

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR THE
HARLEM ESTATES OWNERS ASSOCIATION**

**DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS
AND EASEMENTS FOR HARLEM ESTATES OWNERS ASSOCIATION**

THIS DECLARATION OF COVENANTS, CONDITIONS, RESTRICTIONS AND EASEMENTS FOR THE HARLEM ESTATES OWNERS ASSOCIATION is being made effective on the date of signature below (the “Effective Date”), by AV INVESTMENT LLC, an Ohio limited liability company (“Declarant”).

BACKGROUND

A. AV is the owner of Lots 1 through 11 of the Harlem Estates Subdivision (the “Subdivision”), as the same are numbered and delineated in that certain plat which is of record with the Office of the Recorder of Delaware County, Ohio as Instrument Number [REDACTED].

B. In order to establish and create a general plan for the development of the Subdivision, Declarant has executed these CCRs and shall record them with the Recorder in accordance with the State of Ohio’s Planned Community Law, as set forth in Ohio Revised Code Chapter 5312.

Declarant hereby makes this Declaration of Covenants, Conditions, Restrictions and Easements for the Harlem Estates Owners Association (this “Declaration”) applicable to all of the lots within the Subdivision. All capitalized terms used in this Declaration shall have the meanings set forth in Article II below or as elsewhere defined in this Declaration for convenience.

ARTICLE I

PURPOSE AND INTENT

In order to establish and create a general plan for the improvement and maintenance of the Lots, and in order to protect property values and to contribute to the health, safety, and welfare of the property owners that are subject to this Declaration now and in the future, Declarants hereby declare that the Lots shall be held, sold, conveyed, encumbered, leased, occupied and improved subject to the covenants, conditions, restrictions, easements, encumbrances, rights and other matters set forth in this Declaration, which shall run with the Lots and shall be binding upon, and inure to the benefit of, all parties now or hereafter having any right, title or interest in the Lots or any part thereof, and their respective heirs, personal and legal representatives, successors and assigns.

This Declaration is imposed for the benefit of all Owners (as such term is defined below) and creates specific rights and privileges which may be shared and enjoyed by all Owners and certain obligations which must be performed by all Owners. This Declaration is not intended exclusively or primarily for the benefit of any particular Owner, or for the detriment of

any particular Owner; however, notwithstanding the foregoing, this Declaration may not benefit or affect all Owners equally.

ARTICLE II

DEFINITIONS

Certain words and terms as used in this Declaration shall have the meanings given to them by the definitions and descriptions in this Article. Other words and terms may be defined elsewhere in this Declaration.

“Articles” or “Articles of Incorporation” shall mean the Articles of Incorporation of the Association which were filed with the Secretary of State of Ohio on [REDACTED].

“Assessments” shall mean Base Assessments and/or Special Assessments levied by the Association pursuant to the terms of this Declaration.

“Association” shall mean the Harlem Estates Owners Association, Inc., an Ohio not-for-profit corporation, or any successor thereof by whatever name, charged with the duties and obligations set forth in this Declaration, the Articles of Incorporation, and the Code of Regulations.

“Association Documents” shall mean any and all documents, instruments, and agreements creating and governing the Association including, but not limited to, this Declaration, the Articles of Incorporation, and Code of Regulations and any procedures, rules, regulations or policies adopted by the Association or any other committee of the Board as permitted to be created pursuant to this Declaration.

“Association Rules” shall mean the rules adopted by the Association as provided herein.

“Base Assessment” shall mean the Assessments calculated and levied in accordance with Section 6.4 of this Declaration.

“Board of Trustees” or “Board” shall mean the board of trustees of the Association.

“Code of Regulations” shall mean the code of regulations of the Association or any similar written instrument that is duly adopted and executed by the Association.

“Improvement” or “Improvements” shall mean any and all of the following improvements to real property: Homes, structures, parking areas, sidewalks, fences, walls, hedges, plantings, landscaping, driveways, ponds, signs, and landscaping, or any portion thereof.

“Lot” means any one of Lots 1 through 11 of the Subdivision, and “Lots” shall mean all of Lots 1 through 11 of the Subdivision.

“Member” shall mean any person or entity holding membership in the Association.

“Mortgage” shall mean any mortgage, deed of trust, or other document pledging a Lot or interest therein as security for the payment of a debt or obligation.

“Mortgagee” shall mean the holder or beneficiary of a Mortgage as well as a named mortgagee.

“Owner” shall mean the record owner, whether one or more persons or entities, of fee simple title to any Lot, but shall not mean or refer to any person or entity who holds such interest merely as a Mortgagee, unless and until such person or entity has acquired fee simple title pursuant to foreclosure or otherwise.

“Related User” shall mean a person who obtains all or certain rights of an Owner by reason of such person claiming or being entitled to such rights by, through, or under such Owner.

“Special Assessment” shall mean a special assessment levied in accordance with this Declaration.

“Turnover Date” means the date that is thirty (30) days after the first date when at least nine (9) Lots have been transferred and conveyed by Declarant to third parties.

