

**MASTER DECLARATION OF COVENANTS, EASEMENTS  
AND RESTRICTIONS FOR  
BACK BAY AT ARROWHEAD LAKE**

THIS DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS FOR BACK BAY AT ARROWHEAD LAKE, is made this 30 day of January, 2013, by APL PROPERTIES, LLC., (the "Declarant") an Ohio Limited Liability Company.

PREAMBLE

Whereas, Declarant is the owner of real estate located in the City of Columbiana, Mahoning County (the "City") and described on Exhibit A attached hereto and made a part hereof; and (hereinafter known as "BACK BAY AT ARROWHEAD LAKE").

Whereas, it is the desire and intention of the Declarant to submit all of the property and Lots (as hereinafter defined) at BACK BAY AT ARROWHEAD LAKE to the terms and conditions of this Declaration together with the buildings, structures, improvements and fixtures of whatsoever kind thereon, and all rights and privileges belonging or in anyway pertaining thereto, owned by the Declarant and by each successor of the Declarant who stands in the same relation to BACK BAY AT ARROWHEAD LAKE as the Declarant; and

Whereas, it is the desire and intention of the Declarant to establish for its own benefit and for the mutual benefit of all future Owners or Occupants on BACK BAY AT ARROWHEAD LAKE, or any part thereof, certain easements and rights in, over and upon BACK BAY AT ARROWHEAD LAKE and certain mutually beneficial restrictions, reservations, and obligations with respect to the proper use, development, conduct, and maintenance thereof under a general plan for the development of a unified and preplanned residential area benefiting all Owners or Occupants within BACK BAY AT ARROWHEAD LAKE on this Phase 1 and subsequent phases; and

Whereas, except for the Lots, as defined hereinafter, which include residential homes, all other property within BACK BAY AT ARROWHEAD LAKE shall be Common Elements, as defined hereinafter. The Common Elements shall include a Recreational Area, as hereinafter defined, for the exclusive use of the Members of BACK BAY AT ARROWHEAD LAKE which may contain community structures and additional recreational areas as Declarant may add to BACK BAY AT ARROWHEAD LAKE, which shall be constructed by Declarant and maintained by the Association; and

Whereas, in order to enhance BACK BAY AT ARROWHEAD LAKE development, Declarant shall establish Back Bay Homeowners Association, Inc. ("Association") as an Ohio non-profit corporation. The Association shall be responsible for the maintenance of the Common Elements and other matters as set forth herein to

benefit BACK BAY AT ARROWHEAD LAKE. The Association will be controlled by a Board of Directors which shall operate based upon the By-laws as set forth herein; and

Whereas, there shall be within BACK BAY AT ARROWHEAD LAKE areas which may be designated as Limited Common Element. The Limited Common Element is a Common Element that a Declaration designates as reserved for use by a certain Lot or Lots, to the exclusion of other Lots.

Whereas, to further enhance the overall development of BACK BAY AT ARROWHEAD LAKE and to supplement the services provided by the Master Association, separate Condominium Developments within the BACK BAY AT ARROWHEAD LAKE Property may be created by the Declarant and there may be formed several Condominium Association Unit Owners Associations. Each separate Condominium Association shall be responsible for the maintenance of the Common Elements within their respective Condominium Development. The Condominium Associations shall have their own individual declarations which shall impose additional covenants and restrictions applicable just to their respective Condominium Association and not the entire Property; and

NOW, THEREFORE, for the purpose of protecting the value and desirability of BACK BAY AT ARROWHEAD LAKE, Declarant declares that all of the property described on Exhibit A, of land situated in the City of Columbiana, County of Mahoning, and State of Ohio and as shown on the ----- Plat as recorded in ----- Mahoning County Records of Plats, and any additional property as is hereafter subjected to this Declaration by Supplemental Declarations, shall be held, sold and conveyed subject to the following Declaration as to divisions, covenants, restrictions, limitations, conditions, easements, reservations and uses to which BACK BAY AT ARROWHEAD LAKE may be put, hereby specifying that the provisions of this Declaration shall constitute covenants to run with the real property and shall be binding on and inure to the benefit of the Declarant and each successor of Declarant and its and their respective heirs, executors, administrators, successors and assigns, and all parties having any rights title or interest in BACK BAY AT ARROWHEAD LAKE, including but not limited to, all Owners and Occupants of a Lot together with their grantees, successors, heirs, executors, administrators, devisees, successors, and assigns.

#### ARTICLE I

#### PREAMBLE; PROPERTY SUBJECT TO THIS DECLARATION; EXPANSION AND CONTRACTION OF PROPERTY / CREATION AND CHANGES TO LOTS

##### Section 1 – Preamble

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

Section 2 – BACK BAY AT ARROWHEAD LAKE

BACK BAY AT ARROWHEAD LAKE which is and shall initially be owned, held, transferred, sold, used and occupied subject to this Declaration is the real property described in Exhibit A.

Section 3 - Expansion and Contraction of BACK BAY AT ARROWHEAD LAKE

- (a) The Declarant shall have the unilateral right, privilege and option, from time to time during the Class "B" Control Period, to add additional real property to BACK BAY AT ARROWHEAD LAKE and to subject the same to the provisions of this Declaration and the jurisdiction of the Association. To add additional real property the Declarant shall execute and record a Subsequent Amendment to this Declaration which expressly provides that the land described therein shall become a part of BACK BAY AT ARROWHEAD LAKE and shall be subject to this Declaration and the Association, except as the same may be modified by the Subsequent Amendment.
- (b) The Declarant shall have the unilateral right, privilege and option, from time to time during the Class "B" Control Period to delete real property from BACK BAY AT ARROWHEAD LAKE (provided the lands so deleted have not been previously declared Common Elements or Open Space) and thereby free such lands from the provisions of this Declaration. Lands not owned by Declarant may be deleted from BACK BAY AT ARROWHEAD LAKE only with the written consent of the title owner thereof. To delete such lands, the Declarant shall execute and record a Subsequent Amendment to this Declaration which expressly provides that the land described therein shall no longer be a part of BACK BAY AT ARROWHEAD LAKE and shall no longer be subject to provisions of this Declaration.
- (c) After the end of the Class "B" Control Period the Association may from time to time add additional real property to BACK BAY AT ARROWHEAD LAKE and to subject the same to the provisions of this Declaration and the jurisdiction of the Association or may delete real property from BACK BAY AT ARROWHEAD LAKE (provided the lands so deleted have not been previously declared Common Elements or Open Space) and thereby free such lands from the provisions of this Declaration and the jurisdiction of the Association. Said addition or deletion shall require the affirmative vote of members of the Board with at least seventy-five percent (75%) of the voting power of the Board and the written approval of the Declarant so long as Declarant owns any portion of BACK BAY AT ARROWHEAD LAKE. To add or delete real property, a Subsequent Amendment to this Declaration shall be recorded with the Mahoning County Recorder office describing said real property being added or deleted.

Section 4 - Creation of and Changes to Lots

- (a) The Declarant shall have the exclusive right as permitted by law to create or to cause to be created Lots within BACK BAY AT ARROWHEAD LAKE on the Property. Further, as permitted by law, Declarant reserves the right from time to time to combine Lots, increase or decrease the size of and change the configuration of Lots so long as the Common Elements are not affected. The rights of Declarant set forth in this Section shall survive until the end of the Class "B" Control Period and if after the end of the Class "B" Control Period all Lots permitted under applicable law shall not have been created, the Declarant shall still have the right to create Lots within BACK BAY AT ARROWHEAD LAKE until all Lots permitted under applicable law have been created. If the Association shall have title to any land on which Declarant determines to create a Lot or to add to a Lot, the Association shall convey to the Declarant (or its nominee) at any time and from time to time upon request of Declarant and without cost, such portion of such land as is designated by Declarant in Declarant's sole discretion as being intended for Lots. If any portion of a Lot being changed under this Section is owned by an Owner, the prior consent of the owner must be obtained prior to the modification of the Lot.
- (b) Declarant is permitted to add additional property to BACK BAY AT ARROWHEAD LAKE. In the event property is added, the Declarant shall have the exclusive right as permitted by law to create or to cause to be created, additional Lots and Common Elements on said additional property.

Section 5 - Mineral Reservation

The Declarant hereby states that all mineral rights, including but not limited to, oil, gas and other hydrocarbons rights, royalties and benefits relating thereto, on the Property encumbered by these restrictions, have been severed from BACK BAY AT ARROWHEAD LAKE, and will not pass to any future homeowners.

**ARTICLE II**  
**EXHIBITS AND DEFINITIONS**

Section 1 - Exhibits

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

EXHIBIT "A": A legal description of BACK BAY AT ARROWHEAD LAKE.

EXHIBIT "B" The By-Laws

Section 2 - Definitions

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



- (a) "Area of Maintenance Responsibility" means the following areas: (i) in general, the Common Element as defined in this Section (including any Recreational Area) not located within a Lot and any recreational or other facilities thereon, (ii) any and all landscaping easements located within and/or as shown on the Plat of BACK BAY AT ARROWHEAD LAKE and as amended, together with their appurtenant facilities, (iii) As to Villa Lots: the landscaping, fertilizing of lawns, mulching, mowing, replacing, removing, clearing, pruning, cutting of underbrush, weeds, stumps, or other unsightly growth, (iv) provide snow removal services of driveways and sidewalks.
- (b) "Assessments" means Base Assessments and Special Assessments (as those terms are hereinafter defined) imposed by this Declaration. Assessment means the liability for an expense that is allocated to a Lot within BACK BAY AT ARROWHEAD LAKE.
- (c) "Association" or "Owners Association" means Back Bay Homeowner's Association, Inc., an Ohio non-profit corporation, its successors and assigns, which corporation is charged with certain responsibilities by the Declaration.
- (d) "Board" or "Board of Directors" shall be the elected body which governs this community.
- (e) "Builder" means MASTER PLAN BUILDERS, INC., unless other Builders are approved by the Declarant, who shall be the exclusive Builder within BACK BAY AT ARROWHEAD LAKE, for the purpose of the construction of the improvements within BACK BAY AT ARROWHEAD LAKE.
- (f) "By-Laws" or "Regulations" means the By-Laws of this Association attached hereto as Exhibit "B", as they may be amended from time to time, that provides for the operation of the owners association.
- (g) "Class "B" Control Period" means the period beginning on the date hereof and ending on the earliest of (i) the date that Dwelling Units or other improvements have been constructed and occupied on one hundred percent (100%) of the maximum number of Lots permitted to be created in BACK BAY AT ARROWHEAD LAKE, as determined by Declarant, (ii) at the end of the year 2031, or (ii) the date the Association receives written notice from the Declarant that Declarant has elected to transfer control.
- (h) "City" means the City of Columbiana, Ohio.
- (i) "Cost of Collection" or "Collection Charges" means interest, administrative late fees, enforcement assessments, collection costs, all legal and accounting fees and other costs as set forth in Article IX, Section 3 of this Declaration.

- (j) "Common Element" and "Common Area" means (i) all real property in BACK BAY AT ARROWHEAD LAKE, other than Lots, but including, without limitation, private roads, drives, paths and walks or sidewalks even if within the bounds of a Lot and the entrances, exits and any other installations related thereto; (ii) the Recreational Area which may include community structures and other recreational facilities, to be installed by Declarant; (iii) on-site Utility Facilities not located within the exterior surfaces of the exterior walls of a Dwelling Unit; (iv) personal property owned by the Association including personal property used for maintenance or in connection with the operation of recreational facilities or other Common Element; (v) and any landscaped or open areas not located within a Lot or areas subject to a landscaping easement.
- (k) "Common Expenses" means any expense or financial liability incurred by the Association for the general benefit of the Owners, BACK BAY AT ARROWHEAD LAKE and/or the Association including reasonable reserves, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration.
- (l) "Community-Wide Standard" means the standard of conduct, maintenance, or other activity generally prevailing throughout BACK BAY AT ARROWHEAD LAKE. Such standard shall be determined by the Board or the Architectural Review Committee (as hereinafter defined in Article X) from time to time. General guidelines will include that (1) the siding, gutters and downspouts will need to be replaced as needed; (2) roof shall be replaced as needed; (3) exterior cedar siding shall be refinished as needed; (4) each Villa shall be power washed as needed.
- (m) "Director" means a member of the Board of Directors.
- (n) "Declarant" means the owner of property who executes and records a declaration that the property is a planned community. Declaration means this Declaration of Covenants, Easements and Restrictions for BACK BAY AT ARROWHEAD LAKE, together with its By-Laws, as the same may be amended from time to time, which when filed declares the Property is a planned community subject to the provisions of ORC 5312.01 to 5312.15.
- (o) "Declarant Control" means a period of time in which the Declarant controls the Owners Association by appointing or electing the members of the Association's Board of Directors.
- (p) "Dwelling Lot" means a Lot with a Dwelling Unit constructed thereon.
- (q) "Dwelling Unit" or "Dwelling" means either a Villa or a Single Family Home.
- (r) "Eligible Mortgage Holders" means banks, savings and loan associations, insurance companies and other institutional lenders, holders, insurers or

guarantors of first mortgages on BACK BAY AT ARROWHEAD LAKE or portions thereof.

- (s) "Garage Lots" means a Lot for construction of a stand alone garage(s)
- (t) "BACK BAY AT ARROWHEAD LAKE" and "Property" means the real property as shown on Exhibit A attached hereto and made a part hereof, and further as the same may be added to or deleted from in accordance with the provisions of this Declaration, by amendment to this Declaration from time to time. BACK BAY AT ARROWHEAD LAKE does not include dedicated streets and highways.
- (u) "Limited Common Element" means a common element that a Declaration designates as reserved for use by a certain Lot or Lots, to the exclusion of other Lots.
- (v) "Lot" means (i) a Lot for the construction of a detached Villa, Single Family Home or garage. Each Lot shall contain the structure to be constructed thereon and additional abutting land as designated by the Declarant, and shall be shown on a plat which will be recorded in the public records of Mahoning County, Ohio prior to the conveyance of such Lot by the Declarant. A "Lot" shall be deemed to include any structures thereon. Lots will be conveyed by Declarant to Owners, Builder or successor Declarants for a consideration which will belong solely to the Declarant. In the event that the size or configuration of a Lot is subsequently changes prior to the end of the Class "B" Control Period, Declarant shall have the right to charge a consideration which will belong solely to Declarant.
- (w) "Master Assessments" means Base Master Assessments and Special Master Assessments (as those terms are defined in the Master Declaration) imposed pursuant to the Master Declaration.
- (x) "Master Association" means Back Bay Homeowners Association, Inc. an Ohio non-profit corporation, its successors and assigns, which corporation is charged with certain responsibilities by the Master Declaration.
- (y) "Master By-Laws" means the By-Laws of the Master Association.
- (z) "Master Declaration" means this Master Declaration of Covenants, Easements and Restrictions for BACK BAY AT ARROWHEAD LAKE, INC., recorded on in ORV\_\_\_\_\_, Page\_\_\_\_\_, Mahoning County Records, as the same has been and may in the future be amended from time to time. The Master Declaration creates rights, obligations, easements, covenants and restriction that affect the Property and other properties subjected to the Master Declaration. The Master Declaration grants and reserves easements for access, maintenance, utility and other purposes for the benefit of said properties. The Master Declaration further provides for the creation of the Master Association for the ownership and

operation of the Common Elements and Facilities and for the maintenance, repair and replacement of certain facilities to serve the Development and other properties; and for the ownership, operation, maintenance and repair of properties intended to remain as open areas, roadways, utilities, security facilities, recreation facilities, retention ponds and other amenities and facilities to be used in common by the Development and other parties. The Master Declaration further imposes covenants and restrictions upon the other Homeowner's Associations and Condominium Developments within and other properties and imposes assessments upon the individual Lots Owners and Unit Owners of the Homeowner's Development and Condominium Development and the owners of other properties to provide sufficient funds for the Master Association to carry out its responsibilities. Unless otherwise provided herein, capitalized terms used herein starting with the word "Master" shall have the meanings ascribed to them in the Master Declaration.

- (aa) "Member" means a Person entitled to membership in the Association as set forth in this Declaration.
- (bb) "Mortgage" means a construction mortgage or other mortgage deed to secure debt, or any other form of security deed, including any collateral security documents executed in connection therewith.
- (cc) "Occupant" means a person or persons, natural or artificial, in possession of a Villa or other Dwelling within the Property.
- (dd) "Owner" or "Lot Owner" means one (1) or more Persons who hold the record title to any Lot which is part of BACK BAY AT ARROWHEAD LAKE, but excluding in all cases a party holding an interest merely as security.
- (ee) "Ownership Interest" means the entire right, title and interest of any Owner in all of the freehold and leasehold estates of such Owner in his/her/its Lot.
- (ff) "Person" means a natural person, corporation, partnership, trustee, limited liability company or other legal entity.
- (gg) "Recreational Area" means the Recreational Area, which may include community structures, and additional recreational areas as Declarant may add to BACK BAY AT ARROWHEAD LAKE, and shall be paid for and maintained by the Association.
- (hh) "Single Family Home" means a detached building that is designated for use and occupancy for single family or household residential purposes and is identified as such on the Plat or within the Declaration or future amendments hereto.

