

DECLARATION OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
AND RESERVATION OF EASEMENTS FOR

ROSS ESTATES SUBDIVISION

THIS DECLARATION is made this 10th day of March, 2004, by Ross Estates, LLC, an Ohio limited liability company, hereinafter sometimes referred to as the "Declarant".

WITNESSETH:

WHEREAS, the Declarant is the owner of the real property described in Exhibit "A" attached hereto and desires to create thereon a residential community consisting of various types of single-family residences and community facilities; and

WHEREAS, the Declarant desires to provide for the preservation of the values and amenities in said community and for the maintenance of certain facilities which benefit the entire subdivision; and to this end, desires to subject the real property described in Exhibit "A" attached hereto to the covenants, conditions, restrictions, easements, charges and liens, hereinafter set forth, each and all of which is and are for the benefit of said Property and the subsequent Owners thereof; and

WHEREAS, the Declarant has deemed it desirable, for the efficient preservation of the values and amenities in said community, to create an Association to which should be delegated and assigned the powers and duties of maintaining and administering the common facilities and administering and enforcing the within covenants and restrictions and disbursing the charges and assessments hereinafter created; and

WHEREAS, the Declarant has filed or will file for the formation of "Ross Estates Home Owners Association", as a non-profit Ohio corporation for the purpose of carrying out the powers and duties aforesaid;

NOW, THEREFORE, the Declarant hereby declares that all of the Properties described in Exhibit "A" attached hereto and such other property as may be subjected to the provisions hereof pursuant to Article II, shall be held, sold and conveyed subject to the covenants, conditions, restrictions, easements, charges and liens set forth in this Declaration, and any subdivision plat which includes the Property, which are for the purpose of protecting the value and desirability of, and which shall run with, the real property and be binding on all parties having any right, title, or interest in the described Properties or any part thereof, their heirs, successors and assigns, and shall inure to the benefit of each Owner thereof.

ARTICLE 1    DEFINITIONS

The words in this Declaration which begin with capitalized letters, other than words which would be normally capitalized, unless the context otherwise requires, shall have the same meanings as the definitions of those words in this Article I.

1.1        "Articles" shall mean those Articles, filed with the Secretary of Ohio, incorporating Ross Estates Home Owners Association, as a corporation not for profit under the provisions of Chapter 1702 of the Revised Code of Ohio, as the same may be amended from time to time.

- 1.2 "Association" shall mean and refer to Ross Estates Home Owners Association, its successors and assigns.
- 1.3 "Board" shall mean the Board of Trustees of Ross Estates Home Owners Association, which shall also be known as the "Board of Trustees".
- 1.4 "Builder" shall mean and refer to any party who acquires one or more developed Lots from the Declarant for the purpose of resale to an Owner or for the purpose of constructing improvements thereon for resale to an Owner.
- 1.5 "By-Laws" shall mean the By-Laws or Code of Regulations of the Association, as the same may be amended from time to time, pursuant to Section 1702 of the Revised Code of Ohio.
- 1.6 "Common Driveway" shall mean and refer to any private road or passageway which is built or installed as part of the original construction on the Property to serve more than one single family Lot, and which is situated on a dividing line between Lots or partly on one Lot and partly on another Lot, which road or passageway may be specifically designated by the Declarant on the record plat as "Common Driveway".
- 1.7 "Declarant" shall mean and refer to Ross Estates, LLC, an Ohio limited liability company, its successors and assigns if such successors or assigns should acquire all unsold Lots and/or unplatted real property which adjoins any property already developed and which is intended to be developed into Lots.
- 1.8 "Development Period" shall mean the period commencing on the date on which this Declaration is recorded and terminating on the earlier of: (a) December 31, 2017, or (b) the day next following the day on which the Declarant or a Builder own no part of the Property.
- 1.9 "Living Unit" shall mean and refer to any structure designated and intended for use and occupancy as a residence by a single family.
- 1.10 "Lot" shall mean and refer to any parcel of land upon any recorded subdivision plat of the Properties.
- 1.11 "Member" shall mean any one of those Owners who are Members of the Association as provided in Article IV hereof.
- 1.12 "Owner" shall mean and refer to the record owner, whether one or more persons or entities, of a fee simple title to any Lot which is a part of the Properties, including contract sellers, but excluding those having such interest merely as security for the performance of an obligation.
- 1.13 "Properties" or "Property" shall mean and refer to that certain real property herein described and such additions thereto as may hereafter be brought within the jurisdiction of the Association.
- 1.14 "Storm Water Facilities" shall mean and refer to storm sewers, storm sewers swales, streams, ditches, catch basins, drainage lines, man holes and detention basins situated on storm sewer easements or drainage easements encumbering certain of the Lots as designated on the record plat or plats for the Property or owned by the Association for the common use and enjoyment of the Owners.

