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RECORDER FRANKLIN CO., OHIO

FEB 8 1996

RICHARD B. METCALF, RECORDER  
RECORDER'S FEE 130<sup>00</sup>

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**THE RESERVE  
AT  
NEW ALBANY**  
New Albany, Ohio

DECLARATION OF PROTECTIVE COVENANTS,  
CONDITIONS AND RESTRICTIONS

RECORDED  
(JMA)

**DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND  
RESTRICTIONS FOR  
THE RESERVE AT NEW ALBANY**

This DECLARATION is made February 6, 1996 by Berkshire Development Co., PLL, an Ohio registered partnership having limited liability, (hereinafter "Declarant").

**ARTICLE I**

Declarant is the owner of all that certain real property located in Franklin County, Ohio, more particularly described on Exhibit A attached hereto (hereinafter the "Property") and hereby makes this Declaration of Protective Covenants, Conditions and Restrictions (the "Declaration") for the purposes hereinafter set forth.

Declarant hereby declares that the Property shall be held, sold, conveyed, encumbered, leased, occupied and improved subject to the following covenants, conditions, and restrictions which shall run with the Property and be binding upon and inure to the benefit of all parties now or hereafter having any right, title, or interest in such property or any part thereof, and their heirs, personal and legal representatives, successors and assigns.

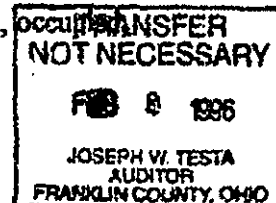
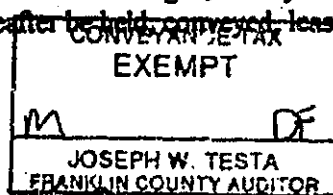
*CC & run with the land*

Whereas, in order to advance the purposes of the Declaration, The Reserve at New Albany Homeowners' Association, Inc. (the "Association"), an Ohio non-profit corporation, has been established for the purpose of owning, operating, maintaining, and administering portions of the Property, together with certain improvements constructed and developed or to be constructed and developed thereon, including, but not limited to, common areas, part A, and lakes as dedicated to either the Association or the Village of New Albany from time to time by Declarant for the common use by the owners of Lots within the Property and/or the public; and the Association, as formed by the Declarant, has joined in this Declaration for purposes of acceptance of all powers and duties of operation, administration, maintenance and repair as delegated and assigned by Declarant together with the collection and disbursement of "operating expenses" (as said term is hereinafter defined); and

*Reserve HOA to own, operate + maintain portions of the land and improvements - including common areas, parks, lakes. Whether dedicated to the HOA or Village*

Whereas, the Association shall administer and enforce the provisions of this Declaration with the costs incurred by the Association in connection with said operation, administration, maintenance and repair, being an encumbrance upon those portions of the Property which are benefited thereby (as more particularly set forth herein).

Now, therefore, in the interest of enhancing the inherent value of ownership within the Property; to ensure proper development and use of the Property; to provide for adequate maintenance of common areas and residential Lots; to promote the health, safety and welfare of the residents; and to promote a cohesive aesthetically pleasing living community, the Declarant, for itself and its successors and assigns, hereby declares and agrees that all portions of the Property shall hereafter be held, conveyed, leased, occupied



used and improved subject to the covenants, conditions and restrictions set forth herein, which shall run with the Property for all purposes and shall be binding upon the Property, the Declarant, and its grantees, together with its respective successors and assigns, and shall inure to the benefit of the Property, the Declarant, its grantees and owners, their respective successors and assigns. *CER binding on Declarant and its grantees and their successors*

## 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.

2.01 Architectural Review Board (also referred to as the ARB): The board created pursuant to Article V of this Declaration for purposes of advising Lot owners and ensuring compliance with the guidelines set forth in the Design Review Manual.

2.02 Articles: The Articles of Incorporation of The Reserve at New Albany Homeowners' Association, Inc., an Ohio non-profit corporation, which said Articles are filed with the Secretary of State, State of Ohio, and as may be amended from time to time.

2.03 Assessment: Shall be defined as follows:

(i) Regular Assessment shall mean the charge against each Owner and respective Lot representing an allocable portion of the Common Expenses of the Association;

*allocable portion of Common Expenses.*

(ii) Compliance Assessment shall mean the charge against an Owner and respective Lot representing a portion of the cost of reconstructing any damaged or destroyed portion or portions of the Common Area and facilities, for which such owner was responsible, the costs incurred by the Association in bringing such Owner and his Lot into compliance with this Declaration; or any amount due to the Association based upon disciplinary proceedings against an Owner in accordance with this Declaration;

*cost to repair damage caused by Owner to Common Area.*

(iii) Special Assessment shall mean the charge against an Owner and respective Lot representing a portion of the cost of constructing or installing any capital Improvements to the Common Area and facilities or of taking any extraordinary action for the benefit of the Common Area and facilities or the membership of the Association pursuant to the provisions of this Declaration;

*or to bring Lot into compliance or incur capital or special costs benefiting community*

(iv) Initial Reserve Assessment shall mean the charge against an Owner and respective Lot representing an initial contribution for purposes of creating an operating reserve fund, thereby creating funds available to the Association to pay obligations when and as they become due.

2.04 Association: The Association is "The Reserve at New Albany Homeowners' Association, Inc.", an Ohio non-profit corporation, and its successors and assigns. It is understood that all owners of land subject to this Declaration will belong to said Association.

All owners  
in Reserve  
belong to  
Association

2.05 Board: The Board of Trustees of the Association.

2.06 Builder: A person or entity who or which acquire title to any Lot or parcel for the purpose of construction of a residential dwelling thereon, in accordance with the Design Review Manual (as hereinafter defined), with the strict purpose of reselling the improved Lot to an Owner. In the event a Builder occupies a dwelling on any Lot as his principal residence, then he shall be deemed to be an Owner as to that Lot and may be a Builder as to other Lots within the Property.

2.07 Code of Regulations: The Code of Regulations of the Association which has been adopted by the Board, as such Code of Regulations may be amended from time to time.

2.08 Common Area: The land controlled and/or owned by the Association, as well as those areas of the Property shown on any recorded plat of all or any portion of the Property, or designated in any recorded declaration, or both, as devoted to the common use and enjoyment of the Owners and/or the public, including without limitation, areas deeded to the Village of New Albany, landscape easements, buildings and Improvements now or hereafter constructed thereon.

Common  
Area includes  
areas deeded  
to New  
Albany

2.09 Common Expenses: The actual and estimated costs to be paid by the Association in delegation of its duties as provided in the Articles, and the Code of Regulations including but not limited to those expenses incurred to maintain Common Area.

2.10 Declarant: Berkshire Development Co., PLL, an Ohio registered partnership having limited liability, and its successors in interest. A person or entity shall be deemed a successor in interest of Declarant only if so specifically designated in a duly recorded written instrument as a successor or assign of Declarant under this Declaration and/or under a Supplemental Declaration and shall be deemed a successor in interest of Declarant only as to the particular rights or interests of Declarant under this Declaration or under such Supplemental Declaration which are specifically designated in the recorded written instrument.

2.11 Declaration: This Declaration of Covenants, Conditions and Restrictions as supplemented and/or amended from time to time.

2.12 Design Review Manual: That collection of standards and/or guidelines as adopted by the ARB as supplemented and/or amended from time to time.

**2.13 Improvement:** Any and all Buildings and structures, parking areas, fences, walls, bridges, plantings, poles, driveways, ponds, lakes, signs, changes in any exterior color or shape, excavation and any and all other site work including, without limitation, grading, road construction, utility improvements, removal of trees or plantings, and any new exterior construction or exterior improvement which may not be included in the foregoing. Improvement does not include turf, shrub, or tree repair or replacement of a magnitude which does not change exterior colors or exterior appearances. Improvement does include both original Improvements and all later changes and Improvements.

includes  
parking area  
lakes & ponds  
Vegetation

**2.14 Landscape Easement:** That easement retained over portions of certain Lots and/or Common Areas for the installation and maintenance of decorative features. The retained Landscape Easements and the Lots affected thereby are identified on the Plat.

**2.15 Lot:** Each separate tract depicted, designated and shown upon any recorded subdivision Plat, excepting, however, any lot described in the Declaration or Plat as Common Area.

**2.16 Member:** Every person or entity who holds Membership in the Association. There are three categories of Membership: Declarant, Builders, and Owners of Lots.

**2.17 Operating Expenses:** The expenses of the Association for which all Owners are liable. Said Expenses include, but are not limited to, the costs and expenses incurred by the Association in fulfilling its obligations hereunder, and in administering, operating, owning, constructing, reconstructing, financing, maintaining, repairing and replacing Common Areas or portions thereof and Improvements thereon. Also included are the expenses incurred for maintenance of all Landscape Easements and Reserve areas as designated on the Plat.

**2.18 Owner:** The holder of record title in fee simple to any Lot, whether or not such title holder actually resides on the Lot. This term specifically excludes those persons or entities holding record title merely as security for the performance of an obligation. This term further excludes Declarant and Builder as they are defined in this Article II.

**2.19 Plat:** Each and every subdivision record plan of real estate as recorded in the plat records of Franklin County, Ohio.

should  
refer to  
Plat # for  
the Reserve

**2.20 Property:** All land described in the attached Exhibit A and all Improvements now or hereafter built, installed or erected thereon.

**2.21 Registered Notice:** Any written notice which has been signed for by the addressee, or by the spouse, son or daughter or any domestic servant or employee of the addressee; Registered Notice also means and refers to any written notice which has been certified by the US Postal Service or other delivery service as actually having been delivered at the address listed for the addressee on the records of the Association or as to which delivery was attempted by was refused by the addressee or other persons at such address, to the

extent that such refusal was witnessed by an employee of the Postal Service or other delivery service.

**2.22 Reserve and Conservation Areas:** Those areas, as designated on the Final Plat, reserved as part of the Common area and/or portions of lots which have specific protections. Said Reserve Areas may be decded to the Homeowners' Association or to the Village of New Albany. Said Conservation Areas are and shall remain as parts of individual Lots, as designated on the Plat. The entities responsible for the maintenance of said areas are designated on the Plat.

**2.23 Residence:** The individual dwelling and the related Improvements that are constructed upon a Lot, which are designed and intended for use and occupancy by a single family.

**2.24 Resident:** Each person residing in a Residence.

**2.25 Restrictions:** These covenants, conditions, restrictions, liens, assessments and easements, together with all of the provisions contained herein as they now appear or as they may hereafter be amended.

**2.26 Rules and Regulations:** The rules and regulations adopted by the Board pursuant to the Code of Regulations and this Declaration, as they may be amended from time to time.

✓ **2.27 Supplemental Declaration:** Any Declaration recorded by Declarant to establish additional covenants, conditions and restrictions or to amend any covenants, conditions and restrictions contained herein.

**2.28 Tenant:** A person, firm, partnership, corporation or other entity possessing or claiming to possess a leasehold interest in any Residence or portion of the Property.

### ARTICLE III

**3.01 Name:** The name of the development shall be "The Reserve at New Albany". The name of the homeowners' association established pursuant to this Declaration shall be "The Reserve at New Albany Homeowners' Association, Inc." Nothing contained in this Declaration, Articles of Incorporation or Code of Regulations of the Association shall permit a name change of this development or the Association. It is the intent of Declarant to establish and maintain proper identity of this development by means of the name assigned hereby.

**3.02 Governmental Regulations.** This development is subject to the subdivision regulations, zoning regulations and provisions of the Village of New Albany Planning and Zoning Commission.

## ARTICLE IV

## Association

4.01 Indemnification and Formation: The name of the Association is "The Reserve at New Albany Homeowners' Association, Inc.". It has been formed as an Ohio non-profit corporation pursuant to the provisions of Chapter 1702 of the Revised Code.

4.02 Membership: Every person or entity who is an Owner, Declarant or Builder shall be a Member of the Association. All Memberships in the Association shall be appurtenant to the Lot owned by each Member. Memberships in the Association shall not be assignable, except to the person or entity to whom the title to the Lot has been transferred. The ownership of such Lot shall be the sole qualification for Membership in the Association.

Each Owner  
of a Lot  
is a Member  
of HOA

4.03 Voting Rights: Voting Rights of Members shall be as provided in the Code of Regulations of the Association.

4.04 Power, Authority, Duties: The Association shall have all the rights, powers, and duties established, invested, or imposed pursuant hereto, its Articles of Incorporation, its Code of Regulations, its duly adopted rules and regulations, and the laws of the State of Ohio applicable with respect to Ohio non-profit corporations.

