boat storage parking area southeast of the Development.

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

(w) **"Occupant"**. A person in possession of a Living Unit or Apartment Unit including, without limitation, an Owner or any guest, invitee, lessee, tenant, or family member of an Owner occupying or otherwise using a Living Unit, or an Apartment Unit lessee, or any guest, invitee, sublessee, subtenant, or family member of an Apartment Unit lessee.

(x) **"Original Builder"**. Zaremba Black River Development, LLC, an Ohio limited liability company.

(y) **"Originally Installed Landscaping"**. The landscaping installed by the Builder in connection with the construction of a Living Unit in accordance with the landscape plan approved by the Developer, Builder, or the Design Review Committee.

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

(aa) **"Ownership Interest"**. The entire right, title and interest of any Owner in all of the freehold and leasehold estates of such Owner in his or her Living Unit or apartment building containing Apartment Units.

(bb) **"Parks"**. Those open areas within the Development which are or will be conveyed to the City and which are or will be dedicated for public recreational use and enjoyment, but which are to be maintained by the Association as a portion of the Areas of Common Responsibility.

(cc) **"Party Wall"**. Each wall of a Townhome Living Unit that is situated on the dividing line between two Townhome Living Units.

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

(ee) **"Property"**. The land described in Exhibit "A" of the Declaration as the same may be amended from time to time.

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

(gg) **"Special Builder Rights"** means those rights reserved for the benefit of the Builder as provided for in this Declaration and the Code, and shall include, without limitation, the following rights: (1) to expand or contract the Property in accordance with Section 1.3 of this Declaration; (2) to maintain sales offices, management offices, customer services offices, signs identifying and/or advertising the Property; (3) to use easements through the Common Areas for the purpose of making improvements within the Property; and (4) to appoint or remove any Board Members or officers of the Association during the period that the Builder has the right to elect or designate members of the Board of Directors.

(hh) **"Sublot"**. A platted single-family lot upon which a Living Unit has been or may be constructed.

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

(jj) **"Tenant"**. Any person(s) having a possessory leasehold estate in a Living Unit or Apartment Unit other than an Owner.

(kk) **"Townhome"**. A Townhome is a Living Unit connected by party wall or other structural connection to one or more other Living Units. Townhomes may include those Living Units referred to as "Bridgeview Townhomes", "Colorado Townhomes", "Parkside Homes", "Warf Cottages", or "Peninsula Homes" on development plans prepared by the Developer and/or the Builder.

(ll) **"Urban Renewal Plan"** The Revised Riverfront Urban Renewal Plan as approved by the Council of the City of Lorain June 7, 1999 by Ordinance No. 90-99 (as amended by Ordinance No. 102-00 passed by Council of the City of Lorain June 5, 2000) as the same may be further amended from time to time.

(mm) **"Urban Renewal Service Payments"** Urban Renewal Service Payments are payments to be made to the City (or to the Lorain County Auditor, if at any time the auditor agrees to serve as a collection agent for the City) by any Owner of the Property in lieu of a portion of real estate taxes that would otherwise be due, pursuant to the terms and conditions of Section 4 of the Development Agreement. As of the Date of this Declaration, the provisions of the Development Agreement state that during the "Exemption Period" Owners shall make semiannual Urban Renewal Service Payments to the City in lieu of real estate taxes that would normally be assessed upon seventy-five percent (75%) of the assessed valuation of the "Improvements" to the property (as therein defined). The Urban Renewal Service Payments shall be equal to the amount of real estate taxes that would have traditionally been paid on seventy-five percent (75%) of the assessed valuation of the Improvements had an Exemption Period not been specified by the City. Owners are still required to pay traditional real estate taxes to the Lorain County Auditor on the assessed value of the land they own, and on twenty-five percent (25%) of the assessed value of the Improvements thereon.

The "Exemption Period" is defined in the Development Agreement as being thirty (30) years from the date of issuance of any Urban Renewal Bonds (as therein defined) or additional Urban Renewal Bonds, or any refunding bonds issued to refund such Urban Renewal Bonds, provided, however, such Exemption Period shall terminate on the December 31 next following the date on which sufficient moneys have been deposited in the Urban Renewal Debt Retirement Fund (as therein defined) to be created by the City and which have been pledged for and are available to make all required principal, interest and premium payments on all outstanding Urban Renewal Bonds or

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any additional Urban Renewal Bonds or any refunding bonds issued to refund such Urban Renewal Bonds which are payable from such semiannual Urban Renewal Service Payments.

Urban Renewal Service Payments are to be made to the City by the date on which real estate taxes are due and payable to the Lorain County Auditor. The Director of the Department of Community Development of the City shall submit, fifteen (15) days prior to each payment date, invoices stating the amount of the Urban Renewal Service Payments next coming due to all parties owing such Urban Renewal Service Payments.

Any Urban Renewal Service Payment which is paid on a delinquent basis shall include an additional amount of interest and penalty equal to that which would have accrued for failure to make timely payment of an equal amount of real estate taxes for the period of the delay. If an Owner of a Living Unit fails for a period of thirty (30) days to make a required Urban Renewal Service Payment, the City may make a non-exclusive assignment to the Developer and/ or Builder of the right to carry out such proceedings as are necessary and appropriate to collect such delinquent Urban Renewal Service Payment, together with interest and penalties thereon. The Memorandum of Understanding further provides that Owners shall deposit an amount equal to three (3) months' of Urban Renewal Service Payments into an escrow account with the Association, and that the Association shall pay delinquent Urban Renewal Service Payments to the City out of such fund. (See the provisions of Sections 6.12 and 9.9 herein regarding the Service Payment Assessments and the Service Payment Reserve Fund.)

The obligation of Owners to pay such Urban Renewal Service Payments are absolute and unconditional. The covenant to pay Urban Renewal Service Payments shall be a covenant running with the land and shall be included in any deed from the Developer, Builder, or any Owner conveying any part of the Property, and shall be binding for the benefit and in favor of, and enforceable by the City, the holders of the City's Urban Renewal Bonds, and the Trustee (if any) for the bondholders. The covenant to pay Urban Renewal Service Payments shall have priority over any interest in the Property other than the Permitted Exceptions (as defined in Section 2 of the Development Agreement, and as summarized in Section 7.26(a)(3) herein). The covenants relating to payment of Urban Renewal Service Payments shall terminate as covenants running with the land upon the payment of all principal and interest on and redemption premium (if any) for all outstanding Urban Renewal Bonds and at the end of the Exemption Period and upon the making of all Urban Renewal Service Payments with respect to said Exemption Period.

This definition of Urban Renewal Service Payments is provided herein for informational purposes only. The terms and conditions of the Development Agreement and the Memorandum of Understanding, as the same may be amended from time-to-time, shall govern the payment of Urban Renewal Service Payments at all times.