“Voting Member” shall mean the Members of the Association entitled to vote on Association matters.

ARTICLE III

DECLARATIONS OF CERTAIN EASEMENTS

Section 3.1. Declarations of Easements. In order to provide for the identification of the Subdivision to Owners, their visitors, and others, and to provide for efficient vehicular wayfinding to and from the Subdivision, Declarant hereby declares, for the benefit of itself and the Association, the following easements:

(a) A non-exclusive perpetual easement over the following portion of Lot 1 (the “Lot 1 Entry Feature Easement Area”) for the purpose of allowing Declarant and/or the Association to install, operate, maintain, repair, and replace a ground-mounted sign that identifies the Subdivision and related landscaping and lighting, including but not limited to electrical infrastructure needed to provide any such lighting: That portion of Lot 1 located between the western right-of-way line of Harlem Road on the east to a line running parallel to and located 25 feet from the western right-of-way line of Harlem Road on the west, and between the southern right-of-way line of Harlem Estates Court on the

north to a line running parallel to and located 25 feet from said southern right-of-way line on the south; and

(b) A non-exclusive perpetual easement over the following portion of Lot 11 (the “Lot 11 Entry Feature Easement Area”, and together with the Lot 1 Entry Feature Easement Area, the “Entry Feature Easement Areas”) for the purpose of allowing Declarant and/or the Association to install, operate, maintain, repair, and replace a ground-mounted sign that identifies the Subdivision and related landscaping and lighting, including but not limited to electrical infrastructure needed to provide any such lighting: That portion of Lot 11 located between the western right-of-way line of Harlem Road on the east to a line running parallel to and located 25 feet from the western right-of-way line of Harlem Road on the west, and between the northern right-of-way line of Harlem Estates Court on the south to a line running parallel to and located 25 feet from said southern right-of-way line on the north.

Section 3.2 Maintenance. Except as otherwise expressly provided herein, until the Turnover Date Declarant shall be responsible for maintaining all portions of the Entry Feature Easement Areas and all Improvements located therein at its sole cost and expense. Also except as otherwise expressly provided herein, after the Turnover Date the Association shall be responsible for the maintenance of the Entry Feature Easement Areas and Improvements located therein at its sole cost and expense. Mowing of grass within the Entry Feature Easement Areas shall be the responsibility of Declarant (at its sole cost and expense), except that once a Lot containing an Entry Feature Easement Area is transferred to an owner other than Declarant, such mowing shall be the responsibility of the Owner of the Lot on which said Entry Feature Easement Area is located (at such Owner’s sole cost and expense). Grassed areas within the Entry Feature Easement Areas shall be mowed and fertilized regularly. Entry feature signage and landscaping shall be maintained in accordance with all applicable laws and in a good state of repair. Landscaping shall be fertilized as needed and mulched areas, when provided, shall be mulched on an annual basis. The Entry Feature Easement Areas shall be kept free of weeds and noxious or invasive plants. Light bulbs shall be replaced as needed within any light fixtures that illuminate permitted ground signage or landscaping within the Entry Feature Easement Areas.

Section 3.3 Owners’ Use. Each Owner of a Lot on which an Entry Feature Easement Area is located shall be permitted to use the Maintenance Area in any manner that does not interfere with the exercise rights granted to Declarant and/or the Association hereunder. No such Owner shall take any action that blocks or impairs the visibility of ground signage within the Entry Feature Easement Areas from Harlem Road or Harlem Estates Court.

ARTICLE IV

ASSOCIATION OPERATIONS

Section 4.1. Association. The Association has been or will be formed as an Ohio not-for-profit corporation. The Association shall have the duties, powers, and rights set forth in this Declaration and in the Articles of Incorporation and Code of Regulations.

Section 4.2. Membership in the Association. Each Owner of a Lot shall be a Member of the Association. There shall be one membership in the Association for each such Lot. Each Owner of a Lot shall be deemed to be a Voting Member of the Association. The person, persons, entity, or entities which constitute the Owner of a Lot shall automatically be the holder or holders of the membership in the Association appurtenant to that Lot, and such membership shall automatically pass with fee simple title to the Lot. No Owner, whether one or more persons or entities, shall have more than one membership per Lot owned, and in the event the Owner of a Lot is more than one person or entity, votes and rights of use and enjoyment shall be as provided hereinafter and in the Code of Regulations. An Owner that owns more than one Lot shall have a membership for each Lot that it owns. The membership rights of a Lot owned by a corporation, partnership or other legal entity shall be exercised by the individual designated from time to time by the Owner in a written instrument provided to the Association, subject to the provisions of this Declaration and the Code of Regulations. Declarant shall hold a separate membership in the Association for each Lot owned by Declarant. Membership in the Association shall not be assignable separate and apart from fee simple title to a Lot, except that an Owner may assign some or all of such Owner's rights to a Related User or Mortgagee and may arrange for a Related User or Mortgagee to perform some or all of such Owner's obligations as provided in this Declaration, but no assignment shall be permitted to relieve such Owner of the responsibility for fulfillment of all of the obligations of an Owner under this Declaration.

