

**DECLARATION  
OF  
COVENANTS, RESTRICTIONS AND EASEMENTS  
OF  
THE RESERVE AT PINE LAKES VILLAGE**

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EXHIBIT "A" Legal Description of The Reserve at Pine Lakes Village  
EXHIBIT "B" Drawing(s) of The Reserve at Pine Lakes Village

**DECLARATION**  
**OF**  
**COVENANTS, RESTRICTIONS, AND EASEMENTS**  
**OF**  
**THE RESERVE AT PINE LAKES VILLAGE**

THIS DECLARATION OF COVENANTS, RESTRICTIONS AND EASEMENTS (the "Declaration") made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2001, by SAKS AND GOLDBERG COMPANIES, an Ohio partnership, located in Cleveland, Ohio, which together with its successors and assigns is hereinafter referred to as the "Company" or "Developer".

WHEREAS, the Company is owner in fee simple of certain real estate situated in the City of Strongsville, County of Cuyahoga and State of Ohio, which is more fully described in Exhibit "A" attached hereto and made a part hereof (the "Premises"); and

WHEREAS, the Premises are a part of that certain larger tract of land known or designated as Pine Lakes Village in Strongsville, Ohio, upon a portion of which, Pine Lakes Village Subdivision Phase 1, a Declaration of Covenants and Restrictions was imposed, as recorded in Vol. 87-6787, Page 30, of Cuyahoga County Records, dated June 16, 1987 and recorded on, \_\_\_\_\_, together with Amendments thereof recorded in the Cuyahoga County Records (the "Pine Lakes Declaration"); pursuant to such Pine Lakes Declaration, there was created the Pine Lakes Residential Community, Inc. (hereafter "Pine Lakes Associations"), an Ohio not-for-profit corporation to administer and exercise the functions and powers set forth in the Pine Lakes Village Declaration: and

WHEREAS, pursuant to Article II of the Pine Lakes Declaration, the Premises were added to the Pine Lakes Village Subdivision by the Declaring thereof, as Additional Property; and by such action the scheme of the Pine Lakes Declaration was extended to the Premises; and

WHEREAS, the Company desires to develop the Premises as Single Family Detached and Cluster Dwellings, under the Planning and Zoning Code of the City of Strongsville, Ohio; and

WHEREAS, the Company, for its own benefit, and for the benefit of all future owners, mortgages and occupants of said Premises or any part thereof, desires to establish the covenants, rights, easements, privileges and restrictions hereinafter set forth with respect to said Premises and the ownership, use, conduct and maintenance of the Common Properties located therein (the within covenants, rights, easements, privileges and restrictions being in addition to, and not in lieu of, any of the covenants, rights, easements, privileges and restrictions created upon the Premises by reason of the Pine Lakes Declaration); and

WHEREAS, the Company has deemed it desirable for the efficient preservation of the values and amenities in the Premises to create an agency to which should be transferred the Common Properties of the Premises and to which should be delegated and assigned the obligations for administering and enforcing the Declaration, and collecting and disbursing the assessments and charges hereinafter created: and

WHEREAS, the Company intends to cause the incorporation under the laws of the State of Ohio of a non-profit corporation, The Reserve at Pine Lakes Village Homeowners' Association, Inc. for the purposes of exercising the functions delegated to it pursuant to this Declaration.

## **ARTICLE I**

### **IMPOSITION OF COVENANTS AND RESTRICTIONS**

NOW, THEREFORE, the Company, on behalf of itself and its successors, assigns and grantees, does hereby;

1. Declare that the real property described in Exhibit "A" and such additions thereto, as my hereafter be made, pursuant to Article III hereof, is and shall be held, transferred, sold, conveyed and occupied subject to the covenants, restrictions, easements, charge and liens (hereafter sometimes referred to as "Covenants") hereinafter set forth in this Declaration, and further declares that this Declaration shall constitute covenants to run with the land and shall be binding upon the Company, its successors and assigns, and all subsequent owners of all or any part of said real property, together with its and their grantees, successors, heirs, executors, administrators and assigns.

2. Covenant and agree that the Common Properties, located within the Premises, shall, at all times during the term of this Declaration, remain and be used solely for the common nonexclusive use of the Cluster Site Owners within the Premises, their lessees, members of their immediate household, and guests, subject to the following rights, reservations and easements:

(a) Subject to the rights reserved to the Company, its successors and assigns in Articles III and IV hereof;

(b) Subject to the rights of the Company, its successors and assigns to construct, install, use and maintain storm and sanitary sewers, swales, water lines, drainage facilities, retention areas, utilities, cable lines in the Common Properties, and to reserve and grant easements for the same to itself, the City, other public authorities, public agencies and public utilities.

3. Declare that the Association may administer and exercise certain of the functions and powers set forth in the Pine Lakes Declaration as may be delegated to it by the Pine Lakes Association, subject to agreement between the Pine Lakes Association and the Association as the same relates solely and only to the Premises, the Cluster Sites and houses constructed thereon and the Common Properties located exclusively in the Premises, or adjacent thereto.

4. Declare that the Company has created and granted or may create and grant easements for the installation and maintenance of sanitary sewers, storm sewers, drainage and swales to the City of Strongsville.

5. Declare that no structures (including but not limited to sidewalks and driveways), plantings or other materials shall be placed or permitted to remain within such easement areas which may damage or interfere with the installation and/or maintenance of such improvements in such easement areas or which may change, retard or increase the flow of water through the respective easement areas. The easement areas and all improvements therein shall be maintained continuously by the Association unless those easement areas are accepted by the City of Strongsville and which the City of Strongsville has formally undertaken to maintain. The City of Strongsville shall have the right to enter upon and across the Common Properties and each Cluster Site at any place that the City deems necessary in order to install or maintain, or to perform any function or operation in accordance with such easements.

## **ARTICLE II**

### **DEFINITIONS**

**Section 1.** "Association" shall mean and refer to The Reserve at Pine Lakes Village Homeowners' Association, Inc., an Ohio not-for-profit corporation, its successors and assigns.

**Section 2.** "Cluster Site Owner" shall mean and refer to the record owner, whether one or more persons or entities, of fee simple title to any Cluster Site which is a part of the Premises, but excluding those persons having such interest merely as security for the performance of an obligation.

**Section 3.** "Premises" shall mean and refer to that certain real property hereinbefore described in Exhibit "A", and any and all additional real properties as may be submitted to the within Deliration by Developer as hereinafter provided in Article III hereof. "Premises" is sometimes hereafter referred to as "Properties".