ARTICLE III
EASEMENTS

Section 3.1 - Utility Easements

There is hereby reserved in favor of Builder and granted to the Developer and the Association, their successors and assigns, a non-exclusive easement upon, across, over, through and under the Property for ingress, egress, installation, replacement, repair and maintenance of all utilities and service lines and systems including, but not limited to, water, sewer, energy, drainage, gas, telephone, electricity, television, cable and communication lines and systems. By virtue of this easement, it shall be expressly permissible for Developer, Builder, and the Association and their successors and assigns, or the providing utility or service company, to install and maintain facilities and equipment on the Property provided that such facilities shall not materially impair or interfere with any Living Units, Sublots, Common Area improvements, or the Marina, and provided further that any areas disturbed by such installation and maintenance are restored to substantially the condition in which they were found. In addition, easements are reserved and granted through a Living Unit of a Townhome building for the benefit of the other Living Units in such Townhome building to the Owners of the other Living Units in the Townhome building for the installation, maintenance, repair and replacement of gas and electric facilities (including metering devices attached to the exterior of the Living Units in a Townhome building. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utility service lines or facilities for such utilities may be installed or located except as approved by the Developer, Builder, or the Design Review Committee or unless the same are shown on a recorded plat. There is hereby reserved in favor of the Developer, Builder, and the Association the right (but not the obligation) to grant neighboring property owners easements for utility purposes so long as the granting of such easements does not overburden the utilities serving the Property.

Section 3.2 - Easement for Ingress and Egress

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

Section 3.3 - Common Areas

Developer, Builder, every Owner and Occupant, and the guest of such parties shall have a right and non-exclusive easement of use and enjoyment in and to the Common Areas which shall be appurtenant to and shall pass with the title to every Sublot, subject to the following provisions:

- a) the right of the Association to charge reasonable admission and other fees for the use of recreational facilities (including the clubhouse and swimming pool) situated upon the Common Area;

- b) the right of the Association to suspend the voting rights and right to use of the recreational facilities (including the clubhouse and swimming pool) by an Owner for any period during which any assessment against his Sublot remains unpaid; and for a period not to exceed sixty (60) days for any infraction of its Rules;
- c) the right of the Association to dedicate or transfer all or any part of the Common Areas to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Board. No such dedication or transfer shall be effective unless an instrument agreeing to such dedication or transfer has been signed by two-thirds (2/3rds) of the Members and has been recorded with the Lorain County Recorder. Dedication of Parks to the City as shown in the Urban Renewal Plan and/or the Development Agreement by the Developer, Builder, or the Association shall not require the consent of the Members.

Section 3.4 - Easements for Construction, Alteration, etc.

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

Section 3.5 - Emergency and Service Easements

There is hereby granted to the City an easement for access to the Common Areas for emergency purposes. Fire, police, health, sanitation, medical, ambulance, school buses, utility company, mail service and other public or quasi-public emergency and service personnel and their vehicles shall have an easement for ingress and egress over and across sidewalks, drives, and parking areas within the Common Areas for the performance of their respective duties.

Section 3.6 - Parking in Common Areas; Off-Street Parking Spaces

There shall be no parking of motor vehicles within the Common Areas unless permitted by the Association and the City. Furthermore, off-street parking spaces shall be utilized only for temporary guest parking. The Developer, Builder, and/or the Association reserve the right and easement to create additional off-street parking spaces to be situated within the Common Areas off of the private streets.

Section 3.7 - Easements for Community Signs

Easements are created over the Common Areas to install, maintain, repair, replace and illuminate signs that are for the general benefit of the Property. The type, size and location of the signs shall be subject to the approval of the Design Review Committee and subject to the laws of the City, County, and other governmental authorities having jurisdiction.

Section 3.8 - Easements for Encroachments

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

As the Detached Homes may be constructed directly up to the property line of their Sublot, an easement is hereby granted across all Sublots on which a Detached Home is situated for the benefit of the Owner of a Detached Home on an adjacent Sublot to allow the benefited Owner to keep and maintain the overhang of such benefited Owner's Detached Home over and across the burdened Owner's Sublot. In the exercise of such easement rights, the benefited Owner shall use reasonable care to avoid damage to the burdened Owner's property, shall return all such property to substantially the same condition it was in prior to such benefited Owner's exercise of such rights, and shall indemnify and save harmless the burdened Owner from and against any and all losses, damages, liabilities, claims and expenses, including reasonable attorneys' and paralegals' fees resulting from the existence of such encroachment or any maintenance, repair, or replacement activities thereto.

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

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

The Developer, Builder, and (after transfer of the Common Areas) the Association shall have the right to grant easements for the installation and maintenance of water lines, sanitary sewers, storm sewers and drainage to the City or any other governmental authority having jurisdiction. No owner shall in any way hinder or obstruct the operation or flow of the drainage system. No structures, plantings or other materials shall be placed or permitted to remain within such easement

areas which may damage or interfere with the installation and/or maintenance of such improvements in such easement areas or which may change, retard or increase the flow of water through the respective easement areas. The easement areas and all improvements therein shall be maintained continuously by the Association unless those easement areas are accepted by the City or other governmental authorities having jurisdiction by formal action.

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

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

Section 3.11 - Maintenance Easement

There is hereby reserved for the benefit of the Association and its agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement to enter upon any Townhome Sublot for the purpose of maintaining Originally Installed Landscaping, and perpetual right and easement to enter upon any Sublot for the purpose of maintaining or repairing the improvements thereon pursuant to the provisions of Section 7.1(a) herein, and for the purpose of mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps, or other unsightly growth and removing trash and debris in order to maintain reasonable standards of health, fire safety, and appearance within the Property, provided that such easements shall not impose any duty or obligation upon Builder or the Association to perform any such actions (unless otherwise provided herein - e.g. see Section 6.4); and provided, further, that in the exercise of its rights hereunder the Association shall be entitled to be reimbursed by such Owner pursuant to Article VII hereof. Furthermore, the Association is granted easement rights to enter upon a Townhome Sublot for the purposes set forth in Section 6.4 hereof; i.e. the maintenance of Originally Installed Landscaping, and the Association is granted easement rights to enter upon any Sublot for the exterior maintenance of Living Units in accordance with Section 6.1(l) herein.

As the Detached Homes may be constructed directly up to the property line of their Sublot, an easement is hereby granted across all Sublots on which a Detached Home is situated, for the

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benefit of the Owner of a Detached Home on an adjacent Sublot, to allow the benefited Owner, and his or her agents, employees, and/or contractors, to enter the burdened Sublot all reasonable times as may be required to perform maintenance, repair, replacement, and improvement activities with respect to the benefited Owner's Living Unit. In the exercise of such easement rights, the benefited Owner shall use reasonable care to avoid damage to the burdened Owner's property, shall return all such property to substantially the same condition it was in prior to such benefited Owner's exercise of such rights, and shall indemnify and save harmless the burdened Owner from and against any and all losses, damages, liabilities, claims and expenses, including reasonable attorneys' and paralegals' fees resulting from any such maintenance, repair, replacement, and improvement activities.

Section 3.12 – Owner's Right to Ingress and Egress

Each Owner shall have the perpetual right as an appurtenance to such Owner's Living Unit to ingress and egress over, upon and across the Common Areas necessary for access to his or her Living Unit, and such rights shall be appurtenant to and pass with the title to the Living Unit.