Section 4.3. Voting. Voting on Association matters requiring a vote will be conducted by Voting Members. Each Voting Member will be entitled to one vote. In the event that a Lot is owned by more than one person or entity, the vote for such Lot shall be exercised as such owners shall determine as evidenced in a writing provided to the Association. The Association shall not be held liable for counting a vote for a Lot that has been wrongfully or fraudulently cast by a person or entity in accordance with a writing provided to the Association, and the Association shall have no duty to investigate or inquire about the authenticity or the legal effect of such writing.

Section 4.4. Board of Trustees. The affairs of the Association shall be managed by a Board of Trustees. Declarant shall serve as the sole member of the Board of Trustees until the Turnover Date, at which time the Board of Trustees shall consist of three (3) members, each elected by a majority of the Voting Members that cast a vote on the appointments. One such member of the Board of Trustees shall be appointed for an initial term of one year, another member shall be appointed for an initial term of two years, and the third member shall be

appointed for an initial term of three years. After these initial terms, each remaining or replacement member of the Board of Trustees shall serve for terms of three years each.

ARTICLE V

DUTIES, RIGHTS AND POWERS OF THE ASSOCIATION

Section 5.1. General Duties and Powers of the Association. The Association has been formed to further the common interests of the Owners. The Association, acting through the Board or through persons to whom the Board has delegated such powers, shall have the duties and powers hereinafter set forth and, in general, the power to do anything that may be necessary or desirable to further the common interests of the Owners, to maintain, improve and enhance the Entry Feature Easement Areas.

Section 5.2. Duty to Manage, Control and Maintain Entry Feature Easement Areas. The Association, subject to the rights of the Owners set forth in this Declaration, shall be responsible for the management and control of the Entry Feature Easement Areas and shall maintain and keep the Entry Feature Easement Areas in good condition and repair. Management of the Association may be (but shall not be required to be) delegated by the Board of Trustees to a “Manager”. By the acceptance of title to any Lot, each Owner agrees to release and indemnify the Association from all claims arising from its actions pursuant to this Section 5.2, except to the extent caused by the intentional, reckless, or grossly negligent acts of the Association.

Section 5.3. Right to Maintain Hazard Insurance. The Association may obtain insurance for all insurable personal property or real estate improvements (if any) owned by the Association in amounts and upon terms that are deemed to be acceptable to the Board in its sole discretion.

Section 5.4. Right to Maintain Liability Insurance. The Association may obtain a comprehensive policy of public liability insurance insuring the Association and its trustees, officers, employees and agents for their actions or omissions for all liability for property damage, bodily injury, or death in connection with the performance of their duties, rights, and powers with regard to the operation, maintenance, or use of the Entry Feature Easement Areas. Such comprehensive policy of liability insurance shall be upon terms that are deemed to be acceptable to the Board in its sole discretion. Nothing in this paragraph or elsewhere in this Declaration shall be read to place a duty upon the Association to insure any Lot or any Owner or persons or entities acting by, through, or with the permission of an Owner, it being the express intent of the Declarants that each individual Owner or persons or entities acting by, through, or with the permission of an Owner shall be responsible for obtaining and maintaining types and amounts of insurance that they deem to be necessary or appropriate in their sole discretion.

Section 5.5. Right to Maintain Fidelity Insurance. The Association may obtain fidelity bonds to protect against dishonest acts on the part of its officers, trustees, agents, and employees

and on the part of all others who handle or are responsible for handling the funds of or funds administered by the Association.

Section 5.6. Other Insurance. The Association may obtain insurance against such other risks, of a similar or dissimilar nature, as it shall deem appropriate with respect to the Association's responsibilities and duties. The Association shall cause any contractors hired by the Association to maintain commercially reasonable insurance coverage, including, without limitation, if appropriate, workers compensation insurance, builder's risk and liability insurance.

Section 5.8. Power to Adopt Rules and Regulations. The Board of Trustees may adopt, amend, and repeal rules and regulations for the Association, to be known as the "Association Rules." The Association Rules shall be in furtherance of and consistent with the terms of this Declaration, and may not grant any rights or impose any obligations on Lots or Owners that are more restrictive than that which are contained in this Declaration. Copies of the currently effective Association Rules shall be made available to each Owner upon request.. In the event of any conflict between the Association Rules and the provisions of this Declaration, the provisions of this Declaration shall prevail.

Section 5.9. Ownership of Other Property. The Association, through action of its Board of Trustees, may acquire, hold, and dispose of tangible and intangible personal property as long as such property is required for the Association to perform its obligations hereunder.

