

DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS

FOR

THE ESTATES OF ABERDEEN NEIGHBORHOOD

OF THE

ABERDEEN COMMUNITY

EXHIBITS:

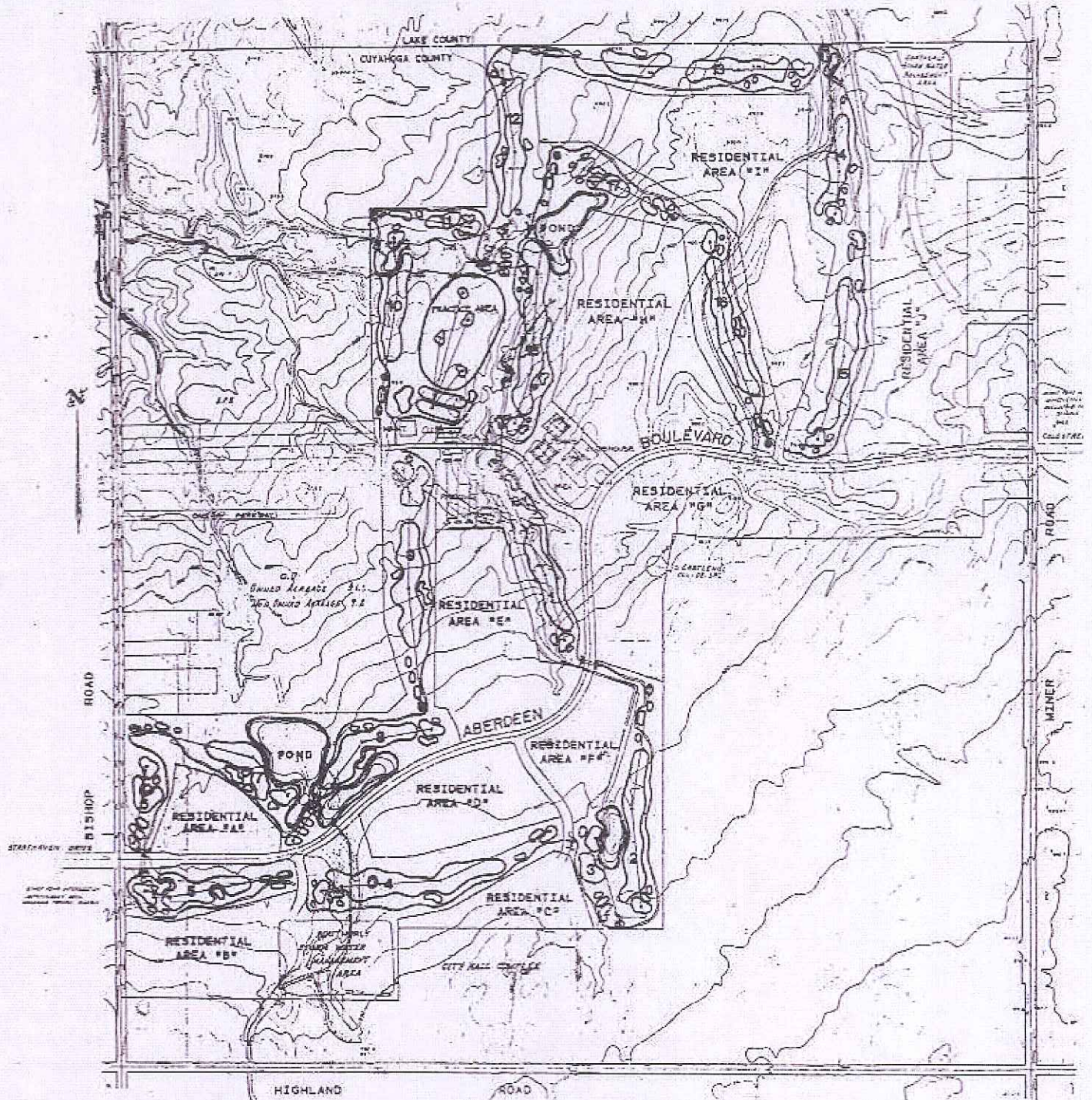
- EXHIBIT A DRAWING SHOWING THE ABERDEEN COMMUNITY
- EXHIBIT B PLAN SHOWING NEIGHBORHOOD
- EXHIBIT C ARTICLES OF INCORPORATION
- EXHIBIT D BY-LAWS

EXHIBIT A

Drawing Showing the Aberdeen Community



EXHIBIT "A"



AMENDED  
 DEVELOPMENT PLAN  
**ABERDEEN GOLF COURSE COMMUNITY**  
 HIGHLAND HEIGHTS, OHIO

DATE: OCTOBER 1991 SCALE: 1" = 300'

The Western Strategic Building Company  
 14000 W. 14th Ave.  
 Denver, Colorado 80202  
 Phone: 303-755-1000  
 Fax: 303-755-1001

MP-5C  
 Ash, Clark & Associates  
 Civil General Architects  
 2021 Fenwick Avenue  
 Cincinnati, Ohio 45219  
 513-763-1414 or 513-763-1415