**Section 4.** "Common Properties", or "Common Property" shall mean and refer to those areas of land within the Premises, if any, which are intended to remain as open areas and buffer zones, and for storm water retention areas, drainage, swales, storm and sanitary sewers, water main, utilities, guest parking, entrance ways, walls, earth mounds and landscaping, for the common use, benefit and enjoyment of all Cluster Site Owners and which are specifically designated as such on any subdivision plat recorded in the Cuyahoga County Records of the Premises, or which are designated or described as such in this Declaration, or on any drawing which is an Exhibit to this Declaration. The terms "Common Areas" and "Common Area", when appearing in this Declaration shall convey the same meaning.

B. "Common Easement Area" shall mean and refer to those areas of the Cluster Sites within the Premises, which are intended for the common use, benefit and enjoyment of all Cluster Site Owners and which are designated as such on any such subdivision record plat of the Premises, or are designated or described as such in this Declaration, or on any drawing which is an Exhibit to this Declaration. Payment of the real estate taxes and assessments on each Cluster Site, including the part thereof subject to any Common Easement Area or other easement, shall be the obligation of the Cluster Site Owner.

Section 5. "Cluster Site" shall mean and refer to any subplot (whether or not improved with a house), including any Single Family Detached House constructed upon a Sublot shown upon any record subdivision plat of the Premises with the exception of the Common Properties. Each Cluster Site shall have a separate permanent parcel number assigned to it by the Cuyahoga County Auditor for tax purposes after recording of the deed to a purchaser from the Developer.

Section 6. "Articles of Incorporation and ByLaws" shall mean the Articles of Incorporation and ByLaws of the Association. The Articles of Incorporation and ByLaws of the Association may contain any provisions not in conflict with this Declaration or any Supplemental Declaration as are permitted to be set forth in such Articles and ByLaws by the nonprofit corporation law of the State of Ohio, as from time to time in effect.

Section 7. "City" shall mean the City of Strongsville, a municipal corporation organized and existing under the laws of the State of Ohio. It is specifically acknowledged by all parties to these Covenants and Restrictions that the "City" is a third party beneficiary to these Covenants and Restrictions and has the same authority to administer and enforce these Covenants and Restrictions as they relate to the Common Properties, storm sewers and swales, as more fully set out herein, as does the Association or Developer.

Section 8. "Developer" shall mean and refer to Saks and Goldberg Companies, and its successors and assigns, and an individual or entity to whom or to which Saks and Goldberg Companies or a successor Developer conveys all or substantially all of the real estate comprising the Properties, which have not been previously conveyed, and one (1) or more individuals or entities to whom or to which Saks and Goldberg Companies or a successor Developer, at anytime or from time to time, signs or conveys all or any portion of the rights and/or obligations of the Developer hereunder.

Section 9. "Development Period" shall mean the period of the development of the Premises, together with any additions thereto by Developer, projected to occur over a period of years ending December 31, 2015.

Section 10. "Living Unit" shall include the term "house", and shall mean and refer to any building or any portion of a building situated within the Premises, or any Cluster Site designed and intended for use and occupancy as a residence by a single family. A residential single family housing unit situated on the Premises, whether attached or detached, is herein defined as a "Living Unit" or a "House".

### **ARTICLE III**

#### **PROPERTIES SUBJECT TO THE DECLARATION, AND ADDITIONS THERETO; POWERS IN DEVELOPER**

**Section 1. Premises.** The real property which is and shall be held, transferred sold, conveyed and occupied subject to this Declaration is located in the City of Strongsville, Ohio, includes The Village at Pine Lakes Village, all as is more particularly described in Exhibit "A" annexed hereto and made a part hereof.

**Section 2. Additions to Premises.** The Developer, with the prior written approval of the City, shall have the right to bring within the scheme of this Declaration such additional Properties as Developer may elect during the Development Period. Nothing, however, contained herein shall bind the Developer to make any additions or to adhere to any particular plan of development. Any such addition shall be made by the Developer, within the Development Period, with the prior approval of the City, provided that any such proposed addition is part of that certain larger tract of land, known or designated as Pine Lakes Village, as Pine Lakes Village may be expanded or increased from time to time pursuant to Pine Lakes Declaration. Any such addition shall be made by filing of record a supplemental Declaration, in a form approved by the Developer with respect to the additional Property, which shall extend the scheme of the covenants, rights, easements, privileges and restrictions of this declaration to such additional Property. Such instrument may contain such complementary additions and modifications of this Declaration as may be necessary to reflect the different character, if any, of the added Property and as are not inconsistent with this Declaration. Such additions shall extend the jurisdiction, functions, duties and membership of the Association to such Properties.

**Section 3. Changes in Boundaries of Cluster Site and Common Areas.** The Developer reserves the right to make such changes in the boundaries of Cluster Sites and in the Common Properties with the approval of the City as it deems advisable, provided that no such change may be made if the same would adversely affect the boundaries or the beneficial use and enjoyment of any Cluster Site then owned by persons other than Developer without the written consent of such person. The Board of Trustees of the Association shall have the right to approve any such change of a Common Area after the Development Period, or when title to fifty percent (50%) of the Cluster Sites within the Premises has been conveyed by Developer to Cluster Site Owners (who occupy the Cluster Site), whichever shall first occur.

**Section 4. Reservation of Easements by Developer.** The Developer does hereby reserve and grant to itself, its successors and assigns:

(a) Easements in, upon, and over all Common Properties and Cluster Sites for the purpose of maintaining same, for the installation, use, maintenance and repair of all utilities, roads and common facilities necessary for the Pine Lakes Village Subdivision or any other property located within Pine Lakes Village, for access across said Cluster Site and/or Common Properties to and from other property located within the Pine Lakes Village, and for the installation, use, maintenance and repair of such improvements to the premises, the Common Properties, any Cluster Site, or any other properties as Developer may determine, including, but not limited to, utilities, roads, drives, electrical, telephone, gas,

cable, storm and sanitary sewers, and/or water service lines. Developer does hereby reserve an easement across each Cluster Site for the purpose of installing a second electrical meter on the house, as Developer deems necessary, for the purpose of providing common electrical metering for light of Common Properties, signs and street lighting, and an easement to install and maintain and use electrical lines across said Cluster Site to and from said electrical meter; and

(b) The right to grant and reserve easements for the above purposes to any public authority, public agency or any public utility.

Developer retains until December 31, 2015, or until such time as Developer has sold all Cluster Sites improved with a home to the Cluster Site Homeowners in the Premises, whichever event first occurs, the right to construct, install, maintain, use and relocate additional signs and/or existing signs advertising the Premises and/or Living Units therein for sale constructed by Developer; such signs to be located on any portion of the Common Properties as Developer may from time to time designate, together with an easement of access thereto sufficient for the purposes stated herein. Such signs shall comply with all ordinances of the City of Strongsville and shall be aesthetically compatible with the Premises in the reasonable discretion of Developer.