- (ii) "Utility Facility" means any irrigation line, water, sewer, drainage, electric, gas, cable television, telephone, and any other utility lines, pipes, conduits, wires, facilities and appurtenances thereto.
- (jj) "Villa" means a detached building or the portion of a building that is designated and intended for use and occupancy for single-family or household residential purposes.

### ARTICLE III PROPERTY RIGHTS – OWNERSHIP OF COMMON ELEMENT

#### Section 1. Easement to Use Common Element.

Every Owner shall have a right and easement of enjoyment in and to the Common Elements, subject to this Declaration and to any restrictions or limitations of record. Any Owner may delegate his or her right of enjoyment to occupants of his or her Dwelling Unit and guests, subject to rules and regulations which may be adopted from time to time by the Board. Notwithstanding the above, no Owner or Occupant may install or place any object in, or change or remove any portion of the Common Element without first obtaining the written consent of the Declarant or the Board.

#### Section 2. Ownership of Common Element.

Declarant shall convey or cause the conveyance of the Common Element to the Association at any time and from time to time, but in any event the Association shall have title to all of the Common Element by the fifth annual anniversary of the end of the Class B Control Period.

#### Section 3. Limited Common Element.

The Declarant or the Association, each in its respective sole and absolute discretion, shall have the right to create permanent or temporary Limited Common Element for the benefit of one (1) or more Owners, to the exclusions of other Lots, upon application pursuant to rules to be Adopted by the Board. The Declarant or the Association shall have the right to condition the granting of a Limited Common Element on reasonable requirements, such as, but not as a limitation, the obtaining of liability or other insurance and the maintenance with respect thereto, and for just cause, the Declarant or the Association shall have the right to terminate such Limited Common Element.

### ARTICLE IV THE ASSOCIATION

#### Section 1 – Existence

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



## Section 2 – Membership and Voting Rights

### (a) Classes of Membership

The membership of the Association is and shall be divided into three (3) classes:

- (1) Class "A" Membership. Each Owner of a Lot, which has a Dwelling Unit built thereon, shall automatically be a Class "A" Member of the Association. Furthermore, membership in the Association is mandatory of all Owners of Lots within BACK BAY AT ARROWHEAD LAKE. The Class "A" Membership is appurtenant to the ownership of each Lot and shall not be separable from the ownership of any Lot and shall be deemed to have been terminated with any voluntary or involuntary conveyance of any Lot, 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 Lot owned.
- (2) Class "B" Membership. The Declarant shall automatically be the sole Class "B" Member of the Association.
- (3) Class "C" Membership. The Class "C" Members shall be: (i) occupants of a Dwelling Unit that are not the Lot Owner but legally occupy the Dwelling Unit under a lease agreement. Said lease agreement must be for a minimum term of one (1) year; (ii) Lot Owners without a Dwelling Unit built on the Lot; and (iii) Garage Owners.

### (b) Voting Rights

- (1) Class "A" Member. Class "A" Members shall be entitled to one (1) equal vote for each Lot in which they hold the interest required for membership under Section 2(a)(1) hereof; there shall be only one (1) vote for each Lot. In any situation where a Member is entitled to exercise a vote and more than one (1) Person holds the interest in such Lot required for membership, the vote for such Lot shall be exercised as those Persons determined 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 Lot shall be suspended if more than one (1) Person seeks to exercise it. In

the case of a Lot 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 Lot, 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 Declarant. The rights of the Class "B" Member, including the right to approve actions taken under this Declaration and the By-Laws, are specified elsewhere in the Declaration and the By-Laws. 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 By-Laws. After termination of the Class "B" Control Period in accordance with Article III, Section 2 of the By-Laws, if the Declarant continues to own any Lot, the Declarant shall have a right to disapprove actions of the Board and any committee as provided in Article III, Section 3, of the By-Laws.
- (3) Class "C" Member. Class "C" members shall receive all the benefits of the Association but shall not be entitled to vote on any matter brought before the members of the Association.

### Section 3 – Board and Officers of the Association

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

### Section 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 Elements or for meeting its obligations with respect to the Areas

of Common Responsibility, 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 Article and By-Laws 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 Elements from foreclosure.
- (c) To convey the Common Elements 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 anybody or agency which has the power of eminent domain or condemnation over any portion of BACK BAY AT ARROWHEAD LAKE.

## ARTICLE V RESPONSIBILITIES OF ASSOCIATION AND OWNERS

### Section 1 Maintenance Responsibility of Association and Owners

- (a) The Association shall be responsible for all maintenance and shall make all repairs and replacements to maintain and keep in good condition and repair, clean and aesthetically pleasing in accordance with Community-Wide Standards and the Area of Maintenance Responsibility, subject only to the provisions of this Declaration, including, without limitation, repairing and replacing paving, trash removal, removing snow, cutting grass, pruning and replacing landscaping, painting and decorating the recreational facilities and providing all other maintenance, repair and replacements required to comply with the above standards.
- (b) Except for the Area of Maintenance Responsibility, each Owner of a Lot shall keep such Lot in good condition and repair, clean, and aesthetically pleasing in accordance with Community-Wide Standards. The Association shall have the right, after giving written notice to the Owner of a Lot, as the case may be, and the failure of the Owner of a Lot, as the case may be, to comply with the Maintenance responsibilities as provided

within a reasonable time after giving of such notice (no notice or waiting period being required in an emergency), as determined by the Association in its sole discretion, from time to time, to assume all or a portion (and for such period of time as determined by the Association) of the maintenance responsibilities required of the Owner of a Lot, as the case may be. In such event, all costs of such maintenance shall be assessed (prorate) by a Special Assessment (hereinafter defined) levied against the Owner of the Lot, as the case may be, for which the services are provided.

- (c) Each Owner shall keep the exterior of his or her Dwelling Unit and improvements thereon in good condition and repair, and replacement, clean and aesthetically pleasing and in keeping with Community-Wide Standard, of the Owner's lot and improvements thereon, including the Dwelling Unit and the utility lines serving that Dwelling Unit.
- (d) Each Owner shall make all repairs and replacements and shall perform such maintenance otherwise required of the Association hereunder necessitated as the result of the tortuous or negligent acts or omissions of such Owner or any Occupant of an Owner's Dwelling Unit or, in the discretion of the Board, the Board may perform the required maintenance, repair or replacement and charge such Owner for the cost thereof.

## Section 2 Insurance

- (a) Property Insurance. The Association shall have the authority to and shall obtain special risk property hazard insurance, if reasonably available, for all insurable improvements on the Common Element, including builder's risk coverage, naming Declarant, during the Class B Control Period, as an additional insured and loss payee. If special-risk coverage is not reasonably available, then at a minimum, an insurance policy providing fire and extended coverage shall be obtained if that is reasonably obtainable. This insurance shall be in an amount sufficient to cover one hundred percent (100%) of the replacement cost in the event of damage or destruction from any insured casualty without co-insurance penalty.
- (b) Liability Insurance. The Association shall further keep in full force and effect with Declarant, and, if possible, the Owners, as additional insured's, public liability insurance with personal injury liability coverage and with a contractual endorsement with respect to the Common Element and its improvements, including, without limitation, an Exclusive Use Area, with minimum limits of Three Million Dollars (\$3,000,000.00), on account of bodily injuries to or death of one (1) or more than one (1) person as a result of any one (1) accident or disaster and Five Hundred Thousand Dollars (\$500,000.00) on account of damage to property. If there is an Exclusive Use Area, the additional cost, if any, of providing liability insurance for such Exclusive Use

Area shall be charged to the Person or persons for whom the Exclusive Use Area was created.

- (c) Deductible – General Provisions. The property hazard insurance policies may contain a \$1,000.00 deductible. All insurance coverage obtained by the Association shall be governed by the provisions hereinafter set forth:
  - (i) All policies shall be written with a company licensed to do business in Ohio.
  - (ii) All policies on the Common Element shall be for the benefit of the Association and its Members, and there shall be a loss payable provision in any builders risk policy for the benefit of mortgagees providing construction financing on the Common Element.
  - (iii) Exclusive authority to adjust losses under policies obtained by the Association in BACK BAY AT ARROWHEAD LAKE shall be vested in the Association; provided, however, no mortgagee having an interest in such losses may be prohibited from participating in the settlement negotiations, if any, related thereto.
  - (iv) In no event shall the insurance coverage obtained and maintained by the Association hereunder be brought into contribution with insurance purchased by individual Owners, Occupants, or their mortgagees.
  - (v) All property hazard insurance policies shall have an agreed amount endorsement.
- (d) The Association shall be required to make every reasonable effort to secure insurance policies that will provide for the following:
  - (i) a waiver of subrogation by the insurer as to any claims against the Declarant, Board, its manager, the Owners, the Occupants, and their respective tenants, servants, agents, and guests;
  - (ii) a waiver by the insurer of its rights to repair and reconstruct, instead of paying cash;
  - (iii) a statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal on account of any one or more individual Owners;
  - (iv) A statement that no policy may be canceled, invalidated, suspended, or subject to non-renewal on account of the conduct of Declarant, any trustee, officer, or employee of the Association or its duly authorized manager without prior demand in writing delivered to the Association to cure the defect and the allowance of a reasonable time thereafter within which the defect may be cured by the Association, its manager, any Owner of mortgagee;
  - (v) that any "other insurance" clause in any policy exclude individual Owners' policies from consideration; and



(vi) that the Association and any named insured (and any named mortgagee) will be given at least thirty (30) days notice prior to cancellation and ten (10) days notice upon non-payment.

(e) Other Insurance; in addition to the other insurance required by this Section, the Association shall obtain, as a Common Expense, worker's compensation insurance, if and to the extent required by law, directors and officers liability coverage, if reasonably available, a fidelity bond or bonds on Directors, officers, employees, and other Persons handling or responsible for the Association's funds, and flood insurance, if required. The amount of fidelity coverage shall be determined in the Directors' reasonable business judgment but, if reasonably available, may not be less than three (3) months Assessments on all Lots, plus reserve on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least ten (10) days notice upon non-payment and at least thirty (30) days notice prior to cancellation.

### Section 3 Taxes and Assessments.

The Association shall pay all real estate taxes and assessments levied against the Common Element and any other property owned by the Association, general or special.

### Section 4. Utilities Charges.

The Association shall pay for all charges for water, sewer, electricity, gas, telephone and any other utility services used, rented or supplied to or in connection with any property owned, maintained, and/or operated by the Association. Each Dwelling Unit shall have its own separate utility meters.

The Declarant is installing the sanitary sewer system within BACK BAY AT ARROWHEAD LAKE and if any addition and/or extension of the sewer lines or facilities within or beyond the Property, are added to and/or extended by the Declarant, Association, City of Columbiana, Mahoning County or any other entity, any proceeds from such addition and/or extension shall be payable to the Declarant. The Declarant its successor and assigns further reserves a non-exclusive easement upon, across, over, through and under the Common Elements within BACK BAY AT ARROWHEAD LAKE, for ingress, egress, installation, addition and/or extension, replacement, repair and maintenance of said sewer lines and facilities. This right is reserved by the Declarant its successor and assigns and shall continue even after the end of the Class B control period.

**ARTICLE VI**  
**MANAGEMENT AND OPERATION OF ASSOCIATION**

**Section 1 - Common Element.**

The Association shall ultimately own all Common Element within BACK BAY AT ARROWHEAD LAKE and by virtue of said existing or future ownership, shall have the responsibility for the management, maintenance, operation, and control of said Common Element and all facilities therein. The Association shall be responsible for the operation of any Recreational Area and the recreational facilities which may be constructed on the Recreational Area or other Common Element.

**Section 2 - Personal Property and Real Property for Common Use.**

The Association, through action of its Board, may acquire, hold, and dispose of tangible and intangible personal property and real property. The Board acting on behalf of the Association, shall accept any real or personal property, leasehold, or other property interests within BACK BAY AT ARROWHEAD LAKE conveyed to it by the Declarant. Cash belonging to the Association may be invested in tangible personal property (such as bank accounts) so long as such investment is insured or issued by the United States Government or an agency thereof. Cash may also be deposited in money market funds of national brokerage firms.

**Section 3 - Employees and Managers.**

The Association shall have the right to engage employees and agents, including without limitation, attorneys, accountants, architects, engineers, landscape architects and other consultants and maintenance firms and contractors. The Association shall have the right to delegate all or any portion of its authority and responsibilities to a manager, managing agent, or management company (a "Manager"). Such delegation may be evidenced by a management contract which shall provide for the duties to be performed by the Manager and for the payment to the Manager of reasonable compensation. Upon the expiration of each management agreement, the Association may renew said management agreement or enter into a different agreement with the same or a different Manager, 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 Manager with whom the Association shall enter into an agreement after the expiration of the then existing management agreement. The Manager may be an entity owned, controlled by, affiliated with, or associated with the Declarant or any shareholder, officer, director, agent or employee of Declarant (an "Affiliate"), but any such management agreement with Declarant or an affiliate of Declarant shall not extend longer than one (1) year after the end of the Class B Control Period. After the Class B Control Period, each management agreement shall provide that it may be terminated by either party with ninety (90) days written notice.

**Section 4 - Rules and Regulations.**

The Association, through its Board, may make and enforce reasonable rules and regulations governing the use of the Common Element including the recreational

facilities and equipment, which rules and regulations shall be consistent with the rights and duties established by this Declaration.

Section 5 - Enforcement.

The Association shall take all actions reasonably necessary under the circumstances to enforce the provisions of the Declaration. Sanctions for violation of any covenant of this Declaration or of any rules adopted by the Board may include reasonable monetary fines (as set forth in the by-Laws) and suspension of the right to use Common Element including recreational facilities that are part of the Common Element. The Board shall, in addition, have the power to seek injunctive or other equitable relief in any court for violations or to abate nuisances and shall be entitled to recover its legal fees and expenses so incurred. Sanctions may be imposed upon Owners and Occupants for any violation caused by such Owners or Occupants of such Owners Dwelling Units or the guests of any of them.

Section 8 - User Fees.

The Association shall have the right to impose fees on Owners and Occupants and their guests for use of any of the facilities on the Common Element as further described herein.

Section 9 - Implied Rights.

The Association may exercise any other right or privilege given to it expressly by this Declaration or the By-Laws, and every other right or privilege reasonably to be implied from the existence of any right or privilege give to it herein or reasonably necessary to effectuate any such right or privilege. The provisions of this Section shall be reasonably construed.

**ARTICLE VII**  
**MASTER ASSOCIATION**

SUBJECT TO MASTER DECLARATION.

Each Lot Owner in addition to being a Member of BACK BAY HOMEOWNERS ASSOCIATION, INC., and subject to the provisions of this Declaration and any amendments thereto, shall also belong to the BACK BAY HOMEOWNERS ASSOCIATION, INC., as a Class "A" Member of the Master Association, and be subject to the Master Declaration, Master By-Laws, and Rules of the Master Association associated therewith. Membership in both Associations is mandatory of all Lot Owners.

In accordance with the requirements for the Master Declaration, Master Bylaws, Rules and Regulations, each Lot Owner upon acquisition of title to his Lot, shall automatically become a member of the Master Association, which association is charged by the Master Declaration, Master Bylaws, Rules and Regulations with certain responsibilities pertaining to the overall Property of which this Declaration Property is a part. Moreover, the Master Association will have the right to assess each Lot Owner for a share of the costs and expenses incurred by the Master Association (including Special

Master Assessments pursuant to the Master Declaration) in the performance of its functions, and will have a lien right against each Lot to secure the payment of the Master Assessments it imposes. The Master Association shall collect as a Common Expense of the Lot Owners all Master Assessments duly imposed by the Master Association against the Lot Owners. Each Lot shall pay an equal share of the costs and expenses attributable to the Lots by the Master Association.