Section 5.10. Implied Rights and Obligations. The Association may exercise any other right or privilege given to it expressly by the Association Documents, and every other right or privilege reasonably to be implied from the existence of any right or privilege given to it herein or reasonably necessary to effectuate any such right or privilege. The Association shall perform all of the duties and obligations imposed on it expressly by the Association Documents and every other duty or obligation reasonably to be implied from the express provisions of the Association Documents or reasonably necessary to perform the duties and obligations contained in the Association Documents.

ARTICLE VI

USE AND DESIGN RESTRICTIONS

Section 6.1. General Restriction. All of the Lots shall be used only for the purposes set forth herein, as permitted by the applicable ordinances, resolutions, and regulations of Harlem Township and Delaware County, Ohio, and the laws of the State of Ohio and the United States.

Section 6.2. Damage or Destruction. In the event of damage or destruction to the Improvements located on any of the Lots, the Owner thereof shall promptly repair and restore the damaged Improvements to as good or better condition as they existed prior to such damage or destruction. If such repair or restoration is not commenced within 120 days from the date of

such damage or destruction, then the Association may, after notice and hearing as provided in the Code of Regulations, impose a fine of not more than \$200 per day (which such maximum amount shall increase by 5% every five (5) years from the Effective Date) (a “Fine”) on the Owner of the Lot until repair and reconstruction is commenced. Each Owner shall diligently proceed with all repair and reconstruction and if repair and reconstruction is commenced by then abandoned for a period of more than 30 days, then unless the Owner can prove to the satisfaction of the Association that such failure is due to circumstances beyond the Owner’s control, the Association may, after notice and hearing as provided in the Code of Regulations, impose the Fine on the Owner of such Lot until repair and reconstruction is recommenced. Such fine shall be a Default Assessment and a lien against the Plot as provided elsewhere in this Declaration.

Section 6.3. Sizes of Structures. No primary residence on a Lot shall be less than 2,200 square feet in gross floor area, measured exclusive of basements and garages. No more than two (2) accessory structures shall be permitted on a Lot and accessory structures shall not, in total, have gross square footages which exceed twenty percent (20%) of the gross square footage of the primary residence on the Lot on which they are located.

Section 6.4. Motorized Vehicles. No commercial vehicles, vehicles with commercial writing on their exteriors, vehicles primarily sed or designed for commercial purposes, utility trucks, motorcycles, trail bikes, recreational vehicles, motor homes, motor coaches, snowmobiles, campers, trailers, boats or boat trailers, or any other motorized vehicles other than passenger automobiles shall be parked, stored, or in any manner kept or placed on any Lot, except in an enclosed garage or in an area completely screened form the view of adjacent Lots and Harlem Estates Court. This restriction, however, shall not be deemed to prohibit commercial and construction vehicles, in the ordinary course of business, from making deliveries or otherwise providing service to the Lots or for the initial construction by Declarant or other Owners.

Section 6.5. Abandoned, Inoperable or Oversized Vehicles. Abandoned or inoperable automobiles or vehicles of any kind, except as hereinafter provided, shall not be stored or parked on any portion of the Lots. “Abandoned or inoperable vehicle” shall be defined as any vehicle which has not been driven under its own propulsion for a period of two weeks or longer; provided, however, this shall not include vehicles parked by Owners while on vacation. A written notice describing the “abandoned or inoperable vehicle” and requesting removal thereof may be served upon the Owner or posted on the unused vehicle; and if such vehicle has not been removed within 72 hours thereafter, the Association shall have the right to remove the same without liability to it, and the expense thereof shall be charged against the Owner. “Oversized” vehicles, for purposes of this Section, shall be vehicles which are too high to clear the entrance to a residential garage.

Section 6.6. Electrical and Telephone Service. All electrical and telephone services will be placed underground.

Section 6.7. Animals and Pets. No animals, livestock, or poultry of any kind shall be kept, raised or bred on any portion of the Lots, except dogs, cats or other household pets, but then only to the extent and in conformity with the kind and number regulated, permitted or prohibited from time to time by the Board.

Section 6.8. Drainage. No Owner shall do or permit any work, construct any Improvements, place any landscaping, or suffer the existence of any condition whatsoever which shall negatively impact or interfere with the drainage pattern for the Lots.

Section 6.9. Trash. No trash, ashes, garbage or other refuse shall be thrown or dumped on any land or area within the Lots. Each Owner shall provide suitable receptacles for the temporary storage and collection of such refuse and all such receptacles shall be screened from the public view and from the wind and protected from animal and other disturbances.

Section 6.10. Equipment Storage. No lawn maintenance equipment or ATVs shall be stored outside of an enclosed structure.

Section 6.11. Temporary Structures. No temporary structures shall be permitted except as may be determined to be necessary during construction and except for outdoor storage pods, the latter of which may be present on a Lot for no more than five (5) consecutive days.

Section 6.12. No Outside Clotheslines. No laundry or wash shall be dried or hung outside any structure unless they are not visible from adjacent Lots or Harlem Estates Court.