Section 5. Association Merger. The Association may be merged or consolidated with another Association as provided in its Articles, By Law or Rules of Regulations. Upon such merger or consolidation, the Association's properties, rights and obligations may, by operation of law, be added to the properties, rights and obligations of the Association as a surviving corporation pursuant to a merger. The surviving or consolidated Association may administer the covenants and restrictions established upon any other properties as one plan. No such merger or consolidation, however, shall effect any revocation, change or addition to the covenants and restrictions established by this declaration within the existing property except as hereinafter provided.

Section 6. Assignment of Developer's Rights. Developer shall have the right to assign any and all of the rights reserved to it in this Declaration to a nominee or subsequent Developer of the Premises.

Section 7. Consent to Reservation of Rights and Powers. Developer on its own behalf as the owner of all the Premises, and on behalf of all subsequent owners, hereby consents to and approves, and each subsequent Cluster Site Owner by acceptance of a deed conveying such ownership interest, and each mortgagee of said subsequent Owner by acceptance of a mortgage deed of such Owner's interest, thereby consents to and approves the provisions of this Article III, including without limitation and the generality of the foregoing, the amendment and modification of this Declaration by Developer in the manner provided in this Article II herein and Article X herein.

## ARTICLE IV

### OWNERSHIP, USE AND MANAGEMENT OF THE COMMON PROPERTIES

Section 1. Every member, and each Lessee of a Cluster Site or Living Unit of a Member (for himself, his immediate household, and guests), shall have a non-exclusive right and easement of enjoyment and use of the Common Properties owned by the Association for use as open space and/or green belt purposes, in common with all others entitled to use the same, and such easement shall be appurtenant to and shall pass with the title to every Cluster Site. Said right and easement shall be subject to the following provisions:

(a) The right of the Developer, and of the Association to borrow money for the purpose of improving the Common Properties and in aid thereof to mortgage said properties.

(b) The right of the Association to make reasonable rules and regulations regarding the use of the Common Properties and Common Easement Areas, including driveways, parking spaces, and access easements by the Members and other persons entitled to such use.

(c) The right of the Association to suspend a Member's voting rights and right to use of the Common Properties (i) for any period during which any assessment against such Member's Cluster Site remains unpaid, or (ii) for a period not to exceed thirty (30) days, for an infraction of the Association's published rules and regulations by such Member, or his immediate household or guests.

(d) The right of the Association, with the prior consent of the Developer or so long as Developer owns any parcel of property within the Premises, to dedicate or transfer all or any part of the Common Properties to any public agency, public authority or utility for such purposes and subject to such conditions as may be agreed to by the Board of Trustees of the Association.

(e) The right of the Association to take such steps as are reasonably necessary to protect the Common Properties against foreclosure.

Section 2. The right of use and enjoyment of the Common Properties shall not commence as to any Cluster Site Owner, his guests and family, until such Cluster Site Owner commences paying assessments pursuant to Article V.

Section 3. (a) The Developer may retain control of the Common Properties until such time as all improvements have been completed thereon by Developer, and until such time, as in the opinion of the Developer, the Association is able to maintain the same but, notwithstanding any provisions herein, the Developer hereby covenants for itself and its successors and assigns that it shall convey title to and turn over control, care and maintenance of the Common Properties to the Association no later than the expiration of the Development Period, or when title to fifty percent (50%) of the total number of Cluster Sites (which may be included within the Premises and the land adjoining the premises as have



been approved by the City) have been conveyed by Developer to Cluster Site Owners (who occupy the Cluster Site), whichever event shall first occur.

(b) The Developer shall have the duty to maintain all Common Properties, Common Easement Areas, guest parking, storm water retention areas, easements, drives, storm sewers, and swales until such time as all improvements are installed, completed, paid for in full, and turned over to the Association. Maintenance shall include but not be limited to painting, repairing, replacing, and caring for all appurtenances, exterior and interior building surfaces, trees, shrubs, grass areas, driveways, paving, walls, concrete, and other improvements in and or on the Common Properties, Common Easement Areas, storm sewers and swales.

(c) The Developer shall pay for all real estate taxes and assessments on all Common Properties until such time as all improvements on the Common Properties are certified by the City as having been completed, and the Common Properties are formally deeded over to the Association.

## **ARTICLE V**

### **MEMBERSHIP AND VOTING RIGHTS IN THE ASSOCIATION**

Section 1. Membership. Each person or entity who is a record Owner of a fee or undivided fee simple interest in any Cluster Site shall automatically be a Member of the Association, provided that any such person or entity who holds such interest merely as a security for the payment of money or performance of an obligation shall not be a Member. When more than one person holds such interest or interests, in any Cluster Site, all such persons shall be Members, but for quorum, voting, consenting and all other rights of Membership, such persons shall collectively be counted as a single Member, and entitled to one vote for each such Cluster Site, which vote for such Cluster Site shall be exercised as they among themselves deem. Each such member shall be jointly and severally liable for the payment of the assessments herein provided with respect to such Cluster Site.

Section 2. Voting Rights. The Association (until the expiration of the Development Period, or until the occurrence of the event specified below, whichever event shall first occur) shall have two classes of voting Membership:

Class A: Class A Members shall be all members with exception of the Developer. Class A Members shall be entitled to one vote for each Cluster Site owned by them.

Class B: The Class B Member shall be the Developer. The Class B Member shall be entitled to two votes for each Cluster Site owned by it. The Developer shall be deemed to own Cluster Sites equal to the total number of the Cluster Sites on the premises and on adjoining land (as have been approved by the City) except for those which have been conveyed by the Developer.

The Class B Member shall become a Class A member upon the earlier of the end of the Development Period or when title to fifty percent (50%) of the Cluster Sites (which may

be developed within the Premises, as they maybe expanded pursuant to Article III hereof) has been conveyed by Developer to Cluster Site Owners, who occupy the Cluster Site.

## **ARTICLE VI**

### **MAINTENANCE ASSESSMENTS**

**Section 1. Creation of the Assessments.** Each Cluster Site Owner (other than the Developer or its nominee), by acceptance of a deed therefore, whether or not it shall be so expressed in any such deed or other conveyance, is deemed to covenant and hereby covenants and agrees to pay the Association:

(a) An annual assessment for the continued operation, care, maintenance and repair of the Common Properties and the Cluster Sites as provided in this Declaration, and for the Association's performance of its other functions and responsibilities; and

(b) Special assessments for improvements or other capital expenditures, including the acquisition of additional property for use as Common Areas, for emergency, operating, maintenance or repair costs, and for other costs and expenses not anticipated in determining the applicable annual assessment. Each assessment shall be in the same amount for each Cluster Site.

