

DECLARATION OF COVENANTS, CONDITIONS, EASEMENTS
AND RESTRICTIONS

OF

BARNSLEY WAY, A CLUSTER DEVELOPMENT,
BROADVIEW HEIGHTS, OHIO

CUYAHOGA COUNTY RECORDER
PATRICK J. O'MALLEY
DEED 04/12/1999 10:51:58 AM
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BEING DEVELOPED BY:

MacIntosh Development Corporation,
an Ohio corporation
905 Corporate Way, Suite 200
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This Instrument Prepared By:

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DECLARATION

Submitting the property known as Barnsley Way, a Cluster Development, being located in Broadview Heights, Cuyahoga County, Ohio.

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

Date: _____, 1999.

Cuyahoga County Recorder

By: _____

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DECLARATION OF COVENANTS, CONDITIONS,
EASEMENTS AND RESTRICTIONS OF
BARNSELY WAY, A CLUSTER DEVELOPMENT,
BROADVIEW HEIGHTS, OHIO
("Declaration")

THIS DECLARATION made as of the ___ day of _____, 1999 by MACINTOSH DEVELOPMENT CORPORATION, an Ohio corporation (referred to herein as the "Developer").

PREAMBLE

A. The Developer is the owner of real property in the City of Broadview Heights, Cuyahoga County, Ohio, legally described in Exhibit "A" (the "Property"), and desires to create thereon a planned community in accordance with the subdivision plat for Barnsley Way at MacIntosh Farms and in accordance with the requirements of the Planning and Zoning Code of the City of Broadview Heights and Cuyahoga County.

B. The Property is part of MacIntosh Farms, a Planned Unit Development, and is governed by document entitled "Master Declaration of Covenants, Conditions, Easements and Restrictions of MacIntosh Farms, a Planned Residential Community ("Master Declaration") recorded August 6, 1986 in Volume 86-4890, Page 60 of Cuyahoga County Records, and amended from time to time thereafter. This Declaration is being created to establish a separate homeowners association, to develop, maintain and administer the Association Roads within Barnsley Way Cluster Development, the first phase of which is Barnsley Way at MacIntosh Farms Phase I, and to impose covenants and building use restrictions to supplement those contained in the Master Declaration, so long as the same do not conflict with those contained in the Master Declaration.

C. The Property consists of Living Units, vacant Sublots and Association Roads, all as hereafter defined.

D. The Property may be developed in whole or in part: (a) as a residential community; (b) for open space and/or recreational purposes; or (c) any combination of the foregoing.

E. The Developer desires to provide for: (a) the orderly development of the Property; (b) the establishment and maintenance of architectural and design controls and standards; (c) the use and maintenance of the Areas of Common Responsibility (hereinafter defined); (d) the compliance with the Planning and Zoning Code, Subdivision Code, and rules and regulations of the City of Broadview Heights and County of Cuyahoga and other governmental authorities having jurisdiction over the Property; and (e) the protection of values within the Property. The foregoing is being provided so that the residents of the Property may enjoy a quality environment for themselves and

their families. For such purpose, the Developer has prepared this Declaration to define the manner in which the Property shall be governed and administered.

F. A central association will be required to regulate, administer and govern the Property for the fulfillment of the foregoing purposes with the power to levy and collect assessments from Owners (hereafter defined) within the Property and to pay the cost and expense of operating, maintaining, repairing and replacing the Areas of Common Responsibility. The Developer has assigned such functions to Barnsley Way Homeowners Association, Inc., a corporation not-for-profit, that Developer has caused to be created under the laws of the State of Ohio (the "Association").

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

ARTICLE I

PREAMBLE: PROPERTY SUBJECT TO THIS DECLARATION; DEVELOPER'S RIGHT TO ADD AND DELETE LAND

Section 1.1 - Preamble

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

Section 1.2 - Property

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

Section 1.3 - Expansion and Contraction of the Property

(a) The Developer reserves the right from time to time to add additional property to the Property and to subject the same to the provisions of this Declaration. To add any additional property, the Developer shall execute and record a Subsequent Amendment to this Declaration which expressly provides that the land described therein shall become a part of the Property and shall be subject to the Covenants and Restrictions set forth in this Declaration, except as the same may be modified by the Subsequent Amendment.

(b) The Developer reserves the right from time to time to delete lands from the Property (provided the lands so deleted are not designated as Common Areas or Open Space) and thereby to free such lands from the provisions of this Declaration. Lands not owned by Developer may be deleted from the Property only with the written consent of the title owner thereof. To delete such lands, the Developer shall execute and record a Subsequent Amendment to this Declaration which expressly provides that the land described therein shall no longer be a part of the Property and shall no longer be subject to the Covenants and Restrictions set forth in this Declaration.

ARTICLE II
EXHIBITS AND DEFINITIONS

Section 2.1 - Exhibits

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

- EXHIBIT "A": A legal description of the Property.
- EXHIBIT "B": A site plan of the Property.
- EXHIBIT "C": A Form Certificate of Compliance (See 7.24 of this Declaration)

Section 2.2 - Definitions

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

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

(b) "AREAS OF COMMON RESPONSIBILITY". The Areas of Common Responsibility shall mean and refer to: (1) the entrances to the Property situated off of existing and future public streets that abut the Property (the "Entrances") and landscaping, sprinklers (if any) and other improvements at the Entrances; (2) any security facilities, walls and fences; (3) Association Roads (hereafter defined) and signs, street lights (if any) and walks or pathways (if any); (4) off-street guest parking spaces along the Association Roads; (5) storm drainage that generally serves the Property and ponds, including storm retention and detention ponds; (6) sanitary sewer lines; (7) water laterals extending to Living Units and other facilities of Barnsley Way; (8) snow removal from the Association Roads and from driveways leading from Barnsley Way, a duly dedicated public street and from the Association Roads to Living Units and maintenance of Originally Installed Landscaping in accordance with Section 6.4 hereof; (9) real and personal property owned by the Association; (10) real and personal property not owned by the Association but determined by the Board to be the responsibility of the Association; (11) together with those areas, if any, which by contract with any commercial establishment or association, or with any local governmental authority become the responsibility of the Association. Any public rights-of-way within or adjacent to the Property, may be part of the Areas of Common Responsibility.

(c) "ARTICLES" or "ARTICLES OF INCORPORATION". The Articles of Incorporation of the Association which are filed with the Secretary of State of Ohio to create the Association.

(d) "ASSESSMENTS". The assessments levied against all Owners of Living Units to fund Common Expenses.

(e) "ASSOCIATION". Barnsley Way Homeowners Association, Inc., a non-profit Ohio corporation, its successors and assigns, created to govern, operate, control and administer the Areas of Common Responsibility and to supervise and enforce this Declaration.

(f) "ASSOCIATION ROAD". Any private street which is at any time constructed on the Property which the Developer at any time offers to dedicate by easement, deed, plat or otherwise, to the Association or to governmental authorities having jurisdiction (whether the same is denominated as a street, avenue, boulevard, drive, place, court, road, circle, lane, walk or other designation) including any curbs, gutters or sidewalks adjacent to any such street or other thoroughfare. An Association Road shall be titled in the name of the Association. The Association Roads in Barnsley Way at MacIntosh Farms Phase I consist of Sweet Bay Court, Archer Court, Sexton Court and Brooks Court.