Section 6.13. Outside Burning. No exterior fires except barbecues, outside fireplaces, and fire pits shall be permitted. No Owner shall permit any condition upon its portion of the Country Club Community Area which creates a fire hazard or is in violation of fire prevention regulations.

Section 6.14. Pools. No above-ground pools shall be erected, constructed or installed on any Lot. Spas and in-ground pools will be permitted subject to prior written approval from the Board

Section 6.15. Window Air Conditioning Units. No window air conditioning units may be installed in any structure.

Section 6.16. Water and Mineral Operations. No oil, gas or water drilling, oil gas or water development operations, oil refining, quarrying or mining operations of any kind shall be permitted On the Lots.

Section 6.17. Landscaping. Each Lot shall be required to provide and maintain mulched landscaping areas for a minimum distance of three (3) feet from the front foundation of a primary residence and from side foundations for a primary residence which are visible from Harlem Estates Court.

Section 6.18. Design Review by Board. The Board shall have the power to enforce the restrictions and requirements of this Article VI. It may adopt, establish and publish, from time to time, Design Guidelines which are not inconsistent with this Declaration but shall more specifically define and describe the design standards for the Lots. Subject to the foregoing, the Design Guidelines may be modified or amended from time to time by the Board in its sole and absolute discretion. The Board may authorize variances from compliance with any of the Design Guidelines and their procedures when circumstances such as topography, natural obstructions, hardship or aesthetic or environmental considerations require. Such variances may only be granted, however, when unique circumstances dictate and no variance shall (a) be effective unless in writing, (b) be contrary to the restrictions set forth in the body of this Declaration, or (c) stop the Board from denying a variance in other circumstances. For purposes of this Section, the inability to obtain approval of any governmental agency, the denial of any permit, or disapproval of the terms of any financing shall not necessarily be considered a hardship warranting a variance.

No building or other structure shall be placed, erected or installed on a Lot and no exterior alteration or modification of existing Improvements shall be permitted without, until, and unless the Owner first obtains the written approval thereof from the Board and otherwise complies with the provisions hereof. The Board shall provide written notice of its approval, approval with conditions, or disapproval of any said Improvements within ten (10) days after receiving a request to review and approve such items. The Association, after reasonable notice to the Owner, may remove any Improvements constructed, reconstructed, refinished, altered or maintained in violation of these covenants, and the Owner thereof shall forthwith reimburse the Association for all expenses incurred in connection therewith.

ARTICLE VII

COVENANTS FOR ASSESSMENTS

Section 7.1. Creation of Lien and Personal Obligation for Assessments. Each Owner of a Lot, by acceptance of a deed of such Lot, whether or not it shall be so expressed in any such deed, covenants and agrees and shall be deemed to have covenanted and agreed to pay the Assessments to the Association. No Owner may waive or otherwise exempt itself from liability for payment for any reason including, by way of illustration and not limitation, non-use of the

Entry Feature Easement Areas, and failure to pay any Assessments, together with any applicable interest, costs, and reasonable attorneys' fees, when due, shall give rise to a lien in favor of the Association upon the Lot to which said failure to pay pertains. Said lien shall arise upon the recording a notice of said lien in the chain of title to the delinquent Owner's Lot in the records of the Recorder's office. Upon payment or other satisfaction of said lien, the Association shall cause a notice of satisfaction and release of said lien to be recorded in the chain of title to the delinquent Owner's Lot in the records of the Recorder's office.

Section 7.2. Purpose of Assessments. The Assessments levied by the Association shall be used exclusively to pay for services provided to the Owners pursuant to the terms of this Declaration and for the maintenance (as permitted or required by this Declaration) of the Entry Feature Easement Areas, including, but not limited to, the payment of insurance thereon, and repair, replacement and additions thereto, reserve accounts, and the cost of labor, equipment, materials, and administration of the Association's business.

Section 7.3. Annual Budget. The Board shall prepare a budget prior to the beginning of each fiscal year estimating its net cash flow requirements for the next year and an estimate of the total Assessments to be charged and distribute it to the Owners at least forty-five (45) days prior to the beginning of each calendar year. On or before of the date that is fifteen (15) days before the beginning of each calendar year, the Board shall approve the budget in final form, and shall determine, levy, and begin taking necessary actions to assess the Association's total Base Assessments against all of the Lots for the following year (the "Total Budgeted Base Assessments"). Each budget may include funds for establishing and maintaining reserves. The Association may maintain or hold funds in reserve at a level that is determined by the Board in its reasonable discretion from time-to-time.

Section 7.4. Calculation and Apportionment of Base Assessments. The Board shall, for each calendar year, fix and assess a Base Assessment against each Lot. For each fiscal year, the Board shall calculate Base Assessment for each Lot in the following manner: The Total Budgeted Base Assessments shall be divided by the 11 total Lots within the Subdivision. That quotient then shall be multiplied by 1.1. In addition, no later than thirty (30) days after the issuance of the first building permit for a structure on each Lot, the Owner of the Lot for which the building permit is issued shall make a one-time contribution of \$400.00 to the Association in order to fund its initial operations.

