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NAPA BOULEVARD EXTENSION SUBDIVISION NO. 1
(SINGLE FAMILY HOME SUBDIVISION)

CITY OF AVON
LORAIN COUNTY
STATE OF OHIO

DECLARATION OF
COVENANTS, CONDITIONS AND RESTRICTIONS
FOR NAPA BOULEVARD SUBDIVISION
(SINGLE FAMILY HOME SUBDIVISION)

NO TRANSFER NECESSARY
MARK R. STEWART
LORAIN COUNTY AUDITOR
McCollahan 3/31/07
DEPUTY

**DECLARATION
OF COVENANTS, CONDITIONS, AND RESTRICTIONS
FOR
NAPA BOULEVARD EXTENSION SUBDIVISION NO. 1
(SINGLE FAMILY HOME SUBDIVISION)**

THIS DECLARATION is made on the date hereinafter set forth by Gamellia Homes Inc., an Ohio corporation, hereinafter referred to as "Declarant".

WITNESSETH: That,

WHEREAS, Declarant is the owner of that certain real property in the City of Avon, Lorain County, Ohio, which is more particularly described on Exhibit A, attached hereto and made a part hereof (the "Properties"); and

WHEREAS, Declarant intends to develop a residential community known as Napa Boulevard Subdivision as shown on Exhibit B attached hereto and made a part hereof;

NOW, THEREFORE, Declarant hereby declares that all of the real estate described on Exhibit A and such additional portions of any larger tract as may be added thereto pursuant to this Declaration shall be held, sold, and conveyed subject to the terms, covenants and restrictions stated herein, which are for the purpose of protecting the value and desirability of, and which shall run with the title to, the real estate and be binding on and inure to the benefit of all parties having any right, title, or interest in such real estate or any part thereof, and their heirs, personal representatives, successors, and assigns.

**ARTICLE I
DEFINITIONS**

Section 1. "Articles" shall mean and refer to the Articles of Incorporation of the Association, including any and all amendments or modifications to those Articles.

Section 2. "Association" shall mean and refer to Napa Boulevard Extension Subdivision No. 1 Homeowners Association Inc., its successors and assigns.

Section 3. "Block" shall mean and refer to any part of the Properties so designated by the Declarant on a recorded plat or in a supplemental instrument adding a portion of such larger tract to this Declaration.

Section 4. "Board of Trustees" shall mean and refer to the Association's Board of Trustees.

Section 5. "Builder" shall mean Gamellia Homes Inc., an Ohio corporation and/or Gamellia Construction Inc., an Ohio corporation, and their respective successors and assigns or designees or its designee.

Section 6. "By-Laws" shall mean and refer to the By-Laws of the Association, including any and all amendments or modifications to those By-Laws.

Section 7. "City" shall mean and refer to the City of Avon.

Section 8. "Common Area" shall mean the private streets located within the Properties, entrance areas, drainage, retention, open space areas now or hereafter designated or created within the Properties described on Exhibit A, real and personal property not owned by the Association but determined by the Board to be the responsibility of the Association, all areas (if any) which, by contract, the Association is responsible to repair, replace or maintain, and all other real property (including the improvements thereto) owned or leased by the Association for the common use and enjoyment of the Owners.

Section 9. "Declarant", for the purpose of this Declaration and the powers, rights, and authorities granted to the Declarant herein, shall mean and refer to not only Gamellia Homes Inc., an Ohio corporation, but also to any successor, alternate, or additional Declarant appointed by Gamellia Homes Inc., as a successor, alternate, or additional Declarant, by an instrument in writing, specifically setting forth that such successor, alternate, or additional Declarant is to have together with or in lieu of Gamellia Homes Inc. the Declarant's rights, duties, obligations, and responsibilities, in whole or in part, for all or any portion of the "Properties".

The term "Declarant" shall not include any person or party who purchases a Lot from Declarant, unless such purchaser is specifically assigned, by a separate recorded instrument, some or all of the Declarant's rights, duties, obligations, or responsibilities under this Declaration with regard to the property conveyed.

Section 10. "Developer" shall mean and refer to Gamellia Construction Inc., its successors and assigns, and an individual or entity to whom or to which Gamellia Construction Inc. or a successor developer, at any time or from time to time assigns or conveys all or any portion of the rights and/or obligations of the Developer hereunder.

Section 11. "Development Period" shall extend from the date of execution of these Declarations and shall continue so long as Developer owns any Lot within the Properties.

Section 12. "Lot" shall mean and refer to any Lot of land shown upon any recorded subdivision map or plat of the Properties with the exception of Common Area or Areas and areas designated on a recorded plat as a "Block". The Lots may be vacant land or contain detached residential structures. Lots are sometimes referred to as "Units" and the terms are interchangeable.

Section 13. "Owner" shall mean and refer to the record Owner, whether one (1) or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including, without limitation, Builder and contract sellers, but excluding those having such interest merely as security for the performance of an obligation.

Section 14. "Properties" shall mean and refer to all of the real estate described on Exhibit A, and such additions thereto as may hereafter be brought within the jurisdiction of the Association and be made subject to this Declaration by recorded supplemental instrument.

Section 15. "Stormwater management system" means a system which is designated and constructed to control discharge which are necessitated by rainfall events, incorporating methods to collect, convey, store, absorb, inhibit, treat, use, or reuse water to prevent or reduce flooding, overdrainage, environmental degradation and water pollution or otherwise affect the quantity and quality of discharges from the system as permitted.

**ARTICLE II
PURPOSES AND RESTRICTIONS ON THE USE OF
LOTS AND COMMON PROPERTY**

Section 1. Operation, Maintenance and Repair of Common Area and Other Areas. The Declarant, in order to ensure that the Common Area will continue to be maintained in a manner that will contribute to the comfort and enjoyment of the Owners and provide for other matters of concern to them, has organized the Association. The purpose of the Association shall be to operate, maintain, and repair the Common Area, including, but not limited to, roadways and retention areas, and any improvements thereon, to maintain decorative entranceway(s) to the Properties and other features within the Properties which are designated by the Board of Trustees, to pay for the costs of street lighting for the Common Area, and to take such other action as the Association is authorized to take with regard to the Properties pursuant to its Articles of Incorporation, By-Laws, or this Declaration and with regard to any other areas as designated by the Board of Trustees. The Association as directed by the Board of Trustees may maintain other areas which are not Common Area if it is determined by the Board of Trustees to be in the best interests of the residents of Napa Boulevard Extension Subdivision No. 1. The Association shall operate, maintain, and repair areas designated by Declarant as Common Areas, whether or not title to those areas has been formally conveyed to the Association. The costs may be paid from the general fund of the Association or may be part of the annual assessment or a special assessment as determined by the Board and assessed in accordance with Article VII hereof.

Section 2. Expansion of the Common Area. Additions to the Common Area may be made in accordance with the terms of Article VIII, which provides for additions to the Properties as therein more particularly described. The Declarant shall not be obligated, however, to make any such additions. The Declarant has the right, but not the obligation, to add improvements to the Common Area; provided that such improvements do not reduce the size of the Common Area to less than the area required by the City as of the date of this Declaration.

Section 3. Use of Common Areas and Facilities. No persons shall use the Common Areas or any part thereof in any manner contrary to or not in accordance with this Declaration or the rules pertaining thereto. Without limiting the generality of the foregoing, the Association shall have the right, but not the obligation, to promulgate rules governing the use of the Common Areas and facilities by unit owners and occupants of their respective families, tenants, guests, invitees and servants.

Section 4. Maintenance.

A. The Association, at its expense, shall maintain, repair and replace the Common Area and Common Area Facilities and all islands located within public Rights-of-Way.

1. **Responsibilities.** The Association shall be responsible for the exclusive management and control of the Common Area, and shall keep the same in good, clean, and proper condition, order, and repair. The Association shall also maintain and care for the other land designated in this Article II in the manner required by this Declaration. The Association shall be responsible for the payment of all costs, charges, and expenses incurred in connection with the operation, administration, and management of the Common Area, and performance of its other obligations hereunder. The Association shall operate and maintain areas designated by Declarant as Common Area, regardless whether those areas have been conveyed to the Association. The Board may delegate all or any portion of its authority to discharge such responsibility to one (1) or more independent contractors or to a managing agent, provided that no contract for such services shall provide for a term in excess of one (1) year (which contract may, however, be renewed by action of the Board). So long as Declarant operates the Association and appoints or elects the Trustees of the Association, it shall be entitled to charge a

management fee for maintenance, repairs and replacement of Common Areas and facilities as provided herein.

