

Homeowner Association Recorded Documents

Contents

1. Declaration of Covenants, Conditions and Restrictions for Northside Lofts Master Association, Inc.
2. Declaration and By-Laws Creating and Establishing a plan for Condominium Ownership under Chapter 5311 of the revised code of Ohio for Northside Lofts Condominium I
3. Declaration of Covenants, Conditions and Restrictions for Townhomes at Northside
4. First Supplemental Declaration of Covenants, Conditions and Restrictions for Northside Lofts Master Association, Inc
5. Condominium Development Disclosure Statement required pursuant to Section 5311.26 of the Ohio Revised Code

RECEIPT

The undersigned acknowledges the receipt from Testa Enterprises, Inc. the following documents:

1. Declaration of Covenants, Conditions and Restrictions for Northside Lofts Master Association, Inc.
2. Declaration and By-Laws Creating and Establishing a plan for Condominium Ownership under Chapter 5311 of the revised code of Ohio for Northside Lofts Condominium I
3. First Supplemental Declaration of Covenants, Conditions and Restrictions for Northside Lofts Master Association, Inc
4. Declaration of Covenants, Conditions and Restrictions for Townhomes at Northside
5. Condominium Development Disclosure Statement required pursuant to Section 5311.26 of the Ohio Revised Code for:

NORTHSIDE LOFTS CONDOMINIUM I

this ____ day of _____, 2010.

Signature(s) of Prospective Purchaser(s)*

***Signing this receipt does not obligate you in any way but is merely evidence that the seller has complied with requirements of Ohio Law to provide certain information and opinions to you.**

THESE DOCUMENTS CONTAIN MATERIAL CIRCUMSTANCES AND FEATURES AFFECTING NORTHSIDE LOFTS CONDOMINIUM I WHICH SHOULD BE REVIEWED CAREFULLY BY PROSPECTIVE RESIDENTIAL PURCHASERS. ORAL REPRESENTATIONS CANNOT BE RELIED UPON AS CORRECTLY STATING THE REPRESENTATIONS OF THE DEVELOPER.

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
NORTHSIDE LOFTS MASTER ASSOCIATION, INC.

THIS MASTER DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made as of MARCH 6, 2007, by Testa Enterprises, Inc., an Ohio corporation ("Declarant").

SPLIT/COMBINE/NEW
LEGAL DESCRIPTION
APPROVED BY
GIS



John A Donofrio, Summit Fiscal Officer

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EXHIBIT A – Land Initially Submitted
EXHIBIT B – Initial Restrictions and Rules
EXHIBIT C – By-Laws



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PART ONE: INTRODUCTION TO THE COMMUNITY

Article I

Creation of the Community

1.0 Purpose and Intent.

Declarant intends by Recording this Declaration to establish a general plan of development for the Community. This Declaration provides a flexible and reasonable procedure for the Community's future expansion as Declarant deems appropriate and provides for its overall development, administration, maintenance and preservation. An integral part of the development plan is the creation of the Association, which is comprised of all owners of real property in the Community, to own, operate, and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration.

1.1 Binding Effect.

All of the Property shall be owned, conveyed, and used subject to all of the provisions of this Declaration, which shall run with the title to such property. This Declaration shall be binding upon all Persons having any right, title, or interest in any portion of the Community, their heirs, successors, successors-in-title, and assigns. This Declaration, as it may be amended, shall remain in effect and shall be enforceable by Declarant, the Association, any Owner, and their respective legal representatives, heirs, successors, and assigns, for a term of 50 years from the date this Declaration is Recorded. After such time, this Declaration shall be extended automatically for successive periods of 10 years each, unless an instrument signed by 85% of the then Owners has been Recorded within the year preceding any extension, agreeing to terminate this Declaration, in which case it shall terminate as of the date specified in such instrument. Notwithstanding this, if any provision of this Declaration would be unlawful, void, or voidable by reasons of applicable law restricting the period of time that covenants on land may be enforced, such provision shall expire 21 years after the death of the last survivor of the now living descendants of George W. Bush, current President of the United States of America. Nothing in this Section shall be construed to permit termination of any easement created in this Declaration without the consent of the holder of such easement.

1.2 Governing Documents.

The Community's Governing Documents consist of:

- this Declaration and any Recorded Supplemental Declarations;
- Northside Lofts Master Association, Inc.'s Articles of Incorporation and By-Laws;



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- Restrictions and Rules described in **Article III**;
- Design Guidelines described in **Article IV**; and
- the Board's resolutions;

all as they may be amended from time to time.

Neighborhoods within the Community will be subject to additional covenants, restrictions, and easements, which a Neighborhood Association may administer. In such case, if there is a conflict between or among the Governing Documents and any such additional covenants or restrictions, or the governing documents or policies of any such Neighborhood Association, the Governing Documents shall control, except to the extent that the Neighborhood provisions establish a higher or stricter standard or requirement for that Neighborhood.

Nothing in this Section shall preclude any Supplemental Declaration or other Recorded covenants applicable to any portion of the Community from containing additional restrictions or provisions which are more restrictive than the provisions of this Declaration and, in such case, the more restrictive shall control. The Association may, but shall not be required to, enforce any such covenants, restrictions, or other instruments applicable to any Neighborhood. The Governing Documents apply to all Owners and Occupants of Property within the Community, as well as to their respective tenants, guests, and invitees. Any lease on a Unit shall provide that the tenant and all Occupants of the leased Unit are bound by and obligated to comply with the Governing Documents.

If any court should determine that any provision of this Declaration is invalid, or invalid as applied in a particular instance, such determination shall not affect the validity of other provisions or applications of such provision.

Article II

Concepts and Definitions

The terms used in the Governing Documents shall generally be given their natural, commonly accepted definitions unless otherwise specified. Capitalized terms shall be defined as set forth below.

"Area of Common Responsibility": The Common Area, together with such other areas, if any, for which the Association has or assumes responsibility pursuant to the terms of this Declaration, any Supplemental Declaration or other applicable covenants, contracts, or agreements.

"Articles": The Association's Articles of Incorporation, as they may be amended.



"Association": Northside Lofts Master Association, Inc., an Ohio non-profit corporation, to be comprised of all owners of real property in the Community, the purpose of which shall be to own, operate, and/or maintain various common areas and community improvements and to administer and enforce this Declaration and the other Governing Documents referenced in this Declaration.

"Base Assessment": Assessments levied on all Units subject to assessment under **Article VIII** to fund Common Expenses for the general benefit of all Units, as determined in accordance with **Section 8.1**.

"Board" or "Directors": The Association's board of directors.

"Builder": Any Person who purchases one or more Units for the purpose of constructing improvements for later sale to consumers, in the ordinary course of its business.

"By-Laws": The By-Laws of the Association, as they may be amended. A copy of the initial By-Laws is attached to this Declaration as **Exhibit C**.

"Class B Control Period": The period of time during which the Class "B" Member is entitled to appoint a majority of the members of the Board as provided in **Section 3.5** of the By-Laws. The Class "B" Control Period shall terminate on the first to occur of the following:

(a) when 100% of the total number of Units to be constructed on the Property have certificates of occupancy issued thereon and have been conveyed to Class "A" Members other than Builders;

(b) December 31, 2037; or

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

"Common Area": All real and personal property, including easements, which the Association owns, leases, or otherwise holds possessory or use rights in for the common use and enjoyment of the Owners. The term shall include the Limited Common Area, as defined below.

"Common Expenses": The actual and estimated expenses incurred, or anticipated to be incurred, by the Association for the general benefit of all Owners, including any reasonable reserve, as the Board may find necessary and appropriate pursuant to the Governing Documents.

"Community": The planned community known as Northside Lofts, which shall consist of the Property and all improvements thereon.

"Community-Wide Standard": The standard of conduct, maintenance, or other activity generally prevailing at the Community, or the minimum standards established pursuant to the Design Guidelines, Restrictions and Rules, and Board resolutions, whichever is the highest



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standard. Declarant shall establish initially such standard and it may contain both objective and subjective elements. The Community-Wide Standard may evolve as development progresses and as the needs and desires within the Community change.

"Declarant": The Declarant named above, and any successor or assign who takes title to any portion of the Property for the purpose of development and/or sale and who is designated as Declarant in a Recorded instrument the immediately preceding Declarant executes.

"Design Guidelines": The architectural, design, and construction guidelines and review procedures adopted pursuant to **Article IV**, as they may be amended.

"Limited Common Area": A portion of the Common Area primarily benefiting one or more, but less than all, Neighborhoods, as more particularly described in **Article XIII**.

"Master Declaration": This Master Declaration of Covenants, Conditions and Restrictions for Northside Lofts Association.

"Member": A member of the Association pursuant to **Article VI**.

"Member Representative": A representative of a Member which has been properly designated as provided herein. Synonymous with a "Neighborhood Representative."

"Mortgage": A mortgage, a deed to secure debt, or any other form of security instrument affecting title to any Unit. The term "Mortgagee" shall refer to a beneficiary or holder of a Mortgage.

"Neighborhood": A Unit or group of Units designated as a separate Neighborhood for purposes of sharing Limited Common Areas and/or receiving other benefits or services from the Association which are not provided to all Units, and/or for the purpose of exercising voting and other rights as provided hereunder. A Neighborhood may consist of one or more housing types, including, without limitation, condominium units, and/or townhomes, commercial facilities, and/or recreational facilities, and other elements, all as approved by Declarant, and may include noncontiguous parcels of property. Where the context permits or requires, the term Neighborhood shall also refer to the Neighborhood Committee (established in accordance with the By-Laws) or Neighborhood Association, if any, having concurrent jurisdiction over the property within the Neighborhood. Neighborhood boundaries may be established and modified as provided herein.

"Neighborhood Assessments": Assessments levied against the Units in a particular Neighborhood or Neighborhoods to fund Neighborhood Expenses, as described in **Section 8.2**.

"Neighborhood Association": A condominium association or townhome association having jurisdiction over any Neighborhood concurrent with (but subject to) the jurisdiction of the Association.



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PART TWO: CREATION AND MAINTENANCE OF COMMUNITY STANDARDS

Article III

Use and Conduct

3.1 Framework for Regulation.

The Governing Documents establish, as part of the general plan of development for the Community, a framework of affirmative and negative covenants, easements, and restrictions which govern the Community. Within that framework, the Board and the Members must have the ability to respond to unforeseen problems and changes in circumstances, conditions, needs, desires, trends, and technology. Therefore, this Article establishes procedures for modifying and expanding the initial Restrictions and Rules set forth in **Exhibit B**. This Article is not intended to apply to rules and regulations relating to use and operation of the Common Area which the Board may adopt by resolution pursuant to **Section 7.1(c)**.

3.2 Rule Making Authority.

(a) Subject to the terms of this Article and the Board's duty to exercise business judgment and reasonableness on behalf of the Association and its Members, the Board may modify, cancel, limit, create exceptions to, or expand the Restrictions and Rules. The Board shall send notice by mail to the Member Representatives concerning any proposed action at least 15 business days prior to the Board meeting at which such action is to be considered.

Such action shall become effective after compliance with **subsection (c)** below unless Members representing more than 50% of the total Class "A" votes in the Association, and the Class "B" Member, if any, disapprove. The Board shall have no obligation to call a meeting of the Members to consider disapproval except upon receipt of a petition of the Members as required for special meetings in the By-Laws. Upon such petition of the Members prior to the effective date of any Board action under this Section, the proposed action shall not become effective until after such meeting is held, and then subject to the outcome of such meeting.

(b) Prior to any action taken under this Section becoming effective, the Board shall send a copy of the new rule or explanation of any changes to the Restrictions and Rules to each Owner. The effective date shall be not less than 30 days following distribution to Owners. The Association shall provide, without cost, a copy of the Restrictions and Rules then in effect to any requesting member or Mortgagee.

(c) No action taken under this Article shall have the effect of modifying, repealing, or expanding the Design Guidelines or any provision of this Declaration other than the initial Restrictions and Rules set forth in **Exhibit B**. In the event of a conflict between the Design Guidelines and the Restrictions and Rules, the Design Guidelines shall control.

(d) The procedures required under this Section shall not apply to the enactment and



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enforcement of administrative rules and regulations governing use of the Common Area unless the Board chooses in its discretion to submit to such procedures. An example of such administrative rules and regulations shall include, but not be limited to the methods of allocating or reserving use of a facility (if permitted) by particular individuals at particular times.

3.3 Owner's Acknowledgment and Notice to Purchasers.

ALL OWNERS ARE GIVEN NOTICE THAT USE OF THEIR UNITS AND THE COMMON AREA IS LIMITED BY THE RESTRICTIONS AND RULES AS AMENDED, EXPANDED, AND OTHERWISE MODIFIED FROM TIME TO TIME. EACH OWNER, BY ACCEPTANCE OF A DEED, ACKNOWLEDGES AND AGREES THAT THE USE AND ENJOYMENT AND MARKETABILITY OF HIS OR HER UNIT CAN BE AFFECTED BY THIS PROVISION AND THAT THE RESTRICTIONS AND RULES MAY CHANGE FROM TIME TO TIME. ALL PURCHASERS OF UNITS ARE ON NOTICE THAT THE ASSOCIATION MAY HAVE ADOPTED CHANGES. COPIES OF THE CURRENT RESTRICTIONS AND RULES MAY BE OBTAINED FROM THE ASSOCIATION.

3.4 Protection of Owners and Others.

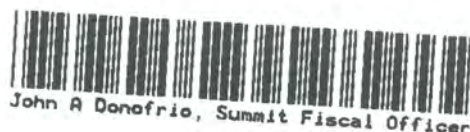
Except as may be set forth in this Declaration (either initially or by amendment) or in the initial Restrictions and Rules set forth in **Exhibit B**, all Restrictions and Rules shall comply with the following provisions.

(a) **Similar Treatment.** Similarly situated Owners shall be treated similarly; however, the Restrictions and Rules may vary by Neighborhood or Unit use, such as commercial vs. residential use.

(b) **Displays.** The rights of Owners to display religious and holiday signs, symbols, and decorations inside structures on their Units of the kinds normally displayed in dwellings located in single-family residential neighborhoods shall not be abridged so long as the displays are not visible from outside the dwelling.

(c) **Household Composition.** No rule shall interfere with the freedom of Owners to determine the composition of their households, except that the Association shall have the power to require that all occupants be members of a single housekeeping unit (which may include extended family) and to limit the total number of occupants permitted in each Unit on the basis of the size and facilities of the Unit and its fair use of the Common Area, to the extent permitted by law.

(d) **Activities within Dwellings.** The Association may restrict activities within a Unit that create a danger to the health or safety of occupants of other Units, that generate excessive noise, that create unsightly conditions visible outside the dwelling, or that create an unreasonable source of annoyance.

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(e) **Allocation of Burdens and Benefits.** No rule shall alter the allocation of financial burdens among the various Units or rights to use the Common Area to the detriment of any Owner over that Owner's objection expressed in writing to the Association. Nothing in this provision shall prevent the Association from changing the Common Area available, from adopting generally applicable rules for use of Common Area, or from denying use privileges to those who are delinquent in paying assessments, abuse the Common Area, or violate the Governing Documents. This provision does not affect the right to increase the amount of assessments as provided in **Article VIII**.

(f) **Abridging Existing Rights.** No rule shall require an Owner to dispose of personal property that was in or on a Unit prior to the adoption of such rule if such personal property was in compliance with all rules previously in force. This exemption shall apply only during the period of such Owner's ownership of the Unit, and shall not apply to subsequent owners who take title to the Unit after adoption of the rule.

(g) **Reasonable Rights to Develop.** No rule or action by the Association or Board shall unreasonably impede Declarant's right to develop the Community.

The limitations in **subsections (a) through (g)** of this Section shall only limit rulemaking authority exercised under **Section 3.2**; they shall not apply to amendments to this Declaration adopted in accordance with **Article XIX**.

Article IV

Architecture and Landscaping

4.1 General.

No structure or thing shall be placed, erected, or installed upon any Unit and no improvements or other work shall take place within the Community, except in compliance with this Article and the Design Guidelines. Any Owner may paint or redecorate the interior of his or her Unit without approval. However, modifications to the interior of a Unit involving porches, patios, terraces or any other portion of a Unit visible from outside the structure require the Association's prior written approval. All dwellings constructed on any portion of the Community shall be designed by and built in accordance with the plans and specifications of a licensed architect unless Declarant or its designee otherwise approves in its sole discretion. This Article shall not apply to Declarant's activities, nor to activities of the Association during the Class "B" Control Period.

4.2 Architectural Review.

(a) **By Declarant.** Each Owner, by accepting a deed or other instrument conveying any interest in any portion of the Community, acknowledges that, as the developer of the Community and as an owner of portions of the Community, Declarant has a substantial interest in ensuring that the improvements within the Community enhance Declarant's reputation as a community developer and do not impair Declarant's ability to market, sell, or lease its property. Therefore,



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each Owner agrees that no activity within the scope of this Article shall be commenced on such Owner's Unit unless and until Declarant or its designee has given its prior written approval for such activity, which approval may be granted or withheld in the Declarant's or its designee's sole discretion. In reviewing and acting upon any request for approval, Declarant or its designee shall be acting solely in Declarant's interest and shall owe no duty to any other Person. Declarant's rights reserved under this Article shall continue so long as Declarant owns any portion of the Community or any real property adjacent to the Community, unless earlier terminated in a written instrument executed and Recorded by Declarant. Declarant may, in its sole discretion, designate one or more Persons from time to time to act on its behalf in reviewing applications hereunder. Declarant may from time to time, but shall not be obligated to, delegate all or a portion of its reserved rights under this Article to (i) a design review board appointed by the Board (the "**Design Review Board**" or "**DRB**"), or (ii) a committee comprised of architects, engineers, or other persons who may or may not be Members of the Association. Any such delegation shall be in writing specifying the scope of responsibilities delegated. It shall be subject to (i) Declarant's right to revoke such delegation at any time and reassume jurisdiction over the matters previously delegated and (ii) Declarant's right to veto any decision which Declarant determines, in its sole discretion, to be inappropriate or inadvisable for any reason. So long as Declarant has any rights under this Article, the jurisdiction of the foregoing entities shall be limited to such matters as Declarant specifically delegates to them.

(b) **Design Review Board.** Upon delegation by Declarant or upon expiration or termination of Declarant's rights under this Article, the Association, acting through the DRB, shall assume jurisdiction over architectural matters. The DRB, when appointed, shall consist of at least three, but not more than seven, persons who shall serve and may be removed and replaced in the Board's discretion. The members of the DRB need not be Members of the Association or representatives of Members, and may, but need not, include architects, engineers, or similar professionals, who may be compensated in such manner and amount, if any, as the Board may establish. Unless and until such time as Declarant delegates all or a portion of its reserved rights to the DRB or Declarant's rights under this Article terminate, Declarant shall have sole jurisdiction over architectural matters.

(c) **Fees; Assistance.** For purposes of this Article, the entity having jurisdiction in a particular case shall be referred to as the "**Reviewer.**" The Reviewer may establish and charge reasonable fees for review of applications and may require such fees to be paid in full prior to review of any application. Such fees may include the reasonable costs incurred in having any application reviewed by architects, engineers, or other professionals. Declarant and the Association may employ architects, engineers, or other persons as deemed necessary to perform the review. The Board may include the compensation of such persons in the Association's annual operating budget.

4.3 Guidelines and Procedures.

(a) **Design Guidelines.** Declarant may prepare the initial Design Guidelines, which may contain general provisions applicable to the entire Community as well as specific provisions which vary from Neighborhood to Neighborhood. The Design Guidelines are intended to provide



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guidance to Owners and Builders regarding matters of particular concern to the Reviewer in considering applications. The Design Guidelines are not the exclusive basis for decisions of the Reviewer and compliance with the Design Guidelines does not guarantee approval of any application. Declarant shall have sole and full authority to amend the Design Guidelines as long as it owns any portion of or has a right to expand the Community pursuant to **Section 9.1**, notwithstanding a delegation of reviewing authority to the DRB, unless Declarant also delegates the power to amend to the DRB. Upon termination or delegation of Declarant's right to amend, the DRB shall have the authority to amend the Design Guidelines with the consent of the Board. Any amendments to the Design Guidelines shall be prospective only and shall not apply to require modifications to or removal of structures previously approved once the approved construction or modification has commenced. There shall be no limitation on the scope of amendments to the Design Guidelines, and such amendments may remove requirements previously imposed or otherwise make the Design Guidelines less restrictive. The Reviewer shall make the Design Guidelines available to Owners and Builders who seek to engage in construction within the Community.

(b) Procedures. Except as otherwise specifically provided in the Design Guidelines, no activities shall commence on any portion of the Community until an application for approval has been submitted to and approved by the Reviewer. Such application shall include plans and specifications showing site layout, structural design, exterior elevations and building heights on each elevation, exterior materials and colors, landscaping, drainage, exterior lighting, irrigation, and other features of proposed construction, as applicable. The Design Guidelines and the Reviewer may require the submission of such additional information as may be reasonably necessary to consider any application. In reviewing each submission, the Reviewer may consider any factors it deems relevant, including, without limitation, harmony of external design with surrounding structures and environment. Decisions may be based on purely aesthetic considerations. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular improvements. The Reviewer shall have the sole discretion to make final, conclusive, and binding determinations on matters of aesthetic judgment and such determinations shall not be subject to review so long as made in good faith and in accordance with the procedures set forth herein. The Reviewer shall make a determination on each application within 30 days after receipt of a completed application and all required information. The Reviewer may (i) approve the application, with or without conditions; (ii) approve a portion of the application and disapprove other portions; or (iii) disapprove the application. Until expiration of Declarant's rights under this Article, the DRB shall notify Declarant in writing within three business days after the DRB has approved any application within the scope of matters delegated to the DRB by Declarant. The notice shall be accompanied by a copy of the application and any additional information which Declarant may require. Declarant shall have 10 days after receipt of such notice to veto any such action, in its sole discretion, by written notice to the DRB. The Reviewer shall notify the applicant in writing of the final determination on any application within five days thereafter or, with respect to any determination by the DRB subject to Declarant's veto right, within five days after the earlier of: (i) receipt of notice of Declarant's veto or waiver thereof; or (ii) expiration of the 10-day period for exercise of Declarant's veto. In the case of disapproval, the Reviewer may, but shall not be obligated to, specify the reasons for any objections and/or offer

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suggestions for curing any objections.

If the Reviewer fails to respond in a timely manner, approval shall be deemed to have been denied. No approval may be inconsistent with the Design Guidelines unless a written variance has been granted pursuant to **Section 4.5**. Notice shall be deemed to have been given at the time the envelope containing the response is deposited with the mail carrier. Personal delivery of such written notice shall, however, be sufficient and shall be deemed to have been given at the time of delivery to the applicant. If construction does not commence on a project for which plans have been approved within one year after the date of approval, such approval shall be deemed withdrawn and it shall be necessary for the Owner to reapply for approval before commencing any activities. Once construction is commenced, it shall be diligently pursued to completion. All work shall be completed within one year of commencement unless otherwise specified in the notice of approval or unless the Reviewer grants an extension in writing, which it shall not be obligated to do. If approved work is not completed within the required time, it shall be considered nonconforming and shall be subject to enforcement action by the Association, Declarant or any aggrieved Owner. The Reviewer may, by resolution, exempt certain activities from the application and approval requirements of this Article, provided such activities are undertaken in strict compliance with the requirements of such resolution.

4.4 No Waiver of Future Approvals.

Each Owner acknowledges that the persons reviewing applications under this Article will change from time to time and that opinions on aesthetic matters, as well as interpretation and application of the Design Guidelines, may vary accordingly. In addition, each Owner acknowledges that it may not always be possible to identify objectionable features until work is completed, in which case it may be unreasonable to require changes to the improvements involved, but the Reviewer may refuse to approve similar proposals in the future. Approval of applications or plans, or in connection with any other matter requiring approval, shall not be deemed to constitute a waiver of the right to withhold approval as to any similar applications, plans, or other matters subsequently or additionally submitted for approval.

4.5 Variances.

The Reviewer may authorize variances from compliance with any of its guidelines and procedures when circumstances such as topography, natural obstructions, hardship, or aesthetic or environmental considerations require, but only in accordance with duly adopted rules and regulations. No variance shall (a) be effective unless in writing; (b) be contrary to this Declaration; or (c) estop the Reviewer from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the issuance of any permit, or the terms of any financing shall not be considered a hardship warranting a variance.

4.6 Limitation of Liability.

The standards and procedures established by this Article are intended as a mechanism for



maintaining and enhancing the overall aesthetics of the Community; they do not create any duty to any Person. Review and approval of any application pursuant to this Article is made on the basis of aesthetic considerations only, and the Reviewer shall not bear any responsibility for ensuring the structural integrity or soundness of approved construction or modifications, nor for ensuring compliance with building codes and other governmental requirements, nor for ensuring that all dwellings are of comparable quality, value or size, of similar design, or aesthetically pleasing or otherwise acceptable to neighboring property owners. Declarant, the Association, the Board, any committee, or member of any of the foregoing shall not be held liable for soil conditions, drainage, or other general site work; any defects in plans revised or approved hereunder; any loss or damage arising out of the action, inaction, integrity, financial condition, or quality of work of any contractor or its subcontractors, employees or agents, whether or not Declarant has approved or featured such contractor as a builder in the Community; or any injury, damages, or loss arising out of the manner or quality or other circumstances of approved construction on or modifications to any Unit. In all matters, the Board, the DRB, and the members of each shall be defended and indemnified by the Association as provided in **Section 7.6**.

4.7 Certificate of Compliance.

Any Owner may request that the Reviewer issue a certificate of architectural compliance certifying that there are no known violations of this Article or the Design Guidelines. The Association shall either grant or deny such request within 30 days after receipt of a written request and may charge a reasonable administrative fee for issuing such certificates. Issuance of such a certificate shall estop the Association from taking enforcement action with respect to any condition as to which the Association had notice as of the date of such certificate.

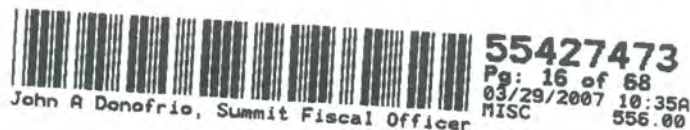
4.8 Archeological Finds.

If any object, artifact, or structure of possible archeological or historical significance is unearthed or otherwise discovered during construction, landscaping, or other activity on a Unit, the Owner thereof shall immediately cease the activity so as not to further disturb the object or structure and shall notify the Association of the discovery. Until such time as the Association and all required governmental authorities have evaluated the find, provided for its removal and/or preservation, if necessary, and given the Unit Owner notice that activities on the Unit may continue, the construction, landscaping, or other activity shall not recommence. Any work stoppage required hereunder shall toll the one year limit for completion of an approved Community as specified in **Section 4.3(b)**. Each Owner agrees to notify all Persons performing any construction, landscaping, excavation, or other work on his or her Unit of the obligations hereunder.

Article V

Maintenance and Repair

5.1 Maintenance of Units.



Each Owner shall maintain his or her Unit and all landscaping and improvements comprising a part thereof in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants, unless such maintenance responsibility is otherwise assumed by or assigned to the Association or a Neighborhood pursuant to any Supplemental Declaration or other declaration of covenants applicable to such Unit.

5.2 Maintenance of Neighborhood Property.

All Neighborhood Associations shall maintain their common property and any other property for which they have maintenance responsibility in a manner consistent with the Governing Documents, the Community-Wide Standard, and all applicable covenants. Upon resolution of the Board, Owners within each Neighborhood shall be responsible for paying, through Neighborhood Assessments, the costs of operating, maintaining, and insuring certain portions of the Area of Common Responsibility within or adjacent to such Neighborhood. This may include, without limitation, the costs of maintaining any signage, entry features, right-of-way, and green space between the Neighborhood and adjacent public roads, regardless of ownership and regardless of the fact that such maintenance may be performed by the Association; provided, however, all Neighborhoods which are similarly situated shall be treated the same. The Association may assume maintenance responsibility for property within any Neighborhood, in addition to that designated by any Supplemental Declaration, either by agreement with the Neighborhood or because, in the opinion of the Board, the level and quality of service then being provided is not consistent with the Community-Wide Standard. All costs of maintenance pursuant to this paragraph shall be assessed as a Neighborhood Assessment only against the Units within the Neighborhood to which the services are provided. The provision of services in accordance with this Section shall not constitute discrimination within a class.

5.3 Responsibility for Repair and Replacement.

Each Owner is responsible for the maintenance, repair and replacement duties set forth in the Supplemental Declaration applicable to that Owner's Unit. If a Unit Owner shall fail to make any such repair or perform such maintenance required pursuant to such Supplemental Declaration, and the Neighborhood Association shall also fail to make such repair or perform such maintenance within a reasonable time after notification by the Association, or if the need for maintenance or repair of any part of the Area of Common Responsibility is caused by the negligent or intentional act of any Unit Owner or Occupant, or any guests or invitees of the Owners or Occupants, or is as a result of the failure of any Unit Owner or his, her or its predecessors in title to timely pursue to conclusion a claim under any warranty, express, implied, or imposed by law, then in any such event, the Association may perform such repair or maintenance and, to the extent that the cost is not covered by insurance proceeds collected by the Association, the costs not recovered by the Association shall constitute a Specific Assessment, as hereinafter defined, on the Unit owned by such Unit Owner. The determination that such maintenance or repair is necessary, or has been so caused, shall be made by the Board.

PART THREE: COMMUNITY GOVERNANCE AND ADMINISTRATION



Article VI

The Association and Its Members

6.1 Function of Association.

The Association is the entity responsible for management, maintenance, operation, and control of the Area of Common Responsibility. The Association also is the primary entity responsible for enforcement of this Master Declaration. The Association shall perform its functions in accordance with the Governing Documents and Ohio law.

6.2 Membership.

Each Neighborhood Association shall be a Member, and only Neighborhood Associations shall be Members. There shall be only one Membership per Neighborhood Association. The Directors of each Neighborhood Association shall serve as the Directors of the Master Association. Each Neighborhood Association shall see that all Owners in its Neighborhood comply with all provisions hereof. Nevertheless, the Association shall have enforcement rights as set forth herein against all Owners directly, and all Owners shall be directly responsible to the Association to comply with all provisions hereof.

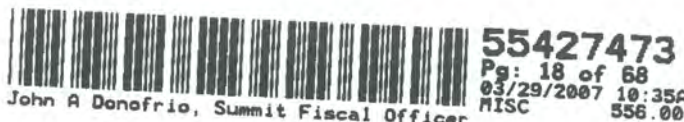
6.3 Voting.

The Association shall have two classes of membership, Class "A" and Class "B".

(a) **Class "A".** The Class "A" Members shall be the Neighborhood Associations. Each Director of a Neighborhood Association, in his or her capacity as a Director of the Master Association, shall be entitled to exercise one equal vote.

(b) **Class "B".** The sole Class "B" Member shall be the Declarant. The Class "B" Member may appoint a majority of the members of the Board during the Class "B" Control Period, as specified in the By-Laws. Additional rights of the Class "B" Member are specified in the relevant sections of the Governing Documents. After termination of the Class "B" Control Period, the Class "B" Member shall have a right to disapprove actions of the Board and committees as provided in the By-Laws. The Class "B" membership shall terminate upon the earlier of:

- (i) two years after expiration of the Class "B" Control Period pursuant to Article III of the By-Laws; or
- (ii) when, in its discretion, Declarant so determines and declares in a Recorded instrument.



Article VII

Association Powers and Responsibilities

7.1 Acceptance and Control of Association Property.

(a) The Association, through action of its Board, may acquire, hold, lease (as lessor or lessee), operate, and dispose of tangible and intangible personal property and real property. The Association may enter into leases, licenses, or operating agreements for portions of the Common Area, for such consideration or no consideration as the Board deems appropriate, to permit use of such portions of the Common Area by community organizations and by others, whether non-profit or for profit, for the provision of goods or services for the general benefit or convenience of Owners, Occupants, and residents of the Community.

(b) Declarant and its designees may convey to the Association, and the Association shall accept, personal property and fee title, leasehold, or other property interests in any real property, improved or unimproved. Upon Declarant's written request, the Association shall reconvey to Declarant any unimproved portions of the Common Area Declarant originally conveyed to the Association for no consideration, to the extent conveyed by Declarant in error or needed by Declarant to make minor adjustments in property lines.

(c) The Association shall be responsible for management, operation, and control of the Common Area, subject to any covenants and restrictions set forth in the deed or other instrument transferring such property to the Association, or in this Master Declaration. The Board may adopt such reasonable rules regulating use of the Common Area as it deems appropriate.

7.2 Maintenance of Area of Common Responsibility.

The Association shall maintain, in accordance with the Community-Wide Standard, the Area of Common Responsibility, which shall include, but need not be limited to:

(a) All land and structures situated on the Common Area;

(b) Landscaping within the public rights-of-way within or abutting the Community;

(c) Such portions of any additional property included within the Area of Common Responsibility as may be dictated by this Declaration, any Supplemental Declaration, a covenant to share costs, or any contract or agreement for maintenance thereof entered into by the Association;

(d) All ponds, streams and/or wetlands located within the Property which serve as part of the storm water drainage system for the Community, including improvements and equipment installed therein or used in connection therewith;



(e) Reasonable clearing of snow and ice from all drives (including, without limitation, the access drive serving the third floor parking facility in Northside Lofts Condominium I), walkways and parking areas serving the Community, except where another entity has voluntarily undertaken such responsibility, and provided that nothing in this paragraph shall make the Association liable for injuries of any nature incurred as a result of snow and ice on the Property; and

(f) Any property and facilities Declarant owns and makes available, on a temporary or permanent basis, for the primary use and enjoyment of the Association and its Members. Such property and facilities shall be identified by written notice from Declarant to the Association and will remain part of the Area of Common Responsibility maintained by the Association until such time as Declarant revokes such privilege of use and enjoyment by written notice to the Association.

(g) The Association may maintain other property which it does not own, including, without limitation, property dedicated to the public, if the Board determines that such maintenance is necessary or desirable to maintain the Community-Wide Standard. The Association shall not be liable for any damage or injury occurring on or arising out of the condition of property which it does not own except to the extent that it has been negligent in the performance of its duties.

7.3 Insurance

(a) **Special Form Coverage Insurance.** The Association shall obtain for the benefit of all Owners, insurance on all structures or other improvements constituting the Common Area, against loss or damage by fire, lightning, and such perils as are at this time comprehended within the term "special form coverage" in an amount not less than the replacement value thereof. Such insurance shall be written in the name of, and the proceeds therefrom shall be payable to the Association, as trustee for each Owner in the same proportions in which the Owners contribute to the Common Expenses of the Association. No Owner may at any time purchase individual policies of insurance on the Owner's interest in the Common Area as real property unless the Association shall be named as an additional insured in such policy. Such policy of insurance obtained by the Association may contain an endorsement recognizing the interest of any mortgagee or mortgagees. Such policy of insurance shall be written with a company licensed to do business in the state of Ohio and holding a rating of "A" or better by Best's Insurance Reports. Such policies shall provide for the release by the insurer thereof of any and all rights of subrogation or assignment and all causes and rights of recovery against any Owner, the Unit Owner's tenant, employee, employees or other Occupant of a Unit for recovery against any one of them for any loss occurring to the insured property resulting from any of the perils insured against under the insurance policy.

(b) **Public Liability Insurance.** The Association shall obtain and maintain a comprehensive policy of public liability insurance covering all of the Area of Common Responsibility, insuring the Association, the Board, the Unit Owners, their tenants, guests, invitees and Occupants, with such limits as the Board may determine, but not less than \$1,000,000, covering

claims for personal injury and/or property damage. This insurance shall include protection against such risks as are customarily covered with respect to developments similar in construction, location and use, as determined by the Board. This insurance shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner or Occupant because of negligent acts of the Association, the Board, other Owners or Occupants, or the manager. Such policies shall not insure against liability for personal injury or property damage arising out of or relating to activities within individual Units.

(c) **Sufficient Insurance.** If the improvements forming a part of the Common Area, or any portion thereof, shall suffer damage or destruction from any cause or peril insured against and the proceeds of any policy or policies insuring against such loss or damage and payable for reason thereof shall be sufficient to pay the cost of such repair, restoration, or reconstruction, then such repair, restoration or reconstruction shall be undertaken by the Association and the insurance proceeds shall be applied by the Association in payment therefore.

(d) **Insufficient Insurance.** If the improvements forming a part of the Common Area, or any portion thereof, shall suffer damage or destruction from any cause or peril which is not insured against, or, if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration, or reconstruction, then such repair, restoration, or reconstruction of all or any part of the Common Elements so damaged or destroyed shall be undertaken by the Association at the expense of all the Owners in the same proportions in which the Owners contribute to the Common Expenses of the Association. Should any Owner refuse or fail after reasonable notice to pay the Owner's share of such cost in excess of available insurance proceeds, the amount thereof may be advanced by the Association and the amount so advanced by the Association shall be assessed to such Owner and such assessment shall have the same force and effect and, if not paid, may be enforced in the same manner as hereinbefore provided for the non-payment of assessments.

The term "uninsured damage or destruction" as used herein shall mean loss occurring by reason of a hazard not covered by the insurance policies of the Association. The term "under insured damage or destruction" as used herein shall mean loss occurring by reason of a hazard covered by the insurance policies of the Association, but for which the proceeds are insufficient to cover the cost of repair, restoration, or reconstruction. The final determination made with the insurers as to insured, uninsured, and under insured damage or destruction shall govern.

7.4 Compliance and Enforcement.

(a) Every Owner and Occupant of a Unit must comply with the Governing Documents. The Board may impose sanctions for violation of the Governing Documents after such notice and a hearing in accordance with the procedures set forth in Section 3.22 of the By-Laws. Such sanctions may include, without limitation:

(i) imposing reasonable monetary fines which shall constitute a lien upon the violator's Unit. (If any occupant, guest or invitee of a Unit violates the Governing Documents and a fine is imposed, the fine shall first be assessed against the violator; provided, however, if the fine is not paid by the violator within the time period set by the



Board, the Owner shall pay the fine upon notice from the Board);

(ii) suspending any Person's right to use any recreational facilities within the Common Area; provided, however, nothing herein shall authorize the Board to limit ingress or egress to or from a Unit;

(iii) suspending any services provided by the Association to an Owner or the Owner's Unit if the Owner is more than 30 days delinquent in paying any assessment or other charge owed to the Association;

(iv) exercising self-help or taking action to abate any violation of the Governing Documents in a non-emergency situation;

(v) requiring an Owner, at its own expense, to remove any structure or improvement on such Owner's Unit in violation of the Governing Documents and to restore the Unit to its previous condition and, upon failure of the Owner to do so, the Board or its designee shall have the right to enter the property, remove the violation and restore the property to substantially the same condition as previously existed and any such action shall not be deemed a trespass;

(vi) without liability to any Person, precluding any contractor, subcontractor, agent, employee, or other invitee of an Owner who fails to comply with the terms and provisions of **Article IV** and the Design Guidelines from continuing or performing any further activities in the Community; and

(vii) levying Specific Assessments to cover costs incurred by the Association to bring a Unit into compliance with the Governing Documents.

In addition, the Board may take the following enforcement procedures to ensure compliance with the Governing Documents without the necessity of compliance with the procedures set forth in Section 3.24 of the By-Laws:

(i) exercising self-help in any emergency situation (specifically including, but not limited to, the towing of vehicles that are in violation of parking rules and regulations); or

(ii) bringing suit at law or in equity to enjoin any violation or to recover monetary damages or both.

In addition to any other enforcement rights, if an Owner fails properly to perform his or her maintenance responsibility, the Association may perform such maintenance responsibilities and assess all costs incurred by the Association against the Unit and the Owner as a Specific Assessment. If a Neighborhood Association fails to perform its maintenance responsibilities, the Association may perform such maintenance and assess the costs as a Specific Assessment



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against all Units within such Neighborhood. Except in an emergency situation, the Association shall provide the Owner or Neighborhood Association reasonable notice and an opportunity to cure the problem prior to taking such enforcement action. All remedies set forth in the Governing Documents shall be cumulative of any remedies available at law or in equity. In any action to enforce the Governing Documents, if the Association prevails, it shall be entitled to recover all costs, including, without limitation, attorneys' fees and court costs, reasonably incurred in such action.

(b) The decision to pursue enforcement action in any particular case shall be left to the Board's discretion, except that the Board shall not be arbitrary or capricious in taking enforcement action. Without limiting the generality of the foregoing sentence, the Board may determine that, under the circumstances of a particular case:

- (i) the Association's position is not strong enough to justify taking any or further action; or
- (ii) the covenant, restriction, or rule being enforced is, or is likely to be construed as, inconsistent with applicable law; or
- (iii) although a technical violation may exist or may have occurred, it is not of such a material nature as to be objectionable to a reasonable person or to justify expending the Association's resources; or
- (iv) that it is not in the Association's best interests, based upon hardship, expense, or other reasonable criteria, to pursue enforcement action.

Such a decision shall not be construed a waiver of the right of the Association to enforce such provision at a later time under other circumstances or preclude the Association from enforcing any other covenant, restriction, or rule. The Association, by contract or other agreement, may enforce applicable governmental ordinances, if applicable, and permit governmental authorities to enforce ordinances within the Community for the benefit of the Association and its Members.

7.5 Implied Rights; Board Authority.

The Association may exercise any right or privilege given to it expressly by the Governing Documents, or reasonably implied from or reasonably necessary to effectuate any such right or privilege. Except as otherwise specifically provided in the Governing Documents, or by law, all rights and powers of the Association may be exercised by the Board without a vote of the Membership. The Board may institute, defend, settle, or intervene on behalf of the Association in mediation, binding or non-binding arbitration, litigation, or administrative proceedings in matters pertaining to the Area of Common Responsibility, enforcement of the Governing Documents, or any other civil claim or action. However, the Governing Documents shall not be construed as creating any independent legal duty to institute litigation on behalf of or in the name of the Association. In exercising the rights and powers of the Association, making decisions on behalf of the Association, and conducting the Association's affairs, Board members



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shall be subject to, and their actions shall be judged in accordance with, the standards set forth in Section 3.23 of the By-Laws.

7.6 Indemnification of Officers, Directors and Others.

The Association shall indemnify any officer or Director of the Association or any former officer or Director of the Association or any current or former committee member of the Association and/or his, her or their respective heirs, executors and administrators, against reasonable expenses, including attorneys' fees, judgments, decrees, fines, penalties or amounts paid in settlement, actually and necessarily incurred by him or her in connection with the defense of any pending or threatened action, suit, or proceeding, criminal or civil, to which he or she is or may be made a party by reason of being or having been such officer or Director of the Association, provided it is determined in the manner hereinafter set forth that (i) such officer or Director of the Association was not and is not adjudicated to have been grossly negligent or guilty of misconduct in the performance of his or her duty to the Association; and (ii) such officer or Director acted in good faith in what he or she reasonably believed to be in, or not opposed to, the best interest of the Association; and (iii) in any criminal action, suit or proceeding, such officer or Director had no cause to believe that his or her conduct was unlawful; and (iv) in case of settlement, the amount paid in the settlement was reasonable.

The determination hereinabove required shall be made by written opinion of independent legal counsel selected by the Board. Notwithstanding the opinion of legal counsel, to the extent that an officer or Director has been successful in defense of any action, suit or proceeding, or in the defense of any claim, issue or matter he or she shall, in that event, be indemnified as set forth herein.

(a) **Advance of Expenses.** Funds to cover expenses, including attorneys' fees, with respect to any pending or threatened action, suit, or proceeding may be advanced by the Association prior to the final disposition thereof upon receipt of a request to repay such amounts.

(b) **Indemnification Not Exclusive; Insurance.** The indemnification provided for in this Section shall not be exclusive, but shall be in addition to any other rights to which any person may be entitled under the Articles of Incorporation, the Master Declaration, the By-Laws, or the rules and regulations of the Association, any insurance provided by the Association, the provisions of Section 1702.12(e) of the Ohio Revised Code, or otherwise.

(c) **Indemnification by Owners.** The officers and Directors of the Association shall not be personally liable to the Owners for any mistake of judgment, negligence, or otherwise, except for their own individual willful misconduct or bad faith. The Owners shall indemnify, defend and hold harmless each of the Trustees and officers of the Association against all contractual liabilities to third parties arising out of contracts made on behalf of the Association, except with respect to any such contracts made in bad faith or contrary to the provisions of the Master Declaration or By-Laws. Every



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agreement made by any officer or Director of the Association shall provide that such officer or Director is acting only as a representative of the Association and shall have no personal liability thereunder (except as an Owner).

(d) **Cost of Indemnification.** Any sum paid or advanced by the Association under this Section shall constitute a Common Expense. The Board shall have the power and the responsibility to raise, by special assessment or otherwise, any sums required to discharge the Association's obligations under this Section; provided, however, that the liability of any Owner arising out of the contract made by any officer or Director of the Association, or out of the aforesaid indemnity in favor of such officer or Director of the Association, shall be limited to such proportion of the total liability hereunder as such Owner's rate of assessment for Common Expenses bears to the total Common Expenses of the Association.

7.7 Access Control.

The Board, in its sole discretion, may pass such Rules as it deems reasonable and appropriate to control access to the Property; provided, however, that the Property must be kept open to business invitees of commercial Owners during regular business hours, and further provided that the Area of Common Responsibility shall generally be kept open to the public during regular business hours. For purposes of this Section, and unless otherwise defined by the Board, "regular business hours" shall mean 8:00 a.m. to 6:00 p.m., Monday through Saturday. Notwithstanding anything in this Declaration to the contrary, the Board may restrict or deny public access to the Property during special events, maintenance, repairs, emergency situations, or as otherwise provided herein.

7.8 Safety and Security.

EACH OWNER AND OCCUPANT OF A UNIT, AND THEIR RESPECTIVE GUESTS AND INVITEES, SHALL BE RESPONSIBLE FOR THEIR OWN PERSONAL SAFETY AND THE SECURITY OF THEIR PROPERTY IN THE COMMUNITY. THE ASSOCIATION MAY, BUT SHALL NOT BE OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE COMMUNITY DESIGNED TO ENHANCE THE LEVEL OF SAFETY OR SECURITY WHICH EACH PERSON PROVIDES FOR HIMSELF AND HIS PROPERTY. NEITHER THE ASSOCIATION NOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SAFETY OR SECURITY WITHIN THE COMMUNITY, NOR SHALL EITHER BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SYSTEMS OR MEASURES, INCLUDING ANY MECHANISM OR SYSTEM FOR LIMITING ACCESS TO THE COMMUNITY, CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES,



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UNDERSTANDS AND SHALL BE RESPONSIBLE FOR INFORMING THE OWNER'S TENANTS AND ALL OCCUPANTS OF THE OWNER'S UNIT THAT THE ASSOCIATION, ITS BOARD AND COMMITTEES, AND DECLARANT ARE NOT INSURERS OR GUARANTORS OF SECURITY OR SAFETY AND THAT EACH PERSON WITHIN THE COMMUNITY ASSUMES ALL RISKS OF PERSONAL INJURY AND LOSS OR DAMAGE TO PROPERTY, INCLUDING UNITS AND THE CONTENTS OF UNITS, RESULTING FROM ACTS OF THIRD PARTIES.

7.9 Powers of the Association Relating to Neighborhood Associations.

The Association shall have the power to veto any action taken or contemplated to be taken by any Neighborhood Association which the Board reasonably determines to be adverse to the interests of the Association or its Members or inconsistent with the Community-Wide Standards. The Association also shall have the power to require specific action to be taken by any Neighborhood Association in connection with its obligations and responsibilities, such as requiring specific maintenance or repairs or aesthetic changes to be effectuated and requiring that a proposed budget include certain items and that expenditures be made therefore. A Neighborhood Association shall take appropriate action required by the Association in a written notice within the reasonable time frame set by the Association in the notice. If the Neighborhood Association fails to comply, the Association shall have the right to effect such action on behalf of the Neighborhood Association and levy Specific Assessments to cover the costs, as well as an administrative charge and sanctions. Notwithstanding anything in this Section to the contrary, the Association may not require a condominium Neighborhood Association to undertake any act that would violate the mandatory provisions of the Ohio Condominium Act.

7.10 Provision of Services.

The Association may provide, or provide for, services and facilities for the Members and/or the Owners and/or their Units, and shall be authorized to enter into and terminate contracts or agreements with other entities, including Declarant, to provide such services and facilities. The Board may include the costs thereof in the Association's budget as a Common Expense and assess it as part of the Base Assessment if provided to all Units. By way of example, such services and facilities might include landscape maintenance, pest control service, cable television service, security, caretaker, transportation, fire protection, utilities, limousine and concierge service, reserved parking spaces, and similar services and facilities. Nothing in this Section shall be construed as a representation by Declarant or the Association as to what, if any, services shall be provided. In addition, the Board shall be permitted to modify or cancel existing contracts for services in its discretion, unless the provision of such services is otherwise required by the Governing Documents. Non-use of services provided to all Owners or Units as a Common Expense shall not exempt any Owner from the obligation to pay assessments for such services.

7.11 Relationships with Other Property.

The Association may enter into contractual agreements or covenants to share costs with

any neighboring property to contribute funds for, among other things, shared or mutually beneficial property or services and/or a higher level of Common Area maintenance.

7.12 Parking

(a) Any parking lot, area, or space in the Common Area is subject to the exclusive control and regulation by the Association, including, without limitation, the parking lot located between Northside Lofts Condominium I and the proposed Ridge Street Townhomes (the "Ridge Street Lot"). Notwithstanding anything in the Governing Documents to the contrary, each Owner of a Unit in the Ridge Street Townhomes will be granted an irrevocable license, coupled with an interest, for the exclusive use of two parking spaces in the Ridge Street Lot for the parking of non-commercial motor vehicles; provided, however, that the Board may establish a reasonable fee for such licenses and may suspend the license of any Owner during such time as the Owner is in default of the license agreement. The parking spaces assigned to each Unit shall be determined by Declarant, and these assignments may not be changed except with the written authorization of the Declarant (during the Class "B" Control Period, or subsequently, the Board) and the affected Unit Owner(s).

(b) Any spaces not allocated to Owners of Units in the Ridge Street Townhomes pursuant to paragraph (a) of this Section shall be allocated for such other purposes as the Board deems most beneficial to the Association. These purposes may include, but are not limited to, assignment to other Owners or designation as visitor or guest parking. The Association may charge a reasonable fee for the use of such additional spaces.

(c) Nothing in this Section shall be interpreted to permit the parking of a vehicle in violation of the properly adopted rules of the Association, including but not limited to those set forth in **Exhibit B** hereto.

Article VIII

Association Finances

8.1 Budgeting and Allocating Common Expenses.

At least 60 days before the beginning of each fiscal year, the Board shall prepare a budget of the estimated Common Expenses for the coming year, including any contributions to be made to a reserve fund pursuant to **Section 8.3**. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount to be generated through the levy of Base Assessments and Special Assessments against the Units, as authorized in **Section 8.7**. The Association is authorized to levy Base Assessments equally against all Units subject to assessment under **Section 8.7** to fund the Common Expenses. In determining the Base Assessment rate per Unit, the Board may consider any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year.



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Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under **Section 8.7**) to fund the Common Expenses. In determining the Base Assessment rate per Unit, the Board may consider any assessment income expected to be generated from any additional Units reasonably anticipated to become subject to assessment during the fiscal year. Declarant may, but shall not be obligated to, reduce the Base Assessment for any fiscal year by payment of a subsidy (in addition to any amounts paid by Declarant under **Section 8.8(b)**), which may be either a contribution, an advance against future assessments due from Declarant, or a loan, in Declarant's discretion. Any such subsidy shall be disclosed as a line item in the income portion of the budget. Payment of such subsidy in any year shall not obligate Declarant to continue payment of such subsidy in future years, unless otherwise provided in a written agreement between the Association and Declarant.

The Board shall send a copy of the final budget, together with notice of the amount of the Base Assessment to be levied pursuant to such budget, to each Owner at least 30 days prior to the effective date of such budget. The budget shall automatically become effective unless disapproved at a meeting by Members representing at least 75% of the total Class "A" votes in the Association and by the Class "B" Member, if such exists. There shall be no obligation to call a meeting for the purpose of considering the budget except on petition of the Members as provided for special meetings in **Section 2.4** of the By-Laws any such petition must be presented to the Board within 10 days after delivery of the budget and notice of any assessment. If any proposed budget is disapproved or the Board fails for any reason to determine the budget for any year, then the budget most recently in effect shall continue in effect until a new budget is determined. The Board may revise the budget and adjust the Base Assessment from time to time during the year, subject to the notice requirements and the right of the Members to disapprove the revised budget as set forth above.

8.2 Budgeting and Allocating Neighborhood Expenses.

At least 60 days before the beginning of each fiscal year, the Board shall prepare a separate budget covering the estimated Neighborhood Expenses for each Neighborhood on whose behalf Neighborhood Expenses are expected to be incurred during the coming year. Each such budget shall include any costs for additional services or a higher level of services to be provided to such Neighborhoods and any contribution to be made to a reserve fund. The budget shall also reflect the sources and estimated amounts of funds to cover such expenses, which may include any surplus to be applied from prior years, any income expected from sources other than assessments levied against the Units, and the amount required to be generated through the levy of Neighborhood and Special Assessments against the Units in such Neighborhood.

The Association is hereby authorized to levy Neighborhood Assessments against a Neighborhood Association subject to assessment hereunder to fund Neighborhood Expenses. The Board shall cause a copy of the Neighborhood budget and notice of the amount of the Neighborhood Assessment for the coming year to be delivered to the Neighborhood Representative at least 30 days prior to the beginning of the fiscal year. Such budget and



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assessment shall become effective unless disapproved by such Neighborhood Representative in writing delivered to the Board within 30 days thereafter. This right to disapprove shall only apply to those line items in the Neighborhood budget which are attributable to services requested by the Neighborhood and shall not apply to any item which the Governing Documents require to be assessed as a Neighborhood Assessment.

The Board may revise the budget for any Neighborhood and the amount of any Neighborhood Assessment from time to time during the year, subject to the notice requirements and the right of the affected Neighborhood to disapprove the revised budget as set forth above. All amounts collected by the Association as Neighborhood Assessments shall be held in trust for and expended solely for the benefit of the Neighborhood for which they were collected and shall be accounted for separately from the Association's general funds.

8.3 Budgeting for Reserves.

The Board shall prepare and review at least annually a reserve budget for the Area of Common Responsibility. The budget shall take into account the number and nature of replaceable assets, the expected life of each asset, and the expected repairs or replacement cost. The Board shall include in the Common Expense budget adopted pursuant to **Section 8.1** a capital contribution to fund reserves in an amount sufficient to meet the projected need with respect both to amount and timing by annual contributions over the budget period.

8.4 Special Assessments.

In addition to other authorized assessments, the Association may levy Special Assessments to cover unbudgeted expenses or expenses in excess of those budgeted. Any such Special Assessment may be levied against the entire membership, if such Special Assessment is for Common Expenses, or against a Neighborhood Association if such Special Assessment is for Neighborhood Expenses. Except as otherwise specifically provided in this Declaration, any Special Assessment shall require the affirmative vote or written consent of the Members representing more than 50% of the total votes allocated to the Members which will be subject to such Special Assessment, and the affirmative vote or written consent of the Class "B" Member, if such exists. Special Assessments shall be payable in such manner and at such times as determined by the Board, and may be payable in installments extending beyond the fiscal year in which the Special Assessment is approved.

8.5 Specific Assessments.

The Association shall have the power to levy Specific Assessments against a particular Unit as follows:

- (a) To cover the costs, including overhead and administrative costs, of providing services to Units upon request of an Owner pursuant to any menu of special services which may be



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offered by the Association (which might include the items identified in **Section 7.10**). Specific Assessments for special services may be levied in advance of the provision of the requested service; and

(b) To cover costs incurred in bringing the Unit into compliance with the Governing Documents if the Neighborhood Association fails to do so after reasonable notice of the need to bring such Unit into compliance, or costs incurred as a consequence of the conduct of the Owner or occupants of the Unit, their agents, contractors, employees, licensees, invitees, or guests; provided, the Board shall give the Unit Owner prior written notice and an opportunity for a hearing, in accordance with the By-Laws, before levying any Specific Assessment under this subsection.

The Association may also levy a Specific Assessment against the Units within any Neighborhood to reimburse the Association for costs incurred in bringing the Neighborhood into compliance with the provisions of the Governing Documents, provided the Board gives prior written notice to the Owners of Units in, or the Neighborhood representing, the Neighborhood and an opportunity for such Owners or Neighborhood to be heard before levying any such assessment.

8.6 Authority to Assess Owners; Time of Payment; Method of Payment

Declarant hereby establishes and the Association is hereby authorized to levy assessments as provided for in this Article and elsewhere in the Governing Documents. The obligation to pay assessments shall commence as to each Unit on the first day of the month following: (a) the month in which Declarant conveys the Unit to an Owner, or (b) the month in which the Board first determines a budget and levies assessments pursuant to this Article, whichever is later. The first annual Base Assessment and Neighborhood Assessment, if any, levied on each Unit shall be adjusted according to the number of months remaining in the fiscal year at the time assessments commence on the Unit.

Assessments shall be paid in such manner and on such dates as the Board may establish. The Board may require advance payment of assessments at closing of the transfer of title to a Unit and impose special requirements for Owners with a history of delinquent payment. If the Board so elects, assessments may be paid in two or more installments. Unless the Board otherwise provides, the Base Assessment and any Neighborhood Assessment shall be due and payable in advance in equal installments on the first day of each month. If any Owner is delinquent in paying any assessments or other charges levied on his Unit, the Board may require the outstanding balance on all assessments to be paid in full immediately.

8.7 Obligation for Assessments.

(a) **Personal Obligation.** Each Owner, by accepting a deed or entering into a Recorded contract of sale for a Unit in the Community, is deemed to covenant and agree to pay all assessments authorized in the Governing Documents. All assessments, together with interest (computed from its due date at a rate of 12% per annum or such higher rate as the Board may

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establish, subject to the limitations of Ohio law), late charges as determined by Board resolution, costs, and reasonable attorneys' fees, shall be the personal obligation of each Owner and a lien upon each Unit until paid in full. Upon a transfer of title to a Unit, the grantee shall be jointly and severally liable for any assessments and other charges due at the time of conveyance. Failure of the Board to fix assessment amounts or rates or to deliver or mail each Owner an assessment notice shall not be deemed a waiver, modification, or a release of any Owner from the obligation to pay assessments. In such event, each Owner shall continue to pay Base Assessments and Neighborhood Assessments on the same basis as during the last year for which an assessment was made, if any, until a new assessment is levied, at which time the Association may retroactively assess any shortfalls in collections. No Owner may exempt himself from liability for assessments by non-use of Common Area, abandonment of his or her Unit, or any other means. The obligation to pay assessments is a separate and independent covenant on the part of each Owner. No diminution or abatement of assessments or set-off shall be claimed or allowed for any alleged failure of the Association or Board to take some action or perform some function required of it, or for inconvenience or discomfort arising from the making of repairs or improvements, or from any other action it takes. Upon written request, the Association shall furnish to any Owner liable for any type of assessment a certificate in writing signed by an Association officer setting forth whether such assessment has been paid. Such certificate shall be conclusive evidence of payment. The Association may require the advance payment of a reasonable processing fee for the issuance of such certificate.

(b) **Declarant's Option to Fund Budget Deficits.** During the Class "B" Control Period, Declarant may satisfy its obligation, if any, for assessments on Units which it owns either by paying such assessments in the same manner as any other Owner, notwithstanding the commencement date of assessments set forth in **Section 8.7**, or by paying the difference between the amount of assessments levied on all other Units subject to assessment and the amount of actual expenditures by the Association during the fiscal year. Unless Declarant otherwise notifies the Board in writing at least 60 days before the beginning of each fiscal year, Declarant shall be deemed to have elected to continue paying on the same basis as during the immediately preceding fiscal year. Regardless of Declarant's election, Declarant's obligations hereunder may be satisfied in the form of cash or by "in kind" contributions of services or materials, or by a combination of these. After termination of the Class "B" Control Period, Declarant shall pay assessments on its unsold Units in the same manner as any other Owner.

8.8 Lien for Assessments.

The Association shall have a lien against each Unit to secure payment of delinquent assessments, as well as interest, late charges, and costs of collection (including attorneys' fees). Such lien shall be superior to all other liens, except (a) the liens of all taxes, bonds, assessments, and other levies which by law would be superior, and (b) the lien or charge of any Recorded first Mortgage (meaning any Recorded Mortgage with first priority over other Mortgages) made in good faith and for value. Such lien, when delinquent, may be enforced by suit, judgment, and foreclosure. The Association may bid for the Unit at the foreclosure sale and acquire, hold, lease, mortgage, and convey the Unit. While a Unit is owned by the Association following foreclosure: (a) no assessment shall be levied on it; and (b) each other Unit shall be charged, in addition to its



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usual assessment, its pro rata share of the assessment that would have been charged such Unit had it not been acquired by the Association. The Association may sue for unpaid assessments and other charges authorized hereunder without foreclosing or waiving the lien securing the same. Sale or transfer of any Unit shall not affect the assessment lien or relieve such Unit from the lien for any subsequent assessments. However, the sale or transfer of any Unit pursuant to foreclosure of the first Mortgage shall extinguish the lien as to any installments of such assessments due prior to the Mortgagee's foreclosure. The subsequent Owner to the foreclosed Unit shall not be personally liable for assessments on such Unit due prior to such acquisition of title. Such unpaid assessments shall be deemed to be Common Expenses collectible from Owners of all Units subject to assessment under **Section 8.7**, including such acquirer, its successors and assigns.

PART FOUR: COMMUNITY DEVELOPMENT

Article IX

Expansion of the Community

9.1 Expansion by Declarant.

Declarant may from time to time subject to the provisions of this Declaration any additional property by Recording a Supplemental Declaration describing the additional property to be subjected. A Supplemental Declaration Recorded pursuant to this Section shall not require the consent of any Person except the owner of such property, if other than Declarant. Declarant's right to expand the Community pursuant to this Section shall expire when Declarant no longer owns any property subject to this Declaration or 30 years after this Declaration is Recorded, whichever is earlier. Until then, Declarant may transfer or assign this right to any Person who is the developer of at least a portion of the Property. Any such transfer shall be memorialized in a written, Recorded instrument executed by Declarant.

9.2 Expansion.

Declarant may, without the consent or approval of the Association or any of the Members, subject additional property to the provisions of this Declaration by Recording a Supplemental Declaration describing the additional property.

9.3 Additional Covenants and Easements.

Declarant may subject any portion of the Community to additional covenants and easements, including covenants obligating the Association to maintain and insure such property and authorizing the Association to recover its costs through Neighborhood Assessments. Such additional covenants and easements may be set forth either in a Supplemental Declaration subjecting such property to this Declaration or in a separate Supplemental Declaration referencing property previously subjected to this Declaration. If the property is owned by someone other than Declarant, then the consent of the Owner(s) shall be necessary and shall be



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evidenced by their execution of the Supplemental Declaration. Any such Supplemental Declaration may supplement, create exceptions to, or otherwise modify the terms of this Declaration as it applies to the subject property in order to reflect the different character and intended use of such property.

9.4 Effect of Filing Supplemental Declaration.

A Supplemental Declaration shall be effective upon Recording unless otherwise specified in such Supplemental Declaration. On the effective date of the Supplemental Declaration, any additional property subjected to this Declaration shall be assigned voting rights in the Association and assessment liability in accordance with the provisions of this Declaration.

Article X

Additional Rights Reserved to Declarant

10.1 Withdrawal of Property.

Declarant reserves the right to amend this Declaration for the purpose of removing from the coverage of this Declaration any portion of the Community which does not contain Units that have been transferred to Owners other than Declarant or improved as Common Areas. Such amendment shall not require the consent of any Person other than the Owner(s) of the property to be withdrawn, if not the Declarant.