Section 3.13 - Scope of Easements and Dedication of Roadways and Utilities

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

Section 3.14 - Easements To Run With the Land

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

ARTICLE IV
OWNERSHIP AND OPERATION OF COMMON AREAS

Section 4.1 - Conveyances of Common Areas

The Builder (or the Developer, as the case may be) shall transfer title to the Common Area to the Association not later than the time at least fifty-one percent (51%) of the number of Living Units to be constructed in the Property and the Additional Property are occupied by Owners. Such conveyance shall have priority over all liens and encumbrances whatsoever except the easements, covenants, restrictions and provisions of this Declaration; easements, covenants, restrictions, conditions and other similar matters of record; real estate taxes and assessments which are a lien, but are not due and payable at the time of said conveyance; and zoning and other ordinances, if any. The Builder (or the Developer, as the case may be) shall cause the mortgagee of the Common Areas to subordinate its mortgage on such areas in favor of this Declaration. The Association shall hold title to said parcels subject to the provisions of this Declaration. After title to the Common Area is transferred to the Association, or its successors and assigns, except as otherwise provided herein the Builder (or the Developer, as the case may be) shall have no greater ownership or control over the Common Area than the ownership or control of Owners or Occupants within the Property, or additional property as the same is added to the Property.

Section 4.2 - Use of Common Areas

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

ARTICLE V
THE ASSOCIATION

Section 5.1 - Existence

The Association is an Ohio not-for-profit corporation.

Section 5.2 - Membership and Voting Rights

(a) **Classes of Membership**

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

(1) **Class "A" Membership**. Each Owner of a Living Unit (including, without limitation, the Builder if the Builder is the record titleholder of a Living Unit) shall automatically be a Class "A" Member of the Association. Furthermore, membership in the

Association is mandatory of all Owners of Living Units and Sublots within the Property. The Class "A" Membership is appurtenant to the ownership of each Living Unit and shall not be separable from the ownership of any Living Unit and shall be deemed to have been terminated with any voluntary or involuntary conveyance of any Living Unit, whether or not such membership is expressly referred to in the instrument effecting such conveyance, at which time the new Owner or other successor in interest shall immediately and automatically become a Member of the Association with all rights and responsibilities relative thereto. No Owner, whether one or more persons, shall have more than one membership per Living Unit owned. The Owner of any apartment building within the Property shall be deemed to be a Member with respect to each Apartment Unit thereby owned, and hold an equal number of membership interests as Apartment Units owned.

(2) Class "B" Membership. The Builder shall automatically be the sole Class "B" Member of the Association.

(b) Voting Rights

(1) Class "A" Member. Class "A" Members shall be entitled to one (1) equal vote for each Living Unit or Apartment Unit in which they hold the interest required for membership under Section 5.2(a)(1) hereof; there shall be only one (1) vote for each Living Unit or Apartment Unit.

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

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

The Class "B" membership shall terminate and become converted to Class "A" membership in accordance with Article III, Section 2 of the Code.

Section 5.3 - Board and Officers of the Association

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

Section 5.4 - Rights of the Association

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

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

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

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

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

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

(f) To enter into an agreement for dock usage with Developer (in such form as attached hereto as Exhibit "D"), including amendments thereto from time-to-time as approved by the Board (the "**Agreement for Dock Usage**") whereby Developer agrees to make a certain number of dock spaces at the Marina available on an annual basis for rental by Members of the Association on a preferred basis.

ARTICLE VI
RESPONSIBILITIES OF THE ASSOCIATION

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

Section 6.1 - Maintenance of Areas of Common Responsibility

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

(a) Entranceway Areas. To operate, and to maintain, repair and replace, any entranceway area at or in the vicinity of any entrance to the Property from public or private roads, and all associated landscaping and other related facilities such as walkways, benches, sprinkler systems, signs, lighting, traffic control devices, decorative or screening walls and fences, ponds and fountains and pumps situated at or in the vicinity of the entrance to the Property. The Association shall also pay or reimburse the Developer or Builder, as the case may be, for any real estate taxes or Urban Renewal Service Payments assessed with respect to any such entranceway area and the improvements thereon, and the Association shall unconditionally accept a deed to and hold title to such portions of the Common Areas and the improvements thereon that are the Association's responsibility to maintain.

(b) Common Areas. To maintain all improvements and landscaping situated within the Common Areas (including, but not limited to, sidewalks, parking areas, driveways, and all utilities installed within such Common Areas) in a good and attractive condition, for the use and enjoyment of Owners. The Association shall also pay or reimburse Developer or Builder, as the case may be, for any Urban Renewal Service Payments, real estate taxes, and assessments assessed with respect to any such Common Areas, and the Association shall accept a deed to and hold title to such areas. The obligations set forth in this subsection shall be deemed to run with and burden the party accepting any such deed and title to the Common Areas. The Common Areas as shown on the Plat shall remain as such.

(c) Landscaping. To maintain all Originally Installed Landscaping situated within the Common Areas and within any Townhome Sublot, in a good and attractive condition, pursuant to Section 6.4 herein.

(d) Snow Removal. To remove snow from the drives, walkways, and parking areas within the Areas of Common Responsibility. (Snow Removal from private walks and driveways serving any Living Unit, and sidewalks adjacent to public streets in front of Sublots is the sole responsibility of the Living Unit Owner or Occupant.)

(e) Perimeter Fences and Walls. To maintain, repair and replace any fences, walls or gates which may be situated within the Common Areas.

(f) Community Signs. To install, maintain, repair, replace and illuminate all signs located on any portion of the Property which are for the general benefit of the Property.

(g) Common Area Lighting. With respect to all parts (including, but not limited to, poles, standards, fixtures) of a lighting system (if any) which may be installed by or at the direction of Developer, Builder or the Association in the Common Areas, to maintain the same in good order and condition, to make all replacements and renewals necessary to so maintain the same, and to operate and to pay all costs of operating the same.

(h) Drainage System. To maintain all piping, culverts, drains, and other facilities now or hereafter situated upon any portion of the Property which are intended for the collection, retention, detention, transmittal or disposal of storm-water in clean and sanitary condition and in good order and repair and to make all replacements and renewals necessary to so maintain the same, provided, however, the maintenance of any such publicly dedicated drainage systems shall be the responsibility of the City, and the maintenance of any such drainage system exclusively serving a single Living Unit, Sublot, or apartment building shall be the responsibility of the Owner thereof.

(i) Utilities. To maintain the portions of the sanitary sewer lines, water supply lines, gas supply lines, electric, telephone, television, and other telecommunications wires serving the Common Areas that are not the responsibility of the supplying utility company, the City, or other governmental authorities having jurisdiction.

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

(k) Rubbish Removal. If rubbish removal for such areas is not performed by the City, the Association shall provide rubbish removal services for the Common Areas, including all recreational areas thereon, the cost of which services shall be a Common Expense. (Rubbish removal serving Living Units is to be provided by the City. Rubbish removal for Apartment Units is to be provided at the sole cost and expense of the owner of such Apartment Units.)

(l) Living Unit Maintenance. Maintenance, repair, and replacement of all interior and exterior portions of the Living Units shall be the sole responsibility of the Living Unit Owner, however, the Association shall have the right, but not the duty, to perform such maintenance and repair activities on the Living Units as permitted by Section 7.1 herein.

