

RECORDING OF
BYLAWS

CUYAHOGA COUNTY
OFFICE OF FISCAL OFFICER - 25
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(ALSO KNOWN AS CODE OF REGULATIONS)
OF
TRAILHEAD HOMEOWNERS' ASSOCIATION

PLEASE CROSS MARGINAL REFERENCE WITH THE DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS AND RESTRICTIONS OF TRAILHEAD VILLAGE RECORDED AT INSTRUMENT NO. 200505060127 OF THE CUYAHOGA COUNTY RECORDS.

BYLAWS
(ALSO KNOWN AS CODE OF REGULATIONS)
OF
TRAILHEAD HOMEOWNERS' ASSOCIATION

WHEREAS, the Trailhead Homeowners' Association, Inc. ("Association") was created on or about March 21, 2005, in conjunction with the filing of its Articles of Incorporation with the Ohio Secretary of State's Office; and

WHEREAS, the Association's principal purpose is to maintain and operate the Trailhead Homeowners' Association, Inc. development located in Berea, Ohio, pursuant to the terms and provisions of the Declaration of Covenants, Conditions, Easements and Restrictions of Trailhead Village, that were filed for record at Instrument No. 200505060127 of the Cuyahoga County Records; and

WHEREAS, upon the filing of the Articles of Incorporation, the Developer created and adopted the Bylaws of Trailhead Homeowners' Association (the "Bylaws") for conducting the Association's affairs, but did not file the Bylaws for record with the Cuyahoga County Records; and

WHEREAS, Ohio Revised Code Section 5312.02 of the Ohio Planned Community Act requires a copy of the Bylaws to be filed and recorded with the County Recorder, and

WHEREAS, to bring the Association's governing documents in compliance with Section 5312.02, the Association hereby adopts the Bylaws, a copy of which is attached hereto, for filing with the Cuyahoga County Fiscal Office.

NOW THEREFORE, the Bylaws of Trailhead Homeowners' Association as adopted by the Association are attached to the Declaration, as "Exhibit A," and set forth as attached hereto.

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Code of Regulations of Trailhead Homeowners' Association

An Ohio Not For Profit Corporation

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CODE OF REGULATIONS OF TRAILHEAD HOMEOWNERS' ASSOCIATION

The within Code of Regulations ("Code") is referenced in the Declaration of Covenants, Conditions, Easements and Reservations of Trailhead Village ("Declaration"). Certain of the terms used in this Code have been defined in the Declaration and, when used herein, shall have the same meaning as set forth in the Declaration, unless the context clearly indicates a different meaning therefor. The Code is to provide for the establishment of a Homeowners' Association for the government of the Community in the manner provided by the Declaration and this Code. This purpose shall be accomplished on a non-profit basis, and no part of the earnings of the Association shall inure to the benefit of any private person, firm, corporation, association or organization. All present or future owners or tenants or their employees, or any other person who might use the facilities of the Community in any manner shall be subject to the covenants, provisions or regulations contained in the Declaration and this Code and shall be subject to any restriction, condition or regulation hereafter adopted by the Association. The mere acquisition or rental of any of the Living Units, located within the Community described in the Declaration, or the mere act of occupancy of any of the Living Units will constitute acceptance and ratification of the Declaration and of this Code.

ARTICLE I THE ASSOCIATION

Section 1. Name and Nature of Association. The Association shall be an Ohio corporation not for profit and shall be called the Trailhead Homeowners' Association.

Section 2. Membership. Each Owner upon acquisition of title to a Living Unit, shall automatically become a member of the Association. Such membership shall terminate upon the sale or other disposition by such member of Living Unit ownership, at which time the new owner of such Living Unit shall automatically become a member of the Association. Membership in the Association shall be limited to Owners. In addition to any other rights the Developer may have pursuant to the Declaration, the Developer shall be a member of the Association with respect to all Parcels owned by Developer and shall have the right, without limitation, to exercise the voting power appurtenant to such Parcel(s) and the power to vote the same.

Section 3. Voting Rights. On any question on which the vote of Owners is permitted or required, the owner or owners of each Living Unit or Parcel shall be entitled to exercise one (1) vote for each such Living Unit or Parcel. In the case of a Living Unit or Parcel owned or held in the name of a corporation or a partnership, a certificate signed by said Living Unit or Parcel Owner shall be filed with the Secretary of the Association. If such certificate is not on file, the vote of such corporation or partnership, shall not be considered nor shall the presence of such Living Unit or Parcel Owner at a meeting be considered in determining whether the quorum requirement for such meeting has been met. Fiduciaries and minors who are owners of record of a Living Unit may vote their respective interests as an Owner. If two or more persons, whether fiduciaries, tenants in common or otherwise, own undivided interests in a Living Unit, each may exercise that proportion of the voting power of all of the Owners of said

Living Unit that is equivalent to their respective proportionate interests in said Living Unit. When any fiduciary or other legal representative of an Owner has furnished to the Association proof, satisfactory to it, of his authority, he may vote as though he were the Owner. The Developer or its nominee shall be the voting member with respect to any Living Unit or Parcel owned by the Developer. The vote of the Association with respect to any Living Units or Parcels owned by the Association shall be determined by the Board.