2. Notwithstanding any contrary provision of this Declaration, the Association shall repair, replace and maintain any and all rear yard storm drains, including keeping said drains reasonably free from clutter and/or debris to ensure the free flow of storm water.

3. Notwithstanding any contrary provision of this Declaration, the Association shall repair, replace and maintain any and all landscape islands within the public Rights-of-Way within the Properties as referenced in Article I, Section 8 of this Declaration.

4. Manager. The Association may obtain, employ, and pay for the services of an entity or person (hereinafter called the "Manager") to assist in managing its affairs and carrying out its responsibilities hereunder to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable, whether such personnel are engaged, furnished, or employed directly by the Association or the Manager. The Association may enter into a Management Agreement for management services with any management entity as the Board of Trustees deems appropriate or necessary.

5. Personal Property for Common Use. The Association may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise, subject to such restrictions, if any, as may from time to time be provided in the Association's Articles or By-Laws.

6. Insurance. The Association at all times shall procure and maintain adequate policies of public liability and other insurance as it deems advisable or necessary and as provided in Article XII hereof. The Association additionally may cause all persons responsible for collecting and disbursing Association moneys to be insured or bonded with adequate fidelity insurance or bonds.

7. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, its Articles or By-Laws, or by law and every other right or privilege reasonably implied from the existence of any right or privilege granted herein or therein or reasonably necessary to effectuate the exercise of any right or privilege granted herein or therein.

B. The responsibility of each Owner shall be as follows:

1. to maintain, repair and replace at his expense: all portions of his Lot and Home, including the interior and exterior surfaces of floors, walls, ceilings, roof and all windows and doors (but the exterior appearance shall be subject to the rules of the Association);

2. to perform his responsibilities in such manner so as not to unreasonably disturb other Owners; and

3. not to impair or obstruct any easement without the prior written consents of the Association and of the Owner or Owners for whose benefit such easement exists.

Section 5. Repairs to Common Areas and Facilities and Owner's Acts. Each Owner shall maintain, repair and replace at his expense all portions of the Common Area and Common Area Facilities which may be damaged or destroyed by reason of his own or his occupant's act or neglect, or by the act or neglect of any tenant, guest, invitee or servant of such Owner or occupants.

Section 6. Construction Defects. The obligation of the Association and of Owners to repair, maintain and replace the portions of the Common Area and Common Area Facilities for which they are responsible shall not be limited, discharged, or postponed by reason of the fact that any maintenance, repair, or replacement may be necessary to cure any latent or patent defects in material or workmanship in the construction of the Common Area.

Section 7. Effect of Insurance or Construction Guarantees. Notwithstanding the fact that the Association and/or any Owner may be entitled to the benefit of any guarantees of material and workmanship furnished by any contractor or subcontractor responsible for any construction defects, or to benefits under any policies of insurance providing coverage for loss or damage for which they are respectively responsible, the existence of construction guarantees or insurance coverage shall not excuse any delay by the Association or any Owner in performing its or his obligations hereunder.

Section 8. Failure to Perform Maintenance. In the event any Owner fails to perform any of his maintenance obligations imposed hereunder or by law, the Association may, after thirty (30) days' notice to said Owner, perform said maintenance, and shall bill said Owner for the costs of said maintenance or repair and said costs shall be deemed to be an assessment against the Owner and the Owner's Lot and may be collected as provided in Article VII.

**ARTICLE III
PROPERTY RIGHTS**

Section 1. Owners' Easements of Enjoyment. Every Owner shall have a right and nonexclusive easement of enjoyment in and to the Common Area which shall be appurtenant to and shall pass with the title to every Lot, subject to the following provisions:

- A. the right of the Association from time to time in accordance with its By-Laws to establish, modify, amend, and rescind reasonable rules and regulations regarding use of the Common Area;
- B. the right of the Association to suspend the voting rights of, and right to use the Common Area by, an Owner for any period during which any assessment levied under this Declaration against the Owner's Lot remains unpaid and suspend such rights (for a period not to exceed sixty (60) days) for any infraction of its published rules and regulations;
- C. the right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority, or utility as provided by its Articles of this Declaration;
- D. the right of the Association to grant easements as to the Common Area or any part thereof as provided by its Articles;
- E. the right of the Association to otherwise deal with the Common Area as provided by its Articles;
- F. the right of the Association to open the Common Area and, including any recreational facilities for use by non-members of the Association, including the general public;

- G. subject to Article XI below, the right of the Association to sell, lease, or transfer all or any part of the Common Area that has been deeded to the Association to a third party other than Declarant or any Owner, as provided by its Articles; provided, however, that any sale, lease or transfer of any part of the Common Areas that has been deeded to the Association, shall require the approval of three-fourths (3/4) of each class of members. This paragraph may not be amended without the approval of three-fourths (3/4) of each class of members;
- H. the right of the Declarant to transfer or dedicate any portion of the Common Area to a governmental agency (including, but not limited to, the City) having jurisdiction thereof; and
- I. the right of the Declarant and its designees to use Common Area parking areas for parking by its employees and invitees.

Section 2. Declaration of Use. Any Owner may delegate such Owner's right of enjoyment of the Common Area and Common Area Facilities to such Owner's tenants who reside at or in the Owner's Lot, provided the Owner waives such Owner's use in writing.

Section 3. Prohibition of Certain Activities. No damage to, or waste of, the Common Area or any part thereof shall be committed by any Owner or any tenant or invitee of any Owner. No noxious, destructive, or offensive activity shall be permitted on or in the Common Area or any part thereof, nor shall anything be done thereon or therein which may be or may become an unreasonable annoyance or nuisance to any other Owner. No Owner may maintain, treat, landscape, sod, place, or erect any improvement or structure of any kind on any Common Area without the prior approval of the Board of Trustees. No Owner (except as provided in Article III, Section 14) shall keep or store upon any Lot, watercraft, recreational vehicle, or truck other than a pick-up truck, used for non-commercial purposes, or family van. No Owner shall cause or permit anything (including, without limitation, one (1) or more antenna, deck, patio, fence, outback building, storage shed, pool, hot tub, sprinkler system, or privacy fence) to be hung, displayed or otherwise affixed to or placed on the exterior wall or roof of any part thereof or the outside of windows or doors or upon Lot without the prior written consent of the Board of Trustees. An Owner, may, however, without such approval, install a deck, patio, hot tub, pool, storm door or other item as pre-approved by the Declarant and installed by the Declarant or Builder during the initial construction of the Home.

No noxious or offensive activity shall be carried on in any Home or in the Common Area and Common Area Facilities, nor shall anything be done therein, either willfully or negligently, which may or become an annoyance or nuisance to the other Owners or occupants.

No clothes, sheets, blankets, laundry of any kind or other articles shall be hung or exposed on any part of the Common Areas or a Lot, except in a patio court in such manner as not to be visible except from the Home to which the patio court is appurtenant. The Common Areas shall be kept free and clear of all rubbish, debris and other unsightly materials.

Not in limitation of any other prohibition, no electrified fences (whether above or below ground) or other pet control devices (herein called "Electric Fences") may be installed or maintained on any Lot, except in the portion of the Lot between the rear wall of the dwelling and the rear boundary of the Lot. The term "Electric Fences" shall include, but not be limited to, any fence or other appliance or improvements intended for the purposes of restraining animals or the demarcation of an area to which pets are or are not intended to be restricted. The Association shall have no responsibility

whatsoever with respect to the maintenance, repair or replacement of any Electric Fences, including, but not limited to, no obligation to repair or replace any Electric Fences or portions thereof damaged by any actions of the Association.

Notwithstanding any contrary provision of this Declaration, each Owner shall be solely and exclusively responsible for all repair, replacement and maintenance of the post lamp located within the Owner's Lot. Additionally, the Owner shall be similarly responsible for any lighting system on the exterior of the dwelling, including, but not limited to, photocell-operated lights affixed to a wall of the dwelling. No Owner shall permit any post lamp or exterior lighting to be inoperable for any more than fourteen (14) consecutive days.

Notwithstanding any contrary provision of this Declaration, each Owner shall be solely and exclusively responsible for all maintenance, repair and replacement of any irrigation system installed by the Owner (or a predecessor in title) within the Lot and any installation of said irrigation system on the Common Areas. The Association shall have no responsibility whatsoever with respect to said irrigation systems, including, but not limited to, no responsibility for any replacement or repair due to the activities of the Association. The foregoing provision shall not be deemed to authorize the installation or extension of an irrigation system on or into the Common Areas.