Section 6.2 – Urban Renewal Service Payments, Taxes, and Assessments

The Association shall file all required tax exemption applications and shall pay all Urban Renewal Service Payments, taxes, and assessments levied against portions of the Property owned by the Association, including, without limitation, personal property taxes, general real estate taxes and special assessments certified by the applicable public authority following conveyance of such

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property to the Association, the same to be prorated to the date such property is created as a separate tax parcel and is submitted to this Declaration.

Section 6.3 - Utilities

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

Section 6.4 - Maintenance of Originally Installed Landscaping by the Association

In addition to the maintenance and repair of the Common Areas, the Association shall provide maintenance of the Originally Installed Landscaping situated on a Townhome Sublot. For the purpose solely for performing the maintenance required by this Section, the Association, through its duly authorized agents, employees and contractors, shall have the right and license to enter upon any Townhome Sublot at reasonable hours.

Section 6.5 - Insurance and Reconstruction

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

(1) Casualty Insurance. The Association shall carry casualty insurance on all insurable improvements comprising the Common Areas and all personal property as may be owned by the Association and for which the Association is responsible.

(2) Liability Insurance. The Association shall insure itself, the members of the Board, the Owners and Occupants of Living Units and Apartment Units against liability for personal injury, disease, illness or death and for injury to or destruction of property occurring upon, in or about, or arising from or relating to the Common Areas, including, without limitation, water damage, legal liability, hired automobile, non-owner automobile and off-premises employee coverage, such insurance to afford protection to a limit of not less than One Million Dollars (\$1,000,000.00) in respect to personal injury, disease, illness or death suffered by any one person, and to the limit of not less than One Million Dollars (\$1,000,000.00) in respect to any one occurrence, and to the limit of not less than One Million Dollars (\$1,000,000.00) in respect to damage to or destruction of property arising out of any one accident. In the event the insurance effected by the Association on behalf of the Owners and Occupants of Living Units and Apartment Units who are not Owners against liability for personal injury or property damage arising from or relating to the Common Areas shall, for any reason, not fully cover any such liability, the amount of any deficit shall be a Common Expense to the Owners. The Association shall also obtain directors (trustees) and officers liability coverage, if reasonably available.

(3) Fidelity Bonds. To the extent available for a reasonable premium, a fidelity bond indemnifying the Association, the Board and the Owners for loss of funds resulting

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

(4) Flood Insurance. The Association shall carry flood insurance on all insurable improvements comprising the Common Areas located within a flood plain and floodway, as defined by currently effective federal law or regulation.

(5) Premiums. Premiums upon insurance policies purchased by the Association shall be paid by the Association at least thirty (30) days prior to the expiration date of such policies and shall be assessed as Common Expenses.

(6) Living Unit Owner Insurance. Each Owner shall, at his own expense, obtain insurance: (i) covering his Living Unit (including the Party Wall, if applicable); and (ii) covering the contents of his Living Unit. In addition, each Owner may, at his own expense, obtain public liability insurance for personal injuries or damage arising out of the use and occupancy of his Living Unit or Sublot.

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

(8) Annual Review of Policies. All policies for insurance shall be reviewed annually by the Board to determine whether the coverage contained in the policies is sufficient to make any and all necessary repairs or replacement of the property which may have been damaged or destroyed.

Section 6.6 - Management

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

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

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(c) Delegate all or any portion of its authority and responsibilities to a manager, managing agent, or management company. Such delegation may be evidenced by a management contract which shall provide for the duties to be performed by the managing agent and for the payment to the managing agent of a reasonable compensation. Upon the expiration of each management agreement, the Association may renew said management agreement or enter into a different agreement with the same or a different managing agent, provided that no management agreement or renewal thereof shall be for a period longer than three (3) years, and provided, further, that the Board may designate a different managing agent with whom the Association shall enter into an agreement after the end of the then existing management agreement; and

(d) The management agreement may be with an entity owned by or associated with the Builder or the Developer, or owned by, associated with, controlled or employed by any partner, shareholder, officer, director, agent or employee of the Builder or the Developer, and may be for a period of time not to exceed three (3) years, in Builder's sole discretion (subject to the right of either party to terminate the management contract without cause and without payment of a termination fee, upon ninety (90) days written notice to the other party). The compensation payable to the Builder or the Developer or their affiliate shall be comparable to compensation paid to unrelated management companies located in the Northeast Ohio area for similar types of developments.

Section 6.7 - Upgrading

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

Section 6.8 - Enforcement

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

Section 6.9 - Rules and Regulations

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

Section 6.10 - General

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

Section 6.11 - Original Builder's Rights

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

Section 6.12 - Service Payment Reserve Fund

For so long as Urban Renewal Service Payments are due to be paid to the City pursuant to the terms of the Development Agreement, the Association shall maintain a separate fund (the "Service Payment Reserve Fund") into which Service Payment Assessments are to be paid pursuant to Section 9.9 herein. The Service Payment Reserve Fund shall be maintained by the Association in an account on deposit with The Huntington National Bank, its successors and assigns. If the Association shall be notified in writing by the City that any Owner is delinquent in the payment of Urban Renewal Service Payments which have been assessed against such Owner's Living Unit, the Association shall pay to the City, out of the Service Payment Reserve Fund, within ten (10) days of receipt of such notice, the amount of such delinquent Urban Renewal Service Payment (including any interest and penalty thereon) and such amount shall then become a lien of the Association upon the Ownership Interest of such Delinquent Owner, such lien subject to all of the provisions of Article X herein. The Association shall have no liability to pay any amount of delinquent Urban Renewal Service Payments, interest or penalties, which individually or in the aggregate exceed(s) the balance of the Service Payment Reserve Fund. At such time as Urban Renewal Service Payments are no longer due to be paid to the City, the Service Payment Reserve Fund shall be liquidated and the funds therein returned to the Owners in proportion to the amount of each such Owner's payment of Service Payment Assessments.

ARTICLE VII
COVENANTS AND RESTRICTIONS

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

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

Section 7.1 - Covenant of Good Maintenance

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

(a) **Maintenance and Repair.**

(1) Each Owner and Occupant of a Living Unit shall maintain the interior and exterior of each Living Unit (including the Party Wall, if any) in good condition and repair and shall keep the adjacent Common Areas free from debris, rubbish, rubble and other conditions created by such Owners or Occupants or their guests.

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

(b) **Snow Removal.** Each Living Unit Owner and Occupant shall keep the driveway leading from a public or common roadway to their garage, walks leading from the front and rear of the Living Unit, sidewalks adjacent to publicly dedicated streets in front of their Sublot, and any porches, stoops, stairways and steps free of unreasonable accumulations of snow and ice.

Section 7.2 - Trailers

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

Section 7.3 - Fences, Walls and Hedges; Mail Boxes

Fences, walls, trees, hedges, and shrub plantings shall be maintained in a sightly and attractive manner. Fences, walls of any kind, and landscaping of any kind shall not be erected, begun or permitted to remain upon any portion of the Property unless approved by the Design Review Committee or unless originally constructed by Developer or Builder. All mail boxes shall be uniform in appearance with the size, type, color and location prescribed by the Developer, Builder, or the Design Review Committee.

