

**DECLARATION OF COVENANTS, CONDITIONS,  
RESTRICTIONS AND RESERVATION OF EASEMENTS  
FOR  
SUGAR MAPLE HILLS HOME OWNERS ASSOCIATION, INC.**

**WHEREAS**, Sugar Maple Hills, LLC (the "Declarant"), an Ohio limited liability company, is the owner of certain real property located in Brimfield Township, Portage County, Ohio and described in Exhibit "A" attached hereto and incorporated herein (the "Property");

**WHEREAS**, Declarant intends to develop the Property into single family residential lots;  
and

**WHEREAS**, Declarant deems it necessary for the efficient preservation of the values, general welfare of the lot owners, aesthetic harmony, and amenities of said development to impose protective covenants on the Property.

**NOW, THEREFORE**, for the benefit of each and every purchaser of one or more Lots (as defined hereinafter), and as further consideration for each deed and in conformity with a general plan of development for the Property, Declarant hereby declares that the Property shall be subject to the covenants, conditions, and restrictions and reservation of easements provided herein, which are hereby made to be covenants running with the land. Declarant further declares that each Lot shall be held, sold, and conveyed subject to the following covenants, conditions, and restrictions and reservation of easements, which shall be binding upon the initial grantees of any Lots, all subsequent grantees, all parties having any right, title, or interest in the Property or any Lot, and their successors and assigns, as covenants running with the land, and which shall inure to the benefit of each owner thereof.

Declarant, **Sugar Maple Hills, LLC**, an Ohio limited liability company, is the owner of certain real estate in Brimfield Township, Portage County, Ohio, described in Exhibit "A", attached hereto and incorporated herein (hereinafter referred to as "Property").

Declarant hereby declares that the Property shall be held, sold and conveyed subject to the covenants, conditions, restrictions and reservation of easements herein, which are for the purpose of protecting the value and desirability of and which shall run with the Property submitted hereunder or which may subsequently be added, and shall be binding on all parties having any right, title or interest in the Property, its successors and assigns, and shall inure to the benefit of each owner thereof.

**ARTICLE I**

**DEFINITIONS**

**1.1. Additional Land.** "Additional Land" means the property described in Exhibit "B" which may be made subject to this Declaration pursuant to Article XII.

**1.2. Allocated Interests.** "Allocated Interests" means the Common Expense Liability and votes in the Association as set forth in Article III.

**1.3. Assessments.** "Assessments" means those charges upon the Owners and Lots established by Article VII of this Declaration.

**1.4. Association.** "Association" means Sugar Maple Hills Homeowners Association, Inc., an Ohio nonprofit corporation, its successors and assigns. Except as the context otherwise requires "Association" shall mean the Board of Trustees acting on behalf of the Association.

**1.5. Board.** "Board" shall mean the Board of Trustees of the Association.

**1.6. Builder.** "Builder" means any person or entity (including the Declarant) who acquires a Lot for the purpose of improving that Lot and erecting a Dwelling Unit thereon for resale to an Owner.

**1.7. Common Elements.** "Common Elements" shall mean all lands and the improvements thereon, together with all easements granted, reserved, or created by Declarant which are designated in the Record Plan as Common Elements or which are otherwise dedicated for the common use, enjoyment, and benefit of all Owners, excepting only Lots and publicly dedicated improvements.

**1.8. Common Expense Liability.** "Common Expense Liability" means the liability for Common Expenses allocated to each Lot pursuant to Article III, of this Declaration.

**1.9. Common Expenses.** "Common Expenses" means all costs necessary or appropriate to the operation and administration of the Association; the enforcement, defense, and operation of this Declaration; the enforcement of the rules and regulations adopted by the Association; the ownership, maintenance, repair, replacement, operation and governance of the use of the Common Elements; expenses declared to be Common Expenses by the provisions of this Declaration; and any valid charge against the Association as a whole.

**1.10. Declarant.** "Declarant" means Sugar Maple Hills, LLC, an Ohio limited liability company, is the Declarant.

**1.11. Declaration.** "Declaration" means this Declaration of Covenants, Conditions, Restrictions and Reservation of Easements, including any amendments hereto.

**1.12. Development Rights.** "Development Rights" means the rights reserved by the Declarant pursuant to Article XII.

**1.13. Dwelling Unit.** "Dwelling Unit" means a building situated on the Properties designed and intended for use and occupancy as a single family residence.

**1.14. Fiscal Year.** The Association's fiscal year shall be determined by the Board.

**1.15. Lot.** "Lot" means the physical portion of the Property designated for separate ownership or occupancy, the boundaries of which are described pursuant to Article II, Section 2.1.

**1.16. Member.** "Member" means any person or entity entitled to membership in the Association as provided herein.

**1.17. Occupant.** "Occupant" means any person in possession of a Lot or Dwelling Unit whether or not such possession is lawful and shall include but not be limited to, an Owner's family members, guests, invitees, tenants and lessees.

**1.18. Owner.** "Owner" means the Declarant or other person or entity who owns a Lot, but does not include a person or entity having an interest in a Lot solely as security for an obligation.

**1.19. Property.** "Property" or "Properties" means the real estate described in Exhibit "A" attached hereto and any other property which may be made subject to the terms of this Declaration, together with any improvements made thereon.

**1.20. Record Plan.** "Record Plan" means the record plat for Sugar Maple Hills Subdivision, Plat No. 2005-126 Portage County Official Records.

**1.21. Special Declarant Rights.** "Special Declarant Rights" means the rights reserved by the Declarant in Article XIII.

**1.22. Surface Water Management System.** "Surface Water Management System" shall mean the system designed for the Property by the Declarant for storm water, soil erosion and sediment control. Such system shall include all existing watercourses, ditches, retention basins and swales located in the Property.

## ARTICLE II

### LOTS

**2.1. Description of Lot Boundaries.** The boundaries of the Lots shall be those as set forth on the Record Plan.

## ARTICLE III

### ALLOCATION OF ALLOCATED INTERESTS

**3.1. Common Expense Liability.** The allocation of Allocated Interests for Common Expense Liability shall be determined in accordance with the allocation of the various assessments as set forth in Article VII, Section 7.8.

**3.2. Votes in the Association.** The allocation of Allocated Interests for voting purposes shall be one vote per Lot.

## ARTICLE IV

### COMMON ELEMENTS AND EASEMENTS

**4.1. Easements.** The Lots and Common Elements shall include certain easements. These easements shall be appurtenant to and pass with the title to the Lots.

**4.1.1. Enjoyment.** Each Lot has a nonexclusive easement for the use and enjoyment of the Common Elements, subject to the terms and conditions of this Declaration and the rules and regulations adopted from time to time by the Association. Uses of such easement shall be limited to the purposes for which the easements are created. Nothing herein shall be construed to provide any right of access to the Lots by any persons who are not Owners thereof.

**4.1.2. Drainage.** The Property shall be subject to easements in favor of the Lots benefited for Surface Water Management as further defined in Article V. No Owner shall do anything within a Lot or Dwelling Unit which shall unreasonably increase or decrease the flow of surface water.

**4.1.3. Utilities.** The Lots shall be subject to easements as shown on the Record Plan.

**4.1.4. Brimfield Township.** A non-exclusive easement is granted to the Brimfield Township, and to all police, fire and other emergency personnel, ambulance operators, and to all similar persons, and to all governmental authorities, but not to the public in general, to enter upon the Common Elements and the Surface Water Management System for the purpose of enforcing any law, rule, regulation or order as well as any provision of this Declaration which is the Association's responsibility. Unless and emergency exists, before exercising its rights, the Township shall notify the Association affording the Association thirty (30) days to take the action specified in the notice. In the event Brimfield Township or any governmental official exercises the rights granted herein all costs, including reasonable attorney fees and court costs, incurred by the Township shall be assessed to the Association. The easement and rights granted herein authorizes, but does not obligate, Brimfield Township or any governmental official to exercise this easement or rights, and neither Brimfield Township nor any governmental official shall have any liability for the failure to, or delay in, the exercise the rights granted herein. No person has the right to require that Brimfield Township or any governmental official exercise the rights granted herein. . In the event the Association does not pay the amount of the assessment within 30 days after demand, Brimfield Township shall have a lien upon the assets of the Association, including the Association's rights to collect Assessments from the Owners, upon the recording of a certificate of lien with the Recorder of Portage County, Ohio. The lien shall be valid without the necessity of additional recordings until paid in full. In addition to the filing of a lien the Township may exercise any other right or remedy available at law or in equity to enforce the rights granted to it herein or to collect any amount due from the Association. The Association shall be responsible for all costs and attorney's fees incurred by the Township.

**4.2. Limitation on Common Elements and Easements.** All Common Elements, easements and rights granted herein are subject to:

4.2.1. Restrictions set forth in this Declaration.

4.2.2. Any rules and regulations adopted by the Association and the right to enforce such rules and regulations.

4.2.3. The right of the Association to levy assessments for the Common Expenses and other assessments as set forth herein.

4.2.4. The right of the Declarant and the Association to amend the Record Plat and to grant further rights and easements within, upon, over, under, and across the Common Elements for the benefit of the Owners, the Association or Declarant.

4.2.5. If access to any residence is through the Common Elements, any conveyance or encumbrance of such area is subject to the Lot Owner's easement.