(g) "BARNESLEY WAY". A Planned Unit Development under the Planning and Zoning Code of the City of Broadview Heights, which consists of or will consist of approximately 137 Sublots which will be platted in phases. The first phase of Barnsley Way, known as Barnsley Way at MacIntosh Farms Phase I, will contain Sublot Numbers 1 through 38, situated on Barnsley Way, a duly dedicated public street, and Sweet Bay Court, Archer Court, Sexton Court and Brooks Court,

all private streets, as shown by the plat recorded in Volume 292, Pages 58-60 of Cuyahoga County Plat Records.

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

(i) "CITY". The City of Broadview Heights, an Ohio municipal corporation.

(j) "CLASS "B" CONTROL PERIOD". The period of time during which the Class "B" Member (the Developer) is entitled to appoint a majority of the members of the Board, as provided in Article III, Section 2 of the Code.

(k) "CODE". The Code of Regulations of the Association.

(l) "COMMON AREAS". All real and personal property now or hereafter owned by the Association or otherwise held for the common use and enjoyment of the Owners or Occupants. Common Areas shall include the Entrances of the Property referred to in subparagraph (b) of this Section, Association Roads, guest parking spaces situated off of Association Roads, and those areas of land intended for the common use, benefit and enjoyment of all Occupants of the Property. Any Owner may delegate, in accordance with the Code and subject to reasonable rules, regulations, and limitations as may be adopted in accordance therewith, his or her right of enjoyment to the Common Areas and facilities to the members of his or her family, tenants, and social invitees and shall be deemed to have made a delegation of all such rights to the Occupants of any leased Living Unit. Common Areas does not mean or imply that the public at large acquires any easement of use or enjoyment therein.

(m) "COMMON EXPENSES". The actual and estimated expenses of operating the Association, both for general or special purposes, including reasonable reserves, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Code, and the Articles of Incorporation of the Association.

(n) "COUNTY". Cuyahoga County.

(o) "DESIGN REVIEW COMMITTEE". The committee created by this Declaration and granted original jurisdiction to review and approve or disapprove exterior and structural improvements, landscaping, additions and changes within the Property.

(p) "DEVELOPER". MACINTOSH DEVELOPMENT CORPORATION, an Ohio corporation, and the specifically designated successors or assigns of any of its rights as Developer under this Declaration or under any supplement to this Declaration involving the Property as the same may be expanded or contracted from time to time. No person, real or corporate, shall be deemed to be a successor, alternate or additional Developer for the purposes of this Declaration unless and until such person or entity has been specifically so designated by Developer herein, by

instrument in writing and placed of record, and shall be deemed a successor and assign of Developer only to the particular rights and interests of Developer under this Declaration or under a supplement to this Declaration. The Developer is also sometimes referred to herein as the "Original Developer".

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

(r) "LIVING UNITS". All units of residential housing to be situated on the Property, whether they are single family homes or any other type of living unit permitted to be constructed or created upon the Property under any applicable zoning code that now exists or may hereafter be amended. Without limiting the generality of the foregoing, Living Unit shall mean a portion of the Property intended for any type of independent ownership for use and occupancy as a single family residence and shall, unless otherwise specified, include within its meaning (by way of illustration, but not by way of limitation) single family houses on separately platted lots, as may be developed, used and defined as herein provided or as provided in Subsequent Amendments; provided, further, the term Living Unit shall also include all portions of the Sublot owned as a part of any structure thereon.

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

(s) "MASTER ASSOCIATION". MacIntosh Farms Community Association, Inc., an Ohio non-profit corporation, created pursuant to the Master Declaration.

(t) "MASTER DECLARATION". Master Declaration of Covenants, Conditions, Easements and Restrictions of MacIntosh Farms, recorded in Volume 86-4890, Page 60 of Cuyahoga County Records (as the same has heretofore or may hereafter be amended) governing the entire MacIntosh Farms Community which includes the Property. **IF THERE IS A CONFLICT BETWEEN THE PROVISIONS OF THE MASTER DECLARATION AND THE PROVISIONS OF THIS DECLARATION, THE MORE RESTRICTIVE PROVISION SHALL GOVERN.**

(u) "MEMBER". A person or entity entitled to membership in the Association, as provided herein.

(v) "OCCUPANT". A person in possession of a Living Unit including, without limitation, an Owner or any guest, invitee, lessee, tenant, or family member of an Owner occupying or otherwise using a Living Unit.

(w) "OPEN SPACES". Land that is assigned as private open space use, including "common land" and "open spaces" required by the City's Planning and Zoning Code.

(x) "ORIGINAL DEVELOPER". MACINTOSH DEVELOPMENT CORPORATION, an Ohio corporation.

(y) "ORIGINALLY INSTALLED LANDSCAPING". The landscaping installed in connection with the construction of a Living Unit on a Living Unit Sublot in accordance with the landscape plan approved by the Developer or the Design Review Committee and denominated by the Developer or the Design Review Committee as Originally Installed Landscaping.

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

(aa) "OWNERSHIP INTEREST". The entire right, title and interest of any Owner in all of the freehold and leasehold estates of such Owner in his Living Unit.

(bb) "PERSON". A natural individual, corporation, partnership, limited partnership, trust or other entity to which the law attributes the capacity of having rights and duties.

(cc) "PROPERTY". The land described in Exhibit "A" as the same may from time to time be amended.

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

(ee) "SITE PLAN". The preliminary site plan of the Property and adjacent lands which currently shows a total of approximately 137 Sublots, as the same may be supplemented, modified and amended from time to time. The first phase of the Property consists of Sublot Nos. 1 through 38 of Barnsley Way at MacIntosh Farms Phase I.

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

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

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

(ii) "SUBSIDY PERIOD". The Subsidy Period for Assessments attributable to the Areas of Common Responsibility shall be for a period beginning as of the date of this Declaration and ending December 31, 1999 or when there are thirty-eight (38) Living Units, whichever shall first occur.

(jj) "TENANT". Any person(s) having a possessory leasehold estate in a Living Unit, other than an Owner.

ARTICLE III EASEMENTS

Section 3.1 - Utility Easements

There is hereby reserved in favor of Developer and granted to the Association, its successors and assigns, a non-exclusive easement upon, across, over, through and under the Property for ingress, egress, installation, replacement, repair and maintenance of all utilities and service lines and systems including, but not limited to, water, sewer, energy, drainage, gas, telephone, electricity, television, cable and communication lines and systems. By virtue of this easement, it shall be expressly permissible for Developer and the Association and their successors and assigns, or the providing utility or service company, to install and maintain facilities and equipment on the Property provided that such facilities shall not materially impair or interfere with any Living Units and provided further that any areas disturbed by such installation and maintenance are restored to substantially the condition in which they were found. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines, water lines, or other utility service lines or facilities

for such utilities may be installed or located except as approved by the Developer or the Design Review Committee or unless the same are shown on a recorded plat. There is hereby reserved in favor of the Developer and the Association the right (but not the obligation) to grant neighboring property owners easements for utility purposes so long as the granting of such easements does not overburden the utilities serving the Property.

Section 3.2 - Easement for Ingress and Egress

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

Section 3.3 - Common Areas

Developer, all Owners, Occupants and the guests of such parties shall have the right to enter upon, use and enjoy the Common Areas for their intended purposes in accordance with this Declaration and the applicable Rules.

Section 3.4 - Easements for Construction, Alteration, etc.

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

Section 3.5 - Emergency and Service Easements

Fire, police, health, sanitation, medical, ambulance, school buses, utility company, mail service and other public or quasi-public emergency and service personnel and their vehicles shall have an easement for ingress and egress over and across the Association Roads and any other roads or drives within the Property for the performance of their respective duties.

