

CUYAHOGA COUNTY RECORDER  
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CUYAHOGA COUNTY RECORDER  
PATRICK J. O'MALLEY  
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DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS

FOR

THE VISTAS AT ABERDEEN NEIGHBORHOOD

OF THE

ABERDEEN COMMUNITY  
(PARCEL A)

11/11/99  
11/11/99  
11/11/99

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DECLARATION OF COVENANTS, EASEMENTS AND RESTRICTIONS  
FOR THE VISTAS AT ABERDEEN NEIGHBORHOOD OF THE  
ABERDEEN COMMUNITY

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THIS DECLARATION OF COVENANTS, EASEMENTS, AND RESTRICTIONS FOR THE VISTAS AT ABERDEEN NEIGHBORHOOD OF THE ABERDEEN COMMUNITY is made this \_\_\_ day of \_\_\_\_\_, 1999, by MINER PROPERTIES, LTD., an Ohio limited liability company.

RECITALS

A. Declarant is the owner of the Community now containing real property located in Highland Heights, Ohio, shown on Exhibit A.

B. Declarant has created the Master Declaration for the Community containing mutually beneficial restrictions, easements and covenants under a general plan for the benefit of all owners of real property within the Community.

C. In order to provide a flexible and reasonable procedure for the overall development of the Community, Declarant has established the Master Association as an Ohio not-for-profit corporation for the administration, maintenance, preservation, use and enjoyment of all land within the Community as is now or hereafter subjected to the Master Declaration.

D. The Master Declaration provides that individual Neighborhoods within the Community shall form their own associations which shall provide for maintenance within the Neighborhood and, in the case of attached Residences, exterior maintenance of the attached Residences within such Neighborhood, and which may impose additional covenants and restrictions uniquely applicable to that Neighborhood rather than the entire Community.

E. The Neighborhood Association has been designated by the Declarant to administer the various maintenance and other obligations specified in this Neighborhood Declaration for the Neighborhood shown on Exhibit B and Declarant has created the Neighborhood Association for this purpose.

F. Owners of Completed Building Envelopes within the Neighborhood (or the Neighborhood Association itself) may desire to construct and install on the Common Area adjacent to their Building Envelopes gas grills, children's play areas, picnic areas, gardens, tennis courts, basketball courts and other recreational facilities. These amenities and recreational facilities within the Exclusive Use Area shall only be permitted if approved by the Master Board and, if so approved,

shall be constructed, installed, used, maintained and repaired exclusively by the Persons for whose benefit the Exclusive Use Area shall have been approved, at the expense of such Persons, but any change of use and/or construction on an Exclusive Common Area must be approved by the Architectural Control Committee established in the Master Declaration.

G. Declarant intends to convey Building Envelopes to Builders consisting of the so-called "foot print" on which a Residence will be constructed and additional land determined by Declarant. Except for the Building Envelopes all other land within the Community will be Common Area.

Now, therefore, Declarant hereby declares that the real property located in the Neighborhood as shown on Exhibit B and any additional property as is hereafter subjected to this Neighborhood Declaration by Supplemental Declaration shall be held, sold, and conveyed subject to the following easements, restrictions, covenants, and conditions, which are created for the purpose of protecting the value and desirability of the Neighborhood, shall run with the real property subject to this Neighborhood Declaration, and shall be binding on and shall inure to the benefit of all parties having any right, title, or interest in the Neighborhood or any part thereof, their heirs, personal representatives, successors, and assigns.

## ARTICLE I.

### DEFINITIONS

Section 1. "Builder" means any Person who purchases land within the Community for the purpose of construction and sale of Residences.

Section 2. "Building Envelope" shall mean 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. Each Building Envelope shall contain the so-called "footprint" of the Residence to be constructed thereon and additional land as designated by the Declarant and shall be shown on a plat which will be recorded in the public records of Cuyahoga County, Ohio, prior to the conveyance of such Building Envelope by the Declarant. A "Building Envelope" shall be deemed to include any Residence and other structures thereon. In the case of a condominium, each condominium unit together with its undivided interest in the common areas of the condominium shall be deemed to be a Building Envelope for all purposes of this Neighborhood Declaration. The Neighborhood Association reserves the right to approve all condominium declarations and amendments thereto for condominiums within the Neighborhood in writing prior to their recording.

Section 3. "Collection Charges" shall mean interest, administrative late charges and other costs as set forth in Section 1 of Article VIII.

Section 4. "Common Area" shall mean all real property in the Community, other than Building Envelopes, which the Declarant or the Master Association now owns or hereafter will own and which is intended for the common use and enjoyment of Owners in the Community, including, without limitation, private roads, drives, paths and walks not within the bounds of the Building Envelope; entrances, exits and any other installations related thereto; any recreational facilities such as a pool, deck, clubhouse, tennis courts and other facilities, which may be erected or installed within the Common Area; on-site Utility Facilities (including, without limitation, lawn sprinkler systems) not located within the exterior surfaces of the exterior walls of a Residence; personal property owned by the Master Association or a Neighborhood Association including personal property used for maintenance or in connection with the operation of recreation facilities or other Common Area; parking areas other than those located on a dedicated road or a Building Envelope; and any landscaped or open areas not located within a Building Envelope. Prior to the creation of Building Envelopes such land will be part of the Common Area. Following creation of Building Envelope, such land will no longer be Common Area. Ultimately, all land within the Community which is not part of Building Envelopes will be Common Area.

Section 5. "Common Master Expenses" shall mean expenses incurred by the Master Association for the general benefit of the Owners, the community and/or the Master Association including reasonable reserves, all as may be found to be necessary and appropriate by the Master Board pursuant to this Master Declaration.

Section 6. "Common Neighborhood Expenses" shall mean expenses incurred by this Neighborhood Association for the general benefit of the Owners, the Neighborhood and/or the Neighborhood Association including reasonable reserves, all as may be found to be necessary and appropriate by the Neighborhood Board pursuant to this Neighborhood Declaration.

Section 7. "Community" shall mean the real property shown on Exhibit A, as the same may be expanded or contracted pursuant to the Master Declaration. The Community does not include dedicated streets or the Golf Course.

Section 8. "Completed Building Envelope" shall mean a Building Envelope for which Neighborhood Assessments are payable pursuant to this Neighborhood Declaration. A Completed Building Envelope is 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 item (i) or (ii) first occurs; provided, however, that if a Builder constructs a model house on a Building Envelope, the Building Envelope shall be deemed to be a Completed Building Envelope when the model house first opens for showings to the public. Once a Building Envelope becomes a Completed Building Envelope, such Building Envelope shall remain a Completed Building Envelope so long as this Declaration shall be applicable to such Building Envelope.

Section 9. "Declarant" shall mean Miner Properties, Ltd., an Ohio limited liability company, or its successors and assigns who take title to all or any portion of this Neighborhood for



the primary purpose of development and sale of Building Envelopes (but not for the construction and sale of Residences) and are designated as a Declarant hereunder in a recorded instrument executed by the immediately preceding Declarant.

Section 10. "Development Control Period" shall mean the period beginning on the date hereof and ending on the earliest of (a) the date that construction of Residences shall have been completed and the Residences occupied on ninety percent (90%) of the maximum number of Building Envelopes permitted to be created in the Neighborhood pursuant to the Development Plan (as amended from time to time) approved by the City of Highland Heights, or the fifth anniversary of the date of the first conveyance to and occupancy by an Owner other than a Builder of a Residence in this Neighborhood, whichever shall be the latter to occur, (b) December 31, 2005 or (c) the date Neighborhood Association receives written notice from the Declarant that the Declarant has elected to terminate the Development Control Period.

*1st occupancy  
3/15/2001*

Section 11. "Development Plan". The Development Plan approved by the City of Highland Heights, showing in general the location of the public and private roads and the boundaries of the Community, as the same may be amended from time to time. Declarant reserves the right to amend the Development Plan from time to time, with the approval of the City of Highland Heights.

Section 12. "Exclusive Use Area" shall mean certain portions of the Common Area designated by the Declarant or the Master Association at the request of an Owner or a Neighborhood Board which are for the exclusive use and benefit of one or more Owners in the Neighborhood but not all of the Owners of the Community. That portion of a driveway, deck, porch, patio or other improvement abutting a Residence which is not located within a Building Envelope (and therefore lies within the Common Area) and which was constructed with the prior written approval of the Declarant or the Master Association as part of the original construction of a Residence, shall automatically be deemed to be an Exclusive Use Area for the benefit of such Residence. When an Exclusive Use Area contains permanent improvements, the land on which they are constructed shall be, for a fair price determined by the Declarant or the Master Association, conveyed to the Owner and will become part of the Building Envelope of such Owner.

Section 13. "Golf Course" shall refer to any land and facilities adjacent to or in the vicinity of the Community which has or will be constructed pursuant to Section 1124.06 of the Codified Ordinances of Highland Heights. The Golf Course is not a Common Area, is independent of, and is not within the Community.

Section 14. "Institutional Mortgage" shall mean a mortgagee which is (a) a bank, savings institution, trust company or national banking association, (b) an insurance company or fraternal benefit association, (c) pension, retirement or profit sharing trust or fund, or (d) a government, public employees' pension or retirement system, or any other governmental agency supervising the investment of public funds.

Section 15. "Master Association" shall mean Aberdeen Community Master Homeowners Association, an Ohio not-for-profit corporation, its successors and assigns.

Section 16. "Master Declaration" shall mean the Master Declaration of Covenants, Easements and Restrictions for Aberdeen, dated March 17, 1995, and recorded in Volume 95-01966, Page 46 of the Cuyahoga County Records, as the same shall be amended from time to time.

Section 17. "Member" shall mean a Person who is a Class A or Class B Member as set forth in Article IV and is entitled to membership in this Neighborhood Association.

Section 18. "Mortgage" shall mean a construction or other mortgage deed to secure debt, or any other form of security deed, including any collateral security documents executed in connection therewith.

Section 19. "Neighborhood" shall mean the land shown on Exhibit B, as said land may be expanded or contracted by Supplemental Declaration as provided in Article III hereof.

Section 20. "Neighborhood Assessments" shall mean Base Neighborhood Assessments and Special Neighborhood Assessments levied under this Neighborhood Declaration which are in addition to the Master Assessments levied under the Master Declaration for the Master Association.

Section 21. "Neighborhood Association" shall mean the Vistas at Aberdeen Neighborhood Association, Inc., an Ohio not-for-profit corporation.

Section 22. "Neighborhood Board" or "Neighborhood Board of Trustees" shall be the elected body which governs this Neighborhood Association.