It shall be the duty of the Developer for each Living Unit owned by it, and of each other Cluster Site Owner to pay the proportionate share of the assessments for the expenses of administration, maintenance and repair of the Common areas and of the other expenses provided for in the Declaration and ByLaws. Such proportionate share shall be calculated by dividing the total amount of expenses (except for expenses paid with proceeds of a loan) by the total number of Living Units (owned by the Developer and the number of Cluster Sites not owned by the Developer) within the Properties and each assessment shall be in the same amount for each such Living Unit and Cluster Site. Payment thereof shall be in such amounts and at such times as may be determined by the Board of Trustees of the Association, as hereinafter provided and in accordance with the provisions of the Declaration.

**Section 2. Annual Assessments.** The annual assessment shall be determined and levied annually by the Trustees of the Association prior to the date of the annual meeting of the Members, in such amounts as in their discretion shall be reasonably necessary to meet expenses anticipated during the ensuing year and to accumulate reasonable reserves for anticipated future operating or capital expenditures. The annual assessments for each calendar year shall be payable to the Association in quarterly installments beginning on the first day of January of such ensuing year. The quarterly assessment for years beginning prior to January 1, 2003 shall not exceed Four Hundred Fifty Dollars (\$450.00) for each Cluster Site.

**Section 3. Special Assessments.** Special Assessments may be levied by the Association from time to time at a meeting of the Members by the affirmative vote of Members entitled to exercise a majority of the voting power of the Association and, if there be more than one class of membership, then by the affirmative vote of Members entitled to exercise a majority of the voting power of each class of membership, provided that written notice shall be given to each Member at least thirty (30) days in advance of the date of such

meeting stating that a special assessment will be considered at and discussed at such meeting. Special assessments may if so stated in the Resolution authorizing such assessment, be payable in installments over a period of years.

All such Annual and Special assessments shall be in addition to any Annual or Special Assessments payable to the Pine Lakes Association pursuant to the Pine Lakes Declaration.

Section 4. Due Dates of Assessments: Defaults: Lien Rights and Priority of Liens; Personal Liability.

(a) The due dates of the quarterly installments of the annual assessments shall be on the first day of each quarter commencing January 1 in each year; provided that in the case of Cluster Site Owner acquiring a living unit from the Developer after January 1 of any calendar year, the quarterly installments of the annual assessments shall commence on the first day of the calendar quarter following the conveyance of such Living Unit by Developer to the Cluster Site Owner. The due date of any special assessment or installment thereof shall be fixed in the Resolution of the Members authorizing such assessment, and written notice of such special assessment or installment thereof shall be given to each Owner subject thereto at least sixty (60) days in advance of such due date.

(b) If any installment of the annual assessment, or special assessment, or installment of a special assessment, or other assessment charged to a Cluster Site Owner by the Association, is not paid within thirty (30) days after the due date, such delinquent installment or assessment shall bear interest from the due date at the rate of ten (10%) per annum (but in no event higher than the highest rate which may be legally charged) until paid. In addition the Board of Trustees by appropriate Rule, may impose a charge for late payment not to exceed five percent (5%) of the amount due if not paid within said thirty (30) day period.

(c) The Annual assessments and Special assessments, and any other assessments authorized in the Declaration and charged by the Association to a Cluster Site Owner, together with any late charges, interest hereon and costs of collection thereof as hereinafter provided, applicable to a Cluster Site, shall be a charge on such Cluster Site and upon perfection, as hereafter provided, shall constitute a lien upon the Cluster Site against which each such assessment is made securing any such unpaid assessments, charges, costs, and interest, until paid in full.

Each such assessment, together with interest, costs and reasonable attorney's fees, shall also be the personal obligation of the person who was the owner of such Cluster Site at the time when the assessment or charge fell due.

(d) If at any time an installment of an assessment or any other charge or assessment due hereunder remains unpaid for thirty (30) or more days after it has become due and payable, a Certificate of Lien for all or any part of the unpaid balance of the assessment, together with interest, late payment charges and costs and reasonable attorneys fees, may be filed for record with the Recorder of Cuyahoga County, Ohio, pursuant to authorization by the Board. The Certificate shall contain a description of the Cluster Site against which the lien shall exist, the name or names of the record Owner(s), the amount of the unpaid portion of the Assessments and the interest, charges and costs,

and shall be signed by the President or other chief officer of the Association. Such lien shall become effective on the date the certificate or lien is filed for record in the office of the Cuyahoga County Recorder, and shall remain valid until released or satisfied in the same manner provided by law for the release and satisfaction of mortgages on real property, or discharged by the final judgment or order of the court in an action brought to discharge such lien as hereinafter provided.

(e) The Association may, after such thirty (30) day period, bring an action at law against the Cluster Site Owner responsible for the payment of such assessment, and, additionally or alternatively may foreclose the lien against the Cluster Site of said Owner for the amount of such assessment, plus interest on the assessment or installment amount as above provided, and together with the costs of the action and reasonable attorneys' fees in favor of the Association, for which amounts judgment may be rendered by a court of competent jurisdiction in favor of the Association.

(f) The lien provided for in this Section shall have priority over any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments and the lien of a bona fide first mortgage which has been filed for record prior to the filing of the certificate for record. The lien may be foreclosed in the same manner as a mortgage on real property in an action of the Association brought by the President or other chief officer as authorized by the Board. During the pendency of any such foreclosure action, the Owner or Owners of the Living Unit on the Cluster Site affected shall be required to pay a reasonable rental for such Living Unit commencing as of the date foreclosure proceedings are filed and continuing during the pendency of such action. The plaintiff in such action shall be entitled to the appointment of a receiver to collect the same. In any such foreclosure action, the Association shall be entitled to become a purchaser at the foreclosure sale.

(g) Any Cluster Site Owner who believes that an Assessment against such Owner's Cluster Site has been improperly charged or a lien improperly filed may commence an action in the Court of Common Pleas for Cuyahoga County, Ohio, for a termination or modification of the Assessment and/or the discharge or modification of any such lien.

(h) When the holder of a first mortgage on a Cluster Site acquires title by virtue of foreclosure of the mortgage or by deed in lieu of foreclosure, or any purchaser acquires the Cluster Site at a foreclosure sale of a first mortgage, such holder or purchaser shall take the Cluster Site free of any claims for unpaid assessments and charges against the Cluster Site other than those Assessments which were the subject of a certificate of lien filed for record prior to the recording of such mortgage.

(i) In the case of a bona fide sale of a Cluster Site, no grantee shall be liable for, nor shall the interest purchased be subject to a lien for any unpaid assessments, late charges, interest or attorneys fees which became due prior to the date of transfer of title to said grantee, unless a lien has been filed for the same as hereinabove set forth in this Section, prior to the date of transfer of title to said grantee.

Section 5. Computation and Application of Annual Assessments. The annual assessments to be levied against each Cluster Site Owner shall be equal to the product of the total annual budget for the Association times a fraction, the numerator of which is one (1) and the denominator of which is the total number of Cluster sites within the Premises.