Section 7.5. Date of Commencement of Base Assessments; Due Dates. The Base Assessments provided herein shall commence as to each Lot on the date that is thirty (30) days after the first building permit is issued for a structure on that Lot. Each Owner shall have the duty to promptly notify the Association once the first building permit is issued for a Lot that it owns. Base Assessments shall be collected on a periodic basis as the Board may determine from time to time, but until the Board directs otherwise, Base Assessments shall be payable annually, in advance, on or before January 15th of each year. Association funds shall be deposited in federally insured accounts or as otherwise determined by policies established by the Board of Trustees.

Section 7.6. Effect of Non-Payment of Assessment Lien; Remedies of the Association. Any Base Assessment installment or Special Assessment which is not paid within thirty (30) days of its due date shall be delinquent. In the event that any such payment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

7.6.1. Assess a late charge of 10% of the delinquent amount;

7.6.2. Assess an interest charge from the date of delinquency at the rate of 10% per annum; and

7.6.6. File a statement of lien with respect to the Lot, and foreclose on the Lot as set forth in more detail below.

The Association may file a statement of lien by recording with the Recorder a written statement with respect to such Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Association, and the amount of delinquent payment(s) then owing, which statement shall be duly signed and acknowledged by a member of the Board of Trustees of the Association, and which shall be served upon the Owner of the Lot by mail or hand delivery to the address of the Lot or at such other address as the Association may have in its records for the Owner of the Lot. Subject to Section 7.8 below, the Association may proceed to foreclose the lien in the same manner as provided for the foreclosure of mortgages under the laws of the State of Ohio. Such lien shall be in favor of the Association and shall be for the benefit of all other Owners. In a foreclosure action, the Association shall be entitled to recover as a part of the action, the interest, costs, and reasonable attorneys' fees with respect to the action. The Association shall have the power to bid for the Lot at the foreclosure sale and to purchase, hold, lease, mortgage and sell the same. The remedies herein provided shall not be exclusive and the Association may enforce any other remedies to collect delinquent Assessments as may be provided by law.

Section 7.7. Successor's Liability for Assessments. Except as provided in this Section, each current Owner shall be jointly and severally liable with the prior Owner or Owners of a Lot for any and all unpaid past Assessments, interest, late charges, costs, expenses, and attorneys' fees against such Lot, without prejudice to any such successors' right to recover from any prior Owner any amounts paid thereon by such successor. Such successor shall be entitled to conclusively rely on the statement of liens shown on any certificate issued by or on behalf of the Association under Section 7.9 hereof and shall not be liable for any amount not shown on any such certificate that is issued. Nothing herein shall be read to make any prior Owner of a Lot liable for any Assessments against said Lot that first accrue or are assessed following the date of conveyance of the Lot to an unaffiliated transferee.

Section 7.8. Subordination of the Lien. The lien provided for in this Article VI shall be subordinate only to the lien of real estate taxes and any assessments by governmental authorities and of any loan evidenced by a recorded Mortgage and to any refinancing of such loan, provided

that any such refinancing is evidenced by a Mortgage of record. The sale or transfer of any Lot pursuant to a decree of foreclosure or by a public trustee's foreclosure, or any other proceeding or deed in lieu of foreclosure, for the purpose of enforcing a Mortgage, shall extinguish the lien as to installments which became due prior to such sale or transfer.

Section 7.9. Statement of Status of Assessments. Upon ten (10) business days' prior written notice to the Association and payment of a processing fee set by the Association from time to time, any Owner or Mortgagee, prospective Owner or Mortgagee, or any partner or other equity interest holder (actual or prospective) in an Owner or prospective Owner of a Lot shall be furnished a statement of the account for such Lot setting forth:

7.9.1. The amount of any unpaid Base Assessments, Special Assessments, interest, late charges, costs, expenses, and attorneys' fees then existing against a particular Lot;

7.9.2. The amount of the current periodic installments of the Base Assessment and the date through which they are paid; and

7.9.3. Any other information deemed proper by the Association. The information contained in such statement, when signed by a member of the Board of Trustees, shall be conclusive upon the Association as to the person or persons to whom such statement is issued and who rely on it in good faith.

Section 7.10. Failure to Assess. The omission or failure of the Board to fix Assessment amounts or rates or to timely deliver or mail to 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 on the same basis as for the last year for which an Assessment was made until a new Base Assessment is made at which time any shortfalls in collections may be assessed retroactively by the Association.

Section 7.11. Special Assessments. The Voting Members, by 65% or more affirmative vote of the Voting members casting a vote as tabulated in accordance with Section 4.3, may levy a Special Assessment to pay for any unusual or unplanned expenses that have not been included in an annual budget of the Association but are incurred or are anticipated to be incurred by the Association when fulfilling its duties and obligations under this Declaration. Any Special Assessment levied hereunder shall be payable on or before the thirtieth (30th) day from the date of the Special Assessment is assessed, or such later date as may be specified therein.