Section 23. "Neighborhood Code of Regulations" shall mean the Code of Regulations of this Neighborhood Association attached hereto as Exhibit "D", as they may be amended from time to time.

Section 24. "Neighborhood Declaration" shall mean this Declaration of Covenants, Easements and Restrictions for the Vistas at Aberdeen Neighborhood of the Aberdeen Community.

Section 25. "Neighborhood-Wide Standard" shall mean the standard of conduct, maintenance, or other activity generally prevailing throughout this Neighborhood. Such standard may be more specifically determined by the Neighborhood Board and the Architectural Control Committee of the Master Association.

Section 26. "Occupant" shall mean a natural person living in a Residence.

Section 27. "Owner" shall mean and refer to one (1) or more Persons (including Builders) who (a) hold the record title to 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.

Section 28. "Person" shall mean a natural person, a corporation, a partnership, a trustee, or other legal entity.

Section 29. "Residence" shall mean 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.

Section 30. "Utility Facility" shall mean any water, sewer, drainage, electric, gas, cable television, telephone, and any other utility lines, pipes, conduits, wires and facilities and appurtenances thereto.

## ARTICLE II.

### PROPERTY RIGHTS

Section 1. Easement to Use Common Area. Every Owner shall have a right and easement of enjoyment in and to the Common Area, subject to the Master Declaration, this Neighborhood Declaration and any restrictions or limitations of record. Any Owner may delegate his or her right of enjoyment to the members of his or her family and guests, subject to rules and regulations which may be adopted by the Master Board or Neighborhood Board. An Owner who leases his or her Building Envelope or Residence shall be deemed to have delegated all such rights to such lessee.

Section 2. Access to Golf Course. Access to the Golf Course (which is not a part of the Community or this Neighborhood but abuts the Community) is strictly subject to the rules and procedures established by the owner and operators of the Golf Course. No Owner or Occupant gains any right to enter or to use the Golf Course by virtue of ownership or occupancy of a Building Envelope.

## ARTICLE III.

### ANNEXATION OF ADDITIONAL PROPERTY - DELETION OF PROPERTY

Section 1. Annexation or Deletion During Development Control Period. Subject to the prior consent of the Master Board, Declarant shall have the unilateral right, privilege, and option, from time to time during the Development Control Period, to subject to the provisions of this

Neighborhood Declaration and the jurisdiction of the Neighborhood Association any additional real property which is part of the Community or to delete from the provisions of this Neighborhood Declaration any real property now or hereafter subject to the provisions of this Neighborhood Declaration. Such annexation or deletion shall be accomplished by filing in the public records of Cuyahoga County, Ohio, a Supplemental Declaration to this Neighborhood Declaration annexing or deleting such property. Such Supplemental Declaration shall not require the consent of any Class A Members.

Section 2. Annexation or Deletion After Development Control Period. Subject to the consent of the owner thereof and the Master Board, after the expiration of the Development Control Period, the Neighborhood Association may annex real property which is part of the Community to the provisions of this Neighborhood Declaration and the jurisdiction of the Neighborhood Association or may delete real property from the provisions of this Neighborhood Declaration and the jurisdiction of the Neighborhood Association. Such annexation or deletion shall require the affirmative vote of seventy-five percent (75%) of the Class A Members and the Class B Member, if any. Annexation or deletion shall be accomplished by filing in the public records of Cuyahoga County, Ohio, a Supplemental Declaration describing the property being annexed or deleted. Any such Supplemental Declaration shall be signed by the President and the Secretary of the Neighborhood Association, and by the owner of the property being annexed deleted.

Section 3. Dividing and Combining Neighborhoods During Development Control Period. Subject to the consent of the Master Board, the Declarant shall have the unilateral right, privilege, and option, from time to time during the Development Control Period, to divide this Neighborhood into two or more Neighborhoods or to combine two or more Neighborhoods into one Neighborhood, or to change the boundaries of existing Neighborhoods, without the consent of any Class A Members. Any such dividing, combining, or revising of Neighborhoods shall be accomplished by filing in the public records of Cuyahoga County, Ohio, a Supplemental Declaration to this Neighborhood Declaration setting forth the change being made in the Neighborhood configurations.

Section 4. Dividing and Combining Neighborhoods After the Development Control Period. Subject to the written consent of all of the owners of Building Envelopes whose land is being transferred from one Neighborhood to another, and with the consent of (a) eighty percent (80%) of the Neighborhood Trustees of the Neighborhood Boards of each Neighborhood being contracted, expanded or otherwise revised, (b) the Master Board, and (c) the Class B Member, if any, this Neighborhood may be divided into two or more Neighborhoods and two or more Neighborhoods may be combined with other Neighborhoods, or the boundaries of the Neighborhoods revised. To accomplish such purpose, a Supplemental Declaration shall be filed of record by the Neighborhood Associations directly involved describing the property within the Neighborhoods which are being divided into more than one Neighborhood, combined with other Neighborhoods, or otherwise revised.

ARTICLE IV.

MEMBERSHIP AND VOTING RIGHTS

Section 1. Membership. Every Owner, as defined in Article I, shall be deemed to have a membership in this Neighborhood Association (as well as the Master Association).

No Owner, whether one (1) or more Persons, shall have more than one (1) membership per Building Envelope owned. In the event the Owner of a Building Envelope is more than one (1) Person, votes and rights of use and enjoyment shall be as provided herein. The rights and privileges of membership may be exercised by a Member or the Member's spouse, subject to the provisions of this Neighborhood Declaration and the Code of Regulations. 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 this Neighborhood Declaration and the Code of Regulations.

Section 2. Types of Membership - Voting. The Neighborhood Association shall have two (2) classes of membership, Class A and Class B, as follows:

(a) Class A Members. (i) Class A Members shall be all Owners with the exception of the Class B Member, if any. Builders shall be Class A Members.

(ii) Class A Members shall be entitled to one (1) equal vote for each Building Envelope owned by such Member; and there shall be only one (1) vote per Building Envelope.

(iii) In any situation where a Building Envelope is owned by more than one (1) Person, the vote for such Building Envelope shall be exercised by the Person determined by the multiple Owners, who shall advise the Secretary of the Neighborhood Association in writing prior to any meeting. In the absence of such advice, the Person exercising such voting power shall be deemed to be authorized to cast said vote unless an objection is made at a meeting by any other co-owner or more than one (1) Person seeks to exercise such vote, in which event the vote shall be suspended until such written authorization signed by all part Owners is filed with the Secretary.

(b) 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 Neighborhood Declaration and the Neighborhood Code of Regulations, are specified elsewhere in the Neighborhood Declaration and the Neighborhood Code of Regulations. The Class B Member shall be entitled to appoint the members of the Neighborhood Board during the Development Control Period. After termination of the Development Control Period, the Class B Member shall have the right to disapprove resolutions and actions of the Neighborhood Board. The Class B membership shall terminate:

(i) three (3) years after expiration of the Development Control Period; or

(ii) when, in its discretion, the Declarant so determines and notifies the Neighborhood Board by written instrument in recordable form.

## ARTICLE V.

### NEIGHBORHOOD ASSOCIATION'S AND OWNERS' RESPONSIBILITIES

Section 1. Neighborhood Association's Maintenance Responsibility. (a) Except for the bike paths designated by the Master Association within the Common Area which the Master Association is obligated to maintain, and subject to any other provision of this Neighborhood Declaration, this Neighborhood Association shall keep the Common Area within the Neighborhood in good condition and repair, and in a clean, attractive, and sanitary condition, pursuant to the terms and conditions hereof and consistent with the Neighborhood-Wide Standard. Without limiting the foregoing, the Neighborhood Association shall have the following responsibilities within this Neighborhood:

(i) All grassy and landscaped and other open areas within the Common Area and the Building Envelopes of the Neighborhood (other than those areas designated in writing by the Declarant or the Master Association to remain in their natural state) shall be cut, pruned, trimmed and otherwise maintained on a regular basis, replacing any grass and landscaping as required to keep such areas neat, trimmed, and aesthetically pleasing, except that any replacement of landscaping or grass located within a Building Envelope required during the first year following initial occupancy of a Residence shall be the obligation of the Owner of the Building Envelopes. For purposes of this Article V, "landscaping" shall be deemed to mean all permanent plantings such as grass, trees and shrubs; provided, however, that if a shrub or tree requires replacement, the Neighborhood Board shall determine whether to substitute a new plant of like or different kind or type, or whether to replace with grass, beds or otherwise, at such discretion of the Neighborhood Board.

(ii) Snow and ice shall be removed from all (A) private roads, and (B) driveways adjacent to Residences (located on the Building Envelopes and/or Common Area) to keep the same reasonably free from such snow and ice as the circumstances may reasonably permit.

(iii) Private roads (but not the designated bike paths) shall be repaired and, if necessary, replaced, to keep them in good condition and repair.

(iv) Utility Facilities within the Neighborhood to the point where they intersect with the exterior face of an exterior wall of a Residence, including any sprinkler systems (and appurtenances thereto), lighting installations, and water, sewer, gas, electric and cable television lines and appurtenances which are not maintained by a utility company shall be repaired and replaced, if necessary, to keep the same in good working order and repair.

(v) All mailbox facilities (but not the boxes themselves) servicing more than one Residence and any other Common Area facilities within the Neighborhood intended for use by more than one Owner within the Neighborhood shall be repaired and replaced, if necessary, to keep the same in good working order and repair.

(b) Except as otherwise specifically provided herein, all costs associated with maintenance, repair and replacement pursuant to the preceding paragraphs in this Section 1 shall be a Common Neighborhood Expense and shall be allocated among all Owners of Completed Building Envelopes within the Neighborhood as part of the Base Neighborhood Assessment.

(c) All maintenance, repair and replacements of an Exclusive Use Area, including, without limitation, the portion of a driveway, patio, porch, deck or other improvement abutting a Residence which has been automatically designated as Exclusive Use Area, shall be performed by the Owner(s) for whose benefit the Exclusive Use Area was created, except for snow removal on a driveway.

Section 2. Owners' Maintenance Responsibility. Unless such maintenance responsibility is otherwise assumed by or assigned to the Neighborhood Association pursuant to this Neighborhood Declaration, each Owner shall maintain his or her Building Envelope, the exterior of all Residences, all other structures within his or her Building Envelope, and any Exclusive Use Area assigned to such Residence in good condition and repair consistent with the Neighborhood-Wide Standard and all applicable covenants of this Neighborhood Declaration. In addition each Owner shall be responsible for the following:

(i) Removal of snow and ice on all walkways between an Owner's Residence and the driveway serving such Residence.

(ii) Repair and replacement of Utility Facilities serving a Residence from the point said Utility Facilities intersect with the exterior face of the exterior wall of such Residence.