Section 7.4 - Nuisance

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

Section 7.5 - Animals

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

Section 7.6 - Signs

No sign or other advertising device of any nature (including, but not limited to "For rent" and "For Sale" signs) shall be placed upon any portion of the Property except for signs and advertising devices installed by or at the direction of the Design Review Committee, or which the Design Review Committee approves as to color, location, nature, size and similar characteristics. Notwithstanding the foregoing, the restrictions of this Section 7.6 shall not apply to Developer, Builder, nor any other original builder of any Living Unit.

Section 7.7 - Storage of Material and Trash Handling

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

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

Section 7.8 - Commercial or Professional Uses

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

Section 7.9 - Storage of Vehicles and Machinery

No truck (except a two-axle truck with no more than four tires), camper, camper trailer, recreation vehicle, boat, boat trailer, all terrain vehicle, airplane, snowmobile, commercial vehicle, van, mobile home, tractor, bus, farm equipment, off-road vehicles or other vehicle of any kind, licensed or unlicensed, shall be stored on any driveway or other area in or upon the Property, except in the confines of garages. No machinery of any kind shall be placed or operated upon any portion of the Property except such machinery which is customarily required for the maintenance of the Property, related improvements, lawns and landscaping.

Section 7.10 - Firearms; Preservation of Wildlife

Firearms, ammunition and explosives of every kind shall not be discharged nor shall any traps or snares be set, nor shall any hunting or poisoning of wildlife of any kind be permitted in or upon the Property, except for rodent control, and the control of such other animals as constitute a nuisance or cause damage to the Property, or except with the prior written approval of the Board.

Section 7.11 - Control of Trucks, Commercial Vehicles

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

Section 7.12 - Traffic Regulations

All vehicular traffic shall be subject to the provisions of the laws of the State of Ohio and the City concerning operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic within the Common Areas, including reasonable safety measures and speed limits.

The Association shall be entitled to enforce the same by establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof. In the event of a conflict between such provisions of the laws of the State of Ohio or the City, and such rules and regulations promulgated by the Association, the more restrictive rules and regulations shall govern. Only drivers licensed to operate motor vehicles by the State of Ohio or by any other state in the United States may operate any type of motor vehicle within the Property. All vehicles of any kind and nature which are operated within the Common Areas shall be operated in a careful, prudent, safe, and quiet manner.

Section 7.13 - Poles, Wires and Antennae

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

Section 7.14 - Exterior Appearance, and Lights for Exteriors of Residences

The exterior of any building or structure in the Property shall not be altered, modified, changed or redecorated in such a way as to change the appearance or decor of the structure, nor shall any of the landscaping appurtenant to such building or structure be materially changed without the express written authorization of the Design Review Committee. No curtains, drapes, shades or blinds shall be displayed in or from any window or glass door of a building without the prior written consent of the Board unless the part thereof within view from the exterior of a building is white, near white or beige in color. The provisions of this paragraph are subject to the provisions of Article VIII of this Declaration. For the purpose of providing security, each Owner of a Sublot containing a Living Unit shall maintain, repair and replace all exterior lights originally attached to the exterior of a Living Unit. Any such light shall be operational at all times.

Section 7.15 - Grading

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

Section 7.16 – Storm Drainage

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

Section 7.17 - Resubdivision of Sublots

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

Section 7.18 - Compliance with City Codes

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

Section 7.19 - Use of the Name "HarborWalk"

No Person shall use the word "HarborWalk", "HarborWalk on the Black River", or any derivative thereof in any printed or promotional material without the prior written consent of Developer. However, Owners may use the name "HarborWalk" or "HarborWalk on the Black

River" in printed and promotional material where such word is used solely to specify that particular property is located within the Development.

Section 7.20 - Sheds

No shed, tent, shack, barn or any similar structure shall be used, temporarily or permanently, as a residence or office on any part of the Property at any time. Developer and Builder shall have the right to maintain a temporary trailer on the property in accordance with the provisions of this Declaration. No shack, barn or shed of any kind shall be permitted on any Sublot.

Section 7.21 – Swimming Pool Restrictions

No swimming pools are permitted on the Property. Wading pools, no more than two (2) feet in height, installed temporarily during the summer months, are permitted in the rear of the Sublot of a Detached Home.

Section 7.22 - Sale, Leasing or Other Alienation of Living Units

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

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

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

Section 7.23 - Party Walls

(a) Each wall which is built as part of the original construction of a Living Unit upon the Property and placed on the dividing line between two Living Unit Sublots shall constitute a Party Wall, and, to the extent not inconsistent with the provisions of this Section, the Owners sharing a Party Wall shall be responsible for the maintenance, repair and replacement of such Party Wall, and shall be responsible to maintain insurance on the Party Wall.

(b) Each Owner sharing a Party Wall shall have the full right to use the Party Wall for the support of beams and structural materials or in any other lawful manner not prohibited hereby; provided, however, that such use shall not injure, impair the strength of, or endanger the wall, foundation or other portion of the Living Unit of the other Owner, and shall not impair or endanger the Party Wall benefits and supports to which the adjoining Living Unit is entitled.

(c) Neither Owner of a Living Unit sharing a Party Wall may extend or increase the height of the Party Wall except upon the written approval of the other Owner, the Design Review Committee and the Eligible Mortgage Holders on both Living Units. No such extension or increase in height may be made which impairs the strength or injures the existing wall or the foundation of the buildings. In the event of such extension or increase in the height of the Party Wall, the other Owner shall have the right to use the extended or heightened part of the wall by paying to the constructing party one-half of the costs of such part of the Party Wall, as he shall use. Any extension or increased height of the Party Wall shall be a Party Wall, become part of the existing Party Wall and be subject to the terms hereof.

(d) The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners who make use of the Party Wall.

(e) If a Party Wall is destroyed or damaged by fire or other casualty, any Owner who has used the Party Wall may restore it and if other Owner thereafter makes use of the Party Wall such other Owner shall contribute equally to the cost of restoration thereof without prejudice, however, to the right of any such Owner to call for a larger contribution from the other Owner under any rule of law regarding liability for negligent or willful acts or omissions.

(f) Notwithstanding any other provision of this subsection, an Owner who by his or her 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.

(g) The right of any Owner to contribution from any other Owner under this subsection shall be appurtenant to the land and shall pass to such Owners successors in title.

(h) In the event of any dispute arising concerning a Party Wall, or under the provisions of this Section, such dispute shall be submitted to arbitration pursuant to Section 16.9 of this Declaration.

Section 7.24 - Waiver of Subrogation

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

Section 7.25 - Violation of this Article

If any Person required to comply with the foregoing Covenants and Restrictions is in violation of any one of same, including, but not by way of limitation, design review criteria or standards established by the Design Review Committee, the Builder (as long as the Builder is a Class "B" Member of the Association) or the Board and/or the Design Review Committee and/or the Covenants Committee shall have the right to give written notice to such Person to terminate, remove or extinguish such violation. Such notice shall expressly set forth the facts constituting such violation.