4.2.6. All rights granted to the Association in this Declaration.

4.2.7. The Declarant may transfer the Common Elements to the Association as provided in this Declaration, but the Association may not thereafter transfer all or any part of the Common Elements owned by it without the prior written approval of the Brimfield Township Board of Zoning Appeals.

4.2.8. The Common Elements may not be subdivided and no improvements other than those installed by the Declarant may be constructed in the Common Elements without the prior written approval of the Brimfield Township Board of Zoning Appeals. No approval is necessary to repair or replace improvements constructed by the Declarant. The Portions of the Common Elements designated on the Record Plan as wetlands and wooded areas are to be left in their natural state. No alteration, excavation, dredging, cutting of trees or vegetation, nor any construction is to take place in these areas without the prior written approval of the Brimfield Township Board of Zoning Appeals.

## ARTICLE V

### SURFACE WATER MANAGEMENT

5.1. **Surface Water Management System.** The Surface Water Management System shall consist of the "Storm Easements" and "Stormwater Management Easement" as shown on the Record Plan. The Association shall maintain and administer the Surface Water Management System in accordance with the guidelines as may be promulgated from time to time by Brimfield Township or Portage County. Except for those portions of the Storm Water Management System dedicated to and accepted by any governmental entity, the Association shall have primary responsibility for the maintenance of the retention basin(s), including any pipes, concrete gutters or mechanical devices.

**5.2. Surface Water Management System Easements.** Each Lot shall be subject to and shall be benefited by an easement for storm sewers, drainage and surface water management as more particularly shown on the Record Plan. Such easement shall be non-exclusive as to the Owners and shall run to the Association. Such easement, however, shall not run to the public at large.

**5.3. Access to Lots.** For the purpose solely of performing the maintenance required or authorized herein, the Association, through its duly authorized agents or employees, or subcontractors, shall have the right, after reasonable notice to the Owner, to enter upon the Lot at reasonable hours on any day.

**5.4. Individual Maintenance.** Each Owner shall maintain that portion of the Surface Water Management System which serves only that Owner's Lot. Each Owner shall have primary responsibility for grass-cutting and vegetation control within the easements located on his or her Lot. Such responsibility shall include keeping these easements clean and unobstructed. Maintenance of the Surface Water Management System shall be in accordance with the guidelines and standards set forth by Brimfield Township or Portage County. If any portion of the Surface Water Management System which serves only one Lot is damaged, the Owner of that portion shall promptly cause it to be repaired.

**5.5. Retention Basin Maintenance.** The Association shall provide for all maintenance of the retention basin, including vegetation control and debris removal.

**5.6. Restriction on use.** No Owner shall use or permit any other persons to use the Surface Water Management System in any manner which would constitute a nuisance, hazard or unsanitary condition or be in violation of any local, state, or federal law ordinance, rule, regulation or statute.

## ARTICLE VI

### OWNERS ASSOCIATION

**6.1. Formation.** The Declarant has caused or will cause to be chartered in accordance with Chapter 1702 of the Ohio Revised Code, a nonprofit corporation named Sugar Maple Hills Homeowners Association, Inc. The purposes of the Association are to provide for the administrative governance, maintenance and upkeep of the Property and to promote the health, safety, and welfare of the Owners and Occupants of the Property.

**6.2. Membership.** The membership of the Association shall at all times consist exclusively of Owners of the Lots. All such Owners shall be Members. Membership shall be appurtenant to and may not be separated from such ownership.

**6.3. Powers of the Association.** Subject to Special Declarant Rights hereinafter set forth in Article XIII, the Association may:

- 6.3.1.** adopt and amend a Code of Regulations for the government of the Association, the conduct of its affairs and the management of the Property;
- 6.3.2.** adopt rules and regulations for the use and occupation of the Common Elements and to enforce the rules and regulations and the provisions and restrictions of the Declaration as against the Owners and Occupants.
- 6.3.3.** adopt and amend budgets for revenues, expenditures and reserves and levy and collect Assessments from Owners;
- 6.3.4.** hire and discharge managing agents and other employees, agents and independent contractors;
- 6.3.5.** institute, defend or intervene in litigation or administrative proceedings in its own name on behalf of itself or two or more Owners on matters affecting the community;
- 6.3.6.** make contracts, incur liabilities and borrow money;
- 6.3.7.** regulate the use, maintenance, repair, replacement and modification of the Common Elements for which the Association has maintenance responsibility and other rights as set forth herein;
- 6.3.8.** cause additional improvements to be made as part of the Common Elements;
- 6.3.9.** acquire, hold, encumber and convey in its own name any right, title or interest to real estate or personal property;
- 6.3.10.** grant easements, liens, licenses and concessions through or over the Common Elements;
- 6.3.11.** impose and receive any payments, fees or charges for the use, rental or operation of the Common Elements and for services provided to Owners;
- 6.3.12.** impose charges for late payments of Assessments and after notice and an opportunity to be heard, levy reasonable fines for violations of the Declarations, Code of Regulations, and the rules and regulations of the Association;
- 6.3.13.** impose reasonable charges for the preparation and recordation of amendments to the Declaration or for statements of unpaid Assessments;
- 6.3.14.** provide for indemnification of its officers and board of trustees and maintain directors' and officers' liability insurance;
- 6.3.15.** assign its right to future income, including the right to receive Common Expense Assessments, to secure the payment of any loans made to the Association;

6.3.16. exercise any other powers conferred by the Declaration, Code of Regulations or Articles of Incorporation;

6.3.17. exercise all other powers that may be exercised in this state by nonprofit corporations;

6.3.18. exercise any other powers necessary and proper for the governance and operation of the Association.

Except as otherwise provided by law, this Declaration or the Regulations, the Board shall exercise all powers of, and shall discharge all duties of, the Association, including those specifically identified above.

**6.4. Voting Rights.** Subject to Special Declarant Rights as set forth in Article XIII, Members shall be entitled to vote on matters properly before them in accordance with this Article, the Code of Regulations and the laws of the State of Ohio.

**6.5. Number of Votes.** Each Lot shall have one vote. If only one of several Owners for a Lot is present at a meeting of the Association, that Owner is entitled to cast the vote allocated to that Lot. If more than one of the Owners is present, the vote allocated to that Lot may be cast only in accordance with the agreement of a majority in interest of the Owners. There is majority agreement if any one of the Owners casts the vote allocated to that Lot without protest being made promptly to the person presiding over the meeting by any of the other Owners of the Lot. The Association may adopt rules regarding deadlocks. No votes allocated to any Lots owned by the Association may be cast.

**6.6. Proxies.** A vote allocated to a Lot may be cast pursuant to a proxy duly executed by an Owner. An Owner may revoke a proxy given pursuant to this section only by actual notice of revocation to the person presiding over a meeting of the Association. A proxy is void if it is not dated or purports to be revocable without notice. Except as hereinafter provided, a proxy shall terminate one year after its date, unless it specifies a shorter time. If a first mortgagee has been designated a proxy under the terms of a first mortgage covering the Lot, its presentation to the Board of a copy of the mortgage shall be notice of the proxy designation, and if the mortgage so states, of the irrevocability of that designation. Written notice to the Board or notice in a meeting of a revocation of a proxy designation shall not affect any vote or act previously taken. Each proxy shall automatically cease upon conveyance of the Lot.

Unless expressly reserved and the Association is notified of such reservation, a land contract vendee as defined in Chapter 5313 of the Revised Code, shall be deemed the proxy of a land contract vendor for purposes of this section.

**6.7. Annual Meeting.** A meeting of the Members of the Association must be held at least once each fiscal year.

**6.8. Management Agent.** The Board may employ for the Association a professional management agent or agents at a compensation established by the Board to perform such duties



and services as the Board shall authorize. The Board may delegate to the managing agent or manager, subject to the Board's supervision, certain powers granted to the Board by this Declaration. The Declarant, or an affiliate of the Declarant, may be employed as a managing agent or manager.

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

## ARTICLE VII

### ASSESSMENTS

**7.1. Establishment of Assessments.** There are hereby established for the benefit of the Association, its successors and assigns, as a charge on each Lot, certain Assessments for Common Expenses and other expenses. Each Owner, by acceptance of a deed, covenants and agrees to pay such Assessments.

**7.2. Purpose of the Assessments.** The Assessments are established for the benefit and use of the Association and shall be used in covering the costs of its Common Expenses and for other such purposes as hereinafter set forth.

**7.3. Annual General Assessment.** There is hereby established an "Annual General Assessment" for the purpose of funding the Common Expenses of the Association. The Common Expenses shall include among other things, (1) operation, maintenance, repair and replacement as required by this Declaration; (2) the cost of any insurance required by this Declaration; (3) reasonable reserves for contingencies and replacement; (4) administrative, accounting, legal and management fees; (5) and all other costs and liabilities incurred by the Association in the exercise of its powers and duties pursuant to this Declaration. The Association may, as part of the Annual General Assessment, impose and maintain a separate reasonable reserve for contingencies and capital replacements when it deems necessary or appropriate to do so.

**7.4. Individual Assessment.** The Association after approval by two-thirds (2/3) vote of all members of the Board shall have the right to assess an Owner and an individual Lot for any of the following:

**7.4.1.** any costs incurred by the Association in the performance of any maintenance in accordance with Article VIII, Section 8.3.