4.05 Specific Powers: Among other things, the Association shall have the following specific rights:

- A. Enforce the provisions of this Declaration. enforcement
- B. Acquire title to, manage, maintain, repair and replace all Common Area and facilities, maintain all street and traffic signs, and pay all costs of utilities, operation, maintenance, repair, replacement, gardening and other necessary services for the Common Area and facilities; maintain  
Common Areas  
pay utility
- C. Grant easements or licenses where necessary for utilities and other service facilities over, on and across the Common Areas and facilities and within platted easements across Lots. grant  
utility  
easements
- D. Levy and collect Assessments from the Owners of Lots and enforce payments of such Assessments. collect  
assessments
- E. Pay all taxes and Special Assessments which would be a lien upon the Common Areas and facilities, and discharge any lien or encumbrance levied against the Project or the Common Areas and facilities.
- F. Pay for reconstruction of any portion of the Common Areas and facilities damaged or destroyed.
- G. Retain, if deemed appropriate by the Board, and pay for, legal and accounting services necessary and proper for the efficient operation of the Association. retain  
professional  
services

H. Enter into a Lot when necessary in connection with the maintenance or construction for which the Board is responsible.

I. Perform any and all other acts and things that a non-profit mutual benefit corporation organized under the laws of the State of Ohio is empowered to do, which may be necessary, convenient or appropriate in connection with the administration of the Association's affairs and the carrying on of the Association's duties as set forth in this Declaration.

4.06 Delegation of Duties: In the event the Association shall delegate any or all of its duties, powers or functions to any person, corporation or firm to act as manager, neither the Association nor the Members shall be liable for any omission or improper exercise by the manager of any such duty, power or function so delegated.

4.07 Right of Entry: The Association, through its authorized representatives, shall have a Right of Entry and access to, over, upon and through all the Property to enable the Association to perform its obligations, exercise its rights and fulfill its duties pursuant hereto. Such representatives shall not be deemed to have committed a trespass as a result thereof; provided, however, except in an emergency, an occupied building may not be entered unless such written notice of such proposed entry shall have been given or sent to the Owner thereof at least five (5) days prior to such entry.

Right of  
Entry

## ARTICLE V

### Architectural Control

5.01 Formation: The Association shall establish an Architectural Review Board (hereinafter referred to as the ARB). In the event the Association fails to appoint an Architectural Review Board, the Board of Trustees shall serve as the Architectural Review Board.

Association to  
appoint  
ARB  
↓  
Trustees  
if no appointment

5.02 Architectural and Design Standards: The Association shall create and adopt a Design Review Manual which may be amended from time to time as provided therein. The Design Review Manual will serve to establish the standards upon which the ARB is to base its approval or rejection of plans, construction, excavation, grading, landscaping, tree removal, renovation, or other work or action which in any way alters the exterior appearance of the Property from its theretofore natural or improved state.

Design  
Review  
Manual  
basis of ARB  
decisions

✓ 5.03 Plan Approval Requirement: No improvement, change, construction, addition, excavation, landscaping, tree removal or other work or action which in any way alters the exterior appearance of the Property from its theretofore natural or improved state (and no change, alteration or other modification of any of the foregoing previously approved hereunder) and no addition to or modification of any Improvement or landscaping (whether or not theretofore approved hereunder) shall be commenced or continued until the same shall have first been approved in writing by the ARB in accordance with the Design Review Manual.

protects  
exterior  
appearance  
of the  
development



5.04 Review Process: The review, evaluation and approval or disapproval of proposed plans for development of Lots within The Reserve shall be processed pursuant to the procedures established by the ARB, as outlined in the Design Review Manual.

5.05 Review Fee: The Association, through the ARB, shall charge and collect review fees whenever plans are submitted to the ARB for review. The fee, as established by the ARB, may be amended from time to time.

5.06 Basis of Approval: Approval shall be based, among other things, upon conformity and harmony of the proposed plans with the standards set forth in the Design Review Manual and other structures on the Property, the effect of the location and use of Improvements on neighboring property, and conformity of the plans and specifications to the general intent of and specific revisions of this Declaration.

standard  
for approval.

5.07 Failure to Approve: In the event the ARB fails to approve any plans and/or specifications within 30 days after their submission in such complete form as may be required by the ARB, said plans and specifications shall be deemed to have been disapproved and rejected.

failure to  
act =  
disapproval.

5.08 Complete Authority: Submission of plans for approval to the ARB constitutes acceptance of the decisions rendered by the ARB. It is acknowledged that the ARB has total, complete, absolute and final discretion and authority to approve or disapprove all plans submitted.

5.09 Liability: Neither the Declarant, the Association, the Board, the ARB nor any member thereof, nor any of their respective heirs, personal representatives, successors or assigns shall be liable to anyone submitting plans for approval by reason of mistakes in judgment, negligence or nonfeasance arising out of or in connection with the approval, disapproval or failure to approve any plans. Every person and entity submitting plans to the ARB agrees by said submission that he or it will not bring any action or suit against the Association, the Board, the ARB or Declarant to act or to recover any damages.

5.10 Scope of Approval: No approval of plans and specifications and no publication or architectural standards bulletins shall ever be construed as representing or implying that such plans, specifications or standards will, if followed, result in a properly designed Residence. Such approvals and standards shall in no event be construed in representing or guaranteeing that any Residence will be built in a good and workmanlike manner.

5.11 Approval Subject to Governmental Regulations: Approval of any plans by the ARB shall not be interpreted or construed as an acceptance of plans that violate any and all applicable township, municipal, state or federal regulations, codes, ordinances, and statutes applicable to standards of building. The terms and conditions of this Article V and the Design Review Manual are deemed subordinate to any and all applicable regulations, codes, ordinances and statutes.

building  
zoning  
fire  
leak  
codes  
need to  
be followed

5.12 Enforcement of Violation: Any construction or Improvements which were not approved by the ARB as well as any failure to comply with the plans and specifications as submitted and approved by the ARB shall be the subject of a Registered Notice from the ARB directing the Owner and/or Builder to remove all such violative work at once. Removal shall commence within seven (7) days of Registered Notice and shall progress until completion within thirty (30) days. Such removal shall be at the expense of Owner and/or Builder on whose Lot the construction and Improvement is situated. In the event removal is not instituted and completed according to the terms and conditions set forth herein, the Association, its delegates or assigns may enter upon the portion of the Property involved to effect the removal with the cost thereof assessed against the Owner of the Lot.

ARB can  
order  
removal  
if  
noncomplying  
addition

## ARTICLE VI

### Environmental Quality

6.01 Reserve Areas: The areas designated as "Reserve" on the Final Plat (A,B,C,& D) will be deeded to the Village of New Albany, but remain the responsibility of the Homeowners' Association. Maintenance of said designated areas, and any additional areas as may be designated from time to time, is the responsibility of the Association. Should the Association not fulfill its maintenance responsibilities of said areas, the Village of New Albany has the right to enter the property for maintenance purposes. The costs incurred by the Village will be assessed against the Association which will be obligated to reimburse the Village for such expenses. Additional detail regarding the protection of these areas may be found on the Final Plat.

H2A to  
maintain  
Reserve  
Areas  
A, B, C, D

\* Note - Village  
can assess  
costs

6.02 Conservation Areas: These are areas within certain individual Lots identified for purposes of preserving the natural condition of the land. They are delineated on the Final Plat, as are the individual Homeowners' responsibilities regarding their protection. Careful attention should be paid to said responsibilities at all times. Specifically there are protection guidelines for during the building process as well as restrictions regarding the removal of vegetation.

## ARTICLE VII

## Protective Covenants and Restrictions

7.01 Residential Use: Subject to the consolidation of two or more Lots for construction of a Residence and related Improvements thereon, each Lot shall be used as a private dwelling for a single family and for no other purpose except such temporary uses as shall be permitted by Declarant while the Project is being developed and Lots are being sold by Declarant; provided, however, that Declarant reserves for itself the right, until all Lots in all Phases are sold (and escrows closed), to carry on normal sales activity on the Property, including the operation of models and sales offices, provided that Declarant shall not unreasonably interfere with any other Owners' use of the Common Area.

7.02 Splits Prohibited: No Lot shall be split, divided or subdivided for sale, resale, gift, transfer or otherwise, so as to create a new Lot or building site.

7.03 Temporary Improvements: No temporary building or structure shall be permitted on any portion of the Property, provided, however, trailers, temporary buildings, barricades and the like shall be permitted for construction purposes during the construction period for a permanent building and for sales purposes during the sale of Lots, provided, in addition, the ARB shall have theretofore approved in writing the design, appearance and location of the same. Any permitted temporary Improvements shall be removed not later than fourteen (14) days after the date of completion of the building(s) for which said temporary structure was intended and shall be permitted for no longer than a period of one (1) year, unless otherwise approved by the ARB.

7.04 Quiet Enjoyment/Nuisance: No Owner or Resident shall permit or suffer anything to be done or kept upon such Lot or Residence which will obstruct or interfere with the rights of quiet enjoyment of other Owners, Residents or occupants, or annoy them by unreasonable noises or otherwise. No Owner shall commit or permit nuisance on the premises or commit or suffer any immoral or illegal act to be committed thereon. Each Owner shall comply with all of the requirements of the Board of Health and of all other governmental authorities with respect to said premises and shall remove all rubbish, trash and garbage from the Lot. There shall be no exterior fires whatsoever, except barbecue fires contained within receptacles made therefore. No odors shall be permitted to arise or to be emitted therefrom so as to render any portion of the Property unsanitary, unsightly, offensive or detrimental to any of the remainder of the Property or to the residents or to the Owners thereof. No exterior lights, the principal beam of which shines upon portions of the Property, other than the Lot upon which they are located, or which otherwise cause unreasonable interference with the use and enjoyment of the Property or Residence by the occupants or the Owners thereof, shall be permitted on any Lot. No speakers, horns, whistles, bells, or other sound devices shall be located, used or placed on any Lot except security devices used exclusively for security purposes which are activated only in emergency situations or for testing thereof. Music, either live or by recording device, that

noise  
nuisance  
immoral acts  
trash  
bon fire  
burning trash  
odors  
lights  
sound devices  
music

is so loud as to disturb adjacent Owners or Residents is prohibited. No garage or yard sales, auctions or similar activities shall be permitted upon any Lot.

Garage  
sales

**7.05 Trucks, Trailers, Mobile Homes, Recreational Vehicles and Boats:** No parking spaces other than those enclosed in garages on the Property shall be used for the parking of any trucks, trailers, mobile homes, recreational vehicles and boats or any other than operative passenger automobiles. The words "Trailer" and "Recreational Vehicle" shall include trailer coach, house trailer, mobile home, motor home, automobile trailer, camper, camp car, or any other vehicle whether or not self-propelled, constructed or existing in such a manner as would permit the use and occupancy thereof for human habitation and constructed in such a manner that it was, is, or may be mounted upon wheels or any similar transporting devices and used on streets and highways. The word "Truck" shall include and mean every form of cab, tractor and other attachments customarily hauled by such trucks including, but not limited to, flat bed trailers and other forms of platforms and enclosed or partially enclosed devices which would be pulled by vehicle or equipment devised to be used with a motor vehicle with the exception of trailers and recreational vehicles and with the further exception of boats and operative passenger automobiles.

**7.06 Service Screening Storage Areas:** Garbage, trash and refuse shall be placed in containers which shall be concealed and contained within the Residence or shall be concealed by means of a screening wall of materials similar to and compatible with that of the Resident on the Lot or shall be concealed by sufficient landscaping to provide a permanent screen at all time of the year (e.g. evergreen vegetation). These elements shall be integrated with the Resident's plan, be designed so as not to attract attention, and shall be located in as reasonably inconspicuous a manner as is possible. Unless specifically authorized by the ARE in writing, no material, supplies or equipment shall be stored on any Lot except inside the Residence, so that they are not visible from neighboring streets or properties.

Trash  
containers

building  
materials

**7.07 Animal Maintenance:** No animals shall be raised, bred or kept in any Lot or in the Common Area except common household pets, including dogs, cats, birds or fish; provided, however, that no animal shall be kept, bred or maintained for any commercial purpose or in unreasonable numbers as may be determined by the Association from time to time. As used herein "unreasonable numbers" shall ordinarily mean more than two animals per Lot. Each Owner shall be responsible for cleaning any excrement or other unclean or unsanitary condition caused by said animal on the Lot, Common Area or Property. All animals maintained in a Lot must be kept within an enclosure, yard, or patio, or on a leash being held by a person capable of controlling the animal. No "runs" or "kennels" shall be permitted or maintained on the Lot. The Association shall have the right to prohibit maintenance of any animal within the Property which, in the opinion of the Association, constitutes a private nuisance to any other person. Any person bringing an animal upon or keeping an animal within the confines of The Reserve at New Albany shall be liable pursuant to the laws of the State of Ohio to each and all persons for any injury or damage to persons or property by such animal.

dogs  
cats or  
birds

Carved

**7.08 Machinery and Equipment:** No commercial machinery or equipment of any kind shall be placed, operated or maintained upon any Lot except such machinery or equipment reasonable necessary for use in connection with the maintenance or construction of Improvements as approved by the ARB. Hobbies or activities that tend to detract from the aesthetic character of the Property, and Improvements used in connection with such hobbies or activities shall not be permitted unless carried out or conducted as authorized by the ARB. This paragraph refers to, but is not limited to, such activities as automotive and boat repair.