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

Section 7.26 - Restrictions of the Development Agreement and Other Documents

(a) The Developer, Builder, and all Owners shall comply with all "Restrictions on Use" as set forth in Section 2 of the Development Agreement, the covenants regarding the payment of Urban Renewal Service Payments in lieu of real estate taxes as set forth in Section 4 of the Development Agreement, the "Covenants Running with the Land" set forth in Section 5 of the Development Agreement, and the covenant regarding non-discrimination as set forth in Section 15 of the Development Agreement, as the same may be amended from time to time. As of the date of this Declaration, such restrictions and covenants contained in the Development Agreement are summarized as follows:

- (1) Pursuant to Section 2 of the Development Agreement, the Developer and all Owners shall use, develop and redevelop the Property in accordance with the Urban Renewal Plan, and such covenant shall be a covenant running with the land and shall be included in all deeds conveying any portion of the Property from the Developer or any Owner, and shall be binding for the benefit and in favor of, and enforceable by the City, against the Developer and all Owners. Such restrictions continue until May 18, 2029. This covenant shall have priority over any other interest in the Property except the "Permitted Exceptions" as defined in the Development Agreement as being "the restrictions of the Urban Renewal Plan, zoning ordinances, easements for utilities, and all other restrictions or conditions on title, but shall not include any mortgage lien or other liens (except for the lien for real property taxes and special assessments) which are superior in priority to or equal in priority to the covenants running with the land."
- (2) Pursuant to Section 4 of the Development Agreement, Owners shall pay Urban Renewal Service Payments in lieu of real estate taxes, as further set forth in Section 2.2(mm) herein.
- (3) Pursuant to Section 15 of the Development Agreement the Developer, Owners, and their successors and assigns shall not, in the use and redevelopment of the Property, discriminate against any person or group of persons based upon race, creed, sex, religion, color, age, national origin or ancestry in the sale, lease, sublease, transfer, occupancy, tenure or enjoyment of the Property, and shall so bind all successors in title by appropriate agreements and covenants running with the land enforceable by the City.

(b) Nothing contained in these restrictions shall preclude the imposition of more stringent restrictions imposed elsewhere in this Declaration, restrictions imposed on Sublots within subdivisions, restrictions imposed in deeds conveying the Property or portions thereof and restrictions imposed by the Design Review Committee so long as such restrictions are not inconsistent with restrictions imposed by the this Declaration, created by the Association or adopted by the Board. The terms and conditions of the Development Agreement regarding the "Restrictions on Use" set forth in Section 2 therein, as the same may be amended from time-to-time, shall govern at all times and shall take precedence over the provisions regarding the same set forth herein in the event of a conflict with any provision of this Declaration.

Section 7.27 - Certificate of Compliance with Restrictions in Connection with Resales of Living Units

Upon an Owner's reconveyance of his/her/their Living Unit or an interest therein, such Owner (i.e. seller) shall request the Association to issue a Certificate of Compliance stating that the Association has no record of a violation of this Article and stating the unpaid Assessments and amount of monthly (or quarterly) Assessments attributable to such Living Unit. A Certificate of Compliance may be relied upon by all persons for all purposes. Neither the Board, nor such officer or agent shall have any liability to the seller, buyer or mortgagee of a Living Unit or to others if the Certificate of Compliance issued hereunder is not correct. The Association may require the advance payment of a reasonable processing fee as the Board may establish from time-to-time for the issuance of the Certificate of Compliance. The Certificate shall be substantially in the form of **Exhibit "C"**.

ARTICLE VIII
DESIGN REVIEW COMMITTEE

Section 8.1 - Power of Design Review Committee

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

Section 8.2 - Operation of Design Review Committee

No Living Unit shall be altered, modified or changed in any way which changes the exterior or the appearance thereof, nor shall any Living Unit be rebuilt, nor shall any grading or landscaping for a Sublot be changed unless an application, plans and specifications for the proposed alteration, modification or change shall have been submitted to and approved in writing by the Design Review Committee. The rights of the Design Review Committee set forth in this subsection are in addition to the rights of the Design Review Committee as set forth elsewhere in this Declaration. Furthermore, no landscaping within a Common Area shall be installed by the Owner(s) of a Living Unit situated in close proximity to such Common Area unless an application, plans and specifications for such installation shall have been submitted to and approved in writing by the Design Review Committee; and the Design Review Committee may impose as a condition of such approval that the maintenance and replacement of such landscaping shall be the responsibility of such Owner(s), and not the responsibility of the Association. The provisions of this subsection

requiring submission of plans and specifications to and obtaining approval from the Design Review Committee shall not be applicable to the Builder, nor any entity related to or affiliated with the Builder or designated by the Builder as being subject to the provisions of this subsection.

Section 8.3 - Inspection

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

Section 8.4 - Violations and Remedies

Should any Living Unit be altered, constructed, or related improvements be reconstructed or removed from or upon any Sublot, or should the use thereof be modified in any way from the use originally constructed or installed without first obtaining the prior written approval of the Builder or Design Review Committee as provided in this Article VIII, such act shall be deemed to be a violation of this Article VIII and this Declaration. Any party violating this Article VIII shall, immediately upon the receipt of written notice of such violation from the Builder or Design Review Committee, cease and desist from the commission of any such act and immediately commence to take such steps as will alleviate or remedy any such condition of default and shall continue with all due diligence thereafter until the satisfactory completion of same. Should the party committing such act in contravention of this Article VIII fail to immediately take such remedial action as aforesaid, then and in such event, the Association shall have the right, but not the obligation, in addition to any and all other rights or remedies available to it at law or in equity, each of which remedies shall be deemed to be nonexclusive, to do any of the following:

(a) **Abate Violation:** Without liability to the Owner of the Sublot, cause its agents and employees to enter upon the Sublot and/or the Living Units for the purpose of summarily abating any such use and/or removing any such building or structure or other improvement.

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

(c) **Seek Reimbursement.** Seek full and complete reimbursement from any party committing any of the aforesaid acts in contravention of this Article VIII, of any costs, damages and expenses (including without limitation court costs, attorneys' and paralegals' fees, litigation costs, and costs to collect such sum) incurred by the Association with respect to its exercise of any of its rights for the purpose of remedying any such condition of default.

(d) **Treat as Assessment:** Should the party committing any acts in contravention of this Article VIII be an Occupant and should such Occupant fail to immediately pay the full amount of all costs, damages, and expenses referred to in above, the Association shall be entitled to treat such

amount as an Assessment against the Sublot of which such Occupant is or was the Owner, a member of the Owner's family or a guest or invitee of such Owner.

ARTICLE IX
ASSESSMENTS

Section 9.1 - Definition of Assessments

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

- (a) All expenditures required to fulfill the responsibilities of the Association, including, but not limited to, expenditures relating to maintenance fees;
- (b) All amounts incurred in collecting Assessments, including all legal and accounting fees;
- (c) Reserves for uncollectible Assessments, unanticipated expenses, replacements, major repairs and contingencies;
- (d) Annual capital additions and improvements and/or capital acquisitions (but not repairs or replacements) having a total cost in excess of Five Thousand Dollars (\$5,000.00), without in each case the prior approval of the Class "B" Member and the vote of at least a majority of the Class "A" Members. In case of an emergency requiring prompt action to avoid further loss, the Board shall have the discretion to expend whatever is necessary to mitigate such loss.
- (e) Such other costs, charges and expenses which the Association determines to be necessary and appropriate within the meaning and spirit of this Declaration.