**7.4.2.** any charges or fines imposed or levied in accordance with Article IX, Section 9.3.1.1.

**7.4.3.** any costs incurred for maintenance or repair caused through the willful or negligent act of an Owner or Occupant or their family, tenants, guests or invitees, including attorney fees, court costs and other expenses incurred.

7.4.4. any costs associated with the enforcement of this Declaration or the Rules and Regulations of the Association, including, but not limited to attorney's fees, witness fees and costs, and court costs.

7.5. **Working Capital Fund; Initial Assessment.** At the time of closing of a Lot from a Builder, the purchaser of such Lot shall be assessed the sum of Two-Hundred and Fifty and 00/100 Dollars (\$250.00) as such purchaser's initial capital contribution to the working capital fund of the Association. This Assessment shall be used by the Association for its operating expenses. Such Assessment is not an advance payment of the Annual General Assessment, and it will not be held in any sort of trust or reserve account. Neither Declarant nor Builder shall be subject to or required to pay such Working Capital Fund Assessment.

7.6. **Special Assessment.** There is hereby established a Special Assessment for the purpose of repairing or restoring damage or destruction to the Common Elements as further set forth in Article X.

7.7. **Computation and Payment of Annual General Assessment.** The Annual General Assessment shall be computed and levied in accordance with the budget adopted by the Board pursuant to the Code of Regulations. This Assessment shall be effective as to each Owner and each Lot on the first day of the Association's fiscal year. Each Owner shall pay to the Association its share of the Annual General Assessment in accordance with the schedule established by the Board. If the initial Annual General Assessment proves inadequate for any reason, including the failure of Unit Owners to pay Assessments, the Board may revise the Annual General Assessment as necessary for the balance of the year. Owners shall be notified in writing of any revision to the Annual General Assessment and such revision shall become effective ten (10) days after the delivery of notice. Each Owner is obligated to pay its share of the revised Annual General Assessment in accordance with the payment schedule established by the Board.

Neither the failure nor delay of the Board to prepare or serve the Annual General Assessment or any report required herein, shall not constitute a waiver of, or release in any manner, each Owner's obligation to pay Assessments. In the absence of any Annual General Assessment or a revised Annual General Assessment, each Owner shall continue to pay Assessments in the amount and according to the schedule established during the previous period.

The initial Annual General Assessment as to each Lot shall commence on the first day of the month following the earlier of (i) its conveyance to an Owner other than a Builder; or (ii) occupation of the Dwelling Unit. The initial Annual General Assessment shall be prorated on a monthly basis to the end of the Association's fiscal year, and shall be collected at closing of the conveyance of the Lot from the Builder. So long as there has been no default in payment of the Assessment, it shall be payable in annual installments due on the first day of each fiscal year. The Board shall have the power from time to time to adopt such billing, collection and payment procedures, charges and other payment time schedules as it deems appropriate. Declarant and Builder shall not be subject to or required to pay the Annual General Assessment.

**7.8. Allocation of Assessments.** The Common Expense Liability of each Lot shall be its portion of the Common Expense. The Common Expense Liability and the Annual General Assessment shall be allocated equally to each Lot. The other Assessments shall be allocated as applicable to the respective Lots and as determined by the Board. Declarant and Builder shall not be subject to or required to pay any Common Expense Liability.

**7.9. Lien for Assessments.** The Association shall have a lien for any Assessment levied against a Lot, for fines imposed against an Owner or Occupant, and for interest, costs and reasonable attorney fees.

**7.9.1. Creation.** The lien for Assessments is created by this Declaration and shall be a charge and a continuing lien on each Lot which shall run with the land. All persons or entities acquiring an interest in a Lot after the filing of this Declaration take such interest subject to the lien.

**7.9.2. Effective Dates.** The lien for the Common Expense Liability for each Lot as set forth in the Annual General Assessment shall be effective on the first day of the fiscal year of the Association. The lien for other Assessments shall be effective on the first day of the month following the notice of its levy on the Owners affected.

**7.9.3. Perfection.** Recording of this Declaration constitutes notice and perfection of the Lien.

**7.9.4. Notice of Lien.** The Association may file a notice of lien with the Recorder of Portage County. Such notice shall not be required for the lien to be effective or for the Association to enforce its lien.

**7.9.5. Priority of the Lien.** The lien created by this Section shall be prior to all liens and encumbrances recorded subsequent to this Declaration except the lien for real estate taxes and assessments and the lien of any bona fide first mortgage filed of record.

**7.9.6. Subordination and Mortgagee Protection.** Notwithstanding any of the provisions hereof to the contrary, the lien of any Assessment levied pursuant to this Declaration (and any late charges, interest, costs and attorney fees) shall be subordinate to, and shall in no way affect the rights of the holder of a first mortgage made in good faith for value received. Failure to pay Assessments shall not constitute a default under any mortgage insured by FHA/VA. Mortgagees are not required to collect Assessments on behalf of the Association. Except as otherwise provided herein, any purchaser of a Lot that acquires title as a result of a judicial sale in a proceeding to which the Association has been made a party shall not be liable for any amounts chargeable to the Lot prior to the acquisition of title beyond the amount bid for such Lot at such judicial proceeding. Also, if a first mortgage holder takes a deed in lieu of foreclosure, the Lot shall not be subject to the lien of the Association. Notwithstanding the foregoing, all amounts chargeable to said Lot which remain unpaid shall be deemed to be a Common Expense payable from all Owners, including the purchaser of the Lot.

With respect to any transfer of an interest in a Lot not subject to the provisions of the preceding paragraph, the Grantee of the Lot shall be jointly and severally liable with the Grantor for all amounts chargeable against the Lot accrued to the time of transfer without prejudice to any right the Grantee may have to recover from the Grantor. However, upon written request to the Association, made prior to the acquisition of title to the Lot by the Grantor, the proposed Grantee, or any mortgagee the Board shall provide a statement setting forth all amounts chargeable against the Lot. If the Board's statement is issued prior to the transfer of title to the Lot, said Grantee shall not be liable for, nor shall the Lot conveyed be subject to any lien in excess of the amount set forth in the statement for the period of time covered by the statement. The Association may charge a reasonable fee for the preparation of such certificate.

**7.9.7. Extinguishment of the Lien.** A lien for unpaid Assessments is extinguished five (5) years after the full amount of the Assessment becomes due unless such lien is extended by the filing of a certificate lien by the Association with the Recorder of Portage County Ohio or proceedings to enforce it are instituted to collect the lien within said five (5) year period. If a certificate is filed the lien shall remain valid for five (5) years after the filing of the Certificate. If an Owner of a Lot subject to a lien files a petition for relief under the United States Bankruptcy Code, then the period of time to enforce the Association's lien shall be tolled until thirty (30) days after the automatic stay under Section 362 of the Bankruptcy Code is lifted.

**7.10. Delinquency and Acceleration.** Any installment of an Assessment provided for by this Declaration shall become delinquent if not paid on the due date as established by this Declaration or by the Board. With respect to each installment of an Assessment not paid within five (5) days of its due date, the Board may, at its election, require the Owner to pay a reasonable late charge, costs of collection, reasonable attorney fees and interest at the rate provided in Section 1343.03 of the Ohio Revised Code (and as amended from time to time). Interest shall be calculated from the date of delinquency to the date full payment is received by the Association. If any installment of an Assessment is not paid within thirty (30) days of its due date, the Board may, at its election, declare all of the unpaid balance of the Assessment immediately due without further notice or demand to the Owner. The Association may enforce the collection of the full Assessment and all charges thereon in any manner authorized by law or this Declaration. The filing of any petition for relief pursuant to the United States Bankruptcy Code by an Owner whose Assessment has been accelerated shall operate as a restoration of the Assessment to its prior status as if it has not been accelerated. Payments made by owners toward the satisfaction of any amount due to the Association shall be applied in the following manner: first, to accrued and unpaid interest; second, to late fees, if any; third, to collection costs, including attorney's and paralegal's fees and court costs; fourth, to the passed due principal balance; and fifth, to the current assessment payment due.

**7.11. Remedies Cumulative.** A suit to recover money judgment for unpaid Assessments and charges may be maintained without foreclosing or waiving the right to enforce the lien. A foreclosure may be maintained notwithstanding the pendency of any suit to recover a money judgment.

**7.12. Personal Obligation.** Each Owner is personally responsible for all Assessments, including fines, penalties, interest, costs and reasonable attorney fees imposed against the Owner or such Owner's Lot, notwithstanding any lien in favor of the Association.

**7.13. No Waiver of Liability for Common Expenses.** No Owner may exempt himself or herself from liability for payment of the Common Expenses by waiver of the use or enjoyment of the Common Elements or by abandonment of the Lot against which the Assessments are made. Notwithstanding the foregoing, neither Declarant nor Builder shall obligated to pay Common Expenses.

**7.14.** Any owner who believes that any Assessment or other amounts chargeable to the Owner or his Lot by the Association, has been improperly charged against him, shall bring an action in the Court of Common Pleas of Portage County Ohio for the determination and/or discharge of the lien.

## ARTICLE VIII

### UPKEEP OF THE PROPERTY

**8.1. Lots.** Each and every Lot, its Dwelling Unit and any improvement erected thereon shall be maintained in a reasonable manner in accordance with the standard generally prevailing throughout the Properties.