(iii) Repair and replacement required to keep in good condition and repair the driveway serving a Residence (whether on the Building Envelope and/or the Common Area) and other paved areas on the Building Envelope or Common Area located between the driveway serving such Residence or adjacent to the Building Envelope and designed for the primary use of such Residence.

(iv) Repair and replacement of all exterior mailboxes and mail box facilities exclusively servicing a Residence.

(v) Repair and replacement of any Exclusive Use Areas designated for the use of an Owner.

(vi) Repair and replacement of any patio or other structure (other than landscaping) located on a Building Envelope, including any fence, privacy wall (including, without limitation, any entry gate or door affixed to such privacy wall) or other horizontal structure connected between Residences which are not designated as Attached Residences hereunder.

Each Owner shall make all repairs and replacements and shall perform such maintenance and repairs to any facility that otherwise would be maintained by the Neighborhood Association if required as the result of the tortious or negligent acts or omissions of such Owner or any Occupant of such Owner's Residence, or, in the discretion of the Neighborhood Board, the Neighborhood Board may, in accordance with Section 6 of this Article V, perform the required maintenance, repair or replacement and charge such Owner for the cost thereof.

Section 3. Rubbish Hauling by the Neighborhood Association. If there are private roads, the Neighborhood Association shall on a weekly basis cause all garbage and rubbish to be hauled away from the Neighborhood, provided that each Occupant shall deliver the garbage and refuse to the place designated by the Neighborhood Board in containers authorized by the Neighborhood Board during the periods specified by the Neighborhood Board (but in no event shall rubbish and garbage be kept outside of a Residence except after 7:00 p.m. of the night preceding the rubbish pickup).

Section 4. Insurance. (a) Each Owner shall obtain the insurance coverage required in the Master Declaration and in this Neighborhood Declaration. Any insurance not specifically required to be obtained by each Owner in the Master Declaration or in this Neighborhood Declaration may be obtained by each Owner at such Owner's sole discretion and expense.

(b) The Neighborhood Board shall obtain, as a Common Neighborhood Expense, worker's compensation insurance, if and to the extent required by law, directors' and officers' liability coverage, if reasonably available, and a fidelity bond or bonds on Neighborhood Trustees, officers, employees, and other Persons handling or responsible for the Neighborhood Association's funds. The amount of fidelity coverage shall be determined in the Neighborhood Trustees' best business judgment but, if reasonably available, may not be less than three (3) months' Neighborhood Assessments on all Completed Building Envelopes, plus reserves on hand. Bonds shall contain a waiver of all defenses based upon the exclusion of persons serving without compensation and shall require at least thirty (30) days' prior written notice to the Neighborhood Association and Declarant of any cancellation, substantial modification, or non-renewal.

Section 5. Utilities. The Neighborhood 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 Common Area facilities located within the Neighborhood, including all utilities used in connection with sprinkling systems located on the Common Area or on a Building Envelope. Utilities consumed with respect to an Exclusive Use Area designated for use by one or more Owners shall be paid for by the Owner(s).



Section 6. Failure of Owner to Comply. In the event that an Owner fails to comply with the provisions of this Article V, the Neighborhood Association shall have the right to perform such covenant on behalf of such Owner, after having given written notice to the Owner and the failure of the Owner to perform such covenant within thirty (30) days following receipt of such notice (except in emergencies when such lesser period as may be reasonable in the circumstances shall be permitted and notice may be dispensed with); provided, however, if within said thirty (30) day period the Owner shall commence to take the required action, then such thirty (30) day period shall be extended as long as said Owner is diligently proceeding. In addition, if any Owner shall fail to obtain the insurance on an Exclusive Use Area required of such Owner hereunder, the Neighborhood Association shall have the right to obtain said insurance after having given at least ten (10) days notice to the Owner.

If the Neighborhood Association incurs any expenses required of an Owner hereunder as permitted in the preceding paragraph, then the Owner shall pay to the Neighborhood Association the amounts expended by the Neighborhood Association within fifteen (15) days following receipt of an invoice. The amounts expended by the Neighborhood Association and not reimbursed as required above shall be deemed to be a Special Assessment levied against the Building Envelope of such Owner.

## ARTICLE VI.

### ATTACHED RESIDENCES

It is possible that some of the Residences within the Neighborhood will be attached to other Residences by virtue of a common wall or if not a common wall by virtue of adjoining walls or abutting walls (hereinafter collectively referred to as a "Common Wall"). Any Residence containing one or more Common Walls shall be referred to as an "Attached Residence". For purposes of this Article VI, an "Attached Residence" shall not include Residences which are separated by a fence, privacy wall, or other similar horizontal structure even though such structure may be connected with both Residences. In the event of any doubt as to whether Residences are Attached Residences for purposes of this Article VI, the decision of the Master Board shall control. The provisions of this Article dealing with Attached Residences shall have priority over any other provisions of this Neighborhood Declaration, and in the event of any conflict between the provisions relating to Attached Residences and other provisions of this Neighborhood Declaration, the provisions relating to Attached Residences shall control. In addition, there may be certain Utility Facilities servicing one or more Attached Residences but no other buildings, improvements or Residences within the Neighborhood. These utility facilities shall be referred to as a "Common Utility Facility". Except as set forth in Section 10 of this Article VI, the provisions of this Article VI assume that an Attached Residence is not owned in the condominium form of ownership.

Section 1. Property Insurance. Each Owner of an Attached Residence shall obtain fire, extended coverage, and all risk insurance covering his Attached Residence in an amount equal

to the full replacement cost of such Residence, such insurance to have an agreed amount endorsement (or equivalent) and shall provide for a waiver of subrogation so that no other Owner or Occupant will be liable for any damage to an Attached Residence coverable under the insurance required to be obtained in this Section notwithstanding the negligence or other actions of such Person.

Section 2. Damage to Common Wall or Common Utility Facility. In the event of the damage or destruction of a Common Wall or a Common Utility Facility from any cause whatsoever which is actually covered under insurance or is coverable under the insurance required pursuant to Section 1 of this Article, the Owners sharing the Common Wall or the Common Utility Line shall, at their own expense, repair and rebuild said Common Wall or Common Utility Facility, and each Owner shall have the right to the full use thereof upon its repair or rebuilding. Notwithstanding the above, if such damage is caused by negligence or willful misconduct and the repair or restoration thereof is not covered by insurance or coverable under the insurance required to be obtained pursuant to Section 1 of this Article, then the Owner causing such damage shall bear the entire cost of repair or restoration. If such Owner shall refuse to pay such Owner's share of such costs or all of the costs if the damage is caused by negligence or willful misconduct, the other Owner shall have such damage repaired and shall be entitled to a lien on the Residence of the Owner so failing to pay such Owner's share (or all) of the costs of repair or restoration. If there shall be a mortgage upon such Owner's Residence, then the Mortgagee shall have the full right to exercise the rights of its Mortgagor as a party hereunder and, in addition, the right to add to the outstanding balance of such Mortgage any amounts paid by the Mortgagee for repairs hereunder and not reimbursed to said Mortgagee by the defaulting Owner. Any damage caused by an Occupant or guest of an Owner or Occupant shall be responsibility of the Owner. Any repair or restoration under this Section shall be in accordance with plans and specifications prepared by a licensed architect or engineer in conformity with all building codes and other legal requirements. Each Owner of a Common Wall or Common Utility Facility requiring repair under this Section shall cause said repairs or restoration to be accomplished as promptly as possible in the circumstances with as little interference with its use by any other Residence as is possible with due regard to the safety of Persons and other Residences of the building containing the Attached Residence.

Section 3. Exterior Repairs. Except for a repair made pursuant to the provisions of Section 2 of this Article, the Neighborhood Association shall maintain and make all repairs and, if necessary, replacements, to the exterior walls and the roof of any building of Attached Residences in order to keep the same in good condition and repair and attractive, including painting or staining the exterior walls. Exterior walls shall include the outside covering and the structure of the wall, but not any portion of the wall below grade unless all Attached Residences being charged on the same basis have basements, in which event the portions of the exterior walls below grade shall be included. Further, an exterior wall shall not include any windows, shutters, or doors or their appurtenances or hardware. Roofs shall include skylights and the outside roofing materials, sheathing to which the exterior roofing material is attached and any structural portion of the roof. Roofs shall also be deemed to include any roof drainage system, gutters and downspouts. The costs of maintaining said exterior walls and roofs shall be paid for by the Owners of all Attached

Residences in the Neighborhood through the Neighborhood Assessments; provided, however, that upon unanimous recommendation of the Neighborhood Board, and with the approval of the Board of the Master Association, if there are more than one type of Attached Residence buildings within the Neighborhood for which the cost of such exterior maintenance would vary because of differences in the design of the Attached Residences, the costs of such exterior maintenance can be apportioned among the Owners of similarly designed Attached Residences within the Neighborhood.

Notwithstanding the above, (a) each Owner shall provide all maintenance and shall make all repairs and replacements to the exterior walls and roof of his Residence required for the one (1) year period following the initial occupancy of the Residence, (b) such Owner shall be responsible thereafter for all maintenance, repairs and replacements required as the result of material defects of workmanship or materials during the original construction (or reconstruction) of a Residence which are known by the Association on the first anniversary of the initial Occupancy of the Residence, (c) each owner shall make all repairs and replacements of any exterior wall and roof caused by the negligence or tortious conduct of the Owner or Occupant of an Attached Residence or a guest of an Owner or Occupant, and (d) each Owner shall make all repairs and replacements of the exterior walls and roof which is covered or coverable (if such insurance shall not have been in effect) under a fire, extended coverage and all risk property insurance policy. All repairs and replacements required of each Owner pursuant to this Section 3 shall be made in accordance with any and all rules, regulations and directives of the Neighborhood Association.

Section 4. Party Wall Agreement. (a) Each Common Wall or boundary between two Attached Residences shall be deemed to be a party wall and the general rules of law regarding party walls and of liability for property damage due to negligent or tortious acts causing damage to a Common Wall or Common Utility Facility shall apply.

(b) The owners of Attached Residences shall have the right to use the Common Wall and Common Utility Facilities jointly, but only the normal use thereof shall be permitted.

Section 5. Modification of a Common Wall; Change of Common Utility Facility. Neither Owner of a Residence sharing a Common Wall shall have the right to extend such wall or increase its height except upon the written approval of the other Owner, and Neighborhood Board, the Architectural Control Committee and the holders of any Mortgages on both Residences. No such extension or increase in height may be made which impairs the strength or injures the existing wall or the foundation of the building. In the event of such extension or increase in the height of the Common Wall made by one of the Owners thereof, the other Owner shall have the right to use the extended or heightened part of the wall by paying to the constructing Owner one-half of the cost of such part of the wall that he shall use. Any extension or increased height of a Common Wall shall also be a party wall and shall also become part of the existing wall and be subject to the terms hereof. No change shall be made in a Common Utility Line without approval of all Owners using said Common Utility Line and the holders of any Mortgages on such Residences.