10.2 Marketing and Sales Activities.

Declarant and Builders authorized by Declarant may construct and maintain upon portions of the Common Area such facilities and activities as, in Declarant's sole opinion, may be reasonably required, convenient, or incidental to the construction or sale of Units, including but not limited to, business offices, signs, model units, and sales offices. Declarant and authorized Builders shall have easements for access to and use of such facilities at no charge.

10.3 Right to Develop.

Declarant and its employees, agents and designees shall have a right of access and use and an easement over and upon all of the Common Area for the purpose of making, constructing, and installing such improvements to the Common Area as it deems appropriate in its sole discretion. Every Person that acquires any interest in the Community acknowledges that the Community is a master planned community, the development of which may extend over many years, and agrees not to protest, challenge, or otherwise object to changes in uses or density of property outside the Neighborhood in which such Person holds an interest.

10.4 Right to Approve Additional Covenants.

As long as Declarant owns property subject to this Declaration, no Person shall Record

any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Community without Declarant's review and written consent. Any attempted Recordation without such consent shall result in such instrument being void and of no force and effect unless subsequently approved by written consent signed and Recorded by Declarant.

10.5 Right to Approve Changes in Community Standards.

No amendment to or modification of any Restrictions and Rules or Design Guidelines shall be effective without prior notice to and the written approval of Declarant so long as Declarant owns property subject to this Declaration.

10.6 Right to Transfer or Assign Declarant Rights.

Any or all of Declarant's rights and obligations set forth in this Declaration or the By-Laws may be transferred in whole or in part to other Persons; provided, the transfer shall not reduce an obligation nor enlarge a right beyond that which Declarant has under this Declaration or the By-Laws. No such transfer or assignment shall be effective unless it is in a written instrument Declarant signs and Records. The foregoing sentence shall not preclude Declarant from permitting other Persons to exercise, on a one-time, occasional or limited basis, any right reserved to Declarant in this Declaration where Declarant does not intend to transfer such right in its entirety, and in such case it shall not be necessary to Record any written assignment unless necessary to evidence Declarant's consent to such exercise. Upon such transfer, Declarant shall be relieved of all obligations related thereto.

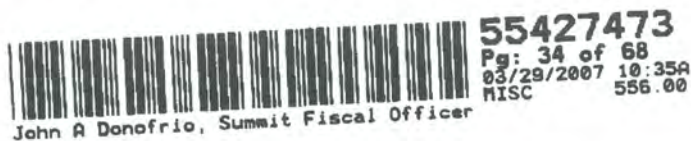
10.7 Exclusive Right to Use Name of Development.

No Person shall use the name "Northside Lofts" or any derivative of such name in logo or depiction in any printed or promotional material without Declarant's prior written consent. However, Neighborhoods within the Community may use the name "Northside Lofts" in printed or promotional matter where such term is used solely to specify that such Neighborhood is located within the Community, and the Association shall be entitled to use the words "Northside Lofts" in its name.

10.8 Easement to Inspect and Right to Correct.

Declarant reserves for itself and others it may designate the right to inspect, monitor, test, redesign, and correct any structure, improvement, or condition which may exist on any portion of the Property within the Community and a perpetual nonexclusive easement of access throughout the Community to the extent reasonably necessary to exercise such right. Except in emergency, entry into a Unit shall be only after reasonable notice to the Owner and no entry into a Unit shall be permitted without the consent of the Owner. The person exercising this easement shall promptly repair, at such person's own expense, any damage resulting from such exercise.

10.9 Termination of Rights.



The rights contained in this Article shall not terminate until the earlier of (a) 40 years from the date this Declaration is Recorded, or (b) Recording by Declarant of a written statement that all sales activity has ceased.

PART FIVE: PROPERTY RIGHTS WITHIN THE COMMUNITY

Article XI

Easements

11.1 Easements in Common Area.

Declarant grants to each Owner a nonexclusive right and easement of use, access, and enjoyment in and to the Common Area, subject to:

- (a) The Governing Documents and any other applicable covenants;
- (b) Any restrictions or limitations contained in any deed conveying such property to the Association;
- (c) The Board's right to:
 - (i) adopt rules regulating use and enjoyment of the Common Area, including rules limiting the number of guests who may use the Common Area;
 - (ii) suspend the right of an Owner to use recreational facilities within the Common Area (A) for any period during which any charge against such Owner's Unit remains delinquent, and (B) for a period not to exceed 30 days for a single violation or for a longer period in the case of any continuing violation, of the Governing Documents after notice and a hearing pursuant to the By-Laws;
 - (iii) dedicate or transfer all or any part of the Common Area, subject to such approval requirements as may be set forth in this Declaration;
 - (iv) impose reasonable membership requirements and charge reasonable admission or other use fees for the use of any recreational facility situated upon the Common Area;
 - (v) permit use of any recreational facilities situated on the Common Area by persons other than Owners, their families, lessees, and guests upon payment of use fees established by the Board and designate other areas and facilities within the Area of Common Responsibility as open for the use and enjoyment of the public;
 - (vi) mortgage, pledge, or hypothecate any or all of its real or personal property as



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security for money borrowed or debts incurred; and

(d) The rights of certain Owners to the exclusive use of those portions of the Common Area designated "Limited Common Areas," as described in **Article XIII**.

Any Owner may extend his or her right of use and enjoyment to the members of his or her family, lessees, and social invitees, as applicable, subject to reasonable regulation by the Board. An Owner who leases his or her Unit shall be deemed to have assigned all such rights to the lessee of such Unit for the period of the lease.

11.2 Easements of Encroachment.

Declarant grants reciprocal appurtenant easements of encroachment, and for maintenance and use of any permitted encroachment, between each Unit and any adjacent Common Area due to the unintentional placement or settling or shifting of the improvements constructed, reconstructed, or altered thereon (in accordance with the terms of these restrictions) to a distance of not more than three feet, as measured from any point on the common boundary along a line perpendicular to such boundary. However, in no event shall an easement for encroachment exist if such encroachment occurred due to willful and knowing conduct on the part of, or with the knowledge and consent of, the Person claiming the benefit of such easement.

11.3 Easements for Utilities, Etc.

(a) **Installation and Maintenance.** Declarant reserves for itself, so long as Declarant owns any Property subject to this Declaration, and grants to the Association and all utility providers, perpetual non-exclusive easements throughout the Community (but not through a structure) to the extent reasonably necessary for the purpose of:

(i) installing utilities and infrastructure to serve the Community, cable, wireless and other systems for sending and receiving data and/or other electronic signals (including all technological evolutions thereof and replacements thereof), security and similar systems, walkways, pathways and trails, drainage systems, street lights and signage on property which Declarant owns or within public rights-of-way or easements reserved for such purpose on Recorded plats;

(ii) inspecting, maintaining, repairing and replacing the utilities, infrastructure and other improvements described above; and

(iii) access to read utility meters.

(b) **Specific Easements.** Declarant also reserves for itself the non-exclusive right and power to grant and Record such specific easements as may be necessary, in the sole discretion of Declarant, in connection with the orderly development of any portion of the Property. The Owner of any property to be burdened by any easement granted pursuant to this subsection (b) shall be given written notice in advance of the grant. The location of the easement shall be



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subject to the written approval of the Owner of the burdened property, which approval shall not unreasonably be withheld, delayed, or conditioned.

(c) **Minimal Interference.** All work associated with the exercise of the easements described in subsections (a) and (b) of this Section shall be performed in such a manner as to minimize interference with the use and enjoyment of the property burdened by the easement. Upon completion of the work, the Person exercising the easement shall restore the property, to the extent reasonably possible, to its condition prior to the commencement of the work. The exercise of these easements shall not extend to permitting entry into the structures on any Unit, nor shall it unreasonably interfere with the use of any Unit and, except in an emergency, entry onto any Unit shall be made only after reasonable notice to the Owner or occupant.

11.4 Easements to Serve Additional Property.

Declarant reserves for itself and its duly authorized agents, successors, assigns, and mortgagees, an easement over the Common Area for the purposes of enjoyment, use, access, and development of any adjacent property owned by Declarant, whether or not such property is subject to this Declaration. This easement includes, but is not limited to, a right of ingress and egress over the Common Area for construction of roads and for connecting and installing utilities on such property. Declarant agrees that it and its successors or assigns shall be responsible for any damage caused to the Common Area as a result of their respective actions in connection with development of such property. Declarant further agrees that if the easement is exercised for permanent access to such property and such property or any portion thereof benefiting from such easement is not made subject to this Declaration, Declarant, its successors or assigns shall enter into a reasonable agreement with the Association to share the cost of any maintenance which the Association provides to or along any roadway providing access to such Property.

11.5 Easements for Maintenance, Emergency, and Enforcement.

Declarant grants to the Association easements over the Community as necessary to enable the Association to fulfill its maintenance responsibilities under Section 7.2. The Association shall also have the right, but not the obligation, to enter upon any Unit for emergency, security, and safety reasons, to perform maintenance and to inspect for the purpose of ensuring compliance with and enforce the Governing Documents. Such right may be exercised by any member of the Board and its duly authorized agents and assignees, and all emergency personnel in the performance of their duties. Except in an emergency situation, entry shall only be during reasonable hours and after notice to the Owner.

11.6 Easements for Access.

Declarant reserves for itself and its successors, assigns, and designees, a perpetual easement over the roads, trails, and walkways within the Property for access by employees, independent contractors, and accompanied guests of Declarant in connection with real estate sales activities within the Property. Declarant further reserves a non-exclusive perpetual easement over the roads, trails, sidewalks, stairs, parking lots and walkways within the Property



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for reasonable public use of such road, trails, sidewalks, stairs, parking lots and walkways for pedestrian passage in a manner consistent with the nature of the Community, and subject to the Rules adopted by the Board. All Owners are hereby granted a non-exclusive perpetual easement for pedestrian access to their Units and for pedestrian and vehicular access to their designated parking area or areas within the Community subject to the reasonable Rules adopted by the Board.

Article XII

Environmental Areas and Issues

12.1 Surface Water Management System.

(a) No Owner, by erection of any structure or otherwise, shall in any way change, alter, impede, revise or otherwise interfere with the flow and the volume of water in any portion of any ditch, canal, channel, pond, lake, retention area, or other body of water or waterway reserved for, or intended by Declarant to be reserved for, drainage ways or for the accumulation of runoff waters, as reflected in any permits therefore, or plat or instrument of records, without the specific written permission of the Association and Declarant.

(b) An Owner or Neighborhood Association shall in no way deny or prevent ingress and egress by Declarant or the Association to such drainage areas for maintenance or landscape purposes. The right of ingress and egress, and easements therefore are hereby specifically reserved and created in favor of Declarant, the Association, or any appropriate governmental or quasi-governmental agency that may reasonably require such ingress and egress.

(c) No Unit shall be increased in size by filling in any water retention or drainage areas on which it abuts. Owners shall not fill, dike, rip-rap, block, divert or change the established drainage ways without the prior written consent of the Association and Declarant.

(d) Water management for any Unit or Neighborhood shall be provided in accordance with the overall drainage system for the Property. Surface water drainage and management including but not limited to, storm water treatment and storage capacity, shall conform to the overall drainage system requirements and permits, if any, for the Property and meet with the approval of Declarant and applicable governmental agencies.

(e) The use of pesticides in any water body or wetland is prohibited, excepting only any such use by the Association and Declarant.

(f) No wells may be drilled, dug, or installed within the Community except by the Declarant or with the Declarant's written consent.

12.2 Conservation Areas.

Any portions of the Common Area designated as a conservation area shall be maintained



and preserved by the Association in accordance with the rules and regulations of all applicable governmental agencies. The Association shall not, and it shall not allow any Person to, undertake or perform any activity of improvements to a conservation area, or remove any native vegetation, without the prior approval of such agencies. No excavation, placement of debris, dumping, construction, or other activity shall be permitted in a conservation area.

12.3 Open Space and Buffers.

Any property conveyed or dedicated to the Association, which is designated as open space, landscape buffer, preserve area, or conservation area on any plat, permit, or other Recorded document, shall be owned and maintained by the Association in a natural open condition. The Association or any subsequent owner shall not do anything that diminishes or destroys the open space, buffers, preserve area, or conservation areas, and such areas shall not be developed for any purpose except that which improves or promotes the use and enjoyment of such areas as open space.

12.5 Recycling Program.

The Board may, but shall not be obligated to, establish a recycling program for the Community. In such event, all occupants of Units shall support such program by recycling, to the extent reasonably practical, all materials which the Association's recycling program is set up to accommodate. The Association may, but shall have no obligation to, purchase recyclable materials in order to encourage participation. Any costs associated with the implementation and operation of a recycling program shall be Common Expenses and any income the Association receives as a result of such recycling efforts shall be applied to Common Expenses.

Article XIII

Limited Common Areas

13.1 Purpose.

Certain portions of the Common Area may be designated as Limited Common Area and reserved for the exclusive use or primary benefit of Owners and occupants within a particular Neighborhood or Neighborhoods. By way of illustration and not limitation, Limited Common Areas may include entry features, landscaping, and other portions of the Common Area within a particular Neighborhood, or Neighborhoods. All costs associated with maintenance, repair, replacement, and insurance of a Limited Common Area shall be a Neighborhood Expense allocated among the Owners in the Neighborhood(s) to which the Limited Common Areas are assigned.

13.2 Designation.

Initially, any Limited Common Area shall be designated as such in the deed conveying such area to the Association or on the subdivision plat relating to such Common Area; provided,



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however, any such assignment shall not preclude Declarant from later assigning use of the same Limited Common Area to additional Units and/or Neighborhoods, so long as Declarant has a right to subject additional property to this Declaration. Thereafter, a portion of the Common Area may be assigned as Limited Common Area and Limited Common Area may be reassigned upon approval of the Board and the vote of Neighborhoods representing a majority of the total Class "A" votes in the Association, including a majority of the Class "A" votes within the Neighborhood(s) affected by the proposed assignment or reassignment. As long as Declarant owns any property subject to this Declaration, any such assignment or reassignment shall also require Declarant's written consent.

13.3 Use by Others.

Upon approval of a majority of Owners of Units within the Neighborhood to which any Limited Common Area is assigned, the Association may permit Owners of Units in other Neighborhoods to use all or a portion of such Limited Common Area upon payment of reasonable user fees, which fees shall be used to offset the Neighborhood Expenses attributable to such Limited common Area.

PART SIX: RELATIONSHIPS WITHIN AND OUTSIDE THE COMMUNITY.

Article XIV

Dispute Resolution and Limitation on Litigation

14.1 Arbitration.

In the event of any dispute between Owners or Neighborhoods as to the application of these restrictions or any rule or regulation promulgated by the Board, the party aggrieved shall submit a complaint in writing to the Board specifying the dispute. The Board shall set a time, date and place for a hearing thereon within 60 days thereafter, and give written notice to each party thereof no less than three days in advance. The Board shall thereupon hear such evidence on the dispute as the Board deems proper and render a written decision on the matter to each party within 30 days thereafter. No action at law may be instituted by either party to such a dispute unless arbitration pursuant hereto has first been had.

14.2 Initiation of Litigation by Association.

The Association shall not initiate any judicial or administrative proceeding unless first approved by a personal vote of 90% of the Owners, except that no such approval shall be required for actions or proceedings:

- (a) initiated during the Class "B" Control Period;
- (b) initiated to enforce the provisions of this Declaration, including collection of assessments and foreclosure of liens;



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(c) initiated to challenge property taxation or condemnation proceedings;

(d) initiated against any contractor, vendor, or supplier of goods or services arising out of a contract for services or supplies; or

(e) to defend claims filed against the Association or to assert counterclaims in proceedings instituted against it.

This Section shall not be amended unless such amendment is approved by the same percentage of votes necessary to institute proceedings.

Article XV

Mortgagee Provisions

The following provisions are for the benefit of holders, insurers and guarantors of first Mortgages on Units in the Community.

15.1 Notices of Action.

An institutional holder, insurer, or guarantor of a first Mortgage which provides a written request to the Association (such request to state the name and address of such holder, insurer, or guarantor and the street address of the Unit to which its Mortgage relates, thereby becoming an "Eligible Holder"), will be entitled to timely written notice sent to such address of:

(a) Any condemnation loss or any casualty loss which affects a material portion of the Community or which affects any Unit on which there is a first Mortgage held, insured, or guaranteed by such Eligible Holder;

(b) Any delinquency in the payment of assessments or charges owed by a Unit subject to the Mortgage of such Eligible Holder, where such delinquency has continued for a period of 60 days, or any other violation of the Governing Documents relating to such Unit or the Owner or its tenants which is not cured within 60 days; and

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

15.2 No Priority.

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



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15.3 Notice to Association.

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

PART SEVEN: CHANGES IN THE COMMUNITY

Article XVI

16.1 Changes in Ownership of Units

Any Owner desiring to sell or otherwise transfer title to his or her Unit shall give the Board at least seven days' prior written notice of the name and address of the purchaser or transferee, the date of such transfer of title, and such other information as the Board may reasonably require. The transferor shall continue to be jointly and severally responsible with the transferee for all obligations of the Owner of the Unit, including assessment obligations, until the date upon which such notice is received by the Board, notwithstanding the transfer of title. Notwithstanding any other provision hereof, all transferors shall see that Transfer Assessments are paid when required under this Declaration and shall remain jointly and severally responsible for the same until paid.

Additionally Testa Realty, Inc., an affiliate of the Declarant, and Testa Realty, Inc.'s successors and assigns, shall have the exclusive right to list for sale all Units that are placed for sale. This exclusive right to sell shall be in effect for 15 years from the date of recording this Declaration and shall apply to all sales of Residential and Commercial Units during said 15 year period.

Article XVII

Changes in Common Area

17.1 Condemnation.

If any part of the Common Area shall be taken (or conveyed in lieu of and under threat of condemnation by the Board acting on the written direction of Neighborhoods representing at least two-thirds of the total Class "A" votes in the Association and of Declarant, as long as Declarant owns any property subject to the Declaration or which may be made subject to the Declaration) by any authority having the power of condemnation or eminent domain, each Owner shall be entitled to written notice of such taking or conveyance prior to disbursement of any condemnation award or proceeds from such conveyance. Such award or proceeds shall be payable to the Association to be disbursed as follows:

(a) If the taking or conveyance involves a portion of the Common Area on which improvements have been constructed, the Association shall restore or replace such improvements on the remaining land included in the Common Area to the extent available, unless within 60

days after such taking Declarant, so long as Declarant owns any property subject to the Declaration, and Neighborhoods representing at least two-thirds of the total Class "A" vote of the Association shall otherwise agree. Any such construction shall be in accordance with plans approved by the Board. The provisions of **Section 7.3(c)** regarding funds for restoring improvements shall apply.

(b) If the taking or conveyance does not involve any improvements on the Common Area, or if a decision is made not to repair or restore, or if net funds remain after any such restoration or replacement is complete, then such award or net funds shall be disbursed to the Association and used for such purposes as the Board shall determine.

17.2 Partition.

Except as permitted in this Declaration, the Common Area shall remain undivided, and no Person shall bring any action for partition of any portion of the Common Area without the written consent of all Owners and Mortgagees, and Declarant as long as Declarant owns any property subject to this Declaration. This Section shall not prohibit the Board from acquiring and disposing of tangible personal property nor from acquiring and disposing of real property which may or may not be subject to this Declaration.

17.3 Transfer or Dedication of Common Area.

The Association may dedicate portions of the Common Area to any governmental or quasi-governmental entity.

Article XVIII

Amendment of Declaration

18.1 By Declarant.

In addition to specific amendment rights granted elsewhere in this Declaration, until a Unit has been sold to an unrelated purchaser for value, Declarant may unilaterally amend this Declaration for any purpose. Thereafter, Declarant may unilaterally amend this Declaration if such amendment is necessary (a) to bring any provision into compliance with any applicable governmental statute, rule, regulation or judicial determination; (b) to enable any reputable title insurance company to issue title insurance coverage on the Units; (c) to enable any institutional or governmental lender, purchaser, insurer, or guarantor of mortgage loans, to make, purchase, insure, or guarantee mortgage loans on the Units; or (iv) to satisfy the requirements of any governmental agency. However, any such amendment shall not adversely affect the title to any Unit unless the Owner shall consent in writing. So long as the Class "B" membership exists, the Class "B" Member may unilaterally amend this Declaration for any other purpose, provided the amendment has no materially adverse effect upon the rights of the Members.

18.2 By Members.



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Except as otherwise specifically provided above and elsewhere in this Declaration, this Declaration may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing two-thirds of the total Class "A" votes in the Association, including two-thirds of the Class "A" votes held by Members other than Declarant, and Declarant's consent, so long Declarant owns any property subject to this Declaration. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

18.3 Validity and Effective Date.

No amendment may remove, revoke or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant or the Class "B" Member, respectively (or the assignee of such right or privilege). If any Owner consents to any amendment to this Declaration or the By-Laws, it will be conclusively presumed that such Owner has the authority to consent, and no contrary provision in any Mortgage or contract between the Owner and a third party will affect the validity of such amendment. Any amendment shall become effective upon Recording, unless a later effective date is specified in the amendment. Any procedural challenge to an amendment must be made within six months of its Recordation or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of this Declaration.

Article XIX

Transfer Assessments

Upon any transfer of any Unit after the original sale thereof ("original sale" being defined for purposes of this sentence as (a) the original sale of a Unit built by a Builder if the Unit was constructed by such Builder with the intent of selling the same to consumers without any personal use thereof by such Builder, and (b) in any other case, the first sale of the Unit after the original sale by Declarant), there shall be automatically levied and due at the closing of the subject transfer an assessment against such Unit equal to two monthly assessments ("**Transfer Assessment**"). Each Transfer Assessment shall be the joint and several obligation of both the subject transferor and transferee, and shall be subject to all other provisions hereof regarding transfers, including, without limitation, the lien provisions hereof. Transfer Assessments shall be used exclusively by the Association for purposes related to Community amenities.

Article XX

General Provisions

20.1 Covenants Run with the Property



All of the easements, covenants and restrictions which are imposed upon, granted and/or reserved in this Master Declaration constitute easements, covenants and restrictions running with the Property and are binding upon every subsequent transferee of all or any portion thereof, including, without limitation, grantees, tenants, Owners and Occupants.

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

20.2 Enforcement; Waiver

Enforcement of the easements, covenants and restrictions herein may be by any proceeding at law or in equity against any Person or Persons violating or attempting to violate any easement, covenant or restriction, either to restrain violation or to recover damages and against the Person or Unit, or to enforce any lien perfected pursuant to this Master Declaration. The failure by the Master Association or any one permitted by this Master Declaration to enforce any easement, covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

20.3 Construction of the Provisions of this Master Declaration

The Declarant, the Master Association or the Design Review Board, where specifically authorized herein to act, shall have the right to construe and interpret the provisions of this Master Declaration and in the absence of an adjudication by arbitrator or a court of competent jurisdiction to the contrary, its construction or interpretation shall be final and binding as to all Persons or property which benefit or which are bound by the provisions hereof.

20.4 Severability

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

20.5 Headings

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



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IN WITNESS WHEREOF, Declarant has executed this Declaration the date and year first written above.

DECLARANT:

TESTA ENTERPRISES, INC., an Ohio Corporation

By: 

Name: JOEL A. TESTA

Its: VICE PRESIDENT

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STATE OF OHIO)
)SS
SUMMIT COUNTY)

BEFORE ME a notary public in and for said county and state, personally appeared the above-named Testa Enterprises, Inc., by Israel A. Testa, its Vice President, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at May Falls, Ohio this 6th day of March, 2007.

Deanna L. Rice
Notary Public

This instrument prepared by:
Nicholas T. George, Esq.
David J. Lindner, Esq.
BUCKINGHAM, DOOLITTLE & BURROUGHS
3800 Embassy Parkway, Suite 300
Akron, OH 44333
(330) 376-5300

DEANNA J. RICE, Notary Public
STATE OF OHIO
Resident Summit County
My Commission Expires October 13, 2009



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EXHIBIT A
LAND INITIALLY SUBMITTED



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CAMPBELL & ASSOCIATES, INC.

Consulting Engineers and Land Surveyors

1923 Bailey Road, Suite A
Cuyahoga Falls, OH 44221
(330) 945-4117
FAX (330) 945-3377

March 1, 2007
Job no. 20051224

Description of a 1.6343 Acre Master Association Parcel

Situated in the City of Akron, County of Summit, State of Ohio, and being all of the former Sublots 6, 5, and 4, and part of the former Sublots 1, 2, 3 and 7 of the King's Allotment, as recorded in Plat Book 1, Page 46 of the Summit County Records, and known as being those parcels conveyed to Testa Enterprises Inc. by document Reception Number 55258152 of the Summit County Records and more fully described as follows, to wit:

Beginning at a 1-inch pin found in a monument box at the centerline intersection of Ridge Street (50-foot width) and High Street (66-foot width); thence North 72 degrees 46 minutes 48 seconds West, along the centerline of said Ridge Street, a distance of 245.05 feet to a point; thence South 17 degrees 13 minutes 12 seconds West, a distance of 25.00 feet to a spike set on the southerly line of said Ridge Street and the northerly line of the said former Sub Lot 7, said point being the **True Point of Beginning**;

Thence South 17 degrees 20 minutes 34 seconds West a distance of 88.47 feet to a rebar to be set;

Thence South 72 degrees 39 minutes 26 seconds East a distance of 14.00 feet to a rebar to be set on the easterly line of the said former Sub Lot 7;

Thence South 17 degrees 20 minutes 34 seconds West along the said easterly line of the former Sub Lot 7 a distance of 90.63 feet to a point on the northerly line of Furnace Street (66-foot width) said point being the southeast corner of the said former Sub Lot 7, and witnessed by a 1-inch square pin found to be 0.32 feet west;

Thence North 72 degrees 46 minutes 25 seconds West along the said northerly line of Furnace Street and the southerly lines of the aforesaid former Sub Lots 7, 6, 5, 4, and 1 a distance of 377.13 feet to a rebar to be set at a point of curvature;

Thence with a curve that has a radius of 15.00 feet, a delta angle of 84 degrees 38 minutes 08 seconds, a chord which bears North 30 degrees 27 minutes 22 seconds West, at a distance of 20.20 feet, with an arc length of 22.16 feet and tangent of 13.66 feet to a rebar to be set on the easterly line of Howard Street (width varies);

Thence along the said easterly line of Howard Street with a curve that has a radius of 708.00 feet, a delta angle of 04 degrees 52 minutes 57 seconds, a chord which bears North 09 degrees 25 minutes 14 seconds East, at a distance of 60.32 feet, with an arc length of 60.33 feet and tangent of 30.19 feet to a rebar to be set at a point on said curve;

Thence continuing along the said easterly line of Howard Street with a curve that has a radius of 708.00 feet, a delta angle of 06 degrees 39 minutes 25 seconds, a chord which bears North 03 degrees 39 minutes 02 seconds East, at a distance of 82.21 feet, with an arc length of 82.26 feet and tangent of 41.18 feet to a rebar to be set at a point of reverse curvature therein;



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Thence with a curve that has a radius of 20.00 feet, a delta angle of 106 degrees 53 minutes 52 seconds, a chord which bears North 53 degrees 46 minutes 16 seconds East, at a distance of 32.13 feet, with an arc length of 37.31 feet and tangent of 26.98 feet to a rebar to be set on the aforesaid southerly line of Ridge Street and the northerly line of the said former Sub Lot 3;

Thence South 72 degrees 48 minutes 48 seconds East along the aforesaid southerly line of Ridge Street and the northerly line of the aforesaid former Sub Lots 3, 4, 5, 6 and 7 a distance of 386.78 feet to the **True Point of Beginning**.

The above parcel contains an area of 71,192.0 square feet, which is 1.6343 acres, none of which is in the public right-of-way, as surveyed by Joseph A. Corall, Ohio Professional Surveyor number 6911 of Campbell & Associates of Cuyahoga Falls, Ohio in September of 2005, and is subject to all easements and right-of-ways of public record or as otherwise legally established.

The basis of bearings for this survey is the State Plane Coordinate System, North Zone as established in a survey by the City of Akron dated December, 2002. All rebars set or to be set are 5/8-inch bars with caps inscribed "CAMPBELL & ASSOCIATES".



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EXHIBIT B

INITIAL RESTRICTIONS AND RULES

The following restrictions shall apply to all of the Property until such time as they are amended, modified, repealed or limited pursuant to the Declaration. The words used in these Rules and Regulations shall be given their normal, commonly understood definitions, except that capitalized terms shall have the same meaning as set forth in the Declaration to which these Rules and Regulations are attached unless the context indicates otherwise.

1. **General.** The Property shall be used only for purposes related to the designated residential, commercial and related purposes of the Neighborhoods (which may include, without limitation, an information center and/or a sales office for any real estate broker retained by Declarant to assist in the sale of portions of the Property, offices for any property manager retained by the Association, or business offices for Declarant or the Association) consistent with this Declaration and any Supplemental Declaration.

2. **Restricted Activities.** The following activities are prohibited within the Community unless expressly authorized by, and then subject to such conditions as may be imposed by, the Board:

(a) Parking of commercial vehicles or equipment, mobile homes, recreational vehicles, golf carts, boats and other watercraft, trailers, stored vehicles or inoperable or unregistered vehicles in places other than enclosed garages; provided, construction, services and delivery vehicles shall be exempt from this provision during daylight hours for such period of time as is reasonably necessary to provide service or to make a delivery to a Unit or the Common Area;

(b) Any activity which emits foul or obnoxious odors in the Common Area or creates noise or other conditions which tend to disturb the peace or threaten the safety of the Occupants of the Units;

(c) Any activity which violates governmental laws or regulations; however, the Board shall have no obligation to take enforcement action in the event of a violation;

(d) Pursuit of hobbies or other activities which tend to cause an unclean, unhealthy, or untidy condition to exist outside of enclosed structures on the Unit;

(e) Any noxious or offensive activity which in the reasonable determination of the Board tends to cause embarrassment, discomfort, annoyance or nuisance to persons using the Common Area or to the occupants of the Units;

(f) Burning of trash, leaves, debris or other materials;

(g) Use or discharge of any radio, loudspeaker, horn, whistle, bell or other audio



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equipment or sound device so as to be audible to occupants or other Units, except alarm devices used exclusively for security purposes;

- (h) Use and discharge of firecrackers and other fireworks;
- (i) Dumping grass clippings, leaves or other debris, petroleum products, fertilizers or other potentially hazardous or toxic substances anywhere within the Community;
- (j) Accumulation of rubbish, trash or garbage except between regular garbage pick ups, and then only in approved containers;
- (k) Discharge of firearms;
- (l) Any garage sale, moving sale, rummage sale or similar activity,
- (m) Capturing, trapping or killing of wildlife within the Community, except in circumstances posing an imminent threat to the safety of persons using the Community, or as determined by the Association to constitute a nuisance;
- (n) Operation of motorized vehicles, for maintenance, repair or construction work undertaken by the Association; and
- (o) Any construction, erection, placement or modification of any thing, permanently or temporarily, on the outside portions of a Unit, except in strict compliance with the provisions of the Declaration. The items prohibited to be placed in the Common Area include, without limitation, signs, balloons, banners, and streamers; basketball hoops, swing sets and similar sports and play equipment; clotheslines or other clothes drying facilities; garbage cans; woodpiles; satellite dishes and antennae; above-ground swimming pools; hedges, walls, dog runs, animal pens, or fences of any kind.

3. Prohibited Conditions. The following shall be prohibited within the Property:

- (a) Plants, animals, devices or other things of any sort whose activities or existence in any way is noxious, dangerous, unsightly, unpleasant or of a nature as may diminish or destroy the enjoyment of the Community;
- (b) Structures, equipment or other items on the exterior portions of a Unit which have become rusty, dilapidated or otherwise fallen into disrepair; and
- (c) Mobile homes or temporary buildings or structures of any kind.

EXHIBIT C
BY-LAWS
OF
NORTHSIDE LOFTS
MASTER ASSOCIATION, INC.

ARTICLE I

NAME, PRINCIPAL OFFICE AND DEFINITIONS

1.1 Name. The name of the corporation is Northside Lofts Master Association, Inc. (the "Association").

1.2 Principal Office.

The principal office of the Association shall be located at 2335 Second Street, Cuyahoga Falls, Ohio 44221. The Association may have such other offices within Ohio as the Board may determine or as the affairs of the Association may require.

1.3 Definitions.

The words used in these By-Laws shall be given their normal, commonly understood definitions, except that capitalized terms shall have the same meaning as set forth in the Declaration to which these By-Laws are attached unless the context indicates otherwise.

ARTICLE II

MEMBERSHIP: MEETINGS, QUORUM, VOTING, PROXIES

2.1 Membership.

The Association shall have two classes of membership, Class "A" and Class "B," as more fully set forth in the Declaration. The provisions of the Declaration pertaining to membership are incorporated by this reference.

2.2 Place of Meetings.

Meetings of the Association shall be held at the principal office of the Association or at such other suitable place convenient to the Members as the Board may designate.



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2.3 Annual Meetings.

The Association's first meeting, whether a regular or special meeting, shall be held within one year after the date of the association's incorporation. Subsequent regular annual meetings shall be set by the Board so as to occur during the third quarter of the Association's fiscal year on a date and at a time set by the Board.

2.4 Special Meetings.

The President may call special meetings. In addition, it shall be the duty of the President to call a special meeting if so directed by resolution of the Board or upon a petition signed by Directors representing at least one-third of the total Class "A" votes of the Association.

2.5 Notice of Meetings.

Written or printed notice stating the place, day, and hour of any meeting of the Members shall be delivered, either personally or by mail, to each Member entitled to vote at such meeting, not less than 10 nor more than 30 days before the date of such meeting, by or at the direction of the President or the Secretary or the officers or persons calling the meeting. In the case of a special meeting or when otherwise required by statute or these By-Laws, the purpose or purposes for which the meeting is called shall be stated in the notice. No business shall be transacted at a special meeting except as stated in the notice. If mailed, the notice shall be deemed to be delivered when deposited with a mail carrier in accordance with **Section 6.5** hereof and addressed to the Member at his address as it appears on the Association's records, with postage prepaid.

2.6 Waiver of Notice.

Waiver of notice of a meeting of the Members shall be deemed the equivalent of proper notice. Any Member may waive, in writing, notice of any meeting of the Members, either before or after such meeting. Any Member who attends a meeting waives notice of the time, date, and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting also shall be deemed waiver of notice of all business transacted at such meeting unless an objection on the basis of lack of proper notice is raised before the business is put to a vote.

2.7 Voting.

The voting rights of the Members shall be as set forth in the Declaration and in these By-Laws, and such voting rights provisions are specifically incorporated by this reference.

2.8 Proxies.

Members may not vote by proxy, but only in person through their Member Representatives.

2.9 Quorum.

For purposes of any Association meeting, a quorum shall consist of those actually in attendance at such Association meeting; provided, however, that at least one representative of each Member must be present.

2.10 Conduct of Meetings.

The President shall preside over all meetings of the Association, and the Secretary shall keep the minutes of the meetings and record in a minute book all resolutions adopted and all other transactions occurring at such meetings.

2.11 Action without a Meeting.

Any action required or permitted by law to be taken at a meeting of the Members may be taken without a meeting, prior notice, or a vote if written consent specifically authorizing the proposed action is signed by Members holding at least the minimum number of votes necessary to authorize such action at a meeting if all Members entitled to vote thereon were present. Such consents shall be signed within 60 days after receipt of the earliest date consent, dated, and delivered to the Association. Such consents, as filed with the minutes of the Association, shall have the same force and effect as a vote of the Members at a meeting. Within 10 days after receiving written consent authorization for any action, the Secretary shall give written notice to all Members entitled to vote who did not give their written consent, fairly summarizing the material features of the authorized action.

ARTICLE III

BOARD OF DIRECTORS: SELECTION, MEETINGS, POWERS

A. Composition and Selection.

3.1 Governing Body: Composition

The Board shall govern the Association's affairs. Each Director shall have one vote. Except with respect to the Class "B" Member's appointees, Directors must be Owners.

3.2 Number of Directors.

The initial Board shall consist of three Directors as identified in the Articles. Upon the



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termination of the Class "B" Control Period as provided in the Declaration, the Board shall consist of nine Directors.

3.3 Directors during Class "B" Control Period.

Directors appointed by the Class "B" Member pursuant to **Section 3.5** hereof shall be appointed by the Class "B" Member acting in its sole discretion and shall serve at the pleasure of the Class "B" Member.

3.4 Directors Subsequent to the Class "B" Control Period.

Upon the termination of the Class "B" Control Period, those persons serving as the Board of Directors for each Neighborhood Association shall become the members of the Board of Directors.

B. Meetings.

3.5 Organizational Meetings.

The first meeting of the Board following each annual meeting of the membership shall be held within 10 days thereafter at such time and place as the Board shall fix.

3.6 Regular Meetings.

Regular meetings of the Board may be held at such time and place as a majority of the Directors shall determine, but at least four such meetings shall be held during each fiscal year with at least one per quarter.

3.7 Special Meetings.

The Board shall hold special meetings when the President or Vice President or any two Directors sign and communicate written notice of such.

3.8 Notice; Waiver of Notice.

(a) Notices of Board meetings shall specify the time and place of the meeting and, in the case of a special meeting, the nature of any special business to be considered. The notice shall be given to each Director by: (i) personal delivery; (ii) first class mail or air mail, postage prepaid; (iii) telephone communication, either directly to the Director or to a person at the Director's office or home who would reasonably be expected to communicate such notice promptly to the Director; or (iv) facsimile, computer, fiber optics, or other electronic communication device, with confirmation of transmission. All such notices shall be given at the Director's telephone number, fax number, electronic mail number, or sent to the Director's address as shown on the records of the Association. Notices sent by first class mail or air mail shall be deposited with the mail carrier at least



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five business days before the time set for the meeting. Notices given by personal delivery, telephone, or other device shall be delivered or transmitted at least 72 hours before the time set for the meeting.

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

3.9 Telephonic Participation in Meetings.

Members of the Board or any committee designated by the Board may participate in a meeting of the Board or committee by means of conference telephone or similar communications equipment by which all persons participating in the meeting can hear each other. Participation in a meeting pursuant to this subsection shall constitute presence in person at such meeting.

3.10 Quorum of Board.

At all Board meetings, a majority of the Directors shall constitute a quorum for the transaction of business, and the votes of a majority of the Directors present at a meeting at which a quorum is present shall constitute the decision of the Board, unless otherwise specifically provided in these By-Laws or the Declaration. A meeting at which a quorum is initially present may continue to transact business, notwithstanding the withdrawal of Directors, if any action taken is approved by at least a majority of the required quorum for that meeting. If any Board meeting cannot be held because a quorum is not present, a majority of the Directors present at such meeting may adjourn the meeting to a time not less than five nor more than 30 days from the date of the original meeting. At the reconvened meeting, if a quorum is present, any business which might have been transacted at the meeting originally called may be transacted without further notice.

3.11 Conduct of Meetings.

The President shall preside over all Board meetings, and the Secretary shall keep a minute book of Board meetings, recording all Board resolutions and all transactions and proceedings occurring at such meetings.

3.12 Open Meetings; Executive Session.

(a) Except in an emergency, notice of Board meetings shall be posted at least 48 hours in advance of the meeting at a conspicuous place within the Community which the Board establishes for the posting of notices relating to the Association. Notice of any

meeting at which assessments are to be established shall state that fact and the nature of the assessment. Subject to the provisions of **Section 3.15** hereof, all Board meetings shall be open to all Members and, if required by law, all Owners; but attendees other than Directors may not participate in any discussion or deliberation unless a Director requests that they be granted permission to speak. In such case, the President may limit the time any such individual may speak.

(b) Notwithstanding the above, the President may adjourn any Board meeting and reconvene in executive session, and may exclude persons other than Directors, to discuss matters of a sensitive nature, such as pending or threatened litigation, personnel matters, etc.

3.13 Action Without a Formal Meeting.

Any action to be taken at a meeting of the Directors or any action that may be taken at a meeting of the Directors may be taken without a meeting if a consent in writing, setting forth the action so taken, is signed by all of the Directors. Such consent shall have the same force and effect as a unanimous vote.

C. Powers and Duties.

3.14 Powers.

The Board shall have all of the powers and duties necessary for the administration of the Association's affairs and for performing all responsibilities and exercising all rights of the Association as set forth in the Governing Documents, and as provided by law. The Board may do or cause to be done on behalf of the Association all acts and things except those which the Governing Documents or Ohio law require to be done and exercised exclusively by the Members or the membership generally.

3.15 Duties.

Duties of the Board shall include, without limitation:

- (a) preparing and adopting, in accordance with the Declaration, an annual budget and establishing each Owner's share of the Common Expenses and any Member Expenses;
- (b) levying and collecting such assessments from the Owners;
- (c) providing for the operation, care, upkeep, and maintenance of the Area of Common Responsibility consistent with the Community-Wide Standard;
- (d) designating, hiring, and dismissing personnel necessary to carry out the Association's rights and responsibilities and where appropriate, providing for the



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compensation of such personnel and for the purchase of equipment, supplies, and materials to be used by such personnel in the performance of their duties;

(e) depositing all funds received on behalf of the Association in a bank depository which it shall approve, and using such funds to operate the Association; provided, any reserve funds may be deposited, in the Board's judgment, in depositories other than banks;

(f) making and amending use restrictions and rules in accordance with the Declaration;

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

(h) making or contracting for the making of repairs, additions, and improvements to or alterations of the Common Area in accordance with the Declaration and these By-Laws;

(i) enforcing by legal means the provisions of the Governing Documents and bringing any proceedings which may be instituted on behalf of or against the Owners concerning the Association; provided, the Association's obligation in this regard shall be conditioned in the manner provided in the Declaration;

(j) obtaining and carrying property and liability insurance and fidelity bonds, as provided in the Declaration, paying the cost thereof, and filing and adjusting claims, as appropriate;

(k) paying the cost of all services rendered to the Association;

(l) keeping books with detailed accounts of the Association's receipts and expenditures;

(m) making available to any prospective purchase of a Unit, any Owner, and the holders, insurers, and guarantors of any Mortgage on any Unit, current copies of the Governing Documents and all other books, records, and financial statements of the Association as provided in **Section 6.4** hereof;

(n) permitting utility suppliers to use portions of the Common Area reasonably necessary to the ongoing development or operation of the Community;

(o) indemnifying a Director, officer or committee member, or former Director, officer or committee member of the Association to the extent such indemnity is required by Ohio law, the Articles, or the Declaration; and

(p) assisting in the resolution of disputes between owners and others without



litigation, as set forth in the Declaration.

3.16 Compensation.

Directors shall not receive any compensation from the Association for acting as such unless approved by Members representing a majority of the total Class "A" votes in the Association at a regular or special meeting of the Association. Any Director may be reimbursed for expenses incurred on behalf of the Association upon approval of a majority of the other Directors. Nothing herein shall prohibit the Association from compensating a Director, or any entity with which a Director is affiliated, for services or supplies furnished to the Association in a capacity other than as a Director pursuant to a contract or agreement with the Association, provided that such Director's interest was made known to the Board prior to entering into such contract and such contract was approved by a majority of the Board, excluding the interested Director.

3.17 Right of Class "B" Members to Disapprove Actions.

So long as the Class "B" membership exists, the Class "B" Member shall have a right to disapprove any action, policy, or program of the Association, the Board and any committee which, in the sole judgment of the Class "B" Member, would tend to impair rights of Declarant or Builders under the Declaration or these By-Laws, or interfere with development or construction of any portion of the Community, or diminish the level of services the Association provides.

(a) **Notice.** The Class "B" Member shall be given written notice of all meetings and proposed actions approved at meetings (or by written consent in lieu of a meeting) of the Association, the Board, or any committee. Such notice shall be given by certified mail, return receipt requested, or by personal delivery at the address it has registered with the Secretary of the Association, which notice complies as to Board meetings with **Sections 3.9 and 3.10** hereof and which notice shall, except in the case of the regular meetings held pursuant to the By-Laws, set forth with reasonable particularity the agenda to be followed at such meeting; and

(b) **Opportunity to Be Heard.** The Class "B" Member shall be given the opportunity at any such meeting to join in or to have its representatives or agents join in discussion from the floor of any prospective action, policy, or program which would be subject to the right of disapproval set forth herein.

No action, policy or program subject to the right of disapproval set forth herein shall become effective or be implemented until and unless the requirements of **subsections (a) and (b)** above have been met. The Class "B" Member, its representatives or agents, shall make its concerns, thoughts, and suggestions known to the Board and/or the members of the subject committee. The Class "B" Member, acting through any officer or Director, agent or authorized representative, may exercise its right to disapprove at any time within 10 days following the meeting at which such action was proposed or, in the case of any action taken by written consent

in lieu of a meeting, at any time within 10 days following receipt of written notice of the proposed action. This right to disapprove may be used to block proposed actions but shall not include a right to require any action on behalf of any committee, the Board or the Association. The Class "B" Member shall not use its right to disapprove to reduce the level of services which the Association is obligated to provide or to prevent capital repairs or any expenditure required to comply with applicable laws and regulations.

3.18 Management.

The Board may employ for the Association a professional management agent or agents, at such compensation as the Board may establish, to perform such duties and services as the Board shall authorize. The Board may delegate such powers as are necessary to perform the manager's assigned duties, but shall not delegate policy-making authority or those duties set forth in **Sections 3.15(a)** (with respect to adoption of the budget), 3.15(d), 3.15(f), and 3.15(g). Declarant or its affiliate may be employed as managing agent or manager. The Board may delegate to one of its members the authority to act on the Board's behalf on all matters relating to the duties of the managing agent or manager, if any, which might arise between Board meetings.

3.19 Accounts and Reports.

The following management standards of performance shall be followed unless the Board by resolution specifically determines otherwise:

- (a) accrual accounting, as defined by generally accepted accounting principles, shall be employed;
- (b) accounting and controls should conform to generally accepted accounting principles;
- (c) cash accounts of the Association shall not be commingled with any other accounts;
- (d) no remuneration shall be accepted by the managing agent from vendors, independent contractors, or others providing goods or services to the Association, whether in the form of commissions, finder's fees, service fees, prizes, gifts, or otherwise; any thing of value received shall benefit the Association;
- (e) any financial or other interest which the managing agent may have in any firm providing goods or services to the Association shall be disclosed promptly to the Board;
- (f) commencing at the end of the quarter in which the first Unit is sold and closed, financial reports shall be prepared for the Association at least quarterly containing:

(i) an income statement reflecting all income and expense activity for the preceding period on an accrual basis;

(ii) a statement reflecting all cash receipts and disbursements for the preceding period;

(iii) a variance report reflecting the status of all accounts in an "actual" versus "approved" budget format; and

(iv) a balance sheet as of the last day of the preceding period;

(g) an annual report consisting of at least the following shall be made available to all Members within 120 days after the close of the fiscal year: (i) a balance sheet; (ii) an operating (income) statement; and (iii) a statement of changes in financial position for the fiscal year. Such annual report shall be prepared on an audited, reviewed, or compiled basis, as the Board determines, by an independent public accountant; provided, upon written request of any holder, guarantor or insurer of any first Mortgage on a Unit, the Association shall provide an audited financial statement. During the Class "B" Control Period, the annual report shall include certified financial statements.

3.20 Borrowing.

The Association shall have the power to borrow money for any legal purpose; provided, the Board shall obtain Member approval in the same manner provided in the Declaration for Special Assessments if the proposed borrowing is for the purpose of making discretionary capital improvements and the total amount of such borrowing, together with all other debt incurred within the previous 12-month period, exceeds or would exceed 50% of the Association's budgeted gross expenses for that fiscal year.

3.21 Rights to Contract.

The Association shall have the right to contract with any Person for the performance of various duties and functions. This right shall include, without limitation, the right to enter into common management, operational, or other agreements with trusts, condominiums, cooperatives, or Member and other owners or residents associations, within and outside the Community. Any common management agreement shall require the consent of a majority of the Board.

3.22 Enforcement.

The Association shall have the power, as provided in the Declaration, to impose sanctions for any violation of the Governing Documents. To the extent specifically required by the Declaration the Board shall comply with the following procedures prior to imposition of sanctions:

(a) **Notice.** The Board or its delegate shall serve the alleged violator with written notice describing (i) the nature of the alleged violation, (ii) the proposed sanction to be imposed, (iii) a period of not less than 10 days within which the alleged violator may present a written request for a hearing to the Board or the Covenants Committee, if one has been appointed pursuant to **Article V** hereof; and (iv) a statement that the proposed sanction shall be imposed as contained in the notice unless a challenge is begun within 10 days of the notice. If a timely request for a hearing is not made, the sanction stated in the notice shall be imposed; provided the Board may, but shall not be obligated to, suspend any proposed sanction if the violation is cured within the 10-day period. Such suspension shall not constitute a waiver of the right to sanction future violations of the same or other provisions and rules by any Person.

(b) **Hearing.** If a hearing is requested within the allotted 10-day period, the hearing shall be held before the Covenants Committee, or if none has been appointed, then before the Board in executive session. The alleged violator shall be afforded a reasonable opportunity to be heard. Prior to the effectiveness of any sanction hereunder, proof of proper notice shall be placed in the minutes of the meeting. Such proof shall be deemed adequate if a copy of the notice, together with a statement of the date and manner of delivery, is entered by the officer, Director, or agent who delivered such notice. The notice requirement shall be deemed satisfied if the alleged violator or its representative appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

(c) **Appeal.** Following a hearing before the Covenants Committee, the violator shall have the right to appeal the decision to the Board. To exercise this right, a written notice of appeal must be received by the Association's manager, President, or Secretary within 10 days after the hearing date.

(d) **Additional Enforcement Rights.** Notwithstanding anything to the contrary in this Article, the Board may elect to enforce any provision of the Governing Documents by self-help (specifically including, but not limited to, towing vehicles that violate parking rules) or, following compliance with the dispute resolution procedures set forth in the Declaration, if applicable, by suit at law or in equity to enjoin any violation or to recover monetary damages or both, without the necessity of compliance with the procedure set forth above. In any such action, to the maximum extent permissible, the Owner or occupant responsible for the violation of such abatement is sought shall pay all costs, including reasonable attorney's fees actually incurred. Any entry onto a Unit for purposes of exercising this power of self-help shall not be deemed as trespass.

3.23 Board Standards.

In the performance of their duties, Association Directors and officers shall be insulated from personal liability as provided by Ohio law for directors and officers of non-profit corporations, and as otherwise provided in the Governing Documents. Directors are required to exercise the ordinary and reasonable care of directors of a corporation, subject to the business



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judgment rule. As defined herein, a Director shall be acting in accordance with the business judgment rule so long as the Director: (a) acts within the express or implied terms of the Governing Documents and his or her actions are not *ultra vires*; (b) affirmatively undertakes to make decisions which are necessary for the continued and successful operation of the Association and, when decisions are made, they are made on an informed basis; (c) acts on a disinterested basis, promptly discloses any real or potential conflict of interests (pecuniary or other), and avoids participation in such decisions and actions; and (d) acts in a non-fraudulent manner and without reckless indifference to the affairs of the Association. A Director acting in accordance with the business judgment rule shall be protected from personal liability. Board determinations of the meaning, scope, and application of Governing Documents provisions shall be upheld and enforced so long as such determinations are reasonable. The Board shall exercise its power in a fair and nondiscriminatory manner and shall adhere to the procedures established in the Governing Documents.

ARTICLE IV

OFFICERS

4.1 Officers.

Officers of the Association shall be a President, Vice President, Secretary, and Treasurer. The President and Secretary shall be elected from among Board members; other officers may, but need not be Board members. The Board may appoint such other officers, including one or more Assistant Secretaries and one or more Assistant Treasurers, as it shall deem desirable, such officers to have such authority and perform such duties as the Board prescribes. Any two or more officers may be held by the same person, except the offices of President and Secretary, or President and Vice President.

4.2 Election and Term Office.

The Board shall elect the Association's officers at the first Board meeting following each annual meeting of the Members, to serve until their successors are elected.

4.3 Removal and Vacancies.

The Board may remove any officer whenever in its judgment the best interests of the Association will be served, and may fill any vacancy in any office arising because of death, resignation, removal, or otherwise, for the unexpired portion of the term.

4.4 Power and Duties.

The Association's officers shall each have such powers and duties as generally pertain to their respective officers, as well as such powers and duties as may specifically be conferred or imposed by the Board. The President shall be the chief executive officer of the Association. The Treasurer shall have primary responsibility for preparation of the budget as provided for in the



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Declaration and may delegate all or part of the preparation and notification duties to a finance committee, management agent, or both.

4.5 Resignation.

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

4.6 Agreements, Contracts, Deeds, Leases, Checks, Etc.

All agreements, contracts, deeds, leases, checks, and other instruments of the Association shall be executed by at least two officers or by such other person or persons as may be designated by Board resolution.

4.7 Compensation.

Compensation of officers shall be subject to the same limitations as compensation of Directors under **Section 3.18** hereof.

ARTICLE V

COMMITTEES

5.1 General.

The Board may appoint such committees as it deems appropriate to perform such tasks and to serve for such periods as the Board may designate by resolution. Each committee shall operate in accordance with the terms of such resolution.

5.2 Covenants Committee.

In addition to any other committees which the Board may establish pursuant to **Section 5.1** hereof, the Board may appoint a Covenants Committee consisting of at least three and no more than seven Members. Acting in accordance with the provisions of the Declaration, these By-Laws, and resolutions the Board may adopt, the Covenants Committee, if established, shall be the hearing tribunal of the Association and shall conduct all hearings held pursuant to **Section 3.24** hereof.

ARTICLE VI

MISCELLANEOUS

6.1 Fiscal Year.



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The Association's fiscal year shall be the calendar year unless the Board establishes a different fiscal year by resolution.

6.2 Parliamentary Rules.

Except as may be modified by Board resolution, *Robert's Rules of Order* (current edition) shall govern the conduct of Association proceedings when not in conflict with Ohio law or the Governing Documents.

6.3 Conflicts.

If there are conflicts among the provisions of Ohio law, the Articles, the Declaration, and these By-Laws, the provisions of Ohio law, the Declaration, the Articles, and the By-Laws (in that order) shall prevail.

6.4 Books and Records.

(a) **Inspection by Members and Mortgagees.** The Board shall make available for inspection and copying by any holder, insurer or guarantor of a first Mortgage on a Unit, any Member, or the duly appointed representative of any of the foregoing at any reasonable time and for a purpose reasonably related to his or her interest in a Unit: the Governing Documents, the membership register, books of account, and the minutes of meetings of the Members, the Board, and committees. The Board shall provide for such inspection to take place at the Association's office or at such other place within the Community as the Board shall designate.

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

- (i) notice to be given to the custodian of the records;
- (ii) hours and days of the week when such an inspection may be made; and
- (iii) payment of the cost of reproducing documents requested.

(c) **Inspection by Directors.** Every Director shall have the absolute right at any reasonable time to inspect all books, records, and documents of the Association and the physical properties owned or controlled by the Association. The right of inspection by a Director includes the right to make a copy of relevant documents at the Association's expense.

6.5 Notices.

Except as otherwise provided in the Declaration or these By-Laws, all notices, demands,



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bills, statements, or other communications under the Declaration or these By-Laws shall be in writing and shall be deemed to have been duly given if delivered personally, sent by U.S. mail, first class postage prepaid:

(a) if to a Member, at the address which the Member has designated in writing and filed with the Secretary or, if no such address has been designated, at the address of the Unit of the President of such Member's Board of Directors;

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

(c) if to any committee, at the principal address of the Association or at such other address as shall be designated by notice in writing to the Members pursuant to this Section.

6.6 Amendment.

(a) **By Class "B" Member.** Prior to termination of the Class "B" Control Period, the Class "B" Member may unilaterally amend these By-Laws. Thereafter, the Class "B" Member may unilaterally amend these By-Laws at any time and from time to time if such amendment is necessary (i) to bring any provision into compliance with any applicable governmental statute, rule or regulation, or judicial determination; (ii) to enable any reputable title insurance company to issue title insurance coverage on the Units; or (iii) to enable any institutional or governmental lender, purchaser, insurer or guarantor of mortgage loans, to make, purchase, insure or guarantee mortgage loans on the Units; provided, however, any such amendment shall not materially and adversely affect the title to any Unit unless the Owner shall consent thereto in writing. Additionally, so long as the Class "B" membership exists, the Class "B" Member may unilaterally amend these By-Laws for any other purpose, provided the amendment has no materially adverse effect upon the rights of more than 2% of the Members.

(b) **By Members Generally.** Except as provided above, these By-Laws may be amended only by the affirmative vote or written consent, or any combination thereof, of Members representing 51% of the total Class "A" votes in the Association, and the consent of the Class "B" Member, if such exists. Notwithstanding the above, the percentage of votes necessary to amend a specific clause shall not be less than the prescribed percentage of affirmative votes required for action to be taken under that clause.

(c) **Validity and Effective Date of Amendments.** Amendments to these By-Laws shall become effective upon Recordation unless a later effective date is specified therein. Any procedural challenge to an amendment must be made within six months of

its Recordation, or such amendment shall be presumed to have been validly adopted. In no event shall a change of conditions or circumstances operate to amend any provisions of these By-Laws. No amendment may remove, revoke, or modify any right or privilege of Declarant or the Class "B" Member without the written consent of Declarant, the Class "B" Member, or the assignee of such right or privilege.

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DECLARATION AND BY-LAWS
CREATING AND ESTABLISHING A PLAN FOR
CONDOMINIUM OWNERSHIP
UNDER CHAPTER 5311 OF THE REVISED CODE OF OHIO
FOR
NORTHSIDE LOFTS CONDOMINIUM I
SUBMITTED BY TESTA ENTERPRISES, INC.

MARCH, 2007

This is to Certify that copies of the Declaration, By-laws, and Drawings for Northside Lofts Condominium I have been filed this date with the Fiscal Officer of Summit County, Ohio.

JOHN A. DONOFRIO

Fiscal Officer

By W. Taylor, Deputy Auditor
March 14, 2007

Taylor

3-30-07

TRANSFER NOT NECESSARY
John A. Donofrio, Fiscal Officer

This instrument prepared by:
Nicholas T. George, Esq.
David J. Lindner, Esq.
BUCKINGHAM, DOOLITTLE & BURROUGHS, LLP
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Akron, OH 44333



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John A Donofrio, Summit Fiscal Officer

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DECLARATION

This Declaration of Northside Lofts Condominium I is made on or as of the ____ day of _____, 2007, pursuant to the provisions of Chapter 5311 of the Revised Code of Ohio.

Recitals

A. Testa Enterprises, Inc., an Ohio corporation ("Declarant"), is the owner in fee simple of all of the real property hereinafter described and the improvements thereon and appurtenances thereto. The real property hereinafter described is subject to the Declaration of Covenants, Conditions and Restrictions for Northside Lofts Master Association.

B. The Declarant desires to create of this property a site of individually owned units, and commonly owned areas and facilities, and to these ends to submit this property to condominium ownership under the provisions of the Condominium Act.

Definitions

The terms used in this document shall have these meanings, unless the context requires otherwise:

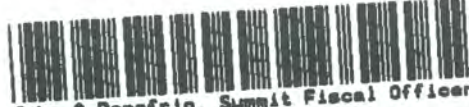
1. "Articles" and "Articles of Incorporation" mean the articles, filed with the Secretary of State of Ohio, incorporating Northside Lofts Condominium I Unit Owners' Association as a corporation not-for-profit under the provisions of Chapter 1702 of the Revised Code of Ohio, as the same may be lawfully amended from time to time. (The State of Ohio's non-profit corporation statutory act).
2. "Association" and "Northside Lofts Condominium I Unit Owners' Association, Inc." mean the corporation not-for-profit created by the filing of the Articles and is also one and the same as the association created for the Condominium pursuant to the provisions of the Condominium Act.
3. "Board" and "Board of Directors" mean those persons who, as a group, serve as the board of Directors of the Association.
4. "By-Laws" mean the by-laws of the Association, as the same may be lawfully amended from time to time, created under and pursuant to the provisions of the condominium law for the Condominium, and which also serve as the code of regulations of the Association under and pursuant to the provisions of Chapter 1702. A true copy of the By-Laws is attached hereto and made a part hereof.
5. "Parking Units" consist of the space bounded by a wall, either real or imaginary, on four sides of a space as shown on the Drawings of the first and second floors of



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the Condominium. If no real wall exists, it shall be considered to exist in the middle of the line outlining the parking spaces as shown on the Drawings and by lines drawn perpendicular thereto extending up to the lower surface of the parking garage ceiling or ten feet, whichever is lesser. The use of each Parking Unit is restricted to the parking of one passenger vehicle. Each initial purchaser of a Residential Unit shall have the option to purchase one Parking Unit at the time of purchasing the Residential Unit. The purchasers of Units 901, 902, 903 and 904 shall be entitled to purchase up to two Parking Units. Thereafter, the Parking Unit or Units associated with each Residential Unit may not be conveyed separately from the Residential Unit with which the Parking Unit or Units were originally transferred. Except for initial transfers by the Declarant, Parking Units may only be transferred to the Owner of a Unit in the North Side Lofts Master Association.

6. "Commercial Units" are Units which are restricted to commercial or office use, and designated as Commercial Units on the Drawings and in Exhibit C. The Commercial Units are hereby designated as "convertible units" as that term is defined herein, and in Section 5311.033 of the Ohio Revised Code.
7. "Common Elements" means all of the Condominium Property, except that portion thereof described in this Declaration as constituting a Unit or Units, and is that portion of the Condominium Property constituting "Common Elements" of the Condominium under the provisions of the Condominium Act.
8. "Condominium" and "Northside Lofts Condominium I" mean the condominium regime for the Condominium Property created under and pursuant to the provisions of the Condominium Act.
9. "Condominium Act" means the statutory law of the State of Ohio regulating the creation and operation of condominiums and is presently Chapter 5311 of the Revised Code of Ohio.
10. "Condominium Instruments" means this Declaration, the By-Laws, the Drawings, the development disclosure statement provided to purchasers pursuant to § 5311.26 of the Ohio Revised Code, any contracts pertaining to the management of the Condominium Property and, as provided by the Condominium Act, "any other documents, contracts, or instruments establishing ownership of or exerting control over the Condominium Property or Unit."
11. "Condominium Organizational Documents" means the Articles, the By-Laws, the Drawings, and this Declaration, as the same may lawfully be amended from time to time.
12. "Condominium Property" means the tract of land hereinafter described as being submitted to the Condominium Act, all buildings, structures and improvements situated thereon, and all easements, rights and appurtenances belonging thereto.

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13. "Convertible Units" means a unit which may be converted into one or more units or common elements, including limited common elements, pursuant to Section 5311.033 of the Ohio Revised Code, and in accordance with the provisions of Section 3 of Article V of this Declaration. The Commercial Units are hereby designated as Convertible Units.
14. "Declarant" means Testa Enterprises, Inc., an Ohio corporation, and its successors and assigns, provided the rights specifically reserved to Declarant under the Condominium Organizational Documents shall accrue only to such successors and assigns as are designated in writing by Declarant as successors and assigns of such rights.
15. "Declaration" means this instrument by which the Condominium Property is submitted to the Condominium Act, as this instrument may be lawfully amended from time to time.
16. "Director" and "Directors" mean that person or those persons serving, at the time pertinent, as a Director or Directors of the Association.
17. "Drawings" means the drawings for the Condominium, as defined in the Condominium Act, filed simultaneously with the submission of this Declaration for recording, as the same may be lawfully amended from time to time.
18. "Eligible Holder of First Mortgage" means the holder of a valid recorded first mortgage on a Unit, which holder has given written notice to the Association requesting notification of any proposed action that requires the consent of a specified percentage of Eligible Holders of First Mortgages.
19. "Exclusive Use Area" means those Common Elements, if any, reserved herein or on the Drawings for delegation by the Board of Directors to the use of a certain Unit or Units, to the exclusion of other Units.
20. "Limited Common Elements" means those Common Elements serving exclusively one Unit or more than one but less than all Units, the enjoyment, benefit or use of which are reserved to the lawful Occupants or the guests or invitees of the Occupants of such Unit or Units, either in this Declaration, or by the Board, and is that portion of the Condominium Property constituting "Limited Common Elements" of the Condominium under the provisions of the Condominium Act.
21. "Occupant" or "Tenant" means a person or entity lawfully in possession of a Unit, regardless of whether that person is a Unit Owner, and any agents, guests, invitees, customers, officers or employees of an Occupant or Tenant or assignee or subtenant.