The assessments levied and collected by the Association shall be applied by the Association toward payment of the following costs and expenses:

(a) For all costs and expenses incurred by the Association in the performance of all Association functions and services, and for the discharge of all duties and obligations of the Association, as set forth in this Declaration, the Bylaws, or as established by the Association;

(b) The full amount of any taxes and assessments levied against the Common Properties;

(c) For all legal and accounting services required by the Association;

(d) For the cost of collecting assessments, and expenses of maintaining the Association; and

(e) For any and all other purposes which the Association may determine from time to time to be for the general benefit of the owners of the Cluster Sites, and the Association.

It shall be the responsibility of the Association to provide such services for the benefit of the Cluster Site Owners, but only to the extent of the funds received by it from the aforesaid Annual and/or Special assessments. In providing such services, the Association shall have the sole discretion as to when and to what extent and in what manner such services are to be provided. The Association may delegate the performance of any such services to any agent, contractor, or management company hired by the Association to perform any of such services.

Such assessments may be increased, decreased or adjusted from time to time by the Association as the interests of the Cluster Site Owners in the Premises may, in its judgment, require. The Association shall exercise its discretion and judgment as to the amount of its funds to be expended in connection with each of the purposes for which its funds are collected, and its discretion in reference thereto shall be binding upon all the interested parties.

Section 6. Abatement. No diminution or abatement of assessments shall be allowed or claimed for inconvenience or discomfort arising from the making of repairs or improvements to the Common Properties or from any action taken to comply with any law, ordinance or order of a governmental authority.

Section 7. Notice of Delinquency. The Association shall have the right to cause written notice of delinquency in payment of assessments to be mailed to the mortgagee of record, if any, of the Cluster Site on which assessments have not been paid. Such notice shall be deemed sufficient if mailed postage prepaid to said mortgagee at the last known address thereof as indicated on the recorded mortgage, within fifteen (15) days after due date of said assessment.

Section 8. Rights of City. After the transfer of title to the Common Properties to the Association, the City shall have the right but not the obligation to impose any special assessments for improvements made by the City which would otherwise be a lien on the

Common Properties, on the Cluster Sites within the Development area or the real property on which said Cluster Sites are located, on an equitable basis to be determined by the City. The assessments set forth above are enforceable as provided by law or under this Article VI.

Section 9. Obligation of Developer to Pay Assessments. Notwithstanding any contrary provision of these Covenants and Restrictions, the Developer shall not be obligated to pay any assessments (whether annual or special) with respect to any Cluster Site owned by the Developer unless and until a structure has been erected upon the Cluster Site in question and a Certificate of Occupancy has been issued by the City. With respect to Cluster Sites, owned by the Developer, on which a structure has been constructed and a Certificate of Occupancy has been issued by the City, the Developer shall be responsible for the payment of assessments (whether Annual or Special) to the same extent as any other Cluster Site Owner.

Section 10. Exempt Property. The following property shall be exempt from the assessments and liens, created herein:

- (a) All properties to the extent of any easement or other interest therein dedicated and accepted by the City and devoted to public use;
- (b) The Common Properties as defined in the Declaration;
- (c) All properties of the City which are exempted from taxation by the laws of the State of Ohio.
- (d) Any Cluster Site held by the Developer or its nominee for sale, so long as no structure has been erected on said Cluster Site.

## **ARTICLE VII**

### **COVENANTS FOR MAINTENANCE**

Section 1. The Association shall have the duty to maintain all Common Properties, Common Easement Areas, guest parking, storm water retention areas, easements, drives, storm sewers, and swales as does the Developer, as set out in Article IV, Section 3(b) after title has been conveyed to the Association. Maintenance shall include, but not be limited to, painting, repairing, replacing, and caring for all appurtenances, exterior and interior building (located in or on the Common Properties or Common Easement Areas) surfaces, trees, shrubs, grass areas, driveways, paving, walls, concrete, and other improvements in and/or on the Common Properties, and Common Easement Areas.

Section 2. The Association shall be further responsible for:

- (a) The care and maintenance of the Common Properties, Common Easement Areas, including but not limited to the parking improvements, driveways, structures, mailboxes and posts, landscaping, lawns, earth mounds, walls and fences,

including landscape timber walls, located on the Common Properties, and Common Easement Areas,

(b) The payment of the real estate taxes and assessments assessed by the public authorities against the Common Properties,

(c) Except for any landscaping installed or altered by a Cluster Site Owner within the ten (10) foot strip described in Article IX, Section 7, and except the area behind the Living Unit from the line coextensive with the rear wall of the Living Unit (extending from each side boundary of the Cluster Site) to the rear boundary of the Cluster Site (provided, however, that the Association shall be responsible for maintenance of grass located on said area to the rear of the Living Unit), maintenance of the landscaping, earth mounds and landscape timer walls for all Cluster Sites and lawn mowing and general lawn care for all of the Cluster Sites, Common Properties, tree lawns, and easements, provided that in the discretion of the Board of Trustees, the Association need not replace any trees located in any Common Properties or on any Cluster Site which may be damaged or which may die,

(d) The maintenance, repair and replacement of the public sidewalks abutting the Premises, driveway aprons for each Cluster Site, and common easement areas for guest parking, driveways and landscaping, easements, storm sewers, drainage and swales (including catch basins therein and any other appurtenances, hard surfaces, or drives thereon) as said easements are shown in Exhibits to this Declaration, or as otherwise shown on any record plat, or created by any other instrument of record of the Premises,

(e) The care and maintenance of the following exterior portion of each Living Unit on a Cluster Site; the painting of exterior surface of all entrance doors, garage doors and exterior trim; except for minor repairs and touch up, all Living Units within the Premises shall be repainted/restained approximately the same time, within the discretion of the Board of Trustees and subject to the approval of color and type of such painting or staining by the Board of Trustees, and

(f) Snow removal of the common parking and individual driveways of the Cluster Sites, or other areas of the Premises deemed necessary in the discretion of the Board of Trustees.

Section 3. [Deleted.]

Section 4. Responsibility of Cluster Site Owners. Each Cluster Site Owner shall maintain in good condition and repair (including replacements as necessary) all other portions of his Cluster site, including the Living Unit thereon, not maintained by Association as above provided, including but not limited to the individual driveways for the house, the private walkways and patios, including all windows and glass, all exterior lighting fixtures, exterior light bulbs, exterior siding, gas and electric service lines, and exterior heating and cooling units. The Cluster Site Owner shall also periodically water the lawns and landscaping on his Cluster Site, for the proper maintenance and growth thereof, at said Owner's expense and shall maintain and replace (to the same standard as applies to the Association with respect to landscaping) all landscaping, whether installed by the Cluster Site Owner or the Developer, except for grass maintenance, located within the area to the rear of the Living Unit as defined in Section 2(c), at said Owner's expense.