Section 6. Access. In the event any repairs or reconstruction shall be necessary to a Common Wall or Common Utility Line, all necessary entries to an adjacent Residence shall not be deemed to be a trespass so long as the repairs and reconstruction shall be done in a reasonable and workmanlike manner, and consent is hereby given to enter at reasonable times adjacent property to make any necessary repairs and reconstruction. Each Owner in a building of Attached Residences is licensed by the other Owners of Attached Residences in such building to make repairs or rebuild the Common Wall or the Common Utility Line. Any Owner exercising his rights under this paragraph shall give notice to the other Owners of such Owner's desire to have access and shall only enter the other Owner's Residence at reasonable times except in the event of an emergency.

Section 7. Use of a Common Wall. Each Owner of an Attached Residence sharing a Common Wall shall have the full right to use said Common Wall for the support of beams and structural materials or for any other lawful purpose not prohibited hereby; provided, however, that such use shall not injure, impair the strength of, or endanger the Common Wall, or the foundation or other portion of a Residence, and shall not impair or endanger the party wall benefit providing support to which the Adjoining Residence is entitled. All further use shall be subject to the terms of this Article.

Section 8. Indemnity by Owner. Each Owner for himself and his Occupants and their respective guests will indemnify the Declarant, the Neighborhood Association, the Master Association, and every other Owner and Occupant of a Resident in such building from and against any and all claims, actions, damages, liability and expense in connection with death or injury to Person(s) or loss or damage to property occurring in, on or about or arising out of the use of such Common Wall or Common Utility Facility.

Section 9. Failure of Owner to Comply. In the event that an Owner fails to comply with the provisions of this Article VI, the Neighborhood Association shall have the right to perform such covenant on behalf of such Owner, after having given written notice to the Owner and the failure of the Owner to perform such covenant within thirty (30) days following receipt of such notice (except in emergencies when such lesser period as may be reasonable in the circumstances shall be permitted and notice may be dispensed with); provided, however, if within said thirty (30) day period the Owner shall commence to take the required action, then such thirty (30) day period shall be extended as long as said Owner is diligently proceeding. In addition, if any Owner shall fail to obtain the insurance in an Exclusive Use Area required of such Owner hereunder, the Neighborhood Association shall have the right to obtain said insurance after having given at least ten (10) days notice to the Owner.

If the Neighborhood Association incurs any expenses required of an Owner hereunder as permitted in the preceding paragraph, then the Owner shall pay to the Neighborhood Association the amounts expended by the Neighborhood Association within fifteen (15) days following receipt

of an invoice. The amounts expended by the Neighborhood Association and not reimbursed as required above shall be deemed to be a Special Assessment levied against such Building Envelope Owner.

Section 10. Condominium Ownership of Attached Residence. If an Attached Residence is within a condominium, the Condominium Declaration (which together with all amendments thereto must be approved by the Association prior to becoming effective) and not the provisions of this Article VI shall address the matters specified in this Article; and this Article VI shall have no effect.

Section 11. Easements for Encroachment. There shall be reciprocal appurtenant easements for encroachment as between each Attached Residence and such portion or portions of the Building Envelope and Common Area adjacent thereto due to the unintentional placement or settling or shifting of the Attached Residences or improvements constructed, reconstructed, or altered thereon (including overhangs) to a distance of not more than three (3) feet, as measured from any point on the common boundary along a line perpendicular to such boundary at such point; provided, however, except for overhangs approved by the Neighborhood Association, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of an Owner, tenant, or the Neighborhood Association. The foregoing easements and reservations of easements, each of which shall, unless otherwise expressly provided, be non-exclusive, in perpetuity, run with the land, and inure to the benefit of and be binding upon the grantors and grantees thereof, each Institutional Mortgagee, and any other Person having an interest in the Neighborhood, or any part thereof, and the respective heirs, devisees, administrators, executors, personal representatives, successors and assigns of any of the foregoing.

## ARTICLE VII.

### MANAGEMENT OF THE NEIGHBORHOOD ASSOCIATION

Section 1. Common Area. The Neighborhood Association, subject to the rights and obligations of the Master Association set forth in the Master Declaration, shall be responsible for the management, maintenance and control of all Common Area within the Neighborhood.

Section 2. Personal Property. The Neighborhood Association, through action of its Board, may acquire, hold, and dispose of tangible personal property, but not real property. Cash belonging to the Neighborhood Association may be invested in intangible 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 Neighborhood Association shall have the right to engage employees and agents, including, without limitation, attorneys, accountants and

consultants, and maintenance firms and contractors. The Neighborhood 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 shall 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 Neighborhood 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 shall provide for cancellation by either party with ninety (90) days notice, and provided, further, that the Neighborhood Board may designate a different Manager with whom the Neighborhood 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 shall not extend longer than three (3) years after the end of the Development Control Period.

Section 4. Architectural Control. (a) The Master Declaration establishes the Architectural Control Committee ("ACC") for the entire Community. In the event that any Owner violates any provision requiring the approval of the ACC, the Neighborhood Board shall advise the Master Board of such violation. In addition, the Neighborhood Board shall actively participate in the proceedings before the ACC with respect to applications made by Owners within the Neighborhood by recommending approval by the ACC, disapproval, or facilitating a compromise.

(b) (i) In the event that the Master Board shall have delegated to the Neighborhood Board some or all of the power and authority of the ACC to perform the functions of the ACC (other than original construction) with respect to Owners within the Neighborhood, and upon written acceptance of this responsibility by the Neighborhood Board, the Neighborhood Board shall undertake the duties of the ACC and shall hold hearings and make decisions in accordance with the applicable provisions of the Master Declaration. In the alternative, but subject to the approval of the Master Board, the Neighborhood Board may empower a committee of three natural persons to undertake such functions of the Neighborhood Board. The committee need not be Members of the Master Association or the Neighborhood Association, but preferably one member of the committee shall be an architect licensed in Ohio, but that if that is not the case, then an architect should be retained to advise such committee.

(ii) No person serving on such committee shall be paid any fee or salary except that the architect on said committee or retained by such committee may be paid a fee for his services. A majority vote of the Neighborhood Board or the committee so selected shall be required to issue any permit, authorization or approval. The Neighborhood Board shall not be permitted to make any rules with regard to architectural control matters unless approved in writing by the Master Board. Any decisions of the Neighborhood Board or the committee approved to handle the architectural control matters shall be based upon the grounds for such decisions set forth in the Master Declaration. No member of the Neighborhood Board or of any committee appointed by the

Neighborhood Board to carry out the architectural control functions set forth in this Section 4 shall be liable with respect to its actions under this Section 4 to the Neighborhood Association, Master Association, any Owner within the Neighborhood or the Community, or any Person for his or her acts or omissions or for failure to act, except for acts of a malicious or wanton nature.

(c) The approval of the Neighborhood Board or any committee appointed by the Neighborhood Board with respect to architectural control of any applications for any work done or proposed, or in connection with any other matter requiring such approval shall not be deemed to constitute a waiver of any rights to withhold approval or consent to any similar proposals, plans and specifications, drawings or other matters whatever subsequently or additionally submitted for approval or consent.

(d) The Neighborhood Board or any committee appointed by the Neighborhood Board with respect to architectural control matters may grant variances as permitted under the applicable provisions of the Master Declaration.

(e) If a committee is appointed its decisions may be appealed to the Neighborhood Board with the same standards for reversal as provided for appeals of decisions of the ACC to the Master Board under the Master Declaration. If a committee is not appointed, the decisions of the Neighborhood Board may be appealed to the Master Board with the same standards for reversal as provided for appeals of decisions of the ACC to the Master Board under the Master Declaration.

Section 5. Representatives on the Master Board. Each Neighborhood Association is a Class C Member of the Master Association. After the "Class B Control Period," defined in the Master Declaration, the Neighborhood Board shall appoint one member (and alternates) of the Master Board of Trustees in accordance with the Master Code of Regulations of the Master Association.

Section 6. Adoption of Restrictions - User Fees. The Neighborhood Board may recommend to the Members of the Neighborhood Association any restrictions which should be adopted for this Neighborhood, so long as any new restrictions shall not conflict with any restrictions or other matters within the Master Declaration or rules of the Master Association, and such new restrictions impose stricter standards than those contained in the Master Declaration. Such additional restrictions shall be created by amendment of this Neighborhood Declaration in accordance with the applicable provisions hereof. In addition, the Neighborhood Board shall have the right to impose reasonable user fees for use of any recreational or other Common Area facilities within an Exclusive Use Area applicable to the entire Neighborhood. Such restrictions and user fees shall be binding upon all Owners and Occupants of this Neighborhood and their guests. Notwithstanding anything herein to the contrary, no restriction or user fee will be enacted without the consent of the Declarant during the Development Control Period. In the event of violation of any restrictions promulgated by the Neighborhood Association or user fees adopted by the Neighborhood Board, the Neighborhood Board shall have the same rights of enforcement of such violations with respect to the Neighborhood and the Owners and Occupants therein as the Master Association has for

enforcement of its restrictions and user fee regulations pursuant to the provisions of the Master Declaration, including, without limitation, the right to use "self-help" remedies and to charge any costs and expenses in connection with such violations to the violating Owner and to levy a Neighborhood Special Assessment against such Owner if the Owner does not reimburse the Neighborhood Association within the time periods set forth in the Master Declaration.

Section 7. Payment of Master Association Assessments. In the event that the Master Association shall elect to bill the Neighborhood Association rather than the individual Owners the Base Master Assessments and those Special Master Assessments applicable to all Completed Building Envelopes within the Neighborhood, the Neighborhood Association shall pay said Master Assessments to the Master Association prior to the date that such payment becomes delinquent. If said Master Assessments are not so paid, each Owner shall immediately pay his share of the Master Assessments to the Master Association. Nonpayment of such Master Assessments shall constitute a default by the Neighborhood Association as well as by each Owner required to pay such Master Assessments pursuant to the Master Declaration. The Master Association shall have all rights and remedies against the Neighborhood Association and the Owners of Completed Building Envelopes in the Neighborhood including, without limitation, the right to impose Collection Charges and to have and foreclose a lien on such Building Envelope, in the same manner and to the same extent as the Master Association would have had if it had billed such Owner directly and such Owner failed to make such payment.