Section 3.6 - Drainage Rights and Authority to Transfer Drainage and other Easement Rights to City

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

Developer and (after transfer of the Common Areas) the Association shall have the right to grant easements for the installation and maintenance of sanitary sewers, storm sewers and drainage to the City. No owner shall in any way hinder or obstruct the operation or flow of the drainage system. No structures (including, but not limited to, sidewalks and driveways), plantings or other materials shall be placed or permitted to remain within such easement areas which may damage or interfere with the installation and/or maintenance of such improvements in such easement areas or which may change, retard or increase the flow of water through the respective easement areas. The easement areas and all improvements therein shall be maintained continuously by the Association unless those easement areas are accepted by the City by formal action of the City.

Section 3.7 - Parking in Common Areas

Ownership of a Living Unit shall entitle the Owner or Occupant of the Living Unit to the reasonable use of parking spaces situated within the Common Areas near and convenient to such Living Unit, together with the right of ingress and egress to such parking area. There shall be no parking of motor vehicles on Association Roads, except that the Developer and/or the Board may designate certain on-street parking areas for only visitors or guests on a temporary basis subject to reasonable rules and regulations, and subject to applicable laws.

Section 3.8 - Easements for Community Signs

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

Section 3.9 - Easement to Maintain Sales Offices, Models, etc.

Notwithstanding any provisions contained in this Declaration to the contrary, so long as the construction and sale of Living Units by the Developer or an Affiliate of the Developer is continuing within the Property (or by the Developer or an Affiliate of the Developer within another portion[s] of MacIntosh Farms), it shall be expressly permissible for the Developer to maintain and carry on

upon portions of the Common Areas such facilities and activities as, in the sole opinion of Developer, may be reasonably required, convenient, or incidental to the construction or sale of Living Units within the Property or within other sites of the Developer (or an Affiliate of the Developer) within MacIntosh Farms, including, but not limited to, administrative/customer services, construction offices/trailers, parking signs, identification signs, model units, and sales and resales offices, and the Developer, its guests, licensees and invitees shall have an easement for access to all such facilities. The right to maintain and carry on such facilities and activities shall specifically include the right to use Living Units owned by the Developer, as models and sales offices. Developer further reserves the right for itself and its successors, assigns, contractors, material suppliers and others performing work and furnishing materials to construct Living Units and other improvements upon the Property to conduct business and carry on construction/site development activities during business hours that are customary within the County. This Section may not be amended or modified without the express written consent of the Developer.

Section 3.10 - Maintenance Easement

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

Section 3.11 - Environmental Easement

There is hereby reserved for the benefit of Developer, the Association, and their respective agents, employees, successors, and assigns, an alienable, transferrable, and perpetual right and easement on, over, and across the Common Areas and all Vacant Sublots for the purpose of taking any action necessary to effect compliance with environmental rules, regulations, and procedures from time to time promulgated or instituted by the Board, the Design Review Committee, or by any governmental entity, such easement to include, without limitation, the right to implement erosion control procedures and practices, the right to drain standing water, and the right to dispense pesticides and the right to maintain designated "wetland" areas, if any.

Section 3.12 - Scope of Easements and Dedication of Roadways and Utilities

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

Section 3.13 - Easements To Run With the Lands

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

ARTICLE IV OWNERSHIP AND OPERATION OF COMMON AREAS

Section 4.1 - Conveyances of Common Areas

Developer shall convey the Common Areas to the Association. Such conveyance shall have priority over all liens and encumbrances whatsoever except the easements, covenants, restrictions and provisions of this Declaration; easements, covenants, restrictions, conditions and other similar matters of record; real estate taxes and assessments which are a lien, but are not due and payable at the time of said conveyance; and zoning and other ordinances, if any. Developer shall cause the mortgagee of the Common Areas to subordinate its mortgage on such areas in favor of this Declaration. The Association shall hold title to said parcels subject to the provisions of this

Declaration. The only Common Areas in Barnsley Way at MacIntosh Farms Phase I are the Association Roads.

Section 4.2 - Use of Common Areas

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

ARTICLE V
THE ASSOCIATION

Section 5.1 - Existence

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

Section 5.2 - Membership and Voting Rights

(a) Classes of Membership

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

(1) Class "A" Membership. Each Owner of a Living Unit (including, without limitation, the Developer if the Developer is the record titleholder of a Living Unit) shall automatically be a Class "A" Member of the Association. The Class "A" Membership is appurtenant to the ownership of each Living Unit and shall not be separable from the ownership of any Living Unit and shall be deemed to have been terminated with any voluntary or involuntary conveyance of any Living Unit, whether or not such membership is expressly referred to in the instrument effecting such conveyance, at which time the new Owner or other successor in interest shall immediately and automatically become a Member of the Association with all rights and responsibilities relative thereto. No Owner, whether one or more persons, shall have more than one membership per Living Unit owned.

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

(b) Voting Rights

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

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

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

Section 5.3 - Board and Officers of the Association

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

Section 5.4 - Rights of the Association

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

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

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

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

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

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

ARTICLE VI
RESPONSIBILITIES OF THE ASSOCIATION

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

Section 6.1 - Maintenance of Areas of Common Responsibility, Including Roadways and Utilities

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

(a) Entranceway Areas. To operate, and to maintain, repair and replace, any now-existing or hereafter-created entranceway area at or in the vicinity of any entrance to the Property from public or private roads, and all associated landscaping and other related facilities such as mail house structures, walkways, benches, sprinkler systems, signs, lighting, traffic control devices, decorative or screening walls and fences, ponds and fountains and pumps situated at or in the vicinity of the entrance to the Property. The Association shall also pay or reimburse the Developer for any real estate taxes assessed with respect to any such entranceway area and the improvements thereon,

and the Association shall unconditionally accept a deed to and hold title to such portions of the Common Areas and the improvements thereon that are the Association's responsibility to maintain.

(b) Perimeter Fences and Walls. To maintain, repair and replace any fences and walls situated within the Common Areas.

(c) Berms Along Public Roads. With respect to the berms (including berms within public right-of-ways) and landscaping thereon which are desired or required to be maintained adjacent to the perimeter of the Property to maintain such berms, and any landscaping on such portions of such berms, in good and attractive condition.

(d) Association Roads and Median Strips; Parking. To accept and hold title to, the Association Roads, and to maintain (including snow removal), repair and replace all such Association Roads, bridges, culverts and other crossings (as well as all signs and devices for the control of traffic within the rights of way of such Association Roads), and to pay all real estate taxes, if any, assessed with respect thereto. Further, to maintain in good and attractive condition all parts of any landscaping now or hereafter within the Common Areas adjacent to any Association Roads and any landscaping, signage or other improvements within any median strip now or hereafter along the Association Roads. Offstreet parking off of Association Roads shall be utilized only for temporary guest parking.

(e) Street Lighting. With respect to all parts (including, but not limited to, poles, standards, fixtures) of a street lighting system (if any) which may be installed by or at the direction of Developer or the Association in the median strips of or in the rights-of-way of any portion of any of the Association Roads, to maintain the same in good order and condition, to make all replacements and renewals necessary to so maintain the same, and to operate and to pay all costs of operating the same.

(f) Drainage System. To the extent the same is not the responsibility of the Master Association, to maintain all lakes, ponds (including retention and detention ponds), canals, piping, culverts, drains, and other facilities now or hereafter situated upon any portion of the Property which are intended for the collection, retention, detention, transmittal or disposal of storm-water in clean and sanitary condition and in good order and repair and to make all replacements and renewals necessary to so maintain the same. The cleaning, maintenance and repair of gutters, downspouts and other facilities attached to Living Units are the responsibility of the Owners of such Living Units.