No industry, business, trade, occupation, garage sale, or profession of any kind, whether for commercial, religious, educational, charitable or other purposes shall be conducted, maintained, or permitted on any part of the Common Area or in or on any Lot except such as may be permitted by the ordinances of the City in effect at the time, and subject to the reasonable rules, and regulations promulgated by the Association, and subject to subsection E below, nor shall any "For Sale" or "For Rent" signs or other window displays or advertising be maintained or permitted by any Owner on any part of the Common Area Facilities or in or on any Lot, except that:

A. The Declarant or Builder may perform or cause to be performed such work as is incident to the completion of the development of the Common Area Facilities, or to the sale or lease of Lots owned by Declarant or Builder.

B. The Declarant or Builder or its agent may place "For Sale" or "For Rent" signs on any unsold or unoccupied Lots or Homes and may place such other signs on the Common Area as may be required to facilitate the sale or lease of unsold units.

C. The Association or an Owner may place "For Sale" or "For Rent" signs on any Lot or on the Common Area for the purpose of facilitating the disposal of units by any Lot Owner, mortgagee, or the Association except that no such signs may be placed or erected without the consent of the Declarant or the Builder as long as either owns a Lot located within the Properties.

D. An Owner with respect to a unit, and the Association or its agent or representative with respect to the Common Areas and Common Area Facilities, may perform or cause to be performed any maintenance repair, or remodeling work, or other work, required or permitted by this Declaration.

E. Subject to the reasonable rules and regulations promulgated by the Association, an Owner may conduct any business, trade, occupation or profession (the conduct of which does not violate the ordinances of the City); provided, however, that the business, trade, occupation or profession does not involve visits by business invitees (except for delivery personnel) to the homesite and does not involve any activities outside of the homesite and does not involve any activities (except for deliveries by the United States Postal Service or United Parcel Service, or Federal Express or similar delivery service)

or anything visible outside of the homesite and does not involve any sounds, vibrations or odors noticeable outside of the homesite.

Section 4. Animals. The Association shall promulgate reasonable rules and regulations to govern Owners' use of Common Area with respect to animals. No animals shall be permitted on or in the Common Area at any time except as may be provided in the rules and regulations of the Association. No animals or birds of any kind shall be raised, bred or kept in any Home or on the Common Areas, except that dogs, cats and other household pets may be kept in Homes, subject to the rules adopted by the Association, 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 disturbance shall be permanently removed from the Properties upon ten (10) days' written notice from the Association.

Section 5. Rules and Regulations. No Owner or other permitted user shall violate the reasonable rules and regulations promulgated for the use of the Common Area, as the same are from time to time adopted or amended or both by the Association.

Section 6. Title to Common Area. No later than the time the Declarant no longer exercises voting control over the Association as provided in Article V of this Declaration continuously for a period of one (1) year, the Declarant shall convey, and the Association shall accept, title to any Common Area subject to such easements, reservations, conditions, and restrictions as may then be of record. Declarant may convey, and the Association shall accept, title at any time prior to the time referred to in this Article III, Section 6, at Declarant's option.

Section 7. Zoning Code Compliance. Neither Declarant nor the Association shall revoke, modify or amend this Declaration in a manner that reduces the size of the Common Area to less than the area required by the City as of the date of this Declaration.

Section 8. Model Homes. Real estate brokers, the Builder, Owners, and their agents may show Lots for sale or lease. The Declarant, its agents and designated assigns, including the Builder, shall have the right to (1) use Lots, and improvements erected thereon for sales offices, field construction offices, storage facilities, and its own general business offices, (2) maintain fluorescent-lighted or spot-lighted model homes which are open to the public for inspection seven (7) days per week for such hours as the Declarant or Builder deems appropriate or necessary, (3) conduct any other activities on Lots to benefit sales efforts, and (4) use the parking facilities on the Common Area for its parking for its employees and invitees including the Builder.

Section 9. Use of Accessory Structures. Except for temporary tents for the celebration of receptions and parties, which shall be used in accordance with the rules of the Association, no tent, shack, barn, utility shed, or other building, other than a dwelling and its required garage, shall, at any time, be erected on a Lot and used temporarily or permanently as a residence or for any other purpose, except temporary buildings, offices, or facilities used by Declarant, Builder, or contractors, with the written approval of the Declarant; provided, however, that the consent referenced in this Article III, Section 9 shall not be required provided all accessory structures are consistent with the codified ordinances of the City of Avon. The Declarant (so long as the Declarant owns a Lot in the Development), or the Association (acting through the Architectural Review Committee ("ARC") as set forth in Article IV) may consent in writing to an Owner erecting a utility shed or barn no larger than 12 feet by 12 feet; provided, however, that the written consent of the Declarant or ARC shall not be required provided the utility shed or barn is consistent with the codified ordinances of the City of Avon.

Section 10. Maintenance of Improvements. Each Lot Owner shall maintain in good condition and repair all improvements constructed upon such Owner's Lot, including, without limitation,

the residential dwelling; provided, however, that any and all improvements constructed upon Owner's Lot shall be consistent with the codified ordinances of the City of Avon. No Owner shall change the exterior design or color of the dwelling on such Owner's Lot, including the roof thereof, without the prior written approval of the Board of Trustees of the Association or its ARC; provided, however, that an Owner may change the exterior design or color on such Owner's Lot, including the roof thereof, provided the change is consistent with the codified ordinances of the City of Avon.

Section 11. Nuisances. No noxious or offensive activity shall be carried on upon any Lot, nor shall anything be done thereon which may be or become an annoyance or nuisance to the neighborhood. No automobile or other vehicle mechanical repairs or like activity shall be conducted on any Lot other than in a garage and concealed from public view.

Section 12. Lawns. Each Lot on which there is a completed dwelling shall be maintained in a neat condition by the Owner thereof. In this context, the word "Lot" shall include that portion of the property from the outside of the structure on the applicable Lot to the adjacent paved road surface. The Owner shall regularly cut and fertilize the lawn area. "Neat" shall require, at a minimum, that the lawn be regularly cut and fertilized and that mulched areas be regularly re-mulched and kept weeded so that its appearance is in overall aesthetic harmony with the neighborhood. All improved Lots must have grassed lawns. No gravel or similar type lawns are permitted. No above ground swimming pools, tool sheds or shacks (other than as provided for in Section 9 above), dog or other animal pens or houses or the like, and no unsightly lawn furniture or decorations as determined by the ARC, in its sole discretion, shall be permitted on such lawn areas.

Section 13. Water Retention Areas. The Association will be responsible for maintaining the portions of the stormwater system which are within the Common Area, including the water quality and quantity standards of the approved plans to the extent required by law. A drainage easement over the Properties is hereby dedicated to the Association for the purpose of maintaining the stormwater system to meet water quality and quantity design standards of the approved and permitted plans and any future governmental laws, rules or regulations.

Each Owner of a Lot which borders a water retention area shall maintain any portion thereof as may be within the boundary of such Owner's Lot free of debris, but shall not remove any wetlands species or do anything that would adversely affect water quality within the water retention area.

Swimming and bathing in water retention areas are prohibited. All other uses of water retention areas shall be subject to the prior written approval of the Board of Trustees, and such rules and regulations as the Board of Trustees may adopt from time to time.

Section 14. Vehicles. No vehicle shall be parked within the Properties except on a paved parking surface, driveway, or within a garage. No trucks or vehicles which are primarily used for commercial purposes, other than those temporarily present on business, nor any trailers, may be kept or parked within the Properties, except that an Owner may park commercial vehicles within an Owner's garage or one (1) commercial pick-up truck or van on an Owner's driveway. The Association may promulgate reasonable rules and regulations governing the parking of such vehicles. Boats, boat trailers, campers, travel trailers, mobile homes, recreational vehicles, and the like, and any vehicles not in operable condition and validly licensed, shall only be permitted to be kept within the Properties if such are kept inside a garage and concealed from public view. No vehicle shall be parked at any time upon the Common Areas except in accordance with Rules promulgated by the Association.

Section 15. Antennae and Roof Structures. No television, radio, or other electrical towers, aerials, antennae, satellite dishes or device of any type for the reception or transmission of radio or television broadcasts or other means of communication shall hereafter be erected, constructed, placed or permitted to remain on any Home, Lot or upon any improvements thereon, except that this prohibition shall not apply to those antennae specifically covered by 47 C.F.R. Part 1, Subpart S Section 1.4000 (or any successor provision) promulgated under the Telecommunications Act of 1996, as amended from time to time. The Association may adopt rules governing the types of antennae that are permissible thereunder and establishing reasonable, non-discriminatory restrictions relating to safety, location and maintenance of antennae.

To the extent that reception of an acceptable signal would not be impaired, an antenna permissible pursuant to rules of the Association may only be installed in a side or rear yard location, not visible from the street or neighboring property, and integrated with the dwelling and surrounding landscape. Antennae shall be installed in compliance with all state and local laws and regulations, including zoning, land-use, and building regulations.