Section 8. Rules and Regulations. The Neighborhood Association, through its Neighborhood Board, may make and enforce reasonable rules and regulations governing the use of the Common Area within the Neighborhood, which rules and regulations shall be consistent with the rights and duties established by this Neighborhood Declaration and the Master Declaration.

Section 9. Enforcement. The Neighborhood Association shall take all actions reasonably necessary under the circumstances to enforce the provisions of this Neighborhood Declaration. Sanctions for any violation of a covenant of this Neighborhood Declaration or of a rule adopted by the Neighborhood Board may include reasonable monetary penalty assessments as set forth in the Neighborhood Code of Regulations. Further, upon recommendation of the Neighborhood Board, the Master Board shall have the right to suspend use of recreational facilities within the Community. The Neighborhood Board shall, in addition, have the power to seek injunctive or other equitable relief in any court for violations or to abate nuisances. Sanctions may be imposed upon Owners for any violations caused by such Owners or Occupants of such Owners' Residences or the guests of any of them.

Section 10. Implied Rights. The Neighborhood Association may exercise any other right or privilege given to it expressly by this Neighborhood Declaration or the Neighborhood Code of Regulations, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege.



Section 11. Conflict with Master Declaration or Rules Adopted by Master Association. In the event of a conflict between the provisions of this Neighborhood Declaration and the Master Declaration on a rule adopted by the Master Association, the provisions of the Master Declaration or the rule adopted by the Master Association shall control. In the event of a conflict between any rule adopted by a Neighborhood Association and the provisions of the Master Declaration or rule adopted by the Master Association, the provisions of the Master Declaration or rule adopted by the Master Association shall control.

## ARTICLE VIII.

### NEIGHBORHOOD ASSESSMENTS

Section 1. Creation of Assessments. (a) There are hereby created Assessments for Common Neighborhood Expenses and for other expenditures as may from time to time specifically be authorized by the Neighborhood Board to be commenced at the time and in the manner set forth in this Article. There shall be two (2) types of Assessments: (a) Base Neighborhood Assessments to fund Common Neighborhood Expenses; and (b) Special Neighborhood Assessments as described in Section 6 below.

(b) Base Neighborhood Assessments shall be levied equally on all Completed Building Envelopes except as provided in Section 2 below. Each Owner, by acceptance of a deed or recorded contract of sale to any portion of the Neighborhood, is deemed to covenant and agree to pay Neighborhood Assessments.

(c) All Neighborhood Assessments, together with other collection charges consisting of (i) interest determined on a uniform basis for all delinquent Owners by the Neighborhood Board at a rate not to exceed the highest rate allowed by Ohio law as computed from the date the delinquency first occurs, (ii) an administrative late charge if any Neighborhood Assessment shall not be paid within not less than ten (10) days of the date due, as established from time to time by the Neighborhood Board (but in no event higher than ten percent (10%) of the amount due), and (iii) reasonable costs and attorneys' fees paid or incurred (collectively, the "Collection Charges") shall be a charge on the real property and shall be a continuing lien upon the Building Envelope against which each Neighborhood Assessment is made. Each such Neighborhood Assessment, together with the Collection Charges shall also be the personal obligation of the Owner of such Building Envelope at the time the Neighborhood Assessment arose, 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, except that no first Institutional Mortgagee whose Mortgage was previously recorded, nominee of such first Institutional Mortgagee, or third party purchaser who obtains title to a Building Envelope pursuant to the remedies provided in such a first Mortgage made to an Institutional Mortgagee shall be liable for unpaid Neighborhood Assessments which accrued prior to such acquisition of title.

(d) The Neighborhood Association shall, within a reasonable time after written demand, furnish to any Owner liable for any type of Neighborhood Assessment a certificate in writing signed by an officer or Manager of the Neighborhood Association setting forth whether such Neighborhood Assessments have been paid as to any particular Building Envelope. Such certificate shall be conclusive evidence of payment to the Neighborhood Association of such Neighborhood Assessments therein stated to have been paid. The Neighborhood Association may require the advance payment of a processing fee not to exceed Fifteen Dollars (\$15.00) (1999 dollars) for the issuance of such certificate.

(e) Neighborhood Assessments shall be paid in such manner and on such dates as may be fixed by the Neighborhood Board which may include, without limitation, acceleration of the annual Base Neighborhood Assessment for delinquents. Unless the Neighborhood Board otherwise provides, the Base Neighborhood Assessment shall be paid in monthly installments.

(f) No Owner may waive or otherwise exempt himself or herself from liability for the Neighborhood Assessments provided for herein, including, by way of illustration and not limitation, by non-use of Common Area or abandonment of the Building Envelope. The obligation to pay Neighborhood Assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of Neighborhood Assessments or set-off shall be claimed or allowed by reason of any alleged failure of the Neighborhood or Master Association or Neighborhood Board to take some action or perform some function required to be taken or performed by the Neighborhood or Master Association or Neighborhood Board under this Neighborhood Declaration or the Code of Regulations or the Master Declaration or Master Code of Regulations, or for inconvenience or discomfort arising from the making of repairs or improvements which are the responsibility of the Neighborhood or Master Association, or from any action taken to comply with any law, ordinance, or with any order or directive of any municipal or other governmental authority.

Section 2. Calculation of Base Neighborhood Assessments. There shall be assessed against each Completed Building Envelope Base Neighborhood Assessments equal to the product of the Common Neighborhood Expenses and a fraction, the numerator of which is one (1) and the denominator of which is the total number of Completed Building Envelopes within the Neighborhood. Such calculation shall be based on the number of Completed Building Envelopes at the beginning of each fiscal year.

Section 3. Non-Payment of Common Neighborhood Expenses by Declarant. The Declarant shall not be required to pay any Common Neighborhood Expenses.

Section 4. Date of Commencement of Neighborhood Assessments. Neighborhood Assessments provided for herein shall commence as to each Building Envelope on the first day of the month following the date such Building Envelope becomes a Completed Building Envelope. Neighborhood Assessments shall be due and payable in a manner and on a schedule as the Neighborhood Board of Trustees may provide. Annual Neighborhood Assessments shall be adjusted

According to the number of days remaining in the calendar year at the time Neighborhood Assessments commence on the Completed Building Envelope.

Section 5. Budget. The Neighborhood Board shall prepare a budget covering the estimated Common Neighborhood Expenses of the Neighborhood Association during the coming year. In the event the Neighborhood Association owns capital items there shall be established reserve funds for replacement of those capital items and the budget shall include a contribution to such reserve funds to be determined by the Neighborhood Board. The Neighborhood Board shall cause a copy of the Common Neighborhood Expense budget and notice of the amount of the Base Neighborhood Assessments to be levied against each Completed Building Envelope for the following year to be delivered to each Owner prior to the beginning of the calendar year.

Notwithstanding the foregoing, in the event the Neighborhood Board 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 Neighborhood Assessments - Penalties. (a) In addition to the Base Neighborhood Assessments authorized above, the Neighborhood Association may levy a Special Neighborhood Assessment from time to time applicable to all Completed Building Envelopes for nonrecurring expenditures and other lawful purposes in connection with the operation of the Neighborhood Association, provided that such special Neighborhood Assessments shall be approved by the Class B Member during the Development Control Period and thereafter by members of the Neighborhood Board possessing at least sixty-six and two-thirds percent (66-2/3%) of the voting power of the Neighborhood Board.

(b) In addition, the Neighborhood Association may levy a Special Neighborhood Assessment from time to time applicable to all Completed Building Units for construction of recreational facilities on Exclusive Use Areas and for other capital items, provided that such Special Neighborhood Assessment shall have been approved by the affirmative vote or written consent of at least sixty-six and two-thirds percent (66-2/3%) of the Class A voting power of the Neighborhood Association and the affirmative vote of the Class B Member, if such exists.

(c) The Neighborhood Board may also levy a Special Neighborhood Assessment against a Building Envelope following acquisition of such Building Envelope to reimburse the Neighborhood Association for costs incurred in bringing the Owner of such Building Envelope (or Occupant thereof) and his or her Building Envelope into compliance with the provisions of this Neighborhood Declaration, the Neighborhood Code of Regulations, or the Neighborhood Association rules. The Owner shall have an opportunity for a hearing in front of the Neighborhood Board if the Special Neighborhood Assessment is contested by the Class A Member by giving written notice to any member of the Neighborhood Board or to the Declarant as long as the Declarant is a Class B Member within fifteen (15) days following receipt of notice by the Class A Member from the Neighborhood Board that such Special Neighborhood Assessment shall have been levied.

Penalties levied in accordance with Section C.3. of Article III of the Neighborhood Code of Regulations shall be deemed to be a Special Neighborhood Assessment for which Collection Charges may be collected and a lien may be imposed and foreclosed as set forth in this Article VIII.

(d) Notwithstanding anything to the contrary in this Declaration, the Declarant shall not be required to pay Base or Special Neighborhood Assessments.

Section 7. Lien for Neighborhood Assessments. Upon the recording in the Cuyahoga County Records of a Notice of Lien with respect to any Building Envelope, which shall include the amount owed, name of Owner, legal description of the Building Envelope, and any other matters which the Neighborhood Association desires to include therein, there shall exist a perfected lien for unpaid Neighborhood Assessments and Collection Charges prior and superior to all other liens, except (a) all taxes, assessments, and other levies which by law would be superior thereto, and (b) the lien or charge of any first Mortgage held by an Institutional Mortgagee (meaning any Mortgage with first priority over other Mortgages) recorded before a Notice of Lien was recorded, but if a Notice of Lien shall have been recorded, such lien shall have priority only to the extent of the amount of such lien set forth in the Notice of Lien. Such lien may be enforced by suit judgment, and foreclosure in the same manner as real estate mortgages may be foreclosed.

The Neighborhood Association, acting on behalf of the Owners within the Neighborhood, shall have the power to bid for the Building Envelope at foreclosure sale and to acquire and hold, lease, mortgage, and convey the same. During the period in which a Building Envelope is owned by the Neighborhood Association following foreclosure: (a) No right to vote shall be exercised on its behalf; and (b) the Neighborhood Assessment assessed or levied on it shall be treated as a Common Neighborhood Expense. Suit to recover a money judgment for unpaid Neighborhood Assessments and Collection Charges shall be maintainable without perfecting a lien and without foreclosing or waiving the lien securing the same. All remedies of the Neighborhood Association shall be non-exclusive and in addition to all remedies permitted under this Neighborhood Declaration, in law or equity and all such remedies may be exercised at one time or at different times.