## ARTICLE VIII ASSESSMENTS

### Section 1 - Creation of Assessments

- (a) There are hereby created Assessments for Association expenses as may from time to time specifically be authorized by the Association to be commenced at the time and in the manner set forth in this Article. There shall be three (3) types of Assessments: (i) Master Assessments to fund Expenses of the Master Association which includes the costs associated with maintaining the Area of Maintenance Responsibility; (ii) Base Assessments to fund Common Expenses; and (iii) Special Assessments as described in Section 6 of this Article.
- (b) The Association may assess a Lot Owner for any of the following: (1) Enforcement assessments and individual assessments for utility service imposed or levied in accordance with the Declaration, and expenses the Board incurs in collecting those assessments; (2) Costs of maintenance, repair, or replacement incurred due to the willful or negligent act of an Owner or occupant of a Lot or their family, tenants, guests, or invitees, including attorney fees, court costs, and other expenses; (3) Costs associated with the enforcement of the Declaration or the rules and regulations of the Owners Association, including attorney fees, court costs, and other expenses; (4) Costs or charges the Declaration or By-Laws permit.
- (c) Each Owner by acceptance of a deed or recorded contract of sale to any portion of BACK BAY AT ARROWHEAD LAKE is deemed to covenant and agree to pay Master Assessments and any Assessments required by this Declaration.
- (d) All Assessments, together with Collection Costs paid or incurred to collect the Assessments shall be a charge on the real property encumbered by this Declaration and shall be a continuing lien upon the Lot against which each Assessment is made. Each such Assessment, together with the Collection Costs, shall be the personal obligation of the Owner of such Lot at the time the Assessment was first payable, and his or her Grantee, who shall be jointly and severally liable for such portion thereof as may be due and payable at the time of conveyance.

Section 2 – Calculation of Master Assessment.

Lot Owners are subject to any Master Assessments imposed based upon the Master Declaration. The portion of the Master Assessment charged to each Lot Owner to cover the costs associated with the Area of Maintenance Responsibility shall be based upon the actual quoted price by the Company contracted to do the work for each Lot. An initial Master Assessment has been set at one hundred seventy-five (\$175.00) dollars per month for each Lot. Said initial Master Assessment shall be paid by direct deposit into an account established by the Master Association. Declarant shall not be responsible for payment of any Master Assessment on any Lot or Property titled in Declarant's name. The Master Assessment for the first year will be due no later than the closing of each Lot, and shall be prorated if closed during the course of a year.

Section 3 - Calculation of Base Assessment.

- (a) Base Assessments shall initially be thirty (\$30.00) dollars per month for each Lot. Said Base Assessment shall be paid by direct deposit into an account established by the Association. Declarant shall not be responsible for payment of any Base Assessment on any Lot or Property titled in Declarant's name. The Base Assessment for the first year will be due no later than the closing of each Lot, and shall be prorated if closed during the course of a year.
- (b) Initial Capital Contribution – In addition, the Association may have a working capital reserve fund in place to pay for any capital needs of the Association (Working Capital Reserve Fund). This will be a capital contribution for each Lot which will be placed into the Working Capital Reserve Fund, and the amount of said capital contribution shall be set by the Declarant as necessary. Said Reserve Account shall be used for Common Element maintenance only, not for use on Dwelling Units or other structures outside of the Common Element.
- (c) Thereafter, prior to the beginning of each fiscal year of the Association, the Board shall estimate, and equally prorate among the Lots the Common Expenses and an amount deemed adequate by the Board to fund the Working Capital Reserve Fund. Such calculation shall be based on the number of Lots at the beginning of each fiscal year.
- (d) If the amounts so collected are, at any time, insufficient to meet all obligations for which those funds are to be used, the deficiency shall be assessed by the Board among the Lots on the same basis as heretofore set forth.

Section 4 - Date of Commencement of Assessments.

Except as set forth in Section 2 of this Article above, the Assessments shall be due and payable in a manner and on a schedule as the Board of Directors may provide. Annual Assessments shall be adjusted according to the number of days remaining in the calendar year at the time Assessments commence on the Lot.



Section 5 - Budget.

The Declarant or the Board shall prepare or cause the preparation of an annual operating budget for the Association covering the estimated Common Expenses of the Association during the coming year. Also, as part of the estimated Common Expenses there shall be an additional amount determined which shall be placed in the Working Capital Reserve Fund for replacement of capital items and the budget shall include a contribution to be determined by the Association to such Working Capital Reserve Fund. The Association shall deliver a copy of the Common Expense budget and notice of the amount of the Base Assessment to be levied against each Lot for the following year to each Owner at least thirty (30) days prior to the beginning of the calendar year. Notwithstanding the foregoing, in the event the Association fails for any reason to determine the budget for any year, then and until such time as a budget shall have been determined as provided herein, the budget in effect for the immediately preceding year shall continue for the current year.

Section 6 - Special Assessments – User's Fees

- (a) In addition to the Base Assessments authorized above, the Association may levy a Special Assessment from time to time applicable to all Lots for payment of extraordinary nonrecurring expenditures. In addition, the Association may levy a Special Assessment from time to time applicable to all Lot for construction of recreational facilities which are not being installed and paid for by Declarant. Such Special Assessments shall be computed on the same basis as the Base Assessments are computed. Such Special Assessments shall be payable in such manner and at such times as may be determined by the Board, and may be payable in installments extending beyond the year in which the Special Assessment is approved, if the Board so determines. The Board may also levy Special Assessments in accordance with Article XIV of the Declaration.
- (b) The Board shall have the right to impose reasonable user's fees for the use of the Recreational Area(s). To the extent user's fees are imposed, the revenue so derived shall be used to offset the costs and expenses of the Recreational Area and being charged as Common Expenses.

Section 7 - No Exemption for Non-Use of Facilities; No Refund of Reserves

A Member not otherwise exempt from the Assessments may not exempt himself from liability for Assessments levied against him by waiver of the use of the Common Elements that are owned and/or operated by the Association. Furthermore, 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 8 - Creation of Lien and Personal Obligation

Each Owner hereby covenants and agrees by acceptance of the deed to a Lot whether or not it shall be so expressed in any such deed or other conveyance, to pay to the Association all Assessments levied against such Owner in accordance with this Declaration on or before the due date of any such Assessment. In the event that the

Assessment is not paid by the tenth (10<sup>th</sup>) day of the month, then such Assessment shall be "delinquent" and the Assessment, together with the Collection Costs, shall, upon "Perfection" as provided in Article IX of this Declaration, become a continuing lien upon the interest of such Person and his Lot and shall bind such Owner, his heirs, devisees, personal representatives, successors and assigns. A Co-Owner of a Lot shall be personally liable, jointly and severally, with all Co-Owners for all Assessments made by the Association with respect to said Lot.

#### Section 9 - Non-Liability of Foreclosure Sale Purchaser for Past Due Assessments

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

#### Section 10 - Liability for Assessments on Voluntary Conveyance

Upon the voluntary conveyance of an Ownership Interest the grantee of the Ownership Interest shall be jointly and severally liable with the grantor for all unpaid Assessments levied pursuant to this Declaration against the grantor of his Ownership Interest prior to the time of the grantor's conveyance, without prejudice to the grantee's rights to recover from the grantor the amounts paid by the grantee therefore. However, any such prospective grantee, upon written request delivered to the Association, shall be entitled to a statement from the Board setting forth the amount of all unpaid Assessments due the Association with respect to the Ownership Interest to be conveyed and such grantee shall not be liable for, nor shall the Ownership Interest conveyed be subject to a lien, for any unpaid Assessments which become due prior to the date of the making of such request if the same are not set forth in such statement. The Association may require the advance payment of a processing fee for the issuance of such statement. A devise of an Ownership Interest or the distribution of said Ownership Interest pursuant to the Statue of Descent and Distribution shall be deemed to be a voluntary conveyance.

#### Section 11- Allocation of Assessment

The Owners Association shall credit any amount it receives from a Lot Owner in the following order: (1) to interest owed to the Owners Association; (2) to administrative late fees or enforcement assessments owed to the Owners Association; (3) to collection costs, attorney fees, paralegal fees incurred in collecting the assessment; (4) to the

oldest principal amounts the Owner owes to the Owners Association for the common expenses chargeable against the Lot or Dwelling Unit.

#### Section 12 - Exempt Property

Notwithstanding anything to the contrary herein, Lots and/or Common Elements owned by the Declarant shall be exempt from payment of Assessments or Additional Assessments.

### ARTICLE IX LIENS

#### Section 1 - Perfection of Lien

If any Owner shall fail to pay Assessments levied in accordance with this Declaration (such Owner hereinafter referred to as the "Delinquent Owner") when due and such Assessment(s) is delinquent, or if an Owner shall violate any rule or breach any restriction, covenant or provision contained in this Declaration or in the By-Laws, 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 Mahoning 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 Article IV, Section 3)
- (d) A statement referring to the provisions of this Declaration authorizing the Certificate of Lien.

#### Section 2- Dispute as to Assessment

Prior to imposing a charge for damages or an enforcement assessment, the Board shall give the Lot Owner written notice that includes a description of the property damage or violation, the amount of the proposed charge or assessment, a statement that the owner has a right to a hearing before the Board to contest the proposed charge or assessment, a statement setting forth the procedures to request a hearing, and a reasonable date by which the Lot Owner must cure a continuing violation to avoid the proposed charge or assessment if such an opportunity to cure is applicable.

To request a hearing, the Lot Owner must deliver a written notice to the Board not later than the tenth day after receiving the notice described in the preceding paragraph. If the Lot Owner fails to make this request within said ten (10) day period, the right to that hearing is waived, and the Board immediately may impose a charge for damages or an enforcement assessment pursuant to the above provisions. If a Lot Owner requests a hearing, at least seven days prior to the hearing the Board shall provide the Lot Owner with a written notice that includes the date, time, and location of the hearing. The Board will not levy a charge or assessment before holding any requested hearing. Within 30 days after a hearing at which the Board imposes a charge

or assessment, the Lot Owners Association shall deliver a written notice of the charge or assessment to the Lot Owner. Any required written notice must be delivered to the Lot Owner or any occupant of the Dwelling Unit by personal delivery, by certified mail, return receipt requested, or by regular mail.

Section 3 - 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 4 - Priority / Foreclosure

A lien perfected under this Article IX shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of first mortgages against Lots. 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'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 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 6 - Personal Obligations

The obligations created pursuant to this Article IX 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 X**  
**REMEDIES OF THE ASSOCIATION**

Section 1 - Denial of Voting Rights

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

Section 2 - Specific Remedies

The violation of any Rule, or the breach of any restriction, covenant or provision contained in this Declaration or in the By-Laws, shall give the Association and the Declarant the right, in addition to all other rights set forth herein and provided by law, (i) to enter upon the Lot or portion thereof upon which, or as to which, such violation or breach exists, and summarily abate and remove, at the expense of the Owner where the violation or breach exists, any structure, thing, or condition that may exist thereon, which is contrary to the intent and meaning of this Declaration, the By-Laws, or the Rules, and the Association, or its designated agent shall not thereby be deemed guilty in any manner of trespass; (ii) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach; (iii) to commence and prosecute an action for specific performance or an action to recover any damages which may have been sustained by the Association or any of its Member as well as an action for punitive damages if warranted; and/or (iv) 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 3 of this Article.

Section 3 - Cost of Collection

If any Owner fails to pay any 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, an administrative fee, not to exceed ten percent (10%) 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 administrative fee shall be in addition to interest and the expenses of collection incurred by the Association, such as attorneys' fees, paralegals' fees, court costs and recording and/or filing fees. The actual expenses of collection and the administrative fee shall hereinafter be referred to as (herein "Cost of Collection").
- (c) Foreclose a lien filed in accordance with Article IX 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 4 - Binding Effect

The remedies provided in this Article X against a Delinquent Owner may also be pursued against the heirs, executors, administrators, successors and assigns and



grantees of such Owner, except as specifically provided in Article VIII, Section 8 of this Declaration.

**ARTICLE XI**  
**ARCHITECTURAL REVIEW COMMITTEE**  
**POLICIES AND GUIDELINES FOR DESIGN CRITERIA**

**Section 1 - Purpose**

In order to assure an attractive, compatible and aesthetically pleasing community, the Declarant hereby establishes an on-going committee designated as the Architectural Review Committee (herein "ARC"). The purpose of the ARC is to implement policies and guidelines for design review for the residential development of BACK BAY AT ARROWHEAD LAKE with a view to maximum compatibility of construction and landscaping with the natural beauty and topography of the land within BACK BAY AT ARROWHEAD LAKE.

Declarant reserves and hereby grants to MASTER PLAN BUILDERS, INC. ("Builder"), the exclusive right to build all the Dwelling Units, single family homes, Garages and improvements at BACK BAY AT ARROWHEAD LAKE, on behalf of the Declarant.

These Policies and Guidelines have been prepared by the ARC for Builder and homeowners in their selection of concepts for construction within BACK BAY AT ARROWHEAD LAKE. These Policies and Guidelines do not include all building, use and other deed restrictions associated with BACK BAY AT ARROWHEAD LAKE and, accordingly, Builder and homeowners should familiarize themselves with the provisions of this Declaration and Rules and Regulations of the Association. The inclusion of any recommendation in these Policies and Guidelines shall not preclude the ARC's right to disapprove any proposed matter for any reason.

**Section 2 - Authority**

The authority of the ARC is set forth in this Declaration of BACK BAY AT ARROWHEAD LAKE, which governs the development of every Lot and all property at BACK BAY AT ARROWHEAD LAKE. The Board of Directors shall have the authority and standing, on behalf of the Association to enforce in courts of competent jurisdiction decisions of the ARC.

**Section 3 - Members**

The ARC is composed of up to 3 or 4 natural persons, but not less than 2 natural persons. The size of the ARC and the persons who shall serve on the ARC shall be designated from time to time by (i) the Declarant prior to the end of the Class "B" Control Period and (ii) the Board of Directors of the Association thereafter. The initial members of the ARC shall be Robert Struharik Jr., Robert Struharik III, and Paul Struharik.

The ARC is authorized to retain the services of consulting architects, landscape architects, engineers, inspectors and attorneys in order to advise and assist the ARC in performing its functions.

#### Section 4 – General Guidelines

- (a) No building shall be erected, placed, altered or suffered to remain on any Lot including in the said Plat other than: (i) one (1) detached single family dwelling, not to exceed two and a half stories in height with a private garage attached thereto, or (ii) No detached garages, outbuildings or storage buildings may be erected, placed, altered, or suffered to remain on any Dwelling Lot, all structures subject to the review and approval of Architectural Control Committee, as hereinafter created. (hereinafter ARC) All Dwelling Units shall be conventional construction.
- (b) No Lot Owner(s) shall delay in the bona fide commencement of the construction of a Dwelling Unit upon their Lot for a period of more than one (1) year after the date their deed to their Lot was recorded with the Mahoning County Recorder. Declarant shall have the right and option to purchase any Lot back from said Owner(s) at a price not to exceed the original purchase price of the Lot, less costs incurred by the Declarant in the original sale and the repurchasing of said Lot, if construction of said Dwelling Unit is not commenced within said one year (1) period.
- (c) The side yards and front and rear set back lines of any buildings, except steps, bay windows, open porches, cornices and other usual projections shall be as required by applicable building and zoning codes of the City and subject to ARC approval. All finished driveways must be constructed of cement and have a set back line from the adjoining lot of at least two (2) feet.
- (d) No swimming pools allowed within the Property, except on the Common Elements.
- (e) All shingles shall be of dimensional or better with not less than thirty (30) year warranty. All shingles shall be of uniform color unless in a separate Condominium Development, and must be approved by the ARC.
- (f) Additional restrictions are set forth in Article XII of this Declaration.

#### Section 4 – Design Review Process

- (a) Required Submission. All plans for improvements, including design, site plan, and color combinations must be considered and approved as set forth herein prior to commencement of construction.

- (b) Improvement Definitions. No improvement shall be commenced until approved by the ARC. Improvements shall not include repainting the original color scheme and routine repairs which do not alter the external appearance.
- (c) In addition to how it is defined in the Declaration, improvements mean any of the following:
- (i) Any alteration or addition which affects the exterior of the Lot or Dwelling Unit, including without limitation, change of or replacement of the roof, siding or exterior trim of a Dwelling Unit or Garage;
  - (ii) Anything or object the placement of which on the Lot may affect the appearance of such Lot, including without limitation, any building, garage, porch, greenhouse, bathhouse, covered or uncovered patio or deck, or any temporary or permanent improvement on such Lot;
  - (iii) Any excavation, fill, ditch, dam or other thing or device which affects or alters the natural flow of surface waters, from, upon or across any Lot, or which affects or alters the flow of any waters in any natural or artificial stream, wash or drainage channel from, upon or across any lot;
  - (iv) Any change in grade of any lot of more than six (6) inches, and
  - (v) The cutting of any tree with a trunk diameter over six (6) inches at four (4) feet above natural grade.

#### Section 5 – Inconsequential Items.

The Design Guidelines have been designed to provide general standards of the approval of plans. The ARC shall have the right to decide that a variance from the Design Guidelines is slight and inconsequential and will have minimal effect on the overall appearance of the community.