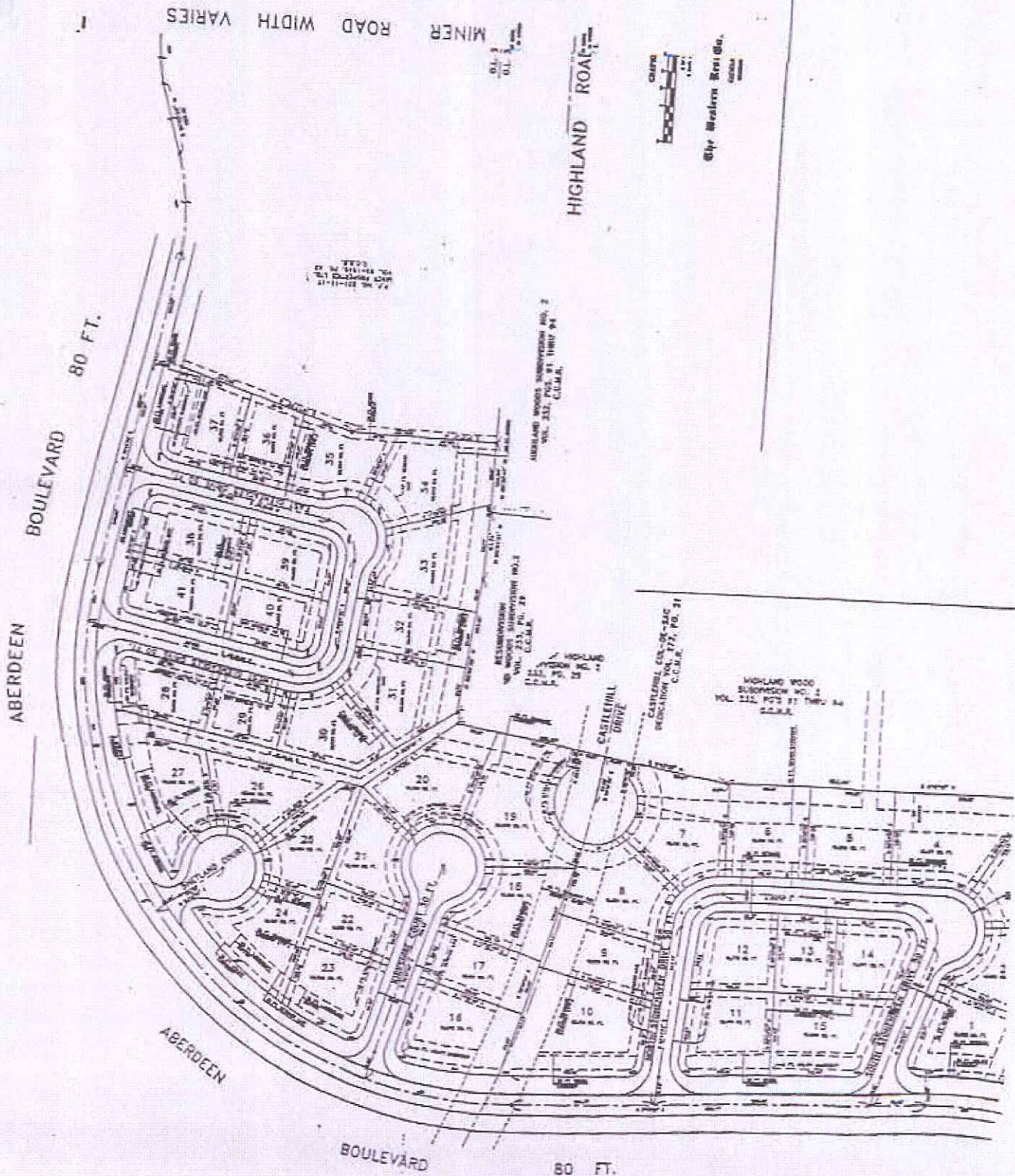
EXHIBIT B

Plan Showing Neighborhood

See Second Amendment  
EXHIBITS B-1 and B-2

EXHIBIT "B"

*see amendments #2*



City Western Real Estate

ABERDEEN

BOULEVARD

80 FT.

ABERDEEN

BOULEVARD

80 FT.

HIGHLAND ROAD

MINER

ROAD WIDTH VARIES

EXHIBIT C

ARTICLES OF INCORPORATION

OF

ESTATES AT ABERDEEN

HOMEOWNERS NEIGHBORHOOD ASSOCIATION

The undersigned, a citizen of the United States, desiring to form a corporation, NOT FOR PROFIT, under Sections 1702.01 et seq. of the Ohio Revised Code, does hereby certify:

FIRST: NAME.

The name of the corporation shall be ESTATES AT ABERDEEN HOMEOWNERS NEIGHBORHOOD ASSOCIATION.

SECOND: LOCATION OF PRINCIPAL OFFICE.

The place in Ohio where the principal office of the corporation is to be located is the City of Beachwood, Ohio.

THIRD: DEFINITIONS.

The following definitions are applicable to these Articles of Incorporation:

1. BUILDING ENVELOPE, a portion of the Neighborhood designated by Declarant and approved by the City of Highland Heights for the construction of an attached or detached Residence.

2. COMPLETED BUILDING ENVELOPE, a Building Envelope on which (a) a Residence has been constructed, and (b) either (i) title to the Building Envelope has been conveyed to an Owner other than a builder, or (ii) an occupant has commenced to live in such Residence, whichever of (i) or (ii) first occurs.