22. "Person" means a natural individual, corporation, partnership, trustee, or other legal entity capable of holding title to real property.
23. "Residential Units" are Units which are restricted to Residential Use, and designated as Units 501 and above on the Drawings and in Exhibit C.
24. "Unit" and "Units" mean that portion or portions of the Condominium Property described as a unit or units in this Declaration, and is that portion of the Condominium constituting a "unit" or "units" of the Condominium under the provisions of the Condominium Act. Units are either "Residential Units," "Commercial Units," or "Parking Units."
25. "Unit Owner" and "Unit Owners" mean that person or those persons owning a fee-simple interest in a Unit or Units, each of whom is also a "member" of the Association, as defined in Ohio's non-profit corporation statutory act.

The Plan

NOW, THEREFORE, Declarant hereby makes and establishes the following plan for condominium ownership of this property under and pursuant to the Condominium Act:

ARTICLE I

THE LAND

A legal description of the land constituting a part of the Condominium Property, located in Summit County, Ohio, is attached hereto as "Exhibit A" and incorporated by this reference.

ARTICLE II

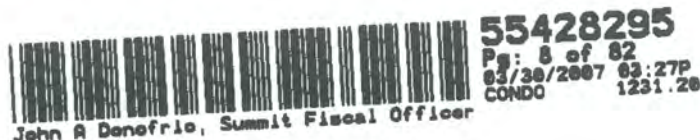
NAME

The name by which the Condominium shall be known is "Northside Lofts Condominium I".

ARTICLE III

PURPOSES; RESTRICTIONS

Section 1. Purposes. This Declaration is being made to establish separate individual parcels from the Condominium Property, to which fee-simple interests may be conveyed; to establish a Unit Owners' Association to administer the Condominium; to provide for the



preservation of the values of Units and the Common Elements; to provide for and promote the benefit, enjoyment and well being of Unit Owners and Occupants; to administer and enforce the covenants, easements, charges and restrictions hereinafter set forth; and to raise funds through assessments to accomplish these purposes.

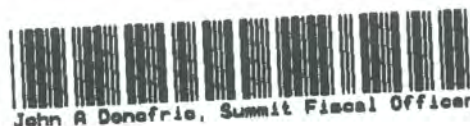
Section 2. Restrictions. The Condominium Property shall be subject to the following restrictions:

(a) **Residential Unit Uses.** Except as otherwise specifically provided in this Declaration, no Residential Unit shall be used for any purpose other than that of a residence or a professional office; provided, however, that any Residential Unit used as a professional office shall not violate any of the restrictions set forth in paragraph (b) of this Section, and shall be subject to the zoning ordinances of the City of Akron and all other applicable laws, statutes, ordinances and regulations of governmental entities having jurisdiction over the Condominium Property. Notwithstanding anything in this Declaration to the contrary, it shall be permissible for the Declarant to maintain, during the period of its sale of Units, one or more Units as sales models and offices and/or for storage and maintenance purposes and one or more Units may be maintained for the use of the Association in fulfilling its responsibilities.

(b) **Commercial Unit Uses.** Except as otherwise specifically provided in this Declaration, the Commercial Units may not be used for any residential purpose, but shall be used exclusively for commercial, office or retail purposes or uses incidental thereto. Without limiting the generality of the foregoing, it shall be permissible for the Declarant to maintain one or more Units as sales models and offices and/or for storage and maintenance purposes and one or more Units may be maintained for the use of the Association in fulfilling its responsibilities. Notwithstanding anything in the Declaration to the contrary, Unit 300 may be used as a commercial parking garage facility open to the public.

In addition to the requirements contained herein which relate to the Condominium in general, no Commercial Unit shall be used for:

- (1) indecent or illegal purposes (such as the sale of pornography or drug paraphernalia). Notwithstanding the foregoing, a book store or news stand which sells materials which may be viewed by some as pornography shall not be considered to violate the foregoing restriction unless a substantial portion of the merchandise offered for sale (no less than 25%) relates to sexual themes.
- (2) any activity which produces noise or sound that is audible beyond the Unit from which it originates and that is objectionable due to intermittence, beat, frequency, shrillness or loudness to reasonable persons in other Units or on the Common Elements.
- (3) any activity which produces obnoxious odors that are perceptible beyond the Unit from which they originate (such as a pet shop).
- (4) any activity which causes the cancellation of insurance policies carried by the Association or by the Owners of other Units within the Condominium.



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(5) any video arcade, pool room or billiard parlor, massage parlor, casino, card club, or bingo parlor.

(c) Parking Unit Uses. Parking Units may not be used for any purpose other than to park one passenger vehicle and/or to store the Owner's personal property. Storage of personal property is subject to such rules and regulations as may from time to time be promulgated in accordance with the provisions of subsection 2(t) of this Article III or by the Board.

(d) Common Element Uses. The Common Elements (except the Limited Common Elements) shall be used in common by Unit Owners and Occupants and their agents, servants, customers, invitees and licensees, in accordance with the purposes for which they are intended, and as may be required for the purposes of access, ingress to, egress from, use, occupancy and enjoyment of Units, provided, however, that unless expressly provided otherwise herein, no Common Elements shall be used for any purpose other than the health, safety, welfare, convenience, comfort, recreation or enjoyment of Unit Owners and Occupants, subject to such rules and regulations as may from time to time be promulgated in accordance with the provisions of subsection 2(t) of this Article III, or by the Board.

(e) Limited Common Element Uses. Except as specifically provided otherwise herein, those portions of the Common Elements described herein and shown on the Drawings as Limited Common Elements shall be used and possessed exclusively by the Unit Owners and Occupants of the Unit or Units served by the same, subject to the restrictions on use of Common Elements and Limited Common Elements set forth in this Declaration and such rules and regulations as may from time to time be promulgated in accordance with the provisions of subsection 2(t) of this Article III or by the Board.

(f) Visible Areas. Except for (i) displays in the windows of the Commercial Units and merchandise visible from outside of a Commercial Unit, (ii) signage on Commercial Units advertising or identifying commercial uses of the Commercial Units, and (iii) improvements made in connection with the use of the Commercial Units, nothing shall be caused or permitted to be hung or displayed on the outside or inside of windows (except inoffensive drapes, blinds or curtains, or other inoffensive window treatment) or placed on the outside walls of a building or otherwise outside of a Unit, or any part thereof, nor shall any sign (except those of the Declarant), awning, canopy, shutter or (to the extent that such limitation is not prohibited by law) television or citizens' band or other radio antenna or transmitter or any other device or ornament, be affixed to or placed upon the exterior walls or roof or any part thereof, unless constructed by the Declarant or unless authorized by the Board, and subject to such rules and regulations as may be adopted from time to time in accordance with the provisions of subsection 2(t) of this Article III. The Board may designate locations for antennae, and may require coverings for such devices, to the extent not prohibited by law.

(g) Commercial Unit Exteriors. Notwithstanding any provision hereof to the contrary, the Commercial Units shall be permitted to have the following, subject only to such rules and guidelines as may, from time to time, be established by Owners of Commercial Units whose Units contain at least 75% of the total square footage of all Commercial Units: (1) signage on the



exterior of storefronts in accordance with the regulations of the City of Akron; and (2) window displays and merchandise visible from the outside of a Commercial Unit; provided that with respect to all of the foregoing, the user shall: (i) be responsible for all costs in connection therewith; and (ii) comply with all governmental rules and regulations and all insurance requirements;.

(h) Nuisances. No illegal, noxious or offensive activity shall be carried on in any Unit, or upon the Common Elements; nor shall any use be permitted which results in the cancellation of the Association's insurance; nor shall any use be permitted which increases the cost of insurance above that which would otherwise be available for normal uses conducted within such Unit unless the owner of such Unit responsible for the increase reimburses the Association and any other Unit Owner who experiences such increase.

(i) Vehicles. The Board may promulgate regulations restricting the parking of automobiles, inoperable vehicles, trucks, boats and recreational vehicles on the Common Elements, (including, without limitation, Limited Common Elements), and may enforce such regulations or restrictions by levying fines or enforcement charges, having such vehicles towed away, or taking such other actions as it, in its sole discretion, deems appropriate.

(j) Renting and Leasing. Units may be rented or leased, including rental for hotel purposes, provided, however, that every Occupant shall be subject in all respects to the provisions of the Declaration, and to the rules and regulations promulgated from time to time by the Board. Any lease or occupancy agreement shall be in writing and shall provide that the failure by the lessee or Occupant to comply with the terms of the Condominium Organizational Documents and lawful rules and regulations shall be a default under the lease or occupancy agreement. Notwithstanding any provision in the Condominium Act to the contrary, the Association shall not exercise any right to evict a tenant of a Commercial Unit, nor to terminate the utility or other services to a Commercial Unit, without the consent of the Owners of, and the holder of any recorded first mortgage lien on, the Commercial Unit involved.

The provisions of this Declaration may not be amended to place any additional restrictions on the leasing of Commercial Units or the eviction of a tenant of a Commercial Unit or termination of utility or other services to a Commercial Unit without the written consent of owners of Commercial Units who possess not less than 75% of the voting power available to owners of Commercial Units.

(k) Signs. Except for signs permitted to Commercial Units in accordance with the provisions of paragraphs (f) and (g) above, no sign of any kind shall be displayed to the public view on the Condominium Property except: (1) on the Common Elements, signs regarding and regulating the use of the Common Elements, provided they are approved by the Board; (2) on the interior side of the window of a Unit, one professionally prepared sign not exceeding two feet by three feet advertising the Unit for sale or rent; and (3) on the Common Elements and model Units, signs advertising the sale of Units by the Declarant during the initial sales/rental period, which shall continue until all Units have been sold to parties unrelated to the Declarant. By acquiring title to a Unit, Unit owners waive, for themselves and their heirs, successors and assigns, any and all rights or claims of rights to any signage not specifically permitted herein,



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unless the same is permitted by rules and regulations promulgated by the Board of Directors.

(l) Replacements. Any building erected to replace an existing building containing Units shall be of new construction, be of comparable size, design and construction to that replaced, and shall contain a like number of Units of comparable size to the Units in the building replaced.

(m) Structural Integrity. Nothing shall be done in any Unit, or in, on or to the Common Elements, which may impair the structural integrity of any improvement.

(n) Animals. Except as hereinafter provided, no animals, livestock or poultry of any kind shall be raised, bred or kept in any Unit or on the Common Elements. Notwithstanding the foregoing, household domestic pets, not bred or maintained for commercial purposes, may be maintained in a Unit, provided that: (i) no animals shall be permitted in any portion of the Common Elements except on a leash (not longer than six feet in length) maintained by a responsible person; (ii) the permitting of animals on the Common Elements shall be subject to such rules and regulations as the Board may from time to time promulgate, including, without limitation, the right to prohibit pets entirely, the right to place limitations on the size, number and type of such pets, and the right to levy fines and enforcement charges against persons who do not clean up after their pets; and (iii) the right of an Occupant to maintain an animal in a Unit shall be subject to termination if the Board, in its full and complete discretion, determines that maintenance of the animal constitutes a nuisance or creates a detrimental effect on the Condominium or other Units or Occupants.

(o) Conveyances. Each Unit shall be conveyed as a separately designated and legally described freehold estate subject to the terms, conditions and provisions hereof. The undivided interest of a Unit in the Common Elements shall be deemed to be conveyed or encumbered with the Unit even though that interest is not expressly mentioned or described in the deed, mortgage or other instrument of conveyance or encumbrance.

The right of a Unit Owner to sell, transfer or otherwise convey that Owner's Unit is not subject to any right of first refusal or similar restriction, and any Unit Owner may transfer that owner's Unit free of any limitations, except that Testa Realty, Inc., an affiliate of the Developer, and Testa Realty, Inc.'s successors and assigns, shall have the exclusive right to list for sale all Residential and Commercial Units that are placed for sale. This exclusive right to sell shall be in effect for 15 years from the date of recording this Declaration and shall apply to all sales of Residential and Commercial Units during said 15 year period.

To enable the Association to maintain accurate records of the names and addresses of Unit Owners, each Unit Owner is required, at the following times, to provide the Association (by delivery to the office of the Association or to any member of the Board) written notice of the name, home address, home and business mailing addresses, and the home and business telephone numbers of the Unit Owner and all Occupants of the Unit and the name, business address and business telephone number of any person who manages the Owner's Unit as an agent of that Owner:



- (1) within thirty (30) days after the Unit Owner accepts delivery of a deed to a Unit;
- (2) within thirty (30) days after a change in any of the above described information; and
- (3) at any time that the Board requests verification or updating of the above-described information.

Each Unit Owner must provide to a purchaser of that Owner's Unit a copy of the Condominium Organizational Documents and all effective rules and regulations in such Owner's possession.

(p) Discrimination. No action shall at any time be taken by the Association or its Board which in any manner would discriminate against any Unit Owner in favor of another.

(q) Architectural Control. Except for improvements constructed by the Declarant, or improvements constructed with respect to Commercial Units done pursuant to authority provided in paragraphs (f) and (g), above, and except as hereinafter specifically provided, no building, fence, wall, sign or other structure shall be commenced, erected or maintained upon the Condominium Property, or any part thereof, nor shall any exterior addition to or change or alteration therein be made, until the plans and specifications showing the nature, kind, shape, height, materials, color and location of the same shall have been submitted to and approved in writing by the Board or its designated representatives as to lawfulness and appropriateness and as to harmony of external design, color and location in relation to surrounding structures and topography. The Board may condition such approval upon the requesting Unit Owner's agreement to maintain the same, and such agreement shall be binding upon the Unit Owner and the Unit Owner's successors in ownership of the Unit, notwithstanding any provision of the Condominium Organizational Documents to the contrary.

(r) Arbitration. In the event of any dispute between Unit Owners as to the application of these restrictions or any rule or regulation promulgated by the Board, the party aggrieved shall submit a complaint in writing to the Board specifying the dispute. The Board shall set a time, date and place for a hearing thereon within 60 days thereafter, and give written notice to each party thereof no less than three days in advance. The Board shall thereupon hear such evidence on the dispute as the Board deems proper and render a written decision on the matter to each party within 30 days thereafter. No action at law may be instituted by either party to such a dispute unless arbitration pursuant hereto has first been had.

(s) Satellite Dishes and Antennae. No satellite dishes or antennae other than the following types are permitted, unless completely contained within a Unit:

- (1) A "dish" antenna that is one meter (39.37") or less in diameter and is designed to receive direct broadcast satellite service, including direct-to-home satellite service, or to receive or transmit fixed wireless signals via satellite;

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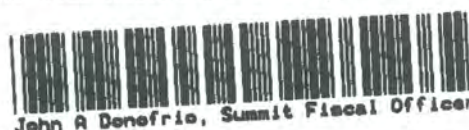
- (2) An antenna that is one meter or less in diameter or diagonal measurement and is designed to receive video programming services via MMDS (wireless cable) or to receive or transmit fixed wireless signals other than via satellite; or
- (3) An antenna that is designed to receive local television broadcast signals.

(The three types of antenna listed above are collectively referred to as "Reception Devices"). The following restrictions apply to the installation of Reception Devices to the extent that the enforcement of these restrictions does not (a) unreasonably delay or prevent the use of; (b) unreasonably increase the cost of; or (c) preclude a person from receiving or transmitting an acceptable quality signal from a Reception Device:

- (1) An Owner desiring to install a Reception Device must notify the Association in writing of the Owner's intent to do so; however, prior authorization to begin installation shall not be required;
- (2) The installation of a Reception Device must be performed in accordance with the manufacturer's instructions, by a properly insured and qualified installer, in compliance with all applicable safety guidelines and regulations, including but not limited to those set forth in any governmental ordinances, regulations, rules, and statutes;
- (3) A Reception Device must be contained entirely within a Unit Owner's Unit or the Limited Common Elements appurtenant to only that Owner's Unit. A Reception Device may not be installed in a manner that encroaches upon the Common Elements or another Unit Owner's Unit or Limited Common Elements.
- (4) A Unit Owner must not damage the Common Elements when installing a Reception Device. By way of example, and not limitation, a Unit Owner may not drill into or through, or otherwise affix any Reception Device to any exterior wall or floor that is a part of the Common Elements.
- (5) A Unit Owner may not run any wiring through a Common Element (other than a Limited Common Element appurtenant to only that Owner's Unit), without the express prior written approval of the Board.
- (6) To the extent reasonably possible, a Unit Owner must camouflage or conceal any exterior Reception Device to minimize its visibility from the outside.
- (7) If a central dish antenna is made available to Unit Owners, then the Board may prohibit Unit Owners from installing individual satellite Reception Devices.

The Board may pass additional rules and regulations to supplement this section, but only to the extent such rules and regulations do not conflict with applicable laws and regulations, including but not limited to the Federal Communication Commission's Over-the-Air Reception Devices Rule.

(t) Rules and Regulations. In addition to the rules and regulations hereinbefore specifically described as being authorized to be established by the Board, the Board, from time to time, may adopt such further reasonable rules and regulations concerning the use of Units and



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the Common Elements as it deems necessary or desirable to promote harmony, to serve the best interests of the majority of the Unit Owners, and to protect and preserve the nature of the Condominium, as a first-class, high-quality, residential/commercial facility. Notwithstanding the foregoing, rules and regulations which affect the use of the Commercial Units, or any Limited Common Elements appurtenant thereto, or the Common Elements between such Commercial Units, shall not be effective unless approved by the Owners of Commercial Units whose Units have at least 75% of the total square footage of all Commercial Units. Additionally, the Owners of Commercial Units whose Units have at least 75% of the total square footage of all Commercial Units may, from time to time, adopt reasonable rules and regulations concerning the use of the Commercial Units or the Limited Common Elements appurtenant thereto or the Common Elements between such Units, which rules and regulations shall be enforceable by the owners of Commercial Units as though promulgated by the Board.

Copies of all such rules and regulations shall be furnished by the Board to each Unit Owner (or by the Owners of Commercial Units to the other Owners of Commercial Units with regard to the rules promulgated by the owners of Commercial Units) prior to the time when the same shall become effective. No such rule or regulation shall discriminate against any Unit owner or occupant on the basis of race, religion, national origin or sex.

Notwithstanding any provision to the contrary contained herein or in any other Condominium Organizational Document, no amendment to the provisions of this Declaration or any Condominium Organizational Documents may be enacted without the approval of the owners of Commercial Units whose Units contain at least 75% of the total square footage of all Commercial Units if such amendment affects: (i) the use of the Commercial Units; (ii) the use of any Limited Common Elements appurtenant to the Commercial Units; (iii) the use by Owners or Occupants of Commercial Units of the Common Elements between the Commercial Units; (iv) the creation or enforcement of rules and regulations affecting such Commercial Units, Limited Common Elements appurtenant to the Commercial Units, or Common Elements between the Commercial Units.

ARTICLE IV

IMPROVEMENT DESCRIPTIONS

The Condominium consists of one ten-story building containing a parking garage on the first three floors, Commercial Units on the fourth floor, and 36 Residential Units on floors five through ten, with Units on floors nine and ten being two-story penthouse Residential Units. Each Unit has access to Common Elements leading directly to a publicly dedicated right-of-way or to easements for ingress and egress across property owned by the Northside Lofts Master Association, which easements lead to one or more publicly dedicated rights-of-way. The building is constructed primarily of glass, steel, brick, concrete, drywall, and finishing materials.

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John A Donafrio, Summit Fiscal Officer

ARTICLE V

UNITS

Section 1. Unit Designations. Each of the Units is designated on the Drawings by a three digit number. The first digit of each Unit number corresponds with the floor on which the Unit is located. For illustration, Unit 401 is a Commercial Unit on the fourth floor. Unit 801 is a Residential Unit on the eighth floor. The Unit designations for all are set forth in Exhibit C, and their respective locations are shown on the Drawings.

Section 2. Composition of Units.

(a) **Unit Composition.** Each Unit consists of the space in the building designated by that Unit's designation on the Drawings that is bounded by a plane extending parallel to and even with the bottom surface of the concrete roof, a plane extending parallel to and even with the top surface of the concrete floor, and planes extending parallel to and even with the top surface of the perimeter wall studs, all projected, if necessary by reason of structural divisions such as interior walls and partitions, to constitute a complete enclosure of space, and all improvements within that space, all within the building as constructed or as reconstructed in substantial accordance with the original drawings. In the case of the penthouse Units on floors 9-10, the Unit shall include the exterior roof, except for those portions designated as Common Elements or Limited Common Elements on the Drawings. Without limiting the generality of the foregoing, each Unit shall include:

(1) the drywall, sheetrock, plaster, wood, paneling or other material constituting or attached to the floors, ceilings and walls, including any paint, lacquer, varnish, wallpaper, tile, carpeting and other finishing material applied thereon;

(2) all windows, screens and doors, including storm doors and windows, if any, and including the frames, sashes and jambs and the space occupied thereby, and the hardware therefore;

(3) all fixtures and appliances installed for the exclusive use of that Unit, commencing at the point of disconnection from the structural body of the building and from utility pipes, lines or systems serving the entire building or more than one Unit thereof, including, without limiting the generality hereof, built-in cabinets, dishwashers, garbage disposal units, refrigerators, stoves and hoods, television antennas and cables, furnaces, water heaters, heat pumps, air conditioning units or compressors, and components thereof, if any, (even if located outside of the bounds of the Unit), serving only that Unit;

(4) all control knobs, switches, thermostats and electrical outlets and connections affixed to or projecting from the walls, floors and ceilings which service either the Unit or the fixtures located therein, together with the space occupied thereby;


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(5) all interior walls, that are not necessary for support of the structure, and all components thereof and all space encompassed thereby; and

(6) all plumbing, electric, heating, cooling and other utility or service lines, pipes, wires, ducts or conduits which serve either the Unit or the fixtures located therein, and which are located within the bounds of the Unit, or within the exterior walls of that Unit; excluding therefrom, however, all of the following items located within the bounds of that Unit:

(A) any structural element of the building contained in interior walls; and

(B) all plumbing, electric, heating, cooling and other utility or service lines, pipes, sump pumps and accessories thereto, wires, ducts and conduits which serve any other Unit.

(b) Unit Sizes; Locations and Components. The location of each part of each Unit and the number of rooms in each Unit are shown on the Drawings. The approximate size of each Unit's interior is shown on the Drawings. The Developer reserves the right to modify interior features, rooms and overall space to accommodate buyer requests.

Section 3. Conversion of Commercial Units.

(a) General; Conditions. Notwithstanding any other provision in this Declaration to the contrary, the Owner of a Commercial Unit may, at any time and from time to time, convert all or any portion of a Commercial Unit into one or more Units or Common Elements, including Limited Common Elements, provided that:

(i) the same may be accomplished without contradicting the provisions of the Ohio Condominium Act;

(ii) the same meets all requirements of the appropriate governmental authorities in all respects, including, without limitation, building, zoning, and health and safety requirements;

(iii) no structural or exterior change is made to the building without the prior written approval of the Board; and

(iv) the Unit Owner and his successors in interest, through a recorded instrument, take responsibility for the maintenance of any new Common Elements created, unless the Board agrees in writing to accept and assume such maintenance.

(b) Mechanics. A Unit Owner desiring to convert a Commercial Unit shall prepare and execute an amendment to the Declaration that describes the conversion and record the amendment together with the drawings described in division (E) of section 5311.07 of the Revised Code. The amendment shall specify the square footage, undivided interests in the Common Elements, proportionate shares of common surplus and common expenses, and the



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voting powers of each Unit resulting from the conversion. The aggregate totals of the foregoing shall equal the undivided interest in the Common Elements, proportionate share of common surplus and common expenses, and the voting power of the Unit being converted. The amendment to the Declaration shall also assign an identifying number to each Unit formed, describe or delineate the Limited Common Elements formed out of the Convertible Unit, and show or designate each Unit to which those Limited Common Elements are reserved.

(c) Effect of Conversion. The conversion of a Convertible Unit pursuant to this section is deemed to occur at the time that the amendment and drawings are filed with the Summit County Fiscal Officer.

Section 4. Relocation of Boundaries of Units and Limited Common Elements

(a) Right to Relocate Boundaries of Units and Limited Common Elements. Notwithstanding any provision in this Declaration to the contrary, to the extent not prohibited by Ohio law, the boundaries between adjoining Units and appurtenant Limited Common Elements may be relocated and the undivided interests in the Common Elements appurtenant to those Units may be reallocated by an amendment to the Declaration pursuant to the following procedures:

(1) The Owners of the adjoining Units shall submit to the Board a written application for the relocation and reallocation. The application shall be accompanied by the written consents of the holders of all liens on those Units, except liens for real estate taxes and assessments not due and payable.

(2) In the applications the Owners of the adjoining Units may request a specific reallocation of their undivided interests in the Common Elements allocated to the adjoining Units.

(b) Board Approval of Relocation of Boundaries and Undivided Interests in Common Elements. Unless the Board finds any requested reallocation of the undivided interests in the Common Elements to be unreasonable, within 30 days after the Board receives the application, the Association shall prepare, at the expense of the Owners of the adjoining Units, an amendment to the Declaration that is executed by the Owners of the affected Units and that includes all of the following:

(1) Identification of the affected Units;

(2) Words of conveyance between the Owners of the Units;

(3) A specification of the undivided interests in the Common Elements, the proportionate shares of common surplus and common expenses, and the voting powers of each Unit resulting from the relocation and reallocation, the total of which shall equal the interests, shares, and powers of the former adjoining Units.



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(c) Recordation of Amendment. At the expense of the Owners of the affected Units, the Association shall record the amendment to the Declaration together with both of the following:

- (1) Any drawing, plat, or plans necessary to show the altered boundaries of the affected Units;
- (2) The dimensions and identifying number of each Unit that results from the relocation and reallocation.

Existing liens automatically shall attach to each Unit that results from the relocation and reallocation.

ARTICLE VI

COMMON AND LIMITED COMMON ELEMENTS

Section 1. Common Elements - Description. All of the Condominium Property, including all of the land and all improvements thereon and appurtenances thereto, except those portions labeled or described herein or in the Drawings as a part of a Unit, are Common Elements.

Except for easements and rights for maintaining sales and marketing facilities and for repairing and completing improvements in the Condominium, and except in its capacity as a Unit Owner of unsold Units, the Declarant shall not retain any interest in, or have any other right to, any portion of the Common Elements.

Section 2. Limited Common Elements - Description. Those portions of the Common Elements that are labeled or designated "LCE" or "Limited Common Elements" on the Drawings, are Limited Common Elements and are reserved for the exclusive use of the Unit or Units they are designed to serve. The Limited Common Elements include, as to each Residential Unit, without limitation, the outdoor terrace or terraces appurtenant to the Residential Unit. All such Limited Common Elements are reserved for the exclusive use of the owners and Occupants of the Unit(s) designated to be served by the same. Additionally, certain Limited Common Elements are reserved for the exclusive use of a particular group of Units as follows:

(a) **Residential Limited Common Elements.** The following Limited Common Elements are designated the "Residential Limited Common Elements" and are reserved for the exclusive use of the Owners and Occupants of the Residential Units: all corridors, hallways, elevator lobbies, and the residential elevator appurtenant to and serving only the Residential Units. The cost of all cleaning, housekeeping and ordinary maintenance (as distinguished from repairs, replacements and capital improvements), and electrical service for the Residential Limited Common Elements shall be assessed by the Association to each Residential Unit in a percentage equal to the par value of that Residential Unit divided by the total par value of all Residential Units.



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(b) Commercial Limited Common Elements. The areas designated on the Drawings as "Commercial Limited Common Elements" are reserved for the exclusive use of the Owners, Occupants and invitees of the Commercial Units. The cost of all cleaning, housekeeping and ordinary maintenance (as distinguished from repairs, replacements and capital improvements), and electrical service for the Commercial Limited Common Elements shall be assessed by the Association to each Commercial Unit in a percentage equal to the par value of that Commercial Unit divided by the total par value of all Commercial Units.

(c) Parking Unit Limited Common Elements. The following Limited Common Elements are designated the "Parking Unit Limited Common Elements" and are reserved for the exclusive use of the Owners and Occupants of the Parking Units: the parking lot surfaces (excluding the individual Parking Units), entranceways, gates, gatehouse, HVAC equipment, and elevator lobbies on the first and second floors. The cost of all cleaning, housekeeping and ordinary maintenance (as distinguished from repairs, replacements and capital improvements), including but not limited to replacement of light bulbs, repainting, staffing of the parking garage entrance, and electrical service for the Parking Unit Limited Common Elements shall be assessed by the Association to each Owner of a Parking Unit in a percentage equal to the par value of that Owner's Parking Unit divided by the total par value of all Parking Units.

Section 3. Undivided Interest. The undivided interest in the Common Elements appurtenant to each Unit is shown on Exhibit C, and is allocated based upon the par value of each Unit, as shown on Exhibit C. The Common Elements shall be owned by the Unit Owners as tenants in common, and ownership thereof shall remain undivided. No Unit Owner may waive or release any rights in the Common Elements. Further, the undivided interest in the Common Elements of a Unit shall not be separated from the Unit to which it appertains. Any attempted conveyance, encumbrance, judicial sale or other transfer of a Unit Owner's fee interest in Common Elements will be void unless the Unit to which such interest is allocated is also transferred.

Section 4. Limited Common Elements - Reallocation. Notwithstanding any provision in this Declaration to the contrary, to the extent not prohibited by Ohio Law, rights to the use of Limited Common Elements may be reallocated between or among Units by an amendment to the Declaration pursuant to the following procedures:

(a) The Owners of the affected Units shall prepare and execute at their expense an amendment to the Declaration that identifies the affected Units and specifies the reallocated rights to the affected Limited Common Elements.

(b) The Owners of the affected Units shall submit to the Board of Directors of the Unit Owners Association the amendment, accompanied by the written consents of the Owners of all affected Units and the holders of all liens on those Units except liens for real estate taxes and assessments not due and payable.

(c) At the expense of the Owners of the affected Units, the Unit Owners Association shall record the submitted amendment to the Declaration.



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Section 5. Exclusive Use Areas.

(a) Those Common Elements, if any, designated on the Drawings as Exclusive Use Areas are reserved for delegation by the Board of Directors to the use of a certain Unit or Units, to the exclusion of other Units, in the Board's sole discretion, except as otherwise provided herein. The Exclusive Use Areas are subject to the Rules governing the Common Elements in addition to any additional Rules the Board may enact with respect to the Exclusive Use Areas.

(b) The Board may establish a reasonable fee for a Unit's use of an Exclusive Use Area. The Board of Directors may revoke, modify or restrict the right of a Unit Owner to use an Exclusive Use Area at any time upon five days' written notice to the Unit Owner. If a Unit Owner's right to use an Exclusive Use Area is revoked by the Board, the Board shall refund, pro rata, any fee paid by the Unit Owner for the right to use the Exclusive Use Area.

ARTICLE VII

UNIT OWNERS' ASSOCIATION

Section 1. Establishment of Association. The Association has been formed to be and to serve as the Unit Owners' association of the Condominium. The Declarant is presently the sole member of the Association.

Section 2. Membership. Membership in the Unit Owners' Association shall be limited to the Unit Owners, and every person or entity who is or becomes a record owner of a fee or undivided fee simple interest in a Unit is a Unit Owner and shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Unit, and transfer of a Unit shall automatically transfer membership to the transferee.

Section 3. Voting Rights. Each Unit Owner shall be entitled to exercise a vote equal to the percentage of ownership interest in the Common Elements for each Unit owned in fee simple; provided, however, that undivided interests in Parking Units may only be voted in the case of (i) the election of Board Members, or (ii) a vote on any matter directly affecting the parking garage, as determined by the Board. In the case of a Unit owned or held in the name of a corporation, a partnership, or a limited liability company, a certificate signed by said Unit Owner shall be filed with the Secretary of the Association naming the person authorized to cast a vote for such Unit, which certificate shall be conclusive until a subsequent substitute certificate is filed with the Secretary of the Association. If two or more persons, whether fiduciaries, tenants in common or otherwise, own undivided interests in a Unit, each may exercise that proportion of the voting power of all of the Unit Owners of said Unit that is equivalent to their respective proportionate interests in said Unit. When any fiduciary or other legal representative of a Unit Owner has furnished to the Association proof, satisfactory to it, of his authority, he or she may vote as though he or she were the Unit Owner. The Declarant or its nominee shall be the voting member with respect to any Unit owned by the Declarant. The vote of the Association with



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respect to any Units owned by the Association shall be determined by the Board.

Section 4. Board of Directors. The Board initially shall be those three persons named as the initial Directors pursuant to the provisions of the Articles, or such other person or persons as may from time to time be substituted by Declarant. No later than 60 days after Units to which 25% of the undivided interests in the Common Elements appertain have been sold and conveyed by the Declarant, the Unit Owners shall meet, and from and after that date there shall be three Directors. The Unit Owners other than the Declarant shall elect one-third (one) of the Directors at such meeting and the Declarant shall designate the other two-thirds (two) of the Directors, which three Directors shall serve until the meeting described in the next paragraph.

Within 60 days after the sale and conveyance, to purchasers in good faith and for value, of Units to which 75% of the undivided interests in the Common Elements appertain, but in no event later than the third anniversary of the establishment of the Association, the Association shall meet and all Unit Owners, including the Declarant, shall elect three Directors to replace all of those Directors earlier elected or designated by the Unit Owners or Declarant, respectively. (The persons so elected shall take office at the end of the meeting during which they are elected and shall, as soon as reasonably possible, appoint officers.) The terms of the three Directors shall be staggered so that the term of one of the Directors will expire and successors be elected at each annual meeting of the Association. Thereafter, at such annual meetings, a successor to the Director whose term then expires shall be elected to serve a three-year term.

Notwithstanding the foregoing, Declarant shall have the right at any time to waive its right to select one or more Directors or to vote in an election of Directors.

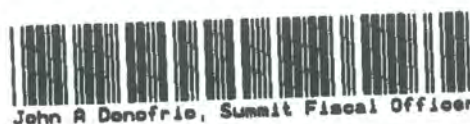
Section 5. Authority. Except as specifically restricted herein, the Board shall have all authority to manage, maintain, repair, replace, alter and improve the Common Elements and assess and collect funds for the payment thereof, and do all things, and exercise all rights provided by the Condominium Organizational Documents, or the Condominium Act, that are not specifically reserved to Unit Owners, including, without limitation:

(a) Hire and fire managing agents, attorneys, accountants, and other independent contractors and employees that the Board determines are necessary or desirable in the management of the Condominium Property and the Association;

(b) Commence, defend, intervene in, settle, or compromise any civil, criminal, or administrative action or proceeding that is in the name of, or threatened against, the Association, the Board, or the Condominium Property, or that involves two or more Unit Owners and relates to matters affecting the Condominium Property;

(c) Enter into contracts and incur liabilities relating to the operation of the Condominium Property;

(d) Subject to the restrictions set forth therein, regulate the use, maintenance, repair, replacement, modification, and appearance of the Condominium Property in accordance with the restrictions set forth herein;



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(e) Subject to the restrictions set forth herein, adopt rules that regulate the use or occupancy of Units, the maintenance, repair, replacement, modification, and appearance of Units, Common Elements, and Limited Common Elements when the actions regulated by those rules affect Common Elements or other Units;

(f) Cause additional improvements to be made as part of the Common Elements;

(g) Purchase, encumber, and convey Units, and, subject to the requirements of Section 3 of Article XVII of this Declaration, acquire an interest in other real property and encumber or convey that interest. All expenses incurred in connection with the acquisition, encumbrance, use, and operation of that interest are common expenses.

(h) Acquire, encumber, and convey or otherwise transfer personal property;

(i) Hold in the name of the unit owners association the real property and personal property acquired pursuant to subsections (g) and (h) of this section;

(j) Grant easements, leases, licenses, and concessions through or over the Common Elements;

(k) Impose and collect fees or other charges for the use, rental, or operation of the Common Elements or for services provided to Unit Owners;

(l) Impose interest and late charges for the late payment of assessments and impose returned check charges;

(m) Promulgate and, pursuant to division (C) of this Section 6 of Article VII, impose reasonable enforcement assessments for violations of the Declaration, the Bylaws, and the Rules of the Association, and reasonable charges for damage to the Common Elements or other property;

(n) Adopt and amend rules that regulate the collection of delinquent assessments and the application of payments of delinquent assessments;

(o) Impose reasonable charges for preparing, recording, or copying amendments to the Declaration, resale certificates, or statements of unpaid assessments;

(p) Enter a Unit for bona fide purposes when conditions exist that involve an imminent risk of damage or harm to Common Elements, another Unit, or to the health or safety of the occupants of that Unit or another Unit;

(q) To borrow funds, as needed, and pledge such security and rights of the Association as may be necessary or desirable to obtain any such loan including, without limitation, the pledge or assignment of the Association's right to future income and the Association's right to levy assessments upon the members;



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(r) Suspend the voting privileges of a Unit Owner or the Occupants of a Unit the Owners of which are delinquent in the payment of assessments for more than 30 days;

(s) Purchase insurance and fidelity bonds required by this Declaration, the By-Laws, or by The Mortgage Corporation, Federal National Mortgage Association, Department of Housing and Urban Development, Veterans' Administration, or any similar holder, insurer or guarantor of first mortgage loans upon Units in the Condominium, or such other insurance and fidelity bonds as the Directors consider appropriate or necessary;

(t) Invest excess funds in investments that meet standards for fiduciary investments under Ohio law; and

(u) Exercise powers that are:

- (1) Conferred by this Declaration or the By-laws, or the law of the State of Ohio;
- (2) Necessary to incorporate or reincorporate the Association as an Ohio not-for-profit corporation;
- (3) Permitted to be exercised in Ohio by a not-for-profit corporation;
- (4) Necessary and proper for the government and operation of the Association.

Section 6. Procedures for Enforcement of Condominium Instruments.

(a) Notice. Prior to imposing charges for damages to the Common Elements or other property, or assessments for the enforcement of violations of the provisions of the Declaration, By-Laws or rules and regulations of the Association, the Board shall give the Owners of the Unit written notice containing

- (1) a description of the property damaged or the violation;
- (2) the amount of the proposed charge or assessment;
- (3) a statement that the owner has a right to a hearing before the Board to contest the proposed charge or assessment;
- (4) a statement setting forth the procedures to request a hearing pursuant to subsection 6(b) of this Article; and
- (5) a reasonable date by which the Unit Owners must cure the violation to avoid the proposed charge or assessment.


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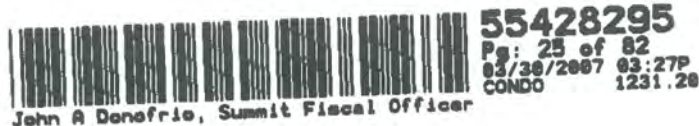
(b) Hearing. A Unit Owner may request a hearing by delivering written notice of such request no later than the tenth day after receiving the notice provided in subsection 6(a) of this Article. If the Unit Owners fail to make a timely request for a hearing, the right to such hearing shall be considered waived, and the Board may immediately impose the charge for damages or enforcement assessment referenced in the notice provided in subsection 6(a) of this Article, or may allow a reasonable time to cure the violation before imposing a charge or assessment. If a Unit Owner requests a hearing, the Board shall not levy the charge or assessment before holding a hearing, and will, at least seven days prior to the hearing, provide the Unit Owners with a written notice of the date, time and location of the hearing. Within 30 days following a hearing at which the Board imposes a charge or assessment, the Board shall deliver a written notice of the charge or assessment to the Unit Owners.

(c) Manner of Notice. Any notice required under this Section to be served:

(i) upon the Unit Owners shall be delivered personally to the Owners or Occupants at the Unit, or mailed (by certified mail, return receipt requested) to the Owners at the address of the Unit, provided that if the Owners have provided the Association with an alternate address, all such notices shall be mailed (by certified mail, return receipt requested) to the Owners at such alternative address.

(ii) upon the Association shall be delivered personally to any officer of the Association or to any on-site representative of any professional management company hired by the Association; or mailed (by certified mail, return receipt requested) to any officer of the Association or to the management company hired by the Association.

Section 7. Delegation of Authority, Professional Management. The Board may delegate all or any portion of its authority to discharge its responsibilities to a managing agent. This delegation of authority and responsibility to a managing agent may be evidenced by one or more management contracts which may provide for the payment of reasonable compensation to such managing agent as a common expense, provided, however, that any agreement for professional management shall be terminable by the Association for cause on 30 days written notice; shall be terminable by either party, without penalty, on 90 days written notice; shall not exceed one year unless renewed by agreement of the parties for successive one-year periods; and shall be bona fide and commercially reasonable at the time entered into under the circumstances then prevailing. Subject to the foregoing, nothing contained herein shall preclude Declarant, or any other entity designated by Declarant, from being employed as managing agent. The managing agent, or the Board, if there is no managing agent, shall have the authority to enter into contracts with Declarant, as defined by an institutional first mortgagee or agency or organization which purchases or insures first mortgages, for goods, services, or for any other thing, including, without limiting the generality of the foregoing, contracts for the providing of management, maintenance and repair services, provided the same are bona fide and commercially reasonable to the Unit Owners at the time entered into under the circumstances then prevailing and are terminable by the Association, without cause and without penalty, on 90 days written notice, provided that any management contract entered into prior to the meeting at which control of the Association has been turned over to the Unit Owners (as provided in Section 4 of Article VII of



this Declaration) may be terminated by the Board, without cause and without penalty, at any time after control of the Association has been turned over to the Unit Owners.

The decision by the Board not to have professional management, or to terminate professional management and assume self management, shall not be made without the consent of Eligible Holders of First Mortgages on Units to which at least 51% of votes of Units subject to such mortgages appertain and the prior written consent of Unit Owners entitled to exercise not less than 67% of the voting power of Unit Owners (including the consent of Owners other than the Declarant who hold a majority of the voting power of Units owned by Owners other than the Declarant). Eligible Holders of First Mortgages on at least 51% of Units subject to such mortgages held by eligible holders may require the Association to employ professional management. Eligible Holders of First Mortgages on at least 51% of Units subject to such mortgages held by eligible holders may require the Association to perform and supply an audit of the Association's financial records.

ARTICLE VIII

AGENT FOR SERVICE

The name of the person to receive service of process for the Association, and that person's residence or place of business, is:

BDB Agent Co.
3800 Embassy Parkway, Suite 300
Akron, OH 44333

If this agent for any reason ceases to be registered with the Secretary of State of Ohio as Statutory Agent for the Association, the person so registered shall be the person to receive service of process for the Association.

ARTICLE IX

MAINTENANCE AND REPAIR

Section 1. Association Responsibility. To the extent that the Board, in the exercise of its duty to use ordinary care and prudence in the management of the property and financial affairs of the Condominium, allocates funds therefore, the Association shall maintain and repair the Common Elements, including and not limited to Limited Common Elements (but excluding any improvements placed upon or affixed to the Limited Common Elements by a Unit Owner) and utility facilities serving more than one Unit, utility lines in the Common Elements, walkways, and all buildings which are a part of the Common Elements; provided, however, that to the extent not prohibited by law or covered by hazard insurance maintained by the Association, damage done to any portion of the Common Elements by the negligent or intentional act of the Owners or the Occupants of a Unit, or by the guests or invitees of Owners or Occupants of a



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Unit, shall be charged to the Owners of the Unit in question as a Special Individual Unit Assessment; and further provided that the Association shall assess the cost of any cleaning, housekeeping or ordinary maintenance (as distinguished from repairs, replacements and capital improvements) and other costs described in Article VI, Section 2, to the Unit Owners to whom the use of the particular Limited Common Area is reserved. The Declarant hereby assigns to the Association all warranties received by the Declarant with regard to Common Elements, that exceed the time periods for the Declarant's warranty under §5311.25(E)(1) and (2) of the Ohio Revised Code.

Notwithstanding anything herein to the contrary, the Association shall be responsible for the maintenance of the first and second floor parking garage, including the Parking Units. No Unit Owner may modify, enclose or decorate a parking space in any way without the prior written authorization of the Board, notwithstanding the fact that the parking space may be a Parking Unit or part of a Unit.

Section 2. Individual Responsibility.

(a) General. Each Unit Owner shall repair and maintain, at the cost of the Unit Owner (except where such repair and maintenance is the result of a matter covered by the Association's insurance, in which event the Association shall hold insurance proceeds for the benefit of the Unit Owners and their mortgagees, as their interests may appear, and shall make the insurance proceeds available to the Unit Owner to reimburse the Unit Owner for the cost of such repair and maintenance), the Unit and all components thereof owned by that Unit Owner, and shall provide routine maintenance and cleaning with respect to any Limited Common Element appurtenant exclusively to that Owner's individual Unit (but not with respect to any Limited Common Element reserved to the Residential Units, Commercial Units or Parking Units as a group). Each Unit Owner must also repair and maintain any improvements to that Owner's Limited Common Elements. By way of example and not limitation, a Unit Owner, who with prior Board authorization installs tile on the Limited Common Element terrace, is responsible for all repair and maintenance of such tile. Without limiting the generality of this paragraph, a Unit Owner's repair and maintenance responsibility shall include repair and maintenance of all windows, screens and doors, including the frames, sashes and jambs, and the hardware therefor.

(b) Failure to Maintain. If a Unit Owner shall fail to make any such repair or perform such maintenance required pursuant to this Article, or if the need for maintenance or repair of any part of the Common Elements or Limited Common Elements is caused by the negligent or intentional act of any Unit Owner or Occupant, or any guests or invitees of the Owners or Occupants, or is as a result of the failure of any Unit Owner or his, her or its predecessors in title to timely pursue to conclusion a claim under any warranty, express, implied, or imposed by law, then in any such event, the Association may perform such repair or maintenance and, to the extent that the cost is not covered by insurance proceeds collected by the Association, the costs not recovered by the Association shall constitute a Special Individual Unit Assessment, as hereinafter defined, on the Unit owned by such Unit Owner. The determination that such maintenance or repair is necessary, or has been so caused, shall be made by the Board.

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ARTICLE X

UTILITY SERVICES

Each Unit Owner by acceptance of a deed to a Unit agrees to pay for utility services separately metered or sub-metered or separately charged by the utility company or the Association to that Unit. If any utility service is not separately metered the cost thereof shall be a common expense and paid by the Association. In the case of electrical service to the Limited Common Elements, the cost shall be assessed as provided in Article VI, Section 2.

ARTICLE XI

INSURANCE; LOSSES; BONDS

Section 1. Special Form Coverage Insurance. The Association shall obtain for the benefit of all Unit Owners, insurance on all structures or other improvements, with the exception of Units, now or at any time hereafter constituting a part of the Condominium Property, against loss or damage by fire, lightning, and such perils as are ordinarily insured against by "special form coverage" and all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement, in an amount not less than the replacement value thereof. Such insurance shall be written in the name of, and the proceeds therefrom shall be payable to the Association, as trustee for each Unit Owner in accordance with the percentage ownership in the Common Elements set forth in Exhibit C. Such policies shall cover built-in or installed fixtures and equipment in an amount not less than the replacement value thereof. Such insurance obtained by the Association shall be without prejudice to the right of a Unit Owner to obtain fire and extended coverage insurance on the Unit Owner's Unit, and individual contents or chattel property insurance, and liability insurance for the Unit Owner's Unit. No Unit Owner may at any time purchase individual policies of insurance on the Unit Owner's interest in the Common Elements or L.C.E. as real property unless the Association shall be named as an additional insured in such policy. Such policy of insurance obtained by the Association may contain an endorsement recognizing the interest of any mortgagee or mortgagees. Such policy of insurance shall be written with a company licensed to do business in the state of Ohio and holding a rating of "A" or better by Best's Insurance Reports. Such policies shall provide for the release by the insurer thereof of any and all rights of subrogation or assignment and all causes and rights of recovery against any Unit Owner, the Unit Owner's tenant, employee, employees or other Occupant of a Unit for recovery against any one of them for any loss occurring to the insured property resulting from any of the perils insured against under the insurance policy.

Section 2. Public Liability Insurance. The Association shall obtain and maintain a comprehensive policy of public liability insurance covering all of the Common Elements, insuring the Association, the Board, the Unit Owners, their tenants, guests, invitees and Occupants, with such limits as the Board may determine, covering claims for personal injury and/or property damage. This insurance shall include protection against such risks as are customarily covered with respect to developments similar in construction, location and use, as determined by the Board. This insurance shall contain a "severability of interest" endorsement which shall preclude the insurer

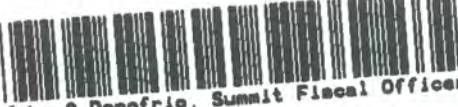
from denying the claim of a Unit Owner or Occupant because of negligent acts of the Association, the Board, other Unit Owners or Occupants, or the Manager. Such policies shall not insure against liability for personal injury or property damage arising out of or relating to activities within individual Units.

Section 3. Sufficient Insurance. If the improvements forming a part of the Condominium Property, or any portion thereof, shall suffer damage or destruction from any cause or peril insured against and the proceeds of any policy or policies insuring against such loss or damage and payable for reason thereof shall be sufficient to pay the cost of such repair, restoration, or reconstruction, then such repair, restoration or reconstruction shall be undertaken by the Association and the insurance proceeds shall be applied by the Association in payment therefore; provided, however, that if within 30 days after such damage or destruction, the Unit Owners, if they are entitled to do so pursuant to Section 2 of Article XII, shall elect to sell the Condominium Property or to withdraw the same from the provisions of this Declaration, then such repair, restoration, or reconstruction shall not be undertaken.

Section 4. Insufficient Insurance. If the improvements forming a part of the Condominium Property, or any portion thereof, shall suffer damage or destruction from any cause or peril which is not insured against, or, if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration, or reconstruction, then, unless the Unit Owner shall, within 90 days after such damage or destruction, if they are entitled to do so pursuant to Section 2 of Article XII, elect to withdraw the property from the provisions of this Declaration, such repair, restoration, or reconstruction of the Unit so damaged or destroyed shall be undertaken by the Association at the expense of the Unit Owner of the Unit so damaged or destroyed in the same proportions which the cost of repair, restoration, or reconstruction of each such Unit so damaged or destroyed bears to the total cost of repair, restoration, or reconstruction of all such Units, and such repair, restoration, or reconstruction of all or any part of the Common Elements shall be undertaken by the Association at the expense of all the Unit Owners in the same proportions in which they shall own the Common Elements. Should any Unit Owner refuse or fail after reasonable notice to pay the Unit Owner's share of such cost in excess of available insurance proceeds, the amount thereof may be advanced by the Association and the amount so advanced by the Association shall be assessed to such Unit Owner and such assessment shall have the same force and effect and, if not paid, may be enforced in the same manner as hereinbefore provided for the non-payment of assessments.

To determine the share of each Unit Owner of the cost in excess of the available insurance proceeds, the following principles shall govern:

- (a) The cost of repair, restoration, or reconstruction of all uninsured and under insured (to the extent of such under insurance), damage or destruction to Units shall be born by the Unit Owner.
- (b) The cost of repair, restoration, or reconstruction of the uninsured and under insured (to the extent of such under insurance), damage or destruction of Common Elements or L.C.E. shall be born by the Unit Owners in proportion to their respective percentages of interest in the Common Elements.


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- (c) All insured, damaged, or destroyed portions of the Condominium Property shall be deemed under insured in the same proportion.


The term "uninsured damage or destruction" as used herein shall mean loss occurring by reason of a hazard not covered by the insurance policies of the Association. The term "under insured damage or destruction" as used herein shall mean loss occurring by reason of a hazard covered by the insurance policies of the Association, but for which the proceeds are insufficient to cover the cost of repair, restoration, or reconstruction. The final determination made with the insurers as to insured, uninsured, and under insured damage or destruction shall govern.

Section 5. Other Association Insurance. In addition, the Board may purchase and maintain contractual liability insurance, trustees' and officers' liability insurance, and such other insurance as the Board may determine.

Section 6. Trustee for Policies. The Association, acting through its Board, is hereby appointed and shall be deemed trustee of the interest of all named insureds under policies of insurance purchased and maintained by the Association. All insurance proceeds under any such policy shall be paid to the Board as trustees. The Board shall have full power to receive and to receipt for the proceeds and to deal therewith as provided herein. Insurance proceeds shall be used by the Association for the repair and replacement of the property for which the insurance was carried or otherwise disposed of as provided in Article XII of this Declaration.

Section 7. Actions as Trustee. Except as otherwise specifically provided herein, the Board, acting on behalf of the Association and all Unit Owners, shall have the exclusive right to bind such parties with respect to all matters affecting insurance carried by the Association, the settlement of a loss claim, and the surrender, cancellation, and modification of all such insurance. Duplicate originals or certificates of all policies of fire and casualty insurance maintained by the Association, and of all renewals thereof, together with proof of payment of premiums, shall be delivered by the Association to all mortgagees who have requested the same in writing.

Section 8. Unit Owner's Insurance. All Unit Owners or Occupants shall obtain insurance, in addition to that provided by the Association pursuant hereto, on the Unit Owner's Unit and any L.C.E. appertaining thereto against loss or damage by fire, lightning, and such other perils as are ordinarily insured against by "special form coverage" and all other perils which are customarily covered with respect to projects similar in construction, location and use, including all perils normally covered by the standard "all risk" endorsement. A Unit Owner may also obtain contents or chattel property insurance. A Unit Owner shall also insure him, her, or itself, and all Occupants of the Unit, any tenants or guests, and all persons lawfully in possession or control of the Unit, against liability for bodily injury, disease, illness, or death and for injury to or destruction of property occurring upon, in or about, or arising from the Unit or any L.C.E. appertaining thereto. All such insurance policies shall contain a waiver of subrogation rights by the insurance carrier as to the Association, its Board and Officers, and all other Unit Owners and Occupants. No Unit Owner or Occupant may at any time purchase individual policies of insurance against loss by fire or other casualty covered by the insurance carried pursuant hereto by the Association. If any Unit Owner or Occupant violates this provision, any diminution in insurance proceeds resulting from the existence


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of such other insurance shall be chargeable to the Unit Owner who acquired or whose Occupant acquired such other insurance, who shall be liable to the Association to the extent of any diminution and/or loss of proceeds. Without limiting the foregoing, a Unit Owner or Occupant shall obtain insurance against liability for events occurring within a Unit, losses with respect to personal property and furnishings, and losses to improvements owned by the Unit Owner or Occupant, provided that if the Association obtains insurance for permanent improvements and built-in fixtures and equipment, then the insurance obtained by the Unit Owner with respect to improvements within the Unit shall be limited to the type and nature of coverage commonly referred to as "tenants' improvements and betterments".

Section 9. Fidelity Bonds. The Board shall obtain fidelity bond coverage with respect to persons handling Association funds in amounts deemed reasonably necessary by the Board to protect against substantial losses.

Section 10. Compliance with Institutional Requirements. Notwithstanding any provision to the contrary contained herein, the Association shall maintain such insurance coverage as is required to be obtained by any national, institutional holder, purchaser, guarantor, insurer or servicer of a first mortgage secured by a Unit in the Condominium.

ARTICLE XII

RESTORATION OF DAMAGE OR DESTRUCTION

Section 1. Obligation to Restore. In the event of damage to or destruction of all or any part of a building, structures or fixtures constituting a part of the Condominium Property, or the taking all or any part of a building, structures or fixtures constituting a part of the Condominium Property in any condemnation or eminent domain proceeding, the Association shall promptly restore or replace the same, unless an election is made in accordance with the requirements of this Article, not to do so.

Section 2. Election Not to Restore. The Association may, with the consent (obtained within sixty (60) days after such damage, destruction or taking) of Unit Owners entitled to exercise not less than 80% of the voting power of Unit Owners, including the consent of Owners other than the Declarant who hold a majority of the voting power of Units owned by Owners other than the Declarant (for the purposes of the foregoing, such consent with respect to a Unit owned by the Declarant shall not be valid unless prior written consent is obtained from the mortgagee of such Unit) and the consent of Eligible Holders of First Mortgages on Units to which at least 75% of the votes of Units subject to mortgages held by Eligible Holders of First Mortgages appertain, determine not to repair or restore such damage, destruction or taking. In the event of such election not to repair or restore such damage, destruction or taking, the Condominium Property shall either be sold as upon partition (and the Condominium regime terminated and dissolved) pursuant to subsection (a) of this Section, or the Association shall distribute the proceeds among the Owners (and their mortgagees and other lien holders) pursuant to subsection (b) of this Section, in proportion to the damage done to their interests by the failure of such damage, destruction or taking to be repaired or restored.



(a) Dissolution of Condominium and Partition Sale. Upon an election not to repair or restore all damage, destruction or taking pursuant to Section 2 of this Article, Owners of Units exercising a majority of the voting power of the Unit Owners may bring an action in partition for the sale of the entire Condominium Property, in which event the net proceeds of such sale, along with the net proceeds of insurance and any other indemnity arising because of the damage or destruction, shall be distributed among all Unit Owners in proportion to the undivided interests in the Common Elements appurtenant to their respective Units. No Owner shall be entitled to receive any portion of those proceeds until all liens and encumbrances on the Owner's Unit (except taxes and assessments of political subdivisions not then due and payable) are paid, released or discharged.

(b) No Partition Sale/Dissolution. Upon an election not to repair or restore all damage, destruction or taking pursuant to Section 2 of this Article, if the Unit Owners do not elect to bring an action in partition pursuant to Section 2(a) of this Article, the net proceeds of insurance or awards paid by reason of such damage or destruction or such taking shall [after payment to damaged Unit Owners in accordance with the balance of this subsection (b)] be added to the Association's reserves, to be used by the Association for future capital improvements, repair or replacements.

If part of the buildings, structures and fixtures not restored or replaced are part of one or more Units, then there shall be allocated and disbursed from the insurance and condemnation proceeds and awards, to each Unit Owner whose Unit cannot be so restored or replaced, and his, her or its respective first mortgagee, as their interests may appear, either:

(a) such amount as would be required for the Unit Owner to restore or repair such damage or taking, if the repair or restoration would return the Unit to tenantable condition equal to the size and condition thereof existing immediately prior to such damage, destruction or taking. [No Owner shall be entitled to receive any portion of those proceeds until all liens and encumbrances on the Owner's Unit (except taxes and assessments of political subdivisions not then due and payable) are paid, released or discharged,] or (b) if such restoration is not possible, an amount equal to the fair market value of the Unit immediately prior to such damage, destruction or taking. In the later event, upon such distribution, such Unit or Units, and the owners thereof, shall be immediately and automatically divested of any interest in the unrestored Unit including, without limiting the generality of the foregoing, divestment of an undivided interest, vote, membership in the Association, and liability for common expenses. All such rights and interests shall be reallocated among all other Units and Unit Owners in the same relative proportions as those rights and interests were prior to such taking. To illustrate, upon a Unit being divested from the Condominium, (x) the voting right of that Unit will be allocated among all other Units in proportion to their respective voting powers in the Association, and (y) the undivided interest of that Unit will be reallocated among all other Units in the proportions of their relative undivided interests prior to such taking. No Owner shall be entitled to receive any portion of

those proceeds until all liens and encumbrances on the Owner's Unit (except taxes and assessments of political subdivisions not then due and payable) are paid, released or discharged.

ARTICLE XIII

CONDEMNATION

Section 1. Standing. Except as hereinafter provided, the Association, or its designated representative, or authorized successor, as trustee, shall represent the Unit Owners in any condemnation or eminent domain proceedings or in negotiations, settlements and agreements with the condemning authority for acquisition of all or any part of the Condominium Property, and shall have the sole and exclusive right to settle the loss with the condemning authority and to receive the award or proceeds of settlement, in trust, for the use and benefit of the Unit Owners and their mortgagees as their interests may appear. Notwithstanding the foregoing, if a Unit Owner may lawfully separately pursue and realize upon a claim for incidental and consequential losses or damage to that Unit Owner resulting from a taking under the power of eminent domain, such as for relocation and moving expenses, loss of favorable mortgage terms, and other such individual incidental or consequential loss, that Unit Owner may, at his, her or its election, separately pursue such claim, provided, that the pursuing of the same, or the realization of an award thereof, neither jeopardizes, in any way, an action by the Association to recoup the losses incurred by it, any other Unit Owner, or the direct loss with respect to the Unit itself, or with regard to the usability thereof, nor diminishes any award for any such loss.

Section 2. Use of Proceeds. The award or proceeds of settlement in any such proceedings, after reduction by the costs, if any, incurred in obtaining the same, shall be applied first to the cost of restoring or replacing all damaged improvements on the remaining Condominium Property in accordance with the Drawings, or in accordance with any new plans and specifications therefor approved by Unit Owners exercising no less than 75% of the voting power of Unit Owners, and the Eligible Holders of First Mortgages on Units to which at 51% of the votes of Units subject to mortgages held by Eligible Holders of First Mortgages appertain. If the award or proceeds are insufficient for such purpose, the excess cost shall be paid by the Association and, to the extent funds of the Association are insufficient therefor, in the judgment of the Board, such excess cost shall be a common expense and assessed among the Units in the same manner as special assessments for capital improvements are assessed. Except as hereinafter provided, the balance of any such award or proceeds of settlement, if there is an excess, shall be allocated and distributed to the Unit Owners, and their first mortgagees, as their interests may appear, in proportion to the relative undivided interests of the Units in the Common Elements. Notwithstanding the foregoing, in the event that as a result of any such taking, and consequent restoration or replacement, any Unit could not reasonably be restored to a condition comparable to that which existed prior to the taking, or could not be replaced, prior to the allocation and disbursement of any sum to any other Unit Owner or his, her or its mortgagee, there shall be allocated and disbursed from such award or proceeds, to each Unit Owner whose Unit cannot be so restored or replaced, and his, her or its respective first mortgagee, as their interests may appear, such amount as is equal to the then fair market value of the Unit that cannot be so



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restored or replaced. Thereupon, such Unit or Units, and the owners thereof, shall be immediately and automatically divested of any interest in the Condominium, the Condominium Property, and the Association, including, without limiting the generality of the foregoing, divestment of an undivided interest, vote, membership in the Association, and liability for common expenses. All such rights and interests shall be reallocated among all other Units and Unit Owners in the same relative proportions as those rights and interests were prior to such taking. To illustrate, upon a Unit being divested from the Condominium, (a) the voting right of that Unit will be divided among all other units in proportion to the other unit's respective percentage of voting power, and (b) the undivided interest of that Unit will be reallocated among all other Units in the proportions of their relative undivided interests prior to such taking.

Section 3. Power of Attorney. Each Unit Owner, by acceptance of a deed to a Unit, appoints the Association, or its designated representative, or authorized successor, as his, her or its attorney-in-fact to represent that Unit Owner, settle losses, receive and utilize the award or proceeds of settlement, and do all things necessary or desirable for such attorney-in-fact to exercise the rights and fulfill the responsibilities of the Association set forth in this Article with respect to condemnation or eminent domain proceedings. This power is for the benefit of each and every Unit Owner, each holder of a first mortgage on a Unit, the Association, and the real estate to which it is applicable, runs with the land, is coupled with an interest, and is irrevocable.