#### Section 6 – Liability.

Each Owner and Builder shall be responsible to insure that all improvements shall be in compliance with the Declaration, the Design Guidelines and the Approved Plans. If the Declarant, the ARC, or the Board have acted in good faith on the basis of such information possessed by them, neither the Declarant, the ARC, The Board, nor any member thereof shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed due to (i) the approval or disapproval of any plans, drawings and specifications, whether or not defective; (ii) the construction or performance of any work whether or not pursuant to approved plans, drawing, and specification; or (iii) the execution and filing of any estoppel certificate, whether or not the facts therein are correct.

Section 7 – Liability Of Members Of ARC

No member of the ARC shall be liable to the Association, any Owner or any other person for his or her acts or omissions or failure to act in any particular manner.

Section 12 – General Provisions

- (a) The invalidity of any covenant, restriction, condition, limitation or any other provision herein contained, or any part of the same, shall not impair or affect in any manner the validity, enforce ability of effect of the rest of the ARC Policies and Guidelines for Design Criteria, as established by the Board or the ARC.
- (b) The ARC Policies and Guidelines for Design Criteria Review shall be construed and enforced under the laws of the State of Ohio.

**ARTICLE XII**  
**RESTRICTIONS**

Section 1- General

BACK BAY AT ARROWHEAD LAKE shall be used only for residential, recreational, and related purposes, which include, without limitation, offices for any property manager retained by the Association or sales or business offices for any Builder and/or the Declarant or the Association. The Association shall have standing and the power to enforce such standards.

The Association shall have authority to make and to enforce standards and restrictions governing the use of BACK BAY AT ARROWHEAD LAKE in addition to those contained herein, and to impose reasonable user fees for use of recreation facilities and other Common Elements. This authority shall include, without limitation, the power to regulate the speed and flow of traffic on private roads within BACK BAY AT ARROWHEAD LAKE. Such regulations and use restrictions shall be binding upon all Owners and Occupants until and unless overruled, canceled or modified.

Section 2 - Sex Offenders. No person who:

- (i) is adjudicated or designated to be a sexual predator or a habitual sex offender by an appropriated court or law enforcement agency, and
- (ii) is required to register with a designated registering agency

under the laws of the State of Ohio pursuant to the Ohio Sex Offenders Act or any similar laws or ordinances of the State of Ohio, and any other state or federal jurisdiction, or any political subdivision of any of the foregoing, as the same may be, from time to amended

may reside in or occupy a Dwelling Unit for any length of time, nor enter upon the Property as a guest, visitor, employee or contractor of an Owner or Occupant of any Dwelling Unit.

The Association may enforce the provisions of this section by commencing an action to enjoin such person from occupying a Dwelling Unit and/or from coming on the Property; or to evict such person; or to levy enforcement charges for the violation of this section; or any combination of the foregoing; and all costs in connection therewith, including attorneys and paralegal fees, shall be charged to the Dwelling Unit, and the Owner of the Dwelling Unit, in which such person resides or of which such person is a guest, visitor, employee or contractor, as a Special Individual Assessment, enforceable in accordance with the provisions of this Declaration

### Section 3 - Nuisance

No portion of BACK BAY AT ARROWHEAD LAKE shall be used, in whole or in part, for the storage of any property or thing that will cause it to appear to be in an unclean or untidy condition or that will be obnoxious to the eye; nor shall any substance thing, or material be in any portion of BACK BAY AT ARROWHEAD LAKE that will emit foul or obnoxious odors or that will cause any noise or other condition that will or might disturb the peace, quiet, safety, comfort, or security of the Occupants of surrounding property. No so-called hazardous or toxic wastes or substances (as defined by any federal or state statute or law) shall be brought upon BACK BAY AT ARROWHEAD LAKE or disposed of except in strict compliance with legal requirements. No noxious or offensive activity shall be carried on upon any portion of BACK BAY AT ARROWHEAD LAKE, nor shall anything be done thereon tending to cause embarrassment, discomfort, annoyance, or nuisance to any Person using any portion of BACK BAY AT ARROWHEAD LAKE. There shall not be maintained any plants or animals or device or thing of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant, or of a nature as may diminish or destroy the enjoyment of BACK BAY AT ARROWHEAD LAKE.

### Section 4 - Unsightly or Unkempt Conditions

The pursuit of hobbies or other activities, including specifically, without limiting the generality of the foregoing the assembly and disassembly of motor vehicles and other mechanical devices which might tend to cause disorderly, unsightly, or unkempt conditions shall not be pursued or undertaken on any part of BACK BAY AT ARROWHEAD LAKE.

### Section 5 - Parking and Use of Motor Vehicles

#### (a) Dwelling Units:

- (i) Except as otherwise hereinafter provided, vehicles that are in an operable condition shall be parked in the garages or the driveway exclusively serving a Dwelling Unit. No vehicles shall be parked upon any of the streets except for attending emergency, delivery vehicles or vehicles of

temporary visitors. No salvage or junk vehicles will be permitted to be stored on the premises at anytime. Commercial vehicles (excluding  $\frac{3}{4}$  ton or less trucks), tractors, mobile homes, trailers (either with or without wheels), campers, camper trailers, boats and boat trailers shall not be parked in BACK BAY AT ARROWHEAD LAKE other than in garages, except for loading, unloading or cleaning for not more than twenty four (24) hours. Vehicles that are being sold will not be permitted to be displayed on the yards or drives within in BACK BAY AT ARROWHEAD LAKE.

- (ii) Off road ATV's, recreational vehicles, quad's, off road bikes or similar type vehicles are permitted to be stored in garages in BACK BAY AT ARROWHEAD LAKE, but are not permitted to be ridden within BACK BAY AT ARROWHEAD LAKE although Declarant may use such vehicles in the construction process.

#### Section 6 - Business Use

No trade or business may be conducted in or from any Dwelling Unit, except that an Owner or occupant may conduct business activities within the Dwelling Unit 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 Dwelling Unit; (b) the business activity conforms to all zoning requirements for BACK BAY AT ARROWHEAD LAKE; (c) the business activity does not involve door-to-door solicitation of residents of BACK BAY AT ARROWHEAD LAKE; and (d) the business activity is consistent with the residential character of BACK BAY AT ARROWHEAD LAKE and does not constitute a nuisance, or a hazardous or offensive use, or threaten the security or safety of other residents of BACK BAY AT ARROWHEAD LAKE, as may be determined in the sole discretion of the Board.

The term "business" and "trade", as used in this provision, shall be construed to have their ordinary, generally accepted meanings, and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involved the provision of goods or services to Persons other than the provider's family and for which the provider receives a fee, compensation, or other form of consideration, regardless of whether: (i) such activity is engaged in full or part time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required therefore. Notwithstanding the above, the leasing of a Dwelling Unit shall not be considered a trade or business within the meaning of this Section. This Section shall not apply to any activities conducted by the Declarant or Builder designated by the Declarant with respect to the development and sale of BACK BAY AT ARROWHEAD LAKE or Dwelling Units within BACK BAY AT ARROWHEAD LAKE.

#### Section 7 - Animals and Pets

No animals, rabbits, livestock, fowl, poultry, pigs of any type (including but not limited to domesticated pigs such as pot-belly pigs), or reptiles of any kind shall be

raised or bred, or kept by any Owner, except that dogs, cats, or other household pets are permissible, subject to the Rules and provided that they are not kept, bred, or maintained for any commercial purpose. No more than two (2) such pets of any description will be permitted. Notwithstanding anything herein, or in the Rules, to the contrary, any such pet causing or creating a nuisance or unreasonable disturbance shall be permanently removed from the Property upon three (3) days written notice from the Association. No animal shall be allowed to run free and **pet owners must clean up after their pet immediately**. The Association has the right to levy fines and enforce charges against persons who do not clean up after their pets. Dogs shall at all times whenever they are outside of the Dwelling Unit be confined by a leash not more than 12 feet in length, and held by a responsible person. No pet shall be tethered outside in the lawn or Common Elements; nor shall any pet be tied to any patio fence or approved fence. The following breeds of dogs are specifically prohibited: Rottweiler's, Chows, Dobermans, Shar Peis, pit bulls, American Bull Dogs, American Pit Bull Terriers, American Staffordshire Terriers, Staffordshire Bull Terriers, Japanese Fighting Dogs (Japanese Tosa), Argentinean Fighting Dogs, Brazilian Fighting Dogs, and Presa Canarios.

#### Section 8 - Antennas.

Except in accordance with rules and regulations to be adopted by the Board or the ARC, no exterior antennas, aerials, or other apparatus for the reception or transmission of television, radio, or other signals of any kind shall be placed, allowed or maintained upon any portion of BACK BAY AT ARROWHEAD LAKE, including any Lot without the prior written consent of the Board or Declarant or unless completely contained within the Dwelling Unit so as not be visible from outside the Dwelling Unit. The Declarant and/or the Board shall have the right, without obligation, to erect an aerial, satellite dish, or other apparatus or a master antenna or cable system for the benefit of all or a portion BACK BAY AT ARROWHEAD LAKE, should any such master system or systems be utilized by the Association and require any such exterior apparatus. An Owner may install a satellite dish (not to exceed 24 inches in diameter) on a Lot, so long as it is not visible from the street and such installation conforms in all respects to the design, construction, installation, location, maintenance, and any other reasonable criteria established by the ARC and/or the Board.

#### Section 9 - Tents, Trailers and Temporary Structures

Tents, trailers and temporary structures are not permitted except as may be permitted by the Declarant or Board during initial construction of a Dwelling Unit and other improvements within BACK BAY AT ARROWHEAD LAKE. Party tents of a temporary nature shall be placed upon a Lot for no more than a period of four (4) days except as may be permitted by the Declarant or Board of BACK BAY AT ARROWHEAD LAKE.

#### Section 10 - Basketball facilities, Playground Equipment, Tennis Courts, Sports Courts, Etc.

- a) Basketball hoops and facilities, tennis courts or sports courts and playground equipment, including but not limited to swing sets, sand boxes and trampolines, are prohibited on BACK BAY AT ARROWHEAD LAKE Lots. Notwithstanding, these facilities can be placed on the Recreation Ares or as designated by the Declarant or the Board on the Common Elements.

#### Section 11 - Guns

The discharge of firearms within BACK BAY AT ARROWHEAD LAKE is prohibited. The term "firearms" includes "B-B" guns, pellet guns, and other firearms of all types, regardless of size.

#### Section 12 - Clothes lines

No clothes, sheets, blankets, laundry or any kind of other articles shall be hung out or exposed on any part of BACK BAY AT ARROWHEAD LAKE.

#### Section 13- Air Conditioning Units

No window air conditioning Units may be installed in any Dwelling Unit. Solar energy collector panels or attendant hardware or other energy conservation equipment installed on the outside of a Dwelling Unit, may not be installed unless reviewed and approved by the ARC.

#### Section 14 - Exterior Lighting

All exterior lights must be approved in accordance with ARC. For the purpose of providing security, each Owner shall provide lighting on the garage (minimum of two (2) ) which shall automatically go on at dusk and remain on until at least 11:00 p.m. The Board may adopt rules in connection with said lighting.

#### Section 15 - Seasonal Lighting

Decorative lights may be displayed between Thanksgiving and January 10.

#### Section 16 - Awnings

No metal or plastic awnings for windows, doors, decks, or patios may be erected or used. Canvas may be used subject to prior approval by the ARC.

#### Section 17 - Trash

The Association shall be responsible for trash pickup, which will be covered by the Base Assessment. The Association shall choose the provider of said trash pickup and coordinate the day and time of the pickup. As to Lots, trash containers and miscellaneous materials shall be stored in the garage of the Dwelling Unit. Trash containers shall remain in the open only on the evening before and the day of, pickup.

#### Section 18 - Storage

No front or side porches may be used for the storage of any items except normal uncovered porch furniture. No building materials of any type whatsoever shall be stored on any Lot except during construction or remodeling permitted hereunder.



Section 19 - Signs and Flags

No sign or other advertising device of any kind, temporary or permanent, shall be erected or placed within BACK BAY AT ARROWHEAD LAKE without the prior written consent of the Board or the Declarant. The Board and the Declarant shall have the right to erect signs or other advertising devices and to permit Builder, Realtors and Owners to erect signs and other advertising devices within BACK BAY AT ARROWHEAD LAKE (including security signs and invisible fence signs) as the Declarant or the Board, in their discretion, deem appropriate. A standard real estate "For Sale" sign not exceeding two (2) square feet in area on one side and advertising the dwelling, however, shall be permitted.

Notwithstanding the above, no signs, political signs, flags (except American Flags), banners or similar items advertising or providing directional information with respect to activities being conducted outside BACK BAY AT ARROWHEAD LAKE shall be permitted on BACK BAY AT ARROWHEAD LAKE without the approval of the ARC and/or Association.

Section 20 - Drainage Systems

Catch basins and drainage areas are for the purpose of natural flow of water only. No obstructions, including, without limitation, trees or debris shall be placed in these areas. No Person (other than Declarant or the Board) may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sewers, or storm drains. Declarant and the Association each hereby reserve a perpetual easement across BACK BAY AT ARROWHEAD LAKE for the purpose of altering drainage and water flow.

Section 21 - Utility Lines

No overhead lines, including lines for cable television, shall be permitted within BACK BAY AT ARROWHEAD LAKE, except for temporary lines as required during construction.

Section 22 - Lakes and Water Bodies

All lakes, ponds and streams within BACK BAY AT ARROWHEAD LAKE shall be aesthetic amenities only with no recreational use for, including but not limited to, fishing, swimming, or skating, no docks are permitted.

Section 23 - Repair or Removal of Damaged Property

In the event that any improvement, building or structure within BACK BAY AT ARROWHEAD LAKE shall be damaged or destroyed by any fire or other casualty the owner shall promptly either (a) immediately commence the repair or rebuilding of said improvements following such damage or destruction and thereafter diligently and continuously complete the same, or (b) provided the following is not prohibited in the Declaration, raze said improvement, building or structure and remove rubble and debris from the area as promptly as possible in the circumstances, but in any event the

improvement, building or structure shall be safe, sightly and in an aesthetic condition so as not to detract from the appearance of BACK BAY AT ARROWHEAD LAKE.

#### Section 24 - Exterior Appearance

The exterior of any building or structure in BACK BAY AT ARROWHEAD LAKE shall not be altered, modified, changed, or re-decorated in any way so as to change the color, appearance, décor or exterior of the structure without the prior written approval of the Declarant, Board or the ARC.

#### Section 25 - Grading

No Person shall change the grade of any portion of BACK BAY AT ARROWHEAD LAKE without first obtaining the prior written consent of the Board or the ARC. Declarant reserves the sole and exclusive right to establish grades and slopes on the premises herein described, and to fix the grade at which any dwelling shall hereafter be erected or placed hereon, so that the same may conform to a general plan

#### Section 26 - Fences

No Fencing shall be permitted on any Lot, fencing only permitted in the Common Elements. No wall shall be erected, placed or altered or permitted to remain on any Lot until the plans, material and plan location thereof shall have been approved by the ARC.

#### Section 27 - Damage and Destruction

No digging or construction on a Lot shall commence until the location of gas, electric, cable, sewer and water lines and other utility lines have been located. Any damage to gas, electric, cable, sewer and water lines and other utility lines are the sole responsibility of the Owner, Builder or contractor causing such damage.

#### Section 28 - Leasing

##### (a) Owner's Right To Lease Dwelling Unit.

Any Owner shall have the right to lease all (but not less than all) of his Dwelling Unit upon such terms and conditions as the Owner may deem advisable, except that no Dwelling Unit shall be leased or sub-leased for transient or hotel purposes. Any lease or sublease of a Unit for a period of less than one (1) year shall be deemed to be a lease or sublease for transient or hotel purposes. (1) Any lease or sublease of a Unit shall be in writing and shall provide: (a) that the lease or sublease shall be subject to the terms of this Declaration, the Bylaws and Rules and that any failure of a lessee to comply with the terms of this Declaration, the Bylaws and Rules shall be in default under the lease or sublease; (b) that the Association shall have the right to require the Owner to deposit with the Association such an amount not to exceed one (1) month's rent as security to provide funds for repairs and to assure compliance with this Declaration, the Bylaws and Rules; (2) the limitations with respect to the leasing of Dwelling Units shall not apply to the: (a) Declarant; or (b) a first mortgagee of a Unit in connection with a mortgage foreclosure (or acceptance of a deed in lieu of foreclosure), or with respect to any sale or transfer by the first mortgagee or any other party who acquired the Dwelling Unit in connection with the foreclosure or deed-in-lieu.

## (b) Association's Rights With Respect To Leased Units.

A tenant shall comply with all covenants, conditions and restrictions set forth in the Declaration, the Bylaws and the Rules of the Association, as lawfully amended. Violations of those covenants, conditions or restrictions shall be grounds for the Association or any Owner to commence a civil action for damages, injunctive relief, or both, and an award of court costs and reasonable attorneys' fees in both types of action.

Section 29 - Waiver of Subrogation.