3. DECLARANT, Miner Properties, Ltd., an Ohio limited liability company, or its successors and assigns who take title to all or any portion of the Neighborhood for the primary purpose of development and sale of Building Envelopes (but not for the construction and sale of Residences) and who are designated as a successor Declarant hereunder in a recorded instrument executed by the immediately preceding Declarant.

4. MEMBER, a Member of the Neighborhood Association.

5. NEIGHBORHOOD, shall mean the land described in the Neighborhood Declaration.

6. NEIGHBORHOOD ASSOCIATION, Estates at Aberdeen Homeowners Neighborhood Association, an Ohio not-for-profit corporation, its successors and assigns.

7. NEIGHBORHOOD DECLARATION, Declaration of Covenants, Easements, and Restrictions for the Estates at Aberdeen Neighborhood of the Aberdeen Community, which will be filed for record in the office of the Cuyahoga County Recorder.

8. OWNER, one or more Persons who (a) hold the record title of any Building Envelope which is part of the Neighborhood, but excluding in all cases any party holding an interest merely as security, and (b) the contract vendee under a land contract.

9. PERSON, shall mean a natural person, a corporation, a partnership, a trustee, or other legal entity.

10. RESIDENCE, a constructed housing unit on a Building Envelope containing living, cooking, sleeping, bathing and toilet facilities intended for use by one family, including, without limitation, a condominium unit.

FOURTH: PURPOSES. The principal purposes of the Association are:

1. To own, maintain, repair and replace certain portions of the Neighborhood as described in the Neighborhood Declaration.

2. To establish an orderly and efficient system of billing to pay for the expenses incurred in the furtherance of the purposes of the Neighborhood Association.

3. To carry out the responsibilities and obligations of the Neighborhood Association set forth in the Neighborhood Declaration applicable to the Neighborhood, to exercise the rights set forth in the Neighborhood Declaration, and to perform such acts and deeds as are deemed necessary to achieve the aforesaid objectives.







each former member of the Neighborhood Board of Trustees and officer of the Neighborhood Association shall be indemnified by the Neighborhood Association against the costs and expenses reasonably incurred by him or her in connection with the defense of any pending or threatened action, suit or proceeding, criminal or civil, to which he or she is or may be made a party by reason of being or having been such Trustee or officer of the Neighborhood Association (whether or not he or she is a member or officer at the time of incurring such costs and expenses), except with respect to matters as to which he or she shall be adjudged in such action, suit or proceeding to be liable for misconduct or negligence in the performance of his or her duty as such Trustee or officer. In case of a settlement of any action, suit or proceeding to which any Trustee or officer of the corporation, or any former Trustee or officer of the Neighborhood Association, is made a party or which may be threatened to be brought against him or her by reason of his being or having been a Trustee or officer of the Neighborhood Association, he or she shall be indemnified by the Neighborhood Association against the costs and expenses (including the cost of settlement) reasonably incurred by him or her in connection with such action, suit or proceeding (whether or not he or she is a Trustee or officer at the time of incurring such costs and expense), if (A) the Neighborhood Association shall be advised by independent counsel that such Trustee or officer did not misconduct himself or herself or was not negligent in the performance of his duty as such Trustee or officer with respect to the matters covered by such action, suit or proceeding, and the cost to the Neighborhood Association of indemnifying such Trustee or officer (and all Trustees and officers, if any, entitled to indemnification hereunder in such case) if such action, suit or proceeding were carried to a final adjudication in their favor could reasonably be expected to exceed the amount of costs and expenses to be reimbursed to such Trustee and officers as a result of such settlement, or (B) disinterested Neighborhood Association Members entitled to exercise the majority of the voting power shall, by vote, at any annual or special meeting of the Neighborhood Association, approve such settlement and the reimbursement to such Trustee or officer of such costs and expenses. The phrase "disinterested Neighborhood Association Members" shall mean all Class A Members of the Neighborhood Association. The foregoing rights of indemnification shall inure to the benefit of the heirs and legal representatives of each such Trustee or officer and shall not be exclusive of other rights to which any Trustee or officer may be entitled to or granted pursuant to Section 1702.12(E) of

the Ohio Revised Code, as a matter of law, or under the Neighborhood Declaration, these Articles, the Neighborhood Bylaws of the Neighborhood Association, any vote of corporation Members, or any agreement.

IN WITNESS WHEREOF, I subscribe my name this \_\_\_\_ day  
of \_\_\_\_\_, 1996.

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MICHAEL A. SHEMO

ORIGINAL APPOINTMENT OF AGENT

The undersigned, being the sole incorporator of the Estates at Aberdeen Homeowners Neighborhood Association, hereby appoints MICHAEL A. SHEMO, a natural person resident in the State of Ohio, as the Statutory Agent for said Association, upon whom any process, notice, or demand required or permitted by statute to be served upon the Corporation, may be served. His complete address is:

MICHAEL A. SHEMO  
Landmark Center  
Suite 350  
25700 Science Park Drive  
Beachwood, Ohio 44122-7301

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MICHAEL A. SHEMO  
"Sole Incorporator"  
Dated: \_\_\_\_\_, 1996  
Cleveland, Ohio



I, Michael A. Shemo, accept the appointment of statutory agent for the Estates at Aberdeen Homeowners Neighborhood Association.