(g) Sanitary Sewer System. To maintain the sanitary sewer lines within the Property that are not the responsibility of the governmental authority having jurisdiction over the sanitary sewer system.

(h) Common Areas. To maintain the Common Areas in good and attractive condition, for the use and enjoyment of Owners. The Association shall also pay or reimburse Developer for any real estate taxes and assessments assessed with respect to any such Common Areas, and the

Association shall, accept a deed to and hold title to such areas. The obligations set forth in this subsection shall be deemed to run with and burden the party accepting any such deed and title to the Common Areas.

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

(j) Maintenance of Non-Association Property. The Association shall maintain property which it does not own, including, without limitation, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard established by the Master Association.

(k) Rubbish Removal. The Association may provide rubbish removal services, the cost of which services shall be a Common Expense.

Section 6.2 - Taxes and Assessments

The Association shall pay all taxes and assessments levied against portions of the Property owned by the Association and levied against the Areas of Common Responsibility, including, without limitation, personal property taxes, general real estate taxes and special assessments certified by the applicable public authority following conveyance of such property to the Association, the same to be prorated to the date such property is created as a separate tax parcel and is submitted to this Declaration.

Section 6.3 - Utilities

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

(b) The Association shall further pay all charges for maintenance and repair of the sanitary sewer system owned and/or operated by the Association.

Section 6.4 - Snow Removal and Maintenance of Originally Installed Landscaping by the Association

In addition to the maintenance and repair of the Common Areas, the Association shall provide snow removal from driveways leading from Barnsley Way and the private streets to Living Units, and maintenance of the Originally Installed Landscaping. Each Owner is responsible for the exterior maintenance, repair and replacement of such Owner's Living Unit. If an Owner fails to properly maintain, repair or replace the exterior of such Owner's Living Unit, the Association shall have the right, but not the obligation, to maintain, repair, or replace the same, in which event, the

cost of such maintenance, repair or replacement shall be added to and become part of the Assessment for which such Living Unit is subject. For the purpose solely for performing the maintenance required by this Section, the Association, through its duly authorized agents, employees and contractors, shall have the right and license, after reasonable notice to an Owner, to enter upon any Sublot at reasonable hours.

Section 6.5 - Insurance and Reconstruction

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

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

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

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

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

(5) Unit Owner Insurance. Each Owner shall, at his own expense, obtain insurance: (A) covering his Living Unit; and (B) covering the contents of his Living Unit. In addition, each Owner may, at his own expense, obtain public liability insurance for personal injuries or damage arising out of the use and occupancy of his Living Unit or Sublot.

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

Section 6.6 - Management

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

- (a) Adopt Rules;
- (b) Engage employees and agents, including without limitation, security personnel, attorneys, accountants and consultants, maintenance firms and contractors;
- (c) Delegate all or any portion of its authority and responsibilities to a manager, managing agent, or management company. Such delegation may be evidenced by a management contract which shall provide for the duties to be performed by the managing agent and for the payment to the managing agent of a reasonable compensation. Upon the expiration of each management agreement, the Association may renew said management agreement or enter into a different agreement with the same or a different managing agent, provided that no management agreement or renewal thereof shall be for a period longer than three (3) years, and provided, further, that the Board may designate a different managing agent with whom the Association shall enter into an agreement after the end of the then existing management agreement; and
- (d) The management agreement may be with an entity owned by or associated with Original Developer or owned by, associated with, controlled or employed by any partner, shareholder, officer, director, agent or employee of Original Developer, and may be for a period of time not to exceed three (3) years, in Original Developer's sole discretion.

Section 6.7 - Upgrading

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

Section 6.8 - Enforcement

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

Section 6.9 - Rules and Regulations

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

Section 6.10 - General

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

Section 6.11 - Original Developer's Rights

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

ARTICLE VII
COVENANTS AND RESTRICTIONS

The intent of this Declaration is to cause the Property to be kept and maintained as a high quality development. Therefore, the covenants and restrictions provided in this Article shall be applicable to the Owners, Land Contract Vendees, Lessees, Tenants and Occupants of the Property. The following Covenants and Restrictions shall be broadly construed and interpreted in furtherance of this intent. The Association, acting through its Board, shall have standing and the power to enforce such standards.

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

Section 7.1 - Covenant of Good Maintenance

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

(a) Maintenance and Repair.

(1) Each Owner and Occupant of a Living Unit shall maintain such Living Unit in good condition and repair and shall keep the exterior and interior of such Living Unit and the adjacent Common Areas free from debris, rubbish, rubble and other conditions created by such Owners or Occupants or their guests. Each Owner and Occupant shall be responsible for the maintenance, repair and replacement of the water line and/or sanitary sewer line exclusively serving his or her Living Unit.

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

(b) Snow Removal. Each Unit Owner and Occupant shall keep the walks leading from the front and rear of the Living Unit to the exterior driveway and any patios, decks, stoops and steps free of unreasonable accumulations of snow and ice.

Section 7.2 - Trailers

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

Section 7.3 - Fences, Walls and Hedges

Fences, walls, trees, hedges, and shrub plantings shall be maintained in a sightly and attractive manner, and shall not obstruct the right-of-way sight lines for vehicular traffic. Fences, walls of any kind and landscaping of any kind shall not be erected, begun or permitted to remain upon any portion of the Property unless approved by the Design Review Committee or unless originally constructed by Developer.

Section 7.4 - Nuisance

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

Section 7.5 - Animals

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

Section 7.6 - Signs

No sign or other advertising device of any nature shall be placed upon any portion of the Property except for signs and advertising devices installed by or at the direction of the Design Review Committee, or which the Design Review Committee approves as to color, location, nature, size and similar characteristics. "For Rent" and "For Sale" signs are prohibited. Notwithstanding the foregoing, the restrictions of this Section 7.6 shall not apply to Developer.

Section 7.7 - Storage of Material and Trash Handling

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

Section 7.8 - Commercial or Professional Uses

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

and resales of Living Units and the right of the Developer to utilize a Living Unit for model home and/or for office purposes.

Section 7.9 - Storage of Vehicles and Machinery; No Parking on Association Roads

No truck (except a two-axle truck with no more than four tires), camper, camper trailer, recreation vehicle, boat, boat trailer, all terrain vehicle, airplane, snowmobile, commercial vehicle, van, mobile home, tractor, bus, farm equipment, off-road vehicles or other vehicle of any kind, licensed or unlicensed, shall be stored on any driveway or other area in or upon the Property, except in the confines of garages, or parking areas approved by the Design Review Committee. No machinery of any kind shall be placed or operated upon any portion of the Property except such machinery which is customarily required for the maintenance of the Property, related improvements, lawns and landscaping. Furthermore, there shall be no parking of motor vehicles on the Association Roads, except that the Developer and/or the Board may designate certain on-street parking areas for temporary use by visitors or guests subject to reasonable rules and regulations, and subject to applicable laws.

Section 7.10 - Firearms; Preservation of Wildlife

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

Section 7.11 - Control of Trucks, Commercial Vehicles

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

Section 7.12 - Traffic Regulations

All vehicular traffic on the Association Roads shall be subject to the provisions of the laws of the State of Ohio, the County, and the City concerning operation of motor vehicles on public streets. The Association is hereby authorized to promulgate, administer, and enforce reasonable rules and regulations governing vehicular and pedestrian traffic on the Association Roads, including reasonable safety measures and speed limits. The Association shall be entitled to enforce the same by establishing such enforcement procedures as it deems appropriate, including levying fines for the violation thereof. In the event of a conflict between such provisions of the laws of the State of Ohio, the County or the City, and such rules and regulations promulgated by the Association, the more restrictive rules and regulations shall govern. Only drivers licensed to operate motor vehicles by the

State of Ohio or by any other state in the United States may operate any type of motor vehicle within the Property. All vehicles of any kind and nature which are operated on the Association Roads shall be operated in a careful, prudent, safe, and quiet manner.