No  
ham radio  
towers

**7.09 Landscaping:** All landscaping installed on a Lot shall be installed only in accordance with the architectural and design standards set forth in the Design Review Manual, as may be altered by the Association from time to time. No alterations, modifications, or changes shall be permitted except with permission of the ARB.

**7.10 Gardens:** Any plot within a Lot utilized for the propagation of edible vegetation shall not exceed a total of one hundred (100) square feet. Any such plot shall be properly maintained to prevent the growth of weeds or other noxious plants. All gardens shall be maintained in accordance with the landscaping standards established by the ARB.

**7.11 Removal of Trees:** In order that the natural beauty of the Property be preserved, no living tree having a caliper measurement or diameter of 6" or more shall be destroyed or removed from any Lot unless approved by the ARB in connection with its approval of plans and specifications for the construction of Improvements or otherwise with the prior express written consent of the ARB. In the event of the violation of this paragraph, Declarant, the ARB or the Association and their respective representatives may, at any of their option, cause any tree so removed or destroyed to be replaced with another tree and the Owner shall reimburse Declarant, the ARB or the Association for all expenses therein incurred by it; provided, however, that with respect to the replacement of a tree, there shall be no obligation of reimbursement of any amount in excess of the expenses which would be incurred if the destroyed or removed tree were replaced with a tree similar in type and size. The Association may assess and collect such reimbursement (for itself, or on behalf of Declarant, as the case may be) in the same manner as it assess and collects yearly assessments, and such amounts shall become part of the assessment against and a lien upon the Lot as provided for herein.

damaged  
or  
destroyed

The majority of lots in The Reserve at New Albany have Conservation Areas delineated in rear and or side yards. These areas have specific restrictions regarding tree and general vegetation removal, as detailed on the Final Plat.

**7.12 Drainage and Grading:** No drainage ditches, swales, streams, impoundments, ponds or lakes; no mounds, knobs, dams, or hills; and no other physical Improvements or elements of the landscape or terrain which control or determine the location or flow of surface water and drainage patterns may be destroyed, altered or modified by or at the direction or with the consent of any Owner without the prior written consent of the Association. No Improvements to any Lot shall be made in any manner whatsoever that

are inconsistent with the master grading plans established by Declarant or its successors or assigns for the Property, as they now exist or may hereafter be modified from time to time, without the prior written consent of the Association. In the event of any destruction, alteration, modification, or improvement made or occurring without such prior consent of the Association, Declarant, the Association and their respective representatives shall have the joint and several rights to enter upon any Lot, and to remedy or repair any such destruction, alteration, modification or improvement without being guilty of trespass and without liability to any Owner with respect to the same or the consequences thereof. Whenever, because of construction of Improvements on a Lot or for some other reason, silt would run off of a Lot, siltation control measures shall be implemented to prevent silt from running off of such Lot onto such adjacent Property.

silt  
run off.

**7.13 Commercial Activity:** No Lot shall ever be used, or caused to be used or allowed or authorized to be used in any way, directly or indirectly for any business, commercial, mercantile, manufacturing, storage or other non-residential purposes. The provisions of this section shall not preclude professional and administrative occupations so long as there is no evidence of the occupations visible to or affecting the Property and for so long as such occupations are in conformance with all applicable governmental regulations. Any such use of a Lot must be merely incidental to the use of the Lot as a Residence.

home  
business

**7.14 Parking:** All streets within the Project are subject to the covenants and terms of the Declaration, as well as all applicable laws, ordinances and regulations of all governmental agencies having jurisdiction over the Property. Additionally, the Association may adopt reasonable rules and regulations regarding parking of vehicles on the Property and procedures to enforce such Rules and Regulations, including, but not limited to, the levying of fines and citing and towing violating vehicles.

**7.15 Utility Service:** No lines, wires or other devices for communication purposes, including telephone, television, data and radio signals, or for transmission of electric current or energy shall be constructed, placed or maintained anywhere in or upon the Property unless the same shall be in or by conduits or cables constructed, placed, maintained underground or concealed in, under or on a Residence or other approved Improvements, provided, however, above ground electrical transformers and electrical equipment may be permitted if properly screened and approved by the ARB. In addition, all gas, water, sewer, oil, and other pipes for gas or liquid transmission, shall also be placed underground or within or under Residences. Nothing herein shall be deemed to forbid the erection and use of temporary power or telephone services incident to the construction of approved Improvements. In addition to the covenants set forth herein, no appliances or installations on the exterior of any Residence or accessory structure shall be permitted unless they are designed in such a manner that they are not visible from the streets, other Residences, and adjoining Property, and they have been approved in writing by the ARB, which shall have the right to approve or disapprove the size, shape, style, noise level, and provisions for screening of any roof mounted equipment. Under no circumstances will outside antennas, disks, aerials, antenna poles, antenna masts,

electronic devices, antenna towers, citizens band (CB) or amateur band (HAM) antennas, be permitted unless maintained completely inside the residence.

**7.16 Maintenance of Lots and Buildings:** No Lot, Residence or other Improvement shall be permitted to become overgrown, unsightly or fall into disrepair, and all Residences and Improvements shall at all times be kept in good condition and repair and adequately painted or otherwise finished in accordance with specifications established by the ARB. Each Owner, for himself and his successors and assigns, hereby grants to Declarant and the Association, jointly and severally, the right to make any necessary alterations, repairs or maintenance approved by the Board to carry out the intent of this provision and they further agree to reimburse the Declarant or the Association for any expenses actually incurred in carrying out the foregoing. The Association may assess and collect such reimbursement (for itself or on behalf of Declarant, as the case may be) as a Compliance Assessment.

**7.17 Signs:** No sign, poster, display or other advertising device of any kind shall be displayed to the public view on or from any Lot or any of the Common Areas and facilities without the approval of the Association or the ARB, except such signs as may be used by Declarant in connection with the development of the Property and the sale of the Lots.

**7.18 Mineral Exploration** The Property shall not be used in any manner to explore for, use, or exploit commercially any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, soil, or any other substance located in or under the ground.

**7.19 Right of Entry:** Declarant and the Association, and their respective representatives, shall have the right, during reasonable hours, to enter upon and inspect any Lot or Residence whether prior to, during or after the completion of any construction of Improvements, for purposes of determining whether or not the provisions of these Restrictions are being complied with, and exercising all rights and powers conferred upon Declarant, the ARB and the Association in this Declaration with respect to the enforcement or correction or remedy of the failure of the Owner to observe these restrictions; and Declarant, the ARB and the Association and such representatives shall not be deemed to have committed a trespass as a result thereof. Notwithstanding the foregoing, an occupied Residence may not be entered hereunder unless written notice of such proposed entry shall have been given to the Resident at least five (5) days prior to such entry.

**7.20 Exemption of Declarant:** Nothing in this Article or elsewhere in this Declaration shall limit in any manner whatsoever the rights of Declarant to complete the planning, development, grading, construction, advertising, marketing, leasing and sales of the Lots, including, without limitation, the following specific rights, which may be exercised by the Declarant, or by its agents and employees, in conjunction with the development and marketing,, until all Lots in the Property are sold (and escrows closed), whichever shall first occur:

- A. The right to maintain and operate one (1) or more advertising, sales or leasing office(s) located upon any Lot(s) owned by Declarant or upon any Common Area without payment of rent or approval of the Association;
- B. The right to post and display from any Lots owned by Declarant or from any Common Area any sign, flag, banner, billboard or other advertising which Declarant may, in its sole discretion, deem appropriate, irrespective of size, color, shape or materials of such items;
- C. The right to install, place, replace, construct, reconstruct, modify or remove any improvement from any Lot owned by Declarant or from any Common Area as Declarant may, in its sole discretion, deem appropriate; provided that in the event Declarant removes any Association-owned improvement, it shall replace said improvement with any improvement of substantially similar value, appearance, and utility within a reasonable period following completion of any work necessitating the removal of the improvement;
- D. The right to conduct any commercial activity upon any Lot owned by the Declarant or upon any Common Area and facility which reasonably relates to the development, marketing, leasing or sale of the Lots;
- E. The right to park vehicles upon any Lot owned by Declarant or upon any Common Area and facilities.

## ARTICLE VIII

### Easements

8.01 Owners' Easements: Every Owner shall have a non exclusive right and easement of access, use and enjoyment in and to the Common Area. Said right and easement shall be appurtenant to and shall pass with title to every Lot, subject to the limitations set forth in this Article VIII.

*covers  
Common  
Area*

8.02 Limitations on Owners' Easement Rights: The rights and easements of access, use and enjoyment set forth in Paragraph 8.01 herein shall be subject to the provisions of this Declaration, including, but not limited to the following:

*and lands located to  
New Albany*

- A. The right of the Association to establish and enforce reasonable Rules and Regulations pertaining to the use of the Common Area and all facilities located thereon;
- B. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be agreed to by the Owners. No such dedication or transfer shall be effective unless approved by two-thirds (2/3s) of the voting power of the Association and a certificate executed by the President and the Secretary of the Association evidencing such approval shall be recorded in the office of the County Recorder for Franklin County, Ohio;
- C. The right of the Declarant (and its sales agents, representatives and customers) to the nonexclusive use of the Common Area and the facilities located



thereon, without charge, in order to market, show, sell, and otherwise dispose of Lots, which rights Declarant hereby reserves; provided however, that such use shall cease upon the date that Declarant no longer owns a Lot or Property;

D. The right of the Association acting by and through its ARB to enact uniform and reasonable architectural guidelines;

E. The right of the Association to fulfill its obligations for maintenance, operation, repair and replacement of all Common Areas;

F. The right of the Association to reasonably restrict access to Common Areas;

G. Any limitations, restriction<sup>(S)</sup> or conditions affecting the use, enjoyment or maintenance of the Common Area imposed by the Declarant or public agencies including, but not limited to, the rights of the township and county, or such other governmental agency having jurisdiction to use their vehicles over those portions of the Common Area designed for vehicular movement to perform municipal functions or emergency or essential public services.

8.03 Utility Easements: Declarant reserves to itself, its grantees, successors and assigns an additional easement in, through, under and/or over those portions of each Lot and Common Area as shown on the Plat designated as easements, or where such rights of way are necessary for construction, operation and maintenance of sanitary sewer, water, electricity, gas, telephone, cable television or CATV lines and conduits or any other public utility facilities, and no structure shall be erected or maintained upon any part of any Lot or Common Area over or upon which easements for installation and maintenance of such public utilities have been granted.

*see Plat.*

8.04 Landscape Easements: Declarant reserves to itself, its grantees, successors and assigns an additional easement in, through under and/or over those portions of each Lot and Common Area as shown on the Plat designated as Landscape Easement. Said Landscape Easement shall be maintained by the Association for the benefit of all Owners. The design of the vegetation and other decorative Improvements within each Landscape Easement shall be maintained and included within the normal maintenance responsibilities of the Association. No Owner of any Lot within which a Landscape Easement exists shall conduct any activity which would result in the alteration or demise of the decorative features established thereon.

*see Plat.  
Association  
to maintain*

8.05 Power of Attorney: Each Owner of a Lot, by acceptance of a deed to a Lot, appoints the Association his, her or its Attorney in Fact to execute, deliver, acknowledge and record, for and in the name of such Owner, deeds of easement, licenses, permits and other instruments as may be necessary or desirable, in the sole discretion of the Board, to further establish or effectuate the foregoing easement and rights. This power is for the benefit of each and every Owner of a Lot and the Association, and the Property, runs with the land, is coupled with an interest and is irrevocable.

8.06 Sidewalk Easements: Declarant hereby covenants for itself, its grantees, successors and assigns that every Owner, Resident, Tenant and invitee shall have non-

exclusive reciprocal easements appurtenant on and over all sidewalks located on Lots for pedestrian access, use and enjoyment.

8.07 Encroachment: In the event any portion of the Common Area encroaches upon any Lot, or any Lot encroaches upon the Common Area as a result of the construction, reconstruction, repair, shifting, settlement or movement of any portion of the Property, a valid easement for the encroachment for and the maintenance of the same shall exist so long as the encroachment exists.

## ARTICLE IX

### Common Areas

9.01 Transfer of Title: Declarant hereby covenants, for itself, its grantees, successors and assigns that it will convey to the Association, fee simple title to, or a non-exclusive easement in, certain Common Areas, free and clear of all liens and encumbrances, subject to the covenants set forth in this Declaration and any amendments thereto. It is the intent of Declarant to transfer, by means of the platting process, and/or by special warranty deed, fee simple title for certain portions of the Property designated on the plat as Common Area which may include, but are not limited to, entrance features and open space. Though retaining the maintenance responsibility of the Association, certain Common Areas, as designated on the Final Development Plan, or as added from time to time, will be deeded to the Village of New Albany.