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Michael A. Shemo  
Landmark Center  
Suite 350  
25700 Science Park Drive  
Beachwood, Ohio 44122-7301

EXHIBIT D

BY-LAWS  
OF THE ESTATES AT ABERDEEN  
HOMEOWNERS NEIGHBORHOOD ASSOCIATION

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6.	Compensation.....	7
7.	Conduct of Meetings.....	7
8.	Open Meetings.....	7
9.	Action Without a Formal Meeting.....	7
10.	Right of Declarant To Veto Activance of Neighborhood Board.....	8
C.	<u>Powers and Duties.</u>	
1.	Powers.....	8
2.	Borrowing.....	10
3.	Enforcement - Fines.....	10
IV.	OFFICERS	11
1.	Officers.....	11
2.	Election, Term of Office, and Vacancies....	12
3.	Removal.....	12
4.	Powers and Duties.....	12
5.	Resignation.....	12
6.	Agreements, Contracts, Deeds, Leases, Checks, Etc.....	12
V.	COMMITTEES	12
1.	General.....	12
2.	Covenants Committee.....	13
VI.	MISCELLANEOUS	13
1.	Fiscal Year.....	13
2.	Parliamentary Rules.....	13
3.	Conflicts.....	13
4.	Books and Records.....	13
5.	Notices.....	14
6.	Amendment.....	14



BY-LAWS  
OF THE ESTATES AT ABERDEEN  
HOMEOWNERS NEIGHBORHOOD ASSOCIATION

Article I

Name, Principal Office, Definitions

Section 1. Name. The name of the Association shall be the Estates at Aberdeen Homeowners Neighborhood Association (hereinafter sometimes referred to as the "Neighborhood Association").

Section 2. Principal Office. The principal office of the Association in the State of Ohio shall be located in Cuyahoga County.

Section 3. Definitions. The words used in these Neighborhood By-Laws shall have the same meaning as set forth in the Declaration of Covenants, Easements, and Restrictions for the Estates at Aberdeen Neighborhood of The Aberdeen Community (said Declaration, as amended, renewed, or extended from time to time, is hereinafter sometimes referred to as the "Neighborhood Declaration").

Article II

Neighborhood Association:

Membership, Meetings, Quorum, Voting, Proxies

Section 1. Membership. The Neighborhood Association shall have two (2) classes of Membership, Class A and Class B. The Class A Members shall be the Owners within the Community other than the Class B Member. The Class B Member shall be the Declarant. No Owner, whether one or more Persons, shall have more than one membership per Building Envelope owned. The rights and privileges of Membership may be exercised by a Member or the Member's spouse, subject to the provisions of the Neighborhood Declaration and the Neighborhood By-Laws. The Membership rights of a Building Envelope owned by a corporation or partnership shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Secretary, subject to the provisions of the Neighborhood Declaration and the Neighborhood By-Laws.

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

Section 3. Annual Meetings. The first annual meeting of this Neighborhood Association shall be held on the last Tuesday in June after the end of the Development Control Period. Subsequent regular annual meetings shall be set by the Neighborhood Board so as to occur on the last Tuesday in June at a time set by the Neighborhood Board of Trustees. During the Development Control Period the Declarant shall have the right (but not the obligation) to call annual meetings on the last Tuesday in June. *SAC AMM.#1*

Section 4. Special Meetings. The Declarant or the President may call special meetings. In addition, after the Development Control Period, the President shall call a special meeting of the Neighborhood Association if so directed by resolution of a majority of a quorum of the Neighborhood Board of Trustees or upon a petition signed by Class A Members representing at least twenty-five percent (25%) of the total Class A voting power of the Neighborhood 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. 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 five (5) nor more than fifty (50) days before the date of such meeting, by or at the direction of the Declarant, President, Secretary, or the officers or persons calling the meeting.

In the case of a special meeting or when required by statute or these Neighborhood 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 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 a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member or alternate shall be deemed a waiver by such Member of notice of the time, date, and place thereof, unless such 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 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 meeting of the Neighborhood Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, either in person or by proxy, who are entitled to vote at such meeting 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 the reconvened meeting, if 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 reconvening the meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for reconvening the meeting after adjournment, notice of the time and place for reconvening the meeting shall be given to Voting Members in the manner prescribed for regular meetings.

The 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 Members to leave less than a quorum, provided that Members or their alternates representing at least twenty-five (25%) percent of the total votes of the Neighborhood Association remain in attendance, and provided further that any action taken is approved by at least a majority of the Members required to constitute a quorum for such meeting.

Section 8. Voting. Class A Members shall be entitled to one vote for each Building Envelope owned by such Member; and there shall only be one vote per Building Envelope. The Class B Member shall have such rights as are set forth in the Neighborhood Declaration and the Neighborhood By-Laws.

Section 9. Proxies. Class A Members may vote by proxy given to another Class A Member. The Class B Member may not vote by proxy but may vote only through its designated representative or its alternates.

Section 10. Majority. As used in these Neighborhood 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. Unless otherwise provided in these Neighborhood By-Laws, the Neighborhood Declaration or the Master Declaration, all actions before the Neighborhood Association shall require for approval a majority vote of Members who are entitled to vote and are present, in person or by proxy, at a meeting of such Members which contains a quorum.

Section 11. Quorum. Except as otherwise provided in these Neighborhood By-Laws, the presence in person or by proxy of the Members representing a majority of the total votes in the Association shall constitute a quorum at all meetings of the Association.