Declarant, each Owner and Occupant, the Association, and any Person who owns, operates or controls any Dwelling Unit, improvement, building, structure, fixture, or item of personal property within BACK BAY AT ARROWHEAD LAKE, as a condition of accepting title to a Lot or possession of a Dwelling Unit or other building or structure, agrees for themselves, and their respective successors, heirs, executors, administrators, personal representatives, and assigns, in the event that any Dwelling Unit, building, structure, improvement, fixture, or item of personal property within BACK BAY AT ARROWHEAD LAKE is damaged or destroyed by fire or other casualty that is covered by insurance or is coverable under standard fire and extended coverage insurance policy with "special-risk" coverage, that the rights, if any, of the person suffering a loss with respect to such damage or destruction and with respect to the losses resulting therefrom, no matter what the cause of such fire or other casualty, including negligence, are hereby waived to the extent of the proceeds of insurance covering such damage or destruction and to the extent of the proceeds of insurance which would have been available if a fire, extended coverage and all-risk policy covered such loss if no such policy existed.

Section 30 - Violation of Article XII.

If any Person required to comply with the foregoing covenants, conditions and restrictions shall violate any one of the same, the Declarant or the Board shall have the right to give written notice to such Person to terminate, remove or alleviate such violation. Such notice shall expressly set forth the facts constituting such violation. If within fifteen (15) days after the giving of such written notice of violation reasonable steps shall not have been taken toward the removal, alleviation or termination of same, or if such remedial action is not prosecuted with due diligence until satisfactory completion of same, the Declarant or the Board shall have the right, through their respective agents and employees, to enter upon that portion of BACK BAY AT ARROWHEAD LAKE where the violation exists and to summarily terminate, remove or extinguish the same using such force as may be required. In addition to the foregoing, the Declarant or the Board shall have the right to obtain an injunction or other equitable relief from any court having jurisdiction for the cessation of such violation. The rights and remedies of the Board and the Declarant contained in this Paragraph shall be nonexclusive and in addition to any other rights or remedies available within this Declaration, at law or in equity and may be exercised at one time or separately.

The Board or the Declarant shall notify in writing the Owner or other person in violation of this Article of all the costs incurred to remedy same (including attorney's fees) and any other damages to which the Association or Declarant may be entitled. If such amounts are not paid within ten (10) days following said notification, then the Board shall have the right to levy a Special Assessment and against said Owner, upon failure to pay such Special Assessment, may perfect a lien upon Lot owned by such Owner in the same manner as set forth in Article IX of this Declaration. In addition, the Owner of any portion of BACK BAY AT ARROWHEAD LAKE in violation of this Article shall be liable, jointly and severally, for any violations of an Occupant of such Owner's property.

### ARTICLE XIII EASEMENTS

#### Section 1 - Utility Easements

There is hereby reserved in favor of Declarant and granted to the Association, its successors and assigns, a non-exclusive easement upon, across, over, through and under BACK BAY AT ARROWHEAD LAKE, including all Lots, for ingress, egress, installation, replacement, repair and maintenance of all utilities and service lines and systems (whether serving the Common Elements or a Lot) including, but not limited to, water, sewer, energy, drainage, gas, telephone, electricity, television, cable and communication lines and systems, and for access to all utility meters. By virtue of this easement, it shall be expressly permissible for Declarant and the Association and their successors and assigns, or the providing utility or service company, to install and maintain facilities and equipment on BACK BAY AT ARROWHEAD LAKE provided that such facilities shall not materially impair or interfere with any Lot and provided further that any areas disturbed by such installation and maintenance are restored to substantially the condition in which they were found. By virtue of this easement it shall also be expressly permissible for the Association, and its agents, contractors, employees, to maintain, repair, and replace such utility facilities and equipment which may serve one or more Lot, but which are located within another Lot and provided further that any areas disturbed by such installation or Lot, provided that such maintenance, repair, and replacement activities shall not unreasonably impair or interfere with the use of any Lot, and provided further that any areas disturbed by such installation and maintenance are restored to substantially the same condition in which they were found at the sole cost and expense of the Association. 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 Declarant or the ARC, or unless the same are shown on a recorded plat. There is hereby reserved in favor of the Declarant and the Association the right (but not the obligation) to grant neighboring BACK BAY AT ARROWHEAD LAKE owners easements for utility purposes so long as the granting of such easements does not overburden the utilities serving BACK BAY AT ARROWHEAD LAKE.



Section 2 - Easement for Ingress and Egress

There is hereby created a non-exclusive easement upon, across, over and through the private roadways, sidewalks and walkways within the Common Elements or upon any Lot, or areas set forth on the Recorded Plat for each Phase as the development progresses, (except sidewalks that serve only one Lot) in favor of Declarant and the Association, all Owners, Occupants, and their respective guests, licensees, and invitees for vehicular or pedestrian ingress and egress, as the case may be, to and from all of the various portions of BACK BAY AT ARROWHEAD LAKE. Notwithstanding the foregoing, the Declarant and/or the Association may limit this right of ingress and egress by a Subsequent Amendment. Each Owner shall have the perpetual right, as an appurtenance to such Owner's Home, to ingress and egress necessary for access to his, her or its Dwelling Unit, over, upon, and across the portion of the Common Elements and private roadways as set forth on the Recorded Plat for each Phase as the development progresses.

Section 3 - Common Elements

Except as may be limited by the easement granted in Section 14 of this Article, Declarant, all Owners, Occupants and the guests of such parties shall have the right to enter upon, use and enjoy the Common Elements for their intended purposes in accordance with this Declaration and the applicable Rules which shall be appurtenant to and shall pass with the title to every Lot, subject to the right of the Association (and/or the Declarant, for so long as Declarant is a Class "B" Member) to dedicate or transfer any part of the Common Elements to the City and any other public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Declarant or the Board, as the case may be. For so long as the Declarant is the Class "B" Member, the Declarant may exercise such right in its sole discretion without the necessity of obtaining the consent or approval of the Association, Board or Members. After the expiration of the Declarant's Class "B" Membership, no such dedication or transfer by the Association shall be effective unless an instrument agreeing to such dedication or transfer has been signed by a majority of the Members and has been recorded with the Mahoning County Recorder.

Section 4 - Easements for Construction, Alteration, etc.

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

claims and expenses, including reasonable attorneys' 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 conditions that existed prior to such activities.

#### Section 5 - Parking In Common Elements

There shall be no parking of motor vehicles within the Common Elements or upon the private roadways (except within designated parking spaces) unless otherwise permitted by the Association. The Declarant and/or the Association reserve the right and easement to create additional off-street parking spaces to be situated within the Common Elements.

#### Section 6 - Emergency And Service Easements

Fire, police, health, sanitation, medical, ambulance, utility companies, 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 BACK BAY AT ARROWHEAD LAKE for the performance of their respective duties.

#### Section 7 - 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 Lots, (a) a Party Wall of a Home shall encroach upon the Lot 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 Lot (including but not limited to roof overhangs) shall encroach upon any part of the Common Elements or any part of an adjacent Lot, easements in favor of the Owner of the Lot are hereby established for the maintenance of such encroachment; provided, however, in no event shall a valid easements for any encroachment be created in favor of an Owner if such encroachment occurs due to his willful conduct.

#### Section 8 - Easements For Signs, Mailboxes, Street Lamps, And Garden Walls

Easements are created over the Common Elements and Lots as needed to install, maintain, repair, replace, street lamps, and/or Garden Walls that are for the general benefit of BACK BAY AT ARROWHEAD LAKE. The type, size and location of such improvements shall be subject to the approval of the Architectural Review Committee.

#### Section 9 - Landscaping, Snow Removal, and 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 Lot for the purposes of fulfilling the Association's responsibilities as provided in this Declaration or By-Laws, to maintain the areas of the Property that the Association is responsible for and the Common Elements within BACK BAY AT ARROWHEAD LAKE, including but not limited to, street lights, landscaping, providing snow removal services, mowing, replacing, removing, clearing, cutting or

pruning lawns, 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 BACK BAY AT ARROWHEAD LAKE.

**Section 10 - Scope of Easements and Dedication of Roadways and Utilities**

As the improvements to be located within BACK BAY AT ARROWHEAD LAKE for the easement rights granted or reserved under Sections 1 and 2 of this Article are definable within specific areas, the Declarant or the Association (with the Declarant's prior written consent prior to the end of the Class "B" Control Period) 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 BACK BAY AT ARROWHEAD LAKE to meet the requirements of the City, and other public authorities having jurisdiction over the same. The Declarant or the Association may exercise any of such rights without the necessity of obtaining the consent or approval of Owners and other Persons for whose benefit the easement rights are granted or reserved.

**Section 11 - Owner's Right to Ingress and Egress**

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

**Section 12 - Easements to Run with the Land**

All easements and rights described herein are easements appurtenant to BACK BAY AT ARROWHEAD LAKE, including Lots, and Common Elements, shall run with said lands, perpetually and at all times shall inure to the benefit of and be binding upon the Declarant, its successors and assigns, and any Owner, Tenant, Occupant, purchaser, mortgagee, the City or other Person having an interest in BACK BAY AT ARROWHEAD LAKE, or an part or portion thereof.

**ARTICLE XIV**

**DAMAGE AND DESTRUCTION OF COMMON ELEMENT FACILITIES**

**Section 1 - Procedure for Reconstruction and Repair**

- (a) Immediately after damage or destruction by fire or other casualty to all or any part of BACK BAY AT ARROWHEAD LAKE covered by insurance written in the name of the Association, the Board or its duly authorized agent shall proceed with the filing and adjustment of all claims arising



under such insurance and obtain reliable and detailed estimate of the cost of repair and restoration. As used in this paragraph, repair and restoration means repairing and restoring BACK BAY AT ARROWHEAD LAKE to substantially the same condition in which it existed prior to the fire or other casualty, allowing for any changes or improvements necessitated by changes in applicable building codes.

- (b) Any damage or destruction to the Common Elements shall be repaired and restored unless the Directors possessing at least seventy-five (75%) of the voting power of the Board shall decide within one hundred twenty (120) days after the casualty not to repair or restore. If for any reason either the amount of the insurance proceeds to be paid as a result of such damage or destruction, or reliable and detailed estimates of the cost of repair or restoration, or both, are not made available to the Association within said period, then the period shall be extended until such information shall be made available; provided, however, said extension shall not exceed sixty (60) additional days. No Mortgagee shall have the right to participate in the determination of whether the damage or destruction to Common Element facilities shall be repaired or restored; provided, however, this provision shall not apply to construction mortgagees providing construction financing for such damaged property.
- (c) In the event that it should be determined in the manner described above that the damage or destruction of the Common Elements shall not be repaired or restored and no alternative improvements are authorized, then and in that event, the affected portion of BACK BAY AT ARROWHEAD LAKE shall be restored to its natural state and maintained by the Association in a neat and attractive condition consistent with the Community-Wide Standard.
- (d) If the damage or destruction for which the proceeds of insurance policies are paid is to be repaired and restored, the proceeds, or such portion thereof as may be required for such purpose, shall be disbursed in payment of such repairs and restoration as hereinafter provided. Any proceeds remaining after defraying such costs of repair and restoration to the Common Element improvements shall be retained by and for the benefit of the Association and placed in a capital improvements account. In the event no repair and restoration is made, any insurance proceeds shall be retained by and for the benefit of the Association and placed in a capital improvement account. This is a covenant for the benefit of any Mortgagee of a Lot and may be enforced by such Mortgagee.
- (e) If after the damage and destruction of the Common Elements and its improvements, insurance proceeds are not sufficient to defray the cost of repair thereof, the Board shall, without the necessity of a vote of the Members, levy a Special Assessment against all Owners of Lots on the same basis as provided for Base Assessments. Additional Special Assessments may be made in like manner at any time during or following the completion of any repair or reconstruction.

**ARTICLE XV**  
**CONDEMNATION**

Whenever all or any part of the Common Elements shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of the Directors possessing at least seventy five percent (75%) of the voting power of the Board and of the Declarant during the Class B Control Period) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof. The award made for such taking shall be payable to the Association for all Owners to be disbursed as follows:

If the taking involves a portion of the Common Element on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant during the Class B Control Period and thereafter the Directors possessing at least seventy-five (75%) of the voting power of the Board shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Element to the extent lands are available therefore, in accordance with plans approved by the Board. If such improvements are to be repaired or restored, the above provisions in Article XIV hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Element, 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 XVI**  
**NO PARTITION**

Except as is permitted in this Declaration or amendments thereto, there shall be no physical partition of the Common Element or any part thereof, nor shall any Person acquiring any interest in BACK BAY AT ARROWHEAD LAKE or any part thereof seek any 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 and/or then disposing of such real property which may or may not be subject to this Declaration.

**ARTICLE XVII**  
**MORTGAGEES' RIGHTS**

The following provisions are for the benefit of holders, insurers or guarantors of first mortgages on Lots within BACK BAY AT ARROWHEAD LAKE. To the extent applicable, necessary, or proper, the provisions of this Article apply to both this Declaration and to the By-Laws, notwithstanding any other provisions contained therein.

Section 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 Dwelling Unit address, therefore becoming an "eligible holder"), will be entitled to timely written notice of:

- (a) any condemnation loss or any casualty loss which affects a material portion of BACK BAY AT ARROWHEAD LAKE or which affects any Dwelling Unit on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;
- (b) any delinquency in the payment of Assessments owed by an Owner subject to the Mortgage of such Eligible Mortgage Holder, where such delinquency has continued for a period of sixty (60) days; provided, however, notwithstanding this provision, any holder of a first Institutional Mortgage, upon request, is entitled to written notice from the Association of any default in the performance by an Owner of a Dwelling Unit of any obligation under the Declaration or By-Laws which is not cured within sixty (60) days;
- (c) any lapse, cancellation, or material modification of any insurance policy maintained by the Association; or
- (d) any proposed action which would require the consent of a specified percentage of Eligible Mortgage Holders.

Section 2 - Special Federal Home Loan Mortgage Corporation Provision.

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

- (a) Unless at least two-thirds (2/3) of the first Institutional Mortgagees or the Directors possessing at least two-thirds (2/3) of the voting power of the Board consent, the Association shall not:
  - a. by act or omission seek to abandon, partition, subdivide, encumber, sell, or transfer all or any portion of the real property comprising the Common Element which the Association owns, directly or indirectly (the granting of easements for public utilities or for other purposes as permitted herein and not inconsistent with the intended use of the Common Element, the transfer of Common Element in accordance with this Declaration and the transfer of diminutive portions of the Common Element by Declarant or the Board in good faith shall not be deemed a transfer within the meaning of this subsection);
  - b. change the method of determining the obligations for Assessments, dues, or other charges which may be levied against an Owner (a decision, including contracts, by the Board or subsequently recorded

on any portion BACK BAY AT ARROWHEAD LAKE regarding assessments for or other similar areas shall not be subject to this provision where such decision is otherwise authorized by this Declaration);

- c. by act or omission change, waive, or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance and maintenance of Dwelling Units and of the Common Element (the issuance and amendment of architectural standards, procedures, rules and regulations, or use restrictions shall not constitute a change, waiver, or abandonment within the meaning of this provision;
  - d. fail to maintain insurance, as required by this Declaration; or
  - e. use hazard insurance proceeds for any Common Element losses for other than the repair, replacement, or reconstruction of such property;
- (b) First Institutional Mortgages may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Element and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Association policy, and first Institutional Mortgagees making such payment shall be entitled to immediate reimbursement from the Association.
- (c) Mortgagees shall not be required to collect Assessments. Nonpayment of Assessments shall not constitute a default under any insured mortgage.

### Section 3 - No Priority.

No provision of this Declaration or the By-Laws gives or shall be construed as giving an Owner or other party priority over any rights of the first Institutional Mortgages of any Lot in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Element.

### Section 4 - Notice to Association.

Upon request, each Owner shall be obligated to furnish to the Association the name and address of the holder of any Mortgage encumbering such owner's Dwelling Unit.

### Section 5 - Amendment by Board.

Should the Federal National Mortgage Association or the Federal Home Mortgage Corporation subsequently delete any of their respective requirements, which necessitate the provisions of this Article or make any such requirements less stringent, the Board, without approval of the Owners, may cause an amendment to this Article to be recorded or reflect such changes.

### Section 6 - Applicability of Article XVII.

Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Declaration, By-Laws, or Ohio corporate law set out in this Article.

Section 7 - Failure of Mortgagees to Respond.

Any Mortgagee who receives a written request from the Board to respond to or consent to any action shall be deemed to have approved such action if the Association does not receive a written request from the Mortgagee within thirty (30) days of the date of the Association's request.

**ARTICLE XVIII**  
**SPECIAL DECLARANT RIGHTS-LIABILITIES**

Section 1 - Retained Right of Repurchase Lots by Declarant.