**8.2. Common Elements.** The Declarant may, but is not obligated to, retain title to the Common Elements until such time as the Declarant is required to transfer its right, title, and interest in the Common Elements to the Association as provided in this Declaration. At any time prior to the time the Declarant is obligated to transfer its interest in the Common Elements to the Association, the Developer may, but is not obligated to, transfer some or all of the Common Elements to the Association. At such time as the Declarant transfers his interest in the Common Elements to the Association, the Association is obligated to, and shall except, such transfer. Notwithstanding the fact that title to the Common Elements may be in the Declarant, at all times the Association is responsible for and shall pay for all costs of ownership, operation, maintenance, governance, use, repair and replacement of the Common Elements. Notwithstanding the foregoing, each Owner is responsible for any damage or destruction to the Common Elements caused by any act or neglect of the Owner or any invitee, licensee, or guest of a the Owner or Occupant of the Owner's Lot.

**8.3. Association's Right to Maintain** If an Owner shall fail to provide maintenance as required by this Declaration in a manner satisfactory to the Association, and such Owner has failed to comply for ten (10) days after being so notified of such failure (and after being provided an opportunity to be heard concerning such failure), the Association shall have the right, through its agents and employees, to enter upon Owner's Lot and repair, maintain and restore the Lot. In the event that such failure poses a health, safety or security risk, then no notice or hearing need be given. The cost of such maintenance and repair shall be assessed against the subject Lot in accordance with Article VII, Section 7.4. Nothing in this Section shall be construed as giving the Association any right to repair, maintain or restore any Dwelling Unit.

**8.4. Access to Lots.** For the purpose solely of performing the maintenance required or authorized herein, the Association, through its duly authorized agents or employees, or subcontractors, shall have the right, after reasonable notice to the Owner, to enter upon any Lot at reasonable hours on any day.

## ARTICLE IX

### RESTRICTIONS

**9.1. Use and Occupancy.** The following restrictions are applicable to the use and occupancy of the Property.

**9.1.1. Compliance with Laws.** No improper, offensive or unlawful use shall be made of the Property or any part thereof. All laws, orders, rules, regulations or requirements of any governmental agency having jurisdiction over any portion of the Property shall be observed and complied with, by and at the expense of all Owners and Occupants.

**9.1.2. Harmful Discharges.** There shall be no emissions of dust, sweepings, dirt, cinders, odors, gases or other substances into the atmosphere (other than normal residential chimney emissions), no production, storage or discharge of hazardous wastes on the Property or discharges of liquid, solid wastes or other harmful matter into the ground or any body of water, if such emission, production, storage or discharge may adversely effect the use or intended use of any portion of the Property or may adversely effect the health, safety or comfort of any person. No waste nor any substance or materials of any kind shall be discharged into any public sewer or the Surface Water Management System serving the Property or any part thereof in violation of any regulation of law, order, rule, regulation or requirement of any applicable government or governmental agency.

**9.1.3. Noise.** No person shall cause any unreasonably loud noise (except for security devices) anywhere on the Property, nor shall any person permit or engage in any activity, practice or behavior for the purpose of causing annoyance, discomfort or disturbance to any person lawfully present on any portion of the Property.

**9.1.4. Signs.** No signs of any character shall be erected, posted or displayed upon the Property, except: (i) marketing signs installed by the Declarant and/or any Builder while actively marketing the Lots for sale; (ii) street and identification signs installed by the Association or the Declarant; (iii) one temporary real estate sign not to exceed six square feet in area advertising that such Lot is on the market; and (iv) political signs permitted by applicable law, provided they are removed within 48 hours after the election is over.

**9.1.5. No Trade or Business.** No trade or business of any kind may be conducted in or from any Lot or Dwelling Unit except that an Owner or Occupant of a Lot or Dwelling Unit may conduct such business activity within the Lot or Dwelling Unit so long as: (a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from the exterior of the Lot or Dwelling Unit; (b) the business activity conforms to all zoning requirements for the Property; (c) the business activity does not involve persons coming on to

the Lot who do not reside in the Property; and (d) the business activity is consistent with the residential character of the Property.

The terms "business" and "trade" as used in this provision shall be construed to have their ordinary generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (i) such activity is engaged in full-time or part-time; (ii) such activity is intended to or does generate a profit; or (iii) a license is required thereof. The term "trade" or "business" for purposes of this restriction shall not include the construction, operation and maintenance of any model home or homes and sales offices by any builder during reasonable hours.

**9.1.6. Trash.** Except in connection with construction activities, no burning of any trash and no accumulation or storage of litter, refuse, bulk materials, building materials or trash of any other kind shall be permitted on any Lot. Trash containers (except during construction) shall not be permitted to remain in public view except on days of trash collection. No incinerator shall be kept or maintained upon any Lot.

**9.1.7. Parking; Vehicle Repairs.** Except in connection with construction activities, trucks, trailers, campers, recreational vehicles, boats and other large vehicles may be parked on the Property only if in garages. No junk or derelict vehicle or other vehicle on which current registration plates are not displayed shall be kept upon any portion of the Property. Vehicle repairs and storage of vehicles are permitted on the Property only if in garages. Recreational vehicles and boats may be parked in the driveways for a period not to exceed twenty-four (24) hours for the purpose of cleaning, loading or unloading.

**9.1.8. Animals.** The maintenance, keeping, boarding or raising of animals of any kind, regardless of number, is prohibited on any Lot except that the keeping of guide animals and orderly domestic pets (e.g., dogs, cats or caged birds), is permitted, subject to the Rules and Regulations adopted by the Board. Such pets are not to be kept or maintained for commercial purposes or for breeding. No external compound cages, kennels or hutches shall be permitted.

Any pet causing or creating a nuisance or unreasonable disturbance or noise may be permanently removed from the Property upon ten (10) days written notice from the Board. Pets shall not be permitted on the Common Elements unless accompanied by someone who can control the pet and unless carried or leashed. Any Owner or Occupant who keeps or maintains any pet on any portion of the Property shall be deemed to have indemnified and agreed to hold the Association harmless from any loss, claim or liability of any kind or character whatever arising by reason of keeping or maintaining such pet within the Property. All pets which may leave the Dwelling Unit or Lot must be inoculated as required by law.

**9.1.9. Open Fires.** Open burning is not permitted on the Property, except that outdoor fireplaces, grills, and chimneys may be used if equipped with fire screens to prevent the discharge of embers or ashes.

**9.2. Architectural Restrictions.** The following architectural restrictions shall be applicable to the Lots.

**9.2.1. Plan Approval.** No structure shall be placed, erected or installed upon any Lot, no construction (which term shall include within its definition staking, clearing, excavation, grading, and other site work), no exterior alteration or modification of existing improvements, and no plantings or removal of plants, trees, or shrubs shall take place until the requirements of this section have been fully met. Prior to any construction, the Owner or Builder shall first submit to the Declarant (which for the terms of this section shall include its designee) a complete set of building plans for the proposed construction. The Declarant shall approve, reject or modify such plans in a writing sent to the Owner or Builder in question not more than thirty (30) days after the plans are submitted to the Declarant. The thirty (30) period shall commence upon execution of a written notice by the Declarant acknowledging receipt of plans and specifications and all information required therewith. The Declarant shall review the plans as to the quality of workmanship and design and harmony of external structures with existing structures and as to location in relation to surrounding structures, topography and finish grade elevation. The Declarant shall not unreasonably withhold approval of any plans that conform in every way with the Declaration and with the general character of the development on neighboring Lots within the Property. If the Declarant fails to approve, reject, or modify the plans within the thirty (30) day period, the Declarant's approval shall be deemed to have been given, and no further permission shall be needed before the improvements described in such plans may be constructed or installed. However, in no event shall any improvements be constructed or installed which violate any terms of this Declaration.

**9.2.1.1. Declarant's Plan Approval Period.** Declarant's right of plan approval shall exist for as long as Declarant owns any Lot in the Properties. Declarant's right of plan approval shall include any alterations to existing Lots or Dwelling Units and / or items requiring prior approval by this Declaration. In any items or matters that are discretionary, the Declarant's decision shall be conclusive upon all parties.

**9.2.1.2. Design Guidelines.** The Declarant shall prepare and, on behalf of itself and the Association, shall promulgate design and development guidelines governing construction within the Properties, which shall include application and review procedures to be followed in submitting an application for approval hereunder ("Design Guidelines"). The Design Guidelines shall be those of the Association, and the Declarant and/or the Association shall have sole and full authority to modify and to amend them from time to time without the consent of any Owner. The Declarant and/or the Association shall make the Design Guidelines available to Builders and Owners who seek to engage in construction upon all or any portion of the Property. A copy of the current Design Guidelines is attached as Exhibit C.

**9.2.1.3. Declarant's Control of New Construction.** The Declarant shall have exclusive control of new construction within the Properties. No provision of this



Declaration or the Design Guidelines, as the same relates to new construction, may be modified without Declarant's consent.

**9.2.1.4. Association's Right of Plan Approval.** After Declarant's right of plan approval has expired, the Association shall be responsible for plan approval. The Declarant may assign its right of plan approval, or any portion thereof, to the Association.