Section 12. Conduct of Meetings. The President shall preside over all meetings of the Neighborhood 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 record of all transactions occurring at the meeting.

Section 13. Action Without A Meeting. Any action required by law to be taken at a meeting of the Members, or any action which may be taken at a meeting of the Members, may be taken without a meeting if written consent setting forth the action so taken is signed by a sufficient number of the Members entitled to vote as is necessary to adopt such matter at a meeting of Members and any such consent shall have the same force and effect as the vote of the Members.

### Article III

#### Neighborhood Board of Trustees: Number, Powers, Meetings

##### A. Composition, Number, and Selection.

Section 1. Governing Body: Composition. The affairs of the Neighborhood Association shall be governed by a Neighborhood Board of Trustees who shall each have one (1) vote. Except with respect to Neighborhood Trustees appointed by the Declarant, the Neighborhood Trustees shall be Class A Members or spouses of such Members.

Section 2. Number and Selection - During Development Control Period. During the Development Control Period there shall be three (3) Neighborhood Trustees who shall be selected by the Class B Member acting in its sole discretion.

Section 3. Number and Selection - After Development Control Period. After the Development Control Period there shall be three (3) Neighborhood Trustees in the Neighborhood Association unless there are One Hundred Twenty-Five (125) or more Building Envelopes in the Neighborhood, in which event there shall be five (5) Neighborhood Trustees.

Section 4. Election and Term of Office. (a) Until the termination of the Development Control Period, the Declarant shall appoint all three (3) members of the Neighborhood Board who shall serve at the pleasure of the Declarant and may be changed by the Declarant at any time.

(a) Within two (2) months after the termination of the Development Control Period the Class A Members shall elect the Neighborhood Trustees. If there are three (3) Neighborhood Trustees, two (2) will be elected to serve a term of two (2) years and one (1) will be elected to serve a term of one (1) year. If there are five (5) Neighborhood Trustees, three (3) Neighborhood

Trustees shall be elected to serve a term of two (2) years and two (2) Neighborhood Trustees shall be elected to serve a term of one (1) year. Upon the expiration of the initial term of office of each such Neighborhood Trustee, a successor shall be elected to serve for a term of two (2) years. Thereafter, all Neighborhood Trustees shall be elected to serve two (2) year terms. For the purpose of the election of Neighborhood Trustees, each Class A Member shall have one equal vote for each Building Envelope owned by such Class A Member. If the Neighborhood shall have had less than one hundred twenty-five (125) Building Envelopes immediately after the Development Control Period, and if thereafter the number of Building Envelopes increases to one hundred twenty-five (125) Building Envelopes, then at the first meeting of Class A Members after there shall first be one hundred twenty-five (125) Building Envelopes in this Neighborhood (whether an annual or special meeting; but if the next annual meeting will be more than six (6) months thereafter, a special meeting will be called for this purpose) an additional two (2) Neighborhood Trustees shall be elected so that there will be a total of five (5) Neighborhood Trustees, one (1) to serve until the next annual meeting and the other to serve until the second annual meeting after their election.

At any election of Neighborhood Trustees, each Class A Member shall be entitled to cast one (1) equal vote with respect to each Building Envelope owned by such Class A Member. The candidates receiving the largest number of votes shall be elected. The Neighborhood Trustees elected by the Class A Members shall hold office until their respective successors have been elected by the Neighborhood Association. Neighborhood Trustees may be elected to serve any number of consecutive terms.

Section 5. Removal of Trustees Elected by Class A Members and Vacancies. Any Neighborhood Trustee elected by the Class A Members may be removed, with or without cause, by the vote of the Class A Members holding a majority of the votes entitled to be cast for the election of such Neighborhood Trustee. Any Neighborhood Trustee whose removal is sought

shall be given prior notice of any meeting called for that purpose. Upon removal of a Neighborhood Trustee, a successor shall then and there be elected by the Class A Members entitled to elect the Neighborhood Trustee so removed to fill the vacancy for the remainder of the term of such Neighborhood Trustee.

Any Neighborhood Trustee elected by the Class A Members who has three consecutive unexcused absences from the Neighborhood Board meetings or who is delinquent in the payment of any Neighborhood Assessment or other charge due the Neighborhood Association for more than thirty (30) days may be removed by a majority of the Neighborhood Trustees present at a regular or special meeting at which a quorum is present, and a successor may

be appointed by the Neighborhood Board to fill the vacancy for the remainder of the term. In the event of the death, disability, or resignation of a Neighborhood Trustee, a vacancy may be declared by the Neighborhood Board, and the Neighborhood Board may appoint a successor. Any Neighborhood Trustee appointed by the Neighborhood Board shall serve for the remainder of the term of the Neighborhood Trustee who vacated the position.

#### B. Meetings

Section 1. Organizational Meetings. The first meeting of the Neighborhood Board of Trustees 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 Neighborhood Board.

Section 2. Regular Meetings. Regular meetings of the Neighborhood Board of Trustees may be held at such time and place as shall be determined from time to time by a majority of the Neighborhood Board of Trustees, but at least one (1) such meeting shall be held during each calendar quarter. Notice of the time and place of the meeting shall be communicated to Neighborhood Trustees not less than four (4) days prior to the meeting; provided, however, notice of a meeting need not be given to any Neighborhood Trustee who has signed a waiver of notice or a written consent to holding of the meeting.