In the event that a Cluster Site Owner fails to perform the obligations required of said Owner as herein provided, after Notice by the Association to perform the same, the Association may perform such maintenance and make such repairs, replacements or painting, and assess the cost thereof to said Owner. The Cluster Site Owner shall pay the cost assessed by the Association on demand with interest thereon at the rate of ten percent (10%) per annum (but in no event higher than the highest rate which may be legally charged) until paid. Until paid, such assessment shall be a charge against said Owner's Cluster Site and shall constitute a lien thereon by the Association, upon perfection in the manner provided in Article VI, Section 4.

## ARTICLE VIII

### INSURANCE

Section 1. Insurance to be obtained by Cluster Site Owners. Each Cluster Site Owner shall maintain at a minimum a homeowner's Class 3 policy of fire and extended coverage hazard insurance (with a malicious mischief and vandalism endorsement) upon the house located upon his Cluster Site, with replacement cost endorsement, in full insurable value of such house, and coverage for loss or damage to contents and personal property. Said policy shall name the Association as an additional insured, and at the request of the Association, all insurance proceeds payable as a result of damage to a Cluster Site shall be paid to an insurance trustee satisfactory to the Association to be used for the sole purpose of repairing and restoring the house. Said policy shall include a policy of public liability insurance upon the Cluster Site and the Common Properties with such limits of coverage as the Association may select.

Such public liability policy shall name the Association as an additional insured. In the event of any damage to or destruction of the house, the Cluster Site Owner shall promptly commence repair and restoration of the house to the condition existing prior to such damage or destruction, using the insurance proceeds to the extent available. If the Cluster Site Owner does not promptly commence said restoration and thereafter diligently complete said restoration, the Association shall have the right to enter upon the Cluster Site and complete said restoration, the Association shall have the right to enter upon the Cluster Site and complete said restoration, using the insurance proceeds for such purpose. Evidence of such insurance shall be provided to the Developer and to the Association at the time of Closing of the purchase and sale of each Cluster Site. The Association shall be furnished with a copy of said policies and originals of said endorsements prior to ten (10) days before the expiration of each policy each year.

Section 2. Insurance to be obtained by the Association. The Association shall obtain and pay out of the funds collected through assessments:

(a) Liability Insurance. A policy or policies insuring the Association, its Officers and Trustees, and the Owners against any liability to the public or to the Owners' of Cluster Sites and their invitees or tenants, incident to the ownership and/or use of Common Properties, and Common Easement Areas, the limits of which policy shall be reviewed annually by the Association, but which shall not be less than \$1,000,000.00 in respect of any one occurrence, and not less than \$500,000.00 in respect to damage to or destruction of property arising out of any one occurrence.



(b) Casualty Insurance. All hazards casualty insurance insuring against loss or damage to any structure or improvement on the Common Properties.

(c) Errors and Omissions. The Board of Trustees is authorized to insure its Members and Officers from liability resulting from an act or a failure to act, pursuant to the authority of office or an act or failure to act, intended to be committed pursuant to authority of office.

(d) Worker's Compensation Insurance. The Board of Trustees is authorized to obtain Worker's Compensation and unemployment insurance to the extent necessary to comply with any applicable laws.

(e) Fidelity Bonds. Fidelity Bonds shall be required for all Officers and employees of the Association handling or responsible for Association funds. The premiums on such bonds shall be paid by the Association as a common expense.

All of said insurance to be obtained by the Association, shall be subject to availability of said insurance by insurance carriers authorized to write such insurance in the State of Ohio.

## **ARTICLE IX**

### **PROTECTIVE COVENANTS AND EASEMENTS**

Section 1. Protective Covenants of Pine Lakes Declaration. In addition to the provisions of this Declaration, the premises are subject to the protective covenants of the Pine Lakes Declaration, as supplemented and modified from time to time. Not in limitation of the foregoing, except for the Developer and its agents, contractors and employees, nothing may be constructed or altered upon any Cluster Site without first obtaining the approval of the Pine Lakes Association as set forth in the Pine Lakes Village Declaration with such exceptions as are set forth therein.

Section 2. Land Use. No industry, business, trade, occupation or profession of any kind whether for commercial, religious, educational, charitable, or other purposes shall be conducted, maintained or permitted on any Cluster Site except such as may be permitted by the Association, and except that:

(a) The Developer, its duly authorized representatives or any Cluster Site Owner duly authorized by Developer, may with respect to the Premises or any part thereof, (i) engage in any and all activities and perform such work as are incident to property development and construction; (ii) maintain thereon or on or in any Living Unit, one or more sales and rental offices and model houses for the sale and lease of Cluster Sites and Living Units and general business activities related thereto; and (iii) place such signs thereon or on any Living Unit to facilitate sales, and to advertise the development and model houses, such signs to be in compliance with City regulations. Nothing herein contained shall restrict the right of the Developer to delegate or assign its rights hereunder to a nominee, successor Developer, or to a builder, building company or other person, firm or entity, authorized by the Developer.

(b) A Cluster Site Owner, or the Association, or their agents or representatives may perform or cause to be performed any maintenance, repair or remodeling work with respect to any Cluster Site, Living Unit, the Common Properties, or Association Property.

(c) Any business, trade, occupation or profession (the conduct of which does not violate any ordinance of the City); provided, however, that the business, trade, occupation or profession does not involve visits by business invitees to the Cluster Site or Living Unit and does not involve any activities outside of the Cluster Site or Living Unit and does not involve any activities (except for deliveries by the United States Postal Service or the United Parcel Service or Federal Express or similar delivery services) or anything visible outside of the Cluster Site or the Living Unit and does not involve any sounds, vibrations or odors noticeable outside of the Cluster Site or Living Unit.

Section 3. Architectural Control. No building or other structures shall be erected, constructed, reconstructed, placed, altered or suffered to remain upon any Cluster Site on the premises by any person, except by the Developer and its agents, contractors and employees, unless and until the plans and specifications showing the size, height, type and materials of construction thereof and the location of the same shall have been submitted to and approved in writing as to the harmony of the external design and the location in relation to surrounding structures and topography by the Developer, as long as the Developer owns any part or interest in the property subject to this Declaration. After the Developer ceases to own any part or interest in the property subject to this Declaration, such submission of plans and specifications shall be made to the Association for approval.

Such plans specifications shall be complied with as approved in all material respects.

Notwithstanding anything to the contrary in the Pine Lakes Declaration, or in this Declaration, the Developer or the Association, as the case may be, shall have the right hereunder to refuse to permit any "outbuilding", to be erected, constructed, reconstructed, placed or replaced on any Cluster Site and/or the right to refuse to permit the construction of or expansion of any deck which extends to a depth beyond the depth of such deck originally approved by the Planning Commission of the City of Strongsville at the initial approval of the Pine Lakes site plan. The provisions of this Section shall not prohibit or restrict any temporary construction buildings used in the development and construction of the Premises by Developer, its agents, contractors and employees.