The Purchase Agreements between the Declarant and Lot Owners for the lots that Dwelling Units will be built on within BACK BAY AT ARROWHEAD LAKE contains a provisions whereby the Declarant has the absolute right to repurchase any or all Lots owned by a Lot Owner in the event such Lot Owner does not commence construction for a period of more than one (1) year after the date their deed to their Lot was recorded with the Mahoning County Recorder. The terms and conditions of the right to repurchase are set forth within this Declaration, and include but not limited to, the right of Declarant to compel specific performance by a Lot Owner to transfer a Lot back to Declarant.

Section 2 - Transfer of Declarant's Rights and Obligations

- (a) The Declarant may transfer any or all of the special rights and obligations created or reserved in this Declaration with respect to any designated portion of BACK BAY AT ARROWHEAD LAKE to other parties who shall purchase those portions of BACK BAY AT ARROWHEAD LAKE and which contain or may in the future contain Lots for development; provided that no such transfer shall be effective unless such transfer is in a written instrument specifying which rights and obligations or if all rights and obligations have been transferred, and the portion of BACK BAY AT ARROWHEAD LAKE affected by the transfer. Such instrument must be signed by the transferring Declarant and duly recorded in the Mahoning County Recorder's Office, Mahoning County, Ohio. Upon the transfer of the Declarant's rights hereunder, the transferring Declarant shall have no further obligations or duties under this Declaration with respect to the land so transferred, except for any liabilities arising before the transfer, and except for any obligations or duties which were not transferred to the successor Declarant.
- (b) During the Class B Control Period, no party or entity shall record any instruments purporting to be an amendment to this Declaration, declarations of covenants, conditions and restrictions, declaration of condominium ownership, or similar instrument, or any amendment or termination thereof (herein Unauthorized Instruments) affecting any portion of BACK BAY AT ARROWHEAD LAKE without Declarant's written consent thereto, and any attempted recordation of any such Unauthorized Instruments without

compliance herewith shall result in such Unauthorized Instruments being void and of no force and effect unless subsequently approved by written consent signed by the Declarant.

- (c) So long as Declarant is a Class B Member, all sales, promotional, and advertising materials relating to the sale of a Lot or Dwelling Unit shall be subject to the prior written approval of Declarant. If Declarant notifies Builder or Owner that Declarant objects to any such sales, promotional or advertising materials, Builder and/or Owner will immediately cease the use and distribution of it.

### Section 3 - Liability of Declarant.

In the event that a money judgment shall be obtained against Declarant by an Occupant, Owner, Builder or Member arising out of the provisions of this Declaration, or in connection with any claim against Declarant arising out of Declarant's ownership, operation, or development of BACK BAY AT ARROWHEAD LAKE, whether such liability is based in contract, tort, statutory provisions, or otherwise, such judgment shall be satisfied only out of Declarant's interest in the lands constituting BACK BAY AT ARROWHEAD LAKE, it being agreed that Declarant shall have no personal liability for any deficiency. No money judgment shall be satisfied out of the assets of Declarant, but only out of the interest of the Declarant in BACK BAY AT ARROWHEAD LAKE. If Declarant is a corporation or limited liability company, no money judgment will be sought or taken against the shareholders, officers or directors of the corporation or the members of the limited liability company.

### Section 4 - Amendment of Article XVIII.

This Article may not be amended without the express written consent of the Declarant; provided, however, the rights contained in this Article shall terminate upon the earlier of (i) twenty (20) years from the date this Declaration is recorded, or (ii) upon recording by Declarant of a written statement that all sales activity has ceased.

## **ARTICLE XIX** **GENERAL PROVISIONS**

### Section 1 – Covenants Run with the Property; Binding Effect

- (a) 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, Owners and Occupants.
- (b) Each grantee accepting a deed or, (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.

#### Section 2 - Occupants Bound.

All provisions of the Declaration, By-Laws and any of the rules and regulations or restrictions promulgated pursuant, thereto, which govern the conduct of Owners and which provide sanctions against Owners shall also apply to all Occupants. Every Owner shall cause all Occupants to comply with the Declaration, By-Laws, and the rules and regulations or restrictions promulgated with respect thereto and such Owner shall be liable for all violations and for all losses to the Common Element and facilities caused by Occupants, notwithstanding the fact that such Occupants of a Dwelling Unit are also fully liable and may be sanctioned for any violation of the Declaration, By-Laws and rules and regulations or restrictions promulgated thereunder.

#### Section 3 - Term.

This Declaration shall run with the land and bind BACK BAY AT ARROWHEAD LAKE, and shall inure to the benefit of and shall be enforceable by the Association and Declarant and shall be binding on the Association, Declarant and all Owners, and their respective legal representatives, heirs, successors and assigns, for the term of fifty (50) years from the date this Declaration is recorded, after which time it shall be automatically extended for successive period of ten (10) years each, unless an instrument in writing, duly approved by at least seventy five percent (75%) of the then Owners and their Mortgagees, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to terminate the same, in which case this Declaration shall be terminated.

#### Section 4 - Amendment

- (a) The Declarant shall have the sole right to amend this Declaration during the Class B Control Period unilaterally so long as the amendments shall not change the voting rights of the Class A or the method of calculating Assessments pursuant to Section 2 of Article VII. After the Class B Control period, this Declaration may be amended only by the affirmative vote or written consent of the Directors possessing at least seventy-five (75%) of the voting power of the Board and written consent of the Class B Members so long as there exists a Class B Member. However, the requirements necessary to amend a specific clause referred to in this Declaration shall not be less than the prescribed requirements for that particular action specified under that clause. Notwithstanding the foregoing, neither the Declarant nor the Directors shall have the right to amend this Declaration in such manner that will materially change the obligations herein set forth.
- (b) Notwithstanding the above, the Board shall have the right to amend this Declaration, the Articles of Incorporation and/or the By-Laws without the consent of any Person to correct errors of omission or commission or as

required to comply with the 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 Administration, the Veterans Administration, or any other governmental agency or public or quasi public or private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, or to bring the Declaration, the Articles of Incorporation and/or the By-Laws in compliance with applicable laws.

- (c) Each Owner and Mortgagee shall be deemed to have knowledge of any amendment made pursuant to this Section 4 upon the recording of such amendment in the Mahoning County Records and each Owner and Mortgagee shall be entitled at any time to request from the Declarant or the Board copies of the Declaration as then amended. The Board shall have the right to charge a reasonable fee for performing such service. In addition, upon the enactment of any amendment, the Board shall attempt to post in a conspicuous place (such as the Recreational Area) or to send letters (ordinary mail or hand delivery) to each Owner to summarize any amendment made; but the non-receipt of any such summary or the failure of the Board to comply with this paragraph shall not affect the foregoing conclusive presumption that the Owner has knowledge of and shall be bound by any such amendment upon the recording of the Amendment.
- (d) If a Person votes for or consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Person has the authority so to vote for or consent and no contrary provision in any Mortgage or contract between such Person and a third party will affect the validity of such amendment.
- (e) No amendment may remove, revoke, or modify any right or privilege of Declarant without the prior written consent of Declarant or the assignee of such right or privilege. No amendment may impair the validity or priority of the lien of any Mortgage held by a Mortgagee or impairs the rights granted to Mortgagees herein without the prior written consent of such Mortgagees.

#### Section 5 - Severability.

Invalidation of any one of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, which shall remain in full force and effect.

#### Section 6 - Perpetuities.

If any of the covenants, conditions, restrictions, or other provisions of this Declaration shall be unlawful, void, or voidable by reason of the violation of the rule against perpetuities, or any other statutory or common-law rule 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 Mitt Romney.



Section 7 - Litigation.

No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by a vote of the Directors possessing at least seventy-five (75%) percent of the voting power of the Board. 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 Article VII hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended during the Class B control period unless such amendment is made by the Declarant.

Section 8 - Construction of the Provisions of this Declaration

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

Section 9 - Use of the Words "BACK BAY AT ARROWHEAD LAKE" or "BACK BAY AT ARROWHEAD LAKE HOMEOWNERS ASSOCIATION, INC.", or "BACK BAY HOMEOWNERS ASSOCIATION INC."

No person shall use the words "BACK BAY AT ARROWHEAD LAKE", "ARROWHEAD LAKE" or "BACK BAY AT ARROWHEAD LAKE HOMEOWNERS ASSOCIATION, INC.", or "BACK BAY HOMEOWNERS ASSOCIATION INC." or any derivative thereof in any printed or promotional material without the prior written consent of the Declarant during the Class B Control Period and the Association thereafter. However, Builder and Owners may use the terms "BACK BAY AT ARROWHEAD LAKE", and "BACK BAY AT ARROWHEAD LAKE HOMEOWNERS ASSOCIATION INC." and "BACK BAY HOME OWNERS ASSOCIATION INC." in printed or promotional matter where such term is used solely to specify that particular property is located within BACK BAY AT ARROWHEAD LAKE.

Section 10 - Security

- (a) NEITHER THE ASSOCIATION, BOARD NOR THE DECLARANT ARE UNDER ANY OBLIGATION OR DUTY TO PROVIDE ANY SECURITY FOR OR ON BEHALF OF ANY OWNER, OCCUPANT, OR DWELLING UNIT. NEITHER THE ASSOCIATION NOR THE DECLARANT SHALL BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE SECURITY. ALL OWNERS, TENANTS, OCCUPANTS, GUESTS

AND INVITEES OF ANY OWNER, AS APPLICABLE, ACKNOWLEDGE THAT THE DECLARANT AND THE ASSOCIATION, ARE NOT INSURERS AND THAT EACH OWNER, TENANT, OCCUPANT, GUEST AND INVITEE ASSUMES ALL RISK OF LOSS OR DAMAGE TO PERSONS, TO DWELLING UNITS AND TO THE CONTENTS OF DWELLING UNIT. NO REPRESENTATIONS OR WARRANTIES HAVE BEEN MADE TO ANY OWNERS, OCCUPANT, NOR HAS ANY OWNER, OCCUPANT, TENANT, GUEST OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND REGARDING SECURITY AND NONE SHALL BE IMPLIED IN LAW.

- (b) Notwithstanding the above, the Association shall have the right (but not the obligation) acting through the Board to provide any security measures for the benefit of BACK BAY AT ARROWHEAD LAKE it deems desirable from time to time.

#### Section 11 - Indemnification.

The Association shall indemnify Declarant and every officer of the Association and Directors, against any and all expenses, including counsel fees, reasonably incurred by or imposed upon Declarant or such officer of Trustee in connection with any action, suit, or other proceeding (including settlement of or proceeding, if approved by the then Board or Declarant) to which it, he or she may be a party by reason of being or having been the Declarant, an officer or Trustee. The Declarant, officers of the Association and Directors shall not be liable for any mistake of judgment negligent, or other-wise, except for their own individual willful, malfeasance or bad faith. The Declarant, officers and Directors shall have no personal liability with respect to any contract or other commitment made by them, in good faith on behalf of the Association (except to the extent that such officers of Directors may also be Owners), and the Association shall indemnify and forever hold Declarant and each such Officer and Directors free and harmless against any and all liability to other on account of a contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any Owners rights to which Declarant, any officer of Trustee, or former Officer of Trustee may be entitled.

#### Section 12 - Force Majeure.

In the event that the Declarant or the shall be prevented or delayed from doing any act required of it pursuant to this Declaration because of weather, strikes or other labor difficulties, inability to obtain or delay in obtaining materials, fire or other casualties, acts of God, governmental restrictions or delays, or other matters beyond the reasonable control of such person or entity, then the time for performing such acts specified in this Declaration shall be extended for the Period of such delay.

#### Section 13 - Exhibits.

All exhibits referred to in this Declaration are attached to and made a part hereof.

Section 14 - Headings.

The Section headings are used for the convenience only and shall not be used in the interpretation of any matters herein. Use of the masculine or any other gender shall include the feminine and the neuter genders, and vice versa.

Section 15 - Governing Law.

This Declaration shall be construed and enforced under the laws of the State of Ohio.

Section 16 - Venue and Jurisdiction.

In the event of any dispute under this Declaration, Mahoning County, Ohio shall have exclusive jurisdiction concerning arbitration, mediation or litigation and venue shall be deemed proper in the Mahoning County Court of Common Pleas.

EXECUTED this 31 Day of January, 2013, by the undersigned Declarant.

**APL PROPERTIES, LLC.**  
**DECLARANT:**

 Managing Member  
Robert P. Struharik III, Managing Member

STATE OF OHIO                    }  
                                          } SS:  
MAHONING COUNTY            }

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named APL PROPERTIES, LLC., Declarant, by Robert P. Struharik III, its Managing Member who acknowledged that he did execute the above instrument and acknowledged that he did sign it, and that such signing was his free action and deed, and in the capacity indicated by his signatures and designations.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal at Youngstown, Ohio, this 31 day of January, 2013.




NANCY R. MUMAW  
Notary Public - State of Ohio  
My Commission Expires Nov. 10, 2014

  
NOTARY PUBLIC



BACK BAY HOMEOWNERS ASSOCIATION, INC., joins in the execution of this Declaration to express its consent and approval of the terms and provisions hereof, this 31 day of January, 2013.

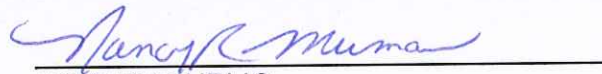
**BACK BAY HOMEOWNERS ASSOCIATION, INC.**

  
Robert P. Struharik III, President

STATE OF OHIO                    }  
                                              } SS:  
MAHONING COUNTY                }

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named BACK BAY HOMEOWNERS ASSOCIATION, INC., by Robert P. Struharik III, its President, who acknowledged that he did execute the above instrument and acknowledged that he did sign it, and that such signing was his free action and deed, and in the capacity indicated by his signatures and designations.

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and affixed my official seal at Youngstown, Ohio, this 31 day of January, 2013.

  
NOTARY PUBLIC



NANCY R. MUMAW  
Notary Public - State of Ohio  
My Commission Expires Nov. 10, 2014

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

Situated in the City of Columbiana, County of Mahoning, and State of Ohio, and known as being Lot Nos. 11, 12, 14, and 15, in the Replat of The Backbay at Arrowhead Plat and The Schooner Bay Plat No. 5, according to the Plat thereof, filed in Volume 123, Page 44, Mahoning County Records of Plats.

201300003126  
Filed for Record in  
MAHONING COUNTY, OHIO  
NORALYNN PALERMO, RECORDER  
02-01-2013 At 02:40 pm.  
DEC/RES COV 596.00  
OR Book 6009 Page 807 - 879

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

**OF**

**BACK BAY AT ARROWHEAD LAKE**

Pursuant to the provisions of Ohio Revised Code Section 5312.01 to 5312.15 to  
establish an Ohio Planned Community.

This Instrument prepared by:

Attorney Daniel J. Mumaw  
7178 West Blvd.  
Youngstown, OH 44512  
330-629-8860

EXHIBIT B

TO DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS FOR  
BACK BAY AT ARROWHEAD LAKE

BY-LAWS

OF

BACK BAY HOMEOWNER'S ASSOCIATION, INC.

A Non-Profit Ohio Corporation

**BY-LAWS OF HOMEOWNERS ASSOCIATION  
OF  
BACK BAY HOMEOWNER'S ASSOCIATION, INC.**

The within By-Laws are executed and incorporated into the DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS FOR BACK BAY AT ARROWHEAD LAKE (hereafter "Declaration"). Certain of the terms used by these By-Laws 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 therefore. The purpose of the within By-Laws is to provide for the establishment of the Unit Owners' Association for the government of the Back Bay at Arrowhead Lake Property in the manner provided by the Declaration and these By-Laws. 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 their employees, or any other person who might use the facilities of the Back Bay at Arrowhead Lake Property in any manner shall be subject to the covenants, provisions or regulations contained in the Declaration and these By-Laws and shall be subject to any restriction, condition or regulation herein after adopted by the Association. The mere acquisition or rental of any of the Lots located within the Back Bay at Arrowhead Lake Property described in the Declaration, or the mere act of occupancy of any of the Lots will constitute acceptance and ratification of the Declaration and of these By-Laws.

**ARTICLE I  
NAME, PRINCIPAL OFFICE, AND DEFINITIONS**

**Name.** The name of the Association shall be BACK BAY HOMEOWNERS ASSOCIATION, INC., an Ohio non-profit corporation (hereinafter sometimes referred to as the "Association").

**Principal Office.** The principal office of the Association shall be located at the Declarant's office (which is currently located at 11624 South Avenue, North Lima, OH 44452) until the termination of the Class B Control Period. The Association may have such other offices, as the Board of Directors ("Board") may determine or as the affairs of the Association may require.

**Definitions.** The words used in this By-Laws ("By-Laws") shall have the same meaning as set forth in that Declaration of Covenants, Conditions, Easements and Restrictions for Back Bay at Arrowhead Lake of even date herewith (said Declaration, as amended, restated, or extended from time to time, is hereinafter sometimes referred to as the "Declaration"), unless the context shall prohibit.