Section 3. Special Meetings. Special meetings of the Neighborhood Board of Trustees shall be held when called by written notice signed by the President of the Neighborhood Association or by any two (2) Neighborhood Trustees. 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 Neighborhood Trustee by one of the following methods: (a) personal delivery; (b) written notice by first class mail, postage prepaid; (c) telephone communication, either directly to the Neighborhood Trustee or to a person at the Neighborhood Trustee's office or home who would reasonably be expected to communicate such notice promptly to the trustee; or (d) telegram, charges prepaid. All such notices shall be given at the Neighborhood Trustee's telephone number or sent to the Neighborhood Trustee's address as shown on the records of the Neighborhood Association. Notices sent by first class mail shall be deposited into a United States mailbox at least seven (7) days before the time set for the meeting. Notices given by personal delivery, telephone, or telegraph shall be delivered, telephoned, or given to the telegraph company at least seventy-two (72) hours before the time set for the meeting.

Section 4. Waiver of Notice. The transactions of any meeting of the Neighborhood Board of Trustees, 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

Neighborhood Trustees 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 Neighborhood Trustee who attends the meeting without protesting before or at its commencement about the lack of adequate notice.

Section 5. Quorum of Neighborhood Board of Trustees. At all meetings of the Neighborhood Board of Trustees, a majority of the Neighborhood Trustees shall constitute a quorum for the transaction of business, and the votes of a majority of the Neighborhood Trustees present at a meeting at which a quorum is present shall constitute the decision of the Neighborhood Board of Trustees. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Neighborhood Trustees, if any action taken is approved by at least a majority of the required quorum for that meeting. If any meeting of the Neighborhood Board cannot be held because a quorum is not present, a majority of the Neighborhood Trustees who are present at such meeting may adjourn the meeting to a time not less than five (5) nor more than thirty (30) days from the date the original meeting was called. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

Section 6. Compensation. No Neighborhood Trustee shall receive any compensation from the Neighborhood Association for acting as such.

Section 7. Conduct of Meetings. The President shall preside over all meetings of the Neighborhood Board of Trustees, and the Secretary shall keep a minute book of meetings of the Neighborhood Board of Trustees, recording therein all resolutions adopted by the Neighborhood Board of Trustees and all transactions and proceedings occurring at such meetings. Meetings may be conducted by telephone and shall be considered as any other meeting, provided all trustees are able through telephone connection to hear and to be heard.

Section 8. Open Meetings. Subject to the provisions of Section 9 of this Article, after the Development Control Period all meetings of the Neighborhood Board shall be open to all Members, but Members other than Neighborhood Trustees may not participate in any discussion or deliberation unless permission to speak is requested on his or her behalf by a Neighborhood Trustee. In such case, the President may limit the time any Member may speak.

Section 9. Action Without a Formal Meeting. Any action to be taken at a meeting of the Neighborhood Trustees or any action that may be taken at a meeting of the Neighborhood Trustees may be

taken without a meeting if a consent in writing, setting forth the action so taken, shall be signed by the number of Neighborhood Trustees whose vote is required for such action.

Section 10. Right of Declarant To Veto Actions of Neighborhood Board. After the Development Control Period and for so long as the Class B Membership exists, the Class B Member shall have the right to veto and disapprove actions of the Neighborhood Board and any Committee of the Neighborhood Board. No action authorized by the Neighborhood Board or a committee thereof shall become effective until the Class B Member shall have been given written notice of such action and (a) the Class B Member shall have notified the Neighborhood Board in writing that such action has been approved, or (b) ten (10) days shall have elapsed since the Class B Member shall have received notice of such action and the Class B Member shall not have notified the Neighborhood Board that it has vetoed such action.

C. Powers and Duties.

Section 1. Powers. Except as set forth in these Neighborhood By-Laws, the Neighborhood Board of Trustees shall be responsible for the affairs of the Neighborhood Association and shall have all of the powers and duties necessary for the administration of the Neighborhood Association's affairs and, as provided by law, may do all acts and things as are by the Neighborhood Declaration, Neighborhood Articles, or these Neighborhood By-Laws directed to be done and exercise by the membership generally.

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

(a) Preparation and adoption of annual budgets;

(b) Making Neighborhood Assessments to defray the Common Neighborhood Expenses, and establishing the means and methods of collecting such Neighborhood Assessments; provided, unless otherwise determined by the Neighborhood Board of Trustees, the Base Neighborhood Assessment shall be payable in equal monthly installments, each such installment to be due and payable in advance on the first day of each month for said month. Base Neighborhood Assessments shall be calculated on the number of Completed Building Envelopes in existence at the beginning of any fiscal year; provided, however, that the Neighborhood Board shall take into account reasonable estimates of revenue to be received with respect to Completed Building Envelopes that become liable for Base Neighborhood Assessments during such year. If it shall become apparent during the course of any such year that the revenue being



collected by the Neighborhood Association is materially more or less than budgeted, or if Common Neighborhood Expenses of the Neighborhood Association are materially more or less than budgeted, the Neighborhood Association shall have the right to increase or decrease the Base Neighborhood Assessments (or to levy a Special Neighborhood Assessment) on account thereof. The members of the Neighborhood Board of Trustees shall also have the right to levy Special Neighborhood Assessments as provided in the Neighborhood Declaration;

(c) Providing for the operating, care, upkeep, and maintenance of the Common Area within the Neighborhood except as set forth in the Neighborhood Declaration;