9.02 Maintenance and Use: Once title to the Common Area, or any portion thereof, is passed to the Association or the Village of New Albany, or the Association acquires a non-exclusive easement in the Common Areas or any portion thereof, said Association shall undertake full responsibility for maintenance of the Improvements within all the Common Areas and shall not alter, nor shall it permit the alteration, of any Improvements contained within the Common Area or any portion thereof. Specifically, the Association shall maintain at the level of their current standards of quality all entrance features, signs, lighting, and landscaping constructed on the Property by Declarant. The Association shall not abandon, partition, subdivide, alienate, release, transfer, hypothecate, or otherwise encumber the Common Area unless specifically permitted pursuant to Paragraph 9.05 herein.

Association to  
maintain  
entrances,  
signs +  
lighting

9.03 Commencement of Association Responsibilities: The Association's responsibility to maintain the Common Area conveyed by Declarant to the Association and/or the Village, shall commence concurrently with the recordation of the Plat and/or special warranty deed, whichever occurs first, conveying the Common Area, as the case may be. The Association shall be obligated to accept title to the Common Area, and undertake all maintenance responsibilities for the Common Area when title is conveyed and maintenance responsibilities are tendered by the Declarant.

**9.04 Use of Common Areas:** All Owners, by reason of such ownership, shall have a right and easement of enjoyment in the Common Areas and facilities for so long as they are Owners. Such right and easement is appurtenant to each Lot and shall not be transferable except that it shall automatically transfer with the transfer of the ownership of the Lot. For purposes of this Article only, the terms Owner and Resident shall also include the guests and invitees of any Owner or Resident, if and to the extent the Board in its absolute discretion so directs. Those Common Areas dedicated to the Village of New Albany shall also be available for use and enjoyment by the public.

use by  
general public

**9.05 Authority to Convey:** Notwithstanding the rights, easements and privileges granted under this Article IX, the Association shall nevertheless have the power and authority to convey and dedicate any property or easement or right of way over any Property referred to in this Article IX, free and clear of all such rights, easements, and privileges, if such conveyance or dedication is for use as a public roadway or pedestrian walkway, or to a public or private utility for the installation, operation or maintenance of utility services. Any other conveyance or dedication of Common Areas and facilities shall be made only for public purpose and, if made for a purpose other than those specified in this Section 9.05, only by an affirmative vote of at least two-thirds (2/3s) of the voting Members of the Association represented in person or by proxy entitled to vote at a meeting (annual or special) called for such purposes.

## ARTICLE X

### Assessments

**10.01 Creation and Identification of Assessments:** The Declarant, for each Lot Owner within the Property, hereby covenants, and each Owner and/or Builder of any Lot, by acceptance of a deed therefore, whether or not it shall be so expressed in such deed, is deemed to covenant and agree to pay the Association:

- A. Regular Assessment
- B. Compliance Assessment
- C. Special Assessment
- D. Initial Reserve Assessments
- E. Such other assessments as the Association may periodically establish.

**10.02 Regular Assessment:** Each Lot and the Owners and/or Builders thereof, shall be subject to annual operating assessments to be determined, assessed, and collected as hereinafter provided for the following purposes:

- A. To defray the administrative costs or expenses incurred by the Association in the exercise of its powers, authority and duties described herein;
- B. For the protection of the health, safety, enjoyment and welfare of the Owners, Builders, and occupants of the Property;

C. To enhance the values and amenities of the Property, by means of the construction, repair, and maintenance of the Common Area, and to the extent not performed by the appropriate public authorities concerning the Property, including, but not limited to, the payment of taxes and insurance on the Common Area, the cost of the purchase, construction, improvement, repair, beautification, alteration, operation, replacement of and additions to the Common Area and the cost of labor, equipment, materials, utility services, management and supervisions with respect thereto, and the maintenance of a reasonable reserve.

*reserve fund*

For the purpose of providing funds for the uses specified above, the Board shall, for each year, commencing with the year 1996, affix and assess a yearly assessment against each Lot by establishing a budget for 1996 and dividing the budget by the number of Lots included in the Property (32). In making each such assessment, the Board shall separately assess each Lot, and each such Lot shall be charged with and be subject to a lien for the amount of the Regular Assessment. In the event a Homeowner purchased two Lots on which to build one residence, the Homeowner is subject to payment of two Assessments. This would be true for any of the Assessments defined in this section as they may affect said Homeowner.

**10.03 Compliance Assessment:** The Association shall levy assessments against an individual Lot or Lots to reimburse the Association for those costs incurred with respect to that Lot or those Lots properly chargeable by the terms hereof to a particular Lot or Lots (such as, but not limited to, the costs of making repairs the responsibility of Lot Owner or Owners or Builder). Any such assessment shall become due and payable on such date as the Association determines.

**10.04 Special Assessment:** In any fiscal year, the Board may ~~not~~ without affirmative vote or written assent of Owners in attendance at a duly called meeting of the Association, levy Special Assessments to defray the costs of any action or undertaking on behalf of the Association which, in the aggregate, exceeds 5% of the budgeted gross expenses of the Association for that fiscal year. Every Special Assessment shall be levied upon the same basis as that prescribed for the levying of Regular Assessments set forth in Paragraph 10.02 above. The five percent (5%) limitation shall not apply to the levy of Special Assessments necessary to cover expenses incurred in emergency situations which include extraordinary expenses required by a court of competent jurisdiction; extraordinary expenses necessary to repair or maintain Improvements within the Property where a threat to personal safety is discovered; and an extraordinary expense necessary to repair or maintain any improvement to the Property to which the Association is responsible that could not have been reasonably foreseen by the Board in preparing the operating budget.

**10.05 Initial Reserve Assessment:** Each initial purchaser of a Lot (whether from Declarant or a grantee, successor or assignee of Declarant, and whether of a Lot now subject hereto or a Lot hereafter subject to this Declaration), shall, at the time of closing of the purchase of the Lot, contribute to the Association a sum equal to one-sixth (1/6th) of the annual Regular Assessment to create an operating reserve fund, so that funds will be

available to the Association to pay its obligations when and as they become due. This contribution shall be non-refundable and shall not be in lieu of or a credit against any other assessments hereinafter provided. Declarant for itself, its successors or assigns, reserves the right to use and appropriate any portion of the operating reserve fund for any purpose that Declarant in its absolute discretion determines to be in the best interest of and for the use and benefit of the Association and/or the Property. (d)

**10.06. Declarant Exemption:** The Declarant is specifically exempt from application of assessment portions of this Article X. Until such time as a sufficient number of Lots is owned by Residents, Declarant shall annually contribute a sum of money in an amount sufficient to subsidize the Association's shortfall in its budget for that budget year. Declarant reserves the right to restrict, diminish or discontinue the amount, nature and character of the subsidy provided for in this Section 10.06.

**10.07 Annual Budget and Statements:** On or before December 1st of each year, or as soon as shall be practicable thereafter, the Board shall establish a budget for the Association for the ensuing calendar year, which shall be the basis of the Regular Assessment calculations referred to in Section 10.02 above. As soon after said budget is established, the Board shall send a written statement to each owner setting forth the amount of the budget established for the ensuing calendar year, together with the amount of the Regular Assessment set for the ensuing year and the frequency of payment therefore (e.g. monthly, quarterly, yearly). In the event the Board determines for some reason that the budget must be adjusted after the initial budget has been distributed to the Owners, the Board may send a written statement to each Owner setting forth the amount of the revised budget, together with the amount of the adjusted Regular Assessment required to fund said revised budget. If a Residence is built across two Lots, or an Owner combines two or more Lots to create one assessable parcel for real property tax purposes, the Owner shall be charged a Regular Assessment for EACH Lot. The Regular Assessment may be billed annually, semi-annually, quarterly, or monthly, as may be determined by the Association from time to time.

December 1<sup>st</sup>

Notice to  
be sent to  
Owners

**10.08. Rules and Procedures for Billing and Collecting Assessments:** The Board shall have the power and authority to adopt rules and procedures respecting the billing and collection of any and all Assessments which shall be binding on all Owners, provided that such procedures shall not be inconsistent with the provisions of this Article. Any Assessment installment, as provided in 10.01, which is not paid within 30 days of its due date shall be delinquent. In the event that an Assessment installment becomes delinquent, the Association, in its sole discretion, may take any or all of the following actions:

**10.08.1** Assess a late charge of not less than 5% of the delinquent amount;

**10.08.2** Assess an interest charge from the date of delinquency at 1-1/2% per month or the maximum rate allowed by law;

**10.08.3** Suspend the voting rights of the Owner during any period of delinquency;

HDA remedies  
if owner  
fails to pay  
amounts

10.08.4 Accelerate all remaining Assessment installments for the fiscal year in question so that unpaid Assessments for the remainder of the fiscal year shall be due and payable at once;

10.08.5 Bring an action at law against any Owner personally obligated to pay the delinquent installments;

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

(2) The Association may file a statement of lien by recording with the Recorder of Franklin County, Ohio, a written statement with respect to the Lot, setting forth the name of the Owner, the legal description of the Lot, the name of the Association, and the amount of delinquent Assessments then owing, which statement shall be duly signed and (4) acknowledged by the President or a Vice President of the Association or by the Manager and which shall be served upon the Owner of the Lot by mail 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. (5) Thirty days following the mailing of such notice, the Association may proceed to foreclose the lien in the same manner as provided for the foreclosure of mortgages under the statutes 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 either a personal or 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. During the period in which a Lot is owned by the Association following foreclosure, no Assessments shall be levied against it and each other Lot shall be charged, in addition to its usual Assessments, its prorata share of the Assessment that would have been levied against such Lot had it not been acquired by the Association as a result of foreclosure. 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.

10.09 Successor's Liability for Assessments: In addition to the personal obligation of each Owner of a Lot to pay all Assessments thereon and the Association's perpetual lien on a Lot for such Assessments, all successors to the fee simple title of a Lot, except as provided in this Section, shall be jointly and severally liable with the prior Owner or Owners thereof for any and all unpaid Assessments, interest, late charges, costs, expenses, and attorneys' fees against such Lot without prejudice to any such successor's right to recover from any prior Owner any amounts paid thereon by such successor. This liability of a successor for such amounts due before the successor's acquiring title to the Lot shall not be personal and shall terminate upon termination of such successor's fee simple interest in the Lot. In addition, such successor shall be entitled to rely on the statement of liens shown on any certificate issued by or on behalf of the Association under Section 10.10 hereof.

**10.10 Statement of Status of Assessments:** Upon 10 days<sup>y</sup> written notice to the Treasurer of the Association or the Manager and payment of a processing fee set by the Association from time to time, not to exceed \$50, any Owner or Mortgagee of a Lot shall be furnished a statement of the account for such Lot setting forth:

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

10.10.2 The amount of the current periodic installments of the Assessments and the date through which they are paid; and

10.10.3 Any other information deemed proper by the Association.

The information contained in such statement, when signed by the Treasurer or Manager, 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.

**10.11 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 other time periods and may carry forward, as surplus, any balances remaining, nor shall the Association be obligated to apply such surpluses to the reduction of the amount of the Regular Assessment in any year.

**10.13 Authority to Enter into Contracts:** The Association shall have the power and authority to contract with any person, corporation, firm or other entity, including but not limited to Declarant for the exercise of any one or more of the various powers and authority granted to and duties performed by the Association hereunder, and to delegate such powers and authority to any agent or employee of the Association, and the exercise of those powers and authority by such person, corporation, firm, entity, agent or employee shall be deemed the exercise of those powers and authority by the Association, except that no independent contractor shall be deemed by virtue of these provisions to be the agent of the Association, its agents, employees, or others assuming the exercise of the powers and authority granted hereunder except as the Board shall in its sole discretion deem necessary or desirable for the safeguarding of any funds received by the Association. *Manager*

**10.14 Professional Management:** Any agreement for professional management of the Property, or any contract providing for services of the Declarant may not exceed one (1) year, renewable by agreement of the parties for successive one (1) year periods. Any such agreement must provide for termination by either party without cause and without payment of a termination fee on thirty (30) days<sup>^</sup> written notice.

## ARTICLE XI

## Real Estate Taxes

11.01 Owner: The Owner of each Lot shall pay the real estate taxes and assessments levied from time to time against the Lot or Lots owned.

11.02 The Association: The Association shall be responsible for the payment of all real estate taxes and assessments that, from time to time, are levied against any Common Area and other real estate owned by the Association.