ARTICLE IV ARCHITECTURAL CONTROL

The Association shall have the sole and absolute right and discretion to determine the style and appearance of the residential dwellings, fences, walls, structures, and other improvements to be constructed on the Lots in a manner consistent with this Declaration. The following standards are hereby adopted by Declarant as guidelines to govern improvements to lots or homes performed by anyone other than Builder as defined in Article I:

Landscape plans shall be prepared by a landscape architect registered in the City of Avon and submitted for approval by the Builder or Developer or, at such time as the Builder or Developer no longer retains a majority of the outstanding voting units, then such landscape plans shall be approved by the ARC.

In the event the Board, or the ARC, fails to approve or disapprove such design and location within sixty (60) days after such plans and specifications have been submitted to it, approval will not be required and this Article will be deemed to have been fully complied with. No approval shall be given by the Board of Trustees or the ARC pursuant to the provisions of this Article unless it determines, in its sole discretion, that such approval shall: (1) assure the overall aesthetic harmony of external design, materials, and location in relation to surrounding building and topography within the Properties; (2) protect and conserve the value and desirability of the Properties as a residential community; (3) be consistent with the provisions of this Declaration; and (4) conform to or enhance, in the sole opinion of the Board or the ARC, the aesthetic appearance of the Properties. Neither the Association, the Board of Trustees, nor any member of the Board or the ARC, shall have any liability to anyone by reason of any acts or action taken or omitted in good faith pursuant to this Article. Notwithstanding any contrary provision of this Declaration, no approval shall be given by the Board of Trustees or the ARC for the installation of fencing on any particular Lot unless the proposed fencing is consistent with the fencing requirements of the Codified Ordinances of the City of Avon, Ohio, as may be periodically amended.

During the Development Period as defined in Article I, the Declarant shall have the right to appoint the members of the ARC which may or may not be Owners. Following the Development Period, the Board may appoint the Members of the ARC and each Member shall be an Owner. The ARC shall act by majority vote. Following the Development Period the Board acting by a majority vote shall have the right to review, approve, overrule or modify actions taken by the ARC.

Notwithstanding any contrary provision of this Declaration, during the Development Period or for so long as Gamellia Homes Inc. owns a Lot or Lots within the Properties, all plans for any proposed improvements upon the Properties must have the written approval of Gamellia Homes Inc.

**ARTICLE V
MEMBERSHIP AND VOTING RIGHTS**

Section 1. Membership. Every Owner of a Lot which is subject to assessment shall be a member of the Association, subject to and bound by the Association's Articles of Incorporation, By-Laws, Rules and Regulations, and this Declaration. The foregoing does not include persons or entities who hold a leasehold interest or interest merely as security for the performance of an obligation. Ownership, as specified above, shall be the sole qualification for membership. When any Lot is owned of record by two (2) or more persons or other legal entities, all such persons or entities shall be members, but multiple ownership shall not result in additional voting rights. An Owner of more than one (1) Lot shall be entitled to one (1) membership for each Lot owned. Membership shall be appurtenant to, and may not be separated from, ownership of a Lot which is subject to assessment, and it shall be automatically transferred by conveyance of that Lot. The Declarant shall also be a member so long as it owns one (1) or more Lots.

Section 2. Classes. The Association shall have two (2) classes of voting membership: Class A and Class B. All votes shall be cast in the manner provided in the By-Laws. When more than one (1) person or entity holds an interest in any Lot, the vote for such Lot shall be exercised as such persons or entities determine, but in no event shall more than the number of votes hereinafter designated be cast with respect to any such Lot, nor shall any split vote be permitted with respect to such Lot. The two classes of voting memberships and voting rights related thereto, are as follows:

A. Class A. The Class A members shall be all Owners of Lots subject to assessment provided, however, so long as there is Class B membership, the Declarant shall not be a Class A member.

1. Lots. Owners of Class A Lots shall be entitled to one (1) vote for each Lot owned.
2. Common Area. Neither the Association nor its members shall be entitled to any vote relating to the Association's ownership of any Common Area.

B. Class B. The Class B member shall be the Declarant and/or Builder. Notwithstanding anything to the contrary in this Declaration, until all of the Lots have been sold and conveyed, the Class B Member shall have a total number of votes equal to not less than the number of votes cumulatively held by all other members plus one (1), providing the Class B Member with a majority of votes of the Association. On the date Declarant sells and conveys the last remaining Lot to an Owner, or at such time as Declarant waives its Class B Membership in Declarant's sole discretion in writing, then the Class B member shall cease to be a member of the Association, except to the extent that Declarant and/or Builder becomes and remains a Class A member due to its ownership of one (1) or more Lots.

ARTICLE VI RIGHTS AND OBLIGATIONS OF THE ASSOCIATION

Section 1. Responsibilities. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the exclusive management and control of the Common Area, and shall keep the same in good, clean, and proper condition, order, and repair. The Association shall also maintain and care for the other land designated in Article II hereof in the manner therein required. The Association shall be responsible for the payment of all costs, charges, and expenses incurred in connection with the operation, administration, and management of the Common Area, and performance of its other obligations hereunder. The Association shall operate and maintain areas designated by Declarant as Common Areas, whether or not title to those areas has been formally conveyed to the Association. Lawn maintenance shall be the responsibility of the Lot Owner. However, the Association may contract for uniform cutting of lawns in accordance with Article III, Section 12. Street maintenance and snow removal from the Common Areas shall be the responsibility of the Association.

Section 2. Manager. The Association may obtain, employ, and pay for the services of an entity or person, hereinafter called the "Manager", to assist in managing its affairs and carrying out its responsibilities hereunder to the extent it deems advisable, as well as such other personnel as the Association shall determine to be necessary or desirable, whether such personnel are engaged, furnished, or employed directly by the Association or the Manager. The Association may enter into a Management Agreement for management services with any management entity as the Board of Trustees deems appropriate or necessary.

Section 3. Personal Property for Common Use. The Association may acquire and hold tangible and intangible personal property and may dispose of the same by sale or otherwise, subject to such restrictions, if any, as may from time to time be provided in the Association's Articles or By-Laws.

Section 4. Insurance. The Association at all times shall procure and maintain adequate policies of public liability and other insurance as it deems advisable or necessary. The Association additionally may cause all persons responsible for collecting and disbursing Association moneys to be insured or bonded with adequate fidelity insurance or bonds.

Section 5. Implied Rights. The Association may exercise any other right or privilege given to it expressly by this Declaration, its Articles or By-Laws, or by law and every other right or privilege reasonably implied from the existence of any right or privilege granted herein or therein or reasonably necessary to effectuate the exercise of any right or privilege granted herein or therein.

Section 6. Administration of Properties. The administration of the Properties by the Association shall be in accordance with the provisions of this Declaration, the By-Laws, and Internal Revenue Code §528, *et. seq.*, and related Treasury Regulations (as may be periodically amended).

ARTICLE VII COVENANT FOR MAINTENANCE ASSESSMENTS

Section 1. Creation of the Lien and Personal Obligation of Assessments. The Declarant, for each Lot owned by it within the Properties, hereby covenants, and each Owner of any Lot, by acceptance of a deed therefor, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay to the Association: (1) annual assessments or charges and (2) special assessments for capital improvements and operating costs, such assessments to be established and collected as hereinafter provided. The annual and special assessments, together with interest, costs, and reasonable attorneys'

fees, shall be effective from, and relate back to, the date of recording this Declaration and which shall be a charge on the land and shall be secured by a continuing lien upon the property against which each such assessment is made. This continuing lien shall also secure interest on unpaid Assessments, fines for violation of this Declaration or the By-Laws or the Rules and Regulations of the Association, and the costs of collecting unpaid Assessments and fines, and court costs for actions enforcing this Declaration and obtaining injunctions, all including reasonable attorney's fees. Notice of the lien will be given by recording a Claim of Lien in the public records of Lorain County, Ohio, stating the Lot description, the name of the record Owner, the amount due, and the due date. A Claim of Lien may be filed against a Lot for unpaid assessments after conveyance of the Lot by the Declarant. Each such assessment or charge, together with interest, costs, and reasonable attorneys' fees, shall also be the personal obligation of the person who was the Owner of such property at the time when the assessment became due. The personal obligation for delinquent assessments shall not pass to such person's successors in title unless expressly assumed by such successor.

Section 2. Purpose of Assessments. The assessments levied by the Association shall be used to promote the recreation, health, safety, and welfare of the residents of the Properties, and for the improvement and maintenance of the Common Area and the carrying out of the other responsibilities and obligations of the Association under this Declaration, the Articles, and the By-Laws.