Section 4. Majority. Except as otherwise provided in the Act, the Declaration or this Code, all actions taken by the Owners shall require the affirmative vote of a majority of the voting power of the Association present at a meeting at which a quorum is present.

Section 5. Proxies. Owners may vote or act in person or by proxy. The person appointed as proxy need not be a member of the Association. Designation by a member or members of a proxy to vote or act on his or their behalf shall be made in writing to the Secretary of the Association (or if there is no Secretary, then with the person conducting the meeting for which the proxy is given) at or before the meeting and shall be revocable at any time by actual notice to the Secretary of the Association by the member or members making such designation. Notice to the Association in writing or in open meeting of the revocation of the designation of a proxy shall not affect any vote or act previously taken or authorized. The presence at a meeting of the person appointing a proxy does not revoke the appointment.

Section 6. Establishment of Owners' Association and Meetings of Members.

(A) Establishment of Owners' Association.

The Owners' Association shall be established not later than the date the deed or other evidence of ownership is filed for record following the first sale of a Living Unit in the Community. Until the Owners' Association is established, the Developer shall act in all instances where action of the Owners' Association or its officers is authorized or required by law or in the Declaration.

(B) Annual Meeting.

The annual meeting of members of the Association for the election of members of the Board of Directors, the consideration of reports to be laid before such meeting, and the transaction of such other business as may properly be brought before such meeting shall be held at the office of the Association or at such other place in Cuyahoga County as may be designated by the Board and specified in the notice of such meeting. The first annual meeting of the Association shall be held upon ten (10) days' written notice given by the Developer not later than the time that one-third (1/3) of all Parcels and/or Living Units in the Community have been sold and conveyed by the Developer, unless the Developer shall consent, in its sole discretion, to a lesser fraction. Thereafter, the annual meeting of members of the Association shall be held on _____ in each succeeding year, if not a legal holiday, and, if a legal holiday, then on the next succeeding business day.

(C) **Special Meeting.** Special meetings of the members of the Association may be held on any business day when called by the President of the Association or by the Board of Directors of the Association or by members entitled to exercise at least twenty-five percent (25%) of the voting power of the Association or by the Developer or any Owner when a meeting is required for the election of members to the Board of Directors pursuant to Article II, Section 5 hereof. Upon request in writing delivered either in person or by certified mail to the President or the Secretary of the Association by any persons entitled to call a meeting of members, such officer shall forthwith cause to be given to the members entitled thereto notice of a meeting to be held on a date not less than seven (7) or more than sixty (60) days after the receipt of such request as such officer may fix. If such notice is not given within thirty (30) days after the delivery or mailing of such requests, the persons calling the meeting may fix the time of the meeting and give notice thereof. Each special meeting shall be called to convene at _____ and shall be held at the office of the Association or at such other place in Cuyahoga County as shall be specified in the notice of meeting.

(D) **Notices of Meetings.** Not less than seven (7) nor more than sixty (60) days before the day fixed for a meeting of the members of the Association, written notice stating the time, place and purpose of such meeting shall be given by or at the direction of the Secretary of the Association or any other person or persons required or permitted by this Code to give such notice. The notice shall be given by personal delivery or by mail to each member of the Association who is an owner of a Living Unit of record as of the day next preceding the day on which notice is given. If mailed, the notice shall be addressed to the members of the Association at their respective addresses as they appear on the records of the Association. Notice of the time, place and purposes of any meeting of members of the Association may be waived in writing, either before or after the holding of such meeting, by any members of the Association, which writing shall be filed with or entered upon the records of the meeting. The attendance of any member of the Association at any such meeting without protesting, prior to or at the commencement of the meeting, the lack of proper notice shall be deemed to be a waiver by him of notice of such meeting.

(E) **Quorum.** **Adjournment.** Except as may be otherwise provided by law or by the Declaration, at any meeting of the members of the Association, the members of the Association entitled to exercise one-half (½) of the voting power of the Association present in person or by proxy shall constitute a quorum for such meeting; provided, however, that no action required by

law, by the Declaration, or by this Code to be authorized or taken by a designated percentage of the voting power of the Association may be authorized or taken by a lesser percentage; and provided further, that the members of the Association entitled to exercise a majority of the voting power represented at a meeting of members, whether or not a quorum is present, may adjourn such meeting from time to time; if any meeting is adjourned, notice of such adjournment need not be given if the time and place to which such meeting is adjourned are fixed and announced at such meeting.

Section 7. Order of Business. The order of business at all meetings of Owners of the Association shall be as follows:

- (1) Calling of meeting to order.
- (2) Proof of notice of meeting or waiver of notice.
- (3) Reading of minutes of preceding meeting.
- (4) Reports of Officers.
- (5) Reports of Committees.
- (6) Election of Inspectors of election.
- (7) Election of members of the Board of Directors.
- (8) Unfinished and/or old business.
- (9) New Business.
- (10) Adjournment.