Section 9.2 -Responsibility for Payment of Assessments

All Owners of Living Units shall be responsible for paying Assessments levied against such Living Units. The Builder or the Board shall prepare or cause the preparation of an annual operating budget for the Association and shall fix the amount of the Assessments, which shall be equal between Living Units and shall equal to the amount of such annual budget divided by the number of Living Units subject to Assessment. Written notice of the Assessments shall be sent to the Owner of each Living Unit and Apartment Unit. Payment of Assessments may be required by the Builder or Board on a monthly, quarterly, semi-annual or annual basis. As Sublots are improved with Living Units, (and as any apartment building is completed) the Owners thereof shall commence payment of the Assessments.

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

A Member not otherwise exempt from the Assessments or Service Payment Assessments may not exempt himself from liability for Assessments or Service Payment Assessments levied against him by waiver of the use of the Common Areas that are owned and/or operated by the Association. Furthermore, other than as set forth in Section 6.12 herein regarding the termination of the Service Payment Reserve Fund, no Member shall be entitled to any portion of the funds held for reserves; nor shall any Owner have a claim against the Association with respect thereto.

Section 9.4 - Creation of Lien and Personal Obligation

Each Owner hereby covenants and agrees by acceptance of the deed to any portion of the Property, whether or not it shall be so expressed in any such deed or other conveyance, to pay to the Association all Assessments and Service Payment Assessments levied against such Owner in accordance with this Declaration on or before the due date for any such Assessment. In the event that the Assessment is not paid by the tenth (10th) day of the month, or Service Payment Assessment paid when otherwise due, then such Assessment or Service Payment Assessment shall be "delinquent" and the Assessment or Service Payment Assessment, together with the Costs of Collection, as hereinafter defined in Section 11.3 hereof shall, upon "Perfection" as provided in Section 10.1, become a continuing lien upon the interest of such Person in his Living Unit or real property and shall bind such Owner, his heirs, devisees, personal representatives, successors and assigns. A co-Owner of a Living Unit shall be personally liable, jointly and severally, with all other co-Owners for all Assessments or Service Payment Assessments made by the Association with respect to said Living Unit.

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

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

Section 9.6 - Liability for Assessments on Voluntary Conveyance

Upon the voluntary conveyance of an Ownership Interest the grantee of the Ownership Interest shall be jointly and severally liable with the grantor for all unpaid Assessments or Service Payment Assessments levied pursuant to this Declaration against the grantor of his Ownership Interest prior to the time of the grantor's conveyance, without prejudice to the grantee's right to

recover from the grantor the amounts paid by the grantee therefor. However, any such prospective grantee, upon written request delivered to the Association, shall be entitled to a statement from the Board of Directors or an officer of the Association setting forth the amount of all unpaid Assessments or Service Payment Assessment due the Association with respect to the Ownership Interest to be conveyed and such grantee shall not be liable for, nor shall the Ownership Interest conveyed be subject to a lien, for any unpaid Assessments or Service Payment Assessment which become due prior to the date of the making of such request if the same are not set forth in such statement. The statement referred to herein shall be included in the Certificate of Compliance with Restrictions referred to in Section 7.27 of this Declaration. The Association may require the advance payment of a processing fee for the issuance of the Certificate of Compliance. A devise of an Ownership Interest or the distribution of said Ownership Interest pursuant to the Statute of Descent and Distribution shall be deemed to be a voluntary conveyance. An unpaid Assessment or Service Payment Assessment shall not be deemed a charge or lien against the Ownership Interest until perfected as such pursuant to Article X.

Section 9.7 - Additional Assessments

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

Section 9.8 - Exempt Property

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

Section 9.9 - Service Payment Assessments

At the time of the purchase of each Living Unit or Sublot each purchasing Owner of a Living Unit or Sublot (other than the Developer, Builder, or Owner of any apartment building constructed on the Property) shall pay into the Service Payment Reserve Fund, as established by Section 6.12 herein, an assessment equal to one fourth (1/4) of the annual amount of the Urban Renewal Service Payments then assessed by the City with respect to such Living Unit or Sublot (as established by the last available invoice for such Urban Renewal Service Payment provided by the City), or, if a Living Unit is newly constructed and the value of such Living Unit is not included in the last available invoice or if there is no such previous invoice, an assessment equal to one fourth (1/4) of the annual amount of the Urban Renewal Service Payments estimated by the Board to be assessed by the City with respect to such Living Unit or Sublot based upon the sales price of the Living Unit and the then current applicable tax rates (the "**Service Payment Assessment**"). The Service Payment Assessment shall be payable by the grantee of each Living Unit or Sublot at the time of transfer of title to each such Living Unit or Sublot, however the Service Payment Assessment shall not be payable by any such transferee; (i) who is the Developer, an Affiliate of Developer, Builder, Affiliate of Builder, or a specifically designated successor or assign of Builder, or (ii) who is exempt

from real property conveyance fees pursuant to the provisions of Section 319.54(F)(3) of the Ohio Revised Code; or (iii) who is an Eligible Mortgage Holder taking title to such Sublot or Living Unit in foreclosure of its security interest in such Sublot or Living Unit.

ARTICLE X LIENS

Section 10.1 - Perfection of Lien

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

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

Section 10.2 - Duration of Lien

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

Section 10.3 - Priority

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

appointment of a receiver to collect the same. Any funds received at the judicial sale of the delinquent Owner or Builder's Ownership Interest in excess of mortgage liens, court costs and the taxes and assessment liens shall be paid over to the Association to the extent of its lien.

Section 10.4 - Dispute as to Assessment

The Builder or any Owner who believes that an Assessment levied by the Association against him for which a Certificate of Lien has been filed by the Association has been improperly determined, may bring an action under the Arbitration provisions contained in Section 16.9 of this Declaration for the discharge of all or any portion of such lien; but the lien shall continue until the actual amount of the lien so determined is paid in full or otherwise be fully discharged.

Section 10.5 - No Waiver Implied

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

Section 10.6 - Personal Obligations

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

ARTICLE XI **REMEDIES OF THE ASSOCIATION**

Section 11.1 - Denial of Voting Rights

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

Section 11.2 - Specific Remedies

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

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damages which may have been sustained by the Association or any of its Members as well as an action for punitive damages if warranted; and/or (d) to collect costs of suit and reasonable attorneys' and paralegals' fees incurred in connection with the exercise by the Association of any remedies hereunder, the same to be deemed "Costs of Collection" under Section 11.3 hereof.