**9.2.1.5. No Liability.** Each Owner and Builder is responsible to insure that all construction or any modifications are in compliance with the restrictions and approved plans. If the Developer or the Trustees have acted in good faith on the basis of such information possessed by them, neither the Developer, the Board nor any Trustee shall be liable to the Association or to any Owner for any damage, loss or prejudice suffered or claimed due to: (a) the approval or disapproval of any plans, drawings and specifications, whether or not defective; or (b) the construction or performance of any work whether or not pursuant to approved plans, drawings, and specifications.

**9.2.2. Dwelling Type.** No building shall be erected, altered, placed or be permitted to remain on any Lot other than one single-family dwelling except as provided in the Design Guidelines.

**9.2.3. Dwelling Floor Areas.** The living area of the Dwelling Unit exclusive of porches, decks, attics, basements, areas not heated year round and garages shall be no less than the areas set forth in the Design Guidelines.

**9.2.4. Roof Requirements.** The roof and gables of each Dwelling unit shall be in accordance with the Design Guidelines .

**9.2.5. Set Back, Minimum Elevation and Yard Requirements.** All Dwelling Units shall be located in accordance with the building set back lines, minimum basement elevation and yard requirements as shown on the Record Plan and as required by applicable codes, ordinances and regulations. The Owner or Builder shall be responsible for compliance with these standards. Declarant shall not be responsible for any failure to comply with these standards.

**9.2.6. Front Yards and Driveways.** Front yards shall be landscaped within ninety (90) days after closing, weather permitting. All driveways shall be paved with concrete, asphalt, brick or paving stone.

**9.2.7. Construction Materials.** No Dwelling Units shall be constructed of concrete block, cinder block or other similar materials unless the exterior of the Dwelling Unit is covered with brick and / or siding, with the exception of exposed foundation walls. No underground Dwelling Units shall be permitted.

**9.2.8. Exterior Siding.** Any exposed wooden sheeting materials must have prior approval.

**9.2.9. Front Storage.** No front porch shall be used for the storage of any items except normal porch furniture. No front yard shall be used for storage of any kind of items. This restriction shall not apply to building materials and / or equipment stored on the Lot during construction of the Dwelling Unit.

**9.2.10. Radio and Television Antennas.** With the exception of home satellite dishes eighteen inches and smaller, no exterior antennas, aerials, satellite dishes, or other apparatus for the reception or transmission of television, radio, satellite or other signals of any kind shall be placed, allowed, or maintained upon any portion of the Properties, including any Dwelling Unit, without the prior written approval as provided in Section 9.2.1, and in accordance with the Design Guidelines. Nothing herein shall be construed so as to be in conflict with current Federal Communications Commission's rules and regulations for antennas.

**9.2.11. Air Conditioning and Heat Pump Equipment.** Air-conditioning and heating equipment should be located and screened in such a manner so as to provide minimum visual impact from other Lots.

**9.2.12. Awnings.** No metal or plastic awnings for windows, doors or patios may be erected or used.

**9.2.13. Exterior Carpeting.** No exterior carpeting shall be permitted if it is visible from the street or any neighboring Lot.

**9.2.14. Fences.** No fence of any sort may be erected unless the same is in accordance with the Design Guidelines and until prior approval in accordance with Section 9.2 of the Declaration has been obtained. The Declarant reserves the right to prohibit all fences or types of fences on certain Lots. Chain link fences shall not be permitted. Invisible pet fences are permitted.

**9.2.15. Other Structures.** No structure of a temporary character, trailer, or shack shall be permitted on any Lot. Barns, storage sheds or other outbuildings must have prior approval in accordance with Section 9.2. Construction trailers and/or storage sheds shall be permitted only during construction.

**9.2.16. Pools and Spas.** Pools, hot-tubs and spas must have prior approval in accordance with Section 9.2. In-ground swimming pools shall be permitted. No above ground swimming pools shall be permitted. All hot tubs and spas must be in-ground or if above ground incorporated into a deck with enclosed sides. All hot tubs and spas must be screened with a privacy fence in accordance with the Design Guidelines.

**9.2.17. Play Equipment and Basketball Hoops.** All play equipment and basketball hoops must comply with the Design Guidelines.

**9.2.18. Clothes Drying.** No outdoor clothes drying apparatus of any sort shall be permitted.

**9.2.19. Mailboxes, Lampposts.** All mailboxes and lampposts must be comply with the design, style and color set forth in the Design Guidelines, if any, and even if such Guidelines do not exist are subject to the approval of the Declarant.

**9.2.20. Completion.** Construction of a Dwelling Unit on any Lot shall be completed within one (1) year from the date construction is started.

**9.2.21. Lot Maintenance.** All lots must be kept mowed and free of debris and clutter. During construction, each Owner and builder shall be responsible for keeping the streets and adjacent Lots clean and free of debris. The Declarant shall have the right to assess any Owner or Builder for the cost of mowing or clean up in the event that the Owner or Builder fails to do so.

**9.3. Remedies for Breach of Covenants and Restrictions.** The violation of any covenant or restriction, contained in this Declaration or violation of any rule or regulation duly adopted by the Board shall give the Board the authority to enforce the covenants, restrictions, rules and regulations in accordance with this Section.

**9.3.1. Actions.** The Board may take any or all of the following actions.

**9.3.1.1.** levy a fine against the Owner or Occupant which shall also be an Individual Assessment under Section 7.4.

**9.3.1.2.** to enter upon a Lot or portion thereof upon which or, as to which, such violation or breach exists and to summarily abate and remove at the expense of the Owner, any structure, thing or condition that may exist thereon contrary to the intent and meaning of the provisions of this Declaration, and the Board, or its agents shall not be thereby deemed guilty in any manner of trespass or wrongful act.

**9.3.1.3.** to institute appropriate legal proceedings to enjoin, abate or remedy the continuance of any breach.

**9.3.1.4.** undertake such dispute resolution methods such as mediation and arbitration, except that this provision shall not be construed as any requirement to do so as a condition precedent to legal proceedings.

**9.3.2. Notice and Opportunity to be Heard.** Prior to any action, the Board shall give the Owner and/or Occupant reasonable notice of the violation and an opportunity to be heard. Such notice and opportunity shall not be required in emergency situations or for repeated or continuing violations.

**9.3.3. Individual Actions.** Each Owner is empowered to enforce the covenants by appropriate legal proceedings or alternative dispute resolution methods.

**9.4 Expenses and Legal Fees.** Each Owner and each Occupant who violates the Declaration, the Regulations, or any rule or regulation made by the Association is jointly and severally liable for, and shall pay, all costs and expenses, including reasonable attorney's fees, paralegal fees, court costs, mediation costs, and arbiters fees incurred by the Association as a result of such violation, including costs and fees, including attorney's fees, court cost, and arbiters fees, incurred in the collection of any amounts due from the Owner or Occupant. The amount of such fees, costs, and expenses, shall be added to, and made part of any judgment, order, or award in favor of the Association.

## ARTICLE X

### INSURANCE AND CASUALTY LOSSES

**10.1. Insurance.** The Board or its duly authorized agent shall have the authority to and shall obtain such insurance as it may deem necessary to protect the Common Elements, the Owners, the Association and the Board.

**10.2. Repair and Restoration.** If the damage or destruction to the Common Elements occurs and any insurance proceeds paid as a result thereof are not sufficient to defray the cost of repair and replacement of the damage, the Board shall, without the necessity of a vote of the Owners, levy a Special Assessment against all Owners. Additional Special Assessments may be levied at any time during or following the completion of any repair or reconstruction. If the funds available from insurance exceed the cost of repair, such excess shall be deposited to the benefit of the Association.

## ARTICLE XI

### CONDEMNATION

**11.1.** Whenever all or any part of the Common Elements shall be taken (or conveyed in lieu of and under threat of condemnation by the Board, acting on its behalf or on the written direction of all Owners of Lots subject to the taking, if any) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to notice thereof and to participate in the proceedings incident thereto, unless otherwise prohibited by law. The award made for such taking shall be payable to the Association, as trustee for all Owners, to be disbursed as follows:

**11.2.** If the taking involves a portion of the Common Elements on which improvements have been constructed, then, unless within sixty (60) days after such taking the Declarant and at least seventy-five (75%) percent of the Owners shall otherwise agree, the Association shall restore or replace such improvements so taken on the remaining land included in the Common Elements, to be extent lands are available therefore, in accordance with plans approved by the Board. If such improvements are to be repaired or restored, the above provisions in Article X hereof regarding the disbursement of funds in respect to casualty damage or destruction which is to be repaired shall apply. If the taking does not involve any improvements on the Common Elements, 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.

## ARTICLE XII

### DEVELOPMENT RIGHTS

**12.1. Submission of Additional Land.** The Declarant reserves the rights to submit all or any portion of the Additional Land to the terms of this Declaration without consent of the Owners for a period of seven (7) years beginning with the date of recording of the Declaration. The submission shall be accomplished by the filing of a Supplemental Declaration identifying the Additional Land, the Lots and the Common Elements.

**12.2. Notice to the Board.** The Declarant shall promptly notify the Board of the filing of any Supplemental Declaration.

**12.3. Easements Reserved.** The Declarant reserves for itself, its successors and assigns and any Builder, the following easements:

12.3.1. Easements for drainage and all utilities as shown on the Record Plan.

12.3.2. Easements for ingress, egress, drainage and all utilities over the Common Elements provided that such easements do not unreasonably interfere with any Owner's rights of enjoyment.