ARTICLE VIII

USE OF MAINTENANCE FUNDS

Section 8.1. Application of Assessments. The Association shall apply all Assessments received, and all other funds and property received by it from any source, including, without

limitation, the proceeds of loans referred to in Section 8.2 and the surplus of funds referred to in Section 8.3 (but excluding the Individual Owner Maintenance Cost Share) for the following purposes and any other lawful purpose that furthers the provisions and intent of this Declaration:

8.1.1. The payment of the costs incurred by the Association in connection with the provision of services which may or must be provided pursuant to the provisions of this Declaration;

8.1.2. The payment of all principal and interest, when due, on all sums borrowed by or loaned to the Association, to the extent required under any agreement with holders or owners of debt obligations referred to in Section 8.2 hereof;

8.1.3. Administrative costs and expenses incurred by the Association in the exercise of its powers, authority, and duties described in the Association Documents; and

8.1.4. The maintenance of the Entry Feature Easement Areas, including, but not limited to, the payment of taxes (if they are the responsibility of the Association) and insurance thereon, and repair, replacement and additions thereto, reserve accounts, the cost of labor, equipment, materials, management and supervision.

Section 8.2. Authority to Borrow Funds. For the purpose of providing funds to fulfill its obligations or exercise its rights under this declaration, the Association is hereby granted the right to borrow funds from time to time upon such terms and conditions deemed appropriate by the Board. Payments on any loan obtained by the Association shall be paid from Base Assessments which are collected by the Association. In order to secure the repayment of any and all sums borrowed by or loaned to it from time to time, the Association is hereby granted the right and power:

8.2.1. To assign and pledge all revenues received and to be received by it under any provision of the Association Documents, including, but not limited to, the proceeds of the Base Assessments payable hereunder;

8.2.2. To enter into agreements with holders and owners of any debt obligations with respect to the collection and disbursement of funds, including, but not limited to, agreements wherein the Association covenants:

- (a) to assess the Base Assessments on a given day in each year and to assess the same subject to the rate limitations set forth herein;
- (b) to provide for the custody and safeguarding of all funds received by the Association; and

The amounts, terms and rates of borrowing and the provisions of all agreements with holders or owners of any such debt obligation shall be subject to the approval of at least 65% of the Voting Members.

Section 8.3. Authority to Maintain Surplus. The Association shall not be obligated to spend in any particular time period all the sums collected or received by it in such time period or in any other time period and may carry forward, as surplus, any balances remaining; nor shall the Association be obligated to apply any such surplus to the reduction of the amount of the Base Assessment in any year, but may carry forward from year to year and time to time such surplus as the Board in its absolute discretion may determine to be desirable for the greater financial security of the Association and the effectiveness of its purposes as set forth in the Association Documents.

ARTICLE IX

GENERAL PROVISIONS

Section 9.1. Term. The covenants and restrictions of this Declaration shall run with and bind the Lots for a term of forty (40) years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of time of ten (10) years each, unless otherwise terminated or modified as hereinafter provided.

Section 9.2. Amendment. Declarants may amend this Declaration, but only if such amendment is: (a) necessary to bring any provision hereof into compliance with any applicable governmental statute, rule, regulation or judicial order, (b) necessary to enable any reputable title insurance company to issue title insurance coverage on the Lots, (c) necessary to correct errors; provided, however, any such amendment shall not materially adversely affect the title to any Lot or increase the Base Assessments on any Lot unless the Owner thereof has consented to such amendment in writing. Any other amendments may be made only with the consent of all of the Voting Members.

Section 9.3. Effective on Recording. Any amendment, to be effective, must be recorded in the office of the Recorder. Any amendment shall be effective immediately upon such recordation.

Section 9.4. Revocation. This Declaration shall not be revoked without the consent of all of the Owners in a written instrument duly recorded, in the office of the Recorder.

Section 9.5. Compliance with Documents. Each Owner shall abide by and benefit from the provisions, covenants, conditions, and restrictions contained in the Association Documents.

Section 9.6. Compliance. Each Owner or other occupant of any part of the Lots shall comply with the provisions of the Association Documents as the same may be amended from time to time.

Section 9.7. Enforcement. The Association and/or any Owner shall have the right to enforce against any Owner, and any Owner shall have the right to enforce against the Association, by a proceeding at law or in equity, all restrictions, conditions, covenants, reservations, liens, and charges now or hereafter imposed by the provisions of this Declaration. Failure by the Association or by any Owner to enforce any covenant or restriction herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 9.8. Non-Exclusive Remedies. All of the remedies set forth herein are cumulative and not exclusive.

Section 9.10. No Liability. No member of the Board, nor the Declarants, a Manager or any Owner shall be liable to any other Owner for the failure to enforce any of the Association Documents at any time.