## ARTICLE XII

## Insurance

12.01 Public Liability Insurance: The Association shall obtain and maintain a policy or policies of comprehensive public liability insurance (with costs liability endorsement, if obtainable) insuring the Association, the Trustees, the Owners, the Declarant, and the agents and employees of each of the foregoing against any liability to the public or to any Owner, his family, invitees, and/or tenants arising from or incident to the ownership, occupation, use, maintenance and/or repair of the Common Area. The Village of New Albany will be named as a co-insured as such would cover the Village for incidents taking place on the Reserve Areas. The limits of liability under this Section shall be set by the Association and shall be reviewed at least annually and increased or decreased at the discretion of the Association; provided, however, that said limits shall not be less than \$1,000,000 for a bodily injury, including deaths of persons and property damage arising out of a single occurrence. In the event the Federal Home Loan Mortgage Corporation (FHLMC), and/or the Federal National Mortgage Association (FNMA) participate in the financing of Lots in the Property, said limits shall not be less than the minimum limits required under the then current FHLMC and FNMA regulations.

*Village of  
New Albany  
to be  
co-insured*

12.02 Casualty and Fire Insurance: The Association shall obtain and maintain a policy or policies of casualty and fire insurance with extended coverage endorsement in an amount equal to one hundred percent (100%) of the current replacement value (without deduction for depreciation or co-insurance) of the Common Area, together with all improvements located thereon. Said policy shall be maintained for the benefit of the Association as the insured, for the use and benefits of the Owners.

12.03 Fidelity Bonds: The Association shall obtain and maintain fidelity coverage (fidelity bonds) to protect against dishonest acts on the part of officers, trustees, agents and employees of the Association and all others who handle or are responsible for handling funds of the Association or to whom such responsibility is delegated, such coverage to be in the form of a fidelity bond shall meet the following requirements:

- A. Such bonds shall include the Association as named insured;



- B. Such bonds shall be written in an amount equal to one and one quarter times the anticipated annual budget;
- C. Such bonds shall include persons who serve without compensation within the definition of employee or similar term.

**12.04 D&O Liability Insurance:** The Association shall obtain and maintain, if available, Directors and Officers liability insurance as the Association determines to be required or beneficial for the protection of trustees and officers of the corporation.

**12.05 Workers Compensation:** The Association shall obtain and maintain as appropriate, workers compensation policies in compliance with applicable law.

**12.06 Miscellaneous Coverage:** The Association may obtain and maintain such other forms of insurance coverage it shall determine to be required or beneficial for the protection and /or preservation of the Property.

### ARTICLE XIII

#### Mortgagee Protection

**13.01 Mortgagee Protection Provisions:** Notwithstanding any other provisions in this Declaration to the contrary, in order to induce lenders and investors to participate in the financing of the sale of Lots on this Property, the following provisions contained within this Article are added hereto and to the extent these added provisions conflict with any other provisions in this Declaration, these added provisions shall control. The Declaration, the Articles and the By-Laws for the Association are hereinafter collectively referred to in this Article as the "Constituent Documents".

**13.02 First Refusal:** The right of an Owner to sell, transfer, or otherwise convey his Lot shall not be subject to any right of first refusal or any similar restriction in favor of the Association.

*No Right  
of 1<sup>st</sup> Refusal*

**13.03 Lien Subordination:** The lien of the Assessments provided for herein shall be subordinate to the lien of any first Mortgage now or hereafter recorded upon any Lot. The sale or transfer of any Lot shall not affect the Assessment Lien; however, the sale or transfer of any Lot pursuant to judicial foreclosure of a first Mortgage, or pursuant to any remedies provided for in the Mortgage, shall extinguish the lien of such Assessments as to payments which became due prior thereto. No sale or transfer shall relieve such Lot from Liability for Assessments due thereafter. Any first Mortgagee who obtains title to a Lot pursuant to the remedies provided in the Mortgage or foreclosure of the Mortgage, or any purchaser at the foreclosure sale of a first Mortgage, will not be liable for unpaid Assessments or charges which accrue prior to the acquisition of title to such Lot by the Mortgagee (except claims for a share of such assessments or charges resulting from a reallocation of such assessments or charges to all Lots, including the mortgaged Lot).

*or second purchaser  
@ a foreclosure sale*

**13.04 Assessment Methods:** Except as provided by statute in case of condemnation or substantial loss to the Lots and/or the Common Area, unless seventy-five percent (75%) of the total voting power of the Association and seventy-five percent (75%) of the first Mortgagees (based upon one (1) vote for each first Mortgage owned) have given their prior written approval, neither the Association nor the Owners shall be entitled to:

A. Change the method of determining the obligations, Assessments, dues or their charges which maybe levied against an Owner's Lot; *dues*

B. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer all or any portion of the Common Area. The granting of easements for public utilities or for other public purposes consistent with the intended uses of the Common Area shall not be deemed a transfer within the meaning of this clause; *sale of Common Area*

C. Use hazard insurance proceeds for losses to the Common Area for other than repair, replacement or reconstruction;

D. Effect any decision of the Association to terminate professional management and assume self-management of the Property, where such professional management was previously required by a holder, insurer or guarantor of any first Mortgage; *self management.*

E. By act or omission, change, waive or abandon any provisions of this Declaration or enforcement thereof, pertaining to architectural design of the Residences situated on a Lot, or the maintenance and operation of the Common Area within the Property, including without limitation, sidewalks, fences, driveways, and landscaping within the Property; *design standards*

F. Fail to maintain fire and extended coverage on the insurable Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value thereof, and

G. Abandon or terminate the Association, except for abandonment, partition, or termination as may be provided by law.

**13.05 Real Estate Taxes:** All taxes, assessments and charges which may become a lien prior to the first Mortgage under local law shall relate only to individual Lots and not the Property as a whole.

**13.06 Insurance Distribution:** No provision of the Constituent Documents shall be interpreted to give any Owner or any other party priority over any rights of the first Mortgagee in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses to or a taking of all or any portion of the Common Area or such Owner's Lot. All applicable fire and casualty insurance policies shall, if requested, contain loss payable clauses acceptable to each Mortgagee, naming the Mortgagee, as their interests appear, as additional insureds.

**13.07 Reserve Funds:** The Assessments provided for in the Constituent Documents shall include an adequate reserve fund for maintenance, repairs and replacement of those elements of the Common Area that must be replaced on a periodic basis, and shall be payable in regular installments rather than by Special Assessments.

**13.08 Notice Information:** Each holder, insurer or guarantor of a first Mortgage who has filed with the Association a written request for notice shall be entitled to a timely written notice of:

- A. Any condemnation or eminent domain proceeding and any loss or taking resulting from such proceedings which affect the Property, or any portion thereof;
- B. Any substantial damage or destruction to the Property, or any portion thereof, when such loss exceeds Ten Thousand Dollars (\$10,000);
- C. Any default in the performance by an individual Owner of any obligation under the constituent documents including, without limitation, the nonpayment of Assessments, which is not cured within sixty (60) days after the Association learns of such default, which notice shall state the length of time which such Owner has been delinquent;
- D. Any lapse, cancellation or material modification of any insurance policy or fidelity bond maintained by the Association;
- E. Any abandonment or termination of the Project; and
- F. Any proposed action that requires the consent of a specified percentage of eligible Mortgagees.

**13.09 Payment Reimbursement:** First Mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may have become a lien on the Common Area, and may pay overdue premiums on hazard insurance policies, secure new hazard insurance coverage on the lapse of a policy for the Common Area, and first Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association. Upon demand by any first Mortgagee, the Board shall execute, on behalf of the Association, an agreement establishing the right of all first Mortgagees to such reimbursement.

**13.10 Access to Information:** A first Mortgagee of a Lot in the Project will, upon request, be entitled to:

- A. Examine the books and records of the Association during normal business hours.
- B. Association and other financial data as may be distributed to the Owners, within ninety (90) days following the end of any fiscal year of the Association, if such statement has been prepared for the Association;
- C. Receive written notice of all meetings of the Association and be permitted to designate a representative to attend all such meetings.

**13.11 Notice of Identity:** Each Owner shall notify the Association in writing within ten (10) days after the close of escrow for the purchase of his Lot of the name and address of his first Mortgagee, and thereafter, each Owner shall promptly notify the Association of any changes of name or address of his first Mortgagee.

*done 1  
Owner's  
to keep  
HOA apprised  
1 Mortgagee  
information*

## ARTICLE XIV

## General Provisions

**14.01 Duration:** The Covenants set forth in this Declaration shall run with and bind the Property, and shall inure to the benefit of the Association and be enforceable by the Association or the Owner of any land subject to this Declaration, their respective legal representatives, heirs, successors and assigns for a term of thirty-five (35) years from the date this Declaration is recorded with the Franklin County, Ohio Records Office, after which time said Covenants shall be automatically extended for successive periods of ten (10) years, unless an instrument meeting the requirements for an amendment to this Declaration has been signed and recorded within one (1) year prior to the termination of the initial thirty-five (35) year term, or within one (1) year prior to the termination of any successive ten year period. er's

**14.02 Time Limits:** If any of the privileges, covenants, or rights created by this Declaration shall be unlawful or void for violation of (a) the rule against perpetuities; (b) any rule restricting restraints on alienation; or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twenty-one (21) years after the death of the last survivor of those descendants of Bill Clinton, now President of the United States of America.

**14.03 No Liability for Declarant:** Neither the Declarant nor its employees, agents, successors or assigns shall be liable for any claim whatsoever, arising out of or by reason of any actions performed or decisions made pursuant to any authority granted or delegated or reserved to the Declarant by or pursuant to this Declaration, or out of, or by reason of any actions performed or decisions made in the capacity of the Declarant or sell or of any Lot whether or not such claim: (a) shall be asserted by any Owner, occupant of any Lot, the Association, or by any person or entity claiming through any of them; or (b) shall be 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 previous enumeration includes all claims for the Property or any part thereof becoming or being out of repair or by reason of any act or neglect of any Owner, occupant of any Lot, the Association, their respective agents, employees, guests, invitees and trespassers or by reason of any neighboring property or of personal property located on or about the Property, whether by reason of the failure to function of, or disrepair of, or interruption of service of any utility services, including, but not limited to, heat, air conditioning, electricity, gas, water, sewage, etc.

**14.04 Construction:** The provisions of this Declaration shall be liberally construed to effectuate its purpose of creating a uniform plan for the development and maintenance off the Property.

**14.05 Constructive Notice and Acceptance:** Every person who now or hereafter owns or acquires any rights, title or estate in any portion of the Property is and shall be

conclusively deemed to have consented and agreed to every restriction contained herein, whether or not a reference to these Restrictions is contained in the instrument by which such person acquired an interest in said Property.

**14.06 Paragraph Headings:** The Paragraph Headings are intended for convenience only and are not intended to be a part of this Declaration in any way to define, limit or describe the scope or intent of the particular paragraph to which they refer. As such, said Article and Section Headings shall not be considered or referred to in resolving questions of interpretation or construction.

**14.07 Singular includes Plural:** Whenever the context of this Declaration may so require, the singular shall include the plural, and the masculine shall include the feminine and neuter.

IN WITNESS WHEREOF, DECLARANT and the ASSOCIATION have duly signed and acknowledged this Declaration this 6<sup>th</sup> day of February, 1996.

Berkshire Development Co., PLL,  
an Ohio registered partnership having  
limited liability

By: JOMAR, its general partner

By: Joseph A. Ciminello  
Joseph A. Ciminello, general partner

Kerna D. Orvedoff  
Jeff A. Cohen  
Witnesses

**JOINDER BY THE RESERVE AT NEW ALBANY**  
**HOMEOWNERS' ASSOCIATION, INC.\***

The Reserve at New Albany Homeowners'  
Association, Inc. (an Ohio corporation)

By: Joseph A. Ciminello  
Joseph A. Ciminello, President

Kerna D. Orvedoff  
Jeff A. Cohen  
Witnesses

\*The Reserve at New Albany Homeowners' Association, Inc. hereby joins in this Declaration and hereby agrees to enforce its rights and be bound by its obligations as provided herein.

STATE OF OHIO  
COUNTY OF FRANKLIN, SS:

BE IT REMEMBERED, That on this 6<sup>th</sup> day of February, 1996, before me, the subscriber, a Notary Public in and for said state, personally came Berkshire Development Co., PLL, an Ohio registered partnership having limited liability, by JOMAR, its general partner, by Joseph A. Ciminello, general partner, and acknowledged the signing hereof to be his voluntary act and deed on behalf of said partnership.

IN TESTIMONY THEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.



JEFFREY A. AUKER, Attorney At Law  
NOTARY PUBLIC, STATE OF OHIO  
My commission has no expiration date.  
Section 147.03 R.C.

*Jeffrey A. Auker*  
Notary Public

STATE OF OHIO  
COUNTY OF FRANKLIN, SS:

BE IT REMEMBERED, That on this 6<sup>th</sup> day of February, 1996, before me, the subscriber, a Notary Public in and for said state, personally came The Reserve at New Albany Homeowners' Association, Inc., an Ohio corporation, by Joseph A. Ciminello, President, and acknowledged the signing hereof to be his voluntary act and deed on behalf of said corporation.