Section 7.13 - Poles, Wires and Antennae

Subject to applicable easement rights, no facilities, including poles and wires, for the transmission of electricity, telephone messages, ham radio messages and the like shall be placed or maintained above the surface of the ground in any portion of the Property without the prior approval of the Design Review Committee. This provision shall not apply for temporary facilities for the construction or repair of any building or other structure. A Digital or Direct Satellite System ("DDS System"), eighteen inches (18") or less in circumference, may be attached to a Living Unit so long as the DDS System is not visible from the Association Road, and so long as the prior approval of the location of the DDS System is given by the Design Review Committee.

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

The exterior of any building or structure in the Property shall not be altered, modified, changed or redecorated in such a way as to change the appearance or decor of the structure, nor shall any of the landscaping appurtenant to such building or structure be materially changed without the express written authorization of the Design Review Committee. The provisions of this paragraph are subject to the provisions of Section 8.2 of this Declaration.

Section 7.15 - Grading

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

Section 7.16 - Drainage Ditches

No Person shall interfere with the free flow of water through any drainage ditches or storm sewers within the Property. The City or other governmental authority having jurisdiction shall have the right to enter upon the Common Areas of the Property to repair and maintain all storm, drainage, courses, ditches, structures and appurtenances for the purpose of relieving any flooding condition or threatened flooding condition which might be harmful to other property within the City. This Section supplements Section 3.6 hereof.

Section 7.17 - Resubdivision of Sublots

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

Section 7.18 - Compliance with City Codes

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

Section 7.19 - Use of the Name "Barnsley Way"

No Person shall use the word "Barnsley Way" or any derivative thereof in any printed or promotional material without the prior written consent of Developer. However, Owners may use the name "Barnsley Way" in printed and promotional material where such word is used solely to specify that particular property is located within Barnsley Way.

Section 7.20 - Sale, Leasing or Other Alienation of Living Units

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

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

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

Section 7.21 - Waiver of Subrogation

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

Section 7.22 - Violation of this Article

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

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

this Article. In addition, the Owner of any portion of the Property shall be liable jointly and severally for any obligations of any Occupant of such Owner's property.

Section 7.23 - Restrictions of Other Documents, Including Master Declaration

Nothing contained in these Restrictions shall preclude the imposition of more stringent restrictions imposed elsewhere in this Declaration, restrictions imposed on Sublots within subdivisions, restrictions imposed in deeds conveying the Property or portions thereof and restrictions imposed by the Design Review Committee so long as such restrictions are not inconsistent with restrictions imposed by the Master Declaration created by this Association or adopted by the Board. The City is a third party beneficiary of these covenants and restrictions; provided, however, if the City's zoning, building or other requirements of ordinances and general law are more restrictive than these covenants and restrictions, the City's requirements shall prevail.

Section 7.24 - Certificate of Compliance with Restrictions in Connection with Resales of Living Units

Upon an Owner's reconveyance of his/her/their Living Unit or an interest therein, such Owner (i.e. seller) shall request the Association to issue a Certificate of Compliance stating that the Association has no record of a violation of this Article and stating the unpaid Assessments and amount of monthly (or quarterly) Assessments attributable to such Living Unit. A Certificate of Compliance may be relied upon by all persons for all purposes. Neither the Board, nor such officer or agent shall have any liability to the seller, buyer or mortgagee of a Living Unit or to others if the Certificate of Compliance issued hereunder is not correct. The Association may require the advance payment of a processing fee not to exceed Fifty Dollars (\$50.00) for the issuance of the Certificate of Compliance. The Certificate shall be substantially in the form of Exhibit "C".

ARTICLE VIII
DESIGN REVIEW COMMITTEE

Section 8.1 - Power of Committee

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

Section 8.2 - Operation of Committee

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

Section 8.3 - Inspection

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

Section 8.4 - Violations and Remedies

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

obligation, in addition to any and all other rights or remedies available to it at law or in equity, each of which remedies shall be deemed to be nonexclusive, to do any of the following:

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

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

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

(d) Treat as Assessment: Should the party committing any acts in contravention of this Article VIII be an Occupant and should such Occupant fail to immediately pay the full amount of all costs, damages, and expenses referred to in above, the Association shall be entitled to treat such amount as an Assessment against the Sublot of which such Occupant is or was the Owner, a member of the Owner's family or a guest or invitee of such Owner.

ARTICLE IX ASSESSMENTS

Section 9.1 - Definition of Assessments

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

(a) All expenditures required to fulfill the responsibilities of the Association, including, but not limited to, expenditures relating to maintenance fees;

(b) All amounts incurred in collecting Assessments, including all legal and accounting fees;

(c) Reserves for uncollectible Assessments, unanticipated expenses, replacements, major repairs and contingencies;

(d) Annual capital additions and improvements and/or capital acquisitions (but not repairs or replacements) having a total cost in excess of Five Thousand Dollars (\$5,000.00), without in each

case the prior approval of the Class "B" Member and the vote of at least a majority of the Class "A" Members. In case of an emergency requiring prompt action to avoid further loss, the Board shall have the discretion to expend whatever is necessary to mitigate such loss.

(e) Such other costs, charges and expenses which the Association determines to be necessary and appropriate within the meaning and spirit of this Declaration.

(f) The Assessments pursuant to this Declaration are in addition to the assessments under the Master Declaration.

Section 9.2 -Responsibility for Payment of Assessments

The Developer or the Board shall prepare or cause the preparation of an annual operating budget for the Association and shall fix the amount of the Assessments. Written notice of the Assessments shall be sent to the Owner of each Living Unit. Payment of Assessments may be required by the Developer or Board on a monthly, quarterly, semi-annual or annual basis. As Sublots are improved with Living Units, the Owners thereof shall commence payment of the Assessments.

(a) The Assessments during the Subsidy Period shall be as follows:

(1) Initial Share of Owners of Living Units. Developer shall determine the Assessments to be paid by the Owner of each Living Unit. During the Subsidy Period the Annual Assessment payable by the residents of Barnsley Way to the Association will not exceed \$130 per Living Unit through December 31, 1999 or when there are thirty-eight (38) Living Units, whichever shall occur first. This "not to exceed" amount is guaranteed by the Developer.

(2) Share of the Developer. During the Subsidy Period Developer shall pay all Common Expenses which are not covered by the annual Assessments payable by Owners of Living Units as set forth above. This obligation may be satisfied in the form of a cash subsidy or by "in kind" contributions of services or materials, or a combination of both. The Association is specifically authorized to enter into subsidy contracts or contracts for "in kind" contribution of services or materials or a combination of services and materials with Developer or other entities for the payment of some portion of the Common Expenses during the Subsidy Period. An Eligible Mortgage Holder acquiring title to all or any portion of the Property as a result of: (A) a foreclosure sale; or (B) a deed in lieu of foreclosure, shall not be responsible for the Developer's obligation for payment of the Common Expenses which are not covered by the annual Assessments payable by Owners of Living Units and Developer during the Subsidy Period.

(3) Assessments after the Subsidy Period. After the Subsidy Period the amount of Assessments attributable to Living Units shall be established as of January 1 of each year and each Living Unit shall pay an equal amount of the Assessments.