Section 3. Special Assessments for Capital Improvements. In addition to the annual assessment authorized above, the Association may levy, in any assessment year, a special assessment applicable to that year only (or spread over such number of years as the Board of Trustees may deem appropriate) for the purpose of defraying, in whole or in part, the cost of any construction, reconstruction, repair, or replacement of a capital improvement upon the Common Area, including building and fixtures and personal property related thereto and for other purposes as designated by the Association, provided that any such special assessment shall be authorized by the Board of Trustees at a meeting duly called for such purpose.

Section 4. Notice and Quorum for Any Action Authorized Under Section 3. Written notice of any meeting called for the purpose of taking any action authorized under Article VII, Section 3 shall be sent to all members not less than thirty (30) days nor more than sixty (60) days in advance of the meeting. At such meeting, the presence of members or of proxies entitled to cast one-third (1/3) of all the votes of each class of membership shall constitute a quorum.

Section 5. Initial Capital Contribution. Upon acquisition of title to a Lot (whether an initial sale or resale), as evidenced by the recording of a deed with the Lorain County Recorder, each Owner (other than Builder) shall promptly contribute Three Hundred Fifty Dollars (\$350.00) to the Association as an initial capital contribution. This initial contribution shall be nonrefundable. This initial contribution shall apply to each subsequent resale of a Lot and shall be paid by each subsequent Owner thereof.

Section 6. Annual Assessment. Subject to the provisions contained in this Article VII, Section 6, the annual assessment shall be fixed by the Board of Trustees and shall be the same for each Class A Lot. The annual assessment shall not be increased by more than ten percent (10%) over the assessment charged for the immediately prior calendar year while Declarant owns any Class B Lots or acreage.

Section 7. Declarant's Assessments. Notwithstanding any provision of this Declaration or the Association's Articles or By-Laws to the contrary, the Declarant and/or Builder shall not be obligated for, or subject to, any annual assessment for any Lot or acreage which it may own, whether Class A or

Class B, except for Lots owned by Declarant, on which a completed dwelling has been built and for which a certificate of occupancy has been issued, which shall be assessed as follows:

Declarant or Builder may, at any time, either waive or terminate its right to Class B membership under Article V, Section 2 above, by giving written notice to the Association thereby terminating effective as of the date specified in such notice (the "Termination Notice"), but in no event a date less than thirty (30) days after the date of such notice. Upon giving the Termination Notice, or upon waiver or termination of Class B membership, whichever is sooner, each Lot owned by the Declarant or Builder that has a completed dwelling with a certificate of occupancy shall thereafter be assessed at twenty-five percent (25%) of the annual assessment established for Lots owned by Class A members other than the Declarant. Such assessment shall be prorated and become payable as to the remaining months of the year, if any, in which such notice, waiver, or termination occurs. Lots or acreage that are owned by the Declarant or Builder and vacant shall not be subject to assessment. Upon transfer of title of a Lot owned by the Declarant or Builder (other than to an entity owned or controlled by Declarant or Builder), the Lot shall be assessed in the amount established for Lots owned by Owners other than the Declarant or Builder, prorated as of and commencing with the month following the date of transfer of title.

Neither Declarant nor Builder shall be responsible for any reserve for replacements, operating reserves, depreciation reserves, capital expenditures, or special assessments. Declarant and Builder shall be assessed only for Lots that are encumbered by this Declaration.

Section 8. Exemption from Assessments. The assessments, charges, and liens provided for or created by this Article VII shall not apply to: (i) Declarant; (ii) Developer; (iii) (the "Builder"); or (iv) the Common Area or any property dedicated to and accepted for maintenance by a public or governmental authority or agency, any property owned by a public or private utility company or public or governmental body or agency, or any property used for commercial purposes. Notwithstanding the foregoing, any Lots from which the Builder derives any rental income, or holds an interest as mortgagee or contract seller, shall be assessed at the same amount as Lots owned by Owners other than the Declarant and the Builders, prorated as of and commencing with the month following the earlier of the execution of the rental agreement or mortgage or the contract purchaser's entry into possession, as the case may be.

Section 9. Date of Commencement of Annual Assessments: Due Dates. The annual assessments provided for herein shall commence as to all Lots on the first (1st) day of the month following the conveyance of the first Lot to an Owner other than the Declarant or Builder. The first annual assessment shall be adjusted according to the number of months remaining in that calendar year. The Board of Trustees shall fix the amount of the annual assessment (to be paid annually as determined by the Association) against each Lot at least thirty (30) days in advance of each annual assessment period. Written notice of the annual assessment shall be sent to every Owner subject thereto. The due date shall be established by the Board of Trustees. The Association shall, upon demand, and for a reasonable uniform charge, furnish a certificate signed by an officer of the Association setting forth whether the assessments or any installments on a specified Lot have been paid or are delinquent and, if so, the particulars of the delinquencies. A properly executed certificate of the Association as to the status of assessments on a Lot is binding upon the Association as of the date of its issuance.

Section 10. Lien for Assessments. All sums assessed against any Lot pursuant to this Declaration, together with interest and all costs and expenses of collection, including reasonable attorneys' fees, at trial and on appeal, shall be secured by a continuing lien on such Lot in favor of the Association as hereinabove provided.

Section 11. Effect of Nonpayment of Assessments: Remedies of the Association. Any assessment not paid within thirty (30) days after the due date shall bear interest from the due date at the lesser of eighteen percent (18%) per annum or the maximum rate allowed by law. The Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the Lot or both. No Owner may waive or otherwise escape liability for the assessments provided for herein by non-use of the Common Area, or abandonment of such Owner's Lot.

Section 12. Foreclosure. The lien for sums assessed pursuant to this Declaration may be enforced by judicial foreclosure by the Association in the same manner in which mortgages on real property may be foreclosed in Ohio or as may be otherwise provided by Ohio law. In any such foreclosure, the Owner shall be required to pay all costs and expenses of foreclosure, including reasonable attorneys' fees, at trial and on appeal. All such costs and expenses shall be secured by the Lien being foreclosed. The Owner shall also be required to pay to the Association any assessments against the Lot which shall become due during the period of foreclosure, and the same shall be secured by the lien foreclosed and accounted for as of the date of the Owner's title is divested by foreclosure. The Association shall have the right and power to bid at the foreclosure sale to acquire the Lot foreclosed, and thereafter to hold, convey, lease, rent, encumber, use and otherwise deal with the same as the owner thereof.

Section 13. Subordination of the Lien to Mortgages. The liens for the assessments provided herein shall be subordinate to the lien of any first mortgage which is recorded prior to any Claim of Lien. Sale or transfer of any Lot shall not affect the assessment lien. No sale or transfer shall relieve the Owner of such Lot from liability for any assessments thereafter becoming due or from the lien thereof.

Section 14. Reserves. The Association shall maintain reserves for future improvements to the Common Area in such amounts as the Board of Trustees, from time to time deems appropriate.

ARTICLE VIII ADDITIONAL PROPERTY

Section 1. Additions to the Properties. Additional real estate may be brought within the jurisdiction and control of the Association and this Declaration in the manner specified in Section 2 of this Article and made subject to all the terms of this Declaration as if part of the Properties initially included within the terms hereof, provided such is done within twenty-five (25) years from the date this Declaration is recorded. Notwithstanding the foregoing, however, under no circumstances shall the Declarant be required to make such additions, and until such time as such additions are made to the Properties in the manner hereinafter set forth, no other real estate owned by the Declarant or any other person or party whomsoever, other than the Properties, shall in any way be affected by or become subject to this Declaration. All additional real estate which, pursuant to this Article, is brought within the jurisdiction and control of the Association and made subject to this Declaration shall thereupon and thereafter be included within the term "Properties" as used in this Declaration. Notwithstanding anything contained in this Article VIII, Section 1, the Declarant neither guarantees nor warrants or represents that any such additional development shall occur.

Section 2. Procedure for Making Additions to the Properties. Additions to the Properties may be made, and thereby such additions shall become subject to this Declaration by, and only by, one of the following procedures:

A. **Additions of Additional Real Estate.** The Declarant shall have the right (but not the duty or obligation) from time to time, in its discretion and without need for consent or approval by

either the Association or its members, to bring within the jurisdiction and control of the Association and make subject to this Declaration, any additional real estate. In the Declarant's sole discretion, portions of any such additional real estate may be designated as Common Area.