1.15 "Trustee" and "Trustees" shall mean that person or those persons serving, at the time pertinent, as a Trustee or Trustees of the Association, and shall mean that same person or those persons serving in the capacity of a member of the Board of Trustees of the Association.

## ARTICLE II PROPERTY DEVELOPMENT - ANNEXATION

### 2.1 Property subject to Declaration.

The real property which is, and shall be held, conveyed, hypothecated or encumbered, sold, leased, rented, used, occupied and improved subject to this Declaration is located in the County of Butler, State of Ohio, and is more particularly described in Exhibit "A" attached hereto and by this reference made a part hereof.

### 2.2 Planned Development.

Declarant reserves the right to subject all or any part of the real estate described in Exhibit "B" to the provisions of this Declaration, so as to create a residential planned development consisting of various residential properties. Such additional property shall be annexed to the real estate described in Exhibit "A" as provided in Section 2.3 hereof.

Notwithstanding the above, nothing contained in this Declaration, in the By-Laws or in any map, picture, drawing, brochure or other representation of a scheme of development shall obligate the Declarant to annex any additional property to the property described in Exhibit "A" and the real estate described in Exhibit "B" shall remain wholly free from any covenant or restriction herein contained until so annexed as hereinafter provided.

### 2.3 Annexation of Additional Property.

For a period of twenty years from and after the date this Declaration is filed for record, additional property, not limited to the Property described in Exhibit "B", may be annexed to the above-described Property by the Declarant without the assent of the Members of the Association, if any. Thereafter, such additional property may be annexed only with the consent of fifty-one percent of each class of Members of the Association.

Any additional property so annexed, however, must be adjacent to or in the immediate vicinity of the above-described Property. The scheme of the within covenants and restrictions shall not, however, be extended to include any such additional property unless and until the same is annexed to the real property described on Exhibit "A" as hereinafter provided.

Any annexations made pursuant to this Article, or otherwise shall be made by recording a supplement to this Declaration with the Recorder of Butler County, Ohio, which supplementary Declaration shall extend the scheme of some or all of the within covenants and restrictions to such annexed property. Such supplementary Declaration may contain such additional covenants, conditions, restrictions, easements, assessments, charges and liens as the Declarant shall deem appropriate for the purpose of completing the development of the Property.

### 2.4 Additional Common Area.

Declarant shall have the right, from time to time, for a period of twenty years from the date this Declaration is filed for record, to convey to the Association for nominal or other appropriate consideration, and the Association shall accept conveyance of any property or interest in property

owned by Declarant along with any structure, improvement, or other facility including related fixtures, equipment and furnishings located thereon. Upon conveyance of such property, the property shall constitute Common Areas.

### ARTICLE III MEMBERSHIP AND VOTING RIGHTS

#### 3.1 Members.

Every Owner of a Lot which is subject to assessment shall be a Member of the Association. Membership shall be appurtenant to and may not be separated from ownership of any Lot which is subject to assessment.

#### 3.2 Classes of Members: Voting.

The Association shall have two classes of voting membership:

3.2.1 Class A Members shall be all Owners, with the exception of the Declarant, and shall be entitled to one vote for each Lot owned. When more than one person holds an interest in any Lot, all such persons shall be Members. The vote for such Lot shall be exercised as they determine, but in no event shall more than one vote be cast with respect to any Lot.