IN TESTIMONY THEREOF, I have hereunto subscribed my name and affixed my official seal on the day and year last aforesaid.



JEFFREY A. AUKER, Attorney At Law  
NOTARY PUBLIC, STATE OF OHIO  
My commission has no expiration date.  
Section 147.03 R.C.

*Jeffrey A. Auker*  
Notary Public

THIS INSTRUMENT PREPARED BY:

BERKSHIRE DEVELOPMENT CO., PPL  
567 LAZELLE ROAD  
WESTERVILLE OH 43081

**EXHIBIT A****THE PROPERTY**

Situated in the State of Ohio, County of Franklin, and in the Village of New Albany:

Being Lots numbered One (1) through Thirty-Two (32), inclusive in The Reserve at New Albany, and the areas designated Reserve "A", Reserve "B", Reserve "C", and Reserve "D", and further including all of the public rights-of-way shown thereon, of record in Plat Book 83, page 45, Recorder's Office, Franklin County, Ohio.

**AMENDMENT TO THE DECLARATIONS OF PROTECTIVE COVENANTS  
CONDITIONS AND RESTRICTIONS FOR THE  
RESERVE AT NEW ALBANY**

**Berkshire Development Co., PLL, an Ohio registered partnership having limited liability  
and The Reserve at New Albany Homeowners' Association, Inc., an Ohio corporation**

The Agreement dated February 6, 1996 and recorded in the Recorder's Office of Franklin County in Volume 31132, Page A01 by and between Berkshire Development Co., PLL, an Ohio registered partnership having limited liability and The Reserve at New Albany Homeowners' Association, Inc., an Ohio corporation setting forth the declarations of protective covenants, conditions and restrictions have been amended effective November 15, 2002 as follows:

Article II, Section 2.08 is amended to read as follows:

**Common Area:** The land controlled and/or owned by the Association, as well as those areas of the Property shown on any recorded plat of all or any portion of the Property, or designated in any recorded declaration, or both, as devoted to the common use and enjoyment of the Owners and/or the public, including without limitation, areas deeded to the Village of New Albany, buildings and Improvements now or hereafter constructed thereon.

Article VII, Section 7.16 is amended to read as follows:

**Maintenance of Lots and Buildings:** No Lot, Residence or other Improvement shall be permitted to become overgrown, unsightly or fall into disrepair, and all Residences and Improvements shall at all times be kept in good condition and repair and adequately painted or otherwise finished in accordance with specifications established by the ARB. Each Owner, for himself and his successors and assigns, hereby grants to Declarant and the Association, jointly and severally, the right to make any necessary alterations, repairs or maintenance approved by the Board to carry out the intent of this provision and they further agree to reimburse the Declarant or the Association for any expenses actually incurred in carrying out the foregoing. The Association may assess and collect such reimbursement (for itself or on behalf of Declarant, as the case may be) as a Compliance Assessment. Any damage or loss sustained as a result of the actions of an Owner or a third party to the Owner's Property, including the Landscape Easement will be borne by and the Owner and the cost of the replacement and repair thereof will be the responsibility of the Owner as set forth in Article VII, Section 7.16.

Article VIII, Section 8.04 will be amended to read as follows:

**Landscape Easements:** Declarant reserves to itself, its grantees, successors and assigns an additional easement in, through and under and/or over those portions of each Lot and Common Area as shown on the Plat designated as Landscape Easement. Said Landscape Easement shall be maintained by the Association for the benefit of all Owners. The design of the vegetation and other decorative Improvements within each Landscape Easement shall be maintained and included within the normal maintenance responsibilities of the Association. No Owner of any

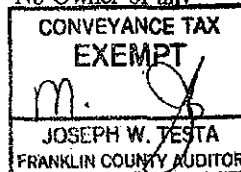
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Robert G. Montgomery T20030004023  
Franklin County Recorder MEPJOY BRO

**TRANSFERRED  
NOT NECESSARY**

**JAN 13 2003**

**JOSEPH W. TESTA  
AUDITOR**

**FRANKLIN COUNTY, OHIO**





Lot within which a Landscape Easement exists shall conduct any activity which would result in the alteration or demise of the decorative features established thereon. The Owner will be responsible for the replacement or repair of any damage or loss to the Landscape Easement as a result of the actions of an Owner or a third party.

In witness whereof the parties have executed this Amendment as of the 28<sup>th</sup> day of November, 2002.

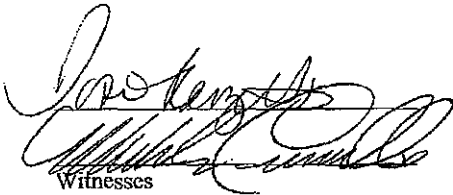


Witnesses

Berkshire Development Co., PLLC  
an Ohio registered partnership having  
Limited liability

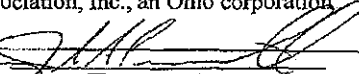
By: JOMAR, its general partner

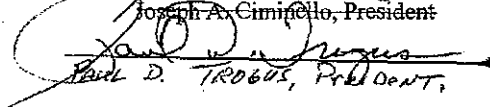
By:   
Joseph A. Ciminello, general partner



Witnesses

The Reserve at New Albany Homeowners'  
Association, Inc., an Ohio corporation

By:   
Joseph A. Ciminello, President

  
Paul D. TROBUS, President

**EXHIBIT A**

**THE RESERVE**

**AT**

**NEW ALBANY**

**New Albany, Ohio**

**DESIGN REVIEW MANUAL**

**Prepared by The Reserve at New Albany Homeowners'  
Association Inc.**

February 1995

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## INTRODUCTION

## OVERVIEW

The Reserve at New Albany is a residential community of custom, single-family home sites, a part of the community of New Albany, Ohio. It is planned to become an exclusive enclave of individually designed and built residences, each a personal statement of its owner, all adhering to the design guidelines resulting in a carefully blended community of quality.

The design, review and administrative processing of each home to be built at The Reserve will be subject to the guidelines expressed in this manual. All of the procedures outlined herein have a positive purpose and are not meant to restrain creativity, but to encourage it within parameters which will ensure high standards. It not only will help make certain the community will be aesthetically pleasing and coherent, but it will also help assure property owners of enduring value.

## CONCEPT

The Reserve at New Albany is designed to appeal to a variety of homeowners seeking to accommodate contemporary lifestyles in a traditional architectural environment. As the basic building-block for development, the design of the Reserve at New Albany is founded in the scale and spatial organization of traditional bedroom communities of the 1920s, such as Bexley, Ohio and Upper Arlington, Ohio. The Reserve guidelines prescribe the physical ingredients of this traditional type of community development emphasizing construction materials and techniques that are found in the local vernacular of that period.

The "Reserve Style" of architecture is purposefully informal and picturesque. It looks to the "English Vernacular Architecture" of the 19th and early 19th century and especially to houses of Upper Arlington, Bexley and Grandview Heights for their massing and detail. Characteristically, the house is a picturesque mix of chimneys, gables and dormers, stucco and stone walls, columned porches, French doors, and casement windows. A contrasting scale of individual masses and varying gables offers continuity of form and a picturesque silhouette to each house and street.

## PURPOSE

The Design Review Manual for The Reserve at New Albany has been prepared to assist builders, architects, landscape architects, engineers and home owners in planning the development of each parcel. The intention is to establish a standard of quality and design which will ensure the preservation and the integrity of the community as a whole, while leaving the design of individual parcels to the discretion of the owner.

The Design Review Manual will be used to review each proposal for conformance with the overall community design objectives, and to protect the health, safety and general welfare of all residents.

The guidelines herein are intended as a supplement to the requirement of applicable federal, state, and county or municipal codes. All prospective builders should completely familiarize themselves with all of the codes that may apply, as well as with the "Declaration of Protective Covenants, Conditions, and Restrictions for The Reserve at New Albany. This manual shall not be considered as primary to the federal, state, county or municipal codes or to the Protective Covenants.

# **REVIEW PROCESS**

## **THE ARCHITECTURAL REVIEW BOARD**

An Architectural Review Board (ARB) has been established to review, evaluate and approve or disapprove proposed plans for construction of single family residences within The Reserve at New Albany.

The ARB will have a maximum of five voting members, all of whom will be appointed by the Board of Trustee of the Homeowners' Association. Any change to the number of voting ARB members can only be enacted by a majority vote of the ARB. The Board may have non-voting consultants in attendance from time to time to advise on specific matters.

The Board shall perform review for site plans, architecture, landscape architecture and site engineering and approvals for all new structures and/or modifications of existing structures. These duties are pursuant to the powers and authority granted in the Declaration of Protective Covenants, Conditions and Restrictions for The Reserve at New Albany's Homeowners' Association, Inc.

The ARB will meet on an as-needed basis. Plans and related submittals must be submitted to a member of the Board in order to be considered for review. If applicant has not been contacted regarding the outcome of that review within 30 days, the submittal should be considered as rejected or disapproved.

The ARB does not review and shall not assume responsibility for the following:

1. The structural adequacy, capacity, or safety of the proposed improvement or structure.
2. Whether or not the location of ht proposed improvement or structure on the lot is free from any possible hazard, whether caused by condition occurring either upon or off the property.
3. Soil erosion, incompatible, or unstable soil condition.
4. Mechanical, electrical or any other technical design requirements for a proposed project.
5. Compliance with any and all building codes, safety requirements, governmental laws, regulations, codes or ordinances.
6. Performance or quality of work of any contractor
7. Title defects on any portion of the property.

## SUBMITTAL PROCESS

### Design Review

Though only one submittal of plans for structural improvements is required, each builder/homeowner is encouraged to submit a preliminary plan for review. At this point various typical non-conforming elements could be identified and corrected prior to wasting extensive time and money.

The Board encourages submittal of the "final" plans as soon as is practically possible. This allows ample time for review and lessens potential for delays in construction. It is also encouraged that the final landscape plans be submitted at this time, though this is not a requirement.

### Structural improvement submittals

Two sets of drawings and documents for each submittal must be accompanied by the appropriate fee (as established by the Board from time to time) and each must contain the following information:

- \* North arrow and scale
- \* Builder's/Owner's name, address and telephone number
- \* Architect's/Landscape Architect's name, address and phone number
- \* The Reserve at New Albany's LOT NUMBER

### Plans required for submittal:

1. Site plan indicating the following:
  - a. Location of all proposed structures
  - b. Setbacks
  - c. Existing trees measuring 6" or greater in caliper at 4' above natural grade
  - d. Natural amenities
  - e. All other information from the plat plan issued as an attachment to these guidelines
2. Grading Plan indicating the following:
  - a. Existing topographic contours
  - b. Proposed cut and fill requirements
  - c. Proposed floor elevations for all structures
  - d. Fence and wall locations and heights
3. Utility plan (1" = 20', may be shown on the Site Plan or Grading Plan)
4. Architectural Plans which shall include the following:

- a. Floor plans at 1/4" = 1'0" showing overall dimensions and area of proposed structures
- b. All major elevations (front, sides and rear), indicating overall heights and roof pitches
- c. Selection of exterior materials and finishes, including samples

### **Landscape Review**

Two sets of drawings and documents for each submittal must be accompanied by the appropriate fee (as established by the Board from time to time) and each must contain the following information:

- \* North arrow and scale
- \* Builder's/Owner's name, address and telephone number
- \* Architect's/Landscape Architect's name, address and phone number
- \* The Reserve at New Albany's LOT NUMBER

The following plans and/or information is required for submittal:

1. Landscape Plan (drawn at 1" = 20' minimum) indicating the following:
  - a. Existing and proposed trees, shrubs, Groundcover, vines and grasses
  - b. Proposed tree/vegetation removal
  - c. Patios, terraces, retaining walls and screen walls with dimensions and heights where appropriate
  - d. Coach light location
  - e. Pool/screen enclosures
  - f. Pool, air conditioning, and irrigation equipment and method of screening
  - g. Utility meters, air conditioning condensers and method of screening
  - h. Low voltage landscape lighting with fixtures and transformer types and locations
  - j. Location and construction methods, materials and colors for all paved areas which are not indicated on the Site Plan
2. Plant materials list (may be on Landscape plan), indicating quantity, size and type.

**No construction or installation shall commence without prior written approval of the ARB and all required government approvals.**



7

# DESIGN GUIDELINES

## SITE

### *Driveways/Paved Areas*

Driveways shall be constructed of brick or stone. Brick or stone colors should coordinate with the architecture and are subject to approval. Concrete used as borders, bands or with special finish may be used subject to approval.

### *Mailboxes*

There will be a community standard for mailboxes, as determined by the ARB. This information may be obtained from the Board, and the builder or homeowners will be responsible for purchase and installation. The location of each mailbox will be designated by the Board, ensuring compliance with Postal Service guidelines.