B. Mergers. Upon a merger or consolidation of the Association with another non-profit corporation as provided in its Articles, its property (whether real or personal or mixed), rights, and obligations may, by operation of law, be transferred to the surviving or consolidated corporation or, alternatively, the property, rights, and obligations of the other non-profit corporation may, by operation of law, be added to the property, rights, and obligations of the Association as the surviving corporation pursuant to a merger. The surviving or consolidated corporation may administer the covenants and restrictions established by this Declaration within the properties together with the covenants and restrictions established upon any other land as one scheme. No such merger or consolidation, however, shall effect any revocation, change, or addition to the covenants established by this Declaration as to the Properties.

Section 3. General Provisions Regarding Additions to the Properties.

A. The additions authorized under Article VIII, Section 2(A) shall be made by the Declarant's filing of record a Supplement to Declaration of Covenants, Conditions, and Restrictions (hereinafter called "Supplement") with respect to the additional real estate extending the scheme of the covenants and restrictions of this Declaration to such real estate, except as hereinafter provided in Article VIII, Section 3(C). Such Supplement need only be executed by the Declarant and shall not require the joinder or consent of the Association or any of its members. Such Supplement may contain such complementary additions and modifications of the covenants and restrictions contained in this Declaration as may be necessary to reflect the different character, if any, of the added real estate or permitted use thereof.

B. Regardless of which of the foregoing methods is used to add additional land to that subject to the terms and provisions of this Declaration, no addition shall revoke or diminish (except for the dilution that occurs as a result of inclusion of additional Owners) the rights of the Owners of the Properties to the utilization of the Common Area as established hereunder except to grant to the Owners of the real estate being added to the Properties the right to use the Common Area according to the terms and conditions as established hereunder, and the right to vote and be assessed as herein provided.

C. Nothing contained in this Article shall obligate the Declarant to make additions to the Properties.

Section 4. Voting Rights of the Declarant as to the Additions to the Properties. The Declarant shall have no voting rights as to the real estate added to the Properties or any portion thereof until such real estate or portion thereof is actually added to the Properties in accordance with the provisions of this Article. Upon such real estate or portion thereof being added to the Properties, the Declarant shall have the Class B voting rights as to the Lots therein as is provided by Article V, Section 2 of this Declaration.

Section 5. Assessment Obligation of the Declarant as to Additions to the Properties. The Declarant shall have no assessment obligation as to the real estate or any portion thereof added to the Properties until such real estate or portion thereof is actually added to the Properties in accordance with the provisions of this Article. At such time, the Declarant shall have, but only as to such of the additional real estate as is added, the assessment obligation hereinafter set forth. As to such added land, the Declarant and the Builder shall be exempt from annual assessments with regard to Lots or Blocks which they own, upon the same terms and conditions as contained in Article VII of this Declaration, and the

Declarant shall have the same right as therein provided to waive its exemption, and become subject to assessment at the rate of twenty-five percent (25%) of the annual assessment established for improved Lots owned by Owners other than the Declarant.

Section 6. Voting Rights of Owners other than the Declarant as to Additions to the Properties. Any Lots or Blocks on real estate added to the Properties which are owned by Owners other than the Declarant, or its assignees by separate written document, shall be entitled to voting rights identical to those granted by Article V, Section 2, of this Declaration to other Owners of Class A Lots or Blocks.

Section 7. Assessment Obligation of Owners other than the Declarant and the Builder as to Additions to the Properties. Any Lots or Blocks on real estate added to the Properties which are owned by Owners other than the Declarant or Builder, or the Declarant's assignees by separate written document, shall be subject to assessments, both annual, special, and otherwise in accordance with the terms and provisions of this Declaration in the same manner as all other Owners of Class A Lots or Blocks within the real estate described on Exhibit A.

**ARTICLE IX
GENERAL PROVISIONS**

Section 1. Deed Restrictions. In addition to this Declaration, the Declarant may record for parts of the Properties specific deed restrictions, declaration of covenants, conditions, and restrictions, community association documents, applicable thereto either by master instrument or individually recorded instruments. Such documents may vary as to different parts of the Properties and the location, topography, and intended use of the land made subject thereto. To the extent that part of the Properties are made subject to such specific documents, such real estate shall be subject to such specific documents and this Declaration. The Association shall have the power to enforce all restrictions as expressly provided for therein, and to exercise any authority granted to it by them. Nothing contained in this Article IX, Section 1 shall require the Declarant to impose uniform restrictions, or to impose restrictions of any kind, other than this Declaration, on all or any part of the Properties.

Section 2. Enforcement.

A. Persons Entitled to Enforce. The Declarant, Association, or any Owner shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by the provisions of this Declaration. Notwithstanding any contrary provision of this Declaration, the right of the Association or Owner to enforce the restrictions, conditions, covenants, reservations, liens and charges now or hereafter imposed by this Declaration shall be effective at such time as there are no longer any Class B Members (as outlined in Article V, Section 2).

B. No Jury Trial. Each Owner, by acceptance of such Owner's deed, and the Association agrees that neither the Owner nor the Association nor any assignee, successor, heir, or legal representative of any of them (all of whom are hereinafter referred to as the "Parties") shall seek a jury trial in any lawsuit, proceeding, counterclaim, or any other litigation procedure, whether in contract or in tort or at law or in equity, based upon or arising out of this Declaration, or the obligations, benefits, dealings, or the relationships between or among the Association and the Owners, their successors and assigns, or any of them. Neither the Association nor any Owner will seek to consolidate any such action in which a jury trial has been waived with any other action in which a jury trial cannot be or has not been waived to the fullest extent formulated by law.

C. Mediation and Arbitration. In the event of a dispute, claim, or controversy arising out of or relating to the breach, termination, validity, interpretation, enforcement, or implementation of any term or provision of this Declaration ("Dispute"), the Owners and the Association agree to submit the Dispute first to mediation and then to voluntary, binding arbitration, as follows:

In the event the parties cannot successfully negotiate a resolution of the Dispute within thirty (30) days of its occurrence, any party to the Dispute can notify the other parties to the Dispute that the matter will be submitted to mediation in accordance with the Commercial Mediation Rules of the American Arbitration Association ("Mediation Rules") and that all parties to the Dispute shall bear equally the costs of the mediation or as otherwise directed by the mediator. The panel shall consist of one (1) mediator and shall be selected according to the Mediation Rules. The Parties agree to participate in good faith in the mediation and negotiations related thereto.

If the Dispute cannot be resolved through mediation, within ten (10) days after the failure to resolve the Dispute through mediation, any Party can notify the others that the matter will be submitted to voluntary, binding arbitration in accordance with the Commercial Arbitration Rules of the American Arbitration Association ("Arbitration Rules") and judgment upon the award rendered by the arbitrator may be entered in any court having jurisdiction thereof. The panel shall consist of one (1) arbitrator and shall be selected according to the Arbitration Rules.

The Parties agree to use the Regional Office of the Arbitration Association which is nearest to the Properties to administer the mediation and arbitration.

Nothing contained in this Article IX, Section 2(C) shall in any way limit or affect the Association's right to immediately file an action in the appropriate court to collect any assessment or enforce any lien under Article VII hereof.

If a person or Party is found in the proceedings to be in violation of, or attempting to violate, the provisions of this Declaration, such person or Party shall bear all costs and expenses of the Dispute resolution, including court costs and reasonable attorneys' fees, for all mediation, arbitration, trial, and appellate proceedings incurred by the Party enforcing the provisions of this Declaration.

Declarant shall not be obligated to enforce this Declaration or any particular provision hereof and shall not in any way or manner be held liable or responsible for any violation of this Declaration by any person other than itself.

Section 3. Severability. Invalidation of any one (1) of these covenants or restrictions by judgment or court order shall in no way affect any other provisions, all of which shall remain in full force and effect.

Section 4. Amendment. The covenants and restrictions of this Declaration shall run with and bind all of the Properties (regardless of when any particular Block of land is added hereto), for a term of twenty-five (25) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten (10) years each. This Declaration may be amended by an instrument signed by not less than three-fourths (3/4) of the Lot Owners. Any amendment must be recorded. For so long as the Declarant owns any Lot in the Properties, any amendment of this Declaration must be approved in writing by the Declarant. At any time a Class B membership exists, this Declaration may be amended by recorded instrument executed solely by Declarant, without the necessity of the approval or joinder of any other Owner or the Association. Neither Declarant, nor the Association,

shall revoke, modify or amend this Declaration in a manner that reduces the size of the Common Area to less than the area required by the City as of the date of this Declaration.

Section 5. Exception.

A. Anything in this Declaration to the contrary notwithstanding, if any amendment to this Declaration is required at any time by an institutional mortgagee, such as a bank, savings and loan association, or insurance company, or any governmental agency, such amendment shall be effective upon recording of such amendment as executed by the Declarant, without the necessity of the approval or joinder of any other Owner or the Association. No such amendment may adversely affect the lien or priority of any institutional first mortgage recorded prior to the amendment.