ARTICLE XIV

GRANTS AND RESERVATIONS OF RIGHTS AND EASEMENTS

Section 1. Easements of Enjoyment; Limitations. Every Unit Owner shall have a right and easement of enjoyment in, over and upon the Common Elements, a right and easement for access to and from his, her or its Unit, and a right and easement for utilities serving that Unit, which rights and easements shall be appurtenant to and shall pass with the title to a Unit, subject to the right of the Board to make reasonable rules and regulations (in accordance with the provisions of subsection 2(t) of Article III, above) concerning the use and management of the Common Elements, provided that no such rule or regulation shall limit or prohibit the right to utility services or the right of ingress and egress to a Unit, or any part thereof, or to that Unit's Limited Common Elements. Any Unit Owner may delegate that Unit Owner's right of enjoyment to the Common Elements and to ingress to and egress to the members of that Unit Owner's family and to Occupants.

Section 2. Right of Entry for Repair, Maintenance and Restoration. The Association shall have a right of necessary entry and access to, over, upon and through all of the Condominium Property, including each Unit, to enable the Association to perform its obligations, rights and duties pursuant hereto with regard to maintenance, repair, restoration and/or servicing of any items, things or areas of or in the Condominium Property. In the event of an emergency, the Association's right of entry to a Unit and its appurtenant Limited Common Elements may be exercised without notice; otherwise, the Association shall give the Owners or Occupants of a Unit no less than 24 hours advance notice prior to entering a Unit or its appurtenant Limited Common Elements.



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Section 3. Easements for Encroachments. Each Unit and the Common Elements shall be subject to easements for encroachments by any other Unit or the Common Elements created or arising by reason of overhangs; or by reason of deviations in construction, reconstruction, or repair; or by reason of shifting, settlement, or movement of the structures; or by reason of errors in the Drawings. Valid easements for these encroachments and for the maintenance of same, so long as the encroaching structures remain, shall and do exist.

Section 4. Easement for Support. Every portion of a building or utility line or any improvement on any portion of the Condominium Property contributing to the support of another building, utility line or improvement on another portion of the Condominium Property shall be burdened with an easement of support for the benefit of all other such buildings, utility lines, improvements and other portions of the Condominium Property.

Section 5. Easements for Utilities and Operation of the Condominium Property. There is hereby created upon, over and under all of the Condominium Property, easements to the Association for ingress and egress to, and the installation, replacing, repairing and maintaining of all utilities, including, but not limited to water, sewer, gas, telephone, communication lines, electricity, security systems, master television antennas and cable television. By this easement it shall be expressly permissible for the Association to grant to the providing company and/or contractors permission to construct and maintain the necessary poles and equipment, wires, circuits, conduits and other appurtenances and improvements on, above, across and under the Condominium Property, so long as such poles, equipment, wires, circuits, conduits, appurtenances and improvements do not unreasonably interfere with the use and enjoyment of the Condominium Property. Should any utility or other company furnishing a service request a specific easement by separate recordable document, the Board shall have the right to grant such easement without conflicting with the terms hereof. Additionally, to the extent that such grant does not unreasonably interfere with the use and enjoyment of the Condominium Property, the Association shall have the authority, on behalf of the Association and the Unit Owners, to grant permits, leases, easements, licenses and concessions on, over, above, across and under the Common Elements for utilities, roads and other purposes necessary, in the sole opinion of the Board, for the proper operation of the Condominium.

Furthermore, the Association, for the benefit of all Owners, shall have an easement delineated by a plane parallel to the ceiling surface of each Residential Unit extending from the ceiling surface to a height two feet below the ceiling surface, for the maintenance, repair and replacement of wires, conduits, pipes, vents and other appurtenances to utility services serving any part of the Condominium Property. No modification, addition, or alteration within this easement area may be performed without the prior written consent of the Board. Without limiting the generality of the foregoing, nothing may be drilled into or affixed to the ceiling surface and no wires, conduits, pipes, vents or other appurtenances to utility services within this easement area may be removed, redirected, repositioned, or altered in any way without the prior written consent of the Board.

Section 6. Easement for Services. A non-exclusive easement is hereby granted to all police, firemen, ambulance operators, mailmen, deliverymen, garbage and trash removal personnel, and all similar persons, and to the local governmental authorities and the Association,



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but not to the public in general, to enter upon the Common Elements in the performance of their duties.

Section 7. Easements Reserved to Declarant. Non-exclusive easements are hereby reserved to the Declarant, its successors and assigns, over and upon the Common Elements (a) for access for and for the purpose of completing improvements for which provision is made in this Declaration, provided that such right of access shall be to the extent, but only to the extent, that access thereto is not otherwise reasonably available, (b) for the periods provided for warranties hereunder, for purposes of making repairs required pursuant to those warranties or pursuant to contracts of sale made with Unit purchasers, and (c) until the Declarant has sold all Units, to maintain one or more Units for sales and management offices and for storage and maintenance, and model Units, parking areas for sales and rental purposes and advertising signs. Such easements described in this paragraph are subject to the Declarant's obligation to restore any areas or improvements damaged by the Declarant's use of such easements.

Section 8. Easement to Master Association. A non-exclusive easement is hereby granted to the Northside Lofts Master Association to perform all duties and responsibilities of the Master Association that may require entry onto the Condominium Property, including but not limited to, landscaping, maintenance, repairs, replacements, and cleaning.

Section 9. Easement to the Public. A non-exclusive easement is hereby granted to the public for access over and upon the Common Elements, including Commercial Limited Common Elements, for the purpose of patronizing businesses located in the Commercial Units, subject to the rules and regulations of the Association. This easement does not give the public any right of access to the Residential Units, or the Common and Limited Common Elements appurtenant to the Residential Units.

Section 10. General. The easements and grants provided herein shall in no way affect any other recorded grant or easement.

ARTICLE XV

ASSESSMENTS AND ASSESSMENT LIENS

Section 1. Types of Assessments. The Declarant for each Unit within the Condominium hereby covenants, and each Unit Owner by acceptance of a deed to a Unit (whether or not it shall be so expressed in such deed), is deemed to covenant and agree to pay to the Association: (1) annual operating assessments, (2) special assessments for capital improvements, and (3) special individual Unit assessments, all of such assessments to be established and collected as hereinafter provided.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used exclusively to promote the health, safety and welfare of Unit Owners and Occupants and the best interests of the Condominium Property.


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Section 3. Elements-Appportionment; Due Dates.

(a) Annual Operating Assessments.

(1) At such time prior to the closing by Declarant of the sale of the first Unit, and prior to the beginning of each fiscal year of the Association thereafter, the Board shall adopt a budget and estimate, and prorate among the Units on the basis of the undivided interest of each Unit in the Common Elements, common expenses of the Association consisting of the following:

a. the estimated next fiscal year's cost of the maintenance, repair, and other services to be provided by the Association;

b. the estimated next fiscal year's costs for insurance and bond premiums to be provided and paid for by the Association;

c. the estimated next fiscal year's costs for utility services not separately metered;

d. the estimated amount required to be collected to maintain a working capital reserve fund in an amount not less than two months' estimated common expenses for each Unit, to assure availability of funds for normal operations of the Association. (The initial contribution to such working capital fund shall be collected at the closing of each Unit, but not later than the date control of the Association is transferred to the Unit Owners, as provided in Section 4 of Article VII, and such initial amounts paid into this fund shall not be considered as advance payments of regular assessments. Such initial contribution shall be completed at the time that the election of all Directors is turned over to the Association, and such funds shall be placed by the Directors in a segregated fund. Prior to such date, such funds may not be used to defray expenses, reserve contributions, construction costs, or to make up budget deficits.);

e. an amount deemed adequate by the Board, (but no less than 10% of the total budget unless such reserve requirement is waived annually by the Unit Owners exercising not less than a majority of the voting power of the Association), to maintain a reserve for the cost of unexpected repairs and replacements and periodic maintenance, repair and replacement of improvements and for the repair and replacement of major capital items in the normal course of operations without the necessity of special assessments, and for the funding of insurance deductibles in the event of casualty loss;



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f. the estimated next fiscal year's costs for the operation, management and administration of the Association, including, but not limited to fees for property management, fees for legal and accounting services, costs of mailing, postage, supplies and materials for operating the Association, and the salaries, wages, payroll charges and other costs to perform these services, and any other costs constituting common expenses not otherwise herein specifically excluded; and

g. the estimated amount of assessments by the Northside Lofts Master Association that the Association is responsible to pay pursuant to the terms of the Declaration of Covenants, Conditions and Restrictions for Northside Lofts Master Association.

(2) The Board shall thereupon allocate to each Unit that Unit's share of all of these items, prorated in accordance with each respective Unit's undivided interest in the Common Elements, and thereby establish the annual operating assessment for each separate Unit. For administrative convenience, any such assessment may be rounded so that monthly installments will be in whole dollars.

(3) The annual operating assessment shall be payable in advance, in equal monthly installments, provided that nothing contained herein shall prohibit any Unit Owner from prepaying assessments in annual, semi-annual, quarterly or monthly increments. The due dates of any such installments shall be established by the Board, and, unless otherwise provided the Association shall collect on or before the first day of each month from those who own the Unit an equal monthly prorata share of the annual operating assessment for that Unit.

(4) If the amounts so collected are, at any time, insufficient to meet all obligations for which those funds are to be used, the deficiency shall be assessed by the Board among the Units on the same basis as heretofore set forth.

(5) If assessments collected during any fiscal year are in excess of the funds necessary to meet the anticipated expenses for which the same have been collected, the excess shall be deemed to be retained by the Board as reserves, and shall in no event be deemed profits nor available, except on dissolution of the Association, for distribution to Unit Owners.

(b) Expenses Calculated On a Per Unit Basis. Notwithstanding the foregoing, and regardless of undivided interests, the Board, in its discretion, may compute some or all of the following common expenses on an equal per unit basis:

(i) expenses that arise out of the administration, operation, maintenance, repair, and replacement of security, telecommunications,



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rubbish removal, roads, entrances, recreation facilities, landscaping, grounds care, and

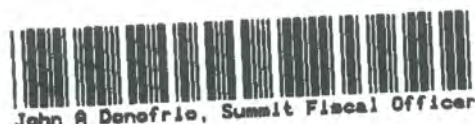
(ii) legal, accounting, and management expenses.

(c) Special Assessments for Capital Improvements.

(1) In addition to the annual operating assessments, the Board may levy, in any fiscal year, special assessments to construct, reconstruct or replace capital improvements on the Common Elements to the extent that reserves therefor are insufficient, provided that new capital improvements not replacing existing improvements (except new capital improvements required by governmental regulation or to correct any deficiency or defect creating a safety or health hazard) shall not be constructed nor funds assessed therefor, if the cost thereof in any 12 consecutive month period would exceed an amount equal to five percent of that fiscal year's budget, without the prior consent of Unit Owners exercising no less than 75% of the voting power of Unit Owners (including the consent of Owners other than the Declarant who hold a majority of the voting power of Units owned by Owners other than the Declarant) and the consent of Eligible Holders of First Mortgages on Units to which at least 51% of the votes of Units subject to mortgages held by eligible holders of mortgages appertain.

(2) Any such assessment shall be prorated among all Units in proportion to their respective undivided interests in the Common Elements, and shall become due and payable on such date or dates as the Board determines following written notice to the Unit Owners.

(d) Special Individual Unit Assessments. The Board may levy an assessment against an individual Unit, or Units, to reimburse the Association for those costs incurred in connection with that Unit or Units properly chargeable by the terms hereof to a particular Unit (such as, but not limited to, the cost of making repairs the responsibility of a Unit Owner; the cost of insurance premiums separately billed to a Unit Owner; the cost of cleaning debris from and the housekeeping of the Unit's Limited Common Elements where, in the opinion of the Board, the owner has allowed the same to become unsightly; penalties and charges imposed pursuant to Rules and Regulations of the Board for violations of the Declaration, By-Laws and Rules and Regulations; and a Unit Owner's enforcement and arbitration charges including, without limitation, the costs and attorneys' fees involved in bringing actions to enforce the terms of the Declaration, By-Laws, and Rules and Regulations. Any such assessment shall become due and payable on such date as the Board determines, and gives written notice to the Unit Owners subject thereto. Additionally, until such time as real estate taxes and assessments are split into separate tax bills for each Unit, the Association shall have the right to pay the real estate taxes and assessments attributable to the Condominium Property if the same have not been paid, when due, and assess each Unit Owner for his, her or its share



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of such real estate taxes and assessments as a special individual Unit assessment. The share of those taxes and assessments attributable to a Unit shall be computed by multiplying the total taxes and assessments for all of the Condominium Property by the undivided interest in Common Elements attributable to that Unit. The calculation by the Association of the Units' shares of taxes and assessments shall be binding upon all Unit Owners.

Section 4. Effective Date of Assessments. Any assessment created pursuant hereto shall be effective, provided it is created as provided herein, if written notice of the amount thereof is sent by the Board to the Unit Owner subject thereto at least ten days prior to the due date thereof, or the due date of the first installment thereof, if to be paid in installments. Written notice mailed or delivered to a Unit Owner's Unit shall constitute notice to that Unit Owner, unless the Unit Owner has delivered written notice to the Board of a different address for such notices, in which event the mailing of the same to that last designated address shall constitute notice to that Unit Owner.

Section 5. Effect of Nonpayment of Assessment; Remedies of Association.

(a) Interest, fees and costs. If any assessment, or any installment or portion of any assessment is not paid within ten days after the same has become due, the entire unpaid balance shall immediately, without notice or demand, become due and payable, and the Board, at its option, without notice or demand, may charge additional amounts for:

(i) reasonable, uniform administrative late fees as determined by the Board from time to time;

(ii) enforcement charges and collection costs (including, without limitation, attorneys and paralegal fees) the Association incurs or estimates that it will incur in connection with the collection of the delinquency;

(iii) interest on the entire unpaid balance of assessments and costs incurred by the Association in connection with such collection, at the rate of 10% per annum or at such other rate as the Board may from time to time determine; and

(iv) any other charges authorized by the Declaration, By-Laws or the Rules and Regulations promulgated by the Board,

(collectively referred to herein as the "interest, fees and costs"), all to the extent not prohibited by Ohio law.

(b) Application of Payments. Payments made by a Unit Owner for assessments shall be applied:

first, for the payment of interest accrued on the delinquent installments or portions of unpaid assessments and on costs incurred by the Association in connection with



such collection, at the rate of 10% per annum or at such other rate as the Board may from time to time have otherwise determined;

second, for the payment of administrative late fees charged with respect to the delinquency applicable to the Unit;

third, to reimburse the Association for enforcement charges and collection costs (including, without limitation, attorneys' and paralegal fees) incurred by the Association in connection with the delinquency;

fourth, to the payment of delinquent installments or portions of assessments which remain unpaid.

(c) Certificate of Lien. Annual operating and both types of special assessments, together with interest, fees and costs, shall be a charge and a continuing lien in favor of the Association upon the Unit against which each such assessment is made, from the effective date thereof. At any time after an installment or portion of an assessment levied pursuant hereto remains unpaid for ten or more days after the same has become due and payable, a certificate of lien for all or any part of the unpaid balance of that assessment, with interest, fees and costs, may be filed with the Summit County Fiscal Officer, pursuant to authorization given by the Board. The certificate, and thereafter, renewal certificates as necessary to keep the lien in effect, shall contain a description of the Unit against which the lien exists, the name or names of the record owner or owners thereof, and the amount of the unpaid balance of the assessment with interest, fees and costs, and shall be signed by the president or other chief officer of the Association.

(d) Expiration of Lien. The lien provided for herein shall remain valid for a period of five years from the date a certificate of lien or renewal certificate was duly filed therefor, unless sooner released or satisfied in the same manner provided by law in the State of Ohio for the release and satisfaction of mortgages on real property, or discharged by the final judgment or order of a court in an action brought to discharge the lien.

(e) Action to Discharge Lien. Any Unit Owner who believes that an assessment chargeable to his, her or its Unit (for which a certificate of lien has been filed by the Association) has been improperly charged against that Unit, may bring an action in the Court of Common Pleas of the county in which the Condominium Property is located for the discharge of that lien. In any such action, if it is finally determined that all or a portion of the assessment has been improperly charged to that Unit, the court shall make such order as is just, which may provide for a discharge of record of all or a portion of that lien.

(f) Personal Obligation of Owners. Each such assessment together with interest, fees and costs, shall also be the joint and several personal obligation of the Unit Owners who owned the Unit at the time when the assessment fell due. The obligation for delinquent assessments, interest, fees and costs shall not be the personal obligation of that owner or owners' successors in title unless expressly assumed by the successors,



provided, however, that the right of the Association to obtain a lien against that Unit, or to foreclose any lien thereon for these delinquent assessments, interest, fees and costs shall not be impaired or abridged by reason of the transfer, but shall continue unaffected thereby.

(g) Legal Actions. In addition to the lien permitted by this Section, the Association, as authorized by the Board, may bring an action at law against the Owner or Owners personally obligated to pay the same, an action to foreclose a lien, or any other action permitted by law. In any foreclosure action, the Owner or Owners affected shall be required to pay a reasonable rental for that Unit during the pendency of such action, and the Association shall be entitled to the appointment of a receiver to collect rental. Rental collected by a receiver during the pendency of a foreclosure action shall be applied first to the payment of the portion of the common expenses chargeable to the Unit during the pendency of the foreclosure action. The Association shall be entitled to become a purchaser at any foreclosure sale.

(h) Waiver. No Owner may waive or otherwise escape liability for the assessments provided for in this Declaration by non-use of the Common Elements, or any part thereof, or by abandonment of his, her or its Unit.

Section 6. Subordination of the Lien to First Mortgages. The lien for delinquent assessments provided for herein shall be: (a) prior to any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments of political subdivisions and liens of first mortgages that have been filed for record; (b) subject and subordinate to the title of any holder of a first mortgage lien who takes title to the Unit pursuant to deed in lieu of foreclosure or other remedies in lieu of the foreclosure of its mortgage; and (c) subject and subordinate to the title of any purchaser at a foreclosure sale in which the Association has been joined and properly served as a party provided that in each such event, the party taking title shall be foreclosure of the mortgage, or deed or assignment in lieu of foreclosure, and any purchaser at a foreclosure sale, shall take the property free of any claims for unpaid installments of assessments or charges against the mortgaged Unit which became due and payable prior to foreclosure sale.

Section 7. Certificate Regarding Assessments. The Board shall, upon demand, for a reasonable charge, furnish a certificate signed by the president, treasurer, secretary or other designated representative of the Association, setting forth whether the assessments on a specified Unit have been paid. This certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

Section 8. Declarant's Obligations. Declarant will assume the rights and obligations of a Unit Owner in its capacity as owner of Units not yet sold, including the obligation to pay common expenses attaching to such Units, from the date the Declaration is filed for record. If no assessments are charged to any Units, then the Declarant will, likewise, pay no assessments for Units owned by the Developer until such time that common expenses are first charged with respect to any Unit.

Section 9. Transfer Assessment. Upon any transfer of any Unit after the original sale thereof ("original sale" being defined for purposes of this sentence as (a) the original sale of a Unit built by a Builder if the Unit was constructed by such Builder with the intent of selling the same to consumers without any personal use thereof by such Builder, and (b) in any other case, the first sale of the Unit after the original sale by Declarant), there shall be automatically levied and due at the closing of the subject transfer an assessment against such Unit equal to two monthly assessments ("**Transfer Assessment**"). Each Transfer Assessment shall be the joint and several obligation of both the subject transferor and transferee, and shall be subject to all other provisions hereof regarding transfers, including, without limitation, the lien provisions hereof.

ARTICLE XVI

NOTICES TO MORTGAGEES

Any holder, insurer or guarantor of a first mortgage, upon written request to the Association (which request states the name and address of such holder, insurer or guarantor and the Unit designation or address), shall have the right to inspect Association documents and records on the same terms as the members and shall be entitled to timely written notice, (delivered by certified or registered mail, return receipt requested), by the Association of:

1. any proposed amendment or change for which a required percentage of Eligible Holders of First Mortgage Liens must consent pursuant to the provisions of Article XVII of this Declaration;
2. any proposed termination of the Condominium as a condominium regime (which notice must be given at least 30 days before any action is taken);
3. any condemnation, eminent domain proceeding, or casualty loss which may affect a material portion of the Condominium Property (including, without limitation, any such event resulting in losses greater than 10% of the annual budget) or any Unit on which there is a first mortgage held, insured or guaranteed by such eligible holder;
4. any decision by the Association not to restore or repair any portion of the Condominium Property (after damage or destruction or partial condemnation), or not to restore or repair such property in a manner specified by the Condominium Organizational Documents;
5. any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
6. any decision by the Association to renew or rehabilitate the Condominium Property;

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7. any decision by the Association to construct significant new capital improvements not replacing existing improvements;

8. times and places of Unit Owners' meetings;

9. any default under the Condominium Organizational Documents which gives rise to a cause of action against a Unit Owner whose Unit is subject to the mortgage of such holder, insurer, guarantor or insurer where the default has not been cured in 60 days;

10. any decision by the Association to establish self-management when professional management had been required previously by an Eligible Holder of a First Mortgage Lien; and

11. any proposed action which requires the consent of a specified percentage of Eligible Holders of First Mortgage Liens.

ARTICLE XVII

AMENDMENTS

Section 1. Amendments requiring 100% of Owners and 75% of Lenders. Except as otherwise provided herein, the following amendments of any Condominium Organizational Documents shall require: (a) the written consent of all Unit Owners; and (b) the consent of Eligible Holders of First Mortgages on Units to which at least 75% of the votes of Units subject to mortgages held by eligible holders of first mortgages appertain.

(1) the boundaries of any Unit (except a Unit designated herein as a Convertible Unit);

(2) the construction of an addition to or an expansion of a Unit into Limited Common Elements or Common Elements;

(3) the undivided interest in the Common Elements appertaining to a Unit or the liability for common expenses appertaining thereto or the right to use Common Elements and Limited Common Elements;

(4) the number of votes in the Association appertaining to any Unit; or

(5) the purposes to which any Unit or the Common Elements are restricted (meaning commercial vs. residential use, or public vs. private use. It is not the intent of this provision to require unanimous consent for the Association's actions affecting the conveyance of interests in, or leasing of, Units or portions of the Common Elements).



Section 2. Action Requiring 80% of Owners and 75% of Lenders. Except as otherwise provided herein, the prior written consent of Unit Owners exercising not less than 80% of the voting power of Unit Owners, including the consent of Owners other than the Declarant who hold a majority of the voting power of Units owned by Owners other than the Declarant, (for the purposes of the foregoing, such consent with respect to a Unit owned by the Declarant shall not be valid unless prior written consent is obtained from the mortgagee of such Unit), and the consent of Eligible Holders of First Mortgages on Units to which at least 75% of the votes of Units subject to mortgages held by Eligible Holders of First Mortgages appertain shall be required to terminate the Condominium;

Section 3. Action Requiring 75% of Owners. Except as otherwise provided herein, the approval of Unit Owners exercising not less than 75% of the voting power of Unit Owners, as well as the authorization of the Board, shall be required for the Association to purchase or sell real property that does not constitute a "Unit" in the Condominium. If such transaction takes place prior to the date that the Unit Owners, other than the Declarant, assume control of the Association, such transaction shall require the approval of the Declarant, the authorization of the Board, and the approval of the Unit Owners other than the Declarant who exercise not less than 75% of the voting power of the Association. Expenses incurred in connection with the purchase or sale of real property shall constitute a "common expense."

Section 4. Amendments Requiring 75% of Owners and 51% of Lenders. Except as otherwise provided herein, the following amendments of any Condominium Organizational Documents shall require: (a) the consent of Unit Owners exercising not less than 75% of the voting power of Unit Owners (including the consent of Owners other than the Declarant who hold a majority of the voting power of Units owned by Owners other than the Declarant), and (b) the consent of Eligible Holders of First Mortgages on Units to which at least 51% of the votes of Units subject to mortgages held by Eligible Holders of First Mortgages appertain:

- (1) a change to any of the provisions governing voting rights;
- (2) a change to any of the provisions governing the increasing of assessments that raise the previously assessed amount by more than 25%;
- (3) a change to any of the provisions governing assessment basis, assessment liens, or the priority of assessment liens;
- (4) a change to any of the provisions governing reserves for maintenance, repair or replacement of Common Elements improvements;
- (5) a change to any of the provisions governing maintenance obligations or the responsibility for maintenance and repairs;
- (6) a change to any of the provisions governing: (a) the method of expansion or contraction of the Condominium, or (b) the method of addition, annexation or withdrawal of land to or from the Condominium;


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- (7) a change to any of the provisions governing hazard, fidelity or other insurance requirements;
- (8) a change to any of the provisions governing restrictions affecting the leasing of a unit;
- (9) a change to any of the provisions governing restrictions affecting the sale of a unit;
- (10) a change to any of the provisions governing the method of determining whether professional management shall be established or discontinued;
- (11) a change to any of the provisions governing restoration or repair of improvements in the Condominium;
- (12) a change to any of the provisions which provision is for the express benefit of mortgagee;
- (13) a change to any of the provisions which affect the scheme of regulation or enforcement of standards for maintenance, architectural design or exterior appearance of improvements on Units;
- (14) a change to any of the provisions governing the rights of any specific class of members;
- (15) a change to any of the provisions governing dissolution of the Association except pursuant to a consolidation or merger;
- (16) a change to any of the provisions governing the conveyance of any or all of the Common Elements;
- (17) any other amendment to any of the Condominium Organizational Documents.

Section 5. Action Requiring 67% of Owners and 51% Lenders. Except as otherwise provided herein, the following actions shall require: (a) the consent of Unit Owners exercising not less than 67% of the voting power of Unit Owners (including the consent of Owners other than the Declarant who hold a majority of the voting power of Units owned by Owners other than the Declarant), and (b) the consent of Eligible Holders of First Mortgages on Units to which at least 51% of the votes of Units subject to mortgages held by Eligible Holders of First Mortgages appertain:

- (1) an increase in assessments that raise the previously assessed amount by more than 25%;
- (2) the imposition of any new restrictions affecting the leasing of a Unit;


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(3) the imposition of any new restrictions affecting the sale of a Unit;

(4) the decision by the Association not to restore or repair any portion of the Condominium Property (after damage or destruction or partial condemnation), or not to restore or repair such property in a manner specified by the Condominium Organizational Documents;

(5) a decision by the Association to establish self management if professional management has been required previously by the Condominium Organizational Documents or by Eligible Holders of First Mortgages, or by a majority vote of the members.

Section 6. Amendments Not Requiring Consent of Owners or Lenders.

Notwithstanding any provision in this Declaration to the contrary, the following statutorily authorized amendments affecting Unit boundaries, Limited Common Elements, and undivided interests in Common Elements shall not require the consent of the Owners, lenders, mortgage insurer or mortgage guarantor, but shall require only the approvals required under these respective sections dealing with such amendments:

(a) Amendments to the Condominium Instruments which are authorized pursuant to the provisions of:

(1) Section 3 of Article V dealing with the conversion of Commercial Units;

(2) Section 4 of Article V dealing with the relocation of boundaries of Units and Limited Common Elements; and

(3) Section 4 of Article VI dealing with the reallocation of Limited Common Elements

(b) Amendments by Declarant to Address Compliance and Other Issues. The Declarant reserves the right and power, and each Unit Owner by acceptance of a deed to a Unit is deemed to and does give and grant to Declarant a power of attorney, which right and power is coupled with an interest and runs with the title to a Unit and is irrevocable (except by Declarant), for a period of three years from the date of the filing of the Declaration, to amend the Condominium Organizational Documents: (i) to the extent necessary to conform to the requirements then governing the purchase or insurance of mortgages by The Mortgage Corporation, Federal Home Loan Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association, Mortgage Guaranty Insurance Corporation, the Department of Housing and Urban Development, the Veterans Administration, or any other such agency or organization, provided that the appropriate percentage (as described elsewhere herein) of Eligible Holders of First Mortgages is obtained; or (ii) to correct typographical errors or obvious factual errors the correction of which would not impair the interest of any Unit Owner or mortgagee; provided that if there is a Unit Owner other than the Declarant, the Declaration shall not be amended to increase the scope or the period of control of the Declarant and further provided that if the



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project has been approved by the Department of Veterans Affairs, such amendment must be approved by the Secretary of the Department of Veterans affairs.

(c) Amendments by Board Pursuant to Statutory Authority. The Board may amend the Declaration in any manner necessary for any of the following:

- (1) To meet the requirements of institutional mortgagees, guarantors and insurers of first mortgage loans, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration, and similar institutions;
- (2) To meet the requirements of insurance underwriters;
- (3) To bring the Declaration into compliance with Chapter 5311 of the Ohio Revised Code;
- (4) To correct clerical or typographical errors or obvious factual errors in the Declaration or an exhibit to the Declaration; or
- (5) To designate a successor to the person named to receive service of process for the Association.

Section 7. Certain Amendments Require Additional Approval of Owners of Commercial Units. In addition to the other requirements for any such amendment, and notwithstanding any provision in this Declaration to the contrary, without the prior written approval of owners of Commercial Units whose Units contain at least 75% of the total square footage of all Commercial Units, no amendment to the provisions of this Declaration or any Condominium Organizational Documents may be enacted regarding: (a) the use of the Commercial Units; (b) the use of any Limited Common Elements appurtenant to the Commercial Units; (c) the use by owners or occupants of Commercial Units of the Common Elements between the Commercial Units; (d) the creation or enforcement of rules and regulations affecting such Commercial Units, Limited Common Elements appurtenant to any Commercial Units, or Common Elements between the Commercial Units; (e) the leasing of Commercial Units; (f) the eviction of a tenant of a Commercial Unit; (g) the termination of utility or other services to a Commercial Unit; or (h) the right of the Board to promulgate rules and regulations affecting any of the foregoing.

Section 8. Approval by Eligible Holders. An Eligible Holder of a First Mortgage on a Unit who receives a written request to approve additions or amendments or actions who does not deliver or post to the requesting party a negative response within 30 days after it receives such written notice, (provided that notice was delivered by certified or registered mail, return receipt requested), shall be deemed to have approved such request.

Section 9. Method to Amend. An amendment to this Declaration, (or the Drawings or the By-Laws), adopted with the consents hereinbefore provided, shall be executed with the same formalities as this Declaration by two officers of the Association and shall contain their



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certification that the amendment was duly adopted in accordance with the foregoing provisions. Any amendment adopted by the Declarant or a duly empowered successor Declarant pursuant to authority granted it pursuant to the Declaration shall be duly executed by it with the same formalities as to execution as this Declaration and shall contain the certification of such signor or signors that such amendment is made pursuant to authority vested in the Declarant or any duly empowered successor Declarant by the Declaration. Any amendment duly adopted and executed in accordance with the foregoing provisions shall be effective upon the filing of the same with the Summit County Fiscal Officer.

ARTICLE XVIII

GENERAL PROVISIONS

Section 1. Security. EACH OWNER AND OCCUPANT OF A UNIT, AND THEIR RESPECTIVE GUESTS AND INVITEES, SHALL BE RESPONSIBLE FOR THEIR OWN PERSONAL SAFETY AND THE SECURITY OF THEIR PROPERTY IN THE CONDOMINIUM. THE ASSOCIATION MAY, BUT SHALL NOT BE OBLIGATED TO, MAINTAIN OR SUPPORT CERTAIN ACTIVITIES WITHIN THE CONDOMINIUM PROPERTY DESIGNED TO ENHANCE THE LEVEL OF SAFETY OR SECURITY WHICH EACH PERSON PROVIDES FOR HIMSELF AND HIS PROPERTY. NEITHER THE ASSOCIATION NOR DECLARANT SHALL IN ANY WAY BE CONSIDERED INSURERS OR GUARANTORS OF SAFETY OR SECURITY WITHIN THE CONDOMINIUM PROPERTY, NOR SHALL EITHER BE HELD LIABLE FOR ANY LOSS OR DAMAGE BY REASON OF FAILURE TO PROVIDE ADEQUATE SECURITY OR INEFFECTIVENESS OF SECURITY MEASURES UNDERTAKEN. NO REPRESENTATION OR WARRANTY IS MADE THAT ANY SYSTEMS OR MEASURES, INCLUDING ANY MECHANISM OR SYSTEM FOR LIMITING ACCESS TO THE CONDOMINIUM PROPERTY, CANNOT BE COMPROMISED OR CIRCUMVENTED, NOR THAT ANY SUCH SYSTEMS OR SECURITY MEASURES UNDERTAKEN WILL IN ALL CASES PREVENT LOSS OR PROVIDE THE DETECTION OR PROTECTION FOR WHICH THE SYSTEM IS DESIGNED OR INTENDED. EACH OWNER ACKNOWLEDGES, UNDERSTANDS AND SHALL BE RESPONSIBLE FOR INFORMING THE OWNER'S TENANTS AND ALL OCCUPANTS OF THE OWNER'S UNIT THAT THE ASSOCIATION, ITS BOARD AND COMMITTEES, AND DECLARANT ARE NOT INSURERS OR GUARANTORS OF SECURITY OR SAFETY AND THAT EACH PERSON WITHIN THE CONDOMINIUM PROPERTY ASSUMES ALL RISKS OF PERSONAL INJURY AND LOSS OR DAMAGE TO PROPERTY, INCLUDING UNITS AND THE CONTENTS OF UNITS, RESULTING FROM ACTS OF THIRD PARTIES.

Section 2. Covenants Running with the Land. The covenants, conditions, restrictions, easements, reservations, liens and charges created hereunder or hereby shall run with and bind the land, and each part thereof, and shall be binding upon and inure to the benefit of all parties having any right, title or interest in or to all or any part of the Condominium Property, and the Association, and their respective heirs, executors, administrators, successors and assigns.



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Jehn A Donofrio, Summit Fiscal Officer

Section 3. Enforcement. In addition to any other remedies provided in this Declaration, Declarant, (only with respect to those rights directly benefiting the Declarant), the Association, and each Unit Owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens and charges set forth herein or in the By-Laws or now or hereafter imposed by or through the Association's rules and regulations. Failure by Declarant, the Association or by any Unit Owner to proceed with such enforcement shall in no event be deemed a waiver of the right to enforce at a later date the original violation or a subsequent violation, nor shall the doctrine of laches nor any statute of limitations bar the enforcement of any such restriction, condition, covenant, reservation, easement, lien or charge. Further, the Association and each Unit Owner shall have rights of action against each other for failure to comply with the provisions of the Condominium Organizational Documents, rules and regulations, and applicable law, and with respect to decisions made pursuant to authority granted thereunder, and the Association shall have the right to assess reasonable charges against a Unit Owner who fails to comply with the same, including the right to assess charges for the costs of enforcement and arbitration and reasonable attorneys' fees arising therefrom. Notwithstanding the foregoing, in the event of any dispute between the Association and any Unit Owner or Occupant, other than with regard to assessments, that cannot be settled by an agreement between them, the matter shall first be submitted to arbitration in accordance with and pursuant to the arbitration law of Ohio then in effect (presently Chapter 2711 of the Revised Code of Ohio), by a single independent arbitrator selected by the Board.

Section 4. Severability. Invalidation of any one or more of these covenants, conditions, restrictions or easements by judgment or court order shall in no way affect any other provisions, which provisions shall remain in full force and effect. If any language of this Declaration conflicts with mandatory provisions of the Condominium Act, the latter's requirements shall prevail and the conflicting language shall be deemed to be invalid and void, provided that such invalidity shall in no way affect any other provisions of this Declaration, which provisions shall remain in full force and effect.

Section 5. Gender and Grammar. The singular wherever used herein shall be construed to mean the plural when applicable, and the necessary grammatical changes required to make the provisions hereof apply either to corporations, partnerships, men or women, shall in all cases be assumed as though in such case fully expressed.

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Section 6. Captions. The captions of the various provisions of this Declaration are not part of the context hereof, but are merely labels to assist in locating the various provisions hereof.

IN WITNESS WHEREOF, the undersigned have executed this instrument this 6th day of March 2007.

DECLARANT:
TESTA ENTERPRISES, INC., an Ohio corporation

By: [Signature]
Joel A. Testa
Its: Vice President

STATE OF OHIO)
)SS
SUMMIT COUNTY)

BEFORE ME a notary public in and for said county and state, personally appeared the above-named Testa Enterprises, Inc., by Joel A. Testa, its Vice President, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Cuy Falls, Ohio this 6th day of March, 2007.

[Signature]
Notary Public

This instrument prepared by:
Nicholas T. George, Esq.
David J. Lindner, Esq.
BUCKINGHAM, DOOLITTLE & BURROUGHS
3800 Embassy Parkway, Suite 300
Akron, OH 44333
(330) 376-5300

DEANNA J. RICE, Notary Public
STATE OF OHIO
Resident Summit County
My Commission Expires October 13, 2009

«CL2:253582_v8»


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Exhibit A

Legal Description of Condominium Property

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CAMPBELL & ASSOCIATES, INC.

Consulting Engineers and Land Surveyors

1923 Bailey Road, Suite A
Cuyahoga Falls, OH 44221
(330) 945-4117
FAX (330) 945-3377

February 28, 2007
Job no. 20051224

Description of a 0.4201 Acre Condominium Parcel

Situated in the City of Akron, County of Summit, State of Ohio, and being part of former Sublots 1, 2, 4, 5, and 6 of the King's Allotment, as recorded in Plat Book 1, Page 46 of the Summit County Records, and known as being part of those parcels conveyed to Testa Enterprises Inc. by document Reception Number 555258152 and known as parcels, Permanent Parcel Numbers 6860592 and of the Summit County Records and more fully described as follows, to wit:

Beginning at a 1-inch pin found in a monument box at the centerline intersection of Ridge Street (50-foot width) and High Street (66-foot width); thence North 72 degrees 46 minutes 48 seconds West, along the centerline of said Ridge Street, a distance of 245.05 feet to a point; thence South 17 degrees 13 minutes 12 seconds West, a distance of 25.00 feet to a spike set on the southerly line of said Ridge Street and the northerly line of the former Sub Lot 7 in said King's Allotment; thence South 17 degrees 20 minutes 34 seconds West a distance of 88.47 feet to a rebar to be set; thence South 72 degrees 39 minutes 26 seconds East a distance of 14.00 feet to a rebar to be set on the easterly line of said former Sub Lot 7; thence South 17 degrees 20 minutes 34 seconds West along the said easterly line of the former Sub Lot 7, a distance of 90.63 feet to a point on the northerly line of Furnace Street (66-foot width), said point being the southeast corner of said former Sub Lot 7 and witnessed by a 1-inch square pin found to be 0.32 feet west; thence North 72 degrees 46 minutes 25 seconds West along the said northerly line of Furnace Street, a distance of 147.71 feet to a rebar to be set at the southeast corner of the said parcel, Permanent Parcel Number 6860593; thence North 17 degrees 12 minutes 31 seconds East along the east line of said parcel a distance of 12.40 feet to a drill hole to be set at the **True Point of Beginning**;

Thence North 71 degrees 23 minutes 23 seconds West a distance of 3.25 feet to the face of the of a building foundation;

Thence along the said building foundation the following eight courses:

South 17 degrees 13 minutes 35 seconds West a distance of 2.32 feet to a corner therein;
North 72 degrees 46 minutes 25 seconds West a distance of 30.42 feet to a corner therein;
South 17 degrees 13 minutes 35 seconds West a distance of 2.83 feet to a corner therein;
North 72 degrees 46 minutes 25 seconds West a distance of 67.50 feet to a corner therein;
North 17 degrees 13 minutes 35 seconds East a distance of 4.00 feet to a corner therein;
North 72 degrees 46 minutes 25 seconds West a distance of 12.67 feet to a corner therein;
South 17 degrees 13 minutes 35 seconds West a distance of 4.00 feet to a corner therein;
North 72 degrees 46 minutes 25 seconds West a distance of 35.84 feet to a point;

Thence South 17 degrees 13 minutes 35 seconds West a distance of 7.33 feet to a drill hole to be set on the north line of the aforesaid Furnace Street and the south line of the aforesaid Testa parcel;

Thence North 72 degrees 46 minutes 25 seconds West along the said north line of Furnace Street and the south line of the Testa parcel a distance of 19.33 feet;



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Thence North 17 degrees 13 minutes 35 seconds East a distance of 7.33 feet to the face of the of the aforesaid building foundation;

Thence along the said building foundation the following seventeen courses:

North 72 degrees 46 minutes 25 seconds West a distance of 48.75 feet to a corner therein;
North 17 degrees 13 minutes 35 seconds East a distance of 5.08 feet to a corner therein;
North 72 degrees 46 minutes 25 seconds West a distance of 1.59 feet to a corner therein;
North 17 degrees 13 minutes 35 seconds East a distance of 3.06 feet to a corner therein;
North 72 degrees 46 minutes 25 seconds West a distance of 3.06 feet to a corner therein;
North 04 degrees 07 minutes 48 seconds East a distance of 28.89 feet to a corner therein;
South 85 degrees 52 minutes 12 seconds East a distance of 0.67 feet to a corner therein;
North 04 degrees 06 minutes 53 seconds East a distance of 34.41 feet to a corner therein;
South 85 degrees 52 minutes 12 seconds East a distance of 18.64 feet to a corner therein;
South 72 degrees 46 minutes 25 seconds East a distance of 103.88 feet to a corner therein;
South 17 degrees 13 minutes 35 seconds West a distance of 0.50 feet to a corner therein;
South 72 degrees 46 minutes 25 seconds East a distance of 28.16 feet to a corner therein;
South 17 degrees 13 minutes 35 seconds West a distance of 0.42 feet to a corner therein;
South 72 degrees 46 minutes 25 seconds East a distance of 21.83 feet to a corner therein;
North 17 degrees 13 minutes 35 seconds East a distance of 0.42 feet to a corner therein;
South 72 degrees 46 minutes 25 seconds East a distance of 50.64 feet to a corner therein;
South 17 degrees 13 minutes 35 seconds West a distance of 4.06 feet to a point;

Thence South 71 degrees 22 minutes 42 seconds East a distance of 12.02 feet to a drill hole to be set;

Thence South 04 degrees 37 minutes 43 seconds West a distance of 5.76 feet to a drill hole to be set;

Thence South 85 degrees 22 minutes 17 seconds East a distance of 22.68 feet to a drill hole to be set;

Thence South 06 degrees 21 minutes 49 seconds West a distance of 35.73 feet to a drill hole to be set;

Thence South 18 degrees 36 minutes 37 seconds West a distance of 8.85 feet to a drill hole to be set;

Thence North 71 degrees 23 minutes 23 seconds West a distance of 5.85 feet to a drill hole to be set;

Thence South 18 degrees 36 minutes 37 seconds West a distance of 20.32 feet to a drill hole to be set;

Thence North 71 degrees 23 minutes 23 seconds West a distance of 22.20 feet to the True Point of Beginning.

The above parcel contains an area of 18299.5 square feet, which is 0.4201 acres, none of which is in the public right-of-way, as surveyed by Joseph A. Corall, Ohio Professional Surveyor number 6911 of Campbell & Associates of Cuyahoga Falls, Ohio in September of 2005. This parcel is subject to all easements and right-of-ways of record or as otherwise legally established.

The basis of bearings for this survey is the State Plane Coordinate System, North Zone as established in a survey by the City of Akron dated December, 2002. All rebars "to be set" are 30-inch lengths of 5/8-inch diameter bars with caps inscribed "Campbell & Associates" and will be set when the pertinent documents are recorded.



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Exhibit B

BY-LAWS

of

NORTHSIDE LOFTS CONDOMINIUM I UNIT OWNERS' ASSOCIATION, INC.

ARTICLE I: NAME AND LOCATION

The name of the Association is Northside Lofts Condominium I Unit Owners' Association, Inc. ("the Association") which corporation, not-for-profit, is created pursuant to the provisions of Chapter 1702 of the Revised Code of Ohio, and which Association is also created pursuant to the provisions of Chapter 5311 of the Revised Code of Ohio as the unit owners' association for Northside Lofts Condominium I. The principal office of the Association shall be as set forth in its Articles of Incorporation ("the Articles") and the place of meetings of Unit Owners (Members) and of the Directors of the Association shall be at such place in Summit County, Ohio as the Board of Directors ("the Board") may from time to time designate.

ARTICLE II: DEFINITIONS

All of the terms used herein shall have the same meanings as set forth in the Declaration of Northside Lofts Condominium I, ("the Declaration"), recorded simultaneously herewith with the Summit County, Ohio, Fiscal Officer.

ARTICLE III: UNIT OWNERS (MEMBERS)

Section 1. Composition. Each Unit Owner, as defined in the Declaration, is a member of the Association.

Section 2. Annual Meetings. Regular annual meetings of the Unit Owners shall be held in the first calendar quarter of each year hereafter, on a date and at an hour established, from time to time, by the Board.

Section 3. Special Meetings. Special meetings of the Unit Owners may be called at any time by the president or by the Board, upon written request of the Declarant, or upon written request of Unit Owners other than the Declarant entitled to exercise one-fourth (1/4) or more of the voting power of Unit Owners other than the Declarant, and when required by the Condominium Act.

Section 4. Notice of Meetings. Written notice of each meeting of Unit Owners shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least seven days but no more than 60 days before such meeting, to each Unit Owner entitled to vote thereat, addressed to the Unit Owner's address last appearing on the books of the Association, or supplied by such Unit Owner to the Association for the purpose of notice, or by delivering a copy of that notice at such address at least seven but



no more than 60 days before the meeting. The notice shall specify the place, day and hour of the meeting, and, in the case of a special meeting, the purpose of the meeting.

Section 5. Quorum. Those present in person or by proxy when action is taken during a meeting of the Association constitute a sufficient quorum.

Section 6. Proxies. At any meeting of Unit Owners a Unit Owner may vote in person or by proxy. All proxies shall be in writing and filed with the secretary prior to the meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by a Unit Owner of his, her or its Unit.

Section 7. Voting Power. Except as otherwise provided in the Condominium Organizational Documents, or by law, a majority of the voting power of Unit Owners voting on any matter that may be determined by the Unit Owners at a duly called and noticed meeting shall be sufficient to determine that matter. The rules of Roberts Rules of Order or such other procedural rules as the Board may establish shall govern the conduct of all meetings of Unit Owners except as otherwise specifically provided in the Condominium Organizational Documents or by law.

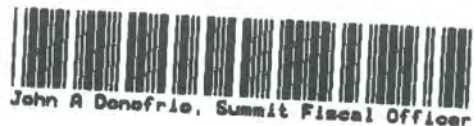
Section 8. Action in Writing without Meeting. Any action that could be taken by Unit Owners at a meeting may be taken without a meeting with the affirmative vote or approval, in a writing or writings, of Unit Owners having not less than a majority of the voting power of Unit Owners, or such greater proportion of the voting power as may be required by the Condominium Organizational Documents, or by law.

ARTICLE IV: BOARD OF DIRECTORS

Section 1. Initial Directors. The initial Directors shall be those three persons named as the initial Directors in the Articles, or such other person or persons as may from time to time be substituted by the Declarant.

Section 2. Successor Directors. The number, times of election, and terms of office of those who will serve as Directors of the Association to succeed the initial Directors, shall be as provided in the Declaration and these By-Laws. Directors shall be elected from among the Unit Owners or the spouses of Unit Owners. If a Unit Owner is not an individual, that Unit Owner may nominate for the Board of Directors any principal, member of a limited liability company, partner, director, officer, or employee of that Unit Owner.

Section 3. Removal. Excepting only Directors named in the Articles or selected by Declarant, any Director may be removed from the Board with or without cause, by the vote of Unit Owners holding at least 67% of the voting power of the Unit Owners. In the event of the death, resignation or removal of a Director other than one named in the Articles or a substitute selected by the Declarant, that Director's successor shall be selected by the remaining Directors to serve until the next annual meeting of Unit Owners, when a Director shall be elected to complete the term of such deceased, resigned or removed Director. Declarant shall have the sole right to remove, with or without cause, any Director designated in the Articles, or a substitute

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selected by the Declarant, and select the successor of any Director so selected who dies, resigns, is removed or leaves office for any reason before the election of Directors by all of the Unit Owners as provided in the Declaration.

Section 4. Nomination. Nominations for the election of Directors to be elected by the Unit Owners shall be made by a nominating committee. Nominations may also be made from the floor at the meetings. The nominating committee shall consist of a chairman, who shall be a member of the Board, and two or more Unit Owners appointed by the Board. The nominating committee shall make as many nominations for election to the Board as it shall, in its discretion, determine, but no less than the number of vacancies that are to be filled.

Section 5. Election. Election to the Board by the Unit Owners shall be by secret written ballot. At such elections, the Unit Owners or their proxies may cast, in respect to each vacancy, such voting power as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected, and likewise, those receiving the largest number of votes shall be elected to the longest terms. Cumulative voting is not permitted.

Section 6. Compensation. Unless otherwise determined by the Unit Owners at a meeting duly called and noticed for such purpose, no Director shall receive compensation for any service rendered to the Association as a Director. However, any Director may be reimbursed for his or her actual expenses incurred in the performance of duties.

Section 7. Regular Meetings. Regular meetings of the Board shall be held no less than quarterly, without notice, on such date and at such place and hour as may be fixed from time to time by resolution of the Board.

Section 8. Special Meetings. Special meetings of the Board shall be held when called by the president of the Board, or by any two Directors, after not less than three days notice to each Director.

Section 9. Quorum. The presence at any duly called and noticed meeting, in person or by proxy, of Directors entitled to cast a majority of the voting power of Directors shall constitute a quorum for such meeting.

Section 10. Voting Power. Except as otherwise provided in the Condominium Organizational Documents, or by law, the vote of a majority of the Directors voting on any matter that may be determined by the Board at a duly called and noticed meeting at which a quorum is present shall be sufficient to determine that matter.

Section 11. Conduct of Meetings. Unless otherwise determined by the Board, meetings of the Board shall be open to all Unit Owners. The Board shall have the prerogative to close their meetings to all non-Board members whenever the same is necessary or convenient to the efficient administration of the Board's affairs. A meeting of the Board may be held by any method of communication, including electronic or telephonic communication provided that each member of the Board can hear (in the case of telephonic) or view (in the case of other electronic methods), participate and respond to every other member of the Board.



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Section 12. Action In Writing Without Meeting. Any action that could be taken by the Board at a meeting may be taken without a meeting with the affirmative vote or approval, in a writing or writings, of all of the Directors.

Section 13. Powers. The Board shall exercise all powers and authority, under law, and under the provisions of the Condominium Organizational Documents, that are not specifically and exclusively reserved to the Unit Owners by law or by other provisions thereof, and without limiting the generality of the foregoing, the Board shall have the right, power and authority to:

(a) take all actions deemed necessary or desirable to comply with all requirements of law, and the Condominium Organizational Documents;

(b) obtain insurance coverage no less than that required pursuant to the Declaration;

(c) enforce the covenants, conditions and restrictions set forth in the Declaration;

(d) repair, maintain and improve the Common Elements;

(e) establish, enforce, levy and collect assessments as provided in the Declaration;

(f) adopt and publish Rules and Regulations:

(i) governing the use of the Common Elements and the personal conduct of Unit Owners, Occupants and their guests thereon;

(ii) detailing the procedures for discharging the Association's responsibilities with regard to the administration of the Condominium Property;

(iii) governing any aspect of the Condominium Property that is not required by statute to be governed by the Declaration or By-Laws; and

(iv) establishing penalties for the infraction thereof;

(g) suspend the voting rights of a Unit Owner during any period in which such Unit Owner shall be in default in the payment of any assessment levied by the Association (such rights may also be suspended after notice and hearing, for a period not to exceed 60 days for each infraction of published Rules and Regulations or of any provisions of the Condominium Organizational Documents);

(h) declare the office of a member of the Board to be vacant if such Director shall be absent from three consecutive regular meetings of the Board;

(i) authorize the officers to enter into one or more agreements necessary or desirable to fulfill the purposes and objectives of the Association and to facilitate the



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efficient operation of the Condominium Property; (it shall be the primary purpose of such management agreements to provide for administration, management, repair and maintenance as provided in the Declaration, and the receipt and disbursement of funds as may be authorized by the Board. The terms of any management agreements shall be as determined by the Board to be in the best interest of the Association, subject, in all respects, to the provisions of the Condominium Organizational Documents);

(j) invest excess funds in investments that meet standards for fiduciary investments under Ohio law;

(k) borrow funds, as needed, and pledge such security and rights of the Association as might be necessary or desirable to obtain any such loan including, without limitation, the pledge of the Association's right to levy assessments upon the Members; and

(l) do all things and take all actions permitted to be taken by the Association by law, or the Condominium Organizational Documents not specifically reserved thereby to others.

Section 14. Duties. It shall be the duty of the Board to:

(a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Unit Owners at each annual meeting of Unit Owners, or at any special meeting when such statement is requested in writing by Unit Owners representing one-half (1/2) or more of the voting power of Unit Owners;

(b) supervise all officers, agents and employees of the Association and see that their duties are properly performed;

(c) as more fully provided in the Declaration, to:

(i) fix the amount of assessments against each Unit;

(ii) give written notice of each assessment to every Unit Owner subject thereto within the time limits set forth therein; and

(iii) foreclose the lien against any property for which assessments are not paid, or bring an action at law against the Unit Owner(s) personally obligated to pay the same, or both;

(iv) issue, or to cause an appropriate representative to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid;

(d) procure and maintain insurance and bonds as provided in the Declaration and as the Board deems advisable;



(e) cause the property subject to the Association's jurisdiction to be maintained within the scope of authority provided in the Declaration;

(f) cause the restrictions created by the Declaration to be enforced; and

(g) take all other actions required to comply with all requirements of law and the Condominium Organizational Documents.

ARTICLE V: OFFICERS

Section 1. Enumeration of Offices. The officers of this Association shall be a president, a secretary, a treasurer and such other officers as the Board may from time to time determine. No officer need be a member of the Association nor need any officer be a Director. The same person may hold more than one office.

Section 2. Selection and Term. Except as otherwise specifically provided in the Declaration or by law, the officers of the Association shall be selected by the Board, from time to time, to serve until the Board selects their successors.

Section 3. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 4. Resignation and Removal. Any officer may be removed from office, with or without cause, by the Board. Any officer may resign at any time by giving written notice to the Board, the president, or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Duties. The duties of the officers shall be as the Board may from time to time determine. Unless the Board otherwise determines, the duties of the officers shall be as follows:

(a) President. The president shall preside at all meetings of the Board, shall have the authority to see that orders and resolutions of the Board are carried out, and shall sign all legal instruments on behalf of the Association.

(b) Secretary. The secretary shall record the votes and keep the minutes and proceedings of meetings of the Board and of the Unit Owners, serve notice of meetings of the Board and of the Unit Owners, keep appropriate current records showing the names of Unit Owners of the Association together with their addresses, and shall act in the place and stead of the president in the event of the president's absence or refusal to act.

(c) Treasurer. The treasurer shall assume responsibility for the receipt and deposit in such bank accounts and investment of funds in such vehicles, as the Board directs, the disbursement of such funds as directed by the Board, the keeping of proper books of account, the preparation



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of an annual budget and a statement of income and expenditures to be presented to the Unit Owners at annual meetings, and the delivery or mailing of a copy of each to each of the Unit Owners.

ARTICLE VI: COMMITTEES

The Board shall appoint a nominating committee and may appoint such other committees as it deems appropriate in carrying out its purposes.

ARTICLE VII: BOOKS AND RECORDS

The Association shall maintain correct and complete books, records and financial statements of the Association, including, without limitation, its governing documents (current copies of the Declaration, By-Laws and Articles); current Rules and Regulations; names and addresses of the Unit Owners and their respective undivided interests in the Common Elements; actions (Board resolutions, minutes of all meetings of Members and the Board, etc.); documents relating to its financial condition (all receipts and expenditures, budget, financial statements showing the allocation, distribution and collection of the common profits, losses and expenses among and from the Unit Owners, etc.) and annual audited financial statements when such are prepared.

Any Unit Owner, duly authorized agent of any Unit Owner, duly authorized prospective purchaser, lender or the holder, insurer or guarantor of a first mortgages on a Unit, may examine and copy any of the foregoing books, records and financial statements pursuant to reasonable standards established in the Declaration, these By-Laws, or by Rules and Regulations promulgated by the Board, which may include, without limitation, standards governing the type of documents that are subject to examination and copying, the times and locations at which those documents may be examined or copied, and the specification of a reasonable fee for copying the documents. Notwithstanding the foregoing, the Association shall not be required to permit the examination and copying of any of the following:

- (1) information that pertains to Condominium Property-related personnel matters;
- (2) communications with legal counsel or attorney work product pertaining to pending litigation or other Condominium Property-related matters;
- (3) information that pertains to contracts or transactions currently under negotiation, or information that is contained in a contract or other agreement containing confidentiality requirements and that is subject to those requirements;
- (4) information that relates to the enforcement of the Declaration, By- Laws, or Rules and Regulations of the Association against Unit Owners;
- (5) information that relates to the enforcement of the Declaration, By-Laws, or Rules and Regulations against Unit Owners; or



- (6) Information the disclosure of which is prohibited by state or federal law.

ARTICLE VIII: AUDITS

The Board shall cause the preparation and furnishing of an audited financial statement for the immediately preceding fiscal year within a reasonable time following request (provided that no such statement need be furnished earlier than 90 days following the end of such fiscal year), in the following circumstances:

1. to each requesting Unit Owner, at the expense of the Association, upon the affirmative vote of Unit Owners exercising a majority of the voting power of Unit Owners; and
2. upon the request of a holder or insurer or guarantor of any first mortgage on a Unit, at the requesting party's expense.

ARTICLE IX: FISCAL YEAR

Unless otherwise changed by the Board, the fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the date of incorporation of this Association.

ARTICLE X: AMENDMENTS

Any modification or amendment of these By-Laws shall be made only by means of an amendment to the Declaration, in the same manner and subject to the approvals, terms and conditions set forth therein, and shall be effective from the time a certificate setting forth such modification or amendment is delivered for recording to the Summit County Fiscal Officer.

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Exhibit C**Unit Types and Par Values**

P - Parking Units
 C - Commercial / Retail
 R - Residential

Parking Units		
<u>Unit Number</u>	<u>Type</u>	<u>Par Value/ Undivided Interest</u>
1-1	P	0.13980%
1-2	P	0.13980%
1-3	P	0.13980%
1-4	P	0.13980%
1-5	P	0.13980%
1-6	P	0.13980%
1-7	P	0.13980%
1-8	P	0.13980%
1-9	P	0.13980%
1-10	P	0.13980%
1-11	P	0.13980%
1-12	P	0.13980%
1-13	P	0.13980%
1-14	P	0.13980%
1-15	P	0.13980%
1-16	P	0.13980%
1-17	P	0.13980%
1-18	P	0.13980%
1-19	P	0.13980%
1-20	P	0.13980%
1-21	P	0.13980%
1-22	P	0.13980%
1-23	P	0.13980%
1-24	P	0.13980%
1-25	P	0.13980%
1-26	P	0.13980%
1-27	P	0.13980%

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 John A Donofrio, Summit Fiscal Officer

Exhibit C (continued)

<u>Unit Number</u>	<u>Type</u>	<u>Par Value/ Undivided Interest</u>
1-28	P	0.13980%
1-29	P	0.13980%
1-30	P	0.13980%
1-31	P	0.13980%
1-32	P	0.13980%
1-33	P	0.13980%
1-34	P	0.13980%
1-35	P	0.13980%
2-1	P	0.13980%
2-2	P	0.13980%
2-3	P	0.13980%
2-4	P	0.13980%
2-5	P	0.13980%
2-6	P	0.13980%
2-7	P	0.13980%
2-8	P	0.13980%
2-9	P	0.13980%
2-10	P	0.13980%
2-11	P	0.13980%
2-12	P	0.13980%
2-13	P	0.13980%
2-14	P	0.13980%
2-15	P	0.13980%
2-16	P	0.13980%
2-17	P	0.13980%
2-18	P	0.13980%
2-19	P	0.13980%
2-20	P	0.13980%
2-21	P	0.13980%
2-22	P	0.13980%
2-23	P	0.13980%
2-24	P	0.13980%
2-25	P	0.13980%
2-26	P	0.13980%
2-27	P	0.13980%
2-28	P	0.13980%
2-29	P	0.13980%

John R. Deneff, Jr., Summit Fiscal Officer

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Exhibit C (continued)

<u>Unit Number</u>	<u>Type</u>	<u>Par Value/ Undivided Interest</u>
2-30	P	0.13980%
2-31	P	0.13980%
2-32	P	0.13980%
2-33	P	0.13980%

Commercial Units

<u>Unit Number</u>	<u>Type</u>	<u>Par Value/ Undivided Interest</u>
301	C	2.994%
401	C	9.000%
402	C	5.500%

Residential Units

<u>Unit Number</u>	<u>Type</u>	<u>Par Value/ Undivided Interest</u>
501	R	1.729%
502	R	1.423%
503	R	1.450%
504	R	1.735%
505	R	2.452%
506	R	1.995%
507	R	1.728%
508	R	2.287%
601	R	1.757%
602	R	1.418%
603	R	1.443%
604	R	1.739%
605	R	2.443%
606	R	2.006%
607	R	1.719%
608	R	2.319%
701	R	1.748%
702	R	1.423%
703	R	1.442%
704	R	1.739%
705	R	2.445%

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Exhibit C (continued)

<u>Unit Number</u>	<u>Type</u>	<u>Par Value/ Undivided Interest</u>
706	R	2.033%
707	R	1.722%
708	R	2.323%
801	R	1.759%
802	R	1.427%
803	R	1.432%
804	R	1.716%
805	R	2.427%
806	R	2.023%
807	R	1.721%
808	R	2.320%
901	R	3.636%
902	R	2.831%
903	R	3.843%
904	R	<u>3.348%</u>
Total:		<u>100.000%</u>

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 John A Donofrio, Summit Fiscal Officer CONDO 1231.20

STATE OF OHIO, COUNTY OF SUMMIT, CITY OF AKRON,
ALL OF LOTS 1 THRU 6, & PART OF LOT 7 OF THE KINGS
ALLOTMENT, PLAT BOOK 1, PAGE 46.

[illegible]

3/27/07
DATE

TESTA ENTERPRISES, INC.,
2335 SECOND STREET
CUYAHOGA FALLS, OHIO 44221
(330) 928-0065

[illegible]

MICINITY MAP
No Scale

TOTAL ACS	1,6343 Acres
NORTHSIDE LOFTS CONDOMINIUM 1	0.4201 Acres
COMMON ELEMENTS	16,078.0 S.F.
RESIDENTIAL UNITED COMMON ELEMENTS	10,930.6 S.F.
COMMERCIAL UNITED COMMON ELEMENTS	2,934.9 S.F.
UNITED COMMON ELEMENTS	16,181.7 S.F.
UNITS	39
PARKING UNITS (66)	90,078.8 S.F.
PARKING UNITS UNITED COMMON ELEMENTS	11,511.2 S.F.