Section 8. Subordination of the Lien to First Institutional Mortgages. Unless a Notice of Lien shall have been recorded prior to the recording of such Mortgage (and then only to the extent of the amount set forth in the Notice of Lien), the lien for unpaid Neighborhood Assessments, including Collection Charges provided for herein, shall be subordinate to the lien of any first Mortgage made to an Institutional Mortgagee. The sale or transfer of any Building Envelope shall not affect the Neighborhood Assessment lien for unpaid Neighborhood Assessments. However, unless a notice of lien shall have been recorded at the time of the recording of such Mortgage, and then only to the extent of the amount of the lien set forth in such notice of lien, the sale or transfer of any Building Envelope pursuant to foreclosure of a first Mortgage made to an Institutional Mortgagee, or transfer to such first Institutional Mortgagee or third party pursuant to a deed in lieu of foreclosure, shall extinguish the lien of such Neighborhood Assessments as to payments which became due prior to such sale or transfer. No sale or transfer shall relieve such

Building Envelope from lien rights for any Neighborhood Assessments thereafter becoming due. Where the Institutional Mortgagee holding a first Mortgage of record or other purchaser of a Building Envelope taking through such a Mortgage made to an Institutional Mortgagee obtains title pursuant to remedies under the Mortgage or Deed in lieu thereof, its successors and assigns shall not be liable for the share of the Common Expenses or Neighborhood Assessments by the Neighborhood Association chargeable to such Building Envelope which became due prior to the acquisition of title to such Building Envelope by such acquirer from such Owner. Such unpaid share of Common Neighborhood Expenses or Neighborhood Assessments shall be deemed to be Common Neighborhood Expenses collectable from Owners of all the Building Envelopes, including such acquirer, its successors and assigns.

Section 9. Capitalization of Neighborhood Association - Working Capital Contribution. Upon acquisition of record title to a Building Envelope by the first purchaser thereof other than the Declarant or a Builder (acting in his professional capacity), a contribution shall be made by or on behalf of the purchaser to the working capital of the Neighborhood Association in an amount equal to one-sixth (1/6) of the amount of the annual Base Assessment per Completed Building Envelope for that year as determined by the Board. If possible, this amount shall be deposited into the purchase and sales escrow and disbursed therefrom to the Neighborhood Association. Otherwise, the Owner thereof shall pay such amount to the Neighborhood Association within ten (10) days following receipt of an invoice. Such funds shall be held by the Declarant and delivered to the Neighborhood Association following the end of the Development Control Period. Notwithstanding anything herein to the contrary, each Builder shall be liable for the payment of such working capital contribution not delivered to Declarant upon the conveyance of the Building Envelope by such Builder to an Owner other than a Builder and such Builder shall pay such amount to Declarant within ten (10) days after receipt of written notice from Declarant.

Section 10. Exempt Property. Notwithstanding anything to the contrary herein, the following property shall be exempt from payment of Base Neighborhood Assessments and Special Neighborhood Assessments:

- (a) all Common Area;
- (b) all property dedicated to and accepted by any governmental authority or public utility, including, without limitation, public schools, public streets, and public parks, if any; and
- (c) all property owned by Declarant.

ARTICLE IX.

GENERAL PROVISIONS

Section 1. Occupants Bound. All provisions of this Neighborhood Declaration and of any 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, guests and invitees of any Owner or Occupant. Every Owner shall cause all Occupants of his or her Residence to comply with this Neighborhood Declaration and the rules and regulations adopted pursuant thereto and such Owner shall be liable for all violations and for all losses to the Common Area caused by Occupants, notwithstanding the fact that such Occupants of a Residence are also fully liable and may be sanctioned for any violation of this Neighborhood Declaration and the rules and regulations adopted pursuant thereto.

Section 2. Term. The covenants and restrictions of this Neighborhood Declaration shall run with and bind the land constituting the Neighborhood, and shall inure to the benefit of be binding upon and be enforceable by the Neighborhood Association or the Owner of any Building Envelope subject to this Neighborhood Declaration, their respective legal representatives, heirs, successors, and assigns, for a term of fifty (50) years from the date this Neighborhood Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years, unless an instrument in writing, signed by a majority of the then Owners, has been recorded within the year preceding the beginning of each successive period of ten (10) years, agreeing to change said covenants and restrictions, in whole or in part, or to terminate the same, in which case this Neighborhood Declaration shall be modified or terminated as specified therein.

Section 3. Amendment. (a) The Declarant shall have the right at any time and from time to time to amend this Neighborhood Declaration during the Development Control Period unilaterally so long as the amendment shall not change voting rights of Class A Members or the method of calculating Neighborhood Assessments pursuant to Section 2 of Article VIII. Thereafter and otherwise, this Neighborhood Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Class A Members representing seventy-five (75%) percent of the total Class A voting power of the Neighborhood Association and the Declarant, so long as the Declarant shall be a Class B Member. However, the percentage of votes necessary to amend a specific clause (which has a provision relating to amendment) shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause. Any amendment to be effective must be recorded in the public records of Cuyahoga County, Ohio.

(b) Notwithstanding the above, the Neighborhood Board (with the approval of the Class B Member, if any) shall have the right at any time and from time to time to amend this Neighborhood Declaration, the Articles of Incorporation and/or the Neighborhood Code of Regulations 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 Neighborhood Association, the Government National Mortgage Neighborhood Association, The Federal Home

Loan Mortgage Corporation, the Department of Housing and Urban Development, The Federal Housing Neighborhood Association, the Veterans Administration, or any other governmental agency or any other governmental agency or public or quasi public private entity which performs (or may in the future perform) functions similar to those currently performed by such entities, or to bring the Neighborhood Declaration, the Articles of Incorporation and/or the Code of Regulations in compliance with applicable laws.

(c) Each Owner and Mortgagee shall be deemed to have knowledge of any amendment made pursuant to this Section 3 upon the recording of such amendment in the Cuyahoga County Records; and each Owner and Mortgagee shall be entitled at any time to request from the Declarant or the Neighborhood Board copies of the Neighborhood Declaration as then amended. The Neighborhood Board shall have the right to charge a reasonable fee for performing such services. In addition, upon the enactment of any amendment, the Neighborhood Board shall post in a conspicuous place (such as the club house) or send (ordinary mail or hand delivery) to an Owner summaries of the amendment made; but the non-receipt of any such summary or the failure of the Neighborhood 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 an Owner votes for or consents to any amendment to this Neighborhood Declaration, it will be conclusively presumed that such Owner has the authority so to vote for or consent and no contrary provision in any Mortgage or contract between the Owner 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 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.

Section 4. 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 5. Right of Entry. The Neighborhood Association shall have the right, but not the obligation, to enter into any Residence for emergency, security, or safety purposes, which right may be exercised by the Neighborhood Association's Board of Trustees, officers, agents, employees or Managers. Except in an emergency situation, entry shall only be made during reasonable hours and after reasonable notice to the Owner. This right of entry shall include the right of the Neighborhood Association to enter a Residence to cure any condition which may increase the possibility of a fire or other hazard in the event an Owner fails or refuses to cure the condition upon request by the Board.

Section 6. Perpetuities. If any of the covenants, conditions, restrictions, or other provisions of this Neighborhood Declaration shall be unlawful, void, or voidable for violation of the rule against perpetuities, then such provisions shall continue only until twenty-one (21) years after the death of the last survivor of the now living descendants of Elizabeth II, Queen of England.

Section 7. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Neighborhood Association unless approved by a majority of the Neighborhood Board members. This Section shall not apply, however, to (a) actions brought by the Neighborhood Association to enforce the provisions of this Neighborhood Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of Assessments as provided in Article VIII hereof, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Neighborhood Association in proceedings instituted against it. This Section shall not be amended during the Development Control Period unless such amendment is made by the Declarant.

Section 8. Use of the Words "Aberdeen" or "Aberdeen Community Neighborhood Association". No Person shall use the words "Aberdeen" or "Aberdeen Community Neighborhood Association" or any derivative thereof in any printed or promotional material without the prior written consent of the Declarant. However, Builders and Owners may use the terms "Aberdeen" or "Aberdeen Community Neighborhood Association" in printed or promotional matter where such term is used solely to specify that particular property is located within Aberdeen.

Section 9. Security. (a) NEITHER THE NEIGHBORHOOD ASSOCIATION OR THE DECLARANT IS UNDER ANY OBLIGATION OR DUTY TO PROVIDE ANY SECURITY FOR OR ON BEHALF OF ANY OWNER, OCCUPANT, OR RESIDENCE. NEITHER THE NEIGHBORHOOD 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 NEIGHBORHOOD ASSOCIATION, ARE NOT INSUREERS AND THAT EACH OWNER, TENANT, OCCUPANT, GUEST, AND INVITEE ASSUMES ALL RISK OF LOSS OR DAMAGE TO PERSONS, RESIDENCES, AND THE CONTENTS OF RESIDENCES AND FURTHER ACKNOWLEDGE THAT NO REPRESENTATIONS OR WARRANTIES, NOR HAS ANY OWNER, TENANT, GUEST, OR INVITEE RELIED UPON ANY REPRESENTATIONS OR WARRANTIES OF ANY KIND REGARDING SECURITY, NONE HAVE BEEN MADE BY ANYONE, AND NONE SHALL BE IMPLIED IN LAW.

(b) Notwithstanding the above, the Neighborhood Association shall have the right (but not the obligation) acting through the Neighborhood Board to provide any security measures it deems desirable from time to time.



Section 10. Indemnification. The Neighborhood Association shall indemnify Declarant and every officer and Neighborhood Trustee, against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer or Neighborhood Trustee in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Neighborhood Board) to which he or she may be a party by reason of being or having been an officer or Neighborhood Trustee. The officers and Neighborhood Trustees shall not be liable for any mistake of judgment, negligence or otherwise, except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and Neighborhood Trustees shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Neighborhood Association (except to the extent that such officers or Neighborhood Trustees may also be Members of the Neighborhood Association), and the Neighborhood Association shall indemnify and forever hold each such officer and Neighborhood Trustees free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall be exclusive of any other rights to which any officer or Neighborhood Trustee, or former officer or Neighborhood Trustee may be entitled. The Neighborhood Association as a Common Neighborhood Expense, may maintain as a Common Neighborhood Expense officers' and directors' liability insurance to fund this obligation, if such insurance is reasonably available.

Section 11. Exhibits. All exhibits referred to in this Neighborhood Declaration are attached to and made a part hereof.

Section 12. Miscellaneous. The section headings are used for convenience only and shall not be used in the interpretation of any matters herein. The use of the masculine or other gender shall include the feminine and the neuter genders, and vice versa.