B. Until the completion of the contemplated improvements on the Properties, and closing of all Lot sales, the Declarant specifically reserves the right, without the joinder of any person or other legal entity, to make amendments to or corrections of this Declaration and its exhibits, as may be required by any lender, governmental authority, or as may, in Declarant's sole judgment, be necessary or desirable. This paragraph shall take precedence over any other provision of this Declaration or its attachments. No such amendment shall impair the security or priority of an institutional first mortgage. Neither Declarant, nor the Association, shall revoke, modify or amend this Declaration in a manner that reduces the size of the Common Area to less than the area required by the City as of the date of this Declaration.

Section 6. Interpretation. Unless the context otherwise requires, the use herein of the singular shall include the plural and vice versa; the use of one gender shall include all genders; and the use of the term "including" shall mean "including without limitation". The headings used herein are for indexing purposes only and shall not be used as a means of interpreting or construing the substantive provisions hereof.

Section 7. Obligation of Cooperation by Association. Any and all additions to the Common Area by Declarant shall be accepted by the Association. The Association upon request of Declarant and without further consideration shall be required to execute any document necessary to evidence the acceptance of such addition to the Common Area.

Section 8. Reservation of Rights to Declarant. Until such time as Declarant has completed all of the contemplated improvements and has sold all of the Lots within the Properties, the Declarant hereby reserves to the Declarant an easement across all of the Common Area and additions to the Common Area for the construction of water, sewer, drainage, telephone, cable television, water retention, and electric facilities deemed by Declarant necessary for the development and enjoyment of the Properties and Common Area and for the conduct of all construction, sales, and marketing activities deemed necessary by the Declarant.

Until such time as Declarant and Builder have completed all of the contemplated improvements and have sold all of the Lots or acreage within the Properties, the Declarant hereby reserves the right to alter the boundaries of the Common Area whether or not it has been previously deeded to the Association, provided that such alteration does not substantially, materially, and adversely affect the function and use of the Common Area.

The Association and each Owner hereby irrevocably appoints the Declarant as their attorney-in-fact to execute and/or deliver any documents, plats, deeds, or other written matters necessary or convenient to accomplish the addition of Common Area or Properties or both, to create

shall have any liability personally for the performance and observance of any term, covenant, restriction, condition, or provision contained in this Declaration. Each Owner covenants and agrees that the Owner shall not commence or participate in any action, suit or proceeding against Declarant and Builder, nor against any shareholder, director, officer, employee or agent of Declarant and Builder, arising out of any claim or breach by Declarant and Builder of any term, covenant, restriction, condition or provision of this Declaration. The liability of Declarant and Builder shall be limited solely and exclusively to its interest in the Land as the same shall then be encumbered, and no other asset of Declarant shall be liable for any claim under or in connection with this Declaration.

Section 11. Rule Against Perpetuities. If any of the Covenants and Restrictions established hereby and/or contained in the Association's Code of Regulations shall be unlawful or void for violation of the rule against perpetuities or some analogous statutory provision, the rule restricting restraints on alienation, or any other statutory or common law rule imposing time limits, then such provision shall continue only one (1) day prior to the end of the twenty-first (21st) year after the death of the survivor of the now living descendants of James A. Gamellia.

Section 12. Attorney in Fact. Each Owner hereby irrevocably appoints Declarant and the Board of Trustees of the Association as such Owner's attorney-in-fact to execute, deliver and record amendments to this Declaration in accordance with the foregoing, which power of attorney is hereby declared to be coupled with an interest.

**ARTICLE X
EASEMENTS**

Section 1. The Properties, each Lot, and the Common Area shall be subject to existing easements for public authorities and public utilities purposes (including, but not limited to, fire and police protection, garbage and trash removal, telephone and cable television and other communication services, water and sewage systems, and electric and gas service) and the utilities and applicable governmental agencies having jurisdiction over such services and their employees and agents shall have the right of access to any Lot or the Common Area in furtherance of such easements. The easement areas contained in any Lot, whether or not shown on any map or plat, shall at all times be properly maintained by the applicable Owner whether or not the utility company or governmental agency properly maintains the easement area.

Section 2. The Declarant reserves the right, for itself and its designee (so long as Declarant or said designee owns a Lot) and for the Board of Trustees of the Association, without joinder or consent of any Owner, member, or other person or entity whatsoever, to grant such additional easements including, but not limited to, irrigation wells and pumps, cable television, television antennas, electric, gas, water, sewer, or other utility easements, or to relocate any existing utility easement in any manner said Board of Trustees or Declarant shall deem necessary or desirable for the proper operation and maintenance of the Properties, or any portion thereof, or for the general health or welfare of the Lot Owners, provided that such additional utilities or the relocation of existing utilities will not prevent or unreasonably interfere with the use of the Lot or Common Area for permitted purposes.

Section 3. Declarant retains for itself, its successors in interest, agents, employees, the Builder and assigns, a non-exclusive easement for ingress and egress over and across all streets, roadways, Common Area, driveways, common parking areas, and walkways that may from time to time exist within the Properties.

easements as deemed necessary by Declarant, and to adjust the boundary or boundaries of the Common Area.

Until such time as Declarant and Builder have completed all of the contemplated improvements and have sold all of the Lots within the Properties, neither the Association nor its members nor the use of the Common Area by the Association and its members shall interfere with the completion of the contemplated improvements or the marketing and sale by Declarant and the Builder of Lots or acreage within the Properties.

Until the Declarant, Builder or their respective assigns have built and sold all of its Lots within the Properties, Declarant reserves the right, and grants to the Builder the right, to make such use of Lots and the Common Area as may facilitate completion and sale of Lots by the Declarant and the Builder. Without limiting the foregoing, Declarant shall have the right to maintain or permit the Builder or others to maintain sales offices, model homes, administration offices, and construction offices (which may be construction trailers or temporary or permanent buildings), or any or all of same, on Lots or on the Common Area. Declarant and the Builder further shall have the right to erect and maintain signs on Lots or on the Common Area, shall have the right to bring prospective purchasers upon the Common Area, shall have the right to use the Common Area for any sales purposes, shall have the right to grant the right of use of the Common Area to any prospects or any other individual or group in Declarant's sole discretion and shall be entitled to conduct all other marketing activities desired by Declarant and the right to permit the Builder and others to exercise such rights in common with Declarant.

In addition to all other rights of the Declarant, until the Declarant and the Builder have built and sold all of their respective Lots within the Properties, without the express prior written consent of Declarant, no amendment shall be made to this Declaration, and no rules or regulations shall be adopted by the Association, which shall modify the assessments or other charges on Declarant's or the Builder's Lots or which shall restrict, impair, or, in Declarant's sole judgment, materially adversely affect the activities of the Declarant or the Builder with regard to construction, use of Common Area, and delegation of use of Common Area, and marketing and sale of the remaining Lots in the Properties, whether or not such activities are enumerated in the preceding paragraphs.

In exercising any of the rights provided or granted under this Article IX, neither Declarant, nor the Association shall revoke, modify or amend this Declaration in a manner that reduces the size of the Common Area to less than the area required by the City as of the date of this Declaration.

Section 9. Non-Liability of Declarant or Builder. Neither Declarant or Builder nor their directors, officers, shareholders, partners, employees, agents or representatives shall be liable, personally or otherwise, for any claim whatsoever arising out of or by reason of any omission or failure to act or any action performed pursuant to the terms of this Declaration, whether or not such claim shall be asserted by any Owner, occupant of a Lot, the Association, or any person or entity claiming by, through or under any of them, nor on account of injury to persons or damage to or loss of property wherever located and however caused. Without limiting the generality of the foregoing, the foregoing enumeration includes all claims for, or arising by reason of: (1) any part of the Properties being or becoming out of repair, or containing any patent or latent defects; (2) by reason of any act or neglect of any Owner, any occupant of a Lot, the Association, their respective agent, employees, guests, and invitees; (3) by reason of any neighboring property or personal property located on or about the Properties; or (4) by reason of the maintenance or interruption of any utility service.

Section 10. Limitation of Liability. Each Owner covenants and agrees that no shareholder, partner, director or officer of Declarant or Builder, nor any employee or agent of Declarant and Builder

**ARTICLE XI
SPECIAL PROVISIONS CONCERNING THE COMMON AREA**

In addition to any and all other restrictions, provisions and covenants concerning the Common Area contained in this Declaration, the following specific requirements shall apply:

A. The Common Area, as shown on the final plat for the Property as recorded in the Lorain County Records, shall remain as such, subject to the terms, restrictions, provisions and conditions stated in this Declaration.