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

A Member not otherwise exempt from the Assessments may not exempt himself from liability for Assessments levied against him by waiver of the use of the Common Areas that are owned and/or operated by the Association. Furthermore, no Member shall be entitled to any portion of the funds held for reserves; nor shall any Owner have a claim against the Association with respect thereto.

Section 9.4 - Creation of Lien and Personal Obligation

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

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

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

Section 9.6 - Liability for Assessments on Voluntary Conveyance

Upon the voluntary conveyance of an Ownership Interest the grantee of the Ownership Interest shall be jointly and severally liable with the grantor for all unpaid Assessments levied pursuant to this Declaration against the grantor of his Ownership Interest prior to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such prospective grantee, upon written request delivered to the Association, shall be entitled to a statement from the Trustees of the Board or an officer of the Association setting forth the amount of all unpaid Assessments due the Association with respect to

the Ownership Interest to be conveyed and such grantee shall not be liable for, nor shall the Ownership Interest conveyed be subject to a lien, for any unpaid Assessments which become due prior to the date of the making of such request if the same are not set forth in such statement. The statement referred to herein shall be included in the Certificate of Compliance with Restrictions referred to in Section 7.24 of this Declaration. The Association may require the advance payment of a processing fee for the issuance of the Certificate of Compliance. A devise of an Ownership Interest or the distribution of said Ownership Interest pursuant to the Statute of Descent and Distribution shall be deemed to be a voluntary conveyance. An unpaid Assessment shall not be deemed a charge or lien against the Ownership Interest until perfected as such pursuant to Article X.

Section 9.7 - Additional Assessments

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

Section 9.8 - Exempt Property

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

Section 9.9 - Assessments under Master Declaration

The Association shall have the right (but not the obligation) on an annual basis, to elect to collect from Owners the assessments due the Owners to the Master Association under the Master Declaration and remit the amounts so collected to the Master Association. If the Association does not exercise such right, the Owners shall remit such amounts directly to the Master Association in accordance with the Master Declaration. Currently, the Association is not collecting the assessment due the Owners to the Master Association, and, therefore, each Owner shall pay such assessments directly to the Master Association.

Section 9.10 - City Assessments

The City shall have the right, but not the obligation to impose any special assessments for improvements made by the City which would otherwise be a lien on the Common Areas or Living Units which would otherwise be a lien on the Common Areas or Living Units on an equitable basis to be determined by the City.

ARTICLE X
LIENS

Section 10.1 - Perfection of Lien

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

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

Section 10.2 - Duration of Lien

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

Section 10.3 - Priority

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

Ownership Interest in excess of mortgage liens, court costs and the taxes and assessment liens shall be paid over to the Association to the extent of its lien.

Section 10.4 - Dispute as to Assessment

The Developer or any Owner or Developer who believes that an Assessment levied by the Association against him for which a Certificate of Lien has been filed by the Association has been improperly determined, may bring an action under the Arbitration Provisions contained in Section 15.9 of this Declaration for the discharge of all or any portion of such lien; but the lien shall continue until the actual amount of the lien so determined is paid in full or otherwise be fully discharged.

Section 10.5 - No Waiver Implied

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

Section 10.6 - Personal Obligations

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

ARTICLE XI
REMEDIES OF THE ASSOCIATION

Section 11.1 - Denial of Voting Rights

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

Section 11.2 - Specific Remedies

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

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

Section 11.3 - Cost of Collection

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

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

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

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

Section 11.4 - Binding Effect

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

ARTICLE XII NO PARTITION

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

ARTICLE XIII
CONDEMNATION

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

If the taking involves a portion of the Common Areas on which improvements have been constructed, then, unless within sixty (60) days after such taking the Developer (so long as the Developer is a Class "B" Member), and at least seventy-five percent (75%) of the Class "A" Members of the Association shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Areas to the extent lands are available therefor, in accordance with plans prepared by the Design Review Committee and approved by the Board. If such improvements are to be repaired or restored, the provisions in Section 6.5 hereof regarding the disbursement of funds in respect to casualty damage or destruction shall apply. If the taking does not involve any improvements on the Common Areas, or if there is a decision made not to repair or restore, or if there are net funds remaining after any such restoration or replacement is completed, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine in its sole and absolute discretion.

ARTICLE XIV
MORTGAGEES' RIGHTS

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

Section 14.1 - Notices of Action

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

- (a) any proposed termination of the Association;
- (b) any condemnation or casualty loss which affects a material portion of the Property or which affects any Living Unit on which there is a first mortgage held, insured, or guaranteed by an Eligible Mortgage Holder;

(c) any delinquency in the payment of assessments or other charges owed by an Owner subject to the mortgage of such Eligible Mortgage Holder, insurer, or guarantor, where such delinquency has continued for a period of sixty (60) days;

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

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

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

Section 14.2 - Other Provisions for First Lien Holders

To the extent possible under Ohio law:

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

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

Section 14.3 - Amendments to Documents

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

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

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

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

Section 14.4 - Special Federal Home Loan Mortgage Corporation Provisions

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

(a) Unless two-thirds (2/3) of the first mortgagees or Owners give their consent, the Association shall not: (1) by act or omission seek to abandon, become a partition, subdivide, encumber, sell or transfer any portion of the Property owned by the Association (the granting of easements for public utilities or for public purposes or the dedication to public use of utilities or roads consistent with the intended use of the Property shall not be deemed a transfer); (2) change the method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner; (3) fail to maintain fire and extended coverage insurance as required by this Declaration; or (4) use hazard insurance proceeds for any Common Area losses for other than repair, replacement or reconstruction of such properties.

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

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

ARTICLE XV
TRANSFER OF SPECIAL DEVELOPER RIGHTS

Section 15.1 - Instrument Transferring Special Developer Rights

A Developer may transfer Special Developer Rights created or reserved in this Declaration or in the Code by an instrument evidencing the transfer recorded in the land records of the County in which the Property is located. The instrument is not effective unless executed by both the transferor and transferee.

Section 15.2 - Liability of Transfer of Special Developer Rights

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

(a) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon the transferor Developer. Lack of privity

(direct contractual relationship) does not deprive the Association or any Owner of standing to bring an action to enforce any obligation of the transferor.

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

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

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

Section 15.3 - Acquisition of Special Developer Rights

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

Section 15.4 - Termination of Special Developer Rights

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

Section 15.5 - Liabilities of A Transferee of Special Developer Rights

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

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

(b) A successor to any Special Developer Right, other than a successor described in paragraphs (3) or (4) of this subsection, who is not an Affiliate of a Developer, is subject to all obligations and liabilities imposed by the Declaration and Code: (i) on a Developer which relate to such Developer's exercise or non-exercise of Special Developer Rights; or (ii) on the transferor, other than: (A) misrepresentations by any previous Developer; (B) warranty obligations on improvements made by any previous Developer, or made before this Declaration is recorded; (C) breach of any fiduciary obligation by any previous Developer or appointees to the Board of Trustees; or (D) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.

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

(d) A successor to all Special Developer Rights held by the transferor who is not an Affiliate of that Developer and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to Living Units under Subsection (B), may declare the intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all Special Developer Rights to any person acquiring title to any Living Unit owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by the transferor to control the Board of Trustees in accordance with the provisions of this Declaration or the Code for the duration of the period that a Developer has the right to elect or designate Board Members, and any attempted exercise of those rights is void. So long as a successor Developer may not exercise Special Developer Rights under this Subsection, such successor Developer is not subject to any liability or obligation as a Developer.