### *Fences and Walls*

Fences and walls should be considered as an extension of the architecture of the residence. They should serve to make a transition between the mass of the architecture and the natural forms of the site. All walls and fences shall be designed to be compatible with the total surrounding environment and shall not block natural views. Fences, walls and hedges should be considered as design elements to enclose and define courtyards, to extend and relate the building forms to the landscape, as well as to ensure security and privacy.

No fence or wall height should exceed 6' in height, and all fences and walls are subject to ARB approval. When a fence or wall is required by code, (pool surround or the like), the ARB will still have approval rights over the location, material and color. The ARB will encourage the use of stone, stucco and wrought iron, and will discourage other varieties of materials.

### *Swimming Pools/Spas*

Swimming pools and outdoor spas will be permitted and must be approved by the ARB and comply with all building codes. Pools and spas shall be located and screened so that they do not adversely impact neighboring properties with light and sound. No above ground or portable pools are permitted.

### *Detached Structures*

Detached structures of any type shall be designed to integrate with the architectural style of the home. They shall be located within the building setbacks and screened to insure privacy. Detached structures include: greenhouse, gazebo, trellis/arbor, play equipment. Approval of these structures and their locations will be at the discretion of the ARB. Storage sheds will be discouraged.

### *Decks*

Decks will be discouraged by the ARB which will favor patio treatments of pavers or the like. If a deck is to be considered, it must be designed to integrate with the architectural style of the home. Wood decks will be stained to match the house. Decks are to be located within the building area and shall not extend into the front, rear or side yard setback.

Overhead covers for decks and patios shall be constructed of wood or canvas. No metal or fiberglass is permitted. These elements shall also integrate with the architecture.

### *Tennis Courts*

Tennis courts are permitted with the approval of the ARB. They must be built within the required setbacks and be well screened to provide a visual and noise buffer for adjacent properties.

### *Exterior Lighting*

All exterior pool and landscape lighting shall be indirect and area-type lighting designed so as not to intrude upon adjacent neighbors. Spot lights with direct glare are not permitted. Landscape lighting shall utilize low voltage fixtures mounted and placed so the effect is seen, not the source. A post mounted coach light, controlled by photocell, is required at each home site and shall be located within 20' of the front property line and within 10' of the driveway. A lighting plan must be submitted indicating the types and locations of all fixtures, transformers, wiring and electrical sources for approval by the ARB. No colored lens or lamps are permitted. Lighting of tennis courts is not permitted unless approved by the ARB.

### *Utilities and Service Lines*

All meters, A/C condensers, irrigation backflow devices, pool equipment and other utilities are to be screened from the street and adjacent properties with shrubbery a minimum height of the equipment with an opacity of 80% at installation. All above grade utility lines and conduits are to be painted to match the house.

## BUILDINGS

### *Size of Residence*

The minimum net living are for any residence shall be no less than 2,500 square feet, exclusive of basements, attics, decks, patios, porches and garages.

### *Building Setbacks*

Building setbacks have been established for each lot and vary from lot to lot. Please refer to the attached Final Development Plan. The ARB will have final approval of structure location and may, from time to time, be more restrictive.

### *Floor Elevations*

Finished grade elevations are reflected on the plat. The ARB will have final approval on the finished floor elevation and recommends it not exceed 2' above finished grade.

### *Siting*

The ARB shall consider each site independently, but shall give extensive consideration to each individual plan's impact upon adjacent home sites and natural site amenities. Consideration shall include:

1. Physical terrain
2. Views from home site
3. Views to the home site of adjacent lots
4. Natural amenities: existing foliage, water and drainage channels
5. Driveway access
6. Height of structures

A suggested building envelope has been established for each lot and is indicated on the site plan which will be issued to each lot purchaser.

### *Building Materials and Colors*

The roofs and side wall materials of each house shall be compatible and shall blend into a common color tone. Exterior material treatments shall reflect a continuity of materials selected for all elevations of the residence in order to achieve a complementary and complete architectural design statement.

### *Roof*

All roof pitches must fall within the range of 8/12 - 12/12.

Roof materials and colors shall be compatible throughout the community. Asphalt shingles shall be heavily textured and gray or a gray blend to simulate the appearance of natural weathered wood or slate.

If not copper, metal flashing is to be colored to match the material being flashed. If not copper, all gutters and downspouts are to match the surface to which they are attached. Roof vents must blend with roofing materials. The street side of a house must drain underground to the street curb and the remainder of the property's drainage must be designed to sheet flow where designed, not imposing any drainage on an adjacent lot.

### *Brick*

Natural sand mold brick is preferred. "Manufactured" sand mold and textured brick may also be approved. Color ranges should be subtle; no speckled or glazed effects are permitted. The use of brick is to be limited to details in brick walls, chimneys and foundations. Brick facades will be considered as a special request.

### *Stone*

Natural stone laid in a natural horizontal bed is required. One type/blend will be allowed, and will be selected by the ARB. There will be a limited number of installation styles permitted.

### *Stucco*

Stucco will be the primary siding material throughout the community. Special attention shall be given to details such as window trim, treatment of outside corners, fascias, main entry, etc.

### *Garages*

Garage doors shall be de-emphasized and shall blend with the design character and color of the house. Garage doors shall be of one color and constructed of wood or wood-based materials. All garage doors will be equipped with an electric garage door opener.

### *Height*

No house will exceed 38' in height, measured from grade at the main entry to the highest roof ridge.

### *Windows*

The use of unfinished metal storm windows is not permitted. The use of reflective glass or film may be deemed inappropriate by the ARB.

Shutters should be properly proportioned to fit the window (1/2 of the width of the window) and should be of authentic period design. Awnings are only acceptable in certain instances where they are an integral part of the facade design. In such cases, the fabric color shall blend with the exterior material of the house.

### *Skylights*

Skylight glazing shall be clear, solar bronze, or gray only. Skylight framing material shall be bronze anodized or colored to match the roof.

### *Screen Enclosures*

All screen enclosures are subject to approval by the ARB. Design and color must conform with architectural of the home.

### *Foundations*

All exterior wall materials must be continued down to finished grade, as far as code permits. Stone may be used as a foundation expression with stucco above, if proper treatment is given to transition.

### *Solar Heating*

Installation of solar heating must be approved by the ARB. Approval will not be unreasonably withheld, but will be dependent upon the individual lot location and exposure. No roof panels or solar equipment may be visible, particularly from the street or an adjacent lot.

### *Alarms*

Audible exterior alarms are not permitted.

## LANDSCAPE

To ensure that the overall beauty of the community is preserved and enhanced, the ARB has the authority to approve or disapprove landscape plans for individual residences. Primary goals of the design guidelines reflected in this Manual are to minimize the disturbance of existing ecological systems and to preserve existing drainage courses and vegetation, including trees, understory and groundcover.

Owners and builders may not remove any trees or brush prior to final approval of plans by the ARB. Trees may be cut and brush cleared after such approval only to clear for driveways and building pads. All other cutting and thinning must be approved as part of the landscape plan. The cutting of trees six inches in diameter or greater will be prohibited unless prior approval is received from the ARB.

The following measures shall be taken to ensure preservation of existing vegetation:

A major tree survey may be required by the ARB as part of the concept design submitted. If required, the survey shall locate and identify all trees over six inches caliper, measured four feet from the ground.

The tree survey shall be used as an aid in developing preliminary plans. Tree preservation should be a high priority in siting the house, driveway, etc.

Final plans must clearly delineate trees to be removed and trees to be preserved. This should be cross-referenced with all aspects of development, such as utilities, grading, layout, erosion control, etc.

All trees to be preserved must be protected by fencing, conspicuous and high enough to be seen by equipment operators. Prior to construction, lots with Conservation Areas in the rear or side yards, as identified on the Final Development Plan, must erect a snow fence along the entire perimeter of the Conservation area to be maintained throughout the construction period.

The builder or landscape designer should pay special attention to the plat and/or Final Development Plan where a landscape easement may be identified in the front yard. This easement runs along the back of the sidewalk and the developer/Association will mandate what will be installed, who will install it, and who will maintain it.

Landscaping as approved by the ARB shall be installed no later than 180 days following occupancy or completion of the residence, whichever occurs first.

### *Location*

No trees, shrubs or groundcover shall be planted within any swale area. Landscape materials must not block drainage.

Planting at or near property lines should be coordinated with adjacent property owners. Property lines shall not be accentuated by tree lines, fences or hedge rows unless specifically approved by the ARB. The Board recommends the natural blending of open space whenever possible.

#### *Maintenance*

Unless specifically noted to the contrary by the Association or the ARB, the owner shall be responsible for maintenance of all landscaping on its lot, ensuring it remains in good living condition so as to present a neat, healthy and orderly appearance. Maintenance shall include the replacement of all dead plant materials.

#### *Lawns*

The ARB will specify one type or mixture of grasses to be planted.

#### *Irrigation*

Irrigation systems installed on residential lots must be automatic, underground. If an irrigation system is planned, it must be submitted for approval with the water source identified.

#### *Mounding*

Earth mounding is permissible within property lines if it is done in a subtle way with gentle slopes to resemble natural grade.



## EXHIBIT B

**DECLARATION  
OF  
THE RESERVE AT NEW ALBANY  
HOMEOWNERS' ASSOCIATION, INC.**

## ARTICLE I

Definitions

All of the terms used herein shall have the same meanings as set forth in the Declaration of Protective Covenants, Conditions and Restrictions for The Reserve At New Albany (the "Declaration"), recorded in the office of the Franklin County, Ohio Recorder, with respect to the real property described therein (the "Property"), and as the Declaration may be lawfully amended from time to time.

## ARTICLE II

Name and Location

The name of the Association is The Reserve at New Albany Homeowners' Association. The principal office of the Association shall be as provided by the Articles.

## ARTICLE III

Members

Section 1. **Membership.** Membership in the Association is divided into three separate categories as follows:

- (a) Declarant (Developer)
- (b) Builders
- (c) Owners

Section 2. **Voting Rights.** Owners and Builders shall be entitled to one vote for each Lot owned. If ownership of a Lot is held by more than one person or entity, then the Owners shall determine, among themselves, who shall be entitled to exercise the single vote for each Lot. If the Owners cannot jointly agree as to which of them shall be entitled to exercise the vote attributable to that Lot, then the right to vote shall be forfeited until such time as the Owners designate which of them shall exercise such vote.

Section 3. **Number of Votes.** At the time this Association comes into existence, the Declarant category of membership shall be entitled to cast a total of sixty-four (64) votes, that being twice the total number of single family homes that may be constructed on the Property known as The Reserve at New Albany. As each Lot is



conveyed to a Builder or Owner, the number of votes held by the Declarant shall decrease by one, transferring that voting right to the new Lot Owner.

At such time as all of the home sites have been sold, then the Declarant category of membership and the builder category of membership shall cease to exist, and the total number of votes will revert to thirty-two (32). Thereafter, the Association shall operate with only one class of membership, that being Owners of Lots. Any Builder who holds a title interest in a Lot shall be deemed an Owner of Lots and thereby a Member of the Association. Additionally, any Owner using two Lots to build one single family residence will have two votes, one per Lot. Additionally, any Owner using one and one half Lots to build one single family residence will have one and one half votes, one per Lot.

**Section 4. Annual Meetings.** A regular annual meeting of the Members shall be held on the first Monday of April of each calendar year hereafter, or on such other date as may be designated by the Board of Trustees at an hour and at a location established from time to time by the Trustees.

**Section 5. Special Meetings.** Special meetings of the Members may be called at any time by the Chairman, the President, the Board of Trustees, or upon written request of Members entitled to exercise one-fourth or more of the voting power of Members, and shall be held on such date, hour and location within Franklin County, Ohio as specified by the person calling the meeting.

**Section 6. Notice of Meetings.** Written notice of each meeting of Members shall be given by, or at the direction of, the person or persons authorized to call the meeting, by mailing a copy of such notice, postage prepaid, at least five (5) days before such meeting to each Member entitled to vote thereat, addressed to the Member's address last appearing on the books of the Association or supplied by such Member to the Association for the purpose of notice, or by delivering a copy of that notice at such address at least five (5) days before the meeting. The notice shall specify the place, day, and hour of the meeting and, in the case of a special meeting, the purpose of the meeting.

**Section 7. Quorum.** The Members present, in person or by proxy, at any duly called and noticed meeting of Members, shall constitute a quorum for such meeting.

**Section 8. Proxy.** At any meeting of Members, a Member may vote in person or by proxy. All proxies shall be in writing and in the event more than one person or entity owns any single Lot, then each person and an authorized representative of each entity or any combination thereof, representing the total ownership of any single Lot shall join in signing the proxy. All proxies shall be filed with the Secretary prior to the meeting. Every proxy shall be revocable and shall automatically cease upon conveyance by a Member of his, her or its Lot.