12.3.3. An easement over the Common Elements as may be reasonably necessary for the purpose of discharging its obligations or exercising any rights under the Declaration.

12.3.4. An easement for ingress, egress, drainage and all utilities over the Common Elements and in favor of the Additional Property including the right to extend, relocate, tie into, access and use any sanitary sewer, water, gas, electric, cable, and telephone line, facility or system, drive, road, street, sidewalk, storm sewer, drainage line, ditch, pipe, pond, lake or other surface water management system and the right to convey those easements to others in the event that the Additional Property is not submitted to this Declaration.

**12.4. Assignment of Development Rights.** The Declarant reserves the right to assign any or all of its Development Rights to any person or entity for the purpose of further development and improvement of the Property. No assignment shall be effective unless in a writing filed with the Recorder of Portage County, Ohio

**12.5. Transfer of Development Rights by Foreclosure.** Unless otherwise provided in any mortgage securing the Property held by Declarant, in the case of foreclosure of such mortgage, deed in lieu of foreclosure, judicial sale, tax sale, sale under the U.S. Bankruptcy Code or receivership proceedings, of any portion of the Property held by the Declarant subject to the Development Rights herein reserved (including the Special Declarant Rights), a person acquiring title to such property, but only upon his request, succeeds to all such Development Rights. The judgment or instrument conveying title must provide for the transfer of such rights. Upon

foreclosure sale, deed in lieu of foreclosure, judicial sale, tax sale, sale under the U.S. Bankruptcy Code or receivership proceedings, the Declarant ceases to have any of the rights herein reserved. A successor to the Development Rights held by a transferee who acquired such rights pursuant to this Section, may declare by a recorded instrument the intention to hold such rights solely for transfer to another person. Thereafter, until transferring such Development Rights to any person acquiring title to the Property subject to the Development Rights, or until recording an instrument permitting exercise of such rights, that successor may not exercise any of those rights, and any attempted exercise is void. So long as a successor Declarant may not exercise any Development Rights under this section, such Declarant is not subject to any liability as a Declarant.

## **ARTICLE XIII**

### **SPECIAL DECLARANT RIGHTS**

**13.1. Use for Sale Purposes.** Declarant reserves for itself, its successors and assigns, and any Builder the right to maintain sales offices and models on the Lots.

**13.2. Signs and Marketing.** The Declarant reserves the right for itself and any Builder to post signs and displays in the Property to promote sales of Lots, and to conduct general sales activities, in a manner as will not unreasonably disturb the rights of Owners.

**13.3. Control of the Association.**

**13.3.1. Appointment of Trustees and Officers.** The Declarant reserves the right to appoint and remove the members of the Board and the Officers of the Association during the Declarant Control Period which commences upon the recording of this Declaration and shall terminate no later than the earlier of.

**13.3.1.1.** sixty (60) days after the conveyance of ninety (90%) percent of the Lots (including Lots to be included on the Additional Land) to Owners other than Declarant or any Builder;

**13.3.1.2.** seven (7) years after recording of this Declaration.

**13.3.2. Transition from Declarant Control.** Not later than sixty (60) days after the conveyance of twenty-five (25%) percent of the Lots (including Lots to be included on the Additional Land) to Owners other than Declarant or any Builder, one Owner shall be elected to the Board by a vote of Owners other than Declarant or any Builder at which time four (4) persons shall constitute the Board. Not later than sixty (60) days after the conveyance of fifty (50%) percent of the Lots (including Lots to be included on the Additional Land) to Owners other than Declarant or any Builder, an additional Owner shall be elected to the Board by a vote of Owners other than Declarant or any Builder at which time five (5) persons shall constitute the Board.

**13.3.3. Early Termination of Control.** Any time after 50% of the Lots, (including the Lots to be included in the Additional Land) is conveyed to Owners other than the Declarant or any Builder, the Association may by a vote of 75% of the Owners elect to terminate the Declarant's right to select the Board.

**13.4. Declarant's Personal Property.** The Declarant and any Builder reserve the right to retain all personal property and equipment used in sales, management, construction and maintenance of the premises that has not been represented as property of the Association. The Declarant and Builder reserve the right to remove, within One (1) year after the sale of the last Lot, from the Property any and all goods and improvements used in development, marketing and construction, whether or not they have become fixtures.

**13.5. Right to Amend Documents.** Notwithstanding anything above to the contrary, this Declaration may be amended at any time without the vote of Owners by a written instrument executed by the Declarant or the Board for the purpose of eliminating or correcting any typographical or other inadvertent error herein; eliminating or resolving any ambiguity herein; making nominal changes; clarifying Declarant' original intent; making any change necessary or desirable to meet the requirements of any institutional lender, the Veteran's Administration, the Federal Housing Administration, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, or any other agency which may insure or purchase loans on a Lot. No such amendment, however, shall materially affect any Owner's interest in the Association or the Common Elements. Each Owner and his mortgagees, by acceptance of a deed to a Lot or a mortgage encumbering such Lot, shall be deemed to have consented to and approved of the provisions of this paragraph and the amendment of this Declaration by Declarant or the Board as provided in the immediately preceding sentence. All such Owners and their mortgagees, upon request of Declarant or the Board, shall execute and deliver from time to time all such instruments and perform all such acts as may be deemed by a Declarant to be necessary or proper to effectuate the provisions of this paragraph.

## ARTICLE XIV

### DURATION, AMENDMENT AND TERMINATION

**14.1. Duration.** This Declaration, and its provisions, shall be covenants running with the land and shall bind the property and shall (regardless of whether any such beneficiary owns an interest in any Lot) inure to the benefit of and be enforceable by Declarant, the Association, and each Owner, Occupant and their legal representatives, heirs, devisees, successors and assigns and shall continue in full force and effect for twenty (20) years from the date on which this Declaration is recorded. Thereafter this Declaration shall be automatically renewed for successive ten-year periods unless amended or terminated as provided in this Article.

**14.2. Amendment.** Except as provided in Section 13.5, prior to the end of the Declarant Control Period, any provision of this Declaration may be amended in whole or in part by a recorded instrument executed by Declarant and approved by at least seventy-five (75%) of the voting power of all Lots.

**14.2.1.** Except as provided in this Section 13.5, after the end of the Declarant Control Period, any provision of this Declaration may be amended in whole or in part by a recorded instrument executed by two officers and approved by at least seventy-five (75%) percent of the voting power of all Lots.

**14.2.2.** All Amendments shall be executed by the Declarant, and any Builder, if required, and shall be executed by the President and Secretary of the Association. Such Amendment shall certify that the proper notices were sent and that the requisite vote was obtained. Amendments need not be signed by the Owners. Notwithstanding anything to the contrary contained in this Declaration, no amendment shall have any effect upon the Declarant or the rights of the Declarant, until and unless the Declarant consents in writing to such amendment and no amendment shall have any effect upon Brimfield Township or the rights of Brimfield Township until and unless the Brimfield Township Board of Zoning Appeals consents in writing to such amendment.

No amendment to this Declaration is relative to the ownership, maintenance, repair, operation, governance, control, and use of the Common Elements is effective unless approved by the Brimfield Board of Zoning Appeals.

**14.3. Termination.** This Declaration and the regime created thereby may be terminated only in accordance with this Section.

**14.3.1. Consent Required.** This Declaration may be terminated only upon consent of Eighty (80%) Percent of the voting power of all Lots, and if during the Declarant Control Period, by consent the Declarant.

**14.3.2. Agreement to Terminate.** No termination shall be effective unless an agreement to terminate is filed for record with the Portage County Recorder. This agreement shall be executed in the same manner as an amendment as provided above. The agreement shall provide for disposition of the Common Elements, disposition of Association funds and other resolutions and provisions necessary to terminate the regime and wind up the affairs of the Association. No agreement or action to terminate this Declaration shall be effective unless the disposition of the Common Elements is approved by the Brimfield Township Board of Zoning Appeals.

## ARTICLE XV

### MISCELLANEOUS

**15.1. No Reverter.** No covenant, condition, restriction or reservation of easement contained in this Declaration is intended to create, or shall be construed as creating, a condition subsequent or a possibility of reverter.

**15.2. Notices.** Any notice required or permitted to be given to an Owner or resident by the Board pursuant to the provisions of this Declaration shall be deemed given when mailed by United States mail, postage prepaid, addressed to such person's last address as it appears on the records of the Association.



**15.3. Construction.** The Board shall have the right to construe the provisions of this Declaration, and, in the absence of adjudication by a court of competent jurisdiction to the contrary, such construction shall be final and binding as to all persons and entities benefited or bound by the provisions of this Declaration.

**15.4. Invalidity.** No covenants, restrictions, conditions, obligations or provisions contained in this Declaration shall be deemed to have been abrogated or waived by reason of any delay or failure to enforce the same irrespective of the number of violations or the passage of time. The invalidity of any covenant, restriction, condition, limitation, or other provision in this Declaration shall not impair or affect in any manner, the validity, enforceability or effect of this Declaration. Furthermore, if it is possible to modify the invalid provisions so as to make such provision valid, then such provision shall be so modified rather than being avoided. The modification shall be only to the extent necessary to make the provision valid and shall be accomplished in a manner which preserves to the greatest extent possible the legal, economic, and practical effect of such provision as originally written. The determination by a court of competent jurisdiction that any provision of this Declaration is invalid for any reason shall not affect the validity of any other provision hereof.