## ARTICLE X.

### MORTGAGEE PROVISIONS

The following provisions are for the benefit of holders of Institutional Mortgages on Residences in the Neighborhood. The provisions of this Article apply to both this Neighborhood Declaration and to the Code of Regulations, notwithstanding any other provisions contained therein.

Section 1. Notices of Action. An institutional first Mortgagee and any insurer or guarantor of an Institutional first Mortgage who provides written request to the Neighborhood Association (such request to state the name and address of such holder, insurer, or guarantor and the

Residence 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 the Neighborhood or which affects any Residence on which there is a first Mortgage held, insured, or guaranteed by such eligible holder;

(b) any delinquency in the payment of Neighborhood Assessments owed by an Owner of a Residence subject to the Mortgage of such eligible 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 Neighborhood Association of any default in the performance by an Owner of a Residence of any obligation under the Neighborhood Declaration or Code of Regulations of the Neighborhood Association which is not cured within sixty (60) days;

(c) any lapse, cancellation, or material modification of any insurance policy maintained by the Neighborhood Association; or

(d) any proposed action which would require the consent of a specified percentage of eligible holders.

Section 2. Special FHLMC Provision. So long as required by the Federal Home Loan Mortgage Corporation, the following provisions apply in addition to and not in lieu of the foregoing. Unless at least two-thirds (2/3) of the first Institutional Mortgagees or Members representing at least two-thirds (2/3) of the total Neighborhood Association vote entitled to be cast thereon consent, the Neighborhood 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 Area which the Neighborhood Association owns, directly or indirectly (the granting of easements for public utilities or other similar purposes consistent with the intended use of the Common Area, the transfer of Common Area by Declarant in connection with the creation or modification of Building Envelopes, and the transfer of diminitive portions of the Common Area 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, Neighborhood Assessments, dues, or other charges which may be levied against an Owner of a Residence (A decision, including contracts, by the Board or provisions of any declaration subsequently recorded on any portion of the Neighborhood regarding assessments for Neighborhoods or other similar areas shall not be subject to this provision where such decision or subsequent declaration is otherwise authorized by this Neighborhood 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 Residences and of the Common Area (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 Neighborhood Declaration; or

(e) use hazard insurance proceeds for any Common Area losses for other than the repair, replacement, or reconstruction of such property.

First Institutional Mortgagees may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against the Common Area and may pay overdue premiums on casualty insurance policies or secure new casualty insurance coverage upon the lapse of an Neighborhood Association policy, and first Institutional Mortgagees making such payments shall be entitled to immediate reimbursement from the Neighborhood Association.

Section 3. No Priority. No provision of this Neighborhood Declaration or the Code of Regulations gives or shall be construed as giving any Owner or other party priority over any rights of the first Institutional Mortgagee of any Building Envelope in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of the Common Area.

Section 4. Notice to Neighborhood Association. Upon request, each Owner shall be obligated to furnish to the Neighborhood Association the name and address of the holder of any Mortgage encumbering such Owner's Residence.

Section 5. Amendment by Board. Should the Federal National Mortgage Neighborhood Association or the Federal Home Loan 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 to reflect such changes.

Section 6. Applicability of Article X. Nothing contained in this Article shall be construed to reduce the percentage vote that must otherwise be obtained under the Neighborhood Declaration, or Ohio corporate law for any of the acts set out in this Article.

Section 7. Failure of Mortgagee 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 Neighborhood Association does not receive a written response from the Mortgagee within thirty (30) days of the date of the Neighborhood Association's request.

ARTICLE XI.

DECLARANT'S RIGHTS - LIABILITY

Section 1. Rights of Declarant. (a) Any or all of the special rights and obligations of the Declarant may be transferred to other Persons, provided that the transfer shall not reduce an obligation nor enlarge a right beyond that contained herein, and provided further, no such transfer shall be effective unless it is in a written instrument signed by the Declarant and duly recorded in the public records of Cuyahoga County, Ohio.

(b) So long as Declarant continues to have rights under this Article, no Person shall record any declaration of covenants, conditions and restrictions, or Declaration of Condominium or similar instrument or any amendment thereof affecting any portion of the Neighborhood without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument or any Amendment thereof being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

(c) So long as Declarant continues to have rights under this Neighborhood Declaration, all sales, promotional, and advertising materials, and all forms for deeds, contracts for sale and other closing documents for the subdivision and sale of property in the Neighborhood by any Builder shall be subject to the prior approval of Declarant. Declarant shall attempt to deliver notice to any Builder of Declarant's approval or disapproval of all such materials and documents within thirty (30) days of receipt of such materials and documents and, if disapproved, the specific changes requested. If Declarant fails to so notify any Builder within such thirty (30) day period, Declarant shall be deemed to have waived any objections to such materials and documents and to have approved the foregoing. Upon disapproval, the foregoing procedure shall be repeated until approval is obtained or deemed to be obtained.

Section 2. Liability of Declarant. In the event that a money judgment shall be obtained against Declarant, such judgment shall be satisfied only out of the interest of the Declarant in the lands constituting the community, it being agreed that Declarant shall have no personal liability for any deficiency.

Section 3. Amendment of Article X. 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 (a) twenty (20) years from the date this Neighborhood Declaration is recorded, or (b) upon recording by Declarant of a written statement that all sales activity has ceased.

ARTICLE XII.

GOLF COURSE

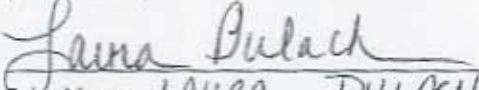
Section 1. General. Neither membership in the Neighborhood Association nor ownership or occupancy of a Building Envelope or Residence shall confer any ownership or other interest in the Golf Course. Rights to use the Golf Course will be granted only by the operator of the Golf Course to such Persons and on such terms and conditions, as may be determined from time to time by the operator of the Golf Course. Except that Owners and Occupants of Residences shall enjoy the same rights as other residents of Highland Heights, eligibility for and duration of membership, use rights, categories of use and extent of use privileges, and number of users shall be determined by the operator of the Golf Course.

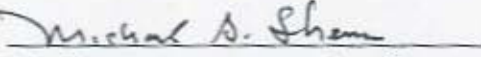
Section 2. Continuance of Golf Course. All Persons, including all Owners, are hereby advised that no representations or warranties have been or are being made by the Declarant, its agents and employees, or any other Person with regard to the Golf Course or the operation of the Golf Course, or the continuance of the Operation of the Golf Course. The Golf Course is not part of the Community and becoming an Owner or Occupant grants no rights in the Golf Course.

IN WITNESS WHEREOF, the undersigned Declarant has executed this Neighborhood Declaration as of the day and year first set forth above.


SIGNED IN THE PRESENCE OF:


(As to both)

  
Print Name: LAURA DULACH

  
Print Name: MICHAEL A. SHEMA

MINER PROPERTIES, LTD.

By:   
Sam Miller, Administrative Officer

By:   
Milton Wolf, Administrative Officer

STATE OF OHIO )  
) SS:  
COUNTY OF CUYAHOGA )

The foregoing instrument was acknowledged before me a notary public on the 29<sup>TH</sup> day of SEPTEMBER, 1999, by Sam Miller, the Administrative Officer, and Milton Wolf, the Administrative Officer, of Miner Properties, Ltd., an Ohio limited liability company, on behalf of the limited liability company.

Laura Dulach  
NOTARY PUBLIC  
My Commission Expires: LAURA DULACH, Notary Public  
STATE OF OHIO  
My Commission Expires Mar. 19, 2000  
(Recorded in Cuyahoga County)

The Vistas at Aberdeen Neighborhood Association, Inc. joins in the execution of this Neighborhood Declaration to express its consent and approval of the terms and provisions hereof, this 5<sup>TH</sup> day of OCTOBER, 1999.

VISTAS AT ABERDEEN  
NEIGHBORHOOD ASSOCIATION, INC.

Laura Dulach  
Print Name: LAURA DULACH

By: Robert F. Monchein  
Robert F. Monchein, Its President

June Tortorici  
Print Name: JUNE TORTORICI

By: Edward W. Surovi  
Edward W. Surovi, Its Secretary

The Aberdeen Community Master Homeowners Association joins in the execution of this Neighborhood Declaration to express its consent and approval of the terms and provisions hereof, this 5<sup>TH</sup> day of OCTOBER, 1999.

ABERDEEN COMMUNITY MASTER  
HOMEOWNERS ASSOCIATION

Rebertha Hamilton  
Print Name: Rebertha Hamilton

By: Michael A. Shemo  
Michael A. Shemo, Its President

Laura Dulach  
Print Name: LAURA DULACH

By: Robert F. Monchein  
Robert F. Monchein, Its Secretary

STATE OF OHIO )  
 ) SS:  
COUNTY OF CUYAHOGA )

The foregoing instrument was acknowledged before me a notary public on the 5<sup>TH</sup> day of OCTOBER, 1999, by Robert F. Monchein, the President, and Edward W. Surovi, the Secretary, of the Vistas at Aberdeen Neighborhood Association, Inc., an Ohio not-for-profit corporation, on behalf of the corporation.

*Laura Dulach*

NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

LAURA DULACH, Notary Public  
STATE OF OHIO  
My Commission Expires Mar. 19, 2000  
(Recorded in Cuyahoga County)

STATE OF OHIO )  
 ) SS:  
COUNTY OF CUYAHOGA )

The foregoing instrument was acknowledged before me a notary public on the 5<sup>TH</sup> day of OCTOBER, 1999 by Michael A. Shemo, the President, and Robert F. Monchein, the Secretary, of the Aberdeen Community Master Homeowners Association, an Ohio not-for-profit corporation, on behalf of the corporation.