The Association's right of review and approval hereunder shall be exercised by the Board of Trustees, or by an Architectural Committee of three representatives appointed by said Board. If the Developer, or said Board, or its designated Committee, as the case may be, fails to approve or disapprove any such plans and specifications within forty-five (45) days after the same has been submitted to it, approval will be deemed to have been granted, and this Article will be deemed to have been fully complied with. Notwithstanding approval by the Association, the request may be denied by the Pine Lakes Association in accordance with the Pine Lakes Declaration.

Not in limitation of the foregoing, the Board of Trustees and/or Architectural Committee, as the case may be, may, but is not obligated to, approve fences (at such locations and with such dimensions and designs and constructed of such materials as it deems appropriate) on Cluster Sites or on Common Properties which are adjacent to real

estate which is not subject to these Covenants and Restrictions and at such other locations with respect to which the Board may, from time to time, authorize fences or authorize an Architectural Review Committee to approve fences.

Section 4. Utility Easements. Easements for installation and maintenance of utilities, storm and sanitary sewers, water main and drainage facilities and swales are reserved in favor of the Developer and the Association, in and over the front ten (10) feet and rear fifteen (15) feet, of each Cluster Site, in and over the Common Properties, and in and over easement areas as shown on any record plat of the Premises, approved by the City and recorded in the Cuyahoga County Records. Within these easements, no structure, planting or other material, without the approval of the City, shall be placed or permitted to remain which may damage or interfere with the installation and maintenance of utilities, storm and sanitary sewers, and water main, or which may change the direction of flow of drainage channels, or which may obstruct or retard the flow of water through drainage channels. The easement area of each Cluster Site and all improvements therein shall be maintained continuously by the owner thereof, except for those areas and improvements for which the Association, a public authority or public utility is responsible. The Developer, its successors, and assigns so long as it shall maintain a property interest in the premises, additions thereto or in any adjoining lands, and thereafter the Association, shall be empowered to assign such easements to the City or to the appropriate public authorities or public utilities. Such easements shall entitle the holder thereof to enter upon and across each Cluster Site, or Common property at any place as required in order to make any such installation or maintenance within the easement, provided that such holder shall restore the Premises to the condition existing prior to such installation or maintenance.

Section 5. Drainage Easement. The Developer, each Cluster Site Owner and the Association shall have the non-exclusive right and easement in common to utilize the waterways, lakes, courses, storm sewers, drainage pipes and retention basins in, over and upon the Common Properties for the purpose of the drainage of surface waters on the premises, said rights-of-way and easements being hereby established for said purposes. It shall be the obligation of the Association to properly maintain, repair and operate such drainage system, retention basins and storm sewers existing on the Common Properties.

Section 6. Television Dishes. Notwithstanding any provision of these Covenants and Restrictions to the contrary, a Cluster Site Owner may install on the Cluster Site or Living Unit one (1) direct television dish or other reception appliance; provided, however, that the dish or reception appliance does not exceed twentyfour (24) inches as measured in a straight line from any point on the dish or other receipt appliance to any other point thereon.

Section 7. Landscaping. Except for the Developer and its nominees and assignees and except as provided below, no Cluster Site Owner may alter, remove or replace any landscaping located in, on, above or about the Premises, including, but not limited to, the Cluster Site of the Cluster Site Owner. With respect to the portion of the Cluster Site consisting of a ten (10) foot wide strip immediately adjacent to the rear wall of the Living Unit extending between lines which are extensions of the side walls of the Living Unit, each Cluster Site Owner may modify or alter or replace the landscaping within said portion of the Cluster Site; provided, however, that the alteration or replacement is not a nuisance as then defined under the common law of the State of Ohio. At the expense of the Cluster Site Owner, the Cluster Site Owner may replace any portion of the landscaping (on

the Owner's Cluster Site) which has died or has become diseased with a replacement of the same species which is not substantially larger than the item replaced.

Section 8. Owner-Occupancy. No Cluster Site Owner shall lease in whole or in part any Cluster Site or Living Unit situated thereon. The provision shall not be amended, modified, canceled or revoked without the prior written consent of the City.

## **ARTICLE X**

### **DURATION, WAIVER AND AMENDMENT**

Section 1. Duration and Provision for Periodic Modification. The duration of the covenants of Article IX shall be as provided in Article IX. All other covenants of this Declaration and any Supplemental Declaration shall run with the land and shall inure to the benefit of and be enforceable by and against the Association, the Developer and any other Owner and their respective legal representatives, heirs, devisees, successors and assigns until December 31, 2027, after which time, said covenants shall be automatically renewed for successive periods of five (5) years each, unless amended, modified or canceled effective on the last day of the then current term or renewal term, at a meeting of the members by the affirmative vote of members entitled to exercise seventy-five percent (75%) of the voting power of the Association, provided that such meeting shall be held at least ninety (90) days in advance of such effective date, and written notice of such meeting shall be given to each member at least sixty (60) days in advance of the date of such meeting, stating that such amendment, modification or cancellation will be considered at such meeting. Promptly following the meeting at which such amendment, modification or cancellation is enacted, the President and Secretary of Association will execute and record an instrument reciting such modification or cancellation

Section 2. Amendment by Developer. Until the expiration of the Development Period, Developer shall and does hereby reserve the right to amend or modify any of the provisions of this Declaration, or to waive any such provision either generally or with respect to particular Cluster Sites, parcels, or premises if in the judgment of the Developer, the development or lack of development of the Cluster Site, parcel, or premises requires such modification or waiver, or if in the judgment of the Developer, the purposes of the general plan of development will be better served by such amendment or modification or waiver, or if in the judgment of the Developer, such an amendment, modification or waiver is necessary to better implement the purposes of the Declaration, provided that the Developer may not, pursuant to this Section 2, increase the maximum annual assessment provided by Section 2 of Article VI for years beginning prior to January 1, 2002. Further, Developer may make such amendments and modifications to this Declaration as the same may be required to permit any mortgage encumbering any part of the premises to be insured or financed by any lending institution, agency or instrumentality providing mortgage financing and/or providing insurance for mortgage financing. Such amendment which Developer has the right to make may be made without the consent or approval of any Cluster Site Owner and/or any mortgagee of any such owner, and all of the same do hereby constitute and appoint Developer as such Owner's and/or mortgagee's true and lawful attorney-in-fact to execute for and on behalf of such Cluster Site Owner and/or the mortgagee such document or instrument as Developer deems appropriate and necessary to cause such amendment to be made; which power of attorney is hereby declared to be coupled with an interest. Promptly following any amendment or modification of this Declaration adopted by the Developer,

pursuant to this Section 2, the Developer shall execute and record an instrument reciting such amendment or modification in the office of the Cuyahoga County Recorder. The Developer shall have the right to assign its rights hereunder.