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

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

ARTICLE XVI GENERAL PROVISIONS

Section 16.1 - Covenants Run With the Property: Binding Effect

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

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

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

Section 16.2 - Duration

Unless sooner terminated as hereinafter provided, the Easements, Covenants and Restrictions of this Declaration shall continue for a term of fifty (50) years from the date this Declaration is recorded, after which time, said covenants and restrictions shall automatically be extended for successive periods of ten (10) years each unless terminated by an instrument signed by Members entitled to exercise not less than seventy-five percent (75%) of the Class "A" Members and by the Class "B" Member.

Section 16.3 - Notices

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

Notices to the Developer shall be deemed given only when received and must be either hand delivered or mailed by certified or registered mail, postage prepaid, to Developer, 905 Corporate Way, Suite 200, Westlake, Ohio 44145, with a copy to Richard A. Rosner, Esquire, Kahn, Kleinman, Yanowitz & Arnson Co., L.P.A., The Tower At Erieview, Suite 2600, 1301 East Ninth Street, Cleveland, Ohio 44114.

Section 16.4 - Enforcement-Waiver

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

Section 16.5 - Construction of the Provisions of this Declaration

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

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

Section 16.6 - Reservations by Original Developer - Exempt Property

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

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

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

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

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

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

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

Section 16.7 - Assignability by Original Developer

The Original Developer, and its successors, shall have the right from time to time to assign all or any part of its rights as a Developer under this Declaration (but not the rights expressly conferred upon the Original Developer), provided that the deed or other writing selected by Original

Developer, in Original Developer's sole discretion, shall expressly state that the rights of a Developer shall be assigned. Any such assignment may provide that said assignee shall have the rights of a Developer (other than those rights reserved by the Original Developer in any such assignment) set forth in this Declaration with respect to the Living Units and/or real property owned by such designee.

Section 16.8 - Severability

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

Section 16.9 - Arbitration

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

Section 16.10 - Litigation

No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by the vote of seventy-five percent (75%) of the Class "A" Members. This Section shall not apply, however, to (a) actions brought by the Association to enforce the provisions of this Declaration (including, without limitation, the foreclosure of liens), (b) the imposition and collection of assessments as provided in Articles IX and X hereof, (c) proceedings involving challenges to real estate taxation, or (d) counterclaims brought by the Association in proceedings instituted against it. This Section shall not be amended unless such amendment is made by the Developer or is approved by the percentage votes, and pursuant to the same procedures, necessary to institute proceedings as provided above.

Section 16.11 - Validity of Mortgages

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

Section 16.12 - Amendment of Declaration

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

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

(b) This Declaration may also be amended by Original Developer or the Association at any time and from time to time for the purpose of: (1) complying with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public entity, or private insurance company which performs (or may in the future perform) functions similar to those currently performed by such entities; or (2) inducing any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages; or (3) correcting clerical or typographical or obvious factual errors in this Declaration or any Exhibit hereto or any supplement or amendment hereto; or (4) complying with the underwriting requirements of insurance companies providing casualty insurance, liability insurance or other insurance coverages for the Association; or (5) bringing any provision hereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination; or (6) correcting obvious factual errors or inconsistencies between this Declaration and other documents governing Barnsley Way, the correction of which would not materially impair the interest of any Owner or Eligible Mortgage Holder; or (7) enabling a title insurance company to issue title insurance coverage with respect to the Property or any portion thereof. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Developer and/or to the Board to vote in favor of, make, or consent to a Subsequent Amendment on behalf of each Owner as proxy or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting any portion of the Property and the acceptance thereof shall be

deemed to be a grant and acknowledgment of, and a consent to the reservation of the power to the Original Developer to vote in favor of, make and record a Subsequent Amendment. To effect said amendment, Original Developer shall file a supplement to the Declaration setting forth the Subsequent Amendment which shall be signed by Original Developer and shall be effective upon the filing of the Subsequent Amendment with the Cuyahoga County Recorder.

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

(d) Except as expressly provided in this Declaration, and after expiration of the period set forth in (a) of this Article, any provision of this Declaration may be amended or repealed following a meeting of the Members held for such purpose, by the affirmative vote of the Class "B" Member and the vote of at least a majority of the voting power of the Class "A" Members unless a greater percentage of vote is required pursuant to this Declaration or in accordance with the statutes of the State of Ohio; provided, however, that any amendment which would terminate or materially affect the easements set forth in Article III of this Declaration shall not be amended (except as expressly provided to the contrary in this Declaration) unless all persons whose rights are terminated or materially affected shall affirmatively consent in writing to such amendment; provided further, that any amendment affecting the rights of Developer in this Declaration shall not be effective without the prior written consent of Developer. Written notice shall be given each Member at least ten (10) days in advance of the date of the meeting held for the purpose of amending this Declaration, which notice shall expressly state the modification to be considered at such meeting. Each amendment shall be effective when signed by the President and one other officer of the Association, signed by the Developer if the amendment affects the rights of the Developer and filed for record with the Cuyahoga County Recorder.

Section 16.13 - Interest Rates

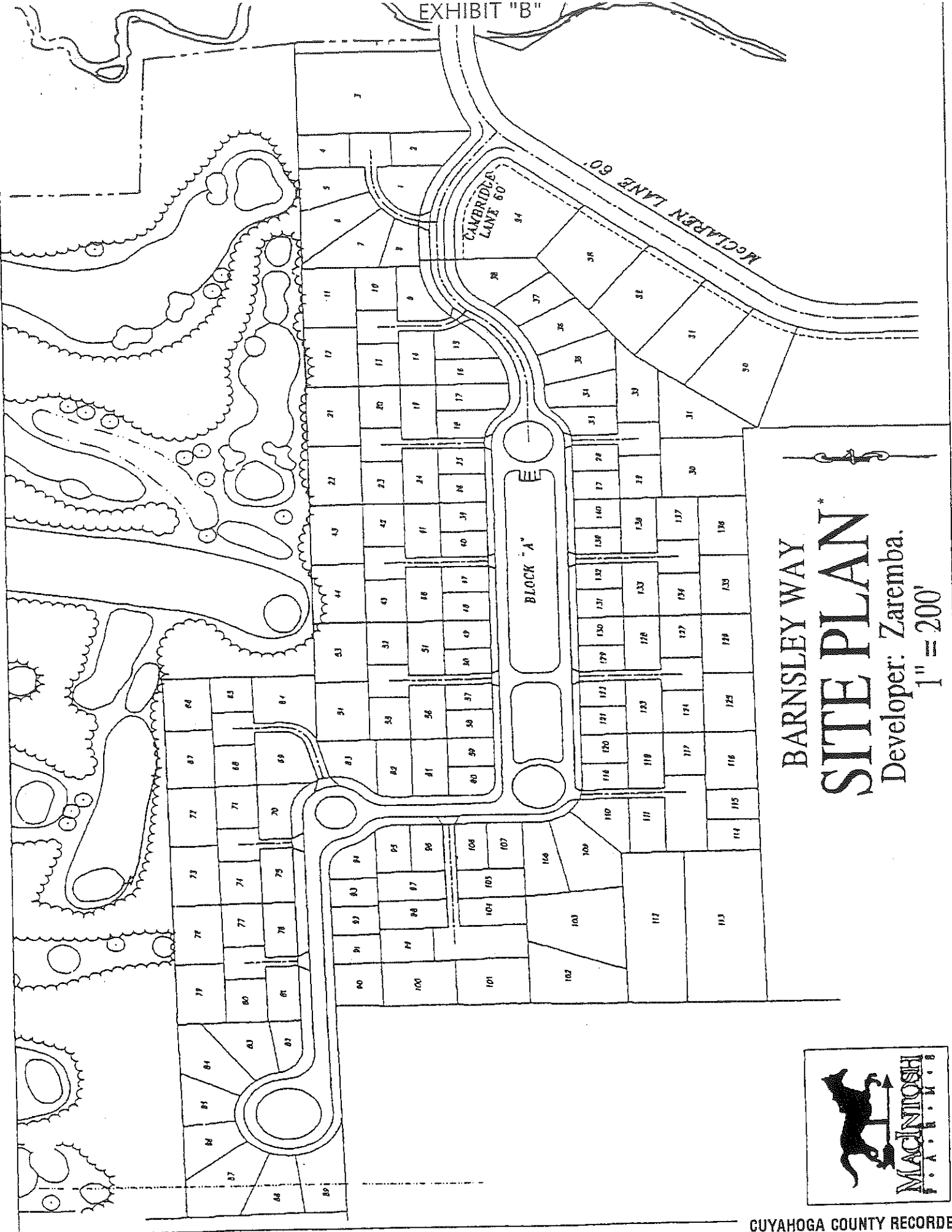
After this Declaration shall have been recorded for five (5) years or more, the Board shall have right to change any interest rate or late payment charge referred to herein by majority vote, but in no event shall said interest rate or late payment charge exceed the highest interest rate chargeable to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