Section 9.11. Recovery of Costs. If legal assistance is obtained to enforce any of the provisions hereof, or in any legal proceeding (whether or not suit is brought) for damages or for the enforcement of or to restrain the violation of the Association Documents, the prevailing party shall be entitled to recover all costs incurred by it in pursuing such legal assistance, including reasonable attorneys fees as may be incurred, or if suit is brought, as may be determined by the court. Any costs incurred by the Association in pursuit of the remedies available to it under this Declaration shall give rise to a lien against the relevant Lot and the relevant Owner thereof, which lien shall be subject to all the terms and conditions applicable to an Association lien arising hereunder.

Section 9.12. Resolution of Disputes. If any dispute or question arises between Owners or between Owners and the Association relating to the interpretation, performance or non-performance, violation, or enforcement of the Association Documents, such matter may be subject to a hearing and determination by the Board in accordance with the procedures which may be set forth in the Code of Regulations.

Section 9.13. Severability. This Declaration, to the extent possible, shall be construed or reformed so as to give validity to all of the provisions hereof. Any provision of this Declaration found to be prohibited by law or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating any other part hereof.

Section 9.14. Construction. In interpreting words herein, unless the context shall otherwise provide or require, the singular shall include the plural, the plural shall include the singular, and the use of any gender shall include all genders.

Section 9.15. Headings. The headings are included only for purposes of convenient reference, and they shall not affect the meaning or interpretation of this Declaration.

Section 9.16. Registration of Address. Each Owner and Member shall register its mailing address and a valid e-mail address with the Secretary of the Association from time to time. If an Owner fails to register its mailing address, such address shall be deemed to be the mailing address of the Owner's Lot if a temporary or permanent certificate of occupancy has been issued for a Building located thereon, or if no such certificate has been issued, such address shall be deemed to be the tax mailing address of the Owner as set forth in the records of the Office of the Auditor of Franklin County, Ohio.

Section 9.17. Notice. All notices or requests required hereunder shall be in writing. Notice to any Owner or member of the Board of Trustees shall be considered delivered and effective upon personal delivery, delivery to an e-mail address provided by the Owner or member of the Board to the Association, or three days after posting, when sent by first class mail, to the address of such Owner on file in the records of the Association at the time of such mailing. Notice to the Board or the Association shall be considered delivered and effective upon personal delivery, or three days after posting, when sent by first class mail, to the Association, the Board, or the Manager, at such address as shall be established by the Association from time to time by notice to the Owners and members of the Board.

Section 9.18. Waiver. No failure on the part of the Association or the Board to give notice of default or to exercise or to delay in exercising any right or remedy hereunder shall operate as a waiver, except as herein specifically provided, should the Board fail to respond to certain requests. No waiver shall be effective unless it is in writing, signed by the president or vice president of the Board on behalf of the Association.

Section 9.19. Conflicts Between Documents. In case of conflict between the Declaration and the Articles of Incorporation or the Code of Regulations, the Declaration shall control. In case of conflict between the Articles of Incorporation and the Code of Regulations, the Articles of Incorporation shall control.

Section 9.20. Litigation. No judicial or administrative proceeding shall be commenced or prosecuted by the Association unless approved by the written consent of at least 65% of the Owners. 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 herein, (c) proceedings involving challenges to ad valorem taxation, or (d) counterclaims brought by the Association in proceedings instituted against it.

Section 9.21. Limitations of Liability and Indemnification. The Association shall indemnify every officer, trustee, and committee member against any and all expenses, including counsel fees, reasonably incurred by or imposed upon such officer, trustee, or committee member in connection with any action, suit, or other proceeding (including settlement of any suit or proceeding, if approved by the then Board of Trustees) to which he or she may be a party by reason of being or having been an officer, trustee, or committee member. The officers, trustees, and committee members shall not be liable for any mistake of judgment, negligent or otherwise,

except for their own individual willful misfeasance, malfeasance, misconduct, or bad faith. The officers and trustees shall have no personal liability with respect to any contract or other commitment made by them, in good faith, on behalf of the Association, and the Association shall indemnify and forever hold each such officer and trustee free and harmless against any and all liability to others on account of any such contract or commitment. Any right to indemnification provided for herein shall not be exclusive of any other rights to which any officer, trustee, or committee member, or former officer, trustee, or committee member may be entitled. The Association may, at its expense, maintain adequate general liability and officers and trustees' liability insurance as required in elsewhere in this Declaration to fund this obligation, if such insurance is reasonably available.

[Signature pages and exhibits follow]

IN WITNESS WHEREOF, the Declarant has executed this Declaration so as to be effective on the Effective Date.

AV INVESTMENT LLC,
an Ohio limited liability company

By: _____

Print Name: _____

Title: _____

Date: _____

STATE OF OHIO

COUNTY OF _____, ss:

The foregoing instrument was acknowledged before me this ____ day of _____, 2021, by _____, the _____ of AV INVESTMENT LLC, an Ohio limited liability company, who acknowledged that he/she did execute the foregoing instrument on behalf of said company and that the same is his/her free act and deed and that no oath or affirmation was administered to the signor.

Notary Public