**15.5. Headings.** The headings of the Articles and Sections are for conveyance only and shall not affect the meaning or construction of the contents of this Declaration.

**15.6. Gender.** Throughout this Declaration, the masculine gender shall be deemed to include the feminine and neuter, and the singular, the plural and vice versa.

**15.7. Conflict.** In the event of a conflict between a restriction, covenant, condition, easement or obligation herein and those of any instrument of the Association which may be recorded subsequent to this Declaration, the more restrictive restriction, covenant, condition, easement or other obligation shall control.

IN WITNESS WHEREOF, Sugar Maple Hills, LLC has caused this Declaration to be signed by MICHAEL G. WOUNO, this 1st day of DECEMBER, 2005.

**Signed and Acknowledged  
in the Presence of:**

Sue A. Harman  
(Signature)

SUE A. HARMAN  
(Printed Name)

Katie Wouno Lanciaese  
(Signature)

KATIE WOUNO LANCIANESE  
(Printed Name)

**Sugar Maple Hills, LLC**

by: [Signature]

its: MANAGER

STATE OF OHIO            )  
  )ss:  
COUNTY OF SUMMIT    )

The foregoing instrument was acknowledged before me, this 1st day of DECEMBER, 2005, by MICHAEL G. WOUNO, MANAGER of **Sugar Maple Hills, LLC**, an Ohio limited liability company, on behalf of the limited liability company.

Sue A. Harman  
Notary Public, State of Ohio



SUE HARMAN  
Resident of Summit County  
Notary Public, State of Ohio  
My commission expires Jan. 11 2010

Prepared by Sugar Maple Hills, LLC

**EXHIBIT A**

Situated in the Township of Brimfield, County of Portage and State of Ohio:

And known as being Sublot Nos. 1 through 39 and Open Space "A", "B", "C", "D" and "E" of Sugar Maple Phase One as recorded in Plat 2005-126 of Portage County Records of Plats.

*KT*  
BONNIE M. HOWE  
PORTAGE CO. RECORDER

200532365 4-52

RECEIVED FOR RECORD  
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**EXHIBIT B**

Situated in the Township of Brimfield, County of Portage and State of Ohio:

And known as being Block "A" of Sugar Maple Phase One as recorded in Plat 2005-126 of Portage County Records of Plats.

## EXHIBIT C

### SUGAR MAPLE HILLS HOMEOWNERS ASSOCIATION DESIGN GUIDELINES

The following standards have been developed and promulgated by the Declarant in accordance with Article IX, Section 9.2.1.2 of the Declaration and are applicable to all new construction and all modifications or improvements. These Design Guidelines are not part of the Declaration and can be amended by the Declarant or the Association without a vote of the Owners.

#### GENERAL GUIDELINES APPLICABLE TO ALL LOTS

**House Placement and Yard Grading.** Dwelling Units shall conform to existing grade and drainage patterns. Each Owner and/or Builder shall endeavor to retain as much of the natural woods as is practical. Builders shall be responsible to regrade the Lot to conform the drainage plan approved for the subdivision. All Dwelling Units shall comply with the following set back requirements:

- a. No Dwelling Unit shall be erected on any lot nearer than 30 feet to the front of the property.
- b. No Dwelling Unit shall be erected on any lot nearer than 10 feet to the side of the property line.
- c. No Dwelling Unit shall be erected on any lot nearer than 15 feet to the rear of the property line.

The following guidelines shall be used in determining placement with respect to style and elevations:

- a. There must be a minimum of a two different homes separating like models on the same side of the street. Optional items, such as full porches and pediment front foyers, may be used to establish the differences.

**Dwelling Type.** No Dwelling Unit shall be erected, altered, placed or be permitted to remain on any Lot other than one single-family Dwelling Unit with an attached front-load or side-load garage. A single-family dwelling shall meet the following requirements:

- a. A one-story dwelling structure, the living area being the first floor space only, constructed with a basement and a space between the first floor ceiling and the roof of inadequate heights to permit its use as a dwelling place.
- b. A story and a half or "Cape Cod" dwelling structure, the living area of which is on two levels connected by a stairway and constructed with a basement. The upper

level is constructed within the gable portion of the roof. Window penetrations are made by use of dormers.

- c. A two-story dwelling structure, the living area of which is on two levels connected by a stairway, constructed with a basement.

**Exterior Construction for Dwellings.** All residences shall be constructed with a minimum of 25% of the front elevation covered with natural or synthetic masonry brick, stone, or stucco-type product. All exposed areas of the foundation must be covered with a brick veneer skirt or stone. Declarant reserves the right to make minor changes in the above requirements, in its discretion, if it deems such changes necessary to achieve the intent of this provision.

**Dwelling Unit Size.** Dwelling Units must be at least 1,900 square feet for a one-story dwelling, 2,100 square feet for a one and a half story or "Cape Cod" dwelling, and 2,300 square feet for a two-story dwelling. Square footage for other types of dwellings (if permitted) shall be determined by the Declarant upon plan review. Declarant reserves the right to make minor variances if, in its sole opinion, the intent of the section is maintained.

**Roof.** The roof and gables of each Dwelling unit shall be no less than 7.5 - 12 pitch. Porch and patio roofs may be 3.5 - 12 pitch. All shingles shall be of a uniform color.

**Out Buildings.** All efforts to meet storage needs should be addressed if possible within the confines of the main residential structure. No unattached garages are permitted. Nevertheless, out-buildings or detached structures (other than garages) for non-residential / non-commercial use may be permitted as long as the following conditions are met:

- a. Submittal of drawings with elevations, colors, materials, and site plan to Declarant or Association for approval.
- b. Building will be no bigger than 192 square feet total area and must not exceed 12' in height. Maximum door size shall be limited to 60" in width.
- c. Building must be built on site with like exterior and roof materials as used on the Dwelling Unit. Only non-maintenance exterior products or wood will be permitted.
- d. Building must be placed at least 10' off any property line and placed as inconspicuously to adjoining neighbors as possible. Declarant or Association reserves the right to determine property placement of any out buildings.
- e. Declarant or Association reserves the right to require additional landscape screening of out building visible to neighbors and/or from any street view.

**Yards, Driveways and Walks.** Front yards shall be grass and landscaped as soon after completion of the Dwelling Unit as is practical under weather conditions. Rear Yards shall

be defined as that portion of the Lot which is behind the rear elevation of the Dwelling Unit extended to each Lot line. All driveways shall be paved with asphalt, concrete, paver bricks or paving stone. Gravel, dirt, or aggregate driveways are prohibited.

**Color Schemes.** All dwellings shall be in conformance with the original color scheme as promulgated by the Developer. The following guidelines shall be followed when determining color scheme with respect to location.

- a. In any group of five dwellings on the same side of a street, at least three siding colors must be used. Never use the same color on two consecutive dwellings.
- b. On any cross-street intersection, at least two siding colors must be used.
- c. Dwellings directly across the street from one another should have different siding colors.

**Underground and Log Houses.** Underground and log structures are prohibited.

**Porches, appendages and additions.** No porches, appendages, or additions shall be permitted unless they are of a size, style, color and type compatible with the original design of the house and shall match the house material and coloring exactly. Porches, appendages or additions must be integrated into the design of the house. Compatibility shall be at the discretion of the Committee.

**Front Storage.** No front porch shall be used for the storage of any items except normal porch furniture. No front yard shall be used for the storage of any item of any kind.

**Awnings.** No metal or plastic awnings for windows, doors, decks or patios may be erected or used. Canvas awnings may be used subject to prior approval of size, color, location and manner of installation for the particular lot in question.

**Exterior Carpeting.** No exterior carpeting may be used if it is visible from any neighboring lot or the street.

**Railings.** All deck and balcony railings shall be wood or other material as approved by the committee and stained the same color as the deck or balcony.

**Solar Panels.** No solar panels shall be permitted.

**Chimneys.** All chimneys with metal flues must be enclosed within a chase that may be sided. Any direct vent chimney and / or furnace flues, hotwater heater or any other flues shall be vented only to the rear or side of the Dwelling Unit

**Water Discharge.** Storm water must be disposed in accordance with the drainage plan for the subdivision and township and county regulations. Sump drain and downspouts must discharge to the rear of the lot or the sump drain line provided. Curb cuts and or discharge to the street of right-of-way or curb is prohibited. Plans showing sump drain lines are available from the Declarant.

**Skylights.** Skylights may be used on a back roof facing the rear of a lot. Other locations may be approved for a contemporary design house depending upon the design and the particulars of the lot.

**Entrance Structures.** No additional driveway entrance structures shall be permitted.

**Swimming Pools, Spas and Hot Tubs.** In-ground swimming pools, hot tubs and spas shall be permitted provided that such pool, hot tub or spa is located in the Rear Yard and at least ten (10) feet from any property line. Privacy fencing or other such adequate screening as approved by the Committee is required. All swimming pools must be approved by the Committee as to style and location. No permanent above-ground pools are permitted.

**Play Equipment.** Play apparatus or structures shall be located in the Rear Yard and not located within any side or rear setback lines. Such structures shall be constructed of wood or other material as approved by the committee with natural coloring or may be painted or stained brown or gray. Structures that include colored items of equipment, such as a slide or swing set seats, so long as all such equipment is the same color. Any play structures that include a roof shall be shingled in the same color as the dwelling. All play equipment on any one lot shall be the same colors.