NAME	TITLE SHEET	SHEET NO.
CONCRETE FOUND	1	1
1st FLOOR (GARAGE) PLAN	2	2
2nd FLOOR (GARAGE) PLAN	3	3
3rd FLOOR (GARAGE) PLAN	4	4
4th FLOOR (COMMERCIAL) PLAN	5	5
5th FLOOR PLAN	6	6
6th FLOOR PLAN	7	7
7th FLOOR PLAN	8	8
8th FLOOR PLAN	9	9
9th FLOOR (PENTHOUSE) PLAN	10	10
10th FLOOR PLAN	11	11
NORTH ELEVATION	12	12
EAST ELEVATION	13	13
WEST ELEVATION	14	14
SOUTH ELEVATION	15	15
SECTION ELEVATION	16	16



5/17
TRANSFERRED IN COMPLIANCE WITH
SEC. 319.202 REV. CODE
Billings 1 M
Competition
JOHN A. DONOHUE By [Signature]
Team Coach [Signature]

DATE: 02/28/2001
TIME: 02:28:00
PAGE: 0001

Prepared by:



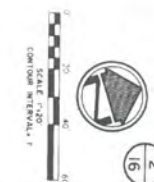
ASSOCIATES, INC.
Sampling • Engineering
(800) 463-8111
www.dynisco.com

Print Approved By 721617
3/27/75 GMS J-2E-07
K17NBRWCH

Robert A. Conrad
CONRAD
REID NO. 458
CAMDEN & ASSOCIATES, INC.
DATE 3/26/87

REFERENCE SOURCES

*CITY OF ARSON SURVEY DATED DEC. 2002
-DEED VOL. 1542, P. 460 SUMMIT COUNTY RECORDS
-ORDOS AS LISTED ON THE PLAT



LOCUS	MAJOR	DELTA ANGLE	CHORD PLACING	ARC LENGTH	CHORD LENGTH	TANGENT
C1	6.5/00					
C2	9.8/108	1.30717 22° W		70.20	22.16	13.66
C3	708.00	1.09753 2° E		64.32	60.33	30.09
C4	708.00	N 0.1719 0.1° E		88.27	82.76	41.08
C5	20.00	N 53.46 5.2° E		32.5	31.5	25.89
C6	708.00	11.327 2° E		16.59	142.35	71.54
		N 06.05 1° E				

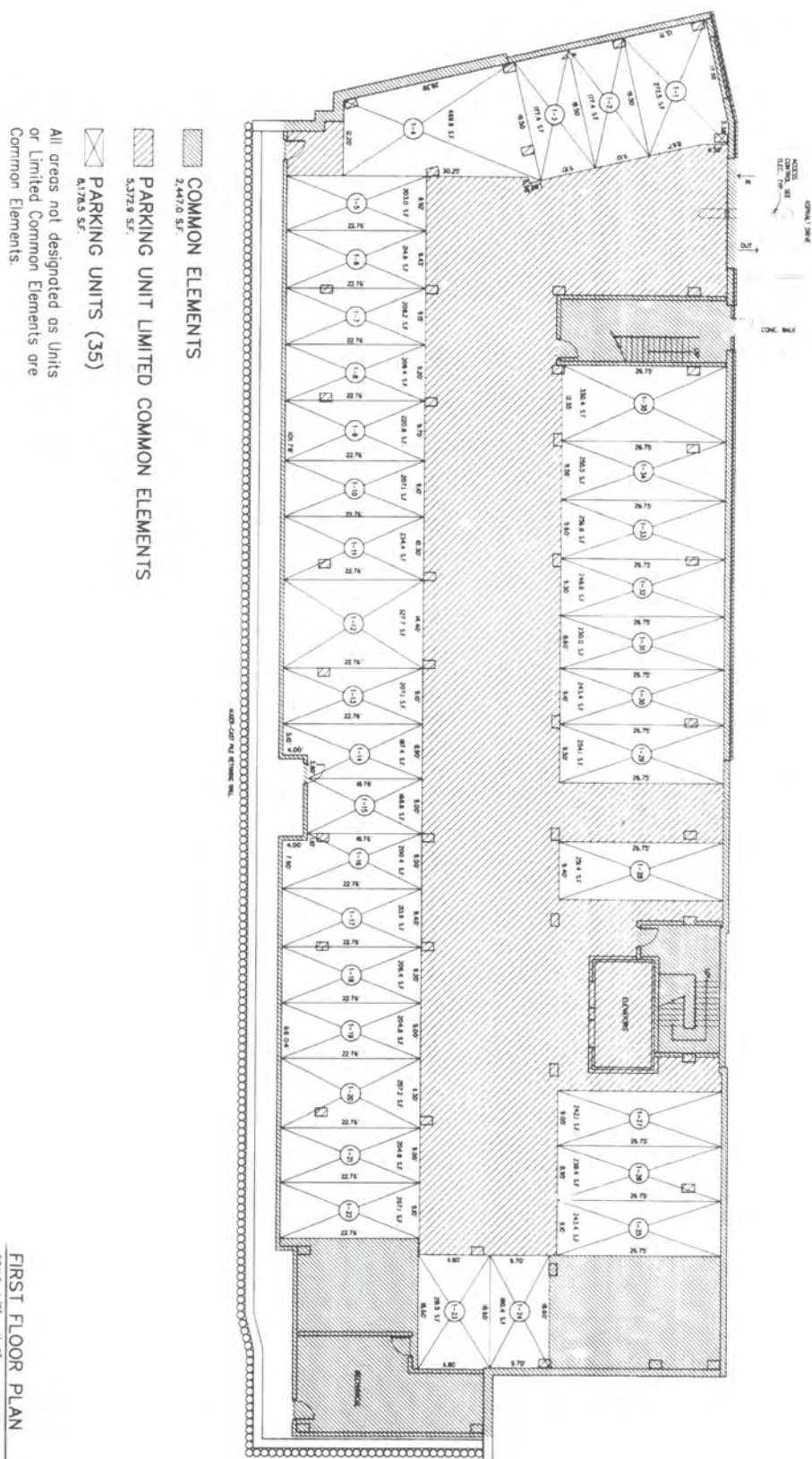
	LINE	RANKING	DISTANCE	LINE	RE-RANKING	DISTANCE
1	L6	N 27°23' N	3.75	L10	S 17°33' S	4.08
2	L2	S 17°33' S	2	L5	N 27°22' 49" E	3.02
3	S 17°33' S	W	2	L3	S 17°33' S	3.76
4	L4	N 27°23' N	2.85	L2	S 17°33' S	3.76
5	L4	N 27°23' N	4.00	L5	S 00°22' 49" E	22.68
6	S 17°33' S	W	4.00	L4	S 00°22' 49" E	33.71
7	L6	S 17°33' S	7.33	L5	S 00°22' 49" E	8.00
8	L6	N 27°23' N	7.33	L6	N 27°23' N	5.00
9	S 00°22' 49" E	W	5.08	L7	S 00°22' 49" E	20.32
10	S 00°22' 49" E	W	0.67	L8	N 27°23' N	22.20

LINE	REFERENCE	DISTANCE
L10	5 17° 35' N	4.06
L8	5 27° 24' N	2.02
L12	5 04° 54' N	5.76
L13	5 00° 22' E	22.68
L14	5 04° 24.9' N	19.73
L15	5 00° 56.3' N	8.60
L16	5 27° 23.5' N	5.85
L17	5 07° 56.3' N	20.32
L18	5 27° 23.5' N	22.32

MAIN ST.

*Northside Lofts Condominium 1 Boundary
18,299.5 S.F.

NORTHSIDE LOFTS CONDOMINIUM 1

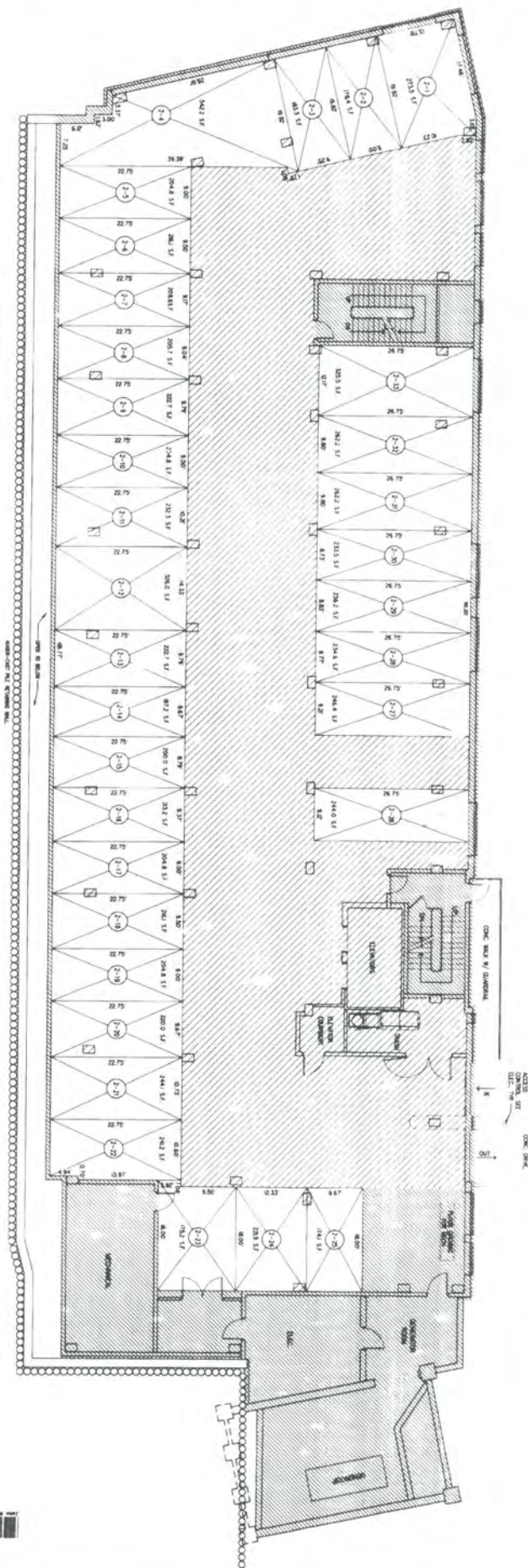


FIRST FLOOR PLAN

SCALE: 1/8" = 1'-0"
35 PRIVATE PARKING SPACES
TO SLAB-B84.00



NORTHSIDE LOFTS CONDOMINIUM 1



 COMMON ELEMENTS
J.509.6 S.F.

J.509.6 S.F.

 PARKING UNIT LIMITED COMMON ELEMENTS
6,138.3 S.F.

6.138.3 S.F.

 PARKING UNITS (33)
7,778.3 S.F.

7.778.3 S.F.

All areas not designated as Units or Limited Common Elements are Common Elements.

SECOND FLOOR PLAN

SCALE: 1/8" = 1'-0"
33 PRIVATE PARKING SPACES
T.O. SLAB=89.94

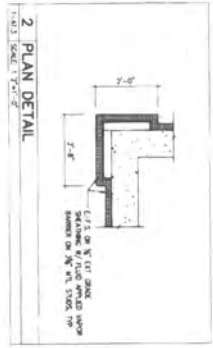
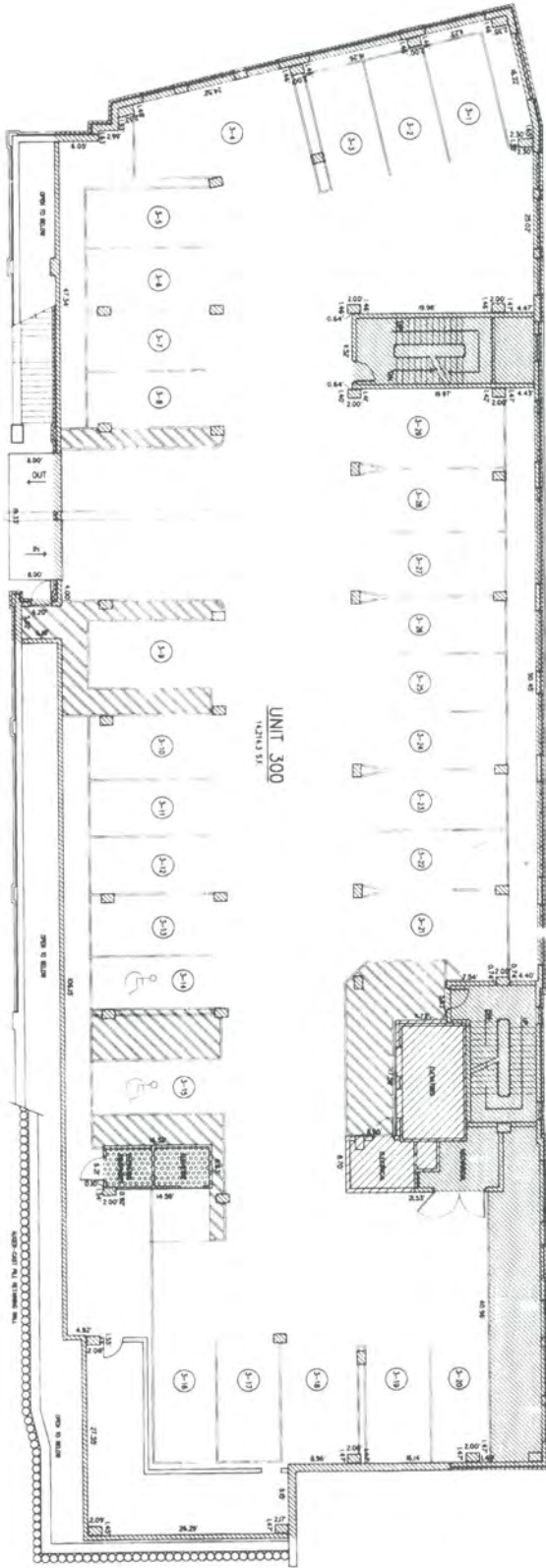
NORTHSIDE LOFTS CONDOMINIUM 1



- COMMON ELEMENTS
1706.0 S.F.
 - RESIDENTIAL LIMITED COMMON ELEMENTS
302.5 S.F.
 - COMMERCIAL LIMITED COMMON ELEMENTS
110.4 S.F.
- UNIT 300
14,214.3 S.F.

All areas not designated as Units or Limited Common Elements are Common Elements.

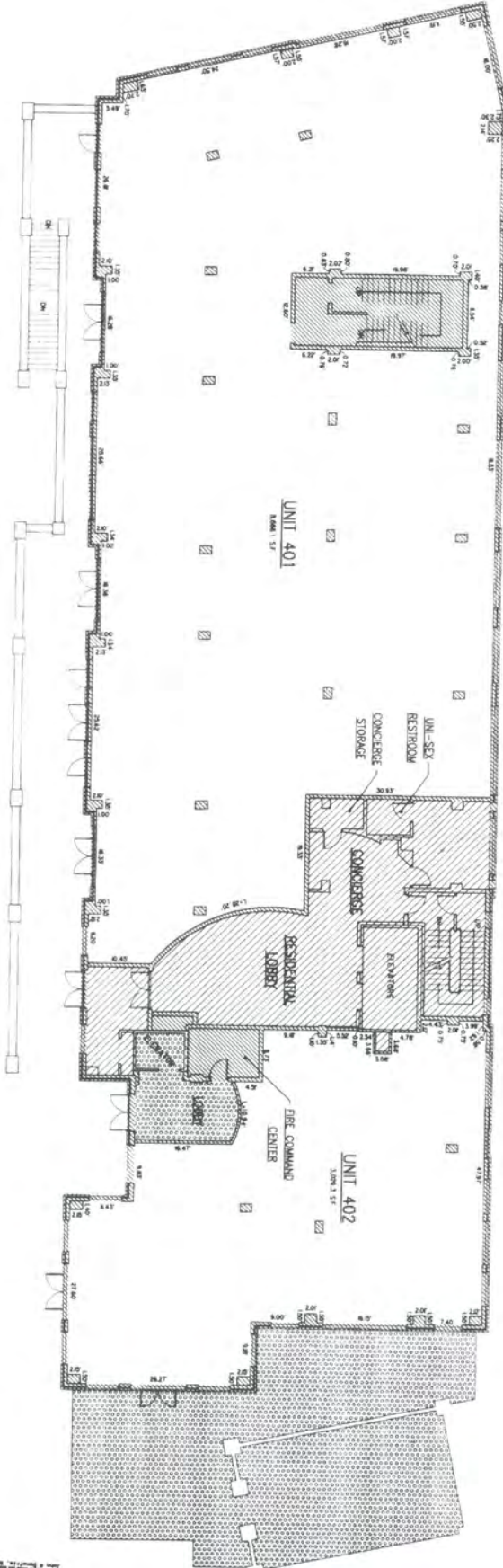
THIRD FLOOR PLAN
SCALE 1/8" = 1'-0"
29 PUBLIC PARKING SPACES
10 S.A.B.=90'93"



NORTHSIDE LOFTS CONDOMINIUM 1

-  COMMON ELEMENTS
1,221.2 S.F.
-  RESIDENTIAL LIMITED COMMON ELEMENTS
1,723.9 S.F.
-  COMMERCIAL LIMITED COMMON ELEMENTS
2,284.5 S.F.
-  COMMERCIAL UNITS
11,893.4 S.F.




All areas not designated as Units or Limited Common Elements are Common Elements.



FOURTH FLOOR PLAN

SCALE: 1/8" = 1'-0"
T.D. 5/18/97 9:21:31

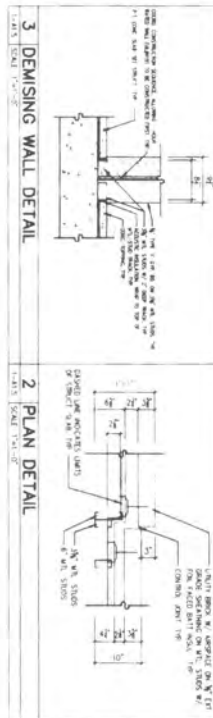
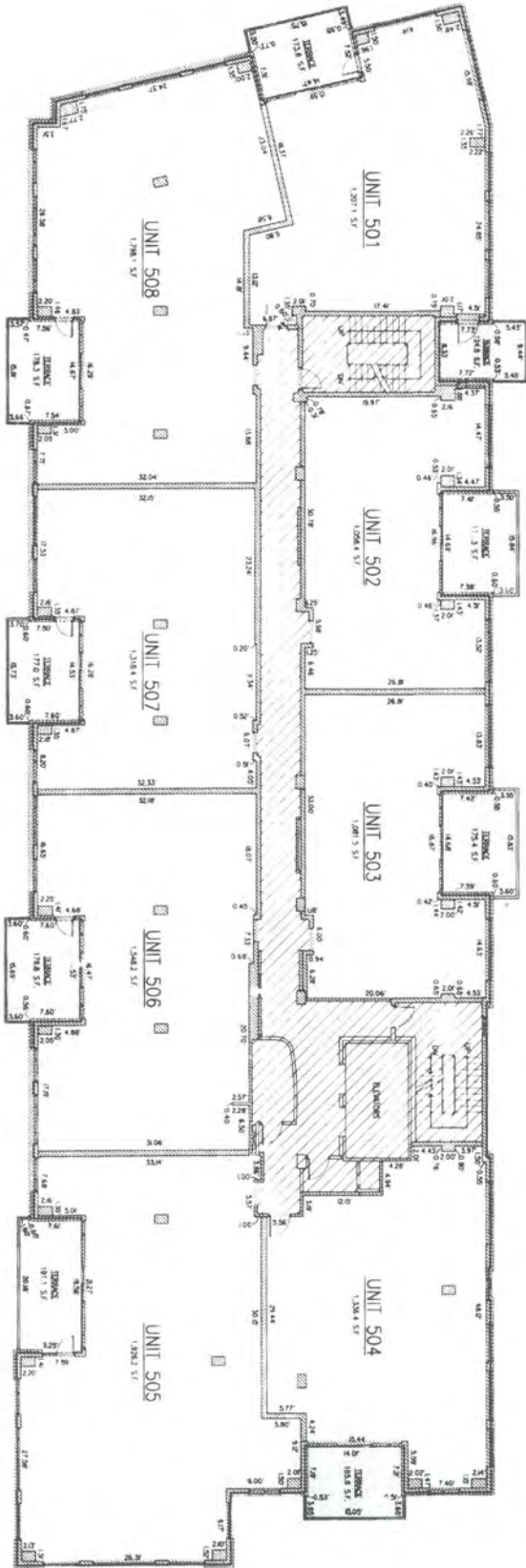


-  COMMON ELEMENTS
1,112.5 S.F.
-  RESIDENTIAL LIMITED COMMON ELEMENTS
1,688.1 S.F.
-  LIMITED COMMON ELEMENTS
1,437.2 S.F.
- RESIDENTIAL UNITS
11,274.3 S.F.

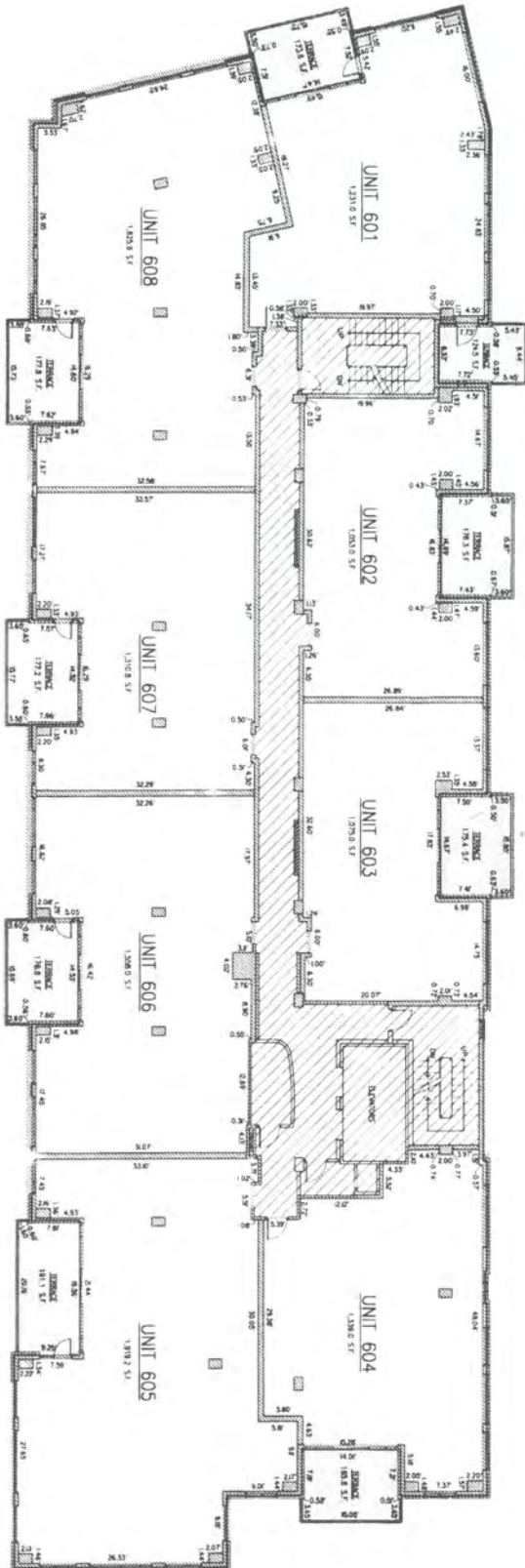
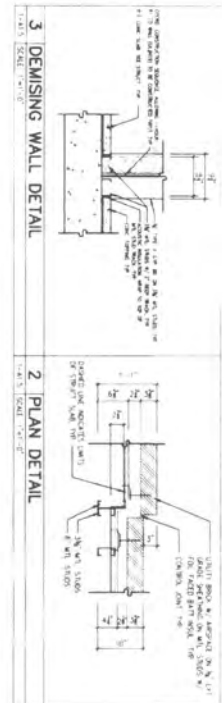
All areas not designated as Units or Limited Common Elements are Common Elements.

FIFTH FLOOR PLAN

SCALE 1/8" = 1'-0"
1" O.S.LAB=9.36 D1



NORTHSIDE LOFTS CONDOMINIUM 1



- COMMON ELEMENTS
1,128.4 SF
- RESIDENTIAL LIMITED COMMON ELEMENTS
1,682.0 SF
- LIMITED COMMON ELEMENTS
1,437.2 SF
- RESIDENTIAL UNITS
11,311.8 SF

All areas not designated as Units or Limited Common Elements are Common Elements.

SIXTH FLOOR PLAN

SCALE: 1/8" = 1'-0"

T.O. SLAB=947.33



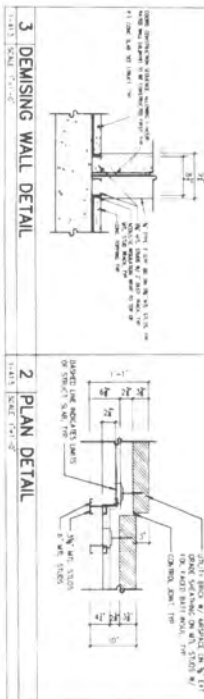
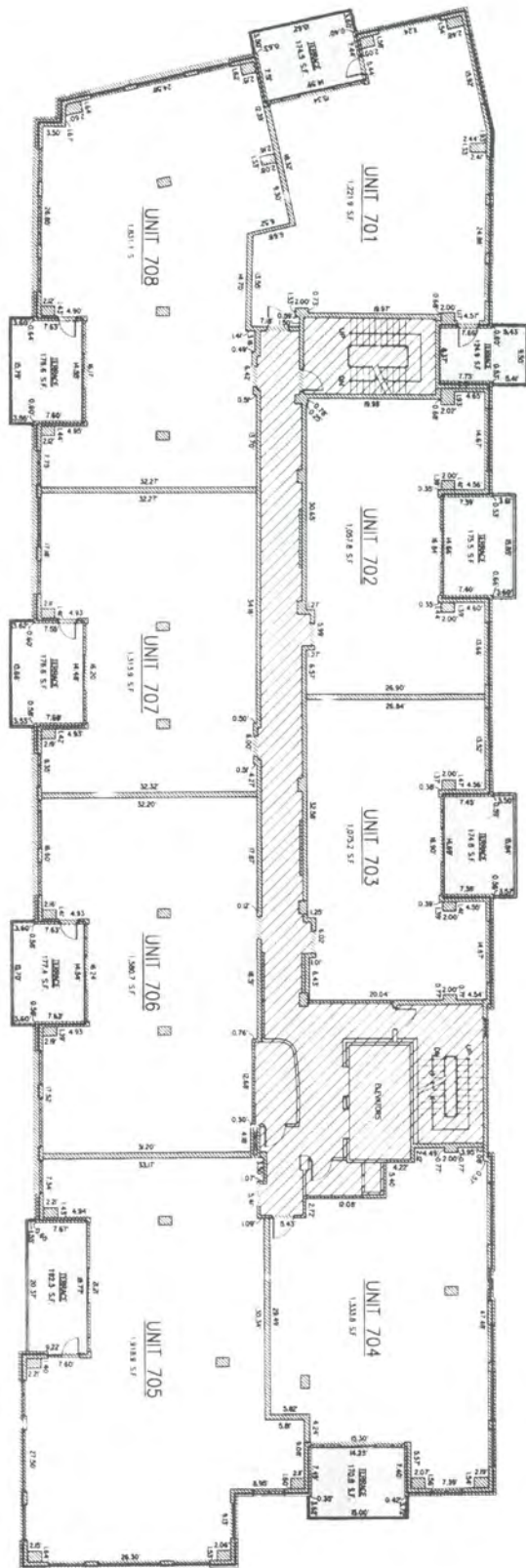
NORTHSIDE LOFTS CONDOMINIUM 1

- COMMON ELEMENTS
1,222.2 S.F.
- RESIDENTIAL LIMITED COMMON ELEMENTS
1,707.8 S.F.
- LIMITED COMMON ELEMENTS
1,437.2 S.F.
- RESIDENTIAL UNITS
11,333.3 S.F.

All areas not designated as Units or Limited Common Elements are Common Elements.

SEVENTH FLOOR PLAN

SCALE 1/8" = 1'-0"
T.O. SLAB - 95.659



3 DEMISING WALL DETAIL

2 PLAN DETAIL



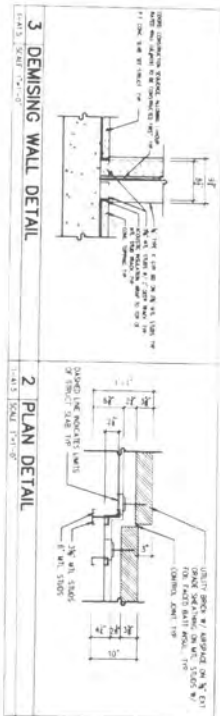
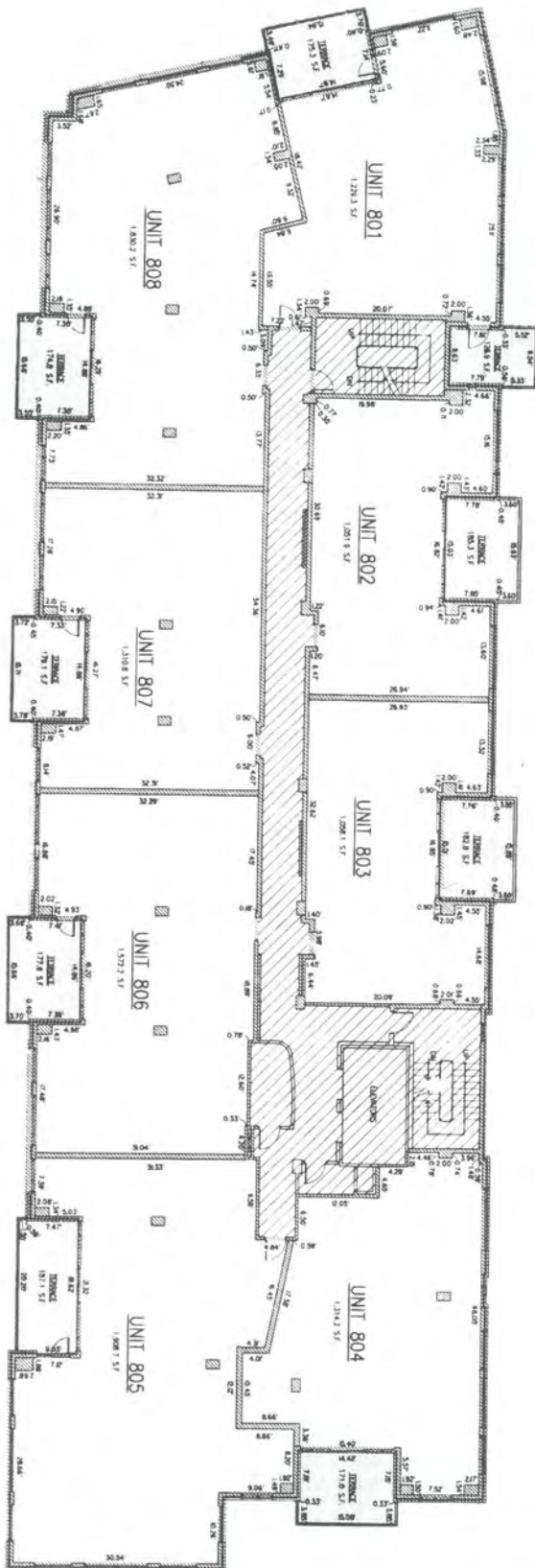
NORTHSIDE LOFTS CONDOMINIUM 1

- COMMON ELEMENTS
1,208.2 S.F.
- RESIDENTIAL LIMITED COMMON ELEMENTS
1,892.2 S.F.
- LIMITED COMMON ELEMENTS
1,437.2 S.F.
- RESIDENTIAL UNITS
11,275.4 S.F.

All areas not designated as Units or Limited Common Elements are Common Elements.

EIGHTH FLOOR PLAN

SCALE 1/8" = 1'-0"
T.O. SLAB = 970.02



NORTHSIDE LOFTS CONDOMINIUM 1



- COMMON ELEMENTS
1,310.8 S.F.
- RESIDENTIAL LIMITED COMMON ELEMENTS
1,063.0 S.F.
- LIMITED COMMON ELEMENTS
2,889.4 S.F.

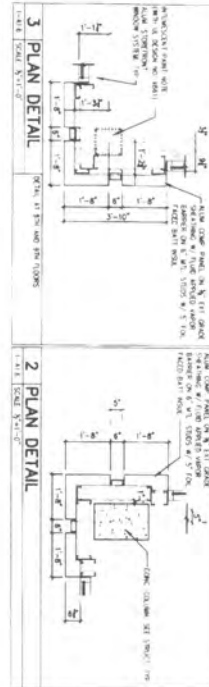
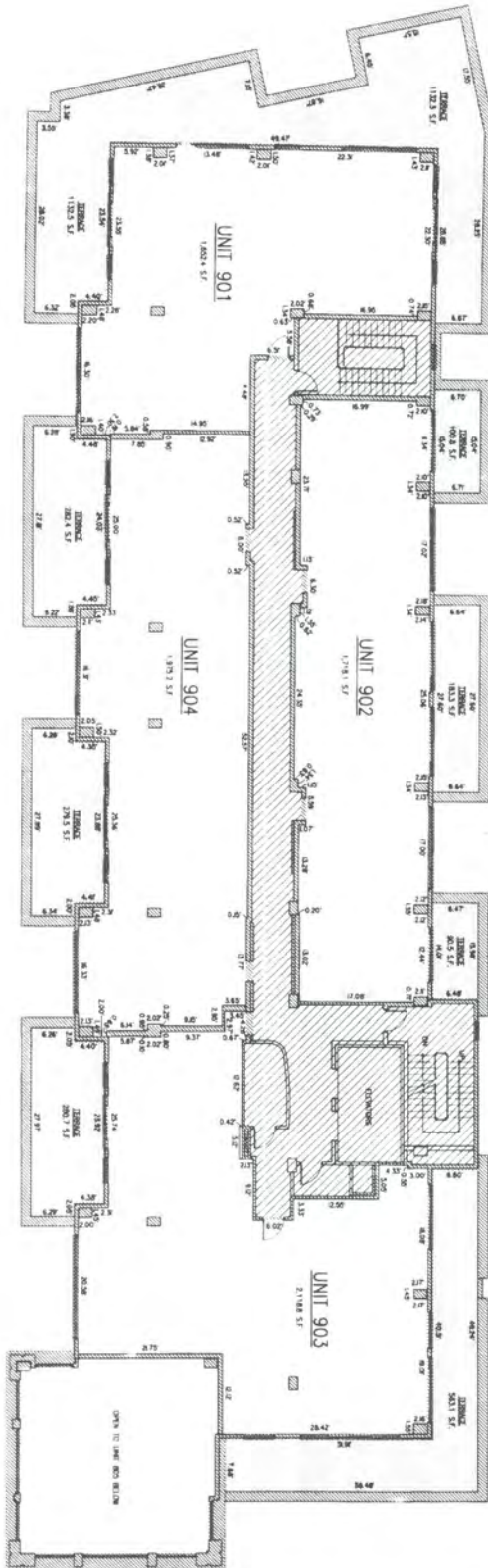
PENTHOUSE UNITS - 1st FLOOR
7,484.5 S.F.





All areas not designated as Units
or Limited Common Elements are
Common Elements



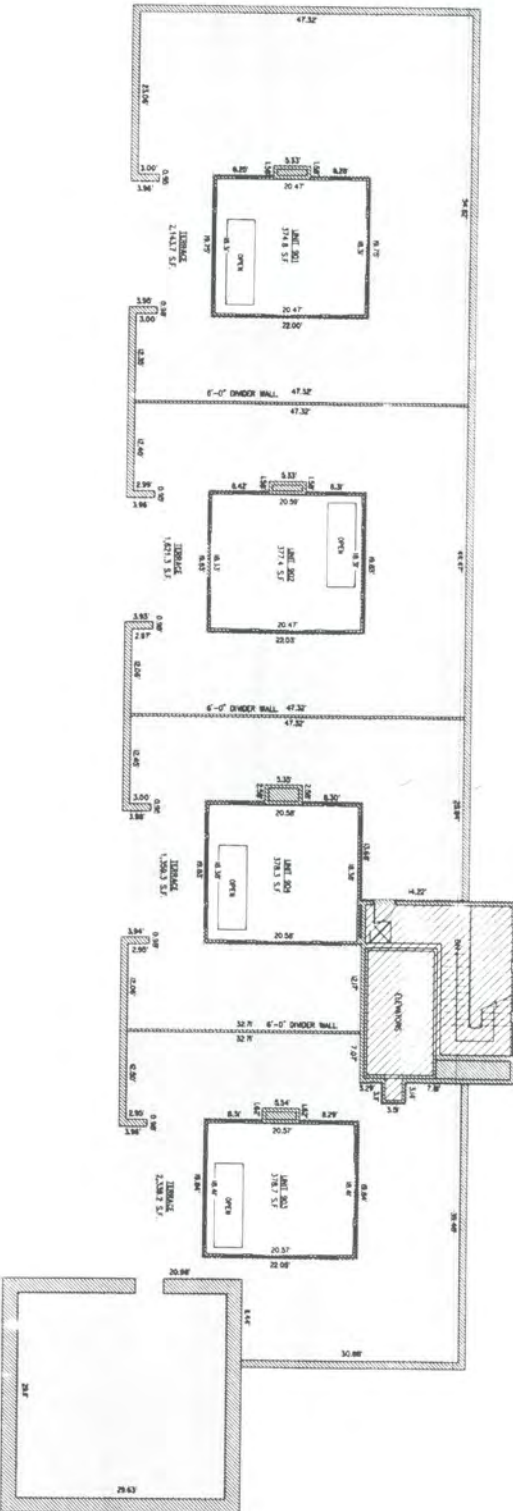
NINTH FLOOR PLAN

SCALE 1/8" = 1'-0"
10 SLAB-982 19



-  COMMON ELEMENT
1,013.1 S.F.
-  RESIDENTIAL LIMITED COMMON ELEMENT
470.3 S.F.
-  LIMITED COMMON ELEMENT
7,463.5 S.F.
-  PENTHOUSE UNITS - 2nd FLOOR
1,509.2 S.F.

All areas not designated as Units or Limited Common Elements are Common Elements.



TENTH FLOOR PLAN

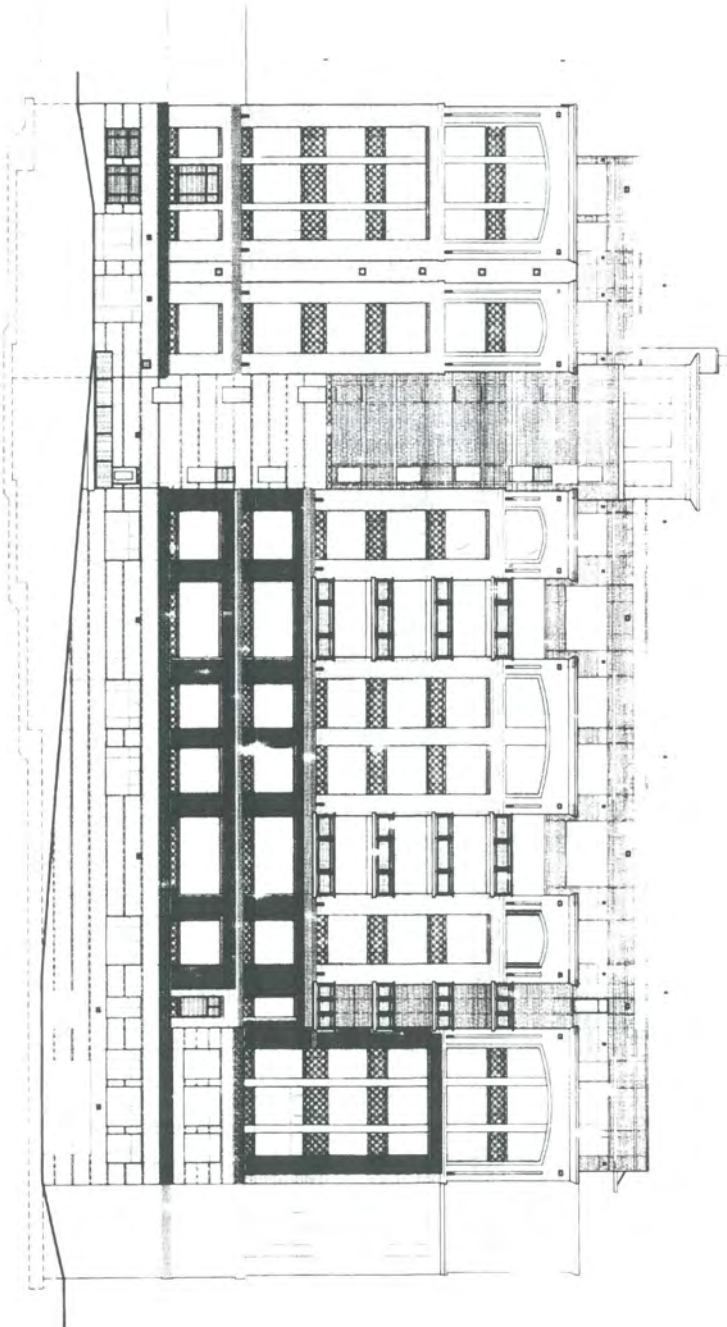
SCALE 1/8" = 1'-0"
10-51-AB-994.66



NORTHSIDE LOFTS CONDOMINIUM 1



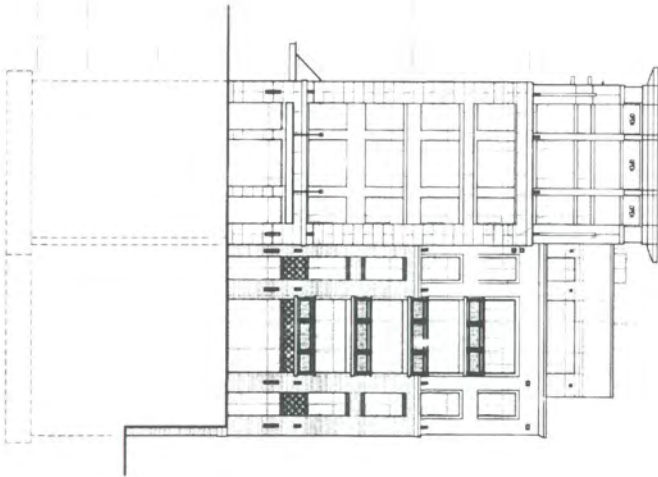
10TH FLOOR UNITS	10
9TH FLOOR UNITS	9
8TH FLOOR UNITS	8
7TH FLOOR UNITS	7
6TH FLOOR UNITS	6
5TH FLOOR UNITS	5
4TH FLOOR UNITS	4
3RD FLOOR UNITS	3
2ND FLOOR UNITS	2
1ST FLOOR UNITS	1
TOTAL UNITS	100



NORTH ELEVATION
SCALE 3/32" = 1'-0"



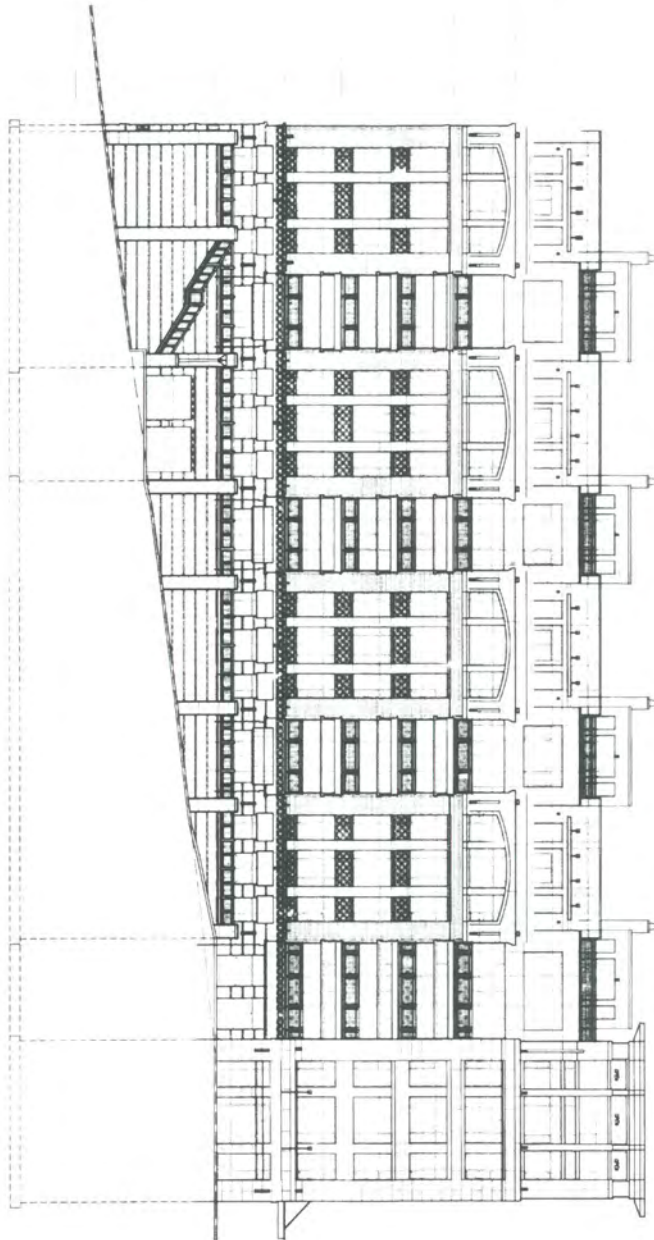
10TH FLOOR UNITS	10'
9TH FLOOR UNITS	10'
8TH FLOOR UNITS	10'
7TH FLOOR UNITS	10'
6TH FLOOR UNITS	10'
5TH FLOOR UNITS	10'
4TH FLOOR UNITS	10'
3RD FLOOR UNITS	10'
2ND FLOOR UNITS	10'
1ST FLOOR UNITS	10'
GROUND FLOOR UNITS	10'



EAST ELEVATION
SCALE 3/32" = 1'-0"

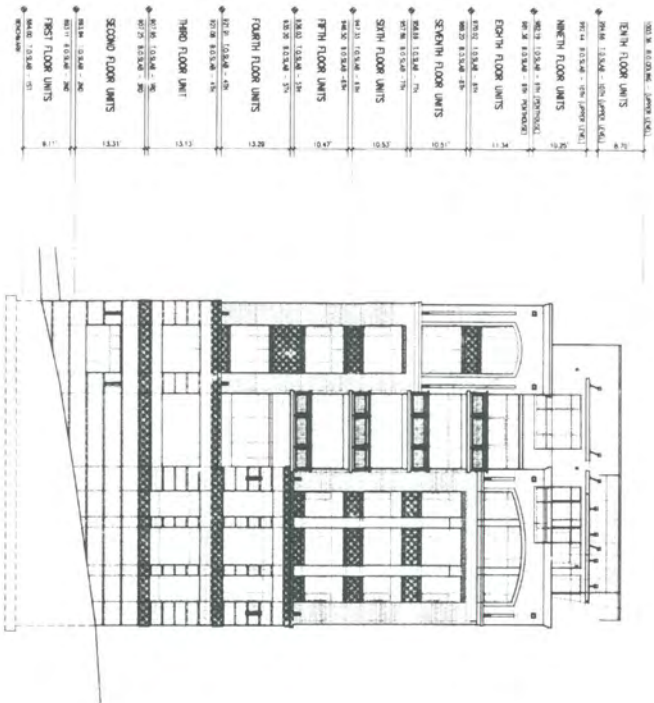


TENTH FLOOR UNITS	
1010 R 13.50' - 13.75'	10.0'
1010 L 13.50' - 13.75'	10.0'
NINTH FLOOR UNITS	
910 R 13.50' - 13.75'	10.0'
910 L 13.50' - 13.75'	10.0'
EIGHTH FLOOR UNITS	
810 R 13.50' - 13.75'	10.0'
810 L 13.50' - 13.75'	10.0'
SEVENTH FLOOR UNITS	
710 R 13.50' - 13.75'	10.0'
710 L 13.50' - 13.75'	10.0'
SIXTH FLOOR UNITS	
610 R 13.50' - 13.75'	10.0'
610 L 13.50' - 13.75'	10.0'
FIFTH FLOOR UNITS	
510 R 13.50' - 13.75'	10.0'
510 L 13.50' - 13.75'	10.0'
FOURTH FLOOR UNITS	
410 R 13.50' - 13.75'	10.0'
410 L 13.50' - 13.75'	10.0'
THIRD FLOOR UNITS	
310 R 13.50' - 13.75'	10.0'
310 L 13.50' - 13.75'	10.0'
SECOND FLOOR UNITS	
210 R 13.50' - 13.75'	10.0'
210 L 13.50' - 13.75'	10.0'
FIRST FLOOR UNITS	
110 R 13.50' - 13.75'	10.0'
110 L 13.50' - 13.75'	10.0'



SOUTH ELEVATION
SCALE 1/32" = 1'-0"





WEST ELEVATION
SCALE 3/32" = 1'-0"



**DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR
TOWNHOMES AT NORTHSIDE**

THIS DECLARATION OF COVENANTS, CONDITIONS, AND RESTRICTIONS is made as of December 12, 2008, by Testa Enterprises, Inc., an Ohio corporation ("Declarant").

FIRST AMERICAN TITLE INS. CO.

ORDER NO: *4400* ESC *11/11*

This instrument prepared by:
Nicholas T. George, Esq.
BUCKINGHAM, DOOLITTLE & BURROUGHS, LLP
3800 Embassy Parkway
Suite 300
Akron, OH 44333
«AK3 940455_v9»



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John A Donofrio, Summit Fiscal Officer

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**DECLARATION OF COVENANTS, CONDITIONS,
AND RESTRICTIONS**

**OF
TOWNHOMES AT NORTHSIDE**

THIS DECLARATION made as of December 12, 2008 by Testa Enterprises, Inc., an Ohio corporation (referred to herein as the "Declarant").

PREAMBLE

A. The Declarant is the owner of approximately .708 acres of real property in the City of Akron, Summit County, Ohio, as legally described in the legal description attached hereto and incorporated herein as Exhibit "A" (the "Property").

B. The Declarant desires to create on the Property a planned residential townhome community in accordance with the requirements of the Planning and Zoning Code of the City of Akron. Upon completion, the community is planned to consist of (however the Declarant is under no obligation to construct) a maximum of 14 Townhomes (hereinafter defined) and associated Common Areas (hereafter defined), which Common Areas will be owned and maintained by the Association (hereafter defined) for the benefit of the Owners (hereafter defined). The Townhomes are planned to be contained in two separate buildings, each containing seven Townhomes.

C. The Property will initially consist of three individual Sublots, and associated Common Areas.

D. The Declarant desires to provide for: (a) the orderly development of the Property; (b) the establishment and maintenance of architectural and design controls and standards; (c) the use and maintenance of the Areas of Common Responsibility (hereinafter defined); (d) the compliance with the Planning, Zoning, and Subdivision Codes, and rules and regulations of the City of Akron and other governmental authorities having jurisdiction over the Property; and (e) the protection of values within the Property. The foregoing is being provided so that the residents of the Property may enjoy a quality environment for themselves and their families. For such purpose, the Declarant has prepared this Declaration to define the manner in which the Property shall be governed and administered.

E. A homeowners association will be required to regulate, administer and govern the Property for the fulfillment of the foregoing purposes with the power to levy and collect assessments from Owners (hereafter defined) within the Property and to pay the cost and expense of operating, maintaining, repairing and replacing the Common Areas. The Declarant will assign such functions to Townhomes At Northside Homeowners' Association, Inc., a corporation not-



of operating, maintaining, repairing and replacing the Common Areas. The Declarant will assign such functions to Townhomes At Northside Homeowners' Association, Inc., a corporation not-for-profit, that Declarant shall cause to be created under the laws of the State of Ohio (the "Association").

F. The Property is also subject to the Declaration of Covenants, Conditions and Restrictions of Northside Lofts Master Association, filed for record on March 29, 2007 as Reception No. 55427473, Summit County Records (the "Master Declaration"). The Master Declaration provides additional rights, and imposes additional duties and obligations, including the payment of assessments, upon the Owners of Townhomes.

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

ARTICLE I
PROPERTY SUBJECT TO THIS DECLARATION;
DECLARANT'S RIGHT TO ADD AND DELETE LAND

Section 1.1 – Preamble

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

Section 1.2 – Property

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

Section 1.3 - Expansion and Contraction of the Property

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



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

ARTICLE II

EXHIBITS AND DEFINITIONS

Section 2.1 - Exhibits

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

EXHIBIT "A": A legal description of the Property.

EXHIBIT "B": Code of Regulations

Section 2.2 - Definitions

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

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



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(b) **"Areas of Common Responsibility"**. The Areas of Common Responsibility shall mean and refer to:

- (1) maintenance, repair and replacement of all storm drainage facilities that generally serve the entire Property (including within the Common Areas and Sublots) or that serve more than one Townhome (from the point such lines connect to the Townhome storm sewer line serving only one Townhome) to the point any such storm drainage facilities or lines become the responsibility of the City or other governmental body having jurisdiction;
- (2) maintenance, repair and replacement of all common sanitary sewer lines serving more than one Townhome, from the point such lines connect to the Townhome sanitary sewer line serving only one Townhome, to the point such lines connect to the main sewer line which is the responsibility of the City or other governmental body having jurisdiction (each Townhome Owner is responsible for the maintenance of their Townhome sanitary sewer line serving only their Townhome to the point it connects with the common sanitary sewer line maintained by the Association or the main sewer line which is the responsibility of the City or other governmental body having jurisdiction);
- (3) maintenance, repair and replacement of all common utility lines serving more than one Townhome, including domestic water lines, natural gas lines, electric lines, telecommunications lines (including telephone, television, and internet access lines) and other such utility lines if such lines serve more than one Townhome, from the point each such utility line serves only one Townhome to the point such utility lines become the responsibility of the providing utility company, City, or other governmental body having jurisdiction (maintenance, repair, and replacement of the portion of such utility lines serving only one Townhome is the responsibility of the Townhome Owner);
- (4) real and personal property owned by the Association;
- (5) real and personal property not owned by the Association but established by this Declaration or determined by the Board to be the responsibility of the Association; and
- (6) together with those areas, if any, which by contract with any commercial establishment or association, or with any local governmental authority become the responsibility of the Association. Any public rights-of-way within or adjacent to the Property, may be part of the Areas of Common Responsibility.



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- (c) **"Articles" or "Articles Of Incorporation"**. The Articles of Incorporation of the Association which are filed with the Secretary of State of Ohio to create the Association.
- (d) **"Assessments"**. The assessments levied against all Owners of Townhomes to fund Common Expenses.
- (e) **"Association"**. Townhomes At Northside Homeowners' Association, Inc., a non-profit Ohio corporation, its successors and assigns, created to govern, operate, control and administer the Common Areas and Areas of Common Responsibility and to supervise and enforce this Declaration.
- (f) **"Board"**. The Board of Directors of the Association. The Board is sometimes also referred to as the "Directors".
- (g) **"City"**. The City of Akron, an Ohio municipal corporation.
- (h) **"Class "B" Control Period"**. The period of time during which the Class "B" Member (the Declarant) is entitled to appoint a majority of the members of the Board, as provided in Article III, Section 2 of the Code.
- (i) **"Code"**. The Code of Regulations of the Association.
- (j) **"Common Areas"**. All real and personal property now or hereafter owned by the Association or otherwise held for the common use and enjoyment of the Owners or Occupants. Common Areas shall include all portions of the Property not part of a Sublot, and not part of a dedicated right-of-way. Common Areas also include any area within any individual Sublot over which an easement has been granted or reserved to the Association and all improvements constructed in conjunction with such easements (including street lights, mailboxes, and Garden Walls (as herein defined). The Common Areas are intended for the common use, benefit and enjoyment of all Occupants of the Property. Any Owner may delegate, in accordance with the Code and subject to reasonable rules, regulations, and limitations as may be adopted in accordance therewith, his or her right of enjoyment to the Common Areas and facilities to the members of his or her family, tenants, and social invitees and shall be deemed to have made a delegation of all such rights to the Occupants of any leased Townhome. Common Areas does not mean or imply that the public at large acquires any easement of use or enjoyment therein.
- (k) **"Common Expenses"**. The actual and estimated expenses of operating the Association, both for general or special purposes, including reasonable reserves, all as may be found to be necessary and appropriate by the Board pursuant to this Declaration, the Code, and the Articles of Incorporation of the Association.

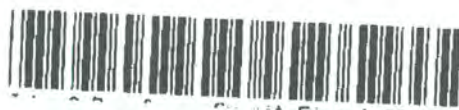


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- (l) **"Design Review Committee"**. The committee created by this Declaration and granted original jurisdiction to review and approve or disapprove exterior and structural improvements, landscaping, additions and changes within the Property.
- (m) **"Declarant"**. Testa Enterprises, Inc., an Ohio corporation, and the specifically designated successors or assigns of any of its rights as Declarant under the Declaration or under any supplement to the Declaration involving the Property as the same may be expanded or contracted from time to time. No person, real or corporate, shall be deemed to be a successor, alternate or additional Declarant for the purposes of the Declaration unless and until such person or entity has been specifically so designated by Declarant herein, by instrument in writing and placed of record, and shall be deemed a successor and assign of Declarant only to the particular rights and interests of Declarant under the Declaration or under a supplement to the Declaration. The Declarant is also sometimes referred to herein as the "Original Declarant".
- (n) **"Eligible Mortgage Holders"**. Eligible Mortgage Holders shall mean banks, savings and loan associations, insurance companies and other institutional lenders, holders, insurers or guarantors of first mortgages on the Property or portions thereof.
- (o) **"Founding Documents"** shall mean or refer to the Articles, the Declaration and the Code of Regulations, all as initially drawn by the Developer and filed and recorded as the case may be, and all as may be duly amended from time to time.
- (p) **"Member"**. A person or entity entitled to membership in the Association, as provided in the Declaration and Code.
- (q) **"Occupant"**. A person occupying a Home including, without limitation, an Owner or any guest, invitee, lessee, tenant, or family member of an Owner occupying or otherwise using a Home.
- (r) **"Owner"**. The record Owner of fee simple title in a Sublot and Townhome situated thereon, including the Declarant (except as otherwise provided herein) with respect to any unsold Townhome, but Owner shall exclude in all cases any party holding an interest merely as security for the performance of an obligation. If a Townhome is sold under a recorded land installment contract, the purchaser (Vendee) (rather than the fee Owner) will be considered to be the Owner. For the purpose of this Declaration, the Owner of Townhomes that are rented to others shall be as follows: for the purpose of votes and Assessments, the record Owner of the Townhome; for the purpose of use and enjoyment of common facilities and amenities which are part of the Common Areas, the Tenant residing in the Townhome. Every Owner shall be treated for all purposes as a single Owner for each Townhome held irrespective of whether such ownership is joint or in



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- (s) **"Ownership Interest"**. The entire right, title and interest of any Owner in all of the freehold and leasehold estates of such Owner in his Townhome.
- (t) **"Party Wall"**. Each wall of an attached Townhome that is situated on the dividing line between two attached Townhomes (including any decorative chimney constructed above or adjacent to such Party Wall).
- (u) **"Person"**. A natural individual, corporation, partnership, limited partnership, limited liability company, trust or other entity to which the law attributes the capacity of having rights and duties.
- (v) **"Plat"**. The plat for Townhomes at Northside which will be filed with the Summit County Fiscal Officer subsequent to the filing of the Declaration.
- (w) **"Property"**. The land described in Exhibit "A" of this Declaration as the same may from time to time be amended.
- (x) **"Rules"**. Rules and regulations that govern the operation and use of the Townhomes and the Areas of Common Responsibility, including the Common Areas and any other property owned by the Association, as such rules and regulations may be adopted from time to time by the Board or the Design Review Committee to implement and carry out the provisions and intent of this Declaration.
- (y) **"Special Declarant Rights"** means those rights reserved for the benefit of the Declarant as provided for in this Declaration and the Code, and shall include, without limitation, the following rights: (1) to expand or contract the Property in accordance with Section 1.3 of this Declaration; (2) to maintain sales offices, management offices, customer services offices, signs identifying and/or advertising the Property; (3) to use easements through the Common Areas for the purpose of making improvements within the Property; and (4) to appoint or remove any Board Members or officers of the Association during the period that the Declarant has the right to elect or designate members of the Board of Directors.
- (z) **"Sublot"**. A platted single-family lot upon which a Townhome has been or may be constructed and which includes the area where the foundation, walkway and driveway are constructed.
- (aa) **"Subsequent Amendment"**. An amendment to this Declaration which adds additional property to that covered by this Declaration, or deletes property from that which is covered by this Declaration. A Subsequent Amendment may, but is not required to: (i) impose, expressly or by reference, additional restrictions and obligations on the land submitted by such Subsequent Amendment to the



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not required to: (i) impose, expressly or by reference, additional restrictions and obligations on the land submitted by such Subsequent Amendment to the provisions of this Declaration; and/or (ii) otherwise amend this Declaration and/or the Code.

- (bb) **"Tenant"**. Any person(s) having a possessory leasehold estate in a Townhome, other than an Owner.
- (cc) **"Townhome(s)"**. All units of residential housing to be situated on the Property. Without limiting the generality of the foregoing, Townhome(s) shall mean a portion of the Property intended for any type of independent ownership for use and occupancy as a single family residence. For the purposes of this Declaration, a Townhome shall come into existence when the improvements constructed thereon are sufficiently complete to reasonably permit the habitation thereof, whether or not a certificate of occupancy has been issued for the Townhome by the governmental authority having jurisdiction over the same, and the Townhome has been conveyed to a person other than the Declarant.

ARTICLE III **EASEMENTS**

Section 3.1 - Utility Easements

There is hereby reserved in favor of Declarant and granted to the Association, its successors and assigns, a non-exclusive easement upon, across, over, through and under the Property, including Sublots, for ingress, egress, installation, replacement, repair and maintenance of all utilities and service lines and systems (whether serving the Common Areas or one or more Townhomes or Sublots, and whether located within the Common Areas, a Sublot, or Townhome) including, but not limited to, water, sewer, energy, drainage, gas, telephone, electricity, television, cable and communication lines and systems, and for access to all utility meters. By virtue of this easement, it shall be expressly permissible for Declarant and the Association and their successors and assigns, or the providing utility or service company, to install and maintain facilities and equipment on the Property provided that such facilities shall not materially impair or interfere with any Townhomes and provided further that any areas disturbed by such installation and maintenance are restored to substantially the condition in which they were found. By virtue of this easement it shall also be expressly permissible for the Association, and its agents, contractors, and employees, to maintain, repair, and replace such utility facilities and equipment which may serve one or more Townhomes, but which are located within another Sublot or Townhome, provided that such maintenance, repair, and replacement activities shall not unreasonably impair or interfere with the use of any Townhomes or Sublots, and provided further that any areas disturbed by such installation and maintenance are restored to substantially the same condition in which they were found at the sole cost and expense of the Association. Notwithstanding anything to the contrary contained in this Section, no sewers, electrical lines,



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

Section 3.2 - Easement for Ingress and Egress

There is hereby created a non-exclusive easement upon, across, over and through the sidewalks and walkways within the Common Areas or upon any Sublot (except sidewalks that serve only one Townhome) in favor of Declarant and the Association, all Owners, Occupants, and their respective guests, licensees and invitees for vehicular or pedestrian ingress and egress, as the case may be, to and from all of the various portions of the Property. Notwithstanding the foregoing, the Declarant and/or the Association may limit this right of ingress and egress by a Subsequent Amendment. Each Owner shall have the perpetual right, as an appurtenance to such Owner's Townhome, to ingress and egress over, upon, and across the portion of the Common Areas necessary for access to his or her Townhome.

Section 3.3 - Common Areas

Except as may be limited by the easement granted in Section 3.13 herein, Declarant, all Owners, Occupants and the guests of such parties shall have the right to enter upon, use and enjoy the Common Areas for their intended purposes in accordance with this Declaration and the applicable Rules which shall be appurtenant to and shall pass with the title to every Sublot, subject to the right of the Association (and/or the Declarant, for so long as Declarant is a Class "B" Member) to dedicate or transfer any part of the Common Areas to the City and any other public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Declarant or the Board, as the case may be. For so long as the Declarant is the Class "B" Member, the Declarant may exercise such right in its sole discretion without the necessity of obtaining the consent or approval of the Association, Board or Members. After the expiration of the Declarant's Class "B" Membership, no such dedication or transfer by the Association shall be effective unless an instrument agreeing to such dedication or transfer has been signed by a majority of the Members and has been recorded with the Summit County Fiscal Officer.

Section 3.4 - Easements for Construction, Alteration, etc.