**ARTICLE II**  
**ASSOCIATION: MEETINGS, QUORUM, VOTING, PROXIES**

**Section 1. Membership.** The Association shall have three (3) classes of membership, Class "A", Class "B" and Class "C" ("Members"), as more fully set forth in the Declaration, the terms of which pertaining to memberships are specifically incorporated herein by reference.

**Section 2. Place of Meetings.** Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as may be designated by the Board either on the Property or as convenient thereto as possible and practical.

**Section 3. Annual Meetings.** The first meeting of the Members, whether a regular or special meeting, shall be held within thirty (30) days after the termination of the Class "B" Control Period specified in Article III, Section 2 hereof, unless the Declarant determines in its sole discretion to call a special meeting prior thereto. The next annual meeting shall be set by the Board so as to occur no later than ninety (90) days after the close of the Association's fiscal year. Subsequent regular annual meetings of the Members shall be held within thirty (30) days of the same day of the same month of each year thereafter at an hour set by the Board. Subject to the foregoing, the annual meeting of the Members shall be held at a date and time as set by the Board.

**Section 4. Special Meetings.** The Declarant or the President of the Association may call special meetings. In addition, after the Declarant is no longer a Class "B" Member, it shall be the duty of the President of the Association to call a special meeting of the Association if so directed by resolution of a majority of a quorum of the Board or upon a petition signed by holders of at least twenty-five percent (25%) of the total votes of the Association. The notice of any special meeting shall state the date, time, and place of such meeting and the purpose thereof. No business shall be transacted at a special meeting except as stated in the notice.

**Section 5. Notice of Meetings.** A written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than seven (7) nor more than sixty (60) days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting.

In the case of a special meeting or when required by statute or the By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice.

If mailed, the notice of a meeting shall be deemed to be delivered three (3) days after it is deposited in the United States mail addressed to the Class "A" Member at his address as it appears on the records of the Association, with postage thereon prepaid.

**Section 6. Waiver of Notice.** Waiver of notice of meeting of a Class "A" Member shall be deemed the equivalent of proper notice. Attendance at a meeting by a Class "A" Member, whether in Person or by proxy, shall be deemed a waiver by such Class "A" Member of notice of the time, date, and place thereof, unless such Class "A" Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting, shall also be deemed a waiver of notice of all business transacted thereat unless objection to the calling or convening of the meeting, of which proper notice was not given, is raised before the business is put to a vote.

**Section 7. Adjournment of Meetings.** If any meetings of the Association cannot be held because a quorum is not present, a majority of the Class "A" Members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for the adjourned meeting are not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Class "A" Members in the manner prescribed for regular meetings.

The Class "A" Members present at a duly called or held meeting at which a quorum is present may continue to do business until adjournment, notwithstanding the withdrawal of enough Class "A" Members to leave less than a quorum, provided that at least twenty-five (25%) percent of the total votes of the Association remains present in person or by proxy, and provided further that any action taken shall be approved by at least a majority of the Members required to constitute a quorum.

**Section 8. Voting.** The voting rights of the Members shall be as set forth in the Declaration, and such voting rights provisions are specifically incorporated herein.

**Section 9. Proxies.** Class "A" Members may act or vote in person or by proxy. The person appointed as proxy need not be a member of the Association. Designation by a Member or Members of a proxy to vote or act on his or her behalf shall be made in writing to the Secretary of the Association (or if there is no Secretary, then with the person conducting the meeting for which the proxy is given) at or before the meeting and shall be revocable at any time by actual notice to the Secretary of the Association by the Member or Members making such designation. 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 10. Majority.** As used in these By-Laws, the term "majority" shall mean those votes, Owners, or other group as the context may indicate totaling more than fifty (50%) percent of the total number.

**Section 11. Quorum.** Except as otherwise provided in the By-Laws or in the Declaration, the presence in person or by proxy of at least one-third (1/3) of the voting power of the Class "A" Members of the Association shall constitute a quorum at all meetings of the Association. Any provision in the Declaration concerning quorums is specifically incorporated herein.

**Section 12. Conduct of Meetings.** The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring thereat.

**Section 13. Action Without A Meeting.** Any action required by law to be taken at a meeting of the Class "A" Members or any action which may be taken at a meeting of the Class "A" Members may be taken without a meeting if a consent in writing setting forth the action so taken shall be signed by all of the Class "A" Members entitled to vote with respect to the subject matter thereof, and such consent shall have the same force and effect as a unanimous vote of the Class "A" Members.

### **ARTICLE III** **BOARD OF DIRECTORS: NUMBER, POWERS, MEETINGS**

#### **A. COMPOSITION AND SELECTION.**

**Section 1. Governing Body; Composition.** The affairs of the Association shall be governed by the Board of Directors, each of whom shall have one (1) vote. Except with respect to Directors appointed by the Declarant, the Board shall be Members or spouses of such Members; provided, however, no person and his or her spouse may serve on the Board at the same time. If a Member is a corporation or partnership, having the authority to designate a Director(s), a certificate signed by such Member shall be filed with the Secretary of the Association naming such Director(s), which certificate shall be conclusive until a subsequent substitute certificate is filed with the Secretary of the Association.

**Section 2. Directors During Class "B" Control.** The Directors shall be selected by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member until up to one hundred eighty (180) days after the first to occur of the following ("Class "B" Control Period"):

- (a) when all Lots to be constructed on the Property have been sold and conveyed to Persons other than the Declarant; and Property refers to the real

property as shown on Exhibit A attached to the Declaration, and further as additional property may be added to or deleted from in accordance with the provisions of the Declaration;

(b) October 31, 2032; or

(c) when, in its discretion, the Class "B" Member so determines.

**Section 3. Right to Disapprove Actions.** This Section 3 may not be amended without the express, written consent of the Declarant as long as the Declarant owns a Lot within the Property.

So long as the Declarant owns a Lot within the Back Bay at Arrowhead Lake Property, the Declarant shall have a right to disapprove actions of the Board and the ARC, as is more fully provided in this Section. This right shall be exercisable only by the Declarant, its successors, and assigns who specifically take this power in a recorded instrument. The right to disapprove shall be as follows:

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

(a) The Declarant shall have been given written notice of all meetings and proposed actions approved at meetings of the Board or any committee thereof by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, as it may change from time to time, which notice complies as to the Board meetings with Article III, Sections 8, 9, and 10, of these By-Laws and which notice shall, except in the case of the regular meetings held pursuant to these By-Laws, set forth in reasonable particularity the agenda to be followed at said meeting; and

(b) The Declarant shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program to be implemented by the Board, any committee thereof, or the Association. The Declarant, its representatives or agents shall have the right to make its concerns, thoughts, and suggestions known to the members of the subject committee and/or the Board. The Declarant shall have the right to disapprove any action, policy, or program authorized by the Board or any committee thereof and to be taken by the Board, such committee, the Association, or any individual Member of the Association, if Board, committee, or Association approval is necessary for such action. This right may be exercised by the Declarant, its representatives, or agents at any time within ten (10) days following the meeting held pursuant to the terms and provisions hereof. This right to disapprove may be used to block proposed actions but shall not extend to the requiring of any action or counteraction on behalf of any committee, or the Board or the Association. The Declarant shall not use its right of disapproval to require a reduction in the level of services which the Association is obligated to provide or to prevent capital

repairs or any expenditure required to comply with applicable laws and regulations.

**Section 4. Number of Directors.** The number of Directors in the Association shall consist of three (3) Board members, as provided in Section 6 below.

**Section 5. Nomination of Directors.** Except with respect to Directors selected by the Class "B" Member, nominations for election to the Board of Directors shall be made by the Members. All candidates shall have a reasonable opportunity to communicate their qualifications to the Class "A" Members and to solicit votes.

**Section 6. Election and Term of Office.** Notwithstanding any other provision contained herein:

(a) At any time prior to the termination of the Class "B" Control Period the Class "B" Member may elect, at its sole discretion, that the Association may call a special meeting at which the Class "A" Members may elect one (1) of the three (3) Directors. In such event, the remaining two (2) Directors shall be appointees of the Class "B" Member. In such event, the Director elected by the Class "A" Members shall not be subject to removal by the Class "B" Member acting alone and shall be elected for a term of two (2) years or until the termination of the Class "B" Control Period, whichever is shorter. If such Director's term expires prior to the termination of the Class "B" Control Period, a successor shall be elected for a like term.

(b) At the first annual meeting of the membership after the termination of the Class "B" Control Period, as specified in Section 2 of this Article III, the Class "A" Members shall elect all three (3) Directors. Immediately prior to such election, the persons previously elected or appointed, whether by the Declarant or by the Class "A" Members, shall resign; provided, however, that such persons that remain as Members shall be eligible for reelection to the Board of Directors. One (1) Director shall be elected to serve a term of three (3) years, one (1) Director shall be elected to serve a term of two (2) years, and one (1) Director shall be elected to serve a term of one (1) year. Upon the expiration of the initial term of office of each such Director, a successor shall be elected to serve a term of three (3) years. Thereafter, all Directors shall be elected to serve three (3) year terms. For the purpose of the election of Directors, each Class "A" Member shall have one (1) equal vote, and the Declarant shall also be entitled to a vote for each Lot owned by the Declarant, if any, except as otherwise provided above.

At any election of Directors, each Class "A" Member shall be entitled to cast one (1) equal vote with respect to each vacancy to be filled. The candidates receiving the largest number of votes shall be elected. Such election shall be by written secret ballot whenever requested by a Member of the Association; but unless the request is made, the election may be conducted in any manner approved at such meeting. The Directors elected by the Class "A" Members shall hold office until their respective successors have been elected by the Association. The Directors may be elected to serve any number of consecutive terms. The persons so elected shall take office upon such election.

**Section 7. Removal of Directors and Vacancies.** Any Director elected by the Class "A" Members may be removed, with or without cause, by the vote of Class "A" Members holding a majority of the votes entitled to be cast for the election of such Director. Any Director whose removal is sought shall be given notice prior to any meeting called for that purpose. Upon removal of a Director by the vote of the Class "A" Members, a successor shall then and there be elected by the Class "A" Members entitled to elect the Director so removed to fill the vacancy for the remainder of the term of such Director. A Director appointed by the Class "B" Member may be removed, with or without cause, by the Class "B" Member. Upon removal of a Director by the Class "B" Member, a successor shall be appointed by the Class "B" Member to fill the vacancy for the remainder of the term of such Director.

Any Director elected by the Class "A" Members who has three (3) consecutive unexcused absences from Board meetings or who is delinquent in the payment of any assessment or other charge due the Association for more than thirty (30) days may be removed by a majority of the Directors present at a regular or special meeting at which a quorum is present, and a successor may be appointed by the Board to fill the vacancy for the remainder of the term. In the event of the death, disability, or resignation of a Director, a vacancy may be declared by the Board, and it may appoint a successor. Any Director appointed by the Board shall serve for the remainder of the term of the Director who vacated the position.

## **B. MEETINGS.**

**Section 8. Organization Meetings.** The first meeting of the Board following each annual meeting of the membership shall be held within ten (10) days thereafter at such time and place as shall be fixed by the Board.

**Section 9. Regular Meetings.** During the Class "B" Control Period, regular meetings of the Board shall be held at such time and place as shall be determined from time to time by the Class "B" Member, but at least one (1) such meeting shall be held during each fiscal year. After the expiration of the Class "B" Control Period, the first annual meeting of the Members shall be held as provided in Article II, Section 3 herein, and thereafter regular meetings of the Board may be held at such time and place as shall be determined from time to time by a majority of the Board, but at least two (2) such meetings shall be held during each fiscal year with at least one (1) per half. Notice of the time and place of the meeting shall be communicated to members of the Board not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any member of the Board who has signed a waiver of notice or a written consent to holding of the meeting.

**Section 10. Special Meetings.** Special meetings of the Board shall be held when called by written notice signed by the President, Vice President, or Secretary of the Association, or by any two (2) members of the Board. The notice shall specify the time and place of the meeting and the nature of any special business to be considered.

The notice shall be given to each member of the Board by one of the following methods: (a) by personal delivery; (b) written notice by first class mail, postage prepaid; or c) by telephone communication, either directly to the member of the Board or to a person at the member's office or home who would reasonably be expected to communicate such notice promptly to the member of the Board. All such notices shall be given or sent to the member's address or telephone number as shown on the records of the Association. Notices sent by first class mail shall be deposited into a United States mailbox at least four (4) days before the time set for the meeting. Notices given by personal delivery or telephone shall be delivered or telephoned at least seventy-two (72) hours before the time set for the meeting.

**Section 11. Waiver of Notice.** The transactions of any meetings of the Board, however called and noticed or wherever held, shall be as valid as though taken at a meeting duly held after regular call and notice if (a) a quorum is present, and (b) either before or after the meeting each of the members of the Board not present signs a written waiver of notice, a consent to holding the meeting, or an approval of the minutes. The waiver of notice or consent need not specify the purpose of the meeting. Notice of a meeting shall also be deemed given to any member of the Board who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

**Section 12. Quorum of Board.** At all meetings of the Board, a majority of the members of the Board shall constitute a quorum for the transaction of business, and the votes of a majority of the members of the Board present at a meeting at which a quorum is present shall constitute the decision of the Board. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of members of the Board, if any action taken is approved by at least a majority of the required quorum for that meeting. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

**Section 13. Compensation.** No member of the Board shall receive any compensation from the Association for acting as such unless approved by Members representing a majority vote of the total vote of the Association at a regular or special meeting of the Association; provided any Director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other Directors.

**Section 14. Conduct of Meetings.** The President shall preside over all meetings of the Board, and the Secretary shall keep a minute book of the Board, recording therein all resolutions adopted by the Board and a record of all transactions and proceedings occurring at such meetings. Meetings may be conducted by telephone and shall be considered as any other meeting, provided all Directors are able through telephone connection to hear and to be heard.

**Section 15. Open Meetings.** Subject to the provisions of Sections 16 and 17 of this Article, all meetings of the Board shall be open to all Class "A" Members, but Class "A" Members other than Directors may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a member of the Board. In such case, the President may limit the time any Class "A" Member may speak.

**Section 16. Executive Session.** The Board may, with approval of a majority of a quorum, adjourn a meeting and reconvene in executive session to discuss and vote upon personnel matters, litigation in which the Association is or may become involved, and orders of business of a similar nature. The nature of any and all business to be considered in executive session shall first be announced in open session.

**Section 17. Action Without a Formal Meeting.** Any action to be taken at a meeting of the Board or any action that may be taken at a meeting of the Board may be taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by all of the members of the Board, and such consent shall have the same force and effect as a unanimous vote. An explanation of the action taken shall be posted at a prominent place or places within the Common Elements within three (3) days after the written consents of all the members of the Board have been obtained.

### **C. POWERS AND DUTIES.**

**Section 18. Powers.** Except as set forth in the Declaration and in these By-Laws, the Board shall be responsible for the affairs of the Association and shall have all of the powers and duties necessary for the administration of the Association's affairs and, as provided by law, may do all acts and things as are not by the Declaration, Articles, or the By-Laws directed to be done and exercised exclusively by the Class "A" Members or the membership generally.

The Board shall delegate to one of its members the authority to act on behalf of the Board on all matters relating to the duties of the managing agent or manager, if any, which might arise between meetings of the Board.

In addition to the duties imposed by these By-Laws or by any resolution of the Association that may be hereafter adopted, the Board shall have the power to and be responsible for the following, in way of explanation, but not limitation:

(a) preparation and adoption of an annual budget in which there shall be established the contribution of each Owner to the Common Expenses;

(b) imposing assessments to defray the Common Expenses, establishing the means and methods of collecting such assessments, and establishing the period of the installment payments of the annual assessment; provided, however, that unless otherwise determined by the Board, the assessments shall be paid annual or semi-



annual against the proportionate share of the Common Expenses and shall be payable in advance and if paid annually on or before January 1; and if paid semi-annually,  $\frac{1}{2}$  of the assessment paid on or before January 1 and  $\frac{1}{2}$  of the assessment paid on or before July 1 of each year.