(d) Designating, hiring, and dismissing the personnel necessary for the maintenance, operation, repair, and replacement of the Common Area within the Neighborhood Association, and, where appropriate, providing for the compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) Collecting the Neighborhood Assessments, depositing the proceeds thereof in a bank depository which it shall approve, and using the proceeds to administer the Neighborhood Association;

(f) Making and amending rules and regulations;

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

(h) Enforcing by legal means the provisions of the Neighborhood Declaration, these Neighborhood 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;

(i) Paying the cost of all services rendered to the Neighborhood Association and not chargeable directly to specific Owners;

(j) Keeping books with detailed accounts of the receipts and expenditures affecting the Neighborhood Association and its administration, specifying the maintenance and repair expenses and any other expenses incurred; and

(k) Making available to any prospective purchaser of a Building Envelope, any Owner of a Building Envelope, any first Mortgagee, and the holders, insurers, and guarantors of a first Mortgage on any Building Envelope, current copies of the Neighborhood Declaration, the Neighborhood Articles of

Incorporation, the Neighborhood By-Laws, rules governing the Building Envelope and, all other books, records, and financial statements of the Association.

Section 2. Borrowing. The Neighborhood Board of Trustees shall have the power to borrow money for the purpose of maintenance, repair or restoration of the Common Area. With the written approval of at least seventy-five percent (75%) of the members of the Neighborhood Board, the Board shall also have the power to borrow money for other purposes. Notwithstanding anything to the contrary contained in the Neighborhood Declaration, these Neighborhood By-Laws, or the Neighborhood Articles of Incorporation, after the Class B Control Period, no Mortgage lien shall be placed on any portion of the Common Area without the affirmative vote or written consent of seventy-five percent (75%) of the Class A members of the Neighborhood and the Class B Member.

Section 3. Enforcement - Fines. The Neighborhood Board shall have the power to impose sanctions including, without limitation, reasonable fines, which shall constitute a lien upon the property of the violating Owner, and to suspend an Owner's right to use the Common Area for violation of any duty imposed under the Neighborhood Declaration, these Neighborhood By-Laws, or any rules and regulations duly adopted hereunder; provided, however, nothing herein shall authorize the Neighborhood Association or the Neighborhood Board of Trustees to limit ingress and egress to or from a Building Envelope or to suspend an Owner's right to vote due to nonpayment of Neighborhood Assessments. In the event that any Occupant of a Residence violates the Neighborhood Declaration, Neighborhood By-Laws, or a rule or regulation and a fine is imposed, the fine shall first be assessed against the Occupant; provided, however, if the fine is not paid by the Occupant within the time period set by the Neighborhood Board, the Owner shall pay the fine upon notice from the Neighborhood Association. The failure of the Neighborhood Board to enforce any provision of the Neighborhood Declaration, Neighborhood By-Laws, or any rule or regulation shall not be deemed a waiver of the right of the Neighborhood Board to do so thereafter.

(a) Notice. Prior to imposition of any sanction under this Section 3, the Neighborhood Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than ten (10) days within which the committee designated by the Neighborhood Board, if any, or Neighborhood Board of Trustees may be requested to have a hearing; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within ten (10) days of the notice. If a timely challenge is not made, the sanction stated in the notice shall be imposed.



(b) Hearing. If a hearing is requested in a timely manner, the hearing shall be held by the committee designated by the Neighborhood Board for ~~suspension~~, if any, imposed. The neighborhood Board of Trustees or the committee may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the ten (10) day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(c) Appeal. Following a hearing before a committee (as opposed to a hearing before the Neighborhood Board), the violator shall have the right to appeal the decision to the Neighborhood Board of Trustees. To perfect this right, a written notice of appeal must be received by the manager, President or Secretary of the Neighborhood Association within thirty (30) days after the hearing date.

(d) Additional Enforcement Rights. Notwithstanding anything to the contrary herein contained, the Neighborhood Association acting through the Neighborhood Board of Trustees, may elect to enforce any provisions of the Neighborhood Declaration, these Neighborhood By-Laws, or the rules and regulations of the Neighborhood 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. All remedies and rights of the Neighborhood Association shall be non-exclusive and cumulative and may be exercised at one time or successively.

(e) Lien Rights. If a fine is not paid when due it shall be deemed to be a Special Neighborhood Assessment for which Collection Charges may be collected and a lien may be created and foreclosed pursuant to Article VIII of the Neighborhood Declaration.

#### Article IV Officers

Section 1. Officers. The officers of the Neighborhood Association shall be a President, Vice President, Secretary, and Treasurer, to be elected from among the members of the Neighborhood Board. The Neighborhood Board of Trustees may appoint 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 Neighborhood Board of Trustees. Any two (2) or more offices may be held by the same person, except the offices of President and Secretary.

Section 2. Election, Term of Office, and Vacancies. The officers of the Neighborhood Association shall be elected annually by the Neighborhood Board of Trustees at the first meeting of the Neighborhood Board of Trustees held after the annual meeting of the Association. A vacancy in any office arising because of death, resignation, removal, or otherwise may be filled by the Neighborhood Board of Trustees for the unexpired portion of the term.