Easements are hereby created in favor of the Declarant, the Association, all Owners, and their respective agents, contractors, and employees upon such portions of the Common Areas and Sublots as may be reasonably necessary for access thereto in connection with the construction, alteration, rebuilding, restoration, maintenance and repair of any Townhome or other structures and improvements within the Property or serving the Property; provided, however, that in the exercise of any rights under this easement, there shall be no unreasonable interference with the use of any Townhome, Sublot, or other structure or improvement on the

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Property. Any Person benefiting from the foregoing easement shall indemnify and save harmless the Declarant, the Association, and each Owner and Occupant from and against any and all losses, damages, liabilities, claims and expenses, including reasonable attorneys' and paralegals' fees resulting from any such construction, rebuilding, alteration, restoration, maintenance and shall repair any damage caused in connection with such activities to substantially the condition that existed prior to such activities.

Section 3.5 - Emergency and Service Easements

Fire, police, health, sanitation, medical, ambulance, utility companies, mail service and other public or quasi-public emergency and service personnel and their vehicles shall have an easement for ingress and egress over and across the Property for the performance of their respective duties.

Section 3.6 - Easements for Encroachments

If by reason of the construction, repair, restoration, partial or total destruction and rebuilding, or settlement or shifting of any of the Townhomes, (a) a Party Wall of a Townhome shall encroach upon the Sublot of the Townhome sharing the Party Wall, easements are hereby created in favor of the Owner of such encroaching Party Wall for the maintenance of such encroachment; or (b) any other part of a Townhome (including but not limited to roof overhangs) shall encroach upon any part of the Common Areas or any part of an adjacent Sublot, easements in favor of the Owner of the Townhome are hereby established for the maintenance of such encroachment; provided, however, in no event shall a valid easement for any encroachment be created in favor of an Owner if such encroachment occurs due to his willful conduct.

Section 3.7 - Easements for Signs, Mailboxes, Street Lamps, and Garden Walls

Easements are created over the Common Areas and Sublots as needed to install, maintain, repair, replace and illuminate signs, mailboxes, and street lamps that are for the general benefit of the Property. The type, size and location of all such improvements shall be subject to the approval of the Design Review Committee, and subject to the laws of the City, County, and other governmental authorities having jurisdiction.

Section 3.8-Drainage Rights and Authority to Transfer Drainage and other Easement Rights to the City

(a) The Declarant, each Owner, and the Association shall have the non-exclusive right and easement in common to utilize storm sewers and drainage pipes in, over, and upon the Property (including such facilities within any Sublot that serve more than one Sublot) for the purposes of drainage of surface waters on the Property, said right and easement being hereby established for said purpose. It shall be the obligation of the Association to properly maintain, repair, operate and control such drainage system within the Property.

(b) The Declarant and (after transfer of the Common Areas) the Association shall



have the right to grant easements for the installation and maintenance of sanitary sewers, storm sewers and drainage to the City or any other governmental authority having jurisdiction. No owner shall in any way hinder or obstruct the operation or flow of the drainage system. No structures, plantings or other materials shall be placed or permitted to remain within such easement areas which may damage or interfere with the installation and/or maintenance of such improvements in such easement areas or which may change, retard or increase the flow of water through the respective easement areas. The easement areas and all improvements therein shall be maintained continuously by the Association unless those easement areas are accepted by the City or other governmental authorities having jurisdiction by formal action.

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

Notwithstanding any provisions contained in this Declaration to the contrary, so long as the construction and sale of Townhomes by the Declarant (or an Affiliate of the Declarant or the holder of Special Declarant Rights) is continuing within the Property, it shall be expressly permissible for the Declarant to maintain and carry on upon portions of the Common Areas (and any Sublot owned by the Declarant) such facilities and activities as, in the sole opinion of Declarant, may be reasonably required, convenient, or incidental to the construction or sale of Townhomes within the Property, including, but not limited to, administrative/customer services, construction offices/trailers, parking areas, parking signs, identification signs, sales signs, model units, and sales and resales offices, and the Declarant, its guests, licensees and invitees shall have an easement for access to all such facilities. The right to maintain and carry on such facilities and activities shall specifically include the right to use Townhomes owned by the Declarant as models and sales offices. The Declarant further reserves the right for itself and its successors, assigns, contractors, material suppliers and others performing work and furnishing materials to construct Townhomes and other improvements upon the Property to conduct business and carry on construction site development activities during the hours of 7:00 a.m. to 7:00 p.m., each day of the week. This Section may not be amended or modified without the express written consent of the Declarant.

Section 3.10 - Landscaping, Snow Removal, and Maintenance Easement

There is hereby reserved for the benefit of the Association and its agents, employees, successors, and assigns, an alienable, transferable, and perpetual right and easement to enter upon any Sublot for the purposes of fulfilling the Association's responsibilities, including maintaining mailboxes, street lights, landscaping, providing snow removal services, mowing, removing, clearing, cutting or pruning underbrush, weeds, stumps, or other unsightly growth, and removing trash and debris in order to maintain reasonable standards of health, fire safety, and appearance within the Property.

Section 3.11 - Scope of Easements and Dedication of Roadways and Utilities

As the improvements to be located within the Property for the easement rights granted or reserved under Sections 3.1 and 3.2 are definable within specific areas, the Declarant or the

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

Section 3.12 - Owner's Right to Ingress and Egress

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

Section 3.13 - Easements To Run with the Land

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

ARTICLE IV **OWNERSHIP AND OPERATION OF COMMON AREAS**

Section 4.1 - Conveyance of Common Areas

Declarant shall convey the Common Areas to the Association not later than the date the last Townhome is conveyed by the Declarant to an Owner other than the Declarant. Such conveyance shall be by limited warranty deed and shall have priority over all liens and



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encumbrances whatsoever except the easements, covenants, restrictions and provisions of this Declaration; easements, covenants, restrictions, conditions and other similar matters of record; real estate taxes and assessments which are a lien, but are not due and payable at the time of said conveyance; and zoning and other ordinances, if any. Declarant shall cause any mortgagee of the Common Areas to subordinate its mortgage on such areas in favor of this Declaration. The Association shall hold title to said parcels subject to the provisions of this Declaration. After title to the Common Area is transferred to the Association, or its successors and assigns, except as otherwise provided herein, the Declarant shall have no greater ownership or control over the Common Area than the ownership or control of Owners or Occupants within the Property, or additional property as the same is added to the Property.

Section 4.2 - Use of Common Areas

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

ARTICLE V **THE ASSOCIATION**

Section 5.1 - Existence

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

Section 5.2 - Membership and Voting Rights

(a) Classes of Membership

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

- (1) Class "A" Membership. Each Owner of a Townhome shall automatically be a Class "A" Member of the Association. Furthermore, membership in the Association is mandatory of all Owners of Townhomes and Sublots within the Property. The Class "A" Membership is appurtenant to the ownership of each Townhome and shall not be separable from the ownership of any Townhome and shall be deemed to have been terminated with any voluntary or involuntary conveyance of any Townhome, whether or not such membership is expressly referred to in the instrument effecting such conveyance, at which time the new Owner or other successor in interest shall immediately and automatically become a Member of the Association with all rights and responsibilities relative thereto. No Owner,



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whether one or more persons, shall have more than one membership per Townhome owned.

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

(b) **Voting Rights**

- (1) **Class "A" Member.** Class "A" Members shall be entitled to one equal vote for each Townhome in which they hold the interest required for membership under Section 5.2(a)(1) hereof; there shall be only one vote for each Townhome. In any situation where a Member is entitled to exercise a vote and more than one Person holds the interest in such Townhome required for membership, the vote for such Townhome shall be exercised as those Persons determine among themselves and advise the Secretary of the Association in writing prior to any meeting. In the absence of such advice, the vote of the Townhome shall be suspended if more than one Person seeks to exercise it. In the case of a Townhome owned or held in the name of a corporation, partnership, limited partnership, limited liability company, trust or other entity, a certificate signed by such Owner shall be filed with the Secretary of the Association naming the person authorized to cast a vote for such Townhome, which certificate shall be conclusive until a subsequent substitute certificate is filed with the Secretary of the Association. If such certificate is not on file, the vote of such entity shall not be considered, nor shall the presence of a person purporting to act on behalf of such entity at a meeting be considered in determining whether the quorum requirement for such meeting has been met. When a fiduciary or other legal representative of an Owner has furnished to the Association proof of such person's authority, such person may vote as though he or she were the Owner.
- (2) **Class "B" Member.** The Class "B" Member shall be the Declarant. The rights of the Class "B" Member, including the right to approve actions taken under this Declaration and the Code, are specified elsewhere in the Declaration and the Code. The Class "B" Member shall be entitled to appoint a majority of the members of the Board during the Class "B" Control Period, as specified in Article III, Section 2 of the Code.

Section 5.3 - Board and Officers of the Association

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



Section 5.4 - Rights of the Association

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

- (a) To borrow money from time to time for the purpose of improving the Common Areas or for meeting its obligations with respect to the Areas of Common Responsibility, and may secure said financing with a mortgage or mortgages upon all or any portion of property owned by the Association in accordance with its Articles and Code and subject to the provisions of this Declaration or by a partial assignment of Assessments.
- (b) To take such steps as are reasonably necessary to protect the Common Areas from foreclosure.
- (c) To convey the Common Areas or a portion thereof, to a successor; provided, however, that any such conveyance shall require the vote of a majority of the Class "A" Members and the vote of the Class "B" Member, and provided further that such successor shall agree, in writing, to be bound by the easements, covenants, restrictions and spirit of this Declaration.
- (d) To enter or authorize its agents to enter on or upon the Property, or any part thereof, when necessary in connection with any maintenance, repair or construction for which the Association is responsible or has a right to maintain, repair or construct. Such entry shall be made with as little inconvenience to the Owner and Occupants thereof as practicable and any damage caused thereby shall be repaired by the Association.
- (e) To grant or obtain or dedicate to public use easements and rights-of-way (i) for access and easements for the construction, extension, installation, maintenance or replacement of utility services and facilities, or (ii) to or from a public utility or governmental authority, and to or from any body or agency which has the power of eminent domain or condemnation over any portion of the Property.

ARTICLE VI **RESPONSIBILITIES OF THE ASSOCIATION**

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

Section 6.1 - Maintenance of Areas of Common Responsibility

The Association shall maintain the Areas of Common Responsibility in a clean, safe, neat, healthy and workable condition, and in good repair, and shall promptly make all necessary repairs and replacements, structural and nonstructural, ordinary as well as extraordinary, subject



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only to the provisions of this Declaration. The Association may provide equipment and supplies necessary for the maintenance (including landscape maintenance) and enjoyment of such property. All work performed by the Association under this Article shall be performed in a good and workmanlike manner. The following are included among such Areas of Common Responsibility:

- (a) **Common Areas.** To maintain all improvements situated in the Common Area in a good and attractive condition, for the use and enjoyment of Owners. The Association shall also pay or reimburse Declarant for any real estate taxes and assessments assessed with respect to any such Common Areas, and the Association shall accept a deed to and hold title to such areas. The obligations set forth in this subsection shall be deemed to run with and burden the party accepting any such deed and title to the Common Areas.
- (b) **Common Area Lighting.** With respect to all parts (including, but not limited to, poles, standards, fixtures) of a street lighting system (if any) which may be installed by or at the direction of Declarant or the Association in the Common Areas or Sublots, to maintain the same in good order and condition, to make all replacements and renewals necessary to so maintain the same, and to operate and to pay all costs of operating the same.
- (c) **Drainage System.** To maintain all piping, culverts, swales, drains, and other facilities now or hereafter situated upon any portion of the Property which are intended for the collection, retention, detention, transmittal or disposal of storm-water, and which are not the responsibility of the City or any other governmental authority having jurisdiction thereover, in clean and sanitary condition and in good order and repair and to make all replacements and renewals necessary to so maintain the same.
- (d) **Utilities.** To maintain, repair and replace all common sanitary sewer lines and other common utility lines as provided herein.
- (e) **Maintenance of Non-Association Property.** The Association shall maintain property which it does not own, including, without limitation, property dedicated to the public, if the Board determines that it is in the best interest of the Association to maintain the same.
- (f) **Irrigation System.** The Association shall be solely responsible for the adjustment, maintenance, and replacement of the irrigation system serving the Property (including within Common Areas and Sublots) and shall pay all charges for water used in irrigation of the Property.
- (g) **Lawns, Landscaping and Sidewalks.** The Association shall maintain all lawns and landscaping areas that are installed by the Declarant or the Association, and shall also maintain, with the consent of the City, the public sidewalks adjacent to



the Property.

- (h) **Snow Removal.** The Association shall provide snow removal from the private garage/parking areas, sidewalks adjacent to the Property and the public right of way alley known as Bank Alley and located behind the Townhomes.

Section 6.2 - Taxes and Assessments

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

Section 6.3 - Utilities

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

Section 6.4 - Insurance and Reconstruction

- (a) **Insurance.** The insurance which shall be carried upon the Common Areas and Townhomes shall be governed by the following provisions:
- (1) **Casualty Insurance for Common Areas.** The Association shall carry casualty insurance on all insurable improvements comprising the Common Areas and all personal property as may be owned by the Association and for which the Association is responsible (the "Casualty Policy").
 - (2) **Casualty Insurance for Townhomes.** The Association shall carry, as part of the Casualty Policy, casualty insurance on all insurable fixtures and improvements comprising a Townhome or constructed within a Sublot, other than furnishings and other personal property of an Owner. Each Townhome Owner may separately insure the personal property kept within their Townhome or on their Sublot. The burden shall be upon each Townhome Owner to determine which property located within the bounds of such Owner's Townhome shall be insured as personal property under their own casualty insurance policy. The casualty insurance to be purchased hereunder by the Association shall be in an amount not less than one hundred percent (100%) of the insurable replacement cost of such improvements, with a "Guaranteed Replacement Cost Endorsement" (excluding excavation and foundation costs and other items normally excluded from coverage), as determined by a qualified appraiser, the



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amount determined and the insurance to be reviewed annually and adjusted if necessary. The burden shall be upon each Townhome Owner to inform the insurance carrier and the Association of all improvements made to their Townhome or Sublot which may increase the replacement cost thereof, or casualty coverage for such increased replacement cost will not be provided. The cost of the appraisal shall be a Common Expense. Such insurance shall include the following coverages:

- (i) loss or damage by fire and other hazards covered by the standard extended coverage endorsement;
- (ii) such policy shall include, if reasonably available, a "Construction Code Endorsement" or its equivalent, a "Demolition Cost Endorsement" or its equivalent, an "Increased Cost of Construction Endorsement" or the equivalent, a "Contingent Liability from Operation of Building Laws Endorsement", or its equivalent, and an "Agreed Amount and Inflation Guard Endorsement" or its equivalent; and
- (iii) such other risks (including flood insurance if such insurance is available) as from time to time customarily shall be covered with respect to buildings similar to the Townhomes in construction, location and use, including, but not limited to, debris removal, vandalism, malicious mischief, windstorm and water damage.

The Casualty Policy shall be subject to such deductible amounts as the Board shall reasonably determine, provided, however, such deductible amounts shall not exceed the lesser of \$5,000 or 1% of the policy amount. Each Townhome Owner shall be responsible for payment of all deductible amounts payable by reason of a claim for casualty or damage to their Townhome, and, in the event of claims for damage to more than one Townhome, each such Owner shall pay such deductible amount in such proportion that the dollar value of the damage to his or her Townhome bears to the total dollar value of damage to all Townhomes damaged under such claim. Deductible amounts due by reason of damage to Common Areas shall be treated as a Common Expense.

The Casualty Policy shall provide that the coverage thereof shall not be terminated for non-payment of premiums without at least ten days' written notice to the Townhome Owners, the Association and to each Townhome's first mortgagee. All Casualty Policies shall be purchased by the Association for the benefit of the Declarant, the Association, the Owners and their respective mortgagees, as their interests may appear, and shall provide (i) for the issuance of certificates of insurance with mortgagee endorsements to the holders of mortgages on the Townhomes,



if any; (ii) that the insurer waives its rights of subrogation against Owners, Occupants of Townhomes, and the Association; (iii) that the insurance will not be prejudiced by any acts or omissions of Owners that are not under the control of the Association; and (iv) the policy is primary, even if an Owner has other insurance that covers the same loss. The Casualty Policies and any endorsements thereto shall be deposited with the Association or with the Insurance Trustee (as hereinafter defined), if one is appointed, who must first acknowledge that the policies and any proceeds thereof will be held in accordance with the provisions hereof. All Casualty Policies shall provide that all proceeds payable as a result of casualty losses shall be paid to the Association as exclusive agent for each of the Owners and each holder of a mortgage or other lien on any Townhome unless the Board determines to appoint an Insurance Trustee in accordance with the provisions of this Declaration.

- (3) **Liability Insurance for Common Areas.** The Association shall insure itself, the members of the Board, the Owners and Occupants of Townhomes against liability for personal injury, disease, illness or death and for injury to or destruction of property occurring upon, in or about, or arising from or relating to the Common Areas, including, without limitation, water damage, legal liability, hired automobile, non-owner automobile and off-premises employee coverage, such insurance to afford protection to a limit of not less than \$1,000,000 in respect to personal injury, disease, illness or death suffered by any one person, and to the limit of not less than \$1,000,000 in respect to any one occurrence, and to the limit of not less than \$3,000,000 in respect to damage to or destruction of property arising out of any one accident. If the insurance effected by the Association on behalf of the Owners and Occupants of Townhomes who are not Owners against liability for personal injury or property damage arising from or relating to the Common Areas shall, for any reason, not fully cover any such liability, the amount of any deficit shall be a Common Expense to the Owners. The Association shall also obtain directors and officers liability coverage, if reasonably available.
- (4) **Fidelity Bonds.** To the extent available for a reasonable premium, the Association may elect to purchase a fidelity bond or other form of employee dishonesty coverage indemnifying the Association, the Board and the Owners for loss of funds resulting from fraudulent or dishonest acts of any employee of the Association or of any other person handling the funds of the Association, the Board or the Owners in such amount as the Board shall deem desirable, but in no event shall the amount of the bond be less than an amount equal to three months' Assessments. The fidelity bond shall name the Association as the obligee, and the premium for such bond shall be a Common Expense. Such bond shall contain waivers of any defense based on the exclusion of persons who serve



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without compensation from any definition of "employee" or similar expression. Such bond shall provide that it may not be canceled for non-payment of any premiums or otherwise substantially modified without ten days prior written notice to the Association and to all Eligible Mortgage Holders.

- (5) **Premiums.** Premiums upon insurance policies purchased by the Association shall be paid by the Association at least 30 days prior to the expiration date of such policies and shall be assessed as Common Expenses as provided in Section 9.2 herein.
 - (6) **Townhome Owner Insurance.** Each Owner may, at his or her own expense, obtain insurance covering the contents of his or her Townhome, the foregoing including, but not limited to, furniture and any personal property which he or she stores within the Townhome or elsewhere on the Property, and each Owner may, at his or her own expense, obtain public liability insurance for personal injuries or damage arising out of the use and occupancy of his or her Townhome and casualty insurance affording coverage upon his or her Townhome and property inasmuch as the same may not be insured by the Association, but such casualty insurance shall provide that it shall be without contribution as against the Casualty Policy purchased by the Association or shall be written by the carrier of such Casualty Policy and shall contain the same waiver of subrogation as that referred to in subsection 6.5(a)(2) above.
 - (7) **Rating of Insurance Company.** All policies for insurance of the Association shall be written with a company licensed to do business in Ohio and holding a rating of B/VI or better in the Financial Category as established by A. M. Best Company, Inc. if reasonably available, or, if not available, the most nearly equivalent rating.
- (b) **Insurance Trustee.** If the amount of the loss exceeds \$100,000, the Board shall designate and appoint an insurance trustee who shall be a bank in the Akron, Ohio area having trust powers and total assets of more than \$50,000,000 (Such trustee shall be herein referred to as the "Insurance Trustee".) The Insurance Trustee shall not be liable for payment of premiums nor for the renewal of the policies, nor for the sufficiency of coverage, nor for the form or contents of the policies, nor for the failure to collect any insurance proceeds. The sole duty of the Insurance Trustee shall be to receive such proceeds as are paid and to hold the same in trust for the purposes elsewhere stated herein, and for the benefit of the Association, the Owners, and their respective mortgagees. The Insurance Trustee may rely upon a certificate of the Association certifying as to whether or not the damaged property is to be reconstructed or repaired which such certificate shall be delivered, upon request of the Insurance Trustee as soon as practicable.



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(c) Responsibility for Reconstruction or Repair

- (1) If any portion of the Common Areas or Townhomes shall be damaged by perils covered by the Casualty Policy, the Association shall cause such damaged portion to be promptly reconstructed or repaired to the extent of the funds made available to the Association (or the Insurance Trustee if one has been appointed), as hereinafter provided, and any such reconstruction or repair shall be substantially in accordance with the original construction.
- (2) Each Owner shall be responsible for the repair of his or her Townhome after a casualty that is not covered by the Association's Casualty Policy.

(d) Procedure for Reconstruction or Repair

- (1) Immediately after a casualty causing damage to any portion of the Common Areas or Townhomes, the Association shall obtain reliable and detailed estimates of the cost to place the damaged property in condition as good as the condition of the property before the casualty. Such costs may include professional fees of public adjuster firms and others and premiums for such bonds as the Board deems necessary.
- (2) If the proceeds of the Casualty Policy are not sufficient to defray the estimated costs of reconstruction and repair by the Association (including the aforesaid fees and premiums, if any.) one or more special assessments shall be made against all Townhome Owners in sufficient amounts to provide funds for the payment of such costs, and the proceeds of such special assessments shall be deposited with the Association or the Insurance Trustee, as the case may be.
- (3) The proceeds of the Casualty Policy and the sums deposited from collections of special assessments against Owners on account of such casualty, shall constitute a construction fund which shall be disbursed to the Association or the Insurance Trustee, as the case may be, and be applied to the payment of the cost of reconstruction and repair of the portion of Property that is covered by the Association's Casualty Insurance policy from time to time as the work progresses, but not more frequently than once in any calendar month. The Association or the Insurance Trustee, as the case may be, shall make such payments upon receipt of a certificate, dated not more than 15 days prior to such request, signed by the architect or contractor in charge of the work, who shall be selected by the Association, setting forth (a) that the sum then requested is justly due to contractors, subcontractors, material-men, architects, or other persons who have rendered services or furnished materials in connection with the work, giving a brief description of the services and materials, and



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that the sum requested does not exceed the value of the services and materials described in the certificate, (b) that except for the amount stated in such certificates to be due as aforesaid less any prescribed holdback of funds, and for work subsequently performed, there is no outstanding indebtedness known to the person signing such certificate after due inquiry which might become the basis of a vendor's, mechanic's, material-men's or similar lien arising from such work, and (c) that the cost as estimated by the person signing such certificate of the work remaining to be done subsequent to the date of such certificate does not exceed the amount of the construction fund remaining in the hands of the Association or the Insurance Trustee, as the case may be, after the payment of the sum so requested. It shall be presumed that the first monies disbursed in payment of such costs of reconstruction and repair shall be from insurance proceeds; and if there is a balance in any construction fund after payment of all costs of the reconstruction and repair for which the fund is established (the "Excess Balance"), the Excess Balance shall be distributed to the Owners of the damaged Townhomes (in such case). The distribution of the Excess Balance shall be in the shares that the estimated costs of reconstruction and repair for each damaged Townhome bears to the total of these costs for all damaged Townhomes. If there is a mortgage upon a Townhome, the distribution of the Excess Balance shall be paid to the Owner thereof and the mortgagee thereof jointly, and they may use the proceeds as they may determine.

- (4) The Insurance Trustee (if any) may rely upon a certificate of the Association certifying as to whether or not the damaged property is to be reconstructed or repaired. The Association, upon request of the Insurance Trustee, shall deliver such certificate as soon as practical.
- (5) Each Owner shall be deemed to have delegated to the Board his or her right to adjust with insurance companies all losses under the Casualty Policy.

(c) **Minor Repairs**

- (1) Notwithstanding the foregoing provisions of this Article, if the aggregate amount of the estimated costs of repairing any damage to the Common Areas or Townhomes is less than \$100,000, the instrument (or draft) by means of which any insurance proceeds are paid shall be delivered to the Association and the damage shall be repaired in accordance with subsection 6.5(e)(2) below.
- (2) Such insurance proceeds shall be used by the Association to defray the cost of repairing the damage to the portions of the Common Areas or Townhomes that are covered by the Casualty Policy. If the cost of such



repairs is less than the amount of such insurance proceeds, the Excess Balance shall be distributed to the Owners of the damaged Townhomes in accordance with subsection 6.5(d)(3) above. The distribution shall be in the shares that the estimated costs of reconstruction and repair for each damaged Townhome bears to the total of these costs for all damaged Townhomes. If there is a mortgage upon a Townhome, the distribution of the Excess Balance shall be paid to the Owner thereof and the mortgagee thereof jointly and they may use the proceeds as they may determine. If the cost of such repairs exceeds the amount of such insurance proceeds, such excess may be provided either by means of a Common Assessment levied by the Board against all Owners or by means of an appropriation from the contingency fund or such other fund as may be established for the purpose of providing for the maintenance, repair and replacement of the Common Areas and Townhomes, as the Board may determine.

- (f) **Negligence of an Owner** Each Owner shall be liable for the expenses of any maintenance, repair or replacement (or payment of any deductible amount required by any insurance policy) rendered necessary by his or her negligence or by that of any member of his or her family or his or her or their guests, employees, agents or lessees, to the extent that such expense is not covered by the proceeds of insurance carried by the Association. An Owner shall pay the amount of any increase in insurance premiums occasioned by his or her use, misuse, occupancy or abandonment of his or her Townhome or its appurtenances or of the Common Areas.
- (g) **Waiver of Subrogation** Each Person as a condition of accepting title and/or possession of a Townhome and the Association agree for themselves, and their respective successors, heirs, executors, administrators, personal representatives, assigns, and lessees, provided said agreement does not invalidate or prejudice any policy of insurance, that if any building, structure or improvement within the Property or the fixtures or personal property of anyone located therein or thereon is damaged or destroyed by fire or other casualty that is covered by insurance, the rights, if any, of any of them against the other, or against the employees, agents, licensees or invitees of any of them with respect to such damage or destruction and with respect to any loss resulting therefrom are hereby waived.

Section 6.5 - Management

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

- (a) Adopt Rules;



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

Section 6.6 - Enforcement

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

Section 6.7 - Rules and Regulations

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

Section 6.8 - General



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

Section 6.9 - Original Declarant's Rights

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

ARTICLE VII
COVENANTS AND RESTRICTIONS

The intent of this Declaration is to cause the Property to be well kept and maintained. Therefore, the covenants and restrictions provided in this Article shall be applicable to the Owners, land contract vendees, lessees, Tenants and Occupants of the Property. The following Covenants and Restrictions shall be broadly construed and interpreted in furtherance of this intent. The Association, acting through its Board, shall have standing and the power to enforce such standards.

The Association, acting through the Board, shall have authority to make and to enforce standards and restrictions governing the use of the Property in addition to those contained herein, and to impose reasonable user fees for use of Common Area facilities. Such regulations and use restrictions shall be binding upon all Owners, land contract vendees, lessees, Tenants and Occupants.

Section 7.1 - Covenant of Good Maintenance

Each Owner and Occupant shall have the exclusive duty to maintain the exterior and interior of his or her Townhome in good condition and repair and shall keep the exterior and interior of such Townhome and the adjacent Common Areas, if any, free from debris, rubbish, rubble and other conditions created by such Owners or Occupants or their guests.

Section 7.2 - Trailers and Other Structures

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

Section 7.3 - Fences, Walls and Hedges; Mail Boxes



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No fences, walls, or landscaping of any kind shall be erected, begun or permitted to remain upon any portion of the Property unless originally constructed by Declarant or approved by the Declarant (for so long as the Declarant owns a Sublot) and the Design Review Committee. All mail boxes shall be as provided by the Declarant or the Association.

Section 7.4 - Nuisance

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

Section 7.5 - Animals

No animals, livestock, or poultry of any kind shall be raised, bred or kept on any portion of the Property (including the Townhomes situated thereon) without the approval of the Board, except that dogs, cats, birds, fish and other customary household pets approved by the Board may be kept, subject to Rules adopted by the Board, provided that they are not kept, bred or maintained for any commercial purpose and provided, further, that any such pet causing or creating a nuisance or unreasonable disturbance or annoyance shall be permanently removed from the Property upon three days' written notice from the Board. Dogs shall at all times whenever they are outside a Townhome be confined on a leash held by a responsible person or contained by an "invisible fence" system. Each Owner shall immediately clean up after his or her dog. No more than two (2) cats, dogs, or combination thereof shall be kept in any one Townhome. The Rules may further limit the number of pets which may be kept in any one Townhome. The Board shall have absolute power to prohibit a pet from being kept on the Property or within a Townhome if the Board finds a violation of this Section.

Section 7.6 - Signs

No sign or other advertising device of any nature shall be placed upon any portion of the Property except for "For Sale" signs and non-commercial opinion signs (which are permitted if in compliance with all City ordinances and regulations), and other signs and advertising devices installed by or at the direction of the Design Review Committee, or which the Design Review Committee approves as to color, location, nature, size and similar characteristics. Notwithstanding the foregoing, the restrictions of this Section 7.6 shall not apply to Declarant. All signs permitted by this Section 7.6 must be installed in compliance with all City ordinances and regulations.

Section 7.7 - Storage of Material and Trash Handling

No lumber, metals, bulk material, refuse or trash shall be burned, whether in indoor incinerators or otherwise, kept, stored or allowed to accumulate on any portion of the Property, except normal residential accumulation pending pick-up and except building materials during the



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course of construction or reconstruction of any approved building or structure. If trash or other refuse is to be disposed of by being picked up and carried away on a regular recurring basis, containers may be placed in the open on any day that a pick-up is to be made, thereby providing access to persons making such pick-up. At all other times such containers shall be stored within the garage of a Townhome or other area not visible from the street. No dumping of rubbish shall be permitted on any portion of the Property. Anything herein to the contrary notwithstanding, the Association or the Board may adopt a Rule or Rules which permit burning, incineration or storage of refuse or trash if the same becomes reasonably necessary for the safety, health or welfare of the Occupants, and is permitted by law.

Section 7.8 - Commercial or Professional Uses

Except as expressly permitted in this Declaration, or by Rules adopted in accordance with this Declaration, no industry, business, trade or full-time occupation or profession of any kind, commercial, educational, or otherwise, designated for profit, altruism, exploration or otherwise, shall be conducted, maintained or permitted on any part of the Property; provided, however, an Owner or a lessee of the Owner may use a portion of his or her Townhome for an office or studio, so long as the activities therein shall not interfere with the quiet enjoyment or comfort of any other Occupant and that such use does not result in the Townhome becoming principally an office, school or studio as distinct from a Townhome. The Board may adopt Rules which intensify, relax or amend the prohibitions of this Section. Nothing in this Section shall preclude the leasing of a Townhome by the Declarant or an Owner; the right of the Declarant or the Board (or a firm or agent employed by the Declarant or Board) to approve commercial activities such as charity events, temporary food and beverage operations, the right of the Declarant to maintain brokerage offices for sales of Sublots and for new sales of Townhomes within the Property, and resales of Townhomes and the right of the Declarant to utilize a Townhome for a model Townhome and/or for office purposes.

Section 7.9 - Storage of Vehicles and Machinery

No truck (except a two-axle truck with no more than four tires), camper, camper trailer, recreation vehicle, boat, boat trailer, all terrain vehicle, airplane, snowmobile, commercial vehicle, mobile home, tractor, bus, farm equipment, off-road vehicles or other vehicle of any kind, licensed or unlicensed, shall be stored on any driveway or other area in or upon the Property, except in the confines of garages. No machinery of any kind shall be placed or operated upon any portion of the Property except such machinery which is customarily required for the maintenance of the Property, related improvements, lawns and landscaping.

Section 7.10 - Firearms; Preservation of Wildlife

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



Section 7.11 - Control of Trucks, Commercial Vehicles

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

Section 7.12 - Poles, Wires and Antennae

Subject to applicable easement rights, no facilities, including poles and wires, for the transmission of electricity, telephone messages, ham radio messages and the like shall be placed or maintained above the surface of the ground in any portion of the Property without the prior approval of the Design Review Committee. This provision shall not apply for temporary facilities for the construction or repair of any building or other structure. A Digital or Direct Satellite System ("DSS System"), one meter (approximately 39 inches) or less in circumference, may be attached to a Townhome in conformance with FCC regulations and all applicable City ordinances and codes, so long as the prior approval of the location of the DSS System is given by the Design Review Committee, provided, however, the criteria used to approve the location of such DSS System shall not cause the Owner unreasonable delay in installation; cause the Owner to incur unreasonable installation, maintenance or usage costs; nor shall the criteria cause unreasonable interference with a broadcast signal. Subject to the foregoing, Owners must install any DSS System in the rear of the building if an acceptable quality signal can be received, or such other location as determined by the Board or the Design Review Committee that will be least visible from the front of the building.

Section 7.13 - Exterior Appearance and Lights for Exteriors of Residences

The exterior of any building or structure in the Property shall not be altered, modified, changed or redecorated in such a way as to change the appearance or decor of the structure without the express written authorization of the Board or Design Review Committee. The provisions of this paragraph are subject to the provisions of Article VIII of this Declaration. For the purpose of providing security, each Owner shall keep the bulb(s) in all exterior lights originally attached to the exterior of his or her Townhome in good working order.

Section 7.14 - Grading

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

Section 7.15 - Storm Drainage

No Person shall interfere with the free flow of water through any drainage system or storm sewers within the Property. The City or other governmental authority having jurisdiction shall have the right to enter upon the Common Areas of the Property to repair and maintain all storm, drainage, courses, strictures and appurtenances for the purpose of relieving any flooding



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condition or threatened flooding condition which might be harmful to other property within the City. This Section supplements Section 3.9 hereof.

Section 7.16 - Resubdivision of Sublots

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

Section 7.17 - Compliance with City Codes

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

Section 7.18 - Use of Associated Names

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

Section 7.19- Sale, Leasing or Other Alienation of Townhomes

- (a) **Owner's Right of Transfer.** The Association shall have no right of first refusal with respect to the purchase or lease of a Townhome, and an Owner shall be able to transfer his Townhome freely by sale, gift, devise, lease or otherwise without restriction except as provided in subsections (b) and (d) below. Testa Realty, Inc., an affiliate of the Declarant, and Testa Realty, Inc.'s successors and assigns ("Testa Realty"), shall have the exclusive right to list for sale all Townhomes that are placed for sale. This exclusive right to sell shall be in effect for 15 years from the date of recording this Declaration and shall apply to all Townhomes and all sales of Living Units during said 15 year period.
- (b) **Owner's Right to Lease Townhome.** An Owner shall have the right to lease all or a portion of his Townhome upon such terms and conditions as the Owner may deem advisable, except that no Townhome shall be leased or subleased for transient or hotel purposes or as prohibited in subsection (d) below. Any lease or sublease of a Townhome shall be in writing and shall provide: (1) that the lease or sublease shall be subject to the terms of this Declaration, the Code and Rules and that any failure of a lessee to comply with the terms of this Declaration, the Code and Rules shall be in default under the lease or sublease; (2) that the Association



shall have the right to require the Owner to deposit with the Association such amount as the Association shall consider appropriate as security to provide funds for repairs and to assure compliance with this Declaration, the Code and Rules. The limitations with respect to the leasing of Townhomes shall not apply to the Declarant or a first mortgagee of a Townhome.

- (c) **Names of Owners and Occupants of Townhomes.** To enable the Association to maintain accurate records of the names, addresses and phone numbers of Owners and other Occupants of Townhomes, each Owner agrees to notify the Association in writing, within five days before such Owner's Townhome will be transferred or leased to another person. In addition, each Owner agrees to provide to a purchaser or lessee of such Owner's Townhome a copy of this Declaration, the Code, the Rules and other relevant documents.
- (d) **No Sale or Lease to, or Occupancy by, Sexually Oriented Offender.** No Owner shall lease, convey, or transfer a Townhome to any person who is required pursuant to the provisions of §2950.04 of the Ohio Revised Code (or other similar statute from any other jurisdiction), to register as a sexually oriented offender, nor shall any Owner permit a Townhome to be occupied by any such sexually oriented offender. Neither the Declarant nor the Association shall be liable to any Owner, Occupant, or their guests, as a result of the Declarant's or the Association's alleged failure, whether negligent, intentional or otherwise, to enforce the provisions of this restriction.

Section 7.20 - Swimming Pool Restrictions

No swimming pools are permitted on the Property.

Section 7.21 - Party Walls

- (a) Each wall which is built as part of the original construction of a Townhome upon the Property and placed on the dividing line between two Townhomes shall constitute a Party Wall. The Association shall insure all Party Walls under the Casualty Policy. Owners sharing a Party Wall shall be responsible for all maintenance, repair, and replacement of such Party Wall which is not provided by the Association or under the coverage provided by the Casualty Policy.
- (b) Each Owner sharing a Party Wall shall have the full right to use the Party Wall for the support of beams and structural materials or in any other lawful manner not prohibited hereby; provided, however, that such use shall not injure, impair the strength of, or endanger the wall, foundation or other portion of the Townhome of the other Owner, and shall not impair or endanger the Party Wall benefits and supports to which the adjoining Townhome is entitled.
- (c) Neither Owner of a Townhome sharing a Party Wall may extend the length or



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increase the height of the Party Wall.

- (d) The cost of reasonable repair and maintenance of a Party Wall shall be shared equally by the Owners who make use of the Party Wall.
- (e) Notwithstanding any other provision of this subsection, an Owner who by his or her negligent or willful act causes the Party Wall to be exposed to the elements shall bear the whole cost of furnishing the necessary protection against such elements.
- (f) The right of any Owner to contribution from any other Owner under this subsection shall be appurtenant to the land and shall pass to such Owner's successors in title.
- (g) In the event of any dispute arising concerning a Party Wall, or under the provisions of this Section, such dispute shall be submitted to arbitration pursuant to Section 16.9 of this Declaration.

Section 7.22 - Violation of this Article

- (a) If any Person required to comply with the foregoing Covenants and Restrictions is in violation of any one of same, including, but not by way of limitation, design review criteria or standards established by the Design Review Committee, the Declarant (as long as the Declarant is a Class "B" Member of the Association) or the Board and/or the Design Review Committee and/or the Covenants Committee shall have the right to give written notice to such Person to terminate, remove or extinguish such violation. Such notice shall expressly set forth the facts constituting such violation.
- (b) Except in the case of an emergency situation, the violating party shall have 15 days after written notice of the violation to take reasonable action to cause the removal, alleviation or termination of same. In the case of an emergency situation, or in the case of the failure of the violating party to comply with the provisions hereof after notice, the Declarant and/or the Association shall have the right, through their respective agents and employees, to enter upon the land where the violation exists and summarily to terminate, remove or extinguish the violation. In addition to the foregoing, the Declarant and/or the Association shall have the right to obtain an injunction from any court having jurisdiction for the cessation of such violation or attempted violation of this Article. The rights and remedies of the Association and Declarant contained in this Article shall be nonexclusive and in addition to any other right or remedy available at law or in equity, including a claim or action for specific performance and/or money damages (including punitive damages), and attorneys' and paralegals' fees. Furthermore, the failure or

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neglect to enforce any term, covenant, condition, restriction, right or procedure herein shall in no event and under no circumstances be construed, deemed or held to be a waiver with respect to any subsequent breach or violation thereof. Subject to the provisions of the Section of the Code entitled, "Hearing Procedure", a Person in violation of this Article VII shall be obligated to the Association and/or Declarant for money damages and for the full amount of all costs and expenses, including attorneys' and paralegals' fees, incurred to remedy any such violation. If said amounts are not paid within ten calendar days following said notification, then said amount shall be deemed "delinquent", and shall, upon perfection as provided in Section 9.4, become a continuing lien upon the portion of the Property owned or occupied by such Person(s) and a personal obligation of the Person(s) violating this Article. In addition, the Owner of any portion of the Property shall be liable jointly and severally for any obligations of any Occupant of such Owner's property.

- (c) If the Association fails to enforce the restrictions set forth in this Section, the Master Association has the power and authority, but is not obligated to, enforce such restrictions against the violating Owner or Owners through the procedures set forth in subsections (a) and (b) above.

Section 7.23 - Restrictions of Other Documents

Nothing contained in these Restrictions shall preclude the imposition of more stringent restrictions imposed elsewhere in this Declaration, restrictions imposed in deeds conveying the Property or portions thereof and restrictions imposed by the Design Review Committee so long as such restrictions are not inconsistent with restrictions imposed by this Declaration, the Master Declaration, created by the Association or adopted by the Board.

Section 7.24 - Certificate of Compliance with Restrictions in Connection with Resales of Townhomes

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

ARTICLE VIII **DESIGN REVIEW COMMITTEE**



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Section 8.1 - Power of Committee

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

Section 8.2 - Operation of Committee

No Townhome shall be altered, modified or changed in any way which changes the exterior or the appearance thereof, nor shall any Townhome be rebuilt, nor shall any grading or landscaping for a Sublot be changed unless an application, plans and specifications for the proposed alteration, modification or change shall have been submitted to and approved in writing by the Committee. The rights of the Committee set forth in this subsection are in addition to the rights of the Committee as set forth elsewhere in this Declaration. The provisions of this subsection requiring submission of plans and specifications to and obtaining approval from the Committee shall not be applicable to the Declarant, nor any entity related to or affiliated with the Declarant or designated by the Declarant as being subject to the provisions of this subsection.

Section 8.3 - Inspection

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

Section 8.4 - Violations and Remedies

Should any Townhome be altered, constructed, or related improvements be reconstructed or removed from or upon any Sublot, or should the use thereof be modified in any way from the use originally constructed or installed without first obtaining the prior written approval of the Declarant or Design Review Committee as provided in this Article, such act shall be deemed to be a violation of this Article and this Declaration. Any party violating this Article shall, immediately upon the receipt of written notice of such violation from the Declarant or Design Review Committee, cease and desist from the commission of any such act and immediately



commence to take such steps as will alleviate or remedy any such condition of default and shall continue with all due diligence thereafter until the satisfactory completion of same. Should the party committing such act in contravention of this Article fail to immediately take such remedial action as aforesaid, then and in such event, the Association shall have the right, but not the obligation, in addition to any and all other rights or remedies available to it at law or in equity, each of which remedies shall be deemed to be nonexclusive, to do any of the following:

- (a) **Abate Violation**: Without liability to the Owner of the Sublot, cause its agents and employees to enter upon the Sublot and/or the Townhomes for the purpose of summarily abating any such use and/or removing any such building or structure or other improvement.
- (b) **Seek Injunction**: Apply to a court having jurisdiction over the Property for the purpose of obtaining an injunction directing the violating party to abate any such use and/or removing any such building or structure wherever located on the Property.
- (c) **Seek Reimbursement**: Seek full and complete reimbursement from any party committing any of the aforesaid acts in contravention of this Article, of any costs, damages and expenses (including without limitation court costs, attorneys' and paralegals' fees, litigation costs, and costs to collect such sum) incurred by the Association with respect to its exercise of any of its rights for the purpose of remedying any such condition of default.
- (d) **Treat as Assessment**: Should the party committing any acts in contravention of this Article be an Occupant and should such Occupant fail to immediately pay the full amount of all costs, damages, and expenses referred to in above, the Association shall be entitled to treat such amount as an Assessment against the Sublot of which such Occupant is or was the Owner, a member of the Owner's family or a guest or invitee of such Owner.

ARTICLE IX **ASSESSMENTS**

Section 9.1 - Definition of Assessments

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

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



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- (b) All amounts incurred in collecting Assessments, including all legal and accounting fees;
- (c) Reserves for uncollectible Assessments, unanticipated expenses, replacements, major repairs and contingencies;
- (d) Annual capital additions, capital improvements, and/or capital acquisitions (not including repairs or replacements for which the Association is responsible hereunder) having a total cost in excess of \$5,000, however, in each case, the prior approval of the Class "B" Member and the vote of at least a majority of the Class "A" Members shall be required to approve the imposition of assessments for such capital additions, improvements, and/or acquisitions. In case of an emergency requiring prompt action to avoid further loss, the Board shall have the discretion to expend whatever is necessary to mitigate such loss.
- (e) Such other costs, charges and expenses which the Association determines to be necessary and appropriate within the meaning and spirit of this Declaration.

Section 9.2 - Responsibility for Payment of Assessments

All Owners of Townhomes shall be responsible for paying Assessments levied against such Townhomes. The Declarant or the Board shall prepare or cause the preparation of an annual operating budget for the Association and shall fix the amount of the Assessments, which shall be equal between Townhomes and shall be equal to the amount of such annual budget divided by the number of Townhomes subject to Assessment. Written notice of the Assessments shall be sent to the Owner of each Townhome. Payment of Assessments may be required by the Declarant or Board on a monthly, quarterly, semi-annual or annual basis.

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

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

Section 9.4 - Creation of Lien and Personal Obligation

Each Owner hereby covenants and agrees by acceptance of the deed to a Townhome whether or not it shall be so expressed in any such deed or other conveyance, to pay to the Association all Assessments levied against such Owner in accordance with this Declaration on or



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before the due date for any such Assessment. If the Assessment is not paid by the tenth day of the month, then such Assessment shall be "delinquent" and the Assessment, together with the Costs of Collection, as hereinafter defined in Section 11.3 hereof shall, upon "Perfection" as provided in Section 10.1, become a continuing lien upon the interest of such Person in his Townhome and shall bind such Owner, his heirs, devisees, personal representatives, successors and assigns. A co-Owner of a Townhome shall be personally liable, jointly and severally, with all other co-Owners for all Assessments made by the Association with respect to said Townhome.

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

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

Section 9.6 - Liability for Assessments on Voluntary Conveyance

Upon the voluntary conveyance of an Ownership interest the grantee of the Ownership Interest shall be jointly and severally liable with the grantor for all unpaid Assessments levied pursuant to this Declaration against the grantor of his Ownership Interest prior to the time of the grantor's conveyance, without prejudice to the grantee's right to recover from the grantor the amounts paid by the grantee therefor. However, any such prospective grantee, upon written request delivered to the Association, shall be entitled to a statement from the Board of Directors or an officer of the Association setting forth the amount of all unpaid Assessments due the Association with respect to the Ownership Interest to be conveyed and such grantee shall not be liable for, nor shall the Ownership Interest conveyed be subject to a lien, for any unpaid Assessments which become due prior to the date of the making of such request if the same are not set forth in such statement. The statement referred to herein shall be included in the Certificate of Compliance with Restrictions referred to in Section 7.24 of this Declaration. The Association may require the advance payment of a processing fee for the issuance of the Certificate of Compliance. A devise of an Ownership Interest or the distribution of said Ownership Interest pursuant to the Statute of Descent and Distribution shall be deemed to be a voluntary conveyance. An unpaid Assessment shall not be deemed a charge or lien against the Ownership Interest until perfected as such pursuant to Article X.

Section 9.7 - Additional Assessments

If the Assessments shall for any reason prove to be insufficient to cover the actual



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expenses incurred by the Association, the Association shall, at such time as it deems it necessary and proper, levy an additional assessment (the "Additional Assessment") against the Owners of Townhomes. Each such Owner shall pay an equal share of each such Additional Assessment as if the Additional Assessment were part of the original Assessment.

Section 9.8 - Exempt Property

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

ARTICLE X **LIENS**

Section 10.1 - Perfection of Lien

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

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

Section 10.2 - Duration of Lien

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



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Section 10.3 - Priority

A lien perfected under this Article shall take priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and liens of first mortgagees against Townhomes. A lien perfected pursuant to this Article may be foreclosed in the same manner as a mortgage on real property in an action brought by the Association after authorization from the Board. In any such foreclosure action, the affected Owner shall be required to pay reasonable rental for such Ownership Interest during the pendency of such action and the plaintiff or Association in such action shall be entitled to the appointment of a receiver to collect the same. Any funds received at the judicial sale of the delinquent Owner or Declarant's Ownership Interest in excess of mortgage liens, court costs and the taxes and assessment liens shall be paid over to the Association to the extent of its lien.

Section 10.4 - Dispute as to Assessment

The Declarant or any Owner or Declarant who believes that an Assessment levied by the Association against him for which a Certificate of Lien has been filed by the Association has been improperly determined, may bring an action under the Arbitration Provisions contained in Section 16.9 of this Declaration for the discharge of all or any portion of such lien; but the lien shall continue until the actual amount of the lien so determined is paid in full or otherwise be fully discharged.

Section 10.5 - No Waiver Implied

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

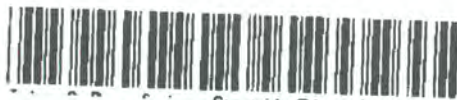
Section 10.6 - Personal Obligations

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

ARTICLE XI **REMEDIES OF THE ASSOCIATION**

Section 11.1 - Denial of Voting Rights

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



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Section 11.2 - Specific Remedies

The violation of any Rule, or the breach of any restriction, covenant or provision contained in this Declaration or in the Code, shall give the Association and the Original Declarant the right, in addition to all other rights set forth herein and provided bylaw, (a) to enter upon the Townhome or Sublot or portion thereof upon which, or as to which, such violation or breach exists, and summarily abate and remove, at the expense of the Owner or Declarant of the Ownership Interest where the violation or breach exists, any structure, thing, or condition that may exist thereon, which is contrary to the intent and meaning of this Declaration, the Code, or the Rules, and the Association, or its designated agent shall not thereby be deemed guilty in any manner of trespass; (b) to enjoin, abate or remedy by appropriate legal proceedings, either at law or in equity, the continuance of any breach; (c) to commence and prosecute an action for specific performance or an action to recover any damages which may have been sustained by the Association or any of its Members as well as an action for punitive damages if warranted; and/or (d) to collect costs of suit and reasonable attorneys' and paralegals' fees incurred in connection with the exercise by the Association of any remedies hereunder, the same to be deemed "Costs of Collection" under Section 11.3 hereof.

Section 11.3 - Cost of Collection

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

- (a) Sue and collect from such Owner the amount due and payable, together with interest thereon as provided in this Declaration and Costs of Collection (hereafter defined).
- (b) In addition to the amount referred to in (a) above, the Association may assess against such Owner, an administrative fee, not to exceed 15% of the amount of the delinquency or \$100, whichever amount is greater, said amount to be determined by the Board provided, however, in no event shall said amount exceed the highest interest rate chargeable to individuals under applicable law. Said administrative fee shall be in addition to interest and the expenses of collection incurred by the Association, such as attorneys' fees, paralegals' fees, court costs and recording and/or filing fees. The actual expenses of collection and the administrative fee shall hereinafter be referred to as "Cost of Collection".
- (c) Foreclose a lien filed in accordance with Article X of this Declaration in the same manner as provided by the laws of the State of Ohio for the foreclosure of real estate mortgages.



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Section 11.4 - Binding Effect

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

ARTICLE XII **NO PARTITION**

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

ARTICLE XIII **CONDEMNATION**

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

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

ARTICLE XIV **MORTGAGEES' RIGHTS**

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



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Section 14.1 - Notices of Action

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

- (a) any proposed termination of the Association;
- (b) any condemnation or casualty loss which affects a material portion of the Property or which affects any Townhome on which there is a first mortgage held, insured, or guaranteed by an Eligible Mortgage Holder;
- (c) any delinquency in the payment of assessments or other charges owed by an Owner subject to the mortgage of such Eligible Mortgage Holder, insurer, or guarantor, where such delinquency has continued for a period of 60 days;
- (d) any lapse, cancellation, or material modification of any insurance policy or fidelity bond maintained by the Association; or
- (e) any proposed action which would require the consent of eligible holders, as required in Sections 14.2 and 14.3 of this Article.

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

Section 14.2 - Other Provisions for First Lien Holders

To the extent possible under Ohio law:

- (a) Any restoration or repair of the Property following a partial condemnation or damage due to an insurable hazard shall be substantially in accordance with this Declaration and the original plans and specifications unless the approval of the Eligible Mortgage Holders on Townhomes to which at least 51% of the votes of Townhomes and the Eligible Mortgage Holders of first mortgages of the Class "A" Members and the Class "B" Member, subject to mortgages held by such Eligible Mortgage Holders, are allocated, is obtained to act otherwise.
- (b) Any election to terminate the Association after substantial destruction or a substantial taking in condemnation shall require the approval of the Eligible Mortgage Holders on Townhomes of at least 51% of the votes of Townhomes and the Eligible Mortgage Holders of first mortgages of the Class "A" Members and the Class "B" Member, subject to mortgages held by such Eligible Mortgage



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Holders, are allocated.

Section 14.3 - Amendments to Documents

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

- (a) The consent of at least 67% of the Class "A" Members and of the Class "B" Member and the approval of the Eligible Mortgage Holders to which at least 67% of the votes of Townhomes subject to a mortgage appertain, shall be required to terminate the Association.
- (b) The vote of at least 67% of the Class "A" Members and the consent of the Class "B" Member and the approval of Eligible Mortgage Holders to which at least 51% of the votes of Townhomes subject to mortgages appertain, shall be required to materially amend any provisions of the Declaration, Code, or Articles of Incorporation of the Association, or to add any material provisions thereto, which establish, provide for, govern, or regulate any of the following:
 - (1) voting rights;
 - (2) Assessments, Additional Assessments, assessment liens, or priority assessment liens;
 - (3) reserves for maintenance, repair, and replacement of the Common Areas;
 - (4) responsibility for maintenance and repair;
 - (5) insurance or fidelity bonds;
 - (6) rights to use of the Common Areas;
 - (7) leasing of Townhomes;
 - (8) imposition of any right of first refusal or similar restriction of the right of any Owner to sell, transfer, or otherwise convey his or her Townhome (this provision is subject and subordinate to any provision in an agreement for the sale by the Declarant of a Townhome.);
 - (9) establishment of self-management by the Association where professional management has been required by an Eligible Mortgage Holder;
 - (10) restoration or repair of the Property (after hazard damage or partial



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condemnation) in a manner other than that specified in this Declaration;

- (11) any action to terminate the legal status of the Property after substantial destruction or condemnation occurs;
- (12) expansion or contraction of the Property, or the addition, annexation, or withdrawal of the Property other than as provided in Section 1.3 of this Declaration; or
- (13) any provisions included in this Declaration, Code, or Articles of Incorporation which are for the express benefit of Eligible Mortgage Holders on Townhomes.

Section 14.4 - Special Federal Home Loan Mortgage Corporation Provisions

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

- (a) Unless two-thirds of the first mortgagees or Owners give their consent, the Association shall not: (1) by act or omission seek to abandon, become a partition, subdivide, encumber, sell or transfer any portion of the Property owned by the Association (the granting of easements for public utilities or for public purposes or the dedication to public use of utilities or roads consistent with the intended use of the property shall not be deemed a transfer); (2) change the method of determining the obligations, Assessments, dues or other charges which may be levied against an Owner; (3) fail to maintain fire and extended coverage insurance as required by this Declaration; or (4) use hazard insurance proceeds for any Common Area losses for other than repair, replacement or reconstruction of such properties.
- (b) The provisions of this Section shall not be construed to reduce the percentage vote that must be obtained from mortgagees or Owners or a larger percentage vote as otherwise required for any of the actions contained in this Article.
- (c) First mortgagees may, jointly or singularly, pay taxes or other charges which are in default or which may or have become a charge against the Common Area and may pay overdue premiums of casualty insurance policies or secure new casualty insurance coverage upon the lapse of a policy, for the Common Areas and first mortgagees making such payments shall be entitled to immediate reimbursement from the Association.
- (d) Mortgagees shall not be required to collect Assessments. Nonpayment of Assessments shall not constitute a default under any insured mortgage.



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ARTICLE XV

TRANSFER OF SPECIAL DECLARANT RIGHTS

Section 15.1 - Instrument Transferring Special Declarant Rights

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

Section 15.2 - Liability of Transfer of Special Declarant Rights

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

- (a) A transferor is not relieved of any obligation or liability arising before the transfer and remains liable for warranty obligations imposed upon the transferor Declarant. Lack of privity (direct contractual relationship) does not deprive the Association or any Owner of standing to bring an action to enforce any obligation of the transferor.
- (b) If the successor to any Special Declarant Right is an Affiliate of a Declarant, the transferor is jointly and severally liable with the successor for any obligation or liability of the successor which related to the Property.
- (c) If a transferor retains any Special Declarant Rights, but transfers other Special Declarant Rights to a successor who is not an Affiliate of the Declarant, the transferor is also liable for any obligations and liabilities relating to the retained Special Declarant Rights imposed on a Declarant by the Declaration or Code arising after the transfer.
- (d) A transferor has no liability for any act or omission, or any breach of contractual or warranty obligation arising from the exercise of a Special Declarant Right by a successor Declarant who is not an Affiliate of the transferor.

Section 15.3 - Acquisition of Special Declarant Rights

Unless otherwise provided in a mortgage held by a first mortgagee, in case of foreclosure of a mortgage (or deed in lieu of foreclosure), tax sale, judicial sale, or sale under the Bankruptcy Code or receivership proceedings, of any Townhomes owned by a Declarant in the Property, a person acquiring title to all the Townhomes being foreclosed (or deed in lieu of foreclosure) or sold, but only upon his request, succeeds to all Special Declarant Rights related to such Townhomes, or only to any rights reserved in the Declaration and/or Code to maintain models,



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sales offices, customer service offices and signs. The judgment or instrument conveying title shall provide for transfer of only the Special Declarant Rights requested.

Section 15.4 - Termination of Special Declarant Rights

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

Section 15.5 - Liabilities of A Transferee of Special Declarant Rights

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

- (a) A successor to any Special Declarant Right who is an Affiliate of a Declarant is subject to all obligations and liabilities imposed on the transferor by the Declaration and Code.
- (b) A successor to any Special Declarant Right, other than a successor described in paragraphs (3) or (4) of this subsection, who is not an Affiliate of a Declarant, is subject to all obligations and liabilities imposed by the Declaration and Code: (i) on a Declarant which relate to such Declarant's exercise or non-exercise of Special Declarant Rights; or (ii) on the transferor, other than: (A) misrepresentations by any previous Declarant; (B) warranty obligations on improvements made by any previous Declarant, or made before this Declaration is recorded; (C) breach of any fiduciary obligation by any previous Declarant or appointees to the Board of Directors; or (D) any liability or obligation imposed on the transferor as a result of the transferor's acts or omissions after the transfer.
- (c) A successor to only a Special Declarant Right reserved in the Declaration and/or Code to maintain models, sales offices, customer service offices and signs, if such successor is not an Affiliate of a Declarant, may not exercise any other Special Declarant Right, and is not subject to any liability or obligation as a Declarant.
- (d) A successor to all Special Declarant Rights held by the transferor who is not an Affiliate of that Declarant and who succeeded to those rights pursuant to a deed in lieu of foreclosure or a judgment or instrument conveying title to Townhomes under Subsection (B), may declare the intention in a recorded instrument to hold those rights solely for transfer to another person. Thereafter, until transferring all Special Declarant Rights to any person acquiring title to any Townhome owned by the successor, or until recording an instrument permitting exercise of all those rights, that successor may not exercise any of those rights other than any right held by the transferor to control the Board of Directors in accordance with the



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provisions of this Declaration or the Code for the duration of the period that a Declarant has the right to elect or designate Board Members, and any attempted exercise of those rights is void. So long as a successor Declarant may not exercise Special Declarant Rights under this Subsection, such successor Declarant is not subject to any liability or obligation as a Declarant.

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

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

ARTICLE XVI
GENERAL PROVISIONS

Section 16.1 - Covenants Run With the Property; Binding Effect

- (a) All of the Easements, Covenants and Restrictions which are imposed upon, granted and/or reserved in this Declaration constitute Easements, Covenants and Restrictions running with the Property and are binding upon every subsequent transferee of all or any portion thereof, including, without limitation, grantees, Tenants, Owners and Occupants.
- (b) Each grantee accepting a deed or Tenant accepting a lease (whether oral or written) which conveys any interest in any portion of the Property that is submitted to all or any portion of this Declaration, whether or not the same incorporates or refers to this Declaration, covenants for himself, his heirs, personal representatives, successors and assigns to observe, perform and be bound by all provisions of this Declaration and to incorporate said Declaration by reference in any deed, lease or other agreement of all or any portion of his interest in any real property subject hereto.
- (c) Each grantee accepting a deed or Tenant accepting a lease (whether oral or written) which conveys any interest in any portion of the Property that is submitted to all or any portion of this Declaration, whether or not the same incorporates or refers to this Declaration, covenants for himself, his heirs, personal representatives, successors and assigns to observe, perform and be bound by all provisions of this Declaration and to incorporate said Declaration by reference in any deed, lease or other agreement of all or any portion of his interest in any real property subject hereto.

Section 16.2 - Duration

Unless sooner terminated as hereinafter provided, the Covenants and Restrictions of this Declaration shall continue for a term of fifty years from the date this Declaration is recorded,



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after which time, said covenants and restrictions shall automatically be extended for successive periods of ten years each unless terminated by an instrument signed by Members entitled to exercise not less than 75% of the Class "A" Members and by the Class "B" Member. No restriction or condition herein shall be materially altered or terminated unless such alteration or termination is consistent with the controlling regulations of the City and other applicable governmental bodies.

Section 16.3 - Notices

- (a) Any notices required to be given to any Person under the provisions of this Declaration shall be deemed to have been given when personally delivered to such Person's Townhome or mailed, postage prepaid, to the last known address of such Person or principal place of business if a corporation, provided, however, that a notice of "delinquency" of any payment due hereunder shall be made by personal delivery to such Townhome or principal place of business if a corporation, or by certified or registered mail, return receipt requested, or by telegram. The effective date of such a notice shall be the date said notice is personally delivered, or postmarked, or the date the telegraph company receives the message, as the case may be.
- (b) Notices to the Declarant shall be deemed given only when received and must be either hand delivered or mailed by certified or registered mail, postage prepaid, to Declarant, Testa Enterprises, Inc., 2335 Second Street, Cuyahoga Falls, Ohio 44221.

Section 16.4 - Enforcement-Waiver

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

Section 16.5 - Construction of the Provisions of this Declaration

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



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Review Committee and that of any Person or entity entitled to enforce the provisions hereof shall be resolved in favor of the construction or interpretation by the Declarant, the Association or the Design Review Committee, as the case may be.

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

Section 16.6 - Reservations by Original Declarant - Exempt Property

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



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- (d) Original Declarant reserves the right to perform or cause to be performed such work as is incident to the completion of the development and improvement of the Property (as the Property may be expanded by a Subsequent Amendment), owned or controlled by the Original Declarant, notwithstanding any covenant, easement, restriction or provision of this Declaration or its exhibits, which may be to the contrary.
- (e) Original Declarant reserves the right to impose, reserve or enter into additional covenants, easements and restrictions with grantees of Townhomes and Sublots as long as such additional easements, covenants and restrictions are not in conflict with the rights, duties and obligations of Owners as set forth in this Declaration. Each reservation, right and easement specified or permitted pursuant to this Article shall include the right of ingress and egress for the full utilization and enjoyment of the rights reserved and/or granted herein. The word "common" as used in this paragraph shall mean any and all lines, pipes, utilities, conduits, ducts, wires, cables, private roads and rights-of-way intended for the use of or used by more than one Owner. Any easements or rights referred to in this Article, whether granted by Original Declarant prior to the filing of this Declaration or subsequent thereto, shall at all times have priority over the provisions of this Declaration and any lien created under this Declaration.
- (f) So long as Declarant is a Class "B" Member, no Person shall record any declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument affecting any portion of the Property without Declarant's review and written consent thereto, and any attempted recordation without compliance herewith shall result in such declaration of covenants, conditions and restrictions, or declaration of condominium or similar instrument being void and of no force and effect unless subsequently approved by recorded consent signed by the Declarant.