3.2.2 Class B Member(s) shall be the Declarant and the Declarant shall be entitled to five votes for each Lot owned, provided, however, that each Class B membership shall terminate after the Class A Members are entitled to elect all of the Board. At such time as Class B membership shall terminate, the Declarant, for any Lot owned, shall be deemed a Class A Member with reference to such Lot or Lots and entitled to the voting and all other rights of such Class A Member.

### ARTICLE IV ASSESSMENTS

#### 4.1 Covenant for Assessments.

The Declarant for each Lot owned by it (and as hereinafter limited by the provisions of this Declaration) and each person, group of persons, or entity who becomes an Owner of a Lot by acceptance of a deed therefor, whether or not it shall be so expressed in any such deed or other conveyance shall be deemed to covenant and agree to pay to the Association: (1) Annual Assessments; (2) Individual Assessments; and (3) Special Assessments; such assessments to be fixed, established and collected from time to time as hereinafter provided.

All assessments, together with interest thereon as hereafter provided and costs of collection thereof (including court costs and reasonable attorney's fees) as hereinafter provided shall be a charge on the land and shall be a continuing lien upon the property and Lot against which such assessment is made. Each such assessment, together with such interest thereon and cost of collection thereof as herein provided, shall also be the personal obligation of the person, group of persons, or entity who was the Owner of such property and Lot at the time when the assessment fell due.

#### 4.2 Annual Assessments: Purposes.

The Annual Assessments levied by the Association are for the purpose of promoting the recreation, scenic enjoyment, health, welfare and safety of the residents and for protecting, advancing and promoting the environmental concept of the Property and preserving the aesthetic

and scenic qualities of the development.

To carry out these purposes, an Annual Assessment shall be levied by the Association to be used currently, and to provide an adequate reserve fund for future use, for the improvement and maintenance of the Storm Water Facilities, and the entrance walls and related landscaping, if any. Such expenses shall include, but not be limited to, the payment of taxes, insurance and fidelity bonds, and for repairs, replacements and additions, and for the cost of labor, equipment, and materials, management and supervision, and including the maintenance, repair and landscaping of Storm Water Facilities as well as streets and right of ways benefiting the Members of the Association as a whole, and, in the discretion of the Association, including any entrance roads or adjoining roads or areas, whether public or private, which may affect the recreation, scenic enjoyment, health, welfare and safety of the residents even though not owned by the Association.

#### 4.3 Annual Assessments: Initial Amount.

Until January 1, 2005, the Annual Assessment for each Class A membership for general purposes provided in Section 4.2 shall not exceed One Hundred Dollars per Living Unit.

#### 4.4 Annual General Assessments: Increase.

The Annual Assessment may be billed in advance on a monthly, quarterly, or annual basis. Commencing January 1, 2005, and at any time thereafter, the Board of Trustees shall fix the amount of the Annual Assessment. The Annual Assessment shall be fixed at a uniform rate based upon Living Units. Annual Assessments funds shall be accounted for separately from Annual Maintenance Assessment funds.

#### 4.5 Individual Assessments.

In the event an Owner of any Lot in the Properties shall fail to maintain the premises and the improvements situated thereon in a manner satisfactory to the Board of Trustees, then the Association, after approval by sixty-six and two-thirds vote of all Members of the Board shall have the right through its agents and employees, to enter upon said Lot and to repair, maintain and restore the Lot and the exterior of the buildings and any other improvements erected thereon. The cost of such exterior maintenance and repair (including charges incurred by the Association for attorney's fees, court costs, or other expenses incurred to obtain access to the subject Lot) shall be added to and become part of the total assessment to which such Lot is subject.