B. The Association shall not dispose of any of the Common Area without first offering the same to the City for acceptance and dedication.

C. The City is hereby granted the right of entry on and to the Common Area (1) for emergency purposes, and (2) in the event of nonperformance of maintenance improvement of the Common Area affecting the public interest. In the event of such nonperformance of maintenance or improvements within the Common Area, the City shall have the right, upon providing the Association with at least ten (10) days' prior written notice and the opportunity to cure or commence to cure such matters, to make improvements and perform maintenance functions with the costs levied as a lien against the Association and the Association's assets.

D. If the terms or provisions of the Declaration conflict with any of the terms or provisions in the Association's Articles of Incorporation, By-Laws or Rules and Regulations, the terms and provisions contained in this Declaration shall govern.

E. In the exercise of its rights under this Declaration, Declarant shall not use the Common Area in a manner that reduces the size of the Common Area available for common use to less than the area required by the City as of the date of this Declaration.

**ARTICLE XII
INSURANCE**

A. The Board shall obtain for the benefit of all Owners insurance on the Common Areas and facilities against loss or damage by fire, lightning, perils as are comprehended with the term "extended coverage", vandalism, and malicious mischief in an amount not less than the full replacement value thereof. Such insurance shall be written in the name of, and the proceeds thereof shall be payable to, the Association as trustee for the Owners and their respective mortgagees, as their interests may appear, and provision shall be made for the issuance, upon request, of certificates of such insurance to the Owners and respective mortgagees. The coverage afforded by such insurance shall be reviewed by the Board no less frequently than annually to determine if the amounts payable thereunder and the coverage thereof comply with the requirements of this Article XII, Subparagraph (A).

B. Each Owner is responsible for obtaining, for the benefit of the Owner's Lot and all improvements thereon, individual contents or chattel property insurance for his individual property as insurance against loss or damage by fire, lightning, such perils as are covered by extended coverage insurance and other coverages deemed appropriate by said Owner to protect against any and all loss to the Owner's Lot.

Section 1. Public Liability Insurance. The Board shall insure itself, the Association, any managing agent, each Owner and their respective families, tenants, guests and servants, and all persons

lawfully in possession or control of any part of the Common Areas, against liability of bodily 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, such insurance to afford protection to a limit of not less than One Million Dollars (\$1,000,000.00) in respect to bodily injury, disease, illness or death suffered by any one person, and to the limit of not less than One Million Dollars (\$1,000,000.00) in respect to any one occurrence, and to the limit of not less than Five Hundred Thousand Dollars (\$500,000.00) in respect to damage to or destruction of property arising out of any one accident. Such insurance shall not insure against liability for personal injury or property damage arising out of or relating to the Lots or any improvements located thereon.

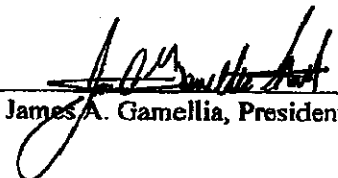
Section 2. Board as Agent. The Board shall be the exclusive agent for each of the Owners and for each holder of a mortgage or other lien upon any Lot, to adjust all claims arising under insurance policies procured by the Board and to execute and deliver releases upon the payment of claims.

Section 3. Insufficiency of Liability Insurance. In the event the insurance obtained by the Board on behalf of the Owners and occupants 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 Association.

Section 4. Interpretation of Declaration. The provision of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and operation of a high quality development. Each of the above requirements shall run with the land.

IN WITNESS WHEREOF, the undersigned, being the Declarant named herein, has executed this Declaration on 27th day of March, 2005.

GAMELLIA CONSTRUCTION INC.

By: 
James A. Gamellia, President

[DOCUMENT CONTINUED ON NEXT PAGE]

STATE OF OHIO)
) SS:
COUNTY OF LORAIN)

BEFORE ME, a Notary Public in and for said County and State, personally appeared the above-named James A. Gamellia, by and through _____, its duly authorized Member, who acknowledged that he did sign the foregoing instrument and that the same is his free act and deed individually and as such member and the free act and deed of said Limited Liability Company.

IN TESTIMONY WHEREOF, I have hereunto set my hand and official seal at Avon Lake, Ohio, this 27th day of March, 2006



S. Renée Ebner
Notary Public

S. Renée Ebner
Notary Public - State of Ohio
My commission expires
09/09/2006

This Instrument Prepared By:
Attorney Marsha L. Collett
WICKENS, HERZER, PANZA, COOK & BATISTA CO.
35765 Chester Road
Avon, OH 44011-1262

EXHIBIT A
LEGAL DESCRIPTION



Polaris Engineering & Surveying
34600 Chardon Road Suite D
Wiloughby Hills, Ohio 44094
Office: (440) 944-4433
Fax: (440) 944-3722

**DECEMBER 7, 2005
LEGAL DESCRIPTION OF
NAPA SUBDIVISION NO.1
8.4164 ACRES**

Situated in the City of Avon, County of Lorain and State of Ohio, known as being part of the Original Avon Township Section Number 26, further known as being all of land conveyed to Gamellia Construction Inc. by instrument no. 20050082377 of Lorain County Records (P.P.N. 04-00-026-108-039):

Beginning in the centerline of Schwartz Road (Width Varies) at the southeasterly corner of land conveyed to Michael and Mary Biskupich by instrument no. 19980545861 of Lorain County Records (P.P.N. 04-00-026-108-038) said point being South 89°43'45" East along said centerline, 1595.23 feet from the centerline of Nagel Road;

- COURSE I** Thence North 00°30'45" East along the easterly line of said Biskupich, at 30.00 feet passing through the northerly sideline of said Schwartz Road (witness: a 5/8 inch iron pin found 0.21 feet northerly), 300.30 feet to a 5/8 inch iron pin (Id: Polaris) set at the northeasterly corner thereof;
- COURSE II** Thence North 89°43'45" West, along the northerly line of said Biskupich, 99.48 feet to the northwesterly corner thereof (witness: a 5/8 inch iron pin found 0.45 feet westerly), said point also being in the easterly line of land conveyed to Jon C. and Karen M. Quisenberry by deed recorded in volume 1412, page 681 of Lorain County Official Records (P.P.N. 04-00-026-103-043);
- COURSE III** Thence North 00°30'45" East, along the easterly line of said Quisenberry, 669.84 feet to the northeasterly corner thereof (witness: a 1 inch iron pipe found 0.20 feet easterly) said point also being in the southerly line of land conveyed to the Catholic Cemeteries Association by instrument no. 19980620817 of Lorain County Records (P.P.N. 04-00-026-108-040);
- COURSE IV** Thence South 89°43'08" East, along the southerly line of said Catholic Cemeteries Association, 448.64 feet to a point therein, said point being the northwesterly corner of Woodbridge Subdivision No. 1 as shown by plat recorded in volume 85, pages 71-72 of Lorain County Plat Records (witness: a 1 inch iron pipe found 0.02 feet southerly);
- COURSE V** Thence South 00°30'45" West, along the westerly line of said Woodbridge Subdivision No. 1, 670.08 feet to a 5/8 inch iron pin (Id: Polaris) set at the southwest corner thereof, said point also being the northeasterly corner of land conveyed to Catherine Fox by instrument no. 20050081345 of Lorain County Records (P.P.N. 04-00-026-108-005);

**DECEMBER 7, 2005
LEGAL DESCRIPTION OF
NAPA SUBDIVISION NO.1
8.4164 ACRES
PAGE 2**

- COURSE VI** Thence North 89°43'45" West, along the northerly line of said Fox, 129.09 feet to a 5/8 inch iron pin (Id: Polaris) set at the northwesterly corner thereof;

- COURSE VII** Thence South 00°30'45" West, along the westerly line of said Fox, at 270.00 feet passing through a 5/8 inch iron pin found in the northerly side line of said Schwartz Road, 300.00 feet to a point in the centerline thereof;

- COURSE VIII** Thence North 89°43'45" West, along said centerline, 220.07 feet to The Principal Place of Beginning and containing 8.4164 Acres of land as calculated and described, December, 2005 by Michael P. Spellacy P.S. #8169 of Polaris Engineering and Surveying Inc. Bearings used herein refer to plat for Woodbridge Subdivision No. 1 as shown by plat recorded in volume 85, pages 71-72 of Lorain County Plat Records.

Michael P. Spellacy 12-13-05
Michael P. Spellacy P.S. #8169



134699

JUDITH M. DWICH
LORAIN COUNTY
RECORDER

2006 MAR 31 P 12:30

RECEIVED FOR RECORD

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