Section 16.7 - Assignability by Original Declarant

The Original Declarant, and its successors, shall have the right from time to time to assign all or any part of its rights as a Declarant under this Declaration (but not the rights expressly conferred upon the Original Declarant), provided that the deed or other writing selected by Original Declarant, in Original Declarant's sole discretion, shall expressly state that the rights of a Declarant shall be assigned. Any such assignment may provide that said assignee shall have the rights of a Declarant (other than those rights reserved by the Original Declarant in any such assignment) set forth in this Declaration with respect to the Townhomes and/or real property owned by such designee.

Section 16.8 - Severability

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

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Section 16.9 - Arbitration

Unless otherwise provided in this Declaration, and specifically excluding any action for the collection of assessments or foreclosure of assessment liens, any controversy, dispute or claim arising out of or relating to this Declaration or the breach thereof shall be settled by arbitration in Akron, Ohio in accordance with the Commercial Rules of the American Arbitration Association and the judgment upon the award rendered by the arbitrator(s) may be entered in any court having jurisdiction hereof. Depositions may be taken and other discovery obtained during such arbitration proceedings to the same extent as authorized in civil judicial proceedings for compensatory damages and the arbitrator(s) shall have no authority to award punitive, exemplary or similar type damages. The prevailing party in the arbitration proceeding shall be entitled to recover its expenses, including the costs of the arbitration proceeding, and reasonable attorney's fees.

Section 16.10 - Litigation

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

Section 16.11 - Validity of Mortgages

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

Section 16.12 - Amendment of Declaration

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

- (a) For so long as the Declarant or a successor designated by the Declarant is the Owner of a fee simple interest in the Property, the Original Declarant shall be entitled from time to time to amend or modify any of the provisions of this

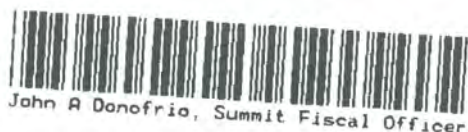


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Declaration or to waive any of the provisions, either generally or with respect to particular real property, if in its judgment, the development or lack of development of the Property requires such modification or waiver, or if in its judgment the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

- (b) This Declaration may also be amended by Original Declarant or the Association at any time and from time to time for the purpose of: (1) complying with requirements of the Federal National Mortgage Association, the Government National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Department of Housing and Urban Development, the Federal Housing Association, the Veteran's Administration, or any other governmental agency or any other public, quasi-public entity, or private insurance company which performs (or may in the future perform) functions similar to those currently performed by such entities; or (2) inducing any of such agencies or entities to make, purchase, sell, insure, or guarantee first mortgages; or (3) correcting clerical or typographical or obvious factual errors in this Declaration or any Exhibit hereto or any supplement or amendment hereto; or (4) complying with the underwriting requirements of insurance companies providing casualty insurance, liability insurance or other insurance coverages for the Association; or (5) bringing any provision hereof into compliance or conformity with the provisions of any applicable governmental statute, rule or regulation or any judicial determination; or (6) correcting obvious factual errors within this Declaration and other documents governing the Property and correcting any inconsistencies between this Declaration and other documents governing the Property, the correction of which would not materially impair the interest of any Owner or Eligible Mortgage Holder; or (7) enabling a title insurance company to issue title insurance coverage with respect to the Property or any portion thereof; or (8) complying with the requirements of the U.S. Army Corps of Engineers, the U.S. Environmental Protection Agency, and the Ohio Environmental Protection Agency. In furtherance of the foregoing, a power coupled with an interest is hereby reserved and granted to Declarant and/or to the Board to vote in favor of, make, or consent to a Subsequent Amendment on behalf of each Owner as proxy

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or attorney-in-fact, as the case may be. Each deed, mortgage, trust deed, other evidence of obligation, or other instrument affecting any portion of the Property and the acceptance thereof shall be deemed to be a grant and acknowledgment of, and a consent to the reservation of the power to the Original Declarant to vote in favor of, make and record a Subsequent Amendment. To effect said amendment, Original Declarant shall file a supplement to the Declaration setting forth the Subsequent Amendment which shall be signed by Original Declarant and shall be effective upon the filing of the Subsequent Amendment with the Summit County Fiscal Officer.

- (c) Original Declarant shall have the right to amend this Declaration at any time and from time to time in accordance with or in implementation of any of the rights granted to or reserved by Original Declarant in this Declaration.
- (d) Except as expressly provided in this Declaration, and after expiration of the period set forth in (a) of this Article, any provision of this Declaration may be amended or repealed following a meeting of the Members held for such purpose, by the affirmative vote of the Class "B" Member and the vote of at least a majority of the voting power of the Class "A" Members unless a greater percentage of vote is required pursuant to this Declaration or in accordance with the statutes of the State of Ohio; provided, however, that any amendment which would terminate or materially affect the easements set forth in Article III of this Declaration shall not be amended (except as expressly provided to the contrary in this Declaration) unless all persons whose rights are terminated or materially affected shall affirmatively consent in writing to such amendment; provided further, that any amendment affecting the rights of Declarant in this Declaration shall not be effective without the prior written consent of Declarant; and provided further, no amendment may increase the financial burden of an Owner without the prior written consent of such Owner. Written notice shall be given each Member at least ten days in advance of the date of the meeting held for the purpose of amending this Declaration, which notice shall expressly state the modification to be considered at such meeting. Each amendment shall be effective when signed by the President and one other officer of the Association, signed by the Declarant if the amendment affects the rights of the Declarant and filed for record with the Summit County Fiscal Officer.

Section 16.13 - Interest Rates

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

Section 16.14 - Headings



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

Section 16.15 - Rule against Perpetuities

If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common-law rules imposing tithe limits, then such provision shall continue only until twenty-one (21) years after the death of the survivor of the now living descendants of George W. Bush, President of the United States of America, and Richard Cheney, Vice President of the United States of America.

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IN WITNESS WHEREOF, Declarant has executed this Declaration the date and year first written above.

DECLARANT:

TESTA ENTERPRISES, INC., an Ohio
Corporation

By: *Paul J. Testa*

Name: Paul J.. Testa
Its: President

STATE OF OHIO)
)SS
SUMMIT COUNTY)

BEFORE ME a notary public in and for said county and state, personally appeared the above-named Testa Enterprises, Inc., by Paul J. Testa, its President, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Cincinnati, Ohio this 12 day of December, 2008.

Deanna J. Rice
Notary Public

This instrument prepared by:
Nicholas T. George, Esq.
BUCKINGHAM, DOOLITTLE & BURROUGHS, LLP
3800 Embassy Parkway, Suite 300
Akron, Ohio 44333

DEANNA J. RICE, Notary Public
STATE OF OHIO
Resident Summit County
My Commission Expires October 13, 2009

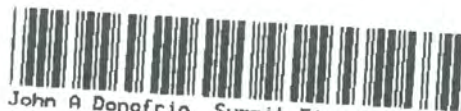
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EXHIBIT "A"

LEGAL DESCRIPTION OF THE PROPERTY



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John A Donofrio, Summit Fiscal Officer

SITUATED IN THE CITY OF AKRON, COUNTY OF SUMMIT AND STATE OF OHIO:

AND KNOWN AS BEING LOT NO. 6, 7, 8, 9, AND 10, BLOCK 3, TOWN PLOT OF AKRON (KING'S ALLOTMENT, AS SURVEYED AND NUMBERED BY ALBERT G. MALLISON SURVEYOR) AND RECORDED IN PLAT BOOK U, PAGES 555-556, PORTAGE COUNTY RECORDS AND RECORDED ON PAGE 16 OF TRANSCRIBED RECORDS OF SUMMIT COUNTY.

BEGINNING AT AN IRON PIN SET AT THE SOUTHWESTERLY CORNER OF SAID LOT NO. 6;

1) THENCE N 16°50'59" E, 156.36 FEET ALONG THE WESTERLY LINE OF SAID LOT NO.'S 6, 7 AND 8 AND THE EASTERLY LINE OF HOWARD STREET (R/W VARIES) TO AN IRON PIN SET;

2) THENCE IN A NORTHERLY DIRECTION 120.63 FEET ALONG THE ARC OF A CURVE DEFLECTING TO THE RIGHT, HAVING A RADIUS OF 1967.00 FEET, A DELTA OF 03°30'50", AND A CHORD WHICH BEARS N 18°36'24" E, A DISTANCE OF 120.62 FEET TO AN IRON PIN SET;

3) THENCE IN A NORTHERLY DIRECTION 6.32 FEET ALONG THE ARC OF A CURVE DEFLECTING TO THE LEFT, HAVING A RADIUS OF 708.00 FEET, A DELTA OF 00°30'41", AND A CHORD WHICH BEARS N 20°06'29" E A DISTANCE OF 6.32 FEET TO AN IRON PIN SET;

4) THENCE IN A NORTHEASTERLY DIRECTION 30.50 FEET ALONG THE ARC OF A CURVE DEFLECTING TO THE RIGHT, HAVING A RADIUS OF 20.00 FEET, A DELTA OF 87°22'04", AND A CHORD WHICH BEARS N 63°32'10" E A DISTANCE OF 27.63 FEET TO AN IRON PIN SET;

5) THENCE S 72°46'48" E 79.67 FEET ALONG THE NORTHERLY LINE OF FURNACE STREET TO AN IRON PIN SET;

6) THENCE S 17°05'51" W, 302.33 FEET ALONG THE WESTERLY LINE OF BANK ALLEY (12' R/W) TO AN IRON PIN SET;

7) THENCE N 72°46'48" W, 102.52 FEET TO THE TRUE PLACE OF BEGINNING AND CONTAINING 0.708 ACRES, MORE OR LESS, AS SURVEYED BY ROBERT J. WARNER, P.S. NO. 6931 FOR FLOYD BROWNE GROUP IN AUGUST, 2008.

68-61056 0301275A8001000
BASIS OF BEARINGS FOR THE ABOVE DESCRIBED PROPERTY OHIO
SPC NAD83 (NORTH ZONE).

IRON PINS SET ARE 5/8" REBARS WITH CAP "FLOYD BROWNE GROUP



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EXHIBIT "B"

**CODE OF REGULATIONS
OF
TOWNHOMES AT NORTHSIDE HOMEOWNERS' ASSOCIATION, INC.**

**ARTICLE I
NAME AND LOCATION**

The name of the Association is Townhomes At Northside Homeowners' Association, Inc., which corporation, not-for-profit, is created pursuant to the provisions of Chapter 1702 of the Revised Code of Ohio, and which Association is also created pursuant to the provisions of the Declaration of Easements, Covenants, Conditions and Restrictions dated December 12, 2008, and filed for record with the Summit County Fiscal Officer as Reception No. _____. The principal office of the Association shall be as set forth in its Articles of Incorporation, and the place of meetings of Members and of the Board of the Association shall be at such place in or out of Summit County, Ohio as the Board may from time to time designate.

**ARTICLE II
DEFINITIONS**

All of the terms used herein shall have the same meanings as set forth in the Declaration.

**ARTICLE III
MEMBERS**

Section 1. **Composition.** Each Member, as defined in the Declaration, is a Member of the Association.

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

Section 3. **Annual Meetings.** The first annual meeting of the Members shall be held on the date designated by the Declarant, which is during the fourth calendar quarter one year after filing the Declaration with the Summit County Fiscal Officer. Thereafter, regular annual meetings of the Members shall be held in the fourth calendar quarter of each year, on a date and at an hour established, from time to time, by the Board. The order of business at all annual meetings shall be as follows:

- A. calling of meeting to order;
- B. proof of notice of meeting or waiver of notice;
- C. reading of minutes of preceding meeting;
- D. reports of officers;



- E. reports of committees;
- F. election of inspectors of election;
- G. election of members of Board
- H. unfinished and/or old business;
- I. new business;
- J. adjournment.

Section 4. Special Meetings. Special meetings of the Members may be called at any time by the president or by the Board or upon written request of any Member, and when required by the Declaration.

Section 5. Notice of Meetings. Written notice of each meeting of Members shall be given by, or at the direction of, the secretary or person authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least seven days before such meeting, to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association, or supplied by such Member to the Association for the purpose of notice, or by delivering a copy of that notice at such address at least seven days before the meeting. The notice shall specify the place, day and hour of the meeting, and in the case of a special meeting the purpose of the meeting.

Section 6. Waiver of Notice. Waiver of notice of meeting of the Members shall be deemed the equivalent of proper notice. Any Member may, in writing, waive notice of any meeting of the Members, either before or after such meeting. Attendance at a meeting by a Member, whether in person or by proxy, shall be deemed a waiver by such Member of notice of the time, date and place thereof, unless such Member specifically objects to lack of proper notice at the time the meeting is called to order. Attendance at a special meeting shall also be deemed a waiver of notice of all business transacted thereat unless objection to the calling of the meeting or the matter being acted upon at the meeting; of which proper notice was not given, is raised before the business is put to a vote.

Section 7. Quorum. Except as otherwise provided in these Code of Regulations or in the Declaration, the presence in person or by proxy of 51% of the Members shall constitute a quorum at all meetings of the Association. Any provision in the Declaration concerning quorums is specifically incorporated herein.

Section 8. Adjournment of Meetings. If any meetings of the Association cannot be held because a quorum is not present, a majority of the Members who are present at such meeting, either in person or by proxy, may adjourn the meeting to a time not less than five nor more than 30 days from the time the original meeting was called. At such adjourned meeting at which a quorum is present, any business which might have been transacted at the meeting originally called may be transacted. If a time and place for the adjourned meeting is not fixed by those in attendance at the original meeting or if for any reason a new date is fixed for the adjourned meeting after adjournment, notice of the time and place of the adjourned meeting shall be given to Members in the manner prescribed for regular meetings.



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Section 9. Proxies. At all meetings of Members, each member may vote in person or by proxy. All proxies shall be in writing and filed with the Secretary at or before the appointed time of each meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by the Member of his or her ownership interest or upon receipt of notice by the Secretary of the Board of the death or judicially declared incompetence of a Member or upon the expiration of 11 months from the date of the proxy.

Section 10. Conduct of Meeting. The President shall preside over all meetings of the Association and the Secretary shall keep the minutes of the meeting and record in a minute book all resolutions adopted at the meeting, as well as a record of all transactions occurring thereat.

Section 11. Voting Power. Except as otherwise provided in the Founding Documents, or by law, the rules of Roberts Rules of Order shall apply to the conduct of all meetings of the Members except as otherwise specifically provided in the Founding Documents or by law.

Section 12. Action In Writing Without Meeting. All actions, except removal of a member of the Board, which may be taken at a meeting of the Association, may be taken without a meeting with the approval of, and in writing or writings signed by Members having the percentage of voting power required to take such action if same were taken at a meeting. Such writing shall be filed with the secretary of the Association.

ARTICLE IV BOARD OF DIRECTORS

Section 1. Initial Directors. The initial directors shall be those three persons named as the initial directors in the Articles, or such other person or persons as may, from time to time, be substituted by the Declarant.

Section 2. Successor Directors. Not later than the time that 14 Townhomes have been purchased and occupied by Members and at the immediately following annual meeting of the Association, the Class A Members shall elect three directors at such meeting, which three directors shall serve until their respective successors are elected, or until their resignation, death, or removal from office. The number of directors may be determined by the vote of the holders of a majority of the Members entitled to vote thereon at any annual meeting or special meeting called for the purpose of electing directors, and when so fixed, such number will continue to be the number of authorized directors until changed by the Members.

Section 3. Removal. Excepting only Directors named in the Articles or selected by the Declarant, any Director may be removed from the Board pursuant to the provisions of the Articles or the Code of Regulations. In the event of the death, resignation or removal of a Director, other than one named in the Articles or a substitute selected by the Declarant, that Director's successor shall be selected by the remaining members of the Board and shall serve until the next annual meeting of Members, when a Director shall be elected to complete the term of such deceased, resigned or removed Director. Declarant shall have the sole right to remove, with or without cause, any Director designated in the Articles, or a substitute selected by the Declarant, and select the

successor of any Director so selected by the Declarant, and selected the successor of any Director so selected who dies, resigns, is removed or leaves office for any reason before the election of Directors by all of the Members as provided in the Declaration.

Section 4. Vacancies. A vacancy in any office shall be filled in the manner prescribed for regular election. The officer elected to such vacancy shall serve the remainder of the term of the officer he replaces.

Section 5. Nomination. When all Directors are elected by the Class A Members, nominations for the election of Directors to be elected by the Members shall be made by a nominating committee. The nominating committee shall consist of a chairman, who shall be a member of the Board, and two or more Members appointed by the Board. The nominating committee shall make as many nominations for election to the Board as it shall, in its discretion, determine but no less than the number of vacancies that are to be filled. Nominations may be made from the floor at the meetings.

Section 6. Election. Election to the Board by the Members shall be by secret, written ballot. At such elections the Members or their proxies may cast, in respect to each vacancy, such voting power as they are entitled to exercise under the provisions of the Declaration. The persons receiving the largest number of votes shall be elected. Cumulative voting is not permitted.

Section 7. Compensation. Unless otherwise determined by the Members at a meeting duly called and noticed for such purpose, no Director shall receive compensation for any service rendered to the Association as a Director. However any Director may be reimbursed for his actual expenses incurred in the performance of duties.

Section 8. Regular Meetings. Regular meetings of the Board shall be held not less than quarterly, on such date and at such place and hour as may be fixed from time to time by resolution of the Board.

Section 9. Special Meetings. Special meetings of the Board shall be held when called by the president of the Board, or by any two Directors, after not less than three days notice to each Director.

Section 10. Quorum. The presence at any duly called and noticed meeting, in person, of Directors entitled to cast a majority of the Voting Power of the Board shall constitute a quorum for such meeting.

Section 11. Voting Power. Except as otherwise provided in the Founding Documents, or by law, a vote of a Majority of the Voting Power of the Board on any matter that may be determined by the Board at a duly called and noticed meeting at which a quorum is present, shall be sufficient to determine that matter.

Section 12. Action In Writing Without Meeting. Any action that could be taken by the Board at a meeting, may be taken without a meeting with the approval of, and in writing or



writings, signed by Directors having the percentage of Voting Power of the Board required to take such action if the same were taken at a meeting.

Section 13. Powers. The Board shall exercise all powers and authority, under law, and under the provisions of the Founding Documents, that are not specifically and exclusively reserved to Members, pursuant to the Founding Documents, without limiting the generality of the foregoing, the Board shall have the right, power and authority to:

- A. Take all actions deemed necessary or desirable to comply with all requirements of law, and the Founding Documents;
- B. Obtain insurance coverage as determined by the Board, and not less than required by the Declaration;
- C. Enforce the easements, covenants, conditions and restrictions set forth in the Declaration;
- D. Repair, maintain and improve the Common Area;
- E. Establish, enforce, levy and collect Assessments as provided in the Declaration;
- F. Adopt and publish rules and regulations governing the use of the Common Area and Facilities and the personal conduct of Members, Owners, occupants and their guests thereon, and establish penalties for the infraction thereof;
- G. Suspend the voting rights of a Member during any period in which such Member shall be in default in the payment of any Assessment levied by the Association (such rights may also be suspended after notice and hearing, for a period not to exceed 60 days for each infraction of published rules and regulations or any provisions of the Founding Documents);
- H. Authorize the officers to enter into one or more management agreements in order to facilitate the efficient operation of the Common Area; (it shall be the primary purpose of such management agreements to provide for administration, management, repair and maintenance as provided in the Declaration, and the receipt and disbursement of funds as may be authorized by the Board) the terms of any management agreements shall be as determined by the Board to be in the best interest of the Association, subject, in all respects, to the provisions of the Founding Documents;
- I. Do all things and take all actions permitted to be taken by the Association by law, or the Founding Documents, not specifically reserved thereby to others.

Section 14. Duties. It shall be the duty of the Board to:

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John A Donofrio, Summit Fiscal Officer

- A. Cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at each annual meeting of members, or any special meeting when such statement is requested in writing by any Member;
- B. Supervise all officers, agents, and employees of the Association and see that their duties are properly performed;
- C. As more fully provided in the Declaration, to:
 - 1. fix the amount of Assessments against each Member;
 - 2. give written notice of each Assessment to every Member subject thereto within the time limits set forth therein; and
 - 3. foreclose a lien against any Lot for which assessments are not paid within a reasonable time after they are authorized by the Declaration to do so, or bring an action at law against the Member personally obligated to pay the same or both;
- D. Issue, or to cause an appropriate representative to issue, upon demand by any person, a certificate setting forth whether any Assessment has been paid;
- E. Procure and maintain insurance as provided in the Declaration, and as the Board deems advisable;
- F. Cause all officers or employees handling Association funds to be bonded;
- G. Cause the property subject to the Association's jurisdiction to be maintained within the scope of authority provided in the Declaration;
- H. Cause the easements, covenants, conditions and restrictions created by the Declaration to be enforced; and
- I. Take all other actions required to comply with all requirements of law and the Founding Documents.

Section 15. Fidelity Bonds. The Board will require that all officers and employees of the Association responsible for Association funds shall furnish adequate fidelity bonds. The premiums on such bonds shall be paid by the Association and shall be a Common Expense.

Section 16. Delegation of Authority and Duties. The Board is authorized to delegate the authority and duties of any officer to any other officer and generally to control the action of the officers and to require the performance of duties in addition to those mentioned herein.

ARTICLE V



OFFICERS

Section 1. Enumeration of Officers. The officers of the Association shall be a president, a secretary, a treasurer and such other officers as the Board, from time to time, determines. All officers shall be members of the Board. The same person may hold more than one office.

Section 2. Selection and Term. Except as otherwise specifically provided in the Declaration or Code of Regulations from time to time by law, the officers of the Association shall be selected by the Board, from time to time, to serve until the Board selects their successors.

Section 3. Special Appointments. The Board may elect such other officers as the affairs of the Association may require, each of whom shall hold office for such period, have such authority, and perform such duties as the Board may, from time to time, determine.

Section 4. Resignation and Removal. Any officer may be removed from office, with or without cause, by the Board. Any officer may resign at any time by giving written notice to the Board, the president, or the secretary. Such resignation shall take effect on the date of receipt of such notice or at any later time specified therein, and the acceptance of such resignation shall not be necessary to make it effective.

Section 5. Duties. The duties of the officers shall be as the Board may, from time to time, determine. Unless the Board otherwise determines, the duties of the officers shall be as follows:

- A. **President.** The president shall preside at all meetings of the Board and the Association and shall have the authority to see that orders and resolutions of the Board are carried out, and shall sign all legal instruments on behalf of the Association.
- B. **Vice President.** The vice president shall perform the duties of the president whenever the president is unable to act, and shall have such other authority and perform such other duties as may be determined by the Board. The Vice President shall be a member of all committees and shall oversee the deliberations of the committees.
- C. **Secretary.** The secretary shall record the votes and keep the minutes and proceedings of meetings of the Board and of the Members, serve notice of meetings of the Board and of the Members, keep appropriate current records showing the names of Members together with their addresses, and shall act in the place and stead of the vice president, in the event of the vice president's absence or refusal to act.
- D. **Treasurer.** The treasurer shall assume responsibility for the receipt and deposit in appropriate bank accounts of all monies of the Association, the disbursement of such funds as directed by resolution of the Board, the keeping of proper books of



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account, the preparation of an annual budget and a statement of income and expenditures to be presented to the Members at annual meetings, and the delivery or mailing of a copy of each to the Members.

- E. Other Officers. The assistant secretaries and assistant treasurers, if any, and all other officers whom the Board may appoint shall, respectively, have such authority and perform such duties as may be determined by the Board.

ARTICLE VI COMMITTEES

The Board shall appoint such committees as it deems appropriate in carrying out its purposes. The committee chairman shall attend all board meetings, but shall not have a vote.

ARTICLE VII FINANCES OF ASSOCIATION

Section 1. Preparation of Estimated Budget. The Assessments provided for herein shall commence on the first day of the month designated by the Board as a commencement date. The first annual Assessment shall be adjusted according to the number of months remaining in the calendar year, and such Assessment shall thereafter be on a full calendar-year basis. Thereafter, each year on or before December 1st, the Board shall estimate the total amount necessary to pay all the Common Expenses for the next calendar year together with a reasonable amount considered by the Association to be necessary for a reserve for contingencies and replacements, and shall on or before December 15th notify each Member in writing as to the amount of such estimate, with a reasonable itemization thereof. The "estimated cash requirement" shall be assessed to the Members, but not to the Declarant according to the provisions of the Declaration. On or before January 1st of the ensuing year each Member shall be obligated to pay to the Association the Assessment made pursuant to this section. On or before the date of each annual meeting, the Association shall supply to all Members an itemized accounting of the Common Expenses for the preceding calendar year actually incurred and paid together with a tabulation of the amounts collected pursuant to the estimates provided, and showing the net amount over or short of the actual expenditures plus reserves. Any amount accumulated in excess of the amount required for actual expenses and reserves shall be credited to each Member pursuant to the apportionment set forth in the Declaration, to the next annual installment due from the Members under the current year's estimate, until exhausted, and any net shortage shall be equally added to each Member's installment due in the succeeding year after rendering the accounting.

Section 2. Replacements. The Association shall build up and maintain a reasonable reserve for contingencies and replacements. Extra-ordinary expenditures not originally included in the annual estimate of Assessments which may be necessary for the year, shall be charged first against such reserve. If said "estimated cash requirement" proves inadequate for any reason, including non-payment of any Member's Assessment, such extraordinary expenditures shall be assessed to the Members according to the apportionment set forth in the Declaration. The Association shall serve notice of such further Assessment on all Members by a statement in writing



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giving the amount and reasons therefor, and such further Assessment shall be payable with the next regular payment becoming due to the Association not less than ten days after the delivery or mailing of such notice of further Assessment. All Members shall be obligated to pay the adjusted monthly amount.

Section 3. Budget for First Year that an Annual Meeting is Held. When the first annual meeting of the Association is held, the Association shall determine the "estimated cash requirement" as hereinabove defined, for the period commencing 30 days after said first annual meeting and ending on December 31st of the calendar year in which said first annual meeting occurs. Assessments shall be levied against and paid by the Members during said period as provided in the Declaration.

Section 4. Failure to Prepare Annual Budget. The failure or delay of the Board to prepare or deliver to the Members the annual or adjusted estimate of Assessments shall not constitute a waiver or release in any manner of such Member's obligation to pay the maintenance costs and necessary reserves, as herein provided, whenever the same shall be determined and in the absence of any annual estimate or adjusted estimate of Assessments, the Member shall continue to pay the yearly Assessment at the existing yearly rate established for the previous period until the Assessment payment which is due more than ten days after such new annual or adjusted estimate shall have been mail or delivered.

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

Section 6. Financial Statement Review. The books of the Association shall be reviewed once a year by the Board and such review shall be completed prior to each annual meeting. Upon the vote of the affirmative vote of a Majority of the Voting Power of the Board, the Board shall cause the financial books and records of the Association to be reviewed by a certified public accountant, who shall prepare and submit to the Board a compilation financial statement of the Association for the preceding fiscal year.

ARTICLE VIII **BOOKS AND RECORDS**

The books, records and financial statements of the Association, shall be available during normal business hours or under other reasonable circumstances, upon request to the Association for inspection by Members. Likewise, during normal business hours or under other reasonable circumstances, the Association shall have available for inspection by Members and Owners current copies of the Founding Documents and the rules and regulations governing the operation of the Association.



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ARTICLE IX **FISCAL YEAR**

Unless otherwise changed by the Board, the fiscal year of the Association shall begin on the first day of January and end on the 31st day of December of every year, except that the first fiscal year shall begin on the day of incorporation of the Association.

ARTICLE X **NOTICE AND HEARING PROCEDURE**

Section 1. Suspension or Privileges. In the event of any alleged violation of the Declaration, these Code of Regulations or the rules and regulations of the Association, and after written notice of such alleged failure is delivered (in the manner prescribed in the Declaration) to the Member or any agent of the Member ("Respondent") alleged to be in default, the Board shall have the right, after affording the Respondent an opportunity for an appropriate hearing as hereinafter provided, and upon an affirmative vote of a majority of the disinterested Board members, to take any one or more of the following actions: (1) levy special Assessments as provided in the Declaration; (2) suspend or condition the right of Respondent to use any Common Area owned, operated or maintained by the Association; or (3) suspend the Respondent's said Member's voting privileges. Any such suspension shall be for a period of not more than 30 days for any non-continuing infraction, but in the case of a continuing infraction (including nonpayment of any Assessment after the same becomes delinquent) may be imposed for so long as the violation continues. No action against a Respondent arising from the alleged violation shall take effect prior to the expiration of (a) 15 days after the Respondent's receipt of the complaint pursuant to Section 2 of this Article, and (b) five days after the hearing required herein. The failure of the Board to enforce the rules and regulations of the Association, these Code of Regulations or the Declaration shall not constitute a waiver of the right to enforce the same thereafter. The remedies set forth above and otherwise provided by these Code of Regulations shall be cumulative and none shall be exclusive. However, any Member must exhaust all available internal remedies of the Association prescribed by the Declaration and these Code of Regulations, or by the rules and regulations of the Association, before that Member may resort to a court of law for relief with respect to any alleged violation of the Declaration, these Code of Regulations, or the rules and regulations of the Association by another Member, provided that the foregoing limitation pertaining to exhausting administrative remedies shall not apply to the Board or to any Member where the complaint alleges non-payment of Assessments.

Section 2. Written Complaint. A hearing to determine whether a right or privilege of the Respondent under the Declaration or these Code of Regulations should be suspended or conditioned, or whether a special Assessment should be levied, shall be initiated by the filing of a written complaint by any Member or any officer or member of the Board with the president of the Association or other presiding member of the Board. The complaint shall constitute a written statement of charges which shall set forth in ordinary and concise language the acts or omissions with which the Respondent is charged, and a reference to the specific provisions of the Declaration, these Code of Regulations or the rules and regulations of the Association which the Respondent is alleged to have violated. A copy of the complaint shall be delivered to the Respondent in



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accordance with the notice procedures set forth in the Declaration, together with a statement which shall be substantially in the following form:

"Unless a written request for a hearing signed by or on behalf of the Member named as respondent in the accompanying complaint is delivered or mailed to the Board within 15 days after the complaint was delivered to you, the Directors may proceed upon the complaint without a hearing, and you will have thus waived your right to a hearing. The request for a hearing may be made by delivering or mailing the enclosed form entitled "Notice of Defense" to the Directors at the following address:

You may, but need not be represented by counsel at any or all stages of these proceedings. If you desire the names and addresses of witnesses or an opportunity to inspect any relevant writings or items on file in connection with this matter in the possession, custody, or control of the Board, you may contact _____."

The respondent shall be entitled to a hearing on the merits of the matter if the notice of defense is timely filed with the Board. The respondent may file a separate statement by way of mitigation, even if respondent does not file a notice of defense.

Section 3. Notice of Hearing. If the notice of defense is timely filed, the Board shall deliver in the manner prescribed by the notice procedures set forth in the Declaration, a notice of hearing on all parties at least ten days prior to the hearing, if such hearing is requested by 30 days, but not later than 90 days after the complaint is mailed or delivered to the respondent as provided in Section 2 of this Article. The notice to the respondent shall be substantially in the following form but may include other information:

"You are hereby notified that a hearing will be held before the Board of Directors of the Townhomes At Northside Homeowners' Association, Inc. at

on the _____ day of _____, upon the charges made in the complaint served upon you. You may be present at the hearing, may but need not be, represented by counsel, may present any relevant evidence, and will be given full opportunity to cross-examine all witnesses testifying against you. You are entitled to request the attendance of witnesses and the production of books, documents or other items by applying to the Board of Directors of the Association."

Section 4. Hearing. If the notice of defense is timely filed, the hearing shall be held before the Board in executive session on the date specified in the notice of hearing delivered to the respondent. If the notice of defense is not timely filed, the respondent's right to a hearing shall be deemed waived and the Board, in executive session, may proceed upon the complaint without a hearing. Prior to the effectiveness of any sanction hereunder, proof of notice, and the invitation to



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be heard shall be placed in the minutes of the notice, together with a statement of the date and manner of delivery entered by the officer or Director or other person who mailed or delivered such notice. The notice requirement shall be deemed satisfied if the respondent appears at the meeting. The minutes of the meeting shall contain a written statement of the results of the hearing and the sanction, if any, imposed.

ARTICLE XI

GENERAL PROVISIONS.

Section 1. Conflict of Interest. A Director or officer of the Association shall not be disqualified by his office from dealing or contracting with the Association as a vendor, purchaser, employee, agent, or otherwise. No transaction or contract or act of the Association shall be void or voidable if made by any firm of which any Director or officer is a member or any corporation of which any officer or Director is a shareholder, director, or Director, or any trust of which any Director or officer of the Association is a Director or beneficiary is in any way interested in such transaction or contract or act. No Director or officer shall be accountable or responsible to the Association for or in respect to any transaction or contract or act of the Association or for any gains or profits directly or indirectly realized by him by reason of the fact that he or any firm of which he is a member or any corporation of which he is a shareholder, director, or Director, or any trust of which he is a Director or beneficiary, is interested in such transaction or contract or act, provided the fact that such Director or officer or such firm or such corporation or such trust is so interested shall have been disclosed or shall have been known to the Board or such members thereof as shall be present at any meeting of the Board at which action upon such contract or transaction or act shall have been taken. Any Director may be counted in determining the existence of a quorum at any meeting of the Board which shall authorize or take action in respect to any such contract or transaction or act, and may vote thereat to authorize, ratify, or approve any such contract or transaction or act, and any officer of the Association may take any action within the scope of his authority respecting such contract or transaction or act, with like force and effect as if he or any firm of which he is a member, or any corporation of which he is a shareholder, director, or Director, or any trust of which he is a Director or beneficiary were not interested in such transaction or contract or act. Without limiting or qualifying the foregoing, if in any judicial or other inquiry, suit, cause or proceeding, the question of whether a Director or officer of the Association has acted in good faith is material, and notwithstanding any statute or rule of law or of equity to the contrary (if any there be), his good faith shall be presumed, in the absence of proof to the contrary by clear and convincing evidence.

Section 2. Indemnification. Except as otherwise provided herein, every person who is or has been a Director or officer of the Association and his heirs and legal representatives is hereby indemnified by the Association against expense and liabilities actually and necessarily incurred by him in connection with the defense of either (i) any action, suit or proceeding to which he may be a party defendant, or (ii) any claim of liability asserted against him, by reason of his being or having been a Director or officer of the Association. Without limitation, the term "expenses" includes any amount paid or agreed to be paid in satisfaction of a judgment or in settlement of a judgment or claim of liability other than any amount paid or agreed to be paid by the Association itself. The Association does not, however, indemnify any Director or officer in respect to any matter as to



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which he shall be finally adjudged liable for gross negligence or malicious misconduct in the performance of his duties as such Director or officer, nor in the case of a settlement, unless such settlement shall be found to be in the interest of the Association by (i) the court having jurisdiction of the action, suit or proceeding against such Director or officer or of a suit involving his right to indemnification or (ii) a majority of the Directors of the Association then in office other than those involved in such matter (whether or not such majority constitutes a quorum), or if there are not Directors who are not involved in the matter, then by disinterested Members entitled to exercise a majority of the voting power shall, by vote at any annual or special meeting of the Association, approve such settlement and the reimbursement to such Board member or officer of such costs and expenses. The foregoing rights of indemnification shall inure to the benefit of the heirs and legal representatives of each such Board member or officer, and shall not be exclusive of other rights to which any Board member or officer may be entitled as a matter of law or under the Declaration, any vote of Association members or any agreement.

ARTICLE XII **AMENDMENTS**

Any modification or amendment of these Code of Regulations shall be made by the approval as provided in Section 16.12 of Article XVI of the Declaration, provided that no amendment shall be in conflict with the Declaration or the interest of the Declarant, and provided, further, that no amendment shall be effective to impair or dilute any rights of the Declarant, and the right of Members that are governed by the Declaration, and shall be effective from the time a certificate setting forth such modification or amendment is delivered for recording to the Fiscal Officer of Summit County, Ohio.



John A Donofrio, Summit Fiscal Officer

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IN TESTIMONY WHEREOF, the undersigned, has caused these Code of Regulations to be duly adopted on or as of December 12 2008.

By: Ken J. [Signature]

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**FIRST SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS**

FOR

NORTHSIDE LOFTS MASTER ASSOCIATION, INC.

FIRST AMERICAN TITLE INS. CO.
NO: *W100* ESC *LM*

This instrument prepared by:
Nicholas T. George, Esq.
Buckingham, Doolittle & Burroughs, LLP
3800 Embassy Parkway, Suite 300
Akron, Ohio 44333

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John A Donofrio, Summit Fiscal Officer

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**FIRST SUPPLEMENTAL DECLARATION OF COVENANTS, CONDITIONS AND
RESTRICTIONS**

FOR

NORTHSIDE LOFTS MASTER ASSOCIATION, INC.

THIS FIRST SUPPLEMENTAL DECLARATION is made this 12th day of December, 2008, by
TESTA ENTERPRISES, INC., an Ohio corporation (the "Declarant").

RECITALS

A. The Association is governed by and subject to the terms and provisions of a Declaration of Covenants, Conditions and Restrictions dated March 6, 2007 (the "Declaration"), duly recorded under reception #55427473 with the Summit County, Ohio Fiscal Officer. All capitalized terms not otherwise defined herein shall have the same definition ascribed to them in the Declaration.

B. Declarant, under Article IX of the Declaration, desires to submit and subject the Additional Land described on Exhibit A, attached hereto, to the rights and obligations imposed by the Declaration.

1. **Incorporation Of Recitals.** The recitals contained above are incorporated herein by this reference.

2. **Additional Land.** Declarant, under Article IX of the Declaration, is submitting and subjecting the Additional Land described on Exhibit A attached hereto, to the rights and obligations imposed by the Declaration. The Additional Land consists of the Townhomes At Northside and as more fully described in Exhibit A.

3. **Other Provisions Remain in Full Force and Effect.** Except as hereinabove amended and supplemented, all of the provisions of, and Exhibits to, the Declaration shall be and remain in full force and effect.



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IN WITNESS WHEREOF, the undersigned has executed this instrument this 12th day of December, 2008.

TESTA ENTERPRISES, INC.

By: Paul J. Testa
Paul J. Testa, President

STATE OF OHIO)
) SS.
SUMMIT COUNTY)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above named TESTA ENTERPRISES, by Paul J. Testa, its President, who acknowledged that he executed the within instrument and that such execution was the free act and deed of said corporation and the free act and deed both individually and in his capacity as officers of said corporation.

IN TESTIMONY WHEREOF, I have herein set my hand and notarial seal this 12th day of December, 2008.

Deanna J. Rice
Notary Public

DEANNA J. RICE, Notary Public
STATE OF OHIO
Resident Summit County
My Commission Expires October 13, 2009

This instrument prepared by:
Nicholas T. George, Esq.
Buckingham, Doolittle & Burroughs, LLP
3800 Embassy Parkway, Suite 300
Akron, Ohio 44333

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John A Donofrio, Summit Fiscal Officer

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EXHIBIT A

PARCEI 1

Situated in the City of Akron County of Summit and State of Ohio:

And known as being Lot No 6, Block 3, Town Plat of Akron (king's Allotment, as surveyed and numbered by Albert G Mallison, Surveyor) and recorded in Plat Book U, Pages 555-556, Portage County Records, and recorded on Page 16 of Transcribed Records of Summit County

PM No 68-06223 PPN 03-01275-08-005 000

PARCEI 2

Tract 1:

Situated in the City of Akron County of Summit and State of Ohio:

And known as being Lot No 7, Block 3, Town Plat of Akron (king's Allotment, as surveyed and numbered by Albert G Mallison, Surveyor) and recorded in Plat Book U, Pages 555-556, Portage County Records, and recorded on Page 16 of Transcribed Records of Summit County

Tract 2:

Situated in the City of Akron, County of Summit and State of Ohio:

And known as being part of Lot Number 8 in Block 3 in the Town Plat of Akron, and recorded in the records of Portage county Book "U" Pages 555 and 556 and recorded on Page 16 of Transcribed Records of Summit County and described as follows: Beginning at the southwest corner of said lot; thence east along the south line of said lot to the southeast corner of said lot; thence north along the east line of said lot twenty feet to a stake; thence west parallel with the north line thirty one feet six inches to a stake; thence north parallel with the west line of said lot thirty feet to a stake; thence west parallel with the north line of said lot approximately sixty eight feet six inches to the west line of said lot; thence south along the west line of said lot fifty feet to the southwest corner of said lot, the place of beginning, being the same premises conveyed to Clinton A Kreighbaum by Ellen W. Thompson by deed dated October 3, 1877, be the same more or less, but subject to all legal highways

Tract 3:



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Situated in the City of Akron, County of Summit and State of Ohio:

And known as being part of Lot Numbers 8 and 9, block 3 in the town plat of Akron, as surveyed and numbered by Albert G. Mallison, surveyor, and recorded in Portage County Records and in Summit County Transcribed records, page 17, bounded and described as follows: Beginning at a point in the west line of said Lot No. 8, Block 3, 50 feet North of the Southwest corner of said Lot Number 8; thence easterly and parallel to the North line of said Lot Number 8, 64.5 feet; thence Southerly parallel to the west line of said lot, 30 feet; thence Easterly and parallel to the North line of said lot Number 8 to a point in the East line of said Lot Number 8 and the West line of an alley; thence North along the east line of said Lot Number 8 and the west line of said alley a distance of 40 feet to the Northeast corner of said Lot Number 8; thence in a Westerly direction along the North line of said Lot Number 8 and the South line of said Lot Number 9 a distance of 39.5 feet; thence Northerly along a line parallel to the East line of said Lot number 9 a distance of 87.03 feet to a point in the South line of Floratos land; thence Westerly and parallel to the North line of said Lot No. 8, 64.5 feet to a point in the West line of said Lot Number 9, Block 3; thence Southerly along the West line of said Lot Number 9 and Number 8, a distance of 187.03 feet to the place of beginning.

PM No 68-23286 PPN 03-1275-08-004 000

PARCEL 3

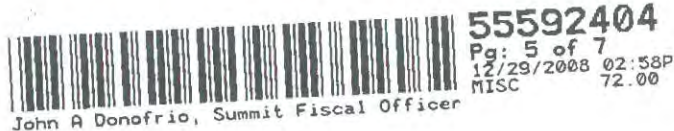
Situated in the City of Akron, County of Summit and State of Ohio:

And known as being part of Lot Number 9 in Block 3, Kings Addition to the Town Plat of Akron as recorded in Transcribed Records Page 17, beginning at the Southeast corner of Lot Number 9, thence North along the East line of said Lot Number 9, 22 feet; thence West on a line parallel with the South line of said lot to a point, 30.5 feet; thence South on a line parallel to the East line of said lot, 22 feet; thence East on the South line of said lot, 39.5 feet to the place of beginning, be the same more or less, but subject to all legal highways.

PM No 68-35697 PPN 03-01275 08-003 000

PARCEL 4

Situated in the City of Akron, County of Summit and State of Ohio:



And known as being all of Lot Number 10 and the North 20 feet, front and rear, of Lot 9 in Block 3 in the Town Plat of Akron as recorded in Transcribed Records Book, Page 16 and 17 of Summit County Records, be the same more or less, but subject to all legal highways

PM No 68-40993 PPN 03-01275-08-001 000

PARCEL 5

Situated in the City of Akron, County of Summit and State of Ohio:

And known as being part of Lot Number 9, Block 3, in the Town Plat of Akron, as surveyed by Albert G Mallison, Surveyor, and recorded in the records of Portage County, Ohio in Book U, Pages 555 and 556 inclusive, also shown in the transcribed records of Summit County, Ohio Page 17, the part of said Lot No 9 is bounded and described as follows:

Beginning at a point 7 62 feet North of the Southwest corner of Lot 9, in the Town Plat of Akron, and in the East line of North Howard Street; thence Northerly 32 38 feet along the East line of Howard Street and the West line of said lot 9, to a point; thence Easterly parallel to the North line of Lot No 9, aforesaid, to a point in the East line of said lot, which is also the west line of an alley; thence Southerly along the East line of said lot and the West line of alley, 18 00 feet to the Northeast corner of land now or formerly owned by George Hoffman; thence Westerly along said Hoffman's North line 39 50 feet to a point; thence southerly along Hoffman's West line to a point; thence Westerly 64 80 feet to the place of beginning, be the same more or less but subject to all legal highways

EXCEPTING THEREFROM THE FOLLOWING DESCRIBED PREMISES:

Situated in the City of Akron, County of Summit and State of Ohio:

Beginning in the East line of North Howard Street at a point which is 7 62 feet North of the South line of Lot No 9; thence East 64 80 feet to a point; thence North and parallel to the East line of North Howard Street, 13 inches to a point; thence West and parallel with the South line of lot No 9, 64 80 feet to a point, which point is the East line of North Howard Street; thence South and along the East line of North Howard Street, 13 inches to the place of beginning as surveyed by Edward G major, registered surveyor #2709 in October 1937

PM No 68-04705 PPN 03-01275-08-002 000

FURTHER EXCEPTING FROM ABOVE PARCELS 4 AND 5 THE FOLLOWING DESCRIBED PREMISES DEED TO THE CITY OF AKRON:



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Situated in the City of Akron, County of Summit and State of Ohio and being a part of Lots No 9 and 10, Block No 3 in the King Allotment as recorded in Transcribed Records Page 17 of the Summit County Records and in Book U, Pages 555 to 556 inclusive of Portage County Records, and being a portion of land needed for street purposes more fully described as follows:

The Place of Beginning being the southwest corner of said Lot 9 and the easterly right of way of Howard Street (66' R/W);

Thence northeasterly along the easterly right of way line of Howard Street, N 16° 50' 59" E, (bearings referenced to the Ohio Coordinate System, North Zone, NAD 1983), 8 76 feet to a point on the easterly line of Howard Street and the True Place of Beginning;

Thence continuing northeasterly along the easterly right of way line of Howard Street, N 16° 50' 59" E 91 95 feet to a point of curve in westerly line of Lot 10 and the easterly right of way line of Howard Street;

Thence northeasterly along the arc of a circle curving to the right (center angle = 90° 22' 13", radius = 20 00', tangent = 20 13', chord = 28 38', chord bearing = N 62° 02' 06" E), 31 55 feet to the northerly line of Lot 10 and the southerly right of way line of Furnace Street (66' R/W);

Thence southeasterly along the northerly line of Lot 10 and the southerly right of way line of Furnace Street S 72° 46' 48" E, 4 03 feet to a point on the northerly line of Lot 10 and the southerly right of way line of Furnace Street;

Thence southwesterly through Lot 10 and along the arc of a circle curving to the left (central angle = 87° 22' 04", radius = 20 00', tangent = 19 10', chord = 27 63', chord bearing = S 63° 32' 10" W), 30 50 feet to a point of curve in Lot 10;

Thence southwesterly along the arc of a circle curving to the right (central angle = 0° 30' 41", radius = 708 00', tangent = 3 16', chord = 6 32', chord bearing = S 20° 06' 29" W), 6 32 feet to a point of curve in Lot 10;

Thence southwesterly through Lots 9 and 10 along the arc of a circle curving to the left (central angle = 2° 31' 36", radius = 1967 00', tangent = 43 38', chord = 86 73', chord bearing = S 19° 06' 01" W), 86 74 feet to a point in Lot 9;

Thence northwesterly through Lot 9, N 72° 46' 48" W, 0 29 feet to the easterly right of way line of Howard Street and the True Place of Beginning for the land hereinbefore described and containing 244 67 square feet of land as surveyed by Michael J Hudik, Professional Surveyor (Registered Surveyor No 6788), in June of 2002

John A Donofrio, Summit Fiscal Officer

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Condominium Disclosure Statement

We are pleased to provide to you, a purchaser or prospective purchaser of a Unit in Northside Lofts Condominium I, the information contained in this statement, which is required to be furnished to you under the State of Ohio's Condominium Act.

Background

In order to enable you to better understand the information the Developer is providing to you, you should know that definitions of various terms used in this statement are contained in the Condominium Act and in the Declaration of Northside Lofts Condominium I ("the Declaration"). We will also try in this statement, from time to time, at appropriate points, to define or clarify various unfamiliar terms and, for convenience, to use short hand references for otherwise lengthy terms, for example, "the Condominium Act" for "Chapter 5311 of the Revised Code of Ohio".

A. Identifications.

1. **Condominium Development.** The name of the Condominium development (referred to in this statement as "the Condominium") is Northside Lofts Condominium I. The Condominium is located at the corner of N. Howard Street and Furnace Street, in Akron, Ohio.

2. **Developer.** Our name, address and telephone number are:

Testa Enterprises, Inc.
2335 Second Street
Cuyahoga Falls, Ohio 44221
Phone: 330-928-1988

We are referred to in the Condominium Act as "the developer" and in the "Condominium Organizational Documents" (the Articles of Incorporation incorporating the association of unit owners as a non-profit corporation, and the Declaration, By-Laws and Drawings creating this Condominium) as "the Declarant". In this Condominium Disclosure Statement we are referred to as "the Developer." When we say "we" in this statement we mean to include our lawful representatives and successors and assigns to whom we assign our rights.

B. General Narrative Description.

1. **General Description.** The Condominium consists of one ten-story building (the "Building"). The Building contains parking facilities on the first three floors, commercial condominium units on the fourth floor, and residential condominium units on floors five through ten. Floors nine and ten contain two-story penthouse Units.

2. **Total Number of Units.** The Condominium consists of 36 residential Units. The number of commercial initially will be two, but that number may increase because the commercial units will be "Convertible Units," which may be subsequently divided into multiple

Commercial Units and Common Elements. The number of Commercial Units will be determined based on demand and the requirements of the commercial buyers.

3. **Types of Units.** The following are the three types of Units in the Condominium:

a. Residential Units. The Residential Units in the Condominium will range from approximately 1,100 square feet to approximately 2,150 square feet. All Residential Units feature an outdoor terrace or terraces of varying size as part of the Unit's Limited Common Elements. The Residential Units on floors nine and ten are two-story penthouse Units with roof decks.

The Developer is not selling a "standard" finished Unit. Units will be available with a wide range of customizable features and layouts that the purchaser will select. Purchasers will work with the Developer, or another builder approved by Developer, to customize and finish their condominium Unit.

b. Commercial Units. A variety of Commercial Units will be located on the fourth floor of the Building. The commercial Units will be "Convertible Units," meaning that they can be combined or divided by the Developer to form additional Units or Common Elements.

c. Commercial Parking Units. The Commercial Parking Units consist of individual parking spaces within the first and second floor parking garage. Owners of Commercial Parking Units will be members of the Association, but will have limited voting rights.

4. **Precise Statement of Nature of Interests.** Each purchaser will own the "fee simple" interest in the Unit that purchaser buys. A fee simple interest in a Unit is the full legal title to that Unit. In addition, each purchaser will own an undivided interest, in common with all other Unit Owners, in the "Common Elements." The undivided interest of each Unit in the Common Elements will be based upon each Unit having a percentage "par value" assigned by the developer. There is no provision for the merger of the Condominium with any other Condominium.

5. **Indoor Parking Spaces.** The lower three floors of the Building will contain an indoor parking garage. Owners of Residential Units will be entitled to purchase one (or in the case of penthouse Unit Owners, two) parking space Unit(s) on the first or second floor (referred to as "Commercial Parking Units"). Any spaces not allocated to Residential Unit Owners will be sold by the Developer as separate Commercial Parking Units. The third-floor parking facility is a separate condominium unit that will be used as a parking garage open to the public for a fee.

C. General Explanation of the Status of:

1. **Construction.** Construction was commenced in October 2005. The Building is now substantially complete, except for individual Unit interiors and portions of the Common Elements. The final completion of the Building by the Developer is subject to availability of site improvements, materials and labor and is further subject to the pace of sales, work stoppages due to strikes, acts of God, acts of national emergency, delays caused by purchasers of other Units, and other acts that are beyond the reasonable control of Developer.

The Condominium is in a zoning category (U3) that permits multi-unit residential buildings and commercial/retail uses. A site plan of the Condominium is included in the drawings that will be filed with the Declaration. All governmental inspections and approvals required to be made to date have been made.

2. **Compliance with Law.** To the best of our knowledge there is compliance with, and the Developer has not received notice of failure to comply with, any Federal, State or local statutes or regulations affecting the Condominium.

3. **Actual or Scheduled Completion.** The portion of the Building in which your Unit is located is either completed or substantially completed, which may not include finish work being completed on a unit-by-unit basis.

4. **Recreation Facilities.** Developer is not required to construct any recreational facilities as a part of the Condominium.

D. Financing. There is no financing being offered by or through the Developer. We have made no prearrangement with any lender for financing of individual Units, although, from time to time, the Developer or its agents may advise prospective purchasers as to the rates and terms currently charged by various lenders. Each purchaser may obtain financing from whatever source the purchaser desires, and for which the purchaser and Unit qualify.

E. Description of Warranties. The Developer hereby gives to you (effective as of the date your Unit is conveyed to you) the following limited warranties, subject to the additional provisions and limitations contained herein:

1. **Units.** Except as provided in subparagraph 3 of this item E, the Developer warrants to provide and pay for the full cost of labor and materials for any repair or replacement of structural, mechanical, and other elements pertaining to your Unit, occasioned or necessitated by a defect in material or workmanship, that arise within a period of one year from the date the deed to you for your Unit is filed for record.

2. **Common Elements.** The Developer warrants to provide and pay for the full cost of labor and materials for any repair or replacement of the Common Elements, such as the structural components of the Building, and mechanical, electrical, plumbing, and common service elements serving the Condominium as a whole, occasioned or

necessitated by defects in material or workmanship, that arise within a period of two years from the date the deed is filed for record following the sale of the first Unit in the phase of the Condominium in which such Common Elements are located, to a purchaser in good faith for value.

3. **Appliances, etc.** In the case of ranges, refrigerators, washing machines, clothes dryers, dishwashers, disposals, and other similar appliances, if any, installed and furnished by the Developer as part of your Unit, the Developer assigns to you (effective as of the date your Unit is conveyed to you) all express and implied warranties of the manufacturer, and our warranty with respect to such items is limited to our warranty that the same have been properly installed.

4. **Extended Warranties.** The Developer hereby assigns to you (effective as of the date your Unit is conveyed to you) and to the Association (effective immediately) any warranties made to the Developer that exceed the time periods for warranties that the Developer gives pursuant to this instrument, to the extent that such warranties are assignable.

5. **Limitations.**

a. No responsibility will be assumed for damage from any cause, whatsoever, other than to repair or replace, at our cost, property damaged by reason of the breach by the Developer of any warranty given to you.

b. NO RESPONSIBILITY WILL BE ASSUMED FOR CONSEQUENTIAL OR INCIDENTAL DAMAGE EXCEPT TO THE EXTENT, IF ANY, NOT PERMITTED TO BE EXCLUDED OR LIMITED BY LAW.

c. Implied warranties, if any, are limited to one year from the date on which your Unit is deeded to you, except to the extent, if any, that limitation is not lawful.

d. Any request for service must be sent in writing to the Developer at our address previously described or at such address as the Developer may designate, from time to time, in writing to you. We, or our designated representative, will commence performance of our obligations under the warranty within 10 days after receipt of your request for service, and complete the same as soon as reasonably possible. All repairs and adjustments will be made Monday through Friday, 8:00 a.m. to 5:00 p.m.

6. **Other Rights.** The limited warranty the Developer provides will give you specific legal rights and you may also have other legal rights under law.

F. Expense Projections.

1. **Expected Budget.** Our two-year projection, from the date of the filing of the Declaration, of annual expenditures necessary to operate and maintain the Common Elements of the Condominium is attached hereto and incorporated herein as Exhibit A. It must be noted that the projections set forth in Exhibit A are based on the Developer's prediction of what the expenses will be based on the Developer's building and management experience and information obtained from companies providing the services set forth herein. However, it is impossible to predict with certainty what such expenses will be for such two-year period and, therefore, the projections may be updated from time-to-time to reflect new or revised estimates.

G. Conversions. The Condominium is not a conversion project.

H. Management.

1. **Unit Owners' Association.** A Unit Owners' Association ("the Association") for the Condominium will be created as a nonprofit corporation in the State of Ohio by the filing of Articles of Incorporation with the Ohio Secretary of State. We do not know of any other requirements that have to be met prior to or as a prerequisite to the creation of the Association. Each Unit Owner will be a member of the Association.

2. **Voting Rights Apportionment.** There are 36 residential Units in the Condominium, plus an as yet undetermined number of commercial Units. Each Unit Owner shall be entitled to exercise a vote equal to the percentage of ownership interest in the Common Elements for each Unit owned in fee simple; provided, however, that undivided interests in Commercial Parking Units may only be voted in the case of (i) the election of Board Members, or (ii) a vote on any matter directly affecting the parking garage, as determined by the Board.

Regardless of the voting rights of members, until members of the Association other than the Developer elect a majority of the Directors, the Developer, in effect, will have the power to exercise the powers and responsibilities otherwise assigned by law or the Declaration to the Directors, the officers, and the Association.

The Board of Directors initially shall be those three persons named as the Directors pursuant to the provisions of the Articles, or such other person or persons as may from time to time be substituted by the Developer. No later than the time that the Developer has sold and conveyed Units that have a total of 25% or more of the undivided interests in the Common Elements (based on the total possible number of Units), the Unit Owners shall meet, and at that meeting the Unit Owners other than the Developer shall elect one-third (one) of the Directors and the Developer shall designate the other two-thirds (two) of the Directors, which three Directors shall serve until the meeting described in the next paragraph.

Within 60 days after the earlier of (a) three years from the date of the establishment of the Association, and (b) the sale and conveyance to purchasers in good faith and for value, of Units that have a total of 75% or more of the undivided interests in the Common Elements, the Association shall meet. At this meeting, the Unit Owners, including the Developer, shall elect

three Directors to replace all of those Directors earlier elected or designated by the owners or the Developer, respectively. The terms of the Directors shall be staggered, as provided in the Declaration, so that the term of one of the Directors will expire and a successor will be elected at each annual meeting of the Association thereafter. At such annual meetings, the successor to the Director whose term then expires shall be elected to serve a three-year term.

For the purposes of computing the percentages of undivided interests referred to in the previous two paragraphs, the Developer may make the percentage calculations based on the estimated final total number of Units in the Condominium.

Regardless of our right to appoint Directors and to vote for the election of Directors, the Developer reserves the right and option, at our sole discretion, at any time, to waive our right to select or to vote for the election of Directors.

3. **Contractual Rights and Responsibilities.** The Developer will enter into a contract with Testa Management, Inc. to provide management services for the Condominium. Testa Management, Inc. is a company owned by the Developer. A copy of the management contract is attached hereto as Exhibit B. In general, the management services to be provided include managing the day-to-day operations of the Association, such as the collection of monthly assessments and the maintenance of the Common Elements. The Developer intends to terminate this management contract no later than 90 days from the time control of the Association is turned over to the Unit Owners, unless the management contract is renewed by Unit Owners exercising a majority of the voting power of the Association. The Association is free to enter into contracts, obtain rights and incur responsibilities to the full extent available to and permitted by Condominium associations under the law.

4. **Condominium Instruments Binding; Amendments.** The Condominium Instruments are binding legal documents. The applicable Ohio law defines "condominium instruments" as including the Declaration, the By-Laws, the Drawings, this disclosure statement, any contracts pertaining to the management of the condominium property, and "any other documents, contracts, or instruments establishing ownership of or exerting control over the condominium property, or Unit." To our best knowledge and belief this latter phrase would include and encompass the Articles of Incorporation of the Association, all contracts for the sale of a Unit or Units, any contracts described in this disclosure statement, and mortgages of record on the Condominium Property or a Unit or Units.

Except with respect to an amendment of percentage interests in the Common Elements, the Declaration may be amended upon the filing for record with the Summit County Recorder of an instrument in writing setting forth specifically the item or items to be amended, which instrument shall have been duly authorized by Unit Owners entitled to exercise at least 75% of the voting power of the Association. Such amendment must be executed by two officers of the Association with the same formalities as the Declaration, must refer to the volume and page in which the Declaration and its attached exhibits are recorded; must contain an affidavit by an officer of the Association that a copy of the amendment has been mailed to first mortgagees having liens of record against Units. The percentage of interest of each Unit in the Common Areas and Facilities as expressed in the Declaration shall not be altered except by an amendment

to the Declaration unanimously approved by all Unit Owners affected, or upon the filing of an amendment by Declarant converting a Convertible Unit into one or more Units. No amendment shall have any effect, however, upon the Developer, the rights of the Developer under the Declaration and other Condominium Instruments and upon the rights of bona fide mortgagees until the written consent of the Developer and/or such mortgagees to such amendment has been secured. Such consent shall be retained by the Secretary of the Association and his or her certification in the instrument of amendment as to the consent or non-consent of the Developer and the names of the consenting and non-consenting mortgagees of various Units may be relied upon by all persons for all purposes. Any such amendment shall be effective upon recordation of the amendment with the Summit County Fiscal Officer; provided, however, that no provision in the Declaration may be amended so as to conflict with the obligatory provisions of the Ohio Condominium Act.

Amendments converting Convertible Units do not require the consent of any parties other than the Declarant. The Declarant has reserved the right and power, for a period of three years from the date of the filing of the Declaration, to amend the Condominium organizational documents: (i) to the extent necessary to conform to the requirements then governing the purchase or insurance of mortgages by The Mortgage Corporation, Federal Home loan Mortgage Corporation, Federal National Mortgage Association, Government National Mortgage Association, Mortgage Guaranty Insurance Corporation, the Department of Housing and Urban Development, the Veterans Administration, or any other such agency or organization, provided that the appropriate percentage (as described elsewhere herein) of eligible holders of first mortgage liens is obtained; or (ii) to correct typographical errors or obvious factual errors the correction of which would not impair the interest of any Unit Owner or mortgagee; provided that if there is a Unit Owner other than the Declarant, the Declaration shall not be amended to increase the scope or the period of control of the Declarant; and further provided that if the project has been approved by the Department of Veterans Affairs, such amendment (except those aiding the expanding of the condominium) must be approved by the Secretary of the Department of Veterans affairs.

The Board may amend the Declaration in any manner necessary for any of the following:

(a) To meet the requirements of institutional mortgagees, guarantors and insurers of first mortgage loans, the Federal National Mortgage Association, the Federal Home Loan Mortgage Corporation, the Federal Housing Administration, the Veterans Administration, and similar institutions;

(b) To meet the requirements of insurance underwriters;

(c) To bring the Declaration into compliance with Chapter 5311 of the Ohio Revised Code;

(d) To correct clerical or typographical errors or obvious factual errors in the Declaration or an exhibit to the Declaration; or

(e) To designate a successor to the person named to receive service of process for the Association.

I. Association Contracts.

1. **Management Contract.** The Developer has or will enter into a contract with Testa Management, Inc. for the management of the Condominium. A copy of the management contract is attached hereto as Exhibit B. The Developer intends to terminate the management contract no later than 90 days after control of the Association is turned over to the Unit Owners, unless the management contract is renewed by Unit Owners exercising a majority of the voting power of the Association.

2. **Geothermal Equipment Lease.** The Developer has entered into a lease on behalf of the Association for geothermal equipment necessary to heat and/or cool water for the Condominium. The lease term is through October 31, 2016. The lease provides the Association with the option to purchase the leased equipment on or after November 1, 2008. A copy of the geothermal equipment lease is attached hereto as Exhibit C.