Section 8. Actions without a Meeting. All actions which may be taken at a meeting of the Association, except an action for the removal of a Board member, may be taken without a meeting with the approval of, and in a writing or writings signed by the members of the Association having the percentage of voting power required to take such action if the same were taken for a meeting. Such writing or writings shall be filed with the Secretary of the Association.

ARTICLE II BOARD OF DIRECTORS.

Section 1. Qualifications. Except as otherwise provided herein, all Members of the Board of Directors (herein called "Board Members" or "Board") shall be Owners. Board Members elected or designated by the Developer need not fulfill the qualifications imposed by this Section 1 of this Article II or any other qualifications imposed on Board Members elected by Owners other than the Developer, except as otherwise provided in this Code, and Board Members elected or designated by the Developer may be removed only by the Developer or as otherwise provided herein. If a Board Member shall cease to meet such qualifications during his term, he shall thereupon cease to be a member of the Board and his place on the Board shall be deemed vacant. No single Living Unit may be represented on the Board by more than one (1) person at any time.

Section 2. Number of Board Members. Subject to such limitations as are or may be imposed by the Declaration or this Code (including Section 14 hereof), as any of the same may be lawfully amended from time to time, all power and authority of the Association shall be exercised by the Board of Directors consisting of three (3) members, in accordance with Section 3 hereof.

Section 3. Election of Board Members by Developer and Owners Prior to the First Annual Meeting. Until such time as one-third (1/3) of the Parcels have been sold and conveyed by the Developer, the Developer shall have the right to elect or designate all three (3) Board Members. Not later than the time that one-third (1/3) of the Parcels have been sold and conveyed by the Developer, the Association shall meet and the Owners, other than the Developer, shall elect one (1) Board Member who shall replace one (1) of the Board Members previously elected or designated by the Developer. The Developer shall have the sole right to designate the two (2) Board Members who will be replaced. Since one (1) of the three (3) Board Members representing one-third (1/3) of the Board Members is to be elected by Owners other than the Developer when one-third (1/3) of the Parcels in the Community have been sold or conveyed by the Developer, it will not be necessary to have a meeting when one-third (1/3) of the Parcels in the Community have been sold and conveyed by the Developer, since, at that time, Owners, other than the Developer, will have elected the required thirty-three and one-third percent (33-1/3%) of the members of the Board.

Section 4. First Annual Meeting. Within thirty (30) days after the earlier of either: (a) five (5) years following the date of the establishment of the Association (or such earlier period of time as Developer, at its option, may designate); or (b) the date of the sale and conveyance of Parcels or Living Units to which appertain one-third (1/3) of the Community or more Areas to purchasers in good faith for value, the Association shall meet (herein referred to as the "First Annual Meeting") and all Owners (including Developer, if Developer shall own any Parcels or Living Units) and elect all three (3) members of the Board of the Association and all persons previously elected or designated whether by the Developer or by the other Owners shall immediately resign; provided, however, that such persons shall be eligible for re-election to the Board. The persons so elected at the First Annual Meeting shall take office upon such election and shall serve such terms for which they are elected in accordance with Section 5 of this Article II.

Section 5. Election of Board Members from and after the First Annual Meeting. Except for the procedures set forth in Section 3 of this Article II for the election of Board Members prior to the First Annual Meeting, Board Members shall be elected at the annual meeting of members of the Association, but when the annual meeting is not held or Board Members are not elected thereat, they may be elected at a special meeting called and held for that purpose. Such election shall be by written secret ballot whenever requested by any member of the Association; but, unless such request is made, the election may be conducted in any manner approved at such meeting. Any Board Member elected or designated prior to the First Annual Meeting shall hold office for a term not to exceed one (1) year after his election or designation. Commencing with the First Annual Meeting, Board Members shall be elected for such terms so that the terms of office of not less than one-third (1/3) of the Board Members shall expire each year. Accordingly, at the First Annual Meeting of the Association, one (1) Board Member shall

be elected for a term of three (3) years, one (1) Board Member shall be elected for a term of two (2) years and one (1) Board Member shall be elected for a term of one (1) year. All Board Members shall be elected in accordance with the provisions of this Article II. At meetings of the Association subsequent to the First Annual Meeting which are called for the purpose of electing Board Members, each Board Member shall be elected for terms of three (3) years or to complete unfinished terms. Except as otherwise provided herein, each Board Member shall hold office until the expiration of his term and until his successor is elected, or until his earlier resignation, removal from office or death. Any Board Member may resign at any time by oral statement to that effect made at a meeting of the Board or by a writing to that effect delivered to the Secretary of the Association; such resignation shall take effect immediately or at such other time as the Board Member may specify. Each member of the Association may cast as many of his votes as there are Board Members to be elected. By way of example, if two (2) Board Members are to be elected, a member of the Association shall have the right to cast a maximum of two (2) votes, but not more than one (1) vote may be cast for any candidate. The candidates receiving the greatest number of votes shall be elected and those receiving the highest percentages of the total vote cast shall serve for the longest terms. Tie votes shall be decided by drawing of lots or by a flip of a coin.

Section 6. Organization Meeting. Immediately after each annual meeting of members of the Association, the newly elected Directors and those Directors whose terms hold over shall hold an organization meeting for the purpose of electing officers and transacting any other business. Notice of such meeting need not be given.