*Laura Dulach*

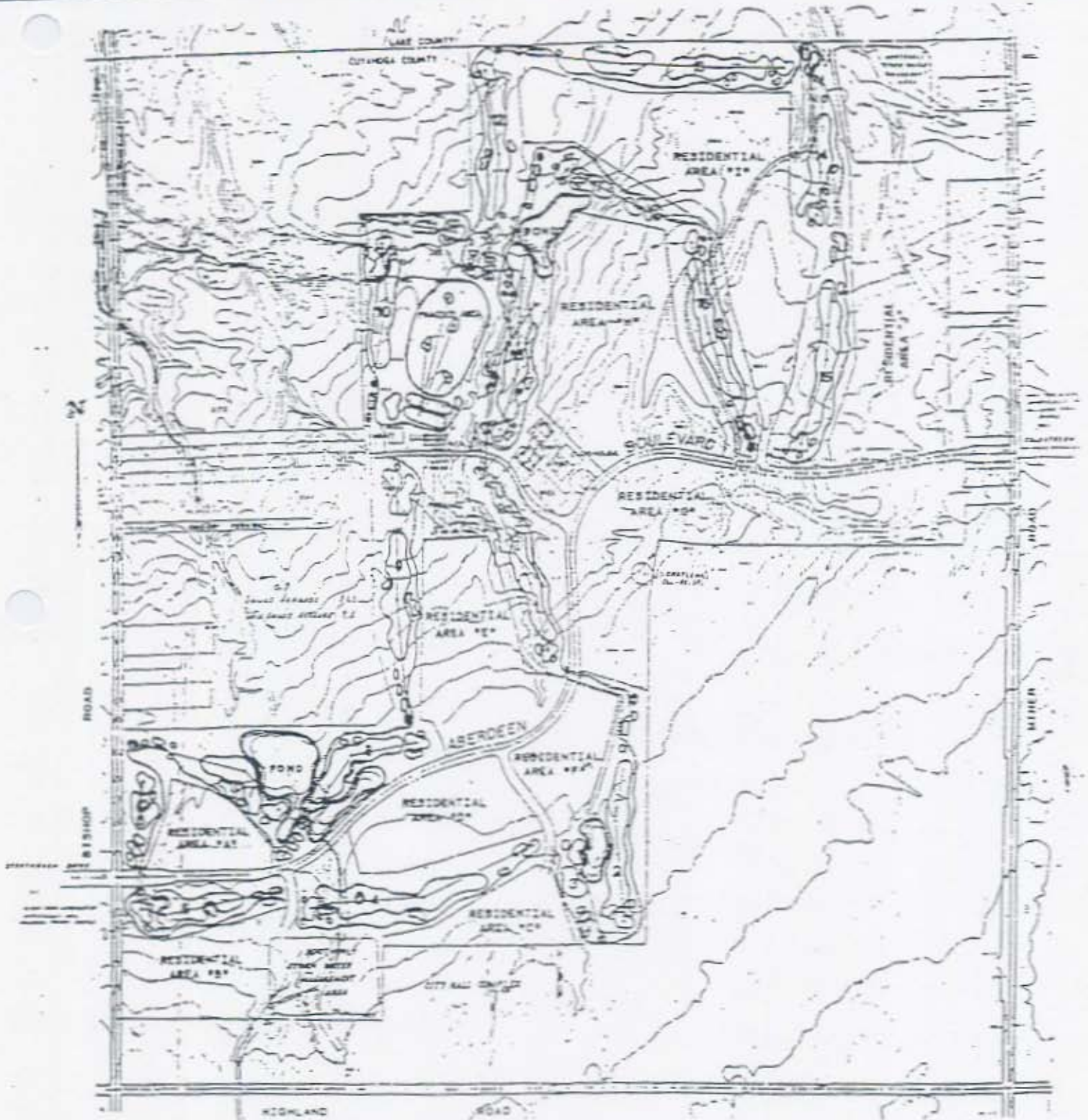
NOTARY PUBLIC

My Commission Expires: \_\_\_\_\_

LAURA DULACH, Notary Public  
STATE OF OHIO  
My Commission Expires Mar. 19, 2000  
(Recorded in Cuyahoga County)

THIS INSTRUMENT PREPARED BY:

DAVID J. GORDON, ESQ.  
C/O FOREST CITY ENTERPRISES, INC.  
TERMINAL TOWER, SUITE 1160  
50 PUBLIC SQUARE  
CLEVELAND, OHIO 44113



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

DATE: OCTOBER 1991 SCALE: 1" = 300'

City of Highland Heights



MP-50

City of Highland Heights  
 City Engineer  
 City Clerk



Plan Showing Neighborhood

CUYAHOGA COUNTY RECORDER  
199910120100 PAGE 41 of 63

BISHOP ROAD WIDTH VARIES

ABERDEEN BOULEVARD 80 FT.

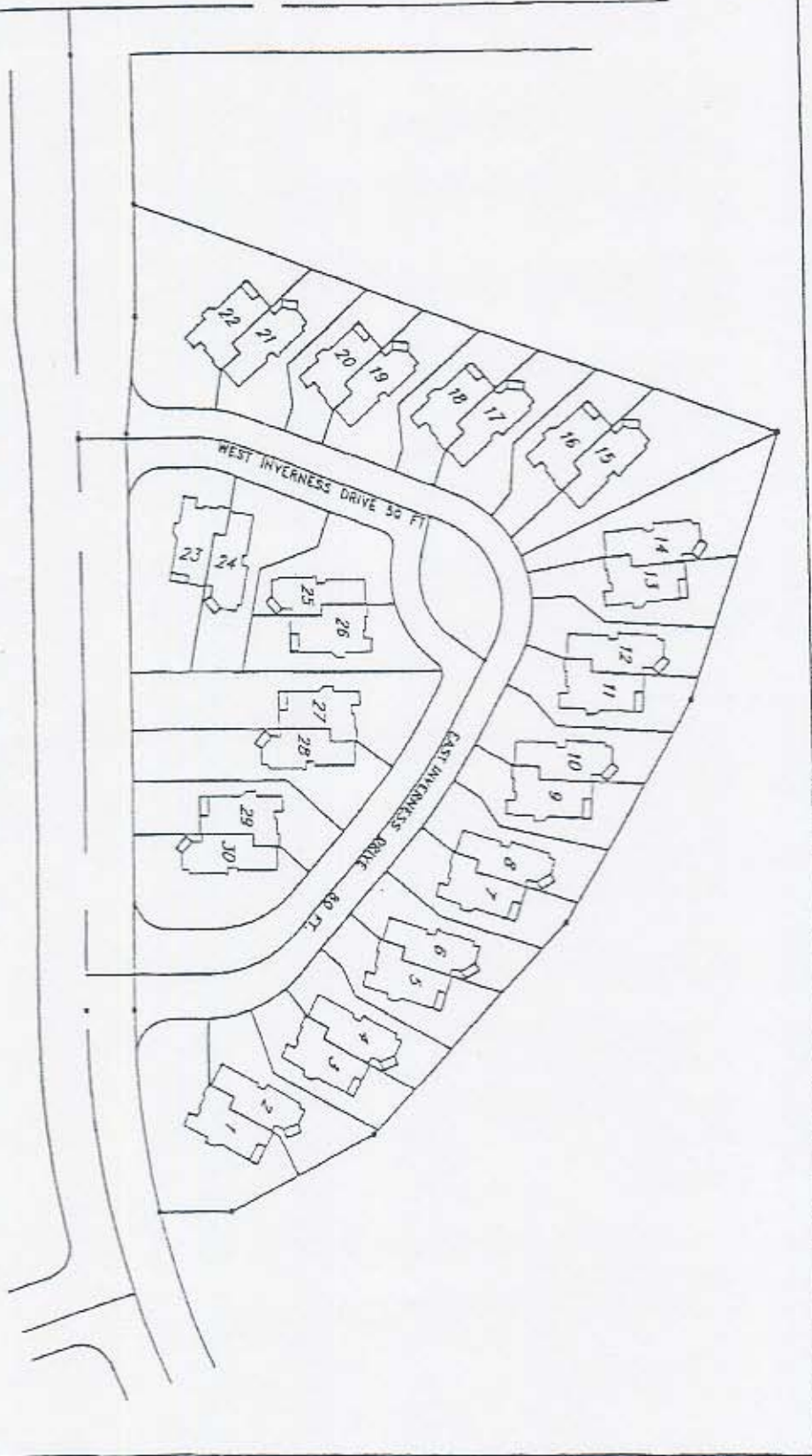


EXHIBIT C  
ARTICLES OF INCORPORATION  
OF  
VISTAS AT ABERDEEN  
NEIGHBORHOOD ASSOCIATION, INC.

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 VISTAS AT ABERDEEN NEIGHBORHOOD ASSOCIATION, INC.

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, Vistas at Aberdeen Neighborhood Association, Inc., an Ohio not-for-profit corporation, its successors and assigns.

7. NEIGHBORHOOD DECLARATION, Declaration of Covenants, Easements, and Restrictions for the Vistas 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.

FIFTH: POWERS.

The Association shall have the power to engage in any lawful act pursuant to Chapter 1702 of the Ohio Revised Code deemed by it necessary or desirable to accomplish the purposes set forth in ARTICLE FOURTH of these Articles and to protect the lawful rights and interests of its Members in connection therewith.

SIXTH: DURATION.

The Neighborhood Association shall have perpetual duration.

SEVENTH: MEMBERSHIP.

There shall be two (2) classes of membership, Class A and Class B, as follows:

(a) Class A Members. The Class A Members shall be the Owners within the Neighborhood.

(b) Class B Member. The Class B Member shall be the Declarant.

EIGHTH: NEIGHBORHOOD BOARD OF TRUSTEES.

The persons vested with the authority to conduct the affairs of the Neighborhood Association shall be known as the Neighborhood Board of Trustees. The following persons having the addresses set forth opposite their respective names, shall serve the Neighborhood Association as Neighborhood Trustees until the first annual meeting or other meeting called to elect Neighborhood Trustees:

Edward Surovi	c/o Forest City Enterprises, Inc. Terminal Tower, Suite 1250 50 Public Square Cleveland, Ohio 44113
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Michael A. Shemo	25700 Science Park Drive Landmark Center, Suite 350 Beachwood, Ohio 44122-7301
------------------	--------------------------------------------------------------------------------------

Robert F. Monchein	c/o Forest City Enterprises, Inc. Terminal Tower, Suite 1250 50 Public Square Cleveland, Ohio 44113
--------------------	--------------------------------------------------------------------------------------------------------------

NINTH: INDEMNITY.

Each member of the Neighborhood Board of Trustees ("Trustee") and each officer of the Neighborhood Association and

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 Code of Regulations of the Neighborhood Association, any vote of corporation Members, or any agreement.

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

1999.

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Michael A. Shemo, Sole Incorporator

ORIGINAL APPOINTMENT OF STATUTORY AGENT

The undersigned, being the sole incorporator of the Vistas at Aberdeen Neighborhood Association, Inc., hereby appoints MICHAEL A. SHEMA to be statutory agent upon whom any process, notice, or demand required or permitted by statute to be served upon the Corporation may be served. The complete address of the agent is: Landmark Center, Suite 350, 25700 Science Park Drive, Beachwood, Ohio 44122-7301.

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Michael A. Shemo, Sole Incorporator

ACCEPTANCE OF APPOINTMENT

The undersigned, Michael A. Shemo, named herein as the statutory agent for the Vistas at Aberdeen Neighborhood Association, Inc., hereby acknowledges and accepts the appointment of statutory agent for said corporation.

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