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

Section 4. Powers and Duties. The officers of the Neighborhood 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 specifically be conferred or imposed by the Neighborhood Board of Trustees. The President shall be the chief executive officer of the Neighborhood Association. The Treasurer shall have primary responsibility for the preparation of the budget as provided for in the Neighborhood 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 Neighborhood Board of Trustees, 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, Leases, Checks, Etc. All agreements, contracts, deeds, leases, checks, and other instruments of the Neighborhood Association shall be executed by at least two (2) officers or by such other person or persons as may be designated by resolution of the Neighborhood Board of Trustees.

#### 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 Trustees present at a meeting at which a quorum is present. Each committee shall operate in accordance with the terms of the resolution of the Neighborhood Board of Trustees designating the committee or with rules adopted by the Neighborhood Board of Trustees.

Section 2. Covenants Committee. In addition to any other committees which may be established by the Neighborhood Board pursuant to Section 1 of this Article, the Neighborhood Board of Trustees may, but shall not be required to appoint a Covenants Committee consisting of at least five (5) and no more than seven (7) members. Acting in accordance with the provisions of the Neighborhood Declaration, these Neighborhood By-Laws, and resolutions the Neighborhood Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to Article III of these Neighborhood By-Laws.

#### Article VI Miscellaneous

Section 1. Fiscal Year. The fiscal year of the Association shall be the calendar year.

Section 2. Parliamentary Rules. Except as may be modified by Board resolution, Robert's Rules of Order (current edition) shall govern the conduct of Association proceedings when not in conflict with Ohio law, the Neighborhood Articles of Incorporation, the Neighborhood Declaration, or these Neighborhood By-Laws.

Section 3. Conflicts. If there are conflicts between the provisions of Ohio law, the Neighborhood Articles of Incorporation, the Neighborhood Declaration, and these Neighborhood By-Laws, the provisions of Ohio law, the Neighborhood Declaration, the Neighborhood Articles of Incorporation, and the Neighborhood By-Laws (in that order) shall prevail.

#### Section 4. Books and Records.

(a) Inspection by Members and Mortgagees. The Neighborhood Declaration and By-Laws, membership register, books of account, and minutes of meetings of the Members, the Board, and committees shall be made available for inspection and copying by any Mortgagee, members of the Neighborhood Association, members of the Master Board, or by his, her or its duly appointed representative at any reasonable time and for a purpose reasonably related to his, her or its interest as a Member at the office of the Neighborhood Association or at such other place within the Properties as the Board shall prescribe.



(b) Rules for Inspection. The Neighborhood 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.

(c) Inspection by Neighborhood and Master Trustees. Every Neighborhood, Master Trustee and the Declarant shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Neighborhood Association and the physical properties owned or controlled by the Neighborhood Association. The right of inspection includes the right to make extracts and a copy of relevant documents at the expense of the Person requesting such copies.

Section 5. Notices. Unless otherwise provided in these Neighborhood By-Laws, all notices, demands, bills, statements, or other communications under these Neighborhood By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally or three (3) days after it is sent by United States Mail, first class postage prepaid:

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

(b) if to the Declarant, at the address which the Declarant has designated in writing and filed with the Secretary or, if no such address has been designated, at the regular place of business of the Declarant; or

(c) if to the Neighborhood Association, the Neighborhood Board of Trustees, or the managing agent, at the principal office of the Neighborhood Association or the managing agent, if any, or at such other address as shall be designated by notice in writing to the members of the Neighborhood Board.

Section 6. Amendment. The Declarant shall have the sole right to amend these Neighborhood By-Laws during the Development Control Period unilaterally so long as the amendment shall not change the voting rights of the Class A or Class C Members, or the method of calculating Neighborhood Assessments pursuant to Section 2 of Article VIII of the Neighborhood Declaration. Thereafter, these Neighborhood By-Laws may be amended only upon the affirmative vote or written consent of at least seventy-five percent (75%) of

the Class A Members and the affirmative vote of the Class B Member so long as a Class B Member exists. Any amendment to be effective must be recorded in the public records of Cuyahoga County, Ohio.

No amendment may remove, revoke, or modify any right or privilege of Declarant without the 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 impair the rights granted to Mortgagees herein without the prior written consent of such Mortgagees.

ESTATES AT ABERDEEN  
HOMEOWNERS NEIGHBORHOOD ASSOCIATION

FIRST AMENDMENT TO BY-LAWS

This First Amendment is effective as of the 1<sup>st</sup> day of November 1999.

WHEREAS, the undersigned, pursuant to Section 6 of Article VI of the By-Laws of Estates at Aberdeen Homeowners Neighborhood Association (the "Association"), desires to amend such By-Laws.


NOW THEREFORE, the second sentence in Section 3 of Article II of the By-Laws for the Association is hereby amended to read as follows:

"The first annual meeting of this Neighborhood Association shall be held on any Tuesday during the second quarter of the year after the end of the Development Control Period. Subsequent regular annual meetings shall be set by the Neighborhood Board so as to occur on any Tuesday during the second quarter of the year at a time set by the Neighborhood Board of Trustees. During the Development Control Period the Declarant shall have the right (but not the obligation) to call annual meetings during the second quarter of any year during such Development Control Period."

Except as modified herein, the By-Laws for the Association shall remain unmodified and in full force and effect.

Date: NOVEMBER 18, 1999

Miner Properties, Ltd.

By:   
Sani Miller, Administrative Officer

By:   
Milton Wolf, Administrative Officer