Section 7. Regular Meetings. Regular meetings of the Board of Directors may be held at such times and places as shall be determined by a majority of the Directors, but at least four (4) such meetings shall be held during each fiscal year.

Section 8. Special Meetings. Special meetings of the Board of Directors may be held at any time upon call by the President or any two Directors. Written notice of the time and place of each such meeting shall be given to each Director either by personal delivery or by mail, telegram or telephone at least two (2) days before the meeting, which notice need not specify the purposes of the meeting; provided, however, that attendance of any Director at any such meeting without protesting (prior to or at the commencement of the meeting) the lack of proper notice shall be deemed to be a waiver by him of notice of such meeting and such notice may be waived in writing either before or after the holding of such meeting, by any Director, which writing shall be filed with or entered upon the records of the meeting. Unless otherwise indicated in the notice thereof, any business may be transacted at any organization, regular or special meeting.

Section 9. Quorum; Adjournment. A quorum of the Board of Directors shall consist of a majority of the Directors then in office; provided that a majority of the Directors present at a meeting duly held, whether or not a quorum is present, may adjourn such meeting from time to time, if any meeting is adjourned, notice of such adjournment need not be given if the time and place to which such meeting is adjourned are fixed and announced at such meeting. At each meeting of the Board of Directors at which a quorum is present, all questions and business shall be determined by a majority vote of those present, except as may be otherwise expressly provided in the Declaration or in this Code.

Section 10. Powers and Duties. Except as otherwise provided by law, the Declaration or this Code, all power and authority of the Association shall be exercised by the Board. In carrying out the purposes of the Community and subject to the limitations prescribed by law, the Declaration or this Code, the Board, for and on behalf of the Association, may do the following:

- (A) Maintenance, repair, replacement and surveillance of the Community and the Common Areas.
- (B) Levy of Assessments against the Owners and the collection of same.
- (C) Designation and dismissal of the personnel necessary for the maintenance and operation of the Community and the Common Areas.
- (D) In carrying out the purposes of the Association and subject to the limitations prescribed by law, the Declaration or this Code, the Board, for and on behalf of the Association, may:
 - (1) Purchase or otherwise acquire, lease as lessee, hold, use, lease as lessor, sell, exchange, transfer, and dispose of property of any description or any interest therein.
 - (2) Grant easements for access, utility and other purposes set forth in Article VIII of the Declaration for the benefit of the Community, Additional Property or any neighboring property, subject, however, to the Special Developer Right reserved in Section 9 thereof.
 - (3) Make contracts.
 - (4) Effect insurance.
 - (5) Borrow money, and issue, sell, and pledge notes, bonds, and other evidence of indebtedness of the Association, provided, however, if such borrowing is in excess of Five Thousand Dollars (\$5,000.00), the prior approval of the members of the Association entitled to exercise a majority of the voting power of the Association shall be obtained at a special meeting duly held for such purpose.
- (E) Employ a managing agent to perform such duties and services as the Board may authorize.
- (F) Employ lawyers and accountants to perform such legal and accounting services as the Board may authorize.
- (G) Adopt Rules,

- (H) To do all things permitted by law and exercise all power and authority within the purposes stated in this Code or the Declaration or incidental thereto.

Section 11. Removal of Board Members. Except as otherwise provided herein and in the Act, the Board may remove any Board Member and thereby create a vacancy in the Board if by order of court such Board Member has been found to be of unsound mind, or if he is physically incapacitated, adjudicated as bankrupt, or fails to attend three consecutive meetings of the Board. At any regular or special meeting of members of the Association duly called at which a quorum shall be present, any one or more of the Board Members may be removed with or without cause by the vote of members entitled to exercise a majority of the voting power of the Association, and a successor or successors to such Board Member so removed may be elected at the same meeting for the unexpired term for each such removed Board Member. Any Board Member whose removal has been proposed by the members of the Association shall be given an opportunity to be heard at such meeting.

Section 12. Vacancies. Except as otherwise provided and subject to the provisions of Act, vacancies in the Board may be filled by a majority vote of the remaining Board Members until an election to fill such vacancies is held. Members of the Association shall have the right to fill any vacancy in the Board (whether or not the same has been temporarily filled by the remaining Board Members) at any meeting of the members of the Association called for that purpose, and any Board Members elected at any such meeting of members of the Association shall serve until the next annual election of Board Members and until their respective successors are elected and qualified.

Section 13. Fidelity Bonds. The Board of Directors may require that all officers and employees of the Association handling or responsible for Association funds shall furnish adequate Fidelity Bonds. The premiums on such bonds shall be paid by the Association and shall be a common expense.

Section 14. Initial Board of Directors. Notwithstanding any of the other provisions contained in this Article II, the Developer may designate the initial Board of Directors to serve until the first meeting of the Owners. The initial Board of Directors may consist of not less than three (3) members and such members may be officers, directors, employees or other designated representatives of Developer, and need not be owners or occupiers of Living Units.