Section 11.3 - Cost of Collection

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

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

(b) In addition to the amount referred to in (a) above, the Association may assess against such Owner, liquidated damages, not to exceed fifteen percent (15%) of the amount of the delinquency or One Hundred Dollars (\$100.00), whichever amount is greater, said amount to be determined by the Board provided, however, in no event shall said amount exceed the highest interest rate chargeable to individuals under applicable law. Said liquidated damages shall be in addition to interest, the expenses of collection incurred by the Association, such as attorneys' fees, paralegals' fees, court costs and filing fees. The actual expenses of collection and the liquidated damages shall hereinafter be referred to as "**Cost of Collection**".

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

Section 11.4 - Binding Effect

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

ARTICLE XII
NO PARTITION

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

ARTICLE XIII
CONDEMNATION

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

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

ARTICLE XIV
MORTGAGEES' RIGHTS

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

Section 14.1 - Notices of Action

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

- (a) any proposed termination of the Association;
- (b) any condemnation or casualty loss which affects a material portion of the Property or which affects any Living Unit on which there is a first mortgage held, insured, or guaranteed by an Eligible Mortgage Holder;
- (c) any delinquency in the payment of assessments or other charges owed by an Owner subject to the mortgage of such Eligible Mortgage Holder, insurer, or guarantor, where such delinquency has continued for a period of sixty (60) days;

(d) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or

(e) any proposed action which would require the consent of eligible holders, as required in Sections 14.2 and 14.3 of this Article.

If an Eligible Mortgage holder fails to submit a response to any written proposal for an amendment under this Article XIV within thirty (30) days after it receives proper notice of the proposal, the implied approval of such Eligible Mortgage Holder to the proposal shall be deemed assumed, provided, the notice was delivered by certified or registered mail, with a "return receipt" requested.

Section 14.2 - Other Provisions for First Lien Holders

To the extent possible under Ohio law:

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

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

Section 14.3 - Amendments to Documents

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

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

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

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

Section 14.4 - Special Federal Home Loan Mortgage Corporation Provisions

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

- (a) Unless two-thirds (2/3) of the first mortgagees or Owners give their consent, the Association shall not: (1) by act or omission seek to abandon, become a partition, subdivide, encumber, sell or transfer any portion of the Property owned by the Association (the granting of easements for public utilities or for public purposes or the dedication to public use of utilities or roads consistent with the intended use of the property shall not be deemed a transfer); (2) change the

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Section 16.2 - Duration

Unless sooner terminated as hereinafter provided, the Easements, Covenants and Restrictions of this Declaration shall continue for a term of fifty (50) years from the date this Declaration is recorded, after which time, said covenants and restrictions shall automatically be extended for successive periods of ten (10) years each unless terminated by an instrument signed by Members entitled to exercise not less than seventy-five percent (75%) of the Class "A" Members and by the Class "B" Member. No restriction or condition herein shall be materially altered or terminated unless such alteration or termination is consistent with the controlling regulations of the City and other applicable governmental bodies. No easement shall be unilaterally altered or terminated without the written consent of the party to whom such easement runs.

Section 16.3 - Notices

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

Notices to the Builder shall be deemed given only when received and must be either hand delivered or mailed by certified or registered mail, postage prepaid, to Zaremba Black River Development, LLC, 737 Bolivar Road, Cleveland, Ohio 44115, with a copy to Richard A. Rosner, Esq., Kahn Kleinman, Yanowitz & Arnson, Co., L.P.A., 1301 East Ninth Street, Suite 2600, Cleveland, Ohio 44114.

Section 16.4 - Enforcement-Waiver

Enforcement of the Easements, Covenants and Restrictions may be by any proceeding at law or in equity against any Person or Persons violating or attempting to violate any Easement, Covenant or Restriction, either to restrain violation or to recover damages and against the Person or Ownership Interest, or to enforce any lien perfected pursuant to this Declaration. The failure by the Association or any one permitted by this Declaration to enforce any Easement, Covenant or Restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 16.5 - Construction of the Provisions of this Declaration

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

entitled to enforce the provisions hereof shall be resolved in favor of the construction or interpretation by the Builder, the Association or the Design Review Committee, as the case may be.

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

Section 16.6 – Reservations by Original Builder – Exempt Property

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

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

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

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

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

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

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

Section 16.7 – Assignability by Original Builder

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

Section 16.8 – Severability

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

Section 16.9 – Arbitration

Unless otherwise provided in this Declaration, any controversy, dispute or claim arising out of or relating to this Declaration or the breach thereof shall be settled by arbitration in Cleveland, Ohio in accordance with the Real Estate Industry Rules of the American Arbitration Association and the judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction hereof.

Section 16.10 – Litigation

No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by the vote of seventy-five percent (75%) of the Class "A" Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the

imposition and collection of assessments as provided in Articles IX and X hereof, (c) proceedings involving challenges to real estate taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Builder or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 16.11 – Validity of Mortgages

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

Section 16.12 – Amendment of Declaration

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

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

(b) This Declaration may also be amended by Original Builder or the Association at any time and from time to time for the purpose of: (1) complying with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public entity, or private insurance company which performs (or may in the future perform) functions similar to those currently performed by such entities; or (2) inducing any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages; or (3) correcting clerical or typographical or obvious factual errors in this Declaration or any Exhibit hereto or any supplement or amendment hereto; or (4) complying with the underwriting requirements of insurance

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

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

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

Section 16.13 – Interest Rates

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

Section 16.14 – Headings

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

Section 16.15 – Rule Against Perpetuities

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

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method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner; (3) fail to maintain fire and extended coverage insurance as required by this Declaration; or (4) use hazard insurance proceeds for any Common Area losses for other than repair, replacement or reconstruction of such properties.

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

(c) First mortgagees may, jointly or singularly, pay taxes or other charges which are in default or which may or have become a charge against the Common Area and may pay overdue premiums of casualty insurance policies or secure new casualty insurance coverage upon the lapse of a policy, for the Common Areas and first mortgagees making such payments shall be entitled to immediate reimbursement from the Association.

ARTICLE XV TRANSFER OF SPECIAL BUILDER RIGHTS

Section 15.1 - Instrument Transferring Special Builder Rights

Builder may transfer Special Builder Rights created or reserved in this Declaration or in the Code by an instrument evidencing the transfer recorded in the records of Lorain County. The instrument is not effective unless executed by both the transferor and transferee.

Section 15.2 - Liability of Transfer of Special Builder Rights

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

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

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

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

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

Section 15.3 - Acquisition of Special Builder Rights

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

Section 15.4 - Termination of Special Builder Rights

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

Section 15.5 - Liabilities of A Transferee of Special Builder Rights

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

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

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

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

(d) A successor to all Special Builder Rights held by the transferor who is not an Affiliate of that Builder and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to Living Units under Subsection (b), may declare the intention in a recorded instrument to hold those rights solely for transfer to another person.

Thereafter, until transferring all Special Builder Rights to any person acquiring title to any Living Unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by the transferor to control the Board of Directors in accordance with the provisions of this Declaration or the Code for the duration of the period that a Builder has the right to elect or designate Board Members, and any attempted exercise of those rights is void. So long as a successor Builder may not exercise Special Builder Rights under this Subsection, such successor Builder is not subject to any liability or obligation as a Builder.

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

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

ARTICLE XVI
GENERAL PROVISIONS

Section 16.1 - Covenants Run With the Property; Binding Effect

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

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

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