- a. **Specifications.** In general, any commercially available goal will be acceptable. Goals with home-made backboards or posts will not be acceptable. Backboards must be clear or painted white. The post should be painted in subdued colors so as to blend in with the surroundings as much as possible. All goals must be maintained. Any backboard or goal that becomes broken or damaged, must be repaired, replaced or removed. Any lighting for the goal must be directed away from any neighboring dwelling or patio or deck areas.
- b. **Location.** No basketball goals shall be permitted in the front of any lot or dwelling. No goal may be attached to any dwelling or garage. No goal may be placed forward of the rear elevation line of any house. On corner lots, goals must be located behind the rear elevation line of the house and at least fifteen (15) feet back from the setback line on the "side" yard adjacent to the street. All goals must be located at least ten (10) feet back from any property line. A portable basketball goal may be located on a driveway for the period of its current use. No portable goals will be permitted to be used in driveways of corner lots. Any portable goal must be put away after use. Any portable goal left out overnight shall be considered in violation of these guidelines.



- c. **Use.** Use shall be limited to reasonable play hours depending upon seasons. No use will be permitted after 11 pm, nor earlier than 9:00 am. The Board shall have the right to set different hours in the event that use creates an unreasonable disturbance.

**Air Conditioning and Heat Pump Equipment.** Air conditioning and heat pump equipment shall be located in side yards or Rear Yards. To the extent reasonably possible, such equipment shall be screened from view in a manner approved for each particular lot.

**Fencing.** Standard chain link or other metal fences shall not be permitted. Fences may be erected only in the Rear Yard. On corner lots, fences may not be placed within the setback on the street side. Perimeter fences are permitted if they are three rail wood split rail not to exceed five (5) feet in height or privacy fences not to exceed six (6) feet in height. Wire fencing material (4" x 4" dog wire) may be attached to the split rail fences for additional enclosure. All swimming pool fencing shall be reviewed on an individual basis in accordance with general standard hereinafter set forth. Decorative fencing will be reviewed upon an individual basis considering the visual impact on surrounding lots. The Declarant and the Association reserve the right to restrict fencing in areas where its presence would adversely impact the aesthetics of the community.

**Radio and Television Antennas.** These guidelines are to be interpreted so as to balance the right of the individual owners to receive acceptable quality broadcast signals in accordance with F.C.C. regulations with the right and duty of the Association to preserve, protect and enhance the value of the properties within the subdivision.

A. **Prohibited Apparatus.** All exterior antennas, except the following, are prohibited:

1. an antenna that is designed to receive direct broadcast satellite service, including direct-to-home satellite services, that is one meter or less in diameter; or
2. an antenna that is designed to receive video programming services via multipoint distribution services, including multichannel multipoint distribution services, instructional television fixed services, and local multipoint distribution services, and that is one meter or less in diameter or diagonal measurement; or
3. an antenna that is designed to receive television broadcast signals.

B. **Permitted Locations.**

An antenna must be located in the rear yard or on the rear of the Dwelling Unit in such a manner so as not to be visible by a person of normal height standing at the edge of the street directly in front of the Dwelling Unit. Other locations are permitted if placement under these guidelines precludes reception of an acceptable quality signal. In such case, the owner and the Declarant or the Association shall attempt to find a location with the least visual impact upon the surrounding properties. An "acceptable quality signal" is one that is intended for reception in the viewing area and is consistent with the quality of signals received by others

in the immediate vicinity. No location shall be permitted if installation creates a line of sight problem for drivers in the vicinity. The Declarant or the Association may prohibit a location that imposes a legitimate safety concern. An example of a location that imposes a legitimate safety concern is one that is near high voltage power lines or one where the guy wires obstruct legitimate pedestrian access

**C. Other Requirements.**

The Declarant or the Association may require that the antenna be painted in a fashion that will not interfere with reception so that it blends into the background against which it is mounted or that the antenna be screened so as to reduce the visual impact. Any such requirements must be reasonable in light of the cost of the equipment or services and the visual impact of the antenna. The Declarant or the Association may impose restrictions on methods of installation that create legitimate safety concerns. For example, permitted methods of installation may include reasonable height restrictions and adequate bolting and guying.

**D. Continued Maintenance.**

Each owner shall maintain any antenna in a reasonable manner so as not become unsightly. Each owner shall remove any antenna upon cessation of its use.

**Landscaping.** Landscaping and normal lawn are required around all houses.

**Lot Maintenance.** All lots must be kept mowed and free of debris and clutter. During any construction, each Owner and Builder shall be responsible for keeping the streets and adjacent lots clean and free of debris. No fill material shall be dumped on any lot except within five (5) days of commencement of construction. The Association shall have the right to assess any owner for the costs of mowing or clean up in the event that the owner fails to do so.

**Lot Grading.** The Builder and Owners shall be responsible to regrade the Lot in accordance with the grading plan as approved by Brimfield Township and Portage County. Any deviations from such plan must be preapproved by the Township, County and the Developer.

**Mailboxes.** All mailboxes must conform to the specifications set forth in the appendix to these guidelines. Declarant or Association reserves the right to disapprove of any mailbox style.

**House Numbers.** House numbers must be placed on all mailboxes.

**Exterior Lighting.** All Lots shall have an exterior light post which must conform to the specifications set forth in the appendix to these guidelines. Plans showing sufficient detail as to size, wattage and type of bulb to be used in the exterior lighting must be submitted to the Committee prior to installation. Exterior lighting must be directed in such a manner so as not to intrude into neighboring lots and houses.

**Discretion.** Any discretion to be exercised in the review of plans shall be that of the Committee.

**Variations.** The developer or the committee may grant variations from these guidelines if such variance will not be of substantial detriment to adjacent lots and will not materially impair these guidelines and the overall best interest of the subdivision.

**Right to Modify Guidelines.** The Developer reserves the right to modify these guidelines, provided however, that no such modification shall be made that will materially and adversely affect the overall character of the properties as a first class development.

**SUPPLEMENTAL DECLARATION  
OF COVENANTS, CONDITIONS AND RESTRICTIONS,  
AND RESERVATION OF EASEMENTS  
FOR SUGAR MAPLE HILLS HOMEOWNERS ASSOCIATION, INC.**

*WHEREAS*, the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Sugar Maple Hills Homeowners Association, Inc. (the "Declaration") was recorded as Instrument No. 200532365 in the Official Records of Portage County, Ohio on December 5, 2005;

*WHEREAS*, the Amendment to the Declaration of Covenants, Conditions and Restrictions and Reservation of Easements for Sugar Maple Hills Homeowners Association, Inc. (the "First Amendment") was recorded as Instrument No. 200627059 in the Official Records of Portage County, Ohio on October 18, 2006;

*WHEREAS*, Sugar Maple Hills, LLC is the Declarant of the Declaration and First Amendment;

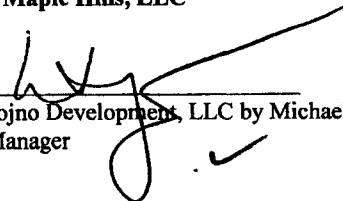
*WHEREAS*, Article XII, Section 12.1 of the Declaration provides that the Declarant may submit all or any portion of the Additional Land, as defined in the Declaration, to the terms of the Declaration without consent of the Owners for a period of seven (7) years, beginning on the date of recording of the Declaration, by filing a Supplemental Declaration identifying the Additional Land, the Lots and the Common Elements to be submitted to and incorporated into the Declaration; and

*WHEREAS*, Declarant desires to submit and incorporate into the Declaration that portion of the Additional Land described on Exhibit "A" attached hereto.

*NOW, THEREFORE*, pursuant to Article XII, Section 12.1 of the Declaration, Declarant hereby submits the property described in Exhibit A to the terms of the Declaration and First Amendment and incorporates said property into the Declaration as if said property were originally defined as "Property" under Article I, Section 1.19 thereof.

*IN WITNESS WHEREOF*, Sugar Maple Hills, LLC has caused this instrument to be signed, this 14<sup>th</sup> day of November, 2006.

Sugar Maple Hills, LLC ✓

By:   
Wojno Development, LLC by Michael G. Wojno  
Its: Manager ✓

*State of Ohio*  
*County of Summit*

The foregoing instrument was acknowledged before me, this 14<sup>th</sup> day of November, 2006, by Michael G. Wojno for Wojno Development, LLC, as Manager of Sugar Maple Hills, LLC, an Ohio limited liability company, on behalf of the company.

  
Notary Public, State of Ohio

PREPARED BY:  
ERIN WOJNO, ESQ.  
453 S. HIGH ST., STE. 303  
AKRON, OHIO 44311



ERIN WOJNO  
ATTORNEY AT LAW  
Notary Public, State of Ohio  
My Commission Has No Expiration  
Section 147.03 R.C.

EXHIBIT A

KT  
BONNIE M. HOWE  
PORTAGE CO. RECORDER

20 0629710 2178

RECEIVED FOR RECORD

AT 15:18:27

FEE 32.00

**INDEXED**

Situated in the Township of Brimfield, County of Portage and State of Ohio:

And known as being Sublot Nos. 40 through 62, Block A-R and Open Space F, G and H of Sugar Maple Hills Phase Two as recorded in Plat 2006-91 of Portage County Records of Plats.