Section 15. Compensation. The Board of Directors shall not receive any salary or compensation for their services, as such, provided nothing herein contained shall be construed to preclude any Board Member from having dealings with the Association in any other capacity and receiving compensation therefor.

ARTICLE III OFFICERS

Section 1. Election and Designation of Officers. The Board of Directors shall elect a President, a Vice President, a Secretary and a Treasurer, each of whom shall be a member of the Board of Directors. The Board of Directors may also appoint an Assistant Treasurer and an Assistant Secretary and such other officers as in their judgment may be necessary who are not members of the Board of Directors but who are members of the Association.

Section 2. Term of Office: Vacancies. The officers of the Association shall hold office until the next organization meeting of the Board of Directors and until their successors are elected, except in case of resignation, removal from office or death. The Board of Directors may remove any officer at any time with or without cause by a majority vote of the Directors then in office. Any vacancy in any office may be filled by the Board of Directors.

Section 3. President. The President shall be the chief executive officer of the Association. He shall preside at all meetings of the Board of Directors. Subject to directions of the Board of Directors, the President shall have general executive supervision over the business and affairs of the Association. He may execute all authorized deeds, contracts and other obligations of the Association and shall have such other authority and shall perform such other duties as may be determined by the Board of Directors or otherwise provided for in the Declaration or in this Code. The President shall have the power to appoint committees from among the Officers and other Unit Owners as he may deem necessary to assist with affairs of the Association.

Section 4. Vice President. The Vice President shall perform the duties of the President whenever the President is unable to act and shall have such other authority and perform such other duties as may be determined by the Board of Directors.

Section 5. Secretary. The Secretary shall keep the minutes of meetings of the members of the Association and of the Board of Directors, shall give notice of meetings of the members of the Association and of the Board of Directors as required by law, or by this Code or otherwise, and shall perform such other duties as may be determined by the Board of Directors.

Section 6. Treasurer. The Treasurer shall receive and have in charge all money, bills, notes and similar property belonging to the Association, and shall do with the same as may be directed by the Board of Directors. He shall keep accurate financial accounts and hold the same open for the inspection and examination of the Directors and shall have such authority and shall perform such other duties as may be determined by the Board of Directors.

Section 7. Other Officers. The Assistant Secretaries and Assistant Treasurers, if any, and any other officers whom the Board of Directors may appoint shall, respectively, have such authority and perform such duties as may be determined by the Board of Directors.

Section 8. Delegation of Authority and Duties. The Board of Directors is authorized to delegate the authority and duties of any officer to any other officer and generally to control the action of the officers and to require the performance of duties in addition to those mentioned herein.

Section 9. No Compensation to Officers. None of the officers of the Association shall receive compensation for his services as such.

ARTICLE IV
GENERAL POWERS OF THE ASSOCIATION

Section 1. Payments from Maintenance Funds. The Association, for the benefit of the owners, shall acquire, and shall pay for out of the maintenance fund hereinafter provided all expenses arising with respect to, or in connection with, the Community ("Common Expenses"), including, without limitation, the following:

- (A) The expense of the Association's Maintenance responsibilities under Article V of the Declaration;
- (B) Casualty Insurance.
A policy or policies of fire insurance, with extended coverage, vandalism and malicious mischief endorsements, as determined by the Board, the amount of which insurance shall be reviewed annually;
- (C) Liability Insurance. Directors' and Officers' Liability Insurance.
A policy or policies insuring the Association; the members of the Board and the owners against any liability to the public or to the owners (of Living Units and of the Common Areas, and their invitees, or tenants), incident to the ownership and/or use of the Common Areas and Living Units, as determined by the Board, the limits of which policy shall be reviewed annually. Furthermore, the Board, at its option, may obtain directors' and officers' liability insurance;
- (D) Workmen's Compensation.
Workmen's compensation insurance to the extent necessary to comply with any applicable laws;
- (E) Wages and Fees for Services.
The services of any person or firm employed by the Association, including, without limitation, the services of a person or firm to act as a manager or managing agent for the Community, the services of any person or persons required for the maintenance of or operation of the Property, and legal and/or accounting services necessary or proper in the operation of the Community or the enforcement of the Declaration and this Code and for the organization, operation and enforcement of the rights of the Association;
- (F) Additional Expenses.
Any other materials, supplies, furniture, labor, services, maintenance, repairs, structural alterations, insurance or assessments which the

Association is required to secure or pay for pursuant to the terms of the Declaration and this Code of which in its opinion shall be necessary or proper for the maintenance and operation of the Community as a first-class, fee simple cluster development or for the enforcement of the Declaration and this Code;