J. Statement of Purchaser's Rights.

1. **Right to Review Condominium Instruments.** The Purchaser has the right to review the condominium instruments and should review them prior to entering into a contract for the purchase of a Unit:

2. **Purchaser's Right to Void the Contract.** In the event that a contract for the purchase of a Unit is executed in violation of § 5311.25 or § 5311.26 of the Ohio Revised Code, (setting forth certain requirements to be complied with and disclosures to be made by the Declarant), the contract shall be voidable by the Purchaser for a period of 15 days after the later to occur of the following dates:

A. The date of the execution by both the Purchaser and the Declarant of the purchase contract; and

B. The date upon which the Purchaser executes a document evidencing receipt of the information required by § 5311.26 of the Ohio Revised Code;

Except that in no case is the purchase contract voidable after the title to the Unit is conveyed to the Purchaser.

Upon exercise of a Purchaser's right to void the contract, the Declarant or his agent shall refund fully and promptly to the Purchaser any deposit or other prepaid fee or item and any amount paid on the purchase price and shall pay all closing costs paid by the Purchaser or for which the Purchaser is liable in connection with the void sale.

3. Conditions for the Return of Deposits. A Purchaser who wishes to void his purchase contract because of a violation of §5311.25 or §5311.26 of the Ohio Revised Code and obtain a return of his deposit, must notify the Declarant in writing prior to the expiration of the previously mentioned 15-day period. There are no other conditions under the purchase contract for the return of the Purchaser's deposit except where a contract contingency, if any, is not met, and the contract requires the return of the deposit.

4. Rights of Purchasers under §5311.27.

A. In addition to any other remedy available, a purchaser has the rights described in paragraph number 2 of this section with regard to voiding the purchase contract.

B. Any declarant or agent who sells a condominium Unit in violation of §5311.25 or §5311.26 of the Ohio Revised Code shall be liable to the purchaser in an amount equal to the difference between the amount paid for the Unit and the least of the following amounts:

1. The fair market value of the Unit as of the time the suit is brought;
2. The price at which the Unit is disposed of in a bona fide market transaction before suit is brought; and
3. The price at which the Unit is disposed of in a bona fide market transaction after suit is brought but before judgment is entered.

In no case shall the amount recoverable under this section be less than \$500 for each violation against each purchaser bringing an action under this section, together with court costs and reasonable

attorney's fees. If the purchaser complaining of such violation brings or maintains an action that the purchaser knows to be groundless or in bad faith and if the declarant or agent prevails, the court shall award reasonable attorneys' fees to the declarant or agent.

4. Nonmaterial errors and omissions in the disclosure statements required by sections 5311.25 and 5311.26 of the Revised Code shall not be actionable in a civil action otherwise authorized by §5311.27 of the Revised Code if the declarant or agent has attempted in good faith to comply with the disclosure requirements and if the declarant or agent has substantially complied with those requirements.

C. Subsection 5311.27(C) of the Ohio Revised Code permits the attorney general to pursue certain remedies under certain circumstances which, if successful, could benefit the purchasers or prospective purchasers of Units in the condominium.

K. **Repair or Replacement Reserves.** The Declaration requires the establishment of a reserve for repairs and replacement of the components of the Common Elements to which annual contributions must be made. The estimated amounts to be placed in such reserve during the first two years of operation and the criteria for determining the amounts to be put in this reserve have been previously described. The reserve may not be reduced below 10% of the annual budget unless the reserve requirement is waived annually by the Unit Owners exercising not less than a majority of the voting power of the Association. These reserves are not required to be maintained in a separate "fund" apart from the general funds of the Association. Additionally, an initial capital contribution equal to two months of assessments shall be collected from each purchaser at closing for the Association's working capital account.

L. **Encumbrances, Easements, Liens and Matters of Record.** Attached hereto and made a part hereof as Exhibit D is a list of all encumbrances, easements, liens and other matters of title affecting the Condominium and attached hereto and made a part hereof as Exhibit E is a facsimile of a Warranty Deed in Condominium to be used by the Developer for the conveyance of Units. If a purchaser designates title to be taken by a survivorship deed, or other type of deed, the Warranty Deed will be modified to conform to such designation.

Included among matters affecting title to the Condominium are "covenants and restrictions" set forth in Article VII of the Declaration as to use and occupancy of the Units and the Common Elements and additional "covenants and restrictions" set forth in the Northside Lofts Master Declaration, a copy of which is available from the Developer. Title to the Condominium Property is or may be subject to one or more mortgages. Any such mortgage will

be released or subjected or subordinated to the Declaration, By-Laws and Drawings of the Condominium prior to the closing of the sale of any Unit. Additionally, each Unit and its appurtenant interest in the Common Elements will be released from the lien of all mortgages (other than a mortgage or mortgages obtained by a purchaser), at the time of the closing of the sale of that Unit. The restrictions include use of residential Units for residential purposes plus limited professional or commercial uses as permitted by the Declaration or Board; restrictions on satellite dishes and antennae; and restrictions on pets.

The Condominium is subject to easements for utility lines as shown on the Drawings, and easements for various purposes that will be created by the filing of the Declaration. A list of all encumbrances, easements, liens and other matters of title affecting the Condominium is attached hereto and made a part hereof as Exhibit D. The Developer does not believe that any of these easements will unreasonably interfere with the proposed use of the Condominium for residential purposes.

The Declaration establishes a plan for the assessment and collection of assessments by the Association to pay common expenses incurred in fulfilling the Association's functions. These assessments are the personal obligation of Unit Owners and may be perfected as liens against Units.

The Condominium is subject to a Master Declaration, which contains additional restrictions on the Condominium Property. A copy of the Master Declaration is available from the Developer upon request. Generally, the Master Declaration requires all Unit Owners (through their respective sub-association) to contribute pro rata to the maintenance of the Master Association common elements, consisting of all property within the Northside Lofts development that is not part of the Condominium or an individually owned Townhouse Neighborhood parcel, including the land, drives, parking lots, walkways, grass, landscaping, stairways and other common features.

Real estate taxes not due and payable at the time of closing will be a lien on a Unit at the time of the closing of the sale of the Unit. Each purchase contract with respect to a Unit sets forth the specific agreement between the Developer and the purchaser regarding all taxes and liens.

Except in our capacity as a Unit Owner of unsold Units, and the reservation of the easement rights with respect to the Additional Property previously mentioned, neither the Developer nor an agent of ours will retain a property interest in the Common Elements.

EACH PURCHASER IS URGED TO READ AND STUDY THE CONDOMINIUM ORGANIZATIONAL DOCUMENTS, BECAUSE OWNERSHIP AND USE OF EACH UNIT WILL BE SUBJECT TO THE ENCUMBRANCES, EASEMENTS, LIENS AND AGREEMENTS SET FORTH THEREIN.

M. Escrow of Deposits. Any deposit or down payment made in connection with a sale will be held in trust or escrow until delivered at closing, returned to or otherwise credited to the purchaser, or forfeited to the Developer. If a deposit or down payment of more than \$2,000 is held for more than 90 days, interest shall be paid or credited at the prevailing rate payable on

daily interest accounts by federally insured financial institutions in Summit County. Such interest shall be payable only on the amount held in escrow (and not withdrawn) that exceeds \$2,000 and only for the time that such deposit or escrow is held (and not withdrawn) for a period exceeding 90 days.

Deposits and down payments held in trust or escrow shall not be subject to attachment by creditors of the Developer or a purchaser. The Developer is entitled to withdraw a purchaser's deposit or down payment from trust or escrow upon the commencement of construction of the structure of the Condominium Property in which the purchaser's Unit will be located and use the moneys in the actual construction and development of the condominium property. The Developer shall not use the moneys for advertising purposes or for the salaries, commissions, or expenses of agents.

N. Restraints on Alienability. There are no restraints on the free alienability of all or any part of the Condominium. Within 30 days after you obtain title to your Unit, you are required to provide the Association with the following information:

- (1) The home address, home and business mailing addresses, and the home and business telephone numbers of the Unit owner and all occupants of the Unit;
- (2) The name, business address, and business telephone number of any person who manages the owner's Unit as an agent of that owner.

O. Litigation. There is no litigation currently in progress concerning the Condominium.

P. Declarant Responsibilities. The Developer will assume the rights and obligations of a Unit Owner in our capacity as owner of Units not yet sold, including, without limitation, the obligation to pay common expenses attaching to such Units, from the date the Declaration is filed for record.

Sincerely,
Testa Enterprises, Inc.

«CL2.267532_v3»

EXHIBIT A

PROJECTED ASSOCIATION EXPENSES – RESIDENTIAL UNITS

**Northside
Preliminary Budget
Condominium I - 21 Furnace Street**

General	
Master Association Fee	46,204
Insurance	20,801
	<hr/>
	66,155
Interior	
Custodial / Light Duty Maint	16,000
Access System	250
Surveillance System	175
Intercom System	175
Fire Alarm/Direct Wire Fees	765
Fire System Inspection Fees	900
Elevator Maintenance	4,680
Elevator Annual Safety Tests	1,575
State Elevator Fees	828
Elevator Telephone	1,260
HVAC Maintenance	1,500
Common Area Electric	11,750
Trash Removal	7,920
Pest Control	2,700
	<hr/>
	50,478
Exterior	
Water Features	319
Gated Entrance	125
Parking Lot Maintenance	600
Window Cleaning (quarterly)	4,250
	<hr/>
	5,294
Parking Garage	
Maintenance; Cleaning	5,680
Maintenance; Sewer / Water	1,775
Electrical	14,058
Heating	13,000
Bulbs; Exits; Emergencies	1,420
HVAC Maintenance / Ventilation	4,970
Gated Entrances	355
	<hr/>
	41,258
Annual Fees	163,185
Reserve Fees	16,319
Geo Field Lease	84,480
	<hr/>
Condo I Budget	263,984

**Northside
Preliminary Budget
Master Association - Furnace & Ridge**

General	
Taxes - Land Only	2,100
Insurance	<u>5,000</u>
	7,100
Exterior	
General Lot Pickup/ Cleanup	7,000
Snow / Seasonal Contract	10,000
Seasonal / Flowers	3,500
Seasonal / Holiday Lighting	3,500
Lighting	<u>3,000</u>
	27,000
Concierge Costs	
Concierge Salary	30,000
Concierge Office Custodial	3,700
Office Supplies	150
Office Electric	840
Office Telephone	<u>840</u>
	35,530
Limo Costs	
License	120
Insurance	2,500
E Check	40
Radio	132
Maintenance / Service	2,500
Gas/Wash/Driver - Per Use	<u>0</u>
	5,292
Hospitality Suite	
Custodial	500
Supplies	150
Electric	300
Other	<u>100</u>
	1,050
Annual Fees	75,972
Management Fees; .20 / square foot	<u>36,137</u>
Master Association Budget	112,109
Annual Fee per Square Foot	0.6205

Northside Lofts Condo I Fee Schedule

P - Parking Units

C - Commercial / Retail

R - Residential

<u>Unit Number</u>	<u>Type</u>	<u>Parking Units</u> <u>Undivided Interest</u>	<u>Annual Fee</u>	<u>Monthly Fee</u>
1-1	P	0.13980%	369.05	30.75
1-2	P	0.13980%	369.05	30.75
1-3	P	0.13980%	369.05	30.75
1-4	P	0.13980%	369.05	30.75
1-5	P	0.13980%	369.05	30.75
1-6	P	0.13980%	369.05	30.75
1-7	P	0.13980%	369.05	30.75
1-8	P	0.13980%	369.05	30.75
1-9	P	0.13980%	369.05	30.75
1-10	P	0.13980%	369.05	30.75
1-11	P	0.13980%	369.05	30.75
1-12	P	0.13980%	369.05	30.75
1-13	P	0.13980%	369.05	30.75
1-14	P	0.13980%	369.05	30.75
1-15	P	0.13980%	369.05	30.75
1-16	P	0.13980%	369.05	30.75
1-17	P	0.13980%	369.05	30.75
1-18	P	0.13980%	369.05	30.75
1-19	P	0.13980%	369.05	30.75
1-20	P	0.13980%	369.05	30.75
1-21	P	0.13980%	369.05	30.75
1-22	P	0.13980%	369.05	30.75
1-23	P	0.13980%	369.05	30.75
1-24	P	0.13980%	369.05	30.75
1-25	P	0.13980%	369.05	30.75
1-26	P	0.13980%	369.05	30.75
1-27	P	0.13980%	369.05	30.75
1-28	P	0.13980%	369.05	30.75
1-29	P	0.13980%	369.05	30.75
1-30	P	0.13980%	369.05	30.75
1-31	P	0.13980%	369.05	30.75
1-32	P	0.13980%	369.05	30.75
1-33	P	0.13980%	369.05	30.75
1-34	P	0.13980%	369.05	30.75
1-35	P	0.13980%	369.05	30.75

2-1	P	0.13980%	369.05	30.75
2-2	P	0.13980%	369.05	30.75
2-3	P	0.13980%	369.05	30.75
2-4	P	0.13980%	369.05	30.75
2-5	P	0.13980%	369.05	30.75
2-6	P	0.13980%	369.05	30.75
2-7	P	0.13980%	369.05	30.75
2-8	P	0.13980%	369.05	30.75
2-9	P	0.13980%	369.05	30.75
2-10	P	0.13980%	369.05	30.75
2-11	P	0.13980%	369.05	30.75
2-12	P	0.13980%	369.05	30.75
2-13	P	0.13980%	369.05	30.75
2-14	P	0.13980%	369.05	30.75
2-15	P	0.13980%	369.05	30.75
2-16	P	0.13980%	369.05	30.75
2-17	P	0.13980%	369.05	30.75
2-18	P	0.13980%	369.05	30.75
2-19	P	0.13980%	369.05	30.75
2-20	P	0.13980%	369.05	30.75
2-21	P	0.13980%	369.05	30.75
2-22	P	0.13980%	369.05	30.75
2-23	P	0.13980%	369.05	30.75
2-24	P	0.13980%	369.05	30.75
2-25	P	0.13980%	369.05	30.75
2-26	P	0.13980%	369.05	30.75
2-27	P	0.13980%	369.05	30.75
2-28	P	0.13980%	369.05	30.75
2-29	P	0.13980%	369.05	30.75
2-30	P	0.13980%	369.05	30.75
2-31	P	0.13980%	369.05	30.75
2-32	P	0.13980%	369.05	30.75
2-33	P	0.13980%	369.05	30.75
		9.5064%		

Commercial Units				
<u>Unit Number</u>	<u>Type</u>	<u>Undivided Interest</u>		
301	C	2.994%	7,903.68	658.64
401	C	9.000%	23,758.55	1,979.88
402	C	5.500%	14,519.11	1,209.93
		17.494%		

Residential Units

<u>Unit Number</u>	<u>Type</u>	<u>Undivided Interest</u>		
501	R	1.729%	4,563.88	380.32
502	R	1.423%	3,757.08	313.09
503	R	1.450%	3,828.31	319.03
504	R	1.735%	4,581.38	381.78
505	R	2.452%	6,471.90	539.32
506	R	1.995%	5,265.38	438.78
507	R	1.728%	4,560.51	380.04
508	R	2.287%	6,037.18	503.10
601	R	1.757%	4,637.26	386.44
602	R	1.418%	3,743.27	311.94
603	R	1.443%	3,808.35	317.36
604	R	1.739%	4,589.37	382.45
605	R	2.443%	6,450.41	537.53
606	R	2.006%	5,295.47	441.29
607	R	1.719%	4,537.79	378.15
608	R	2.319%	6,121.00	510.08
701	R	1.748%	4,613.31	384.44
702	R	1.423%	3,755.55	312.96
703	R	1.442%	3,807.13	317.26
704	R	1.739%	4,589.37	382.45
705	R	2.445%	6,453.48	537.79
706	R	2.033%	5,367.00	447.25
707	R	1.722%	4,545.77	378.81
708	R	2.323%	6,133.28	511.11
801	R	1.759%	4,644.32	387.03
802	R	1.427%	3,767.52	313.96
803	R	1.432%	3,779.19	314.93
804	R	1.716%	4,529.50	377.46
805	R	2.427%	6,405.89	533.82
806	R	2.023%	5,341.52	445.13
807	R	1.721%	4,543.31	378.61
808	R	2.320%	6,125.29	510.44
901	R	3.636%	9,599.63	799.97
902	R	2.831%	7,474.56	622.88
903	R	3.843%	10,145.17	845.43
904	R	<u>3.348%</u>	<u>8,838.88</u>	<u>736.57</u>
		73.000%		
		100.000%	263,984.90	21,998.74

EXHIBIT B

MANAGEMENT CONTRACT

MANAGEMENT AGREEMENT

THIS AGREEMENT is made effective this ____ day of _____, 200_, between **Northside Lofts Master Association, Inc.** ("Association"), a nonprofit corporation established in accordance with the provisions of Ohio Revised Code Chapter 1702 and the Declaration of Covenants, Conditions and Restrictions for Northside Lofts Master Association recorded in the Office of the Summit County Fiscal Officer, Summit County, Ohio ("Declaration"), and **Testa Realty, Inc., dba Testa Management Team**, an Ohio corporation with its principal place of business at 2335 Second Street, Cuyahoga Falls, Ohio 44221, ("Manager").

RECITALS

A. The Association was formed to be and act as the governing entity for the Northside Lofts Master Association Community ("Development").

B. The Association, through the Board, is required to provide the management and supervision for operation of the Common Elements and to establish and maintain such policies, rules, programs and procedures as are necessary to fully implement the Declaration for the purposes intended and for the benefit of the Members. Under Article III, Section 3.18 of the Declaration, the Board may delegate all or any portion of its authority to discharge its responsibilities to a managing agent.

C. The Manager is being engaged by the Association to serve as the manager under Article III, Section 3.18 of the Declaration.

In consideration of the mutual covenants herein contained, the parties agree as follows:

1. **INCORPORATION OF RECITALS.** The recitals contained above are incorporated herein by this reference.

2. **DEFINITIONS.** The definitions contained in the Declaration and Bylaws shall be applicable to this Agreement unless otherwise expressly provided herein or unless the context otherwise requires.

3. **APPOINTMENT AND ACCEPTANCE OF AGENCY.** The Association engages the Manager and the Manager accepts the engagement on the terms and conditions herein contained, to exclusively render the management services for the management, supervision, and operation of the Common Elements and to maintain such policies, rules, programs and procedures as are necessary to fully implement the Declaration for the purposes intended and for the benefit of the Members.

4. **DUTIES OF MANAGER.** The Manager shall perform the following services and duties:

A. Confer with and advise the Board and the Officers of the Association in the performance of their duties.

- B. Prepare and deliver notices for, attend, and supervise (to the extent requested) the annual meetings and all duly called special meetings of the Association.
- C. Attend meetings of the Board (up to a maximum of twelve each year) at the request of the president or vice president of the Association.
- D. Before December first of each year, prepare an estimate of the total amount necessary to pay the common expenses for the next calendar year together with a reasonable amount considered by the Manager necessary for a reserve for contingencies and replacements in accordance with Article VIII, Section 8.3 of the Declaration, and the amounts, if any, which may be received from special assessments (or by virtue of "other charges"), concessions, contracts for special services and facilities, and other sources, and submit such estimates to the Board to facilitate the determination of the Budget and Assessments as set forth in Declaration Article VIII. Upon approval by the Board of the estimates and the amount of the Annual Operating Assessments, the Manager shall give notice to each Member of the amount payable monthly by each Member.
- E. On or before the date of each annual meeting, prepare and furnish to all Members an itemized accounting of the Common Expenses for the preceding calendar year actually incurred and paid, together with a tabulation of the amounts collected pursuant to the estimates provided, by special assessments, or otherwise, and showing the net amount over or short of the actual expenditures, plus reserves.
- F. In addition to keeping the Board generally advised of matters concerning the Common Elements, advise the Board promptly of extraordinary expenditures (and, if known in advance, the probable need thereof).
- G. Collect all assessments due from the Members as directed by the Board.
- H. Furnish to the president and treasurer of the Association an itemized list of all delinquent accounts immediately following the tenth of each month.
- I. Maintain businesslike relations with Members whose service requests shall be received, considered, and recorded in systematic fashion in order to show the action taken with respect to each. Complaints of a serious nature shall, after investigation, be reported to the Board with appropriate recommendations. As part of a continuing program, secure full performance by the Members and Occupants of all obligations for which they are responsible, and advise the Board of any Members and Occupants who fail to perform their obligations under the Declaration, Bylaws, or Rules and Regulations or who violate any of the same.
- J. Negotiate and enter into as Manager of and on behalf of the Association, agreements for the maintenance, repair, replacement, alteration and improvement of the Common Elements; provided that if any one item of repair or replacements costs

more than \$7,500 the Manager shall first receive authorization from the Board, except that emergency repairs involving manifest danger to life or property or requiring immediate action for the preservation or safety of any of the Development or for the safety of any Unit Owner or Occupant or required to avoid the suspension of any necessary service to the Development, may be made by the Manager irrespective of the cost limitation imposed by this subparagraph. Notwithstanding the foregoing authority as to emergency repairs, it is understood and agreed that the Manager will, if possible, confer immediately with the president of the Board regarding every such expenditure. Except for matters requiring immediate action as described above, the Manager shall not incur liabilities (direct or contingent) which will at any time exceed the aggregate of \$18,000 or any liability maturing more than two years from the creation thereof, without first obtaining the approval of the Board.

- K. Take such action on behalf of the Association as may be necessary to comply promptly with orders or requirements affecting the Development placed thereon by any federal, state, county, township, or municipal authority having jurisdiction thereof, and orders of the Board of Fire Underwriters or other similar bodies. The Manager, however, shall not take any action under this subparagraph so long as the Association is contesting, or has affirmed its intention to contest any such order or requirement. The Manager shall promptly, and in no event later than 72 hours from the time of its receipt, notify the Association in writing of all such orders and notices of requirements of which the Manager has received actual notice.
- L. Subject to approval by the Board, as Manager of and on behalf of the Association, enter into agreements for providing utilities, energy, vermin extermination, concessions, landscape maintenance, snow removal, and other services and facilities, or such of them as the Board shall deem desirable, for the Development, and place orders for such equipment, tools, appliances, materials and supplies as are necessary to maintain properly the Development. All such contracts and orders shall be subject to the limitations set forth in subparagraph J of this paragraph.
- M. Establish and maintain, in a bank or in a savings and loan association whose deposits are insured by the Federal Deposit Insurance Corporation and in the name of the Association, a separate bank account for the deposit of the monies of the Association, with authority of Manager, and no one else, to draw thereon for any payments to be made by the Manager to discharge any liabilities or obligations incurred pursuant to this Agreement, and for the payment of the Manager's fee, all of which payments shall be subject to the limitations set forth in this Agreement.
- N. From the funds collected and deposited in the account provided for in subparagraph M of this paragraph, cause to be disbursed regularly and punctually: (i) salaries and any other compensation due and payable to the employees of the Association, and the taxes payable under subparagraph O of this paragraph; (ii) the premiums on insurance required to be maintained by the Association; and (iii) all of the other sums due and payable by the Association, including the Manager's Fee.

After disbursement of the funds in the order herein specified, any balance remaining in the account may be disbursed or transferred from time to time, but only as specifically directed by the Board.

- O. Prepare and file on behalf of the Association such forms, reports, and returns as are required by law in connection with federal, state and municipal income tax withholdings, unemployment insurance, Worker's Compensation insurance, social security, and other similar taxes now in effect or hereafter imposed.
- P. As Manager and on behalf of the Association, obtain the insurance required to be obtained by the Association under Article XI of the Declaration, and upon the direction and authorization from the Board, obtain such additional insurance and coverage as the Association is permitted to obtain.
- Q. Maintain a system of records, books and accounts of Association finances, of the names of the Members and Occupants, and of such other matters affecting the Development as the Manager considers appropriate, which records shall be open for inspection by any Member or his representative duly authorized in writing, subject to the Rules of the Association and the restrictions set forth in Article VI, Section 6.4 of the By-Laws; furnish (on behalf of the Board) to each Owner promptly upon his request, a statement of his account, provided that the Manager may charge to the requesting owner a fee of \$5 for each statement requested in respect to a particular Unit after one statement has been furnished in respect to the same Unit within the past 12 months (regardless of the fact that a change of title within said 12 month period may have caused the request to come from two different owners); render to the president and treasurer of the Association not later than the fifteenth day of each month a statement of receipts and disbursements as of the end of the preceding month.
- R. Operate and maintain the Development according to the highest standards achievable consistent with the overall plan of the Association and the directions and authorizations received from the Board. The Manager shall see that all Members are informed of all Rules and Regulations promulgated by the Association.

4. **POWERS AND AUTHORITY.** The Manager shall have all powers and authority which the Association has and which are necessary or proper to carry out the duties imposed upon the Manager under this Agreement. Such powers and authority include, without limitation, the following:

- A. The rights granted to the Association and its manager under the Declaration and Bylaws; and
- B. The right to request, demand, collect, receive, and receipt for any and all charges or rents which may at any time be or become due to the Association and to take such action in the name of the Association (and at the cost and expense of the Association, by way of legal process or otherwise) as may be required for the

collection of delinquent assessments and any and all other sums due to the Association.

5. **LIMITATIONS ON MANAGER'S OBLIGATIONS.**

- A. Everything done by the Manager under the provisions of Paragraphs 3 and 4 shall be done as Manager of the Association, and all obligations or expenses incurred thereunder shall be for the accounts on behalf and at the expense of the Association, except that the Association shall not be obligated to pay the overhead expenses of the Manager's office. Any payments to be made by the Manager hereunder shall be made out of such sums as are available in the accounts of the Association, or as may be provided by the Association. The Manager shall not be obliged to make any advance to or for the account of the Association to make or to pay any sum, except out of funds held or provided as aforesaid, nor shall the Manager be obliged to incur any liability or obligation for the account of the Association without assurance, satisfactory to Manager, that the necessary funds for the discharge thereof will be provided.
- B. The duties imposed upon the Manager hereunder are confined and limited to the property and obligations for which the Association is responsible.
- C. Anything herein to the contrary notwithstanding, Manager shall have no responsibilities or obligations arising out of a taking, damage to or destruction of any part of the Development as a result of condemnation, fire, accident or any casualty, insured or uninsured, including without limitation, settling or negotiating any claim for insurance proceeds or any condemnation award, arranging for or making repairs, replacements or restoration required or desired as a result of any condemnation, fire, accident or casualty, and collecting and paying out any monies owing, payable or received as a result of such matters; provided, however, that Manager shall negotiate and settle any insurance claim where the amount claimed is less than \$15,000 and shall arrange for the making of repairs, replacements and restorations necessitated by condemnation, fire, accident or any casualty where the reasonable cost of such work does not exceed \$15,000 . If the Association desires Manager to handle any such matters where the claim is more than \$15,000 or the reasonable estimate of the cost of repairs, replacements, or restorations resulting from such matters is in excess of \$15,000, then the Association shall make such additional arrangements with Manager in respect thereto and shall pay the Manager such additional compensation as is satisfactory to Manager.

6. **COMPENSATION.**

The Manager shall be entitled to receive and shall be paid as compensation for the services performed by it under this Agreement a Management Fee ("Fee"), payable on the first day of each and every consecutive month throughout the term of this Agreement. The Fee begins to accrue upon the date title to a Unit is first transferred to a purchaser other than the Developer. For the first two years of this Agreement, the Fee will be \$10 per unit per month. Beginning with the third year of the term and through the fifth year of the term, the Fee will be \$12 per unit per month. Beginning with the sixth year of the term and through the seventh year of the term, the Fee will be \$14 per unit per month.

7. **DURATION.**

A. Subject to the provisions of subparagraph B and of Paragraph 8 below, the term of this Agreement shall be for Seven (7) years and shall commence on _____, 2006.

B. Upon termination of the term of this Agreement, either under Subparagraph A of this Paragraph 7 or under Paragraph 8 below, the Manager and the Association shall account to each other with respect to all matters outstanding as of the date of termination and the Association shall furnish the Manager security satisfactory to the Manager against any outstanding obligations or liabilities which the Manager may have incurred hereunder.

8. **TERMINATION PRIOR TO CONTEMPLATED TERM.**

A. The Association may terminate this Agreement by written notice to Manager if Manager shall be in default in the performance of any of Manager's obligations hereunder and Manager shall fail to remedy such default within 30 days after receipt of written notice thereof from the Association (but Manager shall not be deemed to be in default if Manager commences to remedy said default within said 30 day period and proceeds to cure the same with due diligence).

B. Either party may terminate this Agreement without cause upon 90 days prior written notice.

9. **MISCELLANEOUS.** This Agreement supersedes all prior agreements between the parties with respect to the subject matter hereof. Headings are for convenience only and are not a part of this Agreement. Any failure by any of the parties to comply with any of the obligations, agreements, or conditions set forth in this Agreement may be waived by the other party, but any such waiver shall not be deemed a waiver of any other obligations or conditions contained in this Agreement. A corporate officer signing this document on behalf of a corporate party warrants that he or she has full authority to sign this document. This Agreement shall be construed and governed under the laws and jurisdiction of Ohio. In interpreting this Agreement, the presumption that contracts are to be construed against the drafter shall not be applicable. If any provision of this

Agreement is held to be illegal, invalid, or unenforceable, such provision shall be severable and the remaining provisions of this Agreement shall remain in full force and effect. If a lawsuit is filed with respect to this Agreement, the prevailing party shall be entitled to collect all reasonable attorney's fees and costs. This Agreement may not be altered, amended, or modified except by written instrument signed by all parties.

EXECUTED effective the day and year first above written.

**NORTH SIDE LOFTS MASTER
ASSOCIATION, INC.**

By _____
, President

**TESTA REALTY, INC. DBA TESTA
MANAGEMENT TEAM**

By _____
, President

«CL2:268121_v1»

EXHIBIT C

GEOHERMAL EQUIPMENT LEASE

GEOHERMAL EQUIPMENT LEASE

THIS GEOHERMAL EQUIPMENT LEASE (the "Lease") is entered into effective as of the _____ day of March, 2007, by and between WELLFIN, LLC, with its principal office at 400 East Cuyahoga Falls Avenue, Akron, Ohio 44310 (the "Lessor"), and TESTA ENTERPRISES, INC. or its Assigns, with its principal office at 2335 Second Street, Suite A, Cuyahoga Falls, Ohio 44221 (the "Lessee").

WITNESSETH:

WHEREAS, Lessee owns the real property located at 21 Furnace Street in the City of Akron, Ohio, as more fully described on the attached Exhibit A (the "Property");

WHEREAS, Lessee will construct an approximately 128,170 square foot residential and commercial condominium building on the Property (the "Building");

WHEREAS, Lessee wishes to have Lessor install and lease to Lessee a geothermal heating and cooling equipment system on the Property more fully described on the attached Exhibit B (the "Equipment"), which Equipment will provide geothermally heated and/or cooled water to the Building at the location designated as "Connection Point" on the Building drawing and site plan attached hereto as Exhibit C (the "Drawing");

WHEREAS, upon completion of the Building, it is the intent of the Lessee to convert the Property to condominium ownership, sell residential and retail units within the Building (each a "Unit"), and provide for the common areas of the Property and Building to be owned by a unit owners association to be formed hereafter (the "Association").

In consideration of the foregoing premises and the agreements and undertakings described herein, the parties hereto agree as follows:

1. Recitals. The foregoing recitals are hereby adopted and made a part of this Agreement as if fully restated herein.

2. Agreement of Lease. Lessor hereby leases to Lessee, and Lessee hereby leases from Lessor, the Equipment upon the terms and conditions set forth herein. The Equipment shall at all times be and remain the sole and exclusive property of Lessor. Lessee shall have no right, title or interest therein or thereto except as expressly set forth in this Lease.

3. Term. The term of the Lease for the Equipment listed hereon shall begin on November 1, 2006 (the "Commencement Date") and shall terminate on October 31, 2016. Lessee shall have no right to renew this Lease except as provided for in Section 24 below.

4. Rent and Other Charges.

(a) Base Rent. As base rent for the Equipment, Lessee shall pay Lessor base

rent equal to the sum of \$5,940 plus the Retail Component (collectively, the "Base Rent") each month during the term hereof, payable in advance, on the first day of each month during the term hereof, commencing on the Commencement Date. As used herein, "Retail Component" shall be equal to \$400 per month for each Unit in the Building designated for retail use (currently consisting of four Units) for which a certificate of occupancy has at any time been issued. A retail Unit shall be included in the Retail Component commencing on the first day of the month following the issuance of a certificate of occupancy for such Unit, and shall be included in the Retail Component continuously thereafter even if such Unit later becomes vacant.

(b) Maintenance Fee and Part and Supply Costs. In addition to the Base Rent, Lessee shall pay Lessor the Maintenance Fees and Part and Supply Costs referenced in Section 6 below. The Maintenance Fees, Part and Supply Costs and the Base Rent are hereinafter collectively referred to as "Rent."

(c) Lessee covenants and agrees that it will pay to Lessor, its agents, successors or assigns, the Rent, when due, in lawful money of the United States, without demand and without any deduction whatsoever, and shall pay the same at the Lessor's office, unless another address is designated by notice to Lessee or otherwise provided.

5. Utilities; Internet Connection. Lessee shall contract for and pay for all necessary utilities for service to and operation of the Equipment during the term of this Lease, including without limitation, electricity and water.

Lessee shall, at Lessee's sole cost and expense, make a high speed internet connection available for Lessor's use at the Connection Point throughout the term of this Lease in order to enable Lessor to remotely monitor the Equipment and its operation via the internet. The internet connection shall be for the sole and exclusive use of Lessor and shall (a) be a secure connection; (b) be pass-word protected; (c) be connected through the Building's internet cabling system that will ensure bidirectional communication at all times by the lessor with the monitoring equipment described in Exhibit B.

6. Interior System Maintenance. In order to ensure proper operation of the Equipment and the purity of the water to be exchanged between the Equipment and the Interior System, Lessor shall provide maintenance and repair service for Lessee's water circulation pumps and related equipment located within the Building on the Building side of the Connection Point, as more fully described on the attached Exhibit D (the "Interior System") during the term hereof. Such maintenance shall include the regular monitoring of water quality, replacement of filters, repair and replacement of equipment and component parts, glycol feed, chemical treatment and provision of other necessary additives to the Interior System.

In consideration of the maintenance and repair services to be provided herein, the Lessee shall pay Lessor the following:

(a) A monthly maintenance fee of \$300 each month during the term hereof (the "Maintenance Fee"), payable in advance, on the first day of each month during the

term hereof, commencing on the Commencement Date. The Maintenance Fee shall be adjusted from time to time proportionately with increases in Lessor's labor costs.

(b) 110% of any cost incurred by Lessor in repairing or replacing any equipment, components and supplies comprising a part of or used in the Interior System, including without limitation pumps, piping, filters, glycol and other chemicals and related supplies (collectively, "Part and Supply Costs"). Lessor shall invoice Lessee monthly for Part Costs incurred during the prior month, if any, and shall provide detail of Part and Supply Costs incurred with each invoice. Such invoices shall be due and payable 10 days after receipt.

Lessee represents and agrees that the Interior System is of a size, design, capacity and manufacture selected by Lessee and that Lessor has had no involvement in or responsibility for the selection, sizing or specification of the Interior System. LESSOR SHALL HAVE NO LIABILITY TO LESSEE FOR ANY CLAIM, LOSS OR DAMAGE CAUSED OR ALLEGED TO BE CAUSED DIRECTLY, INDIRECTLY, INCIDENTALLY OR CONSEQUENTLY BY THE INTERIOR SYSTEM, BY ANY INADEQUACY THEREOF OR DEFICIENCY OR DEFECT THEREIN, BY ANY INCIDENT WHATSOEVER IN CONNECTION THEREWITH, ARISING IN STRICT LIABILITY OR OTHERWISE, OR IN ANY WAY RELATED TO OR ARISING OUT OF THIS AGREEMENT. LESSOR MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE INTERIOR SYSTEM AND EXPRESSLY DISCLAIMS THE SAME.

7. Equipment Warranties, Limitation of Liability. Lessor represents and warrants that the Equipment is of a size, design, capacity and manufacture capable of satisfying the building loads and specifications for the Equipment set forth in the attached Exhibit E (the "Building Loads") at the Connection Point. In the event the Equipment proves to be inadequate to meet the Building Loads, Lessor shall install such additional supplemental mechanical systems prior to the Connection Point as shall be necessary to produce water temperatures that will meet the design building loads as set forth in the Building Loads at the Connection Point, and any such supplemental mechanical systems shall constitute a part of the Equipment for all purposes under this Lease. The provision of such supplemental mechanical system shall be the sole remedy for rectifying any failure of the Equipment to comply with the Building Loads. LESSOR SHALL HAVE NO LIABILITY TO LESSEE FOR ANY INDIRECT, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM THE USE, CAPACITY OR FAILURE OF THE EQUIPMENT TO COMPLY WITH THE BUILDING LOADS. EXCEPT AS SPECIFICALLY SET FORTH HEREIN, LESSOR MAKES NO EXPRESS OR IMPLIED WARRANTIES OF ANY KIND, INCLUDING THOSE OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE WITH RESPECT TO THE EQUIPMENT AND EXPRESSLY DISCLAIMS THE SAME.

Lessee acknowledges and agrees that it has engaged a licensed engineer to develop the Building Loads, and that Lessee assumes all risk of the Building Loads being inadequate to heat or cool the Building. LESSOR MAKES NO WARRANTY THAT THE EQUIPMENT WILL BE SUFFICIENT TO PROVIDE ADEQUATE HEATING OR COOLING FOR THE

BUILDING AND EXPRESSLY DISCLAIMS THE SAME.

8. Obligation to Pay Rent Unconditional. This Lease is a net lease and Lessee acknowledges and agrees that Lessee's obligation to pay all rent and other sums payable hereunder, and the rights of Lessor in and to such payments, shall be absolute and unconditional and shall not be subject to any abatement, reduction, setoff, defense, counterclaim or recoupment due or alleged to be due to, or by reason of, any past, present or future claims which Lessee may have against Lessor, the manufacturer of the Equipment, or against any person for any reason whatsoever.

9. Installation, Maintenance and Repair. Lessor shall be solely responsible, at its own expense, for the delivery, installation, maintenance and repair of the Equipment, and shall keep the Equipment in good repair, condition and working order, and shall furnish any and all parts, mechanisms and devices required to keep the Equipment in good repair, condition and working order, at the expense of Lessor. Lessor shall have full access to the Equipment at the Property at all times for all purposes, including without limitation repair and maintenance.

10. Protection of Equipment and Well Field. Lessee shall protect the Equipment and assure that no other installations are made in the locations of the well field depicted on the Drawing which would damage or interfere with the operation of the Equipment. Lessee shall repair any damage to the Equipment caused by its representatives, agents and Unit owners. Lessee shall give Lessor not less than 72 hours written notice prior to commencing any excavation activities in the are of the well field, and shall coordinate any such activities in a order to protect the Equipment and avoid any damage thereto.

11. Representations and Warranties.

(a) Lessor represents and warrants for the benefit of Lessee that Lessor owns, and has title, or will own and have title, to the Equipment free and clear of all liens, encumbrances, mortgages and other security interests other than the security interest granted to Lessor's lender (the "Permitted Liens").

(b) Lessee represents and warrants for the benefit of Lessor, and, if requested by Lessor, will provide supporting documents to the effect that:

(i) Lessee is a corporation validly existing and in good standing under the laws of the State of Ohio, is duly qualified and in good standing in the jurisdiction(s) where the Equipment will be located and has adequate corporate power to enter into and perform this Lease. Upon assignment of this Lease to the Association as contemplated by Section 21 below, said Association shall be a non-profit corporation validly existing and in good standing under the laws of the State of Ohio.

(ii) This Lease has been duly authorized, executed and delivered by Lessee and constitutes a valid, legal and binding agreement of Lessee, and enforceable in accordance with its terms.

(iii) The entering into and performance of this Lease will not violate any judgment, order, law or regulation applicable to Lessee or any provision of Lessee's Articles of Incorporation or By-Laws or result in any breach of, or constitute a default under, or result in the creation of, any lien, charge, security interest or other encumbrance upon any assets of Lessee or on the Equipment pursuant to any instrument to which Lessee is a party or by which it or its assets may be bound.

12. Loss and Damage. Lessee hereby assumes and shall bear the entire risk of loss and damage, whether or not insured against, of the Equipment from any and every cause whatsoever from the date of installation of the Equipment in Lessee's facilities. No loss or damage to the Equipment or any part thereof shall impair any obligation of Lessee under this Lease, which shall continue in full force and effect. In the event of loss or damage of any kind to any item of Equipment, Lessee, at Lessee's option, shall:

(a) Place the same in good repair, condition and working order to the satisfaction of Lessor within 90 days of such loss or damage; or

(b) Replace the same with similar property in good repair, condition and working order to the satisfaction of Lessor within 90 days of such loss or damage; or

(c) Pay Lessor therefor in cash the Stipulated Value (as defined in Section 25 hereof) of the Equipment, and upon such payment this Lease shall terminate with respect to such item of Equipment. The foregoing notwithstanding, this option (c) shall not be available prior to the Option Period specified in Section 25 below.

13. Insurance. Lessee, at its own expense, shall insure the Equipment against all risks and in such amounts as Lessor shall reasonably require (but not less than the initial Stipulated Value). Lessee shall furnish to Lessor upon request a copy of insurance policies.

14. Indemnity. Lessee hereby indemnifies Lessor against and holds harmless from, any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including attorneys' fees, arising out of, connected with or resulting from the connection of the Lessee or Lessee's designates or assigns equipment, namely heat pumps to the main loop system. The connected Lessees' equipment without limitation, the manufacture, selection, purchase, delivery, possession, condition, use or return thereof is included.

15. Taxes. Lessee shall keep the Equipment free and clear of all levies, liens and encumbrances (other than Permitted Liens) and shall declare and pay all license fees, registration fees, assessments, charges and taxes, whether municipal, state or federal, including, but not limited to, sales, commercial activity, use, excise, and property taxes, and penalties and interest with respect thereto, except and excluding, however, any taxes based on or measured solely by Lessor's net income.

16. Lessee's Failure to Pay Taxes, Insurance, Etc. Should Lessee fail to make any payment or do any act as herein provided, Lessor shall have the right, but not the obligation and

without releasing Lessee from any obligation hereunder, to make or do the same, and to pay, purchase, contest or compromise any encumbrance, charge or lien which in the judgment of Lessor appears to affect the Equipment, and in exercising any such right, incur any liability and expend whatever amounts in its absolute discretion it may deem necessary therefor. All sums so incurred or expended by Lessor shall be without demand immediately due and payable by Lessee and shall bear interest at a rate of 15% per annum or the highest interest rate legally permissible in the State of Ohio, whichever is less.

17. Equipment Is Personal Property. Lessee covenants and agrees that the Equipment is, and shall at all times be and remain, personal property. Lessee will not move any Equipment nor permit any Equipment to be moved from the Property.

18. Designation of Ownership. If at any time during the term hereof Lessor supplies Lessee with labels, plates or other markings stating that the Equipment is owned by Lessor, Lessee shall affix and keep the same upon a prominent place on the Equipment. Lessee agrees to execute Uniform Commercial Code financing statements and any and all other instruments necessary to perfect Lessor's interest in this Lease, the payments due hereunder and the Equipment. Lessor may file a copy of this Lease as a financing statement.

19. Use. Lessee shall use the Equipment in a careful and proper manner and shall comply with and conform to all federal, state, municipal and other laws, ordinances and regulations in any way relating to the possession, use or maintenance of the Equipment.

20. Surrender Removal of Equipment. Upon the expiration or termination of this Lease, unless Lessee has purchased the Equipment as provided in Section 25 hereof, Lessor may remove the Equipment from the Property or abandon all or part of the same in place. Lessee shall return the same to Lessor in good repair, condition and working order, ordinary wear and tear resulting from proper use thereof alone excepted, at the Property. Lessor shall not be obligated to repair any holes left by the removal of the Equipment.

21. Assignment and Sublease. Without the prior written consent of Lessor, Lessee shall not (a) assign, transfer, pledge or hypothecate this Lease, the Equipment or any part thereof, or any interest therein, or (b) permit the Equipment or any part thereof to be used by anyone other than Lessee or Lessee's employees; provided, however, that upon giving prior written notice thereof to Lessor, Lessee may assign its rights hereunder to any other party with the prior written consent of Lessor, which consent shall not be unreasonably withheld, provided such assignment shall not relieve Lessee of any of its obligations hereunder. Any assignment, transfer, pledge or hypothecation for which consent is required hereby and which is made without such consent shall be void.

The foregoing notwithstanding, Lessor may assign this Lease to the Association upon its formation and assumption of operation of the Property. Such assignment shall not relieve the original Lessee from any liability for Rent or other amounts due for periods prior to such assignment. Upon assignment of this Lease to the Association, the Association shall sign all such confirmations and/or agreements to be bound hereby as the Lessor may reasonably request.

22. Default. The occurrence of any of the following events shall, at the option of the Lessor, terminate this Lease and Lessee's right to possession of the Equipment.

(a) The nonpayment by Lessee of rent or any other sum required hereunder to be paid by Lessee.

(b) The default by Lessee under any other term, covenant or condition of this Lease which is not cured within 10 days after notice therefor from Lessor.

(c) Any affirmative act of insolvency by Lessee, or the filing by Lessee of any petition or action under any bankruptcy, reorganization, insolvency or moratorium law, or any other law or laws for the relief of, or relating to, debtors.

(d) The filing of any involuntary petition under any bankruptcy statute against Lessee which is not dismissed within 60 days thereafter, or the appointment of any receiver or trustee to take possession of the properties of Lessee, unless such petition or appointment is set aside or withdrawn or ceases to be in effect within 60 days from the date of said filing or appointment.

(e) The subjection of a substantial part of Lessee's property or any part of the Equipment to any levy, seizure, assignment or sale for or by any creditor or governmental agency.

Upon the happening of any of the above events, (x) Lessee shall, without demand, forthwith pay to Lessor an amount equal to the Stipulated Value (as defined in Section 25 below) of the Equipment, and (y) Lessor may, without notice to or demand upon Lessee:

(i) Take possession of the Equipment and lease the same or any portion thereof, for such period, rental and to such persons as Lessor shall elect and apply the proceeds of any such renting, after deducting all costs and expenses incurred in connection with the recovery, repair, storage and renting of the Equipment, in payment of the rent and other obligations due from Lessee to Lessor hereunder, Lessee remaining responsible for any deficiency.

(ii) Take possession of the Equipment and sell the same or any portion thereof at public or private sale and without demand or notice of intention to sell, and apply the proceeds of any such sale, after deducting all costs and expenses incurred in connection with the recovery, repair, storage and sale of the Equipment and any rentals and other obligations of Lessee then due hereunder, against the Stipulated Value of the Equipment sold.

(iii) Take possession of the Equipment and hold and keep the same or any portion thereof.

No remedy referred to in this Section 22 is intended to be exclusive but each shall be cumulative and in addition to any other remedy above or otherwise available to Lessor at law in equity.

23. Investment Tax Credit. Lessor and Lessee hereby agree and acknowledge that any and all investment tax credit (as that term is defined and specified in the Internal Revenue Code) or other tax incentives attributable to and resulting from any of the Equipment shall be received by and allocated to the Lessor.

24. Option to Renew. Lessee shall have the right to renew the term of this Lease for four (4) additional five (5) year periods. Lessee must submit a written notice of renewal to Lessor at least 180 days before the expiration of the then current term of this Lease. If so renewed, this Lease shall continue for such renewal term, upon the terms and conditions set forth herein.

25. Option to Purchase. At any time on or after November 1, 2008 and during the term hereof and any extension thereof (the "Option Period"), and so long as Lessee is not in default hereof, Lessee shall have an option to purchase the Equipment upon the following terms and conditions:

(a) Lessee's option to purchase may be exercised by delivering written notice to Lessor at any time during the Option Period.

(b) The purchase price shall be as provided for in the following table:

<u>Period</u>	<u>Purchase Price</u>
11/01/2008 to 10/31/2009	\$370,000
11/01/2009 to 10/31/2010	\$340,000
11/01/2010 to 10/31/2011	\$300,000
11/01/2011 to 10/31/2012	\$260,000
11/01/2012 to 10/31/2013	\$215,000
11/01/2013 to 10/31/2014	\$170,000
11/01/2014 to 10/31/2015	\$120,000
11/01/2015 to 10/31/2016	\$60,000
After 10/31/2016	\$1

The respective amounts set forth above shall be referenced herein as the "Stipulated Value." Prior to the commencement of the Option Period, the Stipulated Value of the Equipment shall be \$480,000.

(c) In the event Lessee exercises its option to purchase, the closing of the purchase shall occur within 60 days after Lessor's receipt of notice of the exercise of such option unless such closing shall be delayed by mutual agreement of Lessor and Lessee. Rentals and other charges shall continue to be paid through and shall be prorated as of the closing date.

(d) If Lessee exercises its option to purchase, Lessor shall convey good and marketable title to the Equipment to Lessee by bill of sale free and clear of all liens other encumbrances. Lessor shall also assign any remaining warranty rights from vendors with

regard to the Equipment to the extent the same may be assigned.

(e) After closing, and from time to time as reasonably requested by Lessee, and without further expense to Lessee, Lessor shall execute and deliver such instruments of conveyance and transfer and take such other action so as to more effectively sell, transfer and vest in Lessee title to and possession of the Equipment or otherwise to consummate the transaction contemplated hereby.

26. Memorandum of Lease; Financing Statement. The parties agree to execute and record an appropriate memorandum of lease, a UCC financing statement and/or other document or documents as shall be deemed appropriate by Lessor to evidence and protect Lessor's title to the Equipment. Any such document shall acknowledge that the same is a condensation of this Lease, that this Lease is the agreement between the parties, and any difference between this Lease and such other document are to be resolved by this Lease and the language hereof.

27. Miscellaneous.

(a) Notices. Any notice required or permitted to be given by the provisions hereof shall be conclusively deemed to have been received by a party hereto on the day it is delivered to such party at the address indicated below (or at such other address as such party shall specify to the other party in writing) or, if sent by registered mail, on the third business day after the day on which mailed, addressed to such party at such address:

if to Lessor, at

Testa Enterprises, Inc.
2335 Second Street
Suite A
Cuyahoga Falls, Ohio 44321

if to Lessee, at

Wellfin, LLC
c/o John A. Turley
400 East Cuyahoga Falls Avenue
P.O. Box 4894
Akron, Ohio 44310

(b) Effect of Waiver. No delay or omission to exercise any right or remedy accruing to Lessor upon any breach or default of Lessee shall impair any such remedy or be construed to be a waiver of any such breach or default; nor shall any waiver of any single breach or default be deemed a waiver of any other breach or default theretofore or thereafter occurring. Any waiver, permit, consent or approval on the part of Lessor of any breach or default under this Lease, or of any provision or condition hereof, must be in writing and shall be effective only to the extent in such writing specifically set forth. All remedies, either under this Lease or by law or otherwise afforded to Lessor, shall be cumulative and not alternate.

(c) Attorneys' Fees. In the event of any action at law or suit in equity in relation to this Lease, the prevailing party shall be entitled to a reasonable sum for its

attorneys' fees.

(d) Applicable Law. This lease shall be governed by, and construed in accordance with, the laws of the State of Ohio.

(e) Counterparts. The single executed original of this Lease marked "Original" shall be the "Original" and all other counterparts hereof shall be marked and be "Duplicates". To the extent, if any, that this Lease constitutes chattel paper (as such term is defined in the Uniform Commercial Code as in effect in any applicable jurisdiction) no security interest in this Lease may be created through the transfer or possession of any counterpart other than the "Original". Although this Lease is dated as of the date first above written for convenience, the actual date or dates of execution hereof by the parties hereto is or are, respectively, the date or dates set forth opposite the signatures hereto and this Lease shall be effective on the latest of such dates.

(f) Suspension of Obligations of Lessor. The obligations of Lessor hereunder shall be suspended to the extent that it is hindered or prevented from complying therewith because of labor disturbances, including strikes and lockouts, acts of God, fires, storms, accidents, failure of the manufacturer to deliver any unit of Equipment, governmental regulations or interference or any cause whatsoever not within the sole control of Lessor.

IN WITNESS WHEREOF, Lessor and Lessee have caused this Lease to be duly executed as of the date first above written.

LESSOR:
WELLFIN, LLC

By: _____
Its: _____

LESSEE:
TESTA ENTERPRISES, INC. Or Its Assigns

By: _____
Its: _____

EXHIBIT A

Legal Description of Property

Situated in the City of Akron, County of Summit, State of Ohio, and being all of Sublot 1, and part of Sublots 2, 4 and 5 of the King's Allotment, as recorded in Plat Book 1, Page 46 of the Summit County Records, and more fully described as follows, to wit:

Beginning at a 1 – inch pin found in a monument box at the centerline intersection of Ridge Street (50-foot width) and High Street (66-foot width); thence North 72 degrees 46 minutes and 48 seconds West, along the centerline of said Ridge Street, a distance of 245.05 feet to a point; thence South 17 degrees 13 minutes 12 seconds West, a distance of 25.00 feet to a MAG nail set on the southerly line of said Ridge Street; thence North 72 degrees 46 minutes 48 seconds West along the said southerly line of Ridge Street a distance of 89.74 feet to a 5/8-inch rebar with cap to be set; thence South 05 degrees 55 minutes 23 seconds West a distance of 21.91 feet to a 5/8-inch rebar cap to be set on the northerly right of way line of Furnace Street (66-foot width); thence North 72 degrees 46 minutes 25 seconds West, along the said northerly line of Furnace Street, a distance of 48.64 feet to a 5/8-inch rebar with cap to be set and the True Point of Beginning;

Thence North 72 degrees 46 minutes 25 seconds West, along the said northerly line of Furnace Street a distance of 248.30 feet to a point on the easterly line of Howard Street (variable width), and the southwesterly corner of a perpetual easement conveyed to the City of Akron by Reception No. 55219147 of the Summit County Records, said point witnessed by a rebar set which bears South 72 degrees 46 minutes 25 seconds East at a distance of 18.88 feet.

Thence North 05 degrees 28 minutes 26 seconds East, along said easterly line of Howard Street and the westerly line of the said perpetual easement, a distance of 72.68 feet to a point, said point witnessed by a rebar to be set on the easterly line of said perpetual easement which bears South 84 degrees 31 minutes 34 seconds East at a distance of 10.77 feet;

Thence South 84 degrees 31 minutes 34 seconds East a distance of 46.80 feet to a 5/8-inch rebar with cap to be set;

Thence South 72 degrees 46 minutes 48 seconds East a distance of 205.93 feet to a 5/8-inch rebar with cap to be set;

Thence South 17 degrees 13 minutes 12 seconds West a distance of 38.00 feet to a 5/8-inch rebar with cap to be set;

Thence South 72 degrees 46 minutes 48 seconds East a distance of 11.33 feet to a 5/8-inch rebar with cap to be set;

Thence South 17 degrees 12 minutes 31 seconds West a distance of 42.72 feet to the True Place of Beginning.

The above parcel contains an area of 20,056.2 square feet, or 0.4604 acres, of which 0.015 acres are in the public right-of-way, as surveyed by Joseph A. Corall, Ohio Professional Surveyor number 6911 of Campbell & Associates of Cuyahoga Falls, Ohio in September of 2005, and is subject to all easements and right-of-ways of public record or as otherwise legally established.

The basis of bearings for this survey is the State Plane Coordinate System, North Zone as established in a survey by the city of Akron date December, 2002. All rebars set or to be set are 5/8-inch bars with caps inscribed "CAMPBELL & ASSOCIATES".

EXHIBIT B

Equipment List

The Geothermal Wellfield is a closed ground source heat exchanger comprised of the following components:

- (39) 1 ¼" PE3408 SDR-11 High Density Polyethylene (HDPE) vertical heat exchangers installed in an approximately 5.75" diameter x 500' deep boreholes grouted from bottom to top with 1.2 Thermal Conductivity (TC) grout.
- (1) 1 ¼" PE3408 SDR-11 HDPE vertical heat exchanger installed in an approximately 5.75" diameter x 400' deep borehole grouted from bottom to top with 1.2 TC grout.
- 3" SDR 15.5 HDPE horizontal mains connecting boreholes described above in (5) circuits of (8) holes each. Horizontal mains will terminate at 6" headers inside precast concrete valve vault buried at location as shown on as-built drawing. Horizontal mains are buried approximately 4 ½ ' below grade to top of pipe. Geothermal marker tape is buried approximately 3' above the top of horizontal piping.
- Precast concrete valve vault consisting of (1) 6" HDPE supply manifold and (1) 6" HDPE return manifold, (1) sump pump, and pipe, fittings, valves, and accessories necessary to isolate and balance the (5) circuits.
- 3 M electronic marker balls buried approximately 3' above each vertical borehole and periodically above 6" supply and return mains between the valve vault and the building.
- (1) 6" SDR 15.5 HDPE supply and (1) SDR 15.5 HDPE return main originating in the vault and terminating inside the building at 6" flanges.
- Monitoring controls located in the lessee's mechanical equipment room, that measure and record various performance characteristics of the wellfield including flow, temperature, pressure, and antifreeze concentration and will calculate information such as BTUs transferred. The information recorded by these controls will be accessible via an internet connection.

EXHIBIT C

Drawing

EXHIBIT D

Interior System

Interior Items to be Inspected and Maintained by Lessor:

- Geothermal water circulating pumps
- Variable Frequency Drives
- Glycol fill station
- Lessor owned monitoring equipment

EXHIBIT E

Building Loads

Heat Pump Monthly Loads

Month	Total Heating <u>1000 Btu</u>	Total Cooling <u>1000 Btu</u>	Peak Heating <u>1000 Btu/Hr</u>	Peak Cooling <u>1000 Btu/Hr</u>
January	267644.00	0.00	1017.71	570.87
February	238587.00	0.00	1005.93	463.78
March	133110.00	3138.00	1001.06	437.34
April	9911.00	14635.00	293.34	516.14
May	0.00	127341.00	0.00	1094.73
June	0.00	267783.00	0.00	1335.73
July	0.00	350116.00	0.00	1395.21
August	0.00	278137.00	0.00	1349.50
September	0.00	155924.00	0.00	1285.07
October	18576.00	35486.00	365.41	923.75
November	65015.00	12979.00	541.25	736.49
December	204717.00	0.00	1003.42	613.04

Revision to Geothermal Equipment Lease

____ February, 2006

Between

Wellfin, LLC (Lessor)

And

_____ (Lessee)

Revise and replace paragraph 14 on page 5 of the subject lease as follows:

14. Indemnity. Lessee hereby indemnify Lessor against and hold harmless from, any and all claims, actions, suits, proceedings, costs, expenses, damages and liabilities, including attorneys' fees, arising out of, connected with or resulting from the connection of the Lessee or Lessee's designates or assigns equipment, namely heat pumps to the main loop system. The connected Lessees' equipment without limitation, the manufacture, selection, purchase, delivery, possession, condition, use or return thereof is included

Approved Revision:

Lessor:



Lessee:

EXHIBIT D

ENCUMBRANCES, LIENS AND MATTER OF TITLE

EXHIBIT E
WARRANTY DEED

DO NOT WRITE ABOVE THIS LINE

GENERAL WARRANTY DEED
(ORC SECTIONS 5302.05 AND 5302.06)

Testa Enterprises, Inc., an Ohio corporation ("Grantor"), for valuable consideration paid,
grants, with General Warranty Covenants, to

("Grantee"), whose tax mailing address will be _____,
the following real property:

Situated in the City of Akron, County of Summit and State of Ohio
and known as being Unit No. _____ and Commercial Parking
Unit No(s). _____ of Northside Lofts Condominium I,
together with the undivided percentage interest in the Common
Elements pertaining thereto, as established by the Drawings,
Declaration and By-Laws of said Condominium recorded on
_____, 2007 as Reception No.
_____ of Summit County Records and
amendments thereto.

Known as: _____

PPN: _____

Account No.: _____

Together with and subject to all the rights, duties, easements, reservations, limitations,
rights-of-way, conditions and restrictions contained in the Declaration, amendments thereto,
Drawings and By-Laws referred to above and incorporated herein as though fully rewritten, and
Chapter 5311 of the Ohio Revised Code, as the same may be amended from time to time.

The real property described above is conveyed subject to the following exceptions: zoning
ordinances, real estate taxes and assessments, both general and special, which are a lien but not yet
due and payable, all legal highways, and reservations, restrictions, and conditions of record.

Prior Instrument Reference:

Reception Number _____, Summit County, Ohio, Official Records.

IN WITNESS WHEREOF, Grantor has set its hand this ____ day of _____, 2007.

TESTA ENTERPRISES, INC.

By: _____
Print Name: _____
Title: _____

STATE OF OHIO)
) SS.
COUNTY OF SUMMIT)

Before me, a Notary Public in and for said County and State, appeared the above-named _____, the _____ of Testa Enterprises, Inc, an Ohio corporation, who being duly authorized acknowledged that he did sign the foregoing and that the same is his free act and deed and that of the Company.

IN WITNESS WHEREOF, I have set my hand and seal at _____, Ohio, this ____ day of _____, 2007.

This instrument prepared by:
David J. Lindner, Esq.
Buckingham Doolittle & Burroughs, LLP
1375 E. 9th Street, Suite 1700
Cleveland, Ohio 44114

NORTHSIDE LOFTS CONDOMINIUM – “CODE OF CONDUCT”

Building Security:

Residents may not provide access to the building to anyone not visiting them. If someone is visiting another resident, that individual is responsible for letting them in. Exterior doors should never be left propped open unless the resident is directly on the scene to monitor.

Elevator Usage:

Use the elevator properly to avoid causing damage. If you have large or bulk items that you will be moving in or out of the building you will need to contact the maintenance office (330.928.7798) to reserve the elevator and schedule padding to be installed. Report any operational or unlawful uses of the building equipment directly to the building manager.

Elevator & Hallways:

If any spill occurs the resident must clean this up immediately. If a spill has occurred that requires special attention please contact the maintenance hot line to schedule a professional cleaning.

Pets

Pets per City of Akron law must be on leashes and all droppings are required to be picked up by the pet's owner.

- Dogs are not permitted to damage, deface or deposit waste on public or private property. The dog owner is responsible for the removal and proper disposal of all waste. *Sec. 92.13*
- When a dog is off its owner's property the dog must be restrained by a leash and under control at all times. *Sec. 92.25 (B 1)*

Avoidance of Fire Hazards:

No barbecue grills shall be used or stored on the premises that operate with any flammable material, such as charcoal, propane or any flammable product. City of Akron law prohibits any open flame on our patios/terraces and within 10 feet of a multistory structure.

Trash Chute and Dumpster Use:

All trash dropped down the chute must be in a closed bag. Anything too large to go down the chute must be discarded by the resident in the dumpsters outside the garage entrance to P2. Cardboard boxes must be “broken down” and “folded flat” and placed in the dumpster. **NO GARBAGE, TRASH, CARDBOARD OR ANYTHING IS TO BE PLACED IN THE TRASH ROOM.** The trash hauler will not take items that are set around the dumpster. If your item is too large to fit into the dumpster, it must be broken down to fit inside or you must dispose of it yourself in some other way. The cart in each trash room is for common use – please clean the cart of any mess you make and return the cart immediately after use so that it is available for another resident.

Parking

Park only in your own space or in a space to which you have permission to use. There are no “OPEN SPACES” for common use in P1 & P2. Testa has spaces for sale or lease in P1 & P2. Public parking lot is available on Furnace Street and is available to residents 24/7.

Storage

Storage is permitted in front of an owned or assigned parking space. All items **MUST** be stored in a locked container or a fenced partition (which requires prior written approval by the Board). Loose items may not be stored in or around a parking space.

Lobby Entrance / Mail Room

Delivered packages and newspapers left in the lobby are to be removed within 48 hours. If you are not going to be home, please make arrangements for your packages and/or newspapers to be removed by someone else of your choosing.

Quiet Time

Out of consideration to other residents, please observe "quiet time" from 10:00PM to 8AM.