Proxies are  
allowed

**Section 9. Voting Power.** Except as otherwise provided herein, in the Articles or in the Declaration, or by law, a majority of the voting power of Members voting on any matter that may be determined by the Members at a duly called and noticed meeting shall be sufficient to determine that matter. The rules of Roberts' Rules of Order



shall apply to the conduct of all meetings of Members except as otherwise specifically provided herein or in the aforesaid documents.

**Section 10. Action In Writing Without Meeting.** Any action that could be taken by Members at a meeting may be taken without a meeting with the affirmative vote or approval, in a writing or writings, of Members having not less than a majority of the voting power of Members.

## ARTICLE IV

### Board of Trustees

**Section 1. Initial Trustees.** The Trustees shall initially be those named in the Articles, or substitutes or additional Trustees selected by Declarant.

**Section 2. Successor Trustees.** At each annual meeting of Members held, the Members shall elect five Trustees, who shall serve until removed by Member action or the election of a successor. Notwithstanding the foregoing, Members exercising not less than a majority of the voting power of Members may, from time to time, change the number and terms of Trustees.

**Section 3. Removal.** Any Trustee may be removed from the Board, with or without cause, by Members exercising a majority of the voting power of Members. In the event of death, resignation or removal of a Trustee other than an initial Trustee or a replacement selected by Declarant, that Trustee's successor shall be selected by the remaining Trustees and shall serve until the next annual meeting of Members, when a Trustee shall be elected to complete the term of such deceased, resigned or removed Trustee. Declarant shall have the sole right to remove, with or without cause, any Trustee designated in the Articles or selected by it, and select the successor of any Trustee selected by it who dies, resigns, is removed or leaves office for any other reason before the first election of Trustees.

**Section 4. Compensation.** Unless otherwise determined by the Members at a meeting duly called and noticed for such purpose, no Trustee shall receive compensation for any service rendered to the Association as a Trustee. However, any Trustee may be reimbursed for his or her actual expenses incurred in the performance of duties.

**Section 5. Regular Meetings.** Regular meetings of the Trustees shall be held no less than annually, without notice, on such date and at such place and hour as may be fixed from time to time by resolution of the Trustees.

**Section 6. Special Meetings.** Special meetings of the Trustees shall be held when called by the president, or by any Trustee, after not less than three days' notice to each Trustee.



Section 7. **Quorum.** The presence at any duly called and noticed meeting, in person or by proxy, of Trustees entitled to exercise a majority of the voting power of Trustees, shall constitute a quorum for such meeting.

Section 8. **Voting Power.** Except as otherwise provided in the Declaration or Articles, or by law, vote of a majority of the Trustees voting on any matter that may be determined by the Trustees at a duly called and noticed meeting shall be sufficient to determine that matter.

Section 9. **Action In Writing Without a Meeting.** Any action that could be taken by Trustees at a meeting may be taken without a meeting with the affirmative vote or approval, in a writing or writings, of all of the Trustees.

Section 10. **Powers.** The Trustees shall exercise all powers and authority under law, and under the provisions hereof and the Articles and Declaration, that are not specifically and exclusively reserved to the Members by law or by other provisions thereof, and without limiting the generality of the foregoing, the Trustees shall have the right, power and authority to:

- (a) take all actions deemed necessary or desirable to comply with all requirements of law, this Code, the Declaration and the Articles;
- (b) obtain insurance coverage, and cause officers and employees having fiscal responsibilities to be bonded, as the Trustees deem appropriate; *insurance*
- (c) enforce the covenants, conditions and restrictions set forth in the Declaration, and design standards set forth in the Design Review Manual or established pursuant thereto; *enforce CCRs*
- (d) maintain the Common Area and Improvements thereon in The Reserve at New Albany; *maintain Common Areas*
- (e) establish, enforce, levy and collect assessments as provided in the Declaration; *collect assessments*
- (f) adopt and publish rules and regulations governing the use of the Common Area and the exterior portions of all Improvements and the personal conduct of Members and their guests thereon, and establish charges for the infraction thereof; *adopt rules & regs.*
- (g) suspend the voting rights of a Member during any period in which such Member shall be in default in the payment of any assessment levied by the Association (such rights may also be suspended after notice and hearing, for infractions of published rules and regulations or of any provision of the Declaration); *suspend voting rights*
- (h) declare the office of a Member of the Board of Trustees to be vacant in the event such Trustee shall be absent from three consecutive regular meetings of the Board of Trustees; *declare Trustee sent to be vacant*
- (i) authorize the officers to enter into management and security agreements with third parties in order to facilitate the efficient operation of the Association's affairs and the safety of the occupants of The Reserve at New Albany; *mgmt + security agmts*



- (j) borrow funds to finance authorized activities, and grant security and pledge and/or assign revenues received or to be received as security for repayment thereof; *borrow funds*
- (k) cause excess funds to be invested in government agency insured accounts as the Board deems desirable and prudent, and such other investments as the Members approve; and *investments*
- (l) do all things and take all actions permitted to be taken by the Association by law, hereby or by the Articles or Declaration, not specifically reserved thereby to others.

Section 11. **Duties.** It shall be the duty of the Trustees to:

- (a) cause to be kept a complete record of all its acts and corporate affairs and to present a statement thereof to the Members at the annual meeting of Members, or at any special meetings when such statement is requested in writing by Members representing one-half (1/2) or more of the voting power of Members; *annual statement*
- (b) Supervise all officers, agents and employees of the Association and see that their duties are properly performed;
- (c) as more fully provided in the Declaration, to:
  - (i) Fix the amount of assessments against each Lot as provided herein;
  - (ii) give written notice of each assessment to every Member subject thereto within the time limits set forth therein; and
  - (iii) foreclose the lien against any Lot for which assessments are not paid within a reasonable time after they are authorized by the Declaration to do so, or bring an action at law against the Members personally obligated to pay the same, or both;*assessments*
- (d) issue, or to cause an appropriate officer to issue, upon demand by any person, a certificate setting forth whether or not any assessment has been paid;
- (e) maintain liability insurance in such amount as is deemed sufficient by the Trustees;
- (f) cause the property subject to the Association's scope of authority to be maintained within the scope of authority provided in the Declaration;
- (g) cause the restrictions created by the Declaration to be enforced; and *enforce restrictions*
- (h) take all other actions required to comply with all requirements of law, the Articles and the Declaration.

## ARTICLE V

### Officers

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

*combined ?  
separate ? 5*

**Section 2. Selection and Term.** The officers of the Association shall be selected by the Trustees, from time to time, to serve until the Trustees elect their successors.

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

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

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

(a) **President.** The president shall preside at all meetings of the Trustees, shall have the authority to see that orders and resolutions of the Board are carried out, and shall sign all leases, mortgages, deeds and other written agreements.

(b) **Vice President.** The vice president shall act on behalf of the president in the president's absence. The vice president shall also assume the duties respectively of the secretary and treasurer in the absence of either or both at any meetings of the Trustees and of the Members.

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

(d) **Treasurer.** The treasurer shall receive and deposit and/or invest monies of the Association as directed by the Trustees, disburse such funds as directed by resolution of the Trustees, sign all checks and promissory notes of the Association, keep proper books of account and prepare an annual budget and a statement of income and expenditures to be presented to the Members at the annual meeting, and deliver or mail a copy of each to each of the Members.

checks  
annual  
statement

## ARTICLE VI

### Books and Records

The books, records and financial statements of the Association, including annual audited financial statements when such are prepared, shall be available during normal business hours or under other reasonable circumstances, upon request to the Association,



for inspection by Members and the holders and insurers of first mortgages on Lots. Likewise, during normal business hours or under other reasonable circumstances, the Association shall have available for inspection by Members, lenders and their insurers, and the prospective purchasers, current copies of the Association's organization documents and its rules and regulations.

## ARTICLE VII

### Audits

Upon written request to the Association by an institutional first mortgagee of a Lot, or its insurer, or by vote of the holders of a majority of the voting power of Members, the Trustees shall cause the preparation and furnishing to those requesting of a financial statement of the association for the preceding fiscal year, provided that no such statement need be furnished earlier than one hundred twenty (120) days following the end of such fiscal year.

## ARTICLE VIII

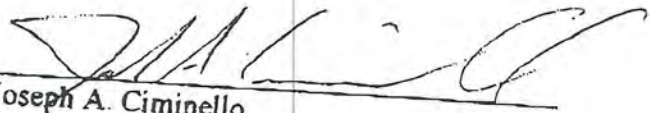
### Fiscal Year

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

ARTICLE IX

Amendments

Any modification or amendment of this Code shall be made only by the affirmative vote of a minimum of sixty-six percent (66%) of the total available votes of the Members of the Association.

  
Joseph A. Ciminello  
Trustee



## Changes to the Declaration of Protective Covenants, Conditions and Restrictions

Article II, Section 2.08 presently reads:

Common Area: The land controlled and/or owned by the Association, as well as those areas of the Property shown on any recorded plat of all or any portion of the Property, or designated in any recorded declaration, or both, as devoted to the common use and enjoyment of the Owners and/or the public, including without limitation, areas deeded to the Village of New Albany, landscape easements, buildings and Improvements now or hereafter constructed thereon.

This paragraph will be amended to read:

Article II, Section 2.08

Common Area: The land controlled and/or owned by the Association, as well as those areas of the Property shown on any recorded plat of all or any portion of the Property, or designated in any recorded declaration, or both, as devoted to the common use and enjoyment of the Owners and/or the public, including without limitation, areas deeded to the Village of New Albany, buildings and Improvements now or hereafter constructed thereon.

What has been modified in Section 2.08 is the removal of Landscape Easements as definition of Common Area.

Article VII, Section 7.16 presently reads as follows:

Maintenance of Lots and Buildings: No Lot, Residence or other Improvement shall be permitted to become overgrown, unsightly or fall into disrepair, and all Residences and Improvements shall at all times be kept in good condition and repair and adequately painted or otherwise finished in accordance with specifications established by the ARB. Each Owner, for himself and his successors and assigns, hereby grants to Declarant and the Association, jointly and severally, the right to make any necessary alterations, repairs or maintenance approved by the Board to carry out the intent of this provision and they further agree to reimburse the Declarant or the Association for any expenses actually incurred in carrying out the foregoing. The Association may assess and collect such reimbursement (for itself or on behalf of Declarant, as the case may be) as a Compliance Assessment.

This paragraph will be amended to read as follows:

Article VII, Section 7.16

Maintenance of Lots and Buildings: No Lot, Residence or other Improvement shall be permitted to become overgrown, unsightly or fall into disrepair, and all Residences and Improvements shall at all times be kept in good condition and repair and adequately painted or otherwise finished in accordance with specifications established by the ARB. Each Owner, for himself and his

successors and assigns, hereby grants to Declarant and the Association, jointly and severally, the right to make any necessary alterations, repairs or maintenance approved by the Board to carry out the intent of this provision and they further agree to reimburse the Declarant or the Association for any expenses actually incurred in carrying out the foregoing. The Association may assess and collect such reimbursement (for itself or on behalf of Declarant, as the case may be) as a Compliance Assessment. Any damage or loss sustained as a result of the actions of a third party to the Owner's Property, including the Landscape Easement will be borne by and the Owner and the cost of the replacement and repair thereof will be the responsibility of the Owner as set forth in Article VII, Section 7.16.

What has been modified in Section VII, Section 7.16 is to clarify the fact that any damage or loss caused by a third party will be borne by the Owner and it will be the Owner's responsibility to repair or replace the damage. Once that is completed the Association will continue to maintain the Landscape Easement.

Article VIII, Section 8.04 reads as follows:

Landscape Easements: Declarant reserves to itself, its grantees, successors and assigns an additional easement in, through and under and/or over those portions of each Lot and Common Area as shown on the Plat designated as Landscape Easement. Said Landscape Easement shall be maintained by the Association for the benefit of all Owners. The design of the vegetation and other decorative improvements within each Landscape Easement shall be maintained and included within the normal maintenance responsibilities of the Association. No Owner of any Lot within which a Landscape Easement exists shall conduct any activity which would result in the alteration or demise of the decorative features established thereon.

This paragraph will be amended to read as follows:

Article VIII, Section 8.04 reads as follows:

Landscape Easements: Declarant reserves to itself, its grantees, successors and assigns an additional easement in, through and under and/or over those portions of each Lot and Common Area as shown on the Plat designated as Landscape Easement. Said Landscape Easement shall be maintained by the Association for the benefit of all Owners. The design of the vegetation and other decorative improvements within each Landscape Easement shall be maintained and included within the normal maintenance responsibilities of the Association. No Owner of any Lot within which a Landscape Easement exists shall conduct any activity which would result in the alteration or demise of the decorative features established thereon. The Owner will be responsible for the replacement or repair of any damage or loss to the Landscape Easement as a result of the actions of a third party.

What has been modified in Section VIII, Section 8.04 is to clarify the fact that any damage or loss caused by a third party will be borne by the Owner and it will be the Owner's responsibility to repair or replace the damage. Once that is completed the Association will continue to maintain the Landscape Easement.