Section 3. Other Amendments. This Declaration may be amended or modified, effective on the date set forth in the amendment, following a meeting of the Members held for such purposes by the affirmative vote of Members entitled to exercise seventy-five percent (75%) of the voting power of the Association, provided that written notice shall be given to every Member at least sixty (60) days in advance of the date of such meeting stating that such amendment or modification will be considered at such meeting; or this Declaration may be amended or modified in a writing adopted without a meeting, signed by members entitled to exercise seventy-five percent (75%) of the voting power of the Association. Promptly following the meeting at which such amendment, modification or cancellation is enacted, or promptly following the adoption of such amendment, modification or cancellation in writing adopted without a meeting and signed by the members entitled to exercise seventy-five percent (75%) of the voting power of the Association as aforesaid, the President and Secretary of the Association shall execute and record an instrument reciting such amendment, modification or cancellation in the office of the Cuyahoga County Recorder.

Section 4. Duration of Common Property Obligations. Notwithstanding anything in this Declaration to the contrary, the duties and obligations of the Developer until conveyance of the Common Properties to the Association by Developer as provided in Article IV and VII, and thereafter the duties and obligations of the Association, as they relate to the Common Properties, and the authority to enforce these duties and obligations shall be of unlimited duration, shall be non-modifiable and shall be non-waivable without the prior written consent of the City.

Section 5. Dissolution or Termination. Notwithstanding anything in this Declaration to the contrary, the Association may be dissolved or terminated only with the express written consent of the City.

## **ARTICLE XI**

### **GENERAL PROVISIONS**

Section 1. Notices. All notices hereunder shall be in writing. All notices given or required to be given by the Association to its Members shall be deemed to have actually been given if actually received and, whether or not actually received, when deposited in the United States mail, postage prepaid, and addressed to the Member at his address as it appears on the books of the Association.

Section 2. Enforcement. Enforcement of the covenants of this Declaration or any Supplemental Declaration shall be by any proceeding at law or in equity against any person or persons violating or attempting to violate any covenant, either to restrain violation or to recover damages, or both, and against the land to enforce any lien created by the covenants of this Declaration, and failure by the Association or any Owner to enforce any covenant herein contained shall in no event be deemed a waiver of the right to do so thereafter.

Section 3. The City, as a third party beneficiary, may, although under no obligation or duty to do so, compel compliance with Article IV, Section 3(b) or Article VII, Section 1 hereof as the City deems necessary by court action or any other means.

Section 4. The City, as a thirty party beneficiary to these Covenants and Restrictions and by giving its approval to these documents, shall in no way be deemed to have waived any of its zoning, building or other requirements or ordinances or general law which requirements shall still be binding upon the premises if they are more restrictive than the requirements set out within these Covenants and Restrictions.

Section 5. Service Provided by Association. The Association, in addition to its performance of the functions and responsibilities hereinabove provided for it, may but shall not be required to, provide other services determined by the Trustees to be of general benefit or utility to the Owners of the properties, including without limitation, the services of snow removal and refuse collection and disposal supplementary to or in lieu of such municipal services, and the expense of any such service or services shall be met by the levy of assessments pursuant to Article VI.

Section 6. Liability of Developer. In executing this Declaration and ByLaws, or any documents or instruments necessary to fully perform the obligation of the Developer under the Declaration and ByLaws, no personal liability shall arise or be enforceable against the Developer, or its Members, or against the Managers, Directors, Officers, Agents, Employees or Stockholders of the Developer, or of its Members, individually or personally and the liability of such persons and entities shall be limited to the real property owned by Developer described in Article III. All claimants shall look solely to said property for satisfaction of claims or judgments of any nature arising in connection with the affairs of the Developer and its members, and no claim or judgment in tort, contract, or otherwise shall be enforceable against the Members of Developer, or against the Managers, Directors, Officers, Agents, or Employees or Stockholders of Developer or its Members, individually or personally, arising out of the ownership, management, development, construction, operation or maintenance of the property by the Developer, but only against said property.

Section 7. Invalidation of any of these covenants by judgment or court order shall in no way affect any of the other provisions which shall remain in full force and effect.

Section 8. Variances. The Developer, for so long as it owns the premises, or an interest therein, and thereafter the Association, shall have the right to waive or modify any of these restrictions and their application to any of the parcels with the consent of the Owner of the Cluster Site with respect to which such restrictions as waived or modified if, in the judgment of the Developer or the Association, as the case may be, which judgment shall be conclusive, such waiver or modification will be in general keeping with the character of the then existing development of the Premises and desirable for its further development, but any such waiver or modification shall be in writing and delivered to such Owner.

Section 9. Perpetuities and Restraints on Alienation. If any of the options, privileges, covenants or rights created by this Declaration shall be unlawful or void for violation of (a) the rule against perpetuities or some analogous statutory provision, (b) the rule restricting restraints on alienation, or (c) any other statutory or common law rules imposing time limits, then such provision shall continue only until twentyone (21) years after

the death of the survivor of the now living descendants of Bob Taft, Governor of the State of Ohio.

Section 10. Articles and By-Laws of the Association. The Articles of Incorporation and By-Laws of the Association may contain any provisions not in conflict with this Declaration or any Supplemental Declarations as are permitted to be set forth in such Articles and By-Laws by the nonprofit corporation law of the State of Ohio as from time to time in effect.

Section 11. Construction of Terms. The paragraph headings contained in this Declaration are for reference purposes only and shall not affect in any way the meaning or interpretation of this instrument. The use herein of the singular number shall be deemed to include the plural, and vice versa, and the masculine shall be deemed to mean the feminine or neuter, and vice versa, wherever the sense of this instrument so requires.

IN WITNESS WHEREOF, Saks and Goldberg Companies has executed this Declaration this \_\_\_\_\_ day of \_\_\_\_\_, 2001.

Signed in the Presence of:

SAKS AND GOLDBERG COMPANIES

\_\_\_\_\_  
\_\_\_\_\_

By: \_\_\_\_\_  
Scott E. Goldberg  
Partner

STATE OF OHIO            )  
                                      )§  
COUNTY OF CUYAHOGA)

The foregoing instrument was acknowledged before me this \_\_\_\_\_ day of \_\_\_\_\_, 2001 by SAKS AND GOLDBERG COMPANIES, by and through Scott E. Goldberg, Partner, who acknowledged that the foregoing was his free act and deed individually and the free act and deed of said partnership.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal at \_\_\_\_\_, Ohio.

\_\_\_\_\_  
Notary Public