(c) adopt and enforce rules regulating the operation, maintenance, repair, replacement, modification, care, and upkeep, Area of Maintenance Responsibility and of all of the Common Elements;

(d) designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Association, its property, and the Common Elements and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and material to be used by such personnel in the performance of their duties;

(e) collecting the assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Association; provided, however, that any reserve fund may be deposited, in the Director's best business judgment, in depositories other than banks;

(f) making and amending rules and regulations;

(g) opening of bank accounts on behalf of the Association and designating the signatories required;

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Elements in accordance with the provisions of the Declaration and the By-Laws after damage or destruction by fire or other casualty;

(i) enforcing by legal means the provisions of the Declaration, the By-Laws, and the rules and regulations adopted by it and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association;

(j) commence, defend, intervene in, settle or compromise any civil, criminal, or administrative action or proceeding that is in the name of, or threatened against, the association, the Board of Directors, or the Property, or that involves two or more Owners and relates to matters affecting the Property;

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

(l) keeping books with detailed accounts of the receipts and expenditures affecting the Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred. The said books and vouchers accrediting the entries thereupon shall be available for examination by the Owners and mortgagees,

their duly authorized agents, accountants, or attorneys, during general business hours on working days at the time and in a manner that shall be set and announced by the Board for the general knowledge of the Owners. All books and records shall be kept in accordance with generally accepted accounting practices;

(m) make available to any prospective purchaser of a Lot, any Owner of a Lot, any first mortgagee, and the holders, insurers, and guarantors of a first mortgage on any Lot or Residence, current copies of the Declaration, the Articles, the By-Laws, rules governing Residences or Lots, and all other books, records, and financial statements of the Association. The Association may impose a reasonable charge for the foregoing in order to defray duplication costs;

(n) permit utility suppliers to use portions of the Common Elements reasonably necessary to the ongoing development or operation of the Property; and

(o) entering into easement agreements, license agreements and other agreements with utility companies (both private and public), with Owners within the Property, and with the owners of neighboring properties;

(p) acquire, encumber, and convey or otherwise transfer real and personal property, subject to the requirements of the Declaration and hold said property in the name of the Owners Association;

(q) suspend the voting privileges and use or Recreational Areas or facilities of an Owner who is delinquent in the payment of Assessments for more than 30 days;

(r) purchase insurance and fidelity bonds the Directors consider appropriate and necessary;

(s) exercise powers that are conferred by the Declaration of By-Laws, necessary to incorporate the Owners Association as a nonprofit corporation, permitted to be exercised in Ohio by a nonprofit corporation, or necessary and proper for the government and operation of the Owners Association;

(t) authorize entry to any portion of the Planned Community by designated individuals when conditions exist involving imminent risk of damage or harm to Common Elements, and Residence, or to the health or safety of the Occupants of that or another Residence;

(u) Levy and collect fees or other charges for the use, rental, or operation of the Common Elements;

(v) Pursuant to the provisions of the Declaration, levy interest and charges for the late payment of Assessments, returned checks, enforcement Assessments for violations of the Declaration, By-Laws, and the rules and regulations of the Owners Association, and charges for damage to the Common Elements or other property.



**Section 19. Management Agent.**

(a) The Board may employ for the Association a professional management agent or agents at a compensation established by the Board to perform such duties and services, as the Board shall authorize. The Board may delegate to the managing agent or manager, subject to the Board's supervision, all of the powers granted to the Board by the By-Laws, other than the powers set forth in subparagraphs (a), (b), (f), (g), and (i) of Section 18 of this Article. The Declarant, or an affiliate of the Declarant, may be employed as managing agent or manager.

(b) No management contract may have a term in excess of three (3) years and must permit termination by either party without cause and without termination fee on ninety (90) days' or less written notice.

**Section 20. Accounts and Reports.** The Association shall keep correct and complete books and records of accounting specifying the receipts and expenditures relating to the Common Elements and the common receipts and expenses, records showing collection of the Common Expenses from the Owners, minutes of the meetings of the association and the Board, and records of the names and address of the Owners.

**Section 21. Borrowing.** The Board shall have the power to borrow money for the purpose of repair or restoration of the Common Elements or Elements of Common Responsibility without the approval of the Class "A" Members of the Association; provided, however, the Board shall obtain membership approval in the same manner as is provided in the Declaration for Assessments for borrowings made for matters referred to in said Section.

**Section 22. Rights of the Association.** With respect to the Common Elements or other Elements of Common Responsibility, and in accordance with the Articles and the By-Laws, the Association shall have the right to contract with any person for the performance of various duties and functions. Without limiting the foregoing, this right shall entitle the Association to enter into common management, operational, or other agreements with trusts, or neighborhood and other homeowners or residents associations, both within and without the Property. Such agreements shall require the consent of two-thirds (2/3) of the votes of all members of the Board.

**Section 23. Hearing Procedure; Compliance and Non-Monetary Default.**

(a) **Enforcement.** In the event of a violation by any Member or any other occupant of a Member (other than the nonpayment of Assessments or charges, which is governed by Article IX of the Declaration) of any of the provisions of the Declaration, the By-Laws, or the Rules, the Association or a committee created by the By-Laws (e.g., the

Covenants Committee) or by the Board shall notify the Member and any other occupant of the violation, by written notice. If such violation is not cured as soon as is reasonably practical and in any event within seven (7) days after such written notice, or if the violation is not capable of being cured within such seven (7) day period, if the Member or other occupant fails to commence and diligently proceed to completely cure such violation as soon as is reasonably practical within seven (7) days after written demand by the Association or such committee, or if any similar violation is thereafter repeated, the Association or such committee may, at its option:

- (i) Impose a fine against the Member or other occupant as provided in Subsection (b) of this Section; and/or
- (ii) Commence an action to enforce performance on the part of the Member or other occupant, and to require the Member to correct such failure, or for such other relief as may be necessary under the circumstances, including injunctive relief; and/or
- (iii) The Association may itself perform any act or work required to correct such failure and, either prior to or after doing so, may charge the Member with all reasonable costs incurred or to be incurred by the Association in connection therewith, plus a service fee equal to fifteen percent (15%) of such costs. In connection with the foregoing, the Association may perform any maintenance or repairs required to be performed, may remove any change, alteration, addition or improvement which is unauthorized or not maintained in accordance with the provisions of the Declaration, and may take any and all other action reasonably necessary to correct the applicable failure; and/or
- (iv) Commence an action to recover damages or any other remedy available at law or in equity.

**(b) Fines.** The amount of any fine shall be a reasonable amount as determined by the Board or the Covenants Committee (as defined in Article V, Section 2). Prior to imposing any fine, the Member or other occupant shall be afforded an opportunity for a hearing after reasonable notice to the Member or other occupant of not less than ten (10) days, which notice shall include (i) a statement of the date, time and place of the hearing, (ii) a statement of the provisions of the Declaration, the By-Laws or Rules which have allegedly been violated, and (iii) a short and plain statement of the matters asserted by the Association or the committee. If the Member or other Occupant fails to attend the hearing as set by the Board or committee, the Member or other Occupant shall be deemed to have admitted the allegations contained in the notice to the Member or other Occupant. Any fine imposed by the Board or committee shall be due and payable within ten (10) days after written notice of the imposition of the fine, or if a hearing is timely requested, within ten (10) days after written notice of the Board's or committee's decision at the hearing. Any fine levied against a Member shall be deemed

an Assessment and if not paid when due all of the provisions of the Declaration relating to the late payment of Assessments shall be applicable.

**(c) Negligence.** A Member shall be liable and may be charged by the Association for the expense of any maintenance, repair or replacement rendered necessary by his act, neglect or carelessness, but only to the extent that such expense is not met by the proceeds of insurance carried by the Association. Such liability shall include any deductible portion of such loss, and any increase in casualty insurance rates occasioned by use, misuse, occupancy or abandonment of a Lot or its appurtenances or of the Common Elements.

**(d) Responsibility of Members for Occupants.** Each Member shall be responsible for the acts and omissions, whether negligent or willful, of his Occupant, and for all employees, agents and invitees of the Member or any such Occupant, and in the event the acts or omissions of any of the foregoing shall result in any damage to the Common Elements, or any liability to the Association, the Member shall be charged for same, limited where applicable to the extent that the expense or liability is not met by the proceeds of insurance carried by the Association. Furthermore, any violation of any of the provisions of the Declaration, the By-Laws, or any Rule, by any Occupant, or any employees, agents or invitees of a Member or any Occupant of a Residence or Lot, shall also be deemed a violation by the Member, and shall subject the Member to the same liability as if such violation was that of the Member.

**(e) Costs and Attorney's Fees.** In any legal proceedings commenced by the Association or a committee to enforce the Declaration, the By-Laws and/or the Rules, as said documents may be amended from time to time, the prevailing party shall be entitled to recover the costs of the proceeding and reasonable attorneys' and paralegal fees. Any such costs or attorneys' and paralegals' fees awarded to the Association or committee in connection with any action against any Member shall be charged to the Member.

**(f) Declarant Assessments.** Declarant shall not be required to pay any assessments or monies to finance any claim or litigation against the Declarant.

**(g) No Waiver of Rights.** The failure of the Association or a committee or any Member to enforce any covenant, restriction or any other provision of the Declaration, the By-Laws, or the Rules, as the said documents may be amended from time to time, shall not constitute a waiver of the right to do so thereafter.

**(h) Additional Enforcement Rights.** Notwithstanding anything to the contrary herein contained, the Association, acting through the Board, may elect to enforce any provision of the Declaration, the By-Laws, or the Rules and Regulations of the Association by self-help (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations) or by suit at law or in equity to enjoin any violation or to recover monetary damages or both without the necessity of compliance with the procedure set forth above. In any such action, to the maximum



extent permissible, the Owner or Occupant responsible for the violation of which abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred by the Association in so acting to enforce such rights.

#### **ARTICLE IV** **OFFICERS**

**Section 1. Officers.** The officers of the Association shall be elected by the Board and shall consist of a President, Vice President, Secretary, and Treasurer. The Board may elect such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have the authority and perform the duties prescribed from time to time by the Board. Any two or more offices may be held by the same person, excepting the offices of President and Secretary. The President, Secretary and Treasurer shall be elected from among the members of the Board.

**Section 2. Election, Term of Office, and Vacancies.** The officers of the Association shall be elected annually by the Board at the first meeting of the Board following each annual meeting of the Members, as herein set forth in Article III. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Board for the unexpired portion of the term.

**Section 3. Removal.** Any officer may be removed by the Board whenever in its judgment the best interests of the Association will be served thereby.

**Section 4. Powers and Duties.** The officers of the Association shall each have such powers and duties as generally pertain to their respective offices, as well as such powers and duties as may from time to time be specifically conferred or imposed by the Board. The President shall be the chief executive officer of the Association. The Secretary shall have primary responsibility for the preparation and maintenance of all minutes and other records of actions by the Board, and shall provide all notice required hereunder and handle all correspondence or other communications of the Association, either directly or by delegation, to other committees, the management agent, or both. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

**Section 5. Resignation.** Any officer may resign at any time by giving written notice to the Board, the President, or the Secretary. Such resignation shall take effect on the date of the receipt of such notice or at any later time specified therein, and unless otherwise specified therein, the acceptance of such resignation shall not be necessary to make it effective.



**Section 6. Agreements, Contracts, Deeds, Easements, Leases.** All agreements, contracts, deeds, easements, leases, and other instruments of the Association shall be executed by the President of the Association, or by such other person or persons as may be designated by resolution of the Board.

#### **ARTICLE V** **COMMITTEES**

**Section 1. General.** Committees are hereby authorized to perform such tasks and to serve for such periods as may be designated by a resolution adopted by a majority of the members of the Board present at a meeting at which a quorum is present. Such committees shall perform such duties and have such powers as may be provided in the resolution. Each committee shall be composed as required by law and shall operate in accordance with the terms of the resolution of the Board designating the committee or with rules adopted by the Board.

#### **ARTICLE VI** **FINANCES OF ASSOCIATION (ASSESSMENTS)**

**Section 1. Preparation of Estimated Budget.** On or before the filing with the Mahoning County Recorder of the Declaration, and on or before December 15 of each year thereafter, the Association shall estimate the total amount necessary to pay the Assessments referred to in Article VII of the Declaration for the balance of the calendar year in which the Declaration is filed and, thereafter, for each succeeding calendar year together with a reasonable amount considered by the Association to be necessary for a reserve for contingencies and replacements, and the amounts, if any, which may be received from special assessments, concessions, contracts for special services and facilities, and other sources. On or before December 21, the Association shall notify each Member in writing as to the amount of such estimates. The failure of the Association to comply strictly with the above time requirements shall not be deemed to be a waiver and shall not prevent the Association from collecting Assessments. Each Member required to pay Assessments shall pay to the Association or as it may direct. At the sole discretion of the Board, any amount accumulated in excess of the amount required for actual expenses and reserves and/or to cover any shortages shall be either credited to the next years Assessments due from the Members under the current year's estimate, pro rata, or added to the reserve fund.

In addition to such regular assessments, each Class A Member shall be required to make, at the time such Member acquires title to a Lot from the Declarant, any initial capital contribution to the Association required by the agreement of sale and purchase of a Lot or as required by the Declaration. 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 such 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 Declarant, but only from those persons who or which purchase a Lot or Lots from the Declarant.

Notwithstanding the provisions of this Section<sup>1</sup>, the Board shall have the authority to establish payment of Assessments on a monthly, quarterly or semi-annual (rather than on a yearly) basis.

**Section 2. Reserve for Contingencies and Replacements: Special Assessments.** The Association shall build up and maintain a reasonable reserve for contingencies and replacements. Extraordinary expenditures not originally included in the annual estimate which may be necessary for the year, shall be charged first against such reserve. If the estimated cash requirement proves inadequate for any reason, including nonpayment of any Member's Assessment, the deficiency and any extraordinary expenditures in excess of the reserves therefore shall be assessed to the Members required to pay assessments, pro rata. The Association shall also make any necessary or desirable special Assessments, from time to time which shall be payable at the time or times the Board deems necessary or desirable.

**Section 3. Failure to Prepare Annual Budget.** The failure or delay of the Association to prepare or deliver to a Member any annual or adjusted estimate shall not constitute a waiver or release in any manner of such Member's obligation to pay his share of the Assessments, as herein provided, whenever the same shall be determined, and in the absence of any annual estimate or adjusted estimate, the Member required to pay Assessments pursuant to Article VII of the Declaration shall continue to pay the yearly charge at the existing yearly rate established for the previous period until the Association mails or delivers notice of the new monthly payment due as a result of the determination of the new annual or adjusted estimate.

**Section 4. Books and Records of the Association.**

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

**(b) Rules for Inspection.** The Board shall establish reasonable rules with respect to:

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be



made; and

- (iii) payment of the cost of reproducing copies of documents requested.

**Section 5. Status of Funds Collected by Association.** All funds collected hereunder shall be held and expended solely for the purposes designated herein and (except for such special Assessments as may be levied hereunder against less than all of the Members and for such adjustments as may be required to reflect delinquent or prepaid Assessments) shall be deemed to be held for the use, benefit and account of all Members required to pay Assessments pursuant to Article VII of the Declaration.

**Section 6. Depository.** The depository of the Association shall be such bank or banks and/or such savings and loan association or savings and loan associations and/or such money market fund(s) as shall be designated from time to time by the Board and in which the monies of the Association shall be deposited. Withdrawal of the monies from such accounts shall be only by check signed by such persons as are authorized by the Board.

**Section 7. Remedies for Failure to Pay Assessments.** If an Owner shall be in default in the payment of any of the aforesaid Assessments, the Association (or Declarant if such Assessment was to be paid directly to Declarant) shall have all of the remedies set forth anywhere in the Declaration, in the By-Laws or at law or equity to collect such Assessments and all costs associated therewith.

## **ARTICLE VII** **MISCELLANEOUS**

**Section 1. Fiscal Year.** The initial fiscal year of the Association shall be set by resolution of the Board.

**Section 2. Conflicts.** If there are conflicts or inconsistencies between the mandatory provisions of Ohio law, the Articles, the Declaration, and the By-Laws, the mandatory provisions of Ohio law, the Declaration, the Articles, and the By-Laws (in that order) shall prevail.

**Section 3. Notices.** Unless otherwise provided in the By-Laws, all notices, demands, bills, statements, or other communications under the By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or if sent by U. S. mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Residence or Lot of such Member; or

(b) if to the Association, the Board, or the managing agent, at the principal office of the Association or the managing agent, if any, or at such other address as shall be designated by the notice in writing to the Owners pursuant to this Section.

**Section 4. Amendment.**

(a) Prior to the sale and conveyance of the first Lot, the Declarant may unilaterally amend the By-Laws.

(b) After the sale and conveyance of the first Lot, the Declarant may unilaterally amend the By-Laws during the Class "B" Period or so long as it owns any portion of the Property for development, and so long as the amendment has no material adverse effect upon the rights of any Member.

(c) After the Declarant no longer owns any portion of the Property for development, or if an amendment has a material adverse effect upon the rights of any Member, the By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Class "A" Members representing a majority of the total votes of the Association, which shall include a majority of votes of Members other than the Declarant or, where the two class voting structure is still in effect: shall include the Class "B" Member and a majority of the Class "A" Members. However, the percentage of votes necessary to amend a specific clause or provision shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

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

This instrument prepared by:  
Daniel J. Mumaw, Attorney at Law