- (G) **Discharge of Mechanic's Liens.**
Any amount necessary to discharge any mechanic's lien or other encumbrances levied against the entire Community or any part thereof which may in the opinion of the Association constitute a lien against the Property or against the Common Areas, rather than merely against the interests therein of particular owners; it being understood, however, that the foregoing authority shall not be in limitation of any statutory provisions relating to the same subject matter. Where one or more owners are responsible for the existence of such lien, they shall be jointly and severally liable for the cost of discharging it and any costs incurred by the Association by reason of said lien or liens shall be specially assessed to said owners;
- (H) **Certain Maintenance of Living Units.** Maintenance and repair of any Living Unit if, at the sole discretion of the Association, the owner or owners of said Living Unit have failed or refused to perform said maintenance or repair; within a reasonable time after written notice of the necessity of said maintenance or repair delivered by the Association to said owner or owners, provided that the Association shall levy a special assessment against such Owner for the cost of said maintenance or repair;
- (I) **Limitation on Capital Additions and Improvements.**
The Association's powers hereinabove enumerated shall be limited in that the Association shall have no authority to acquire and pay for out of the maintenance fund any acquisitions, capital additions and improvements, or structural alterations to the Common Areas (other than for purposes of maintaining, replacing or restoring portions of the Common Areas, subject to all the provisions of the Declaration and this Code) having a total cost in excess of Five Thousand Dollars (\$5,000.00), nor having an aggregate cost in any one (1) calendar year period in excess of Ten Thousand Dollars (\$10,000), without, in each case, the prior approval of the members of the Association entitled to exercise a majority of the voting power of the Association provided, however, so long as Developer has the authority to elect or designate any Board Members, the Developer's prior written consent to such expenditure shall be required. The limitations of expenditures by the Association contained in this Section shall not apply to repair of the Property due to casualty loss, emergency repairs immediately necessary for the preservation and safety of the Community or for the safety of persons or to avoid suspension of any necessary services. The foregoing provisions of this Section I(I) also shall not apply to the

rehabilitation and renewal of obsolete property which shall be governed by the Declaration;

(J) **Miscellaneous.**

The Association shall pay such other costs and expenses required in the Declaration and in this Code.

Section 2. Rules. The Board of Directors, by vote of the members entitled to exercise a majority of the voting power of the Board, may adopt such reasonable rules and regulations and from time to time amend the same supplementing the rules and regulations set forth in the Declaration and this Code as it may deem advisable for the maintenance, conservation and beautification of the Community, and for the health, comfort, safety and general welfare of the owners and occupants of the Community. Written notice of such rules and regulations shall be given to all owners and occupants and the Community shall at all times be maintained subject to such rules and regulations. In an action or proceeding brought by the Association against an Owner and/or Occupant of a Living Unit to enforce such rules or regulations, the Association shall be entitled to collect costs of suit and reasonable attorneys' fees from such Owner and/or Occupant. In the event such supplemental rules and regulations shall conflict with any provisions of the Declaration or of this Code, the provisions of the Declaration and of this Code shall govern.

Section 3. No Active Business to be Conducted for Profit. Nothing herein contained shall be construed to give the Association authority to conduct an active business for profit on behalf of all the owners or any of them.

Section 4. Special Services. The Association may arrange for the provision of any special services and facilities for the benefit of such owner, and/or occupants as may desire to pay for the same, including, without limitation, cleaning, repair and maintenance of Living Units. Fees for such special services and facilities shall be determined by the Board of Directors and may be charged directly to participating owners, or paid from the maintenance fund and levied as a special assessment due from the participants.

Section 5. Delegation of Duties. Nothing herein contained shall be construed so as to preclude the Association, through its Board of Directors and officers, from delegating to persons, firms or corporations of its choice, including any manager or managing agent, such duties and responsibilities of the Association as the Directors of the Association shall from time to time specify, and to provide for reasonable compensation for the performance of such duties and responsibilities.

Section 6. Applicable Laws. The Association shall be subject to and governed by the provisions of any statute adopted at any time and applicable to the Property; provided, however, that all inconsistencies between or among the permissive provisions of any statute and any provision of the Declaration and this Code, shall be resolved in favor of the Declaration and this Code, and any inconsistencies between any statute applicable to associations formed to administer property submitted to the fee-simple cluster development form of ownership, and the Articles or Code of the Association shall be resolved in favor of the statute. In the event of any

conflict or inconsistency between the provisions of the Declaration and the Articles or Code of the Association, the terms and provisions of the Declaration shall prevail, and the owners and all persons claiming under them covenant to vote in favor of such amendments in the Articles or Code as will remove such conflict or inconsistencies.

ARTICLE V DETERMINATION AND PAYMENT OF ASSESSMENTS

Section 1. Payment of Assessments. Following the establishment of the Association and prior to the preparation of the estimated budget in accordance with Section 2 of this Article V, annual assessments shall be paid in monthly installments by Owners (except the Developer shall not be charged with any assessments for Parcels, land or Living Units it owns) in an amount estimated by the Board of Directors as being sufficient to cover the initial working capital requirements for the Association payable by each Owner.

In addition to such regular monthly assessments, each purchaser of a Living Unit from the Developer will be required to make, at the time such purchaser acquires title to a Living Unit, an initial capital contribution to the Association in the amount of Two Hundred Dollars (\$200.00). The general purpose of this contribution is to provide the Association with a portion of the necessary initial working capital and/or a contingency reserve. Such funds may be used for certain prepaid items (e.g., insurance premiums, utility deposits and organizational, equipment and supply costs) and for such other purposes as the Board may determine. This initial capital contribution is not an escrow or advance, is not refundable and shall not be required of the Developer, but only from those persons who or which purchase a Living Unit or Living Units from the Developer.