Section 16.14 - Headings

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

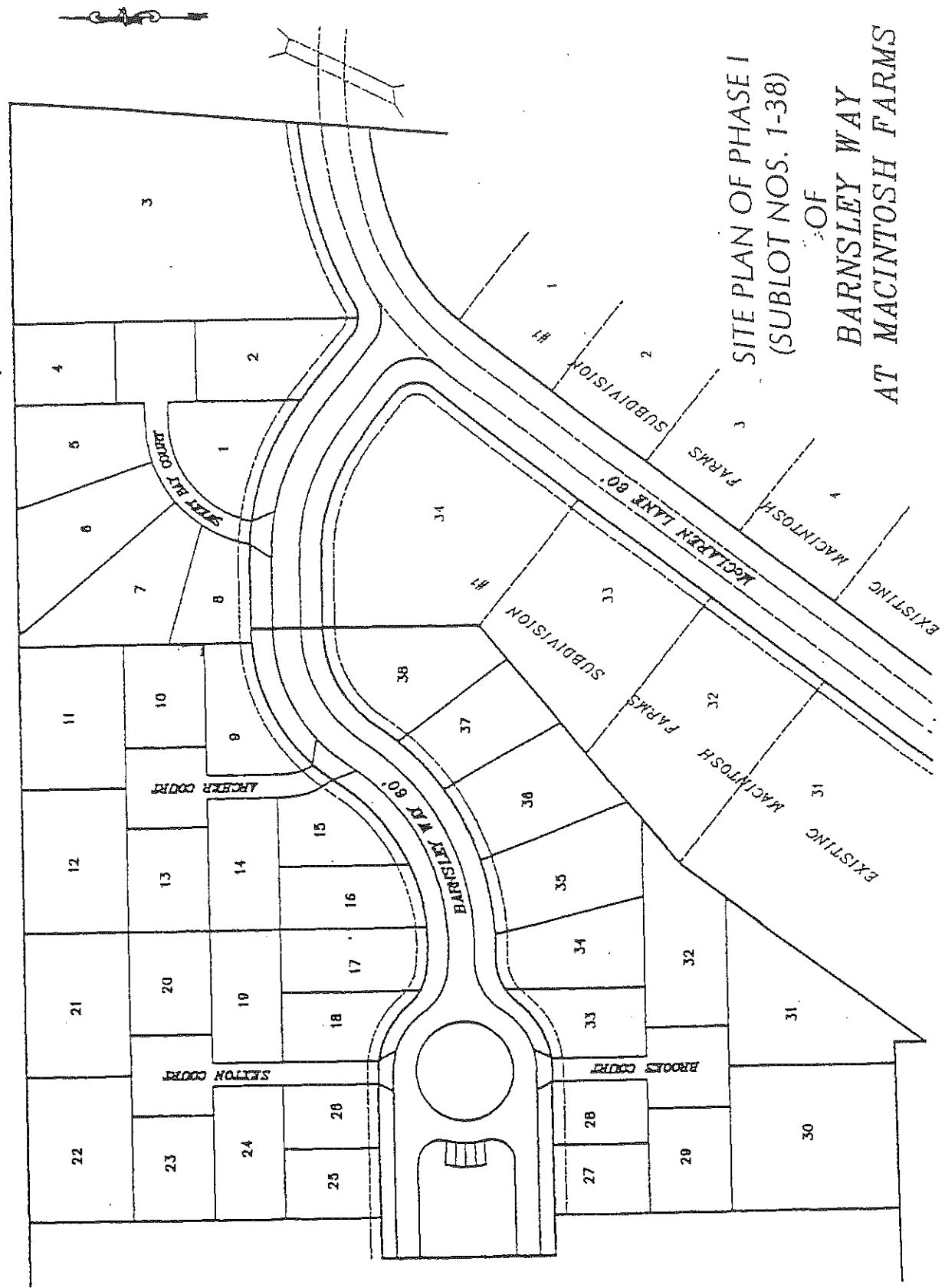
EXHIBIT "A"

Situated in the City of Broadview Heights, County of Cuyahoga, State of Ohio and being known as Sublot Numbers 1 through 38, Sweet Bay Court, Archer Court, Sexton Court and Brooks Court of Barnsley Way at MacIntosh Farms Phase I, being part of Original Royalton Township Lot No. 25, as shown by plat recorded in Volume 292, Pages 58-60 of Cuyahoga County plat records, be the same, more or less, but subject to all legal highways.



BARNSELEY WAY
SITE PLAN
 Developer: Zaremba.
 1" = 200'





SITE PLAN OF PHASE I
 (SUBLOT NOS. 1-38)
 OF
 BARNSELY WAY
 AT MACINTOSH FARMS

EXHIBIT "C"

CERTIFICATE OF COMPLIANCE AND STATUS OF ASSESSMENTS
WITH RESPECT TO THE RESALE OF A LIVING UNIT
IN BARNESLEY WAY, A CLUSTER DEVELOPMENT
BROADVIEW HEIGHTS, OHIO

Barnesley Way Homeowners Association, Inc., a non-profit Ohio corporation (the "Association"), created to govern, operate, control and administer the "Areas of Common Responsibility" for Barnesley Way, a Cluster Development, Broadview Heights, Ohio ("Barnesley Way") and to supervise and enforce the Declaration of Covenants, Conditions, Easements and Restrictions for Barnesley Way (the "Declaration") hereby certifies as follows:

1. The Association has received notice of a proposed sale of Living Unit No. _____, located at _____, Broadview Heights, Ohio.
2. The proposed purchaser of the Living Unit is _____.
3. The owner(s) of the Living Unit (is) (are) _____.
4. The Association has no record of a violation of the Covenants and Restrictions contained in the Declaration except _____ (if none, write "None").
5. The current annual assessment attributable to the Living Unit is \$_____.
6. The assessments are payable at the rate of \$_____ per (month) (quarter); said assessments being payable through _____ 199__.
7. A fee of \$50.00 is payable to the Association upon the issuance of this Certificate in accordance with the terms of the Declaration.

This Certificate of Compliance is being issued pursuant to Section 7.24 of the Declaration.

BARNESLEY WAY HOMEOWNERS
ASSOCIATION, INC.

By: _____

Date: _____, 199__