Regular monthly assessments shall be paid to the Association commencing on the first day of the calendar month immediately following the date on which the first Living Unit is sold and the deed evidencing such sale shall have been filed for record with the Cuyahoga County, Ohio Recorder and shall continue to be due and payable on the first day of each and every calendar month thereafter. Said assessments shall be deposited when received by the Association in an account established in the name of the Association at a bank or savings and loan association in Cuyahoga County, Ohio. Living Unit Owners shall continue to pay such monthly assessments as aforesaid until revised assessments are made by the Board of Directors in the manner herein provided.

Section 2. Preparation of Estimated Budget. The annual budget for the initial year shall be first determined by Developer in good faith in consultation with the management company. The annual assessment for the initial year shall be \$135.00/month or \$1,620.00/year per Living Unit or Parcel. Each year on or before December 1st, the Board shall estimate the total amount necessary to pay the cost of wages, materials, insurance, services and supplies which will be required during the ensuing calendar year for the rendering of all services, together with a reasonable amount considered by the Association to be necessary for a reserve for contingencies and replacements, and shall on or before December 15th notify each owner in writing as to the amount of such estimate, with reasonable itemization thereof and the Owner's

monthly maintenance payment which is due not more than ten (10) days after such new annual or adjusted estimate shall have been mailed or delivered.

Section 6. Books and Records of Association. The Association shall keep full and correct books of account and the same shall be open for inspection by any owner or any representative of an owner duly authorized in writing, at such reasonable time or times during normal business hours as may be requested by the Owner. Upon ten (10) days' notice to the Board of Directors and upon payment of a reasonable fee, any Owner shall be furnished a statement of his account setting forth the amount of any unpaid assessments or other charges due and owing from such owner.

Section 7. Status of Funds Collected by Association. All funds collected hereunder shall be held and expended solely for the purposes designated herein, and (except for such special assessments as may be levied hereunder against less than all of the owners, and for such adjustments as may be required to reflect delinquent or prepaid assessments) shall be deemed to be held for the use, benefit and account of all of the owners in proportion to each owner's percentage ownership in the Common Areas.

Section 8. Annual Statements. Within one hundred twenty (120) days after the end of each fiscal year of the Association, the Board shall furnish to each Owner a financial statement consisting of: (A) a balance sheet containing a summary of the assets and liabilities of the association as of the date of such balance sheet; and (B) a statement of the income and expenses for the period commencing with the date marking the end of the period for which the last preceding statement of income and expenses required hereunder was made and ending with the date of said statement, or in the case of the first such statement, from the date of formation of the Association to the date of said statement. The financial statement shall have appended thereto a certificate signed by the President or the Vice President or Secretary or the Treasurer of the Association or by a public accountant or firm of public accountants to the effect that the financial statement presents fairly the financial position of the Association and the results of its operations in conformity with generally accepted accounting principles applied on a basis consistent with that of the preceding period except as may be specified therein.

Section 9. Annual Audit. The books of the Association shall be reviewed once a year by the Board of Directors, and such review shall be completed prior to each annual meeting. If requested by two or more members of the Board of Directors, such review shall be made by a Certified Public Accountant. In addition, and at any time, if requested by Owners having more than fifty percent (50%) of the voting power of the Association, or upon the request of two or more members of the Board of Directors, the Board shall cause an additional review to be made.

Section 10. Remedies for Failure to Pay Assessments. If an owner is in default in the monthly payment of the aforesaid charges or assessments for thirty (30) days, the Board of Directors may bring suit for and on behalf of themselves and as representatives of all owners, to enforce collection thereof or to foreclose the lien therefor as provided in the Declaration, and, there shall be added to the amount due the costs of said suit, together with legal interest and reasonable attorneys' fees to be fixed by the Court. To the extent permitted by the Declaration, any decision or any statute or law now or hereafter effective, the amount of any delinquent and

unpaid charges or assessments, and interest, costs and fees as above provided shall be and become a lien or charge against the Property of the owner involved when payable and may be foreclosed by an action brought in the name of the Board of Directors as in the case of foreclosure of liens against real estate, as provided in the Declaration. The members of the Board of Directors and their successors in office, acting on behalf of the other Owners, shall have the power to bid in the interest so foreclosed at foreclosure sale, and to acquire and hold, lease, mortgage and convey the same. Any mortgagee shall be entitled to written notice of such failure to pay such assessment. The Board of Directors shall have the power to suspend the voting rights and the right to use of the Common Areas of an Owner during any period in which such Owner shall be in default in the payment of any assessment levied by the Association. In addition, each Owner shall be personally liable for all assessments levied by the Association against his Living Unit during the period he has an ownership interest therein, and any assessment not paid within thirty (30) days after the same shall become due and payable, shall bear interest at the maximum rate allowed by law until such time as the assessment has been paid in full and the Association shall be entitled to levy against the delinquent Owner a service charge of five percent (5%) of the amount of the delinquent payment in order to defray the cost of collection.

Any encumbrancer may from time to time request in writing a written statement from the Board of Directors setting forth the unpaid Common Expenses with respect to the Living Unit covered by his or its encumbrance and unless the request shall be complied with within twenty (20) days, all unpaid Common Expenses which become due prior to the date of the making of such request shall be subordinate to the lien of such encumbrance. Any encumbrancer holding a lien on a Living Unit may pay any unpaid Common Expenses payable with respect to such Living Unit and upon such payment such encumbrancer shall have a lien on such Living Unit for the amounts paid at the same rank as the lien of his encumbrance.

ARTICLE VI INDEMNIFICATION

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

are not parties to or threatened with any such action, suit or proceeding is present, or, in the event of settlement, by a written opinion of independent legal counsel selected by the Board.

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

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

Section 4. Indemnification by Owners. The members of the Board and officers of the Association shall not be liable to the Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Owners shall indemnify and hold harmless each of the members of the Board and officers of the Association against all contractual liability to third parties arising out of contracts made on behalf of the Association except with respect to any such contracts made in bad faith or contrary to the provisions of the Declaration or this Code. It is intended that the members of the Board and officers of the Association shall have no personal liability with respect to contracts entered into on behalf of the Association. Every agreement made by any members of the Board, officer, employee or agent of the Association or by a management company, if any, on behalf of the Association, shall provide that such members of the Board, officer, employee or agent of the Association, or the management company, as the case may be, is acting only as agent for the Association and shall have no personal liability thereunder (except as Owner), and that each Owner's liability thereunder shall be limited to such proportion of the total liability thereunder as his percentage of interest in the Common Areas bears to the total percentage interest of all Owners in the Common Areas.

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

ARTICLE VII
GENERAL PROVISIONS

Section 1. Copies of Notice to Mortgage Lenders: Rights of First Mortgagees.

(A) Upon written request to the Board of Directors by the holder of any duly recorded mortgage or trust deed against any Unit ownership, the Board of Directors shall give such mortgage holder a copy of any and all notices permitted or required by the Declaration or this Code to be given to the owner or owners whose Living Unit ownership is subject to such mortgage or trust deed.

(B) A first mortgagee of a Living Unit shall be entitled to written notice from the Association of any default by its mortgagor Owner which is not cured within sixty (60) days. Any first mortgagee may from time to time request in writing a written statement from the Board of Directors setting forth any and all unpaid assessments due and owing from its mortgagor Owner with respect to the Living Unit subject to the lien of its mortgage and such request shall be complied with within fifteen (15) days from receipt thereof. Any first mortgagee holding a mortgage on a Living Unit may pay any unpaid Common Expenses assessed with respect to such Unit and upon such payment, such first mortgagee shall have a lien on such Unit for the amounts so paid at the same rank as the lien of its mortgage.

Section 2. Service of Notices on the Board of Directors. Notices required to be given to the Board of Directors or to the Association may be delivered to any member of the Board of Directors or officer of the Association either personally or by mail addressed to such member or officer at his Living Unit.

Section 3. Service of Notices on Devisees and Personal Representatives. Notices required to be given any devisees or personal representatives of a deceased owner may be delivered either personally or by mail to such party at his, her or its address appearing on the records of the court wherein the estate of such deceased owner is being administered.

Section 4. Non-Waiver of Covenants. No covenants, restrictions, conditions, obligations or provisions contained in the Declaration or this Code shall be deemed to have been abrogated or waived by reason of any failure to enforce the same, irrespective of the number of violations or breaches which may occur.

Section 5. Agreements Binding. All agreements and determinations lawfully made by the Association in accordance with the procedures established in the Declaration and this Code shall be deemed to be binding on all Owners, and their respective heirs, executors, administrators, successors and assigns.

Section 6. Notices of Mortgages. Any owner who mortgages his unit shall notify the Association, in such manner as the Association may direct, of the name and address of his mortgagee and thereafter shall notify the Association of the payment, cancellation or other

alteration in the status of such mortgage. The Association shall maintain such information in a book entitled "Mortgagees of Living Units."

Section 7. Severability. The invalidity of any covenant, restriction, condition, limitation or any other provision of this Code, or any part of the same, shall not impair or affect in any manner the validity, enforceability or effect the rest of this Declaration.

Section 8. Perpetuities and Restraints on Alienation. If any of the options, privileges, covenants or rights created by this Code shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints or 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, or Dick Cheney, Vice President of the United States of America.

Section 9. Definitions. The terms used in this Code (except as herein otherwise expressly provided or unless the context otherwise required) for all purposes of this Code and of any amendment hereto shall have the respective meanings specified in Article I of the Declaration.

Section 10. Amendments. Provisions of this Code may be amended by the Owners at a meeting held for such purpose by the affirmative vote of those entitled to exercise not less than seventy-five percent (75%) of the voting power, provided, however, that no amendment shall have any effect upon Developer, the rights of Developer under this Code and the rights of bona fide mortgagees of Living Units until the written consent of Developer and/or such mortgagees to such amendment has been secured.

Section 11. Captions. The captions used in this Code are inserted solely as a matter of convenience and shall not be relied upon and/or used in construing the effect or meaning of any of the text hereof.