#### 4.6 Special Assessments.

In addition to the Annual Assessments authorized by this Article, the Association may levy in any assessment year Special Assessments, applicable to that year only, for the purpose of defraying, in whole or in part, the cost of any construction or reconstruction, unexpected repair, replacement or addition of a described capital improvement located upon, or adjacent to, the Storm Water Facilities or entrance walls and related landscaping, which cost has not otherwise been provided for in full as part of the Annual Assessments, including the necessary fixtures and personal property related thereto, provided that any such assessment affecting the any common facilities shall have the approval of fifty-one percent of the total number of votes held by Class A Members and fifty-one percent of the total number of votes held by the Class B Member.

Any Special Assessments levied by the Association pursuant to the provisions of this Section shall be fixed at a uniform rate based upon the number of applicable Living Units. All movies received

by the Association as a Special Assessment shall be held in trust by the Association for the benefit of the Member, to be used solely for the purpose of the Special Assessment and any income derived therefrom shall be held as a separate fund and shall be accounted for separately from the other assets coming under the control of the Association. The assessment may be billed in advance on a monthly, quarterly or annual basis.

#### 4.7 Commencement of Assessments.

The Annual Assessments shall commence on the first day of the first month following the date the Declaration, or an amendment thereto, is filed for record or at such other date as determined by the Association. The first assessment for any such membership may be made for the balance of the calendar year and shall become due and payable and a lien on the date aforesaid. The Board may from time to time determine the manner and schedule of payments.

It shall be the duty of the Board of Trustees of the Association to periodically fix the amount of the assessment against each Lot for such assessment period and the Board of Trustees shall make reasonable efforts to fix the amount of the assessment against each Lot for each assessment period at least thirty days in advance of such date or period and shall, at the time, prepare a roster of the Lots and assessments applicable thereto which shall be kept in the office of the Association and shall be opened to inspection by any Owner upon reasonable notice to the Board.

Written notice of the assessment shall thereupon be sent to the Owner of any Lot subject thereto. Annual Assessments subsequent to the first Annual Assessment shall become a lien on January 1 of each year; Special Assessments shall become a lien at the time designated by the Board of Trustees. No notice of lien other than this Declaration need be recorded to establish the validity of any such lien, and this Declaration shall stand as notice thereof.

#### 4.8 Assessment of Builder and Declarant.

4.8.1 Any provision of this Declaration or of the Articles of Incorporation or By Laws of the Association notwithstanding, a Builder shall be required to pay an assessment for any recorded, unsettled Lot on which is situated a completed Living Unit only in an amount equal to twenty-five percent of the Annual Assessments which the Association levies for purposes set forth in Sections 4.2.

4.8.2 Any provision of this Declaration or the Articles of Incorporation or By Laws of the Association notwithstanding, the Declarant shall be required to pay an assessment for any recorded, unsettled lots only in an amount equal to twenty-five percent of the Annual General Assessments which the Association levies for the purposes set forth in Section 4.2. The Declarant shall be completely exempt from the obligation to pay any Special Assessments which the Association levies for the purposes set forth in Section 4.6.

4.8.3 The provisions of this Section 4.8 shall not apply to the assessment of any Lot and Living Unit held by a Builder or the Declarant for rental purposes and which is or has been occupied as a Living Unit; in which event such Builder or the Declarant shall be required to pay the full amount of the assessments levied thereon.

#### 4.9 Assessment Certificates.

The Association shall, upon demand, at any reasonable time, furnish to the Owner liable for assessment a certificate in writing signed by an officer or other authorized agent of the

Association, setting forth the status of said assessment, i.e., whether the same is paid or unpaid. Such certificate shall be conclusive evidence of the payment of any assessment therein stated to have been paid. A reasonable charge may be levied in advance by the Association for each certificate so delivered.

#### 4.10 Non-Payment of Assessment.

Any assessment levied pursuant to these covenants which is not paid on the date when due shall be delinquent and shall, together with such interest thereon and cost of collection thereof, as hereinafter provided, thereupon become a continuing lien upon the property which shall bind such Lot in the hands of the then Owner, his heirs, devisees, personal representatives and assigns. The personal obligation of the then Owner to pay such assessment, however, shall remain his personal obligation for the statutory period and shall not pass to his successors in title unless expressly assumed by them with the consent of the Association.

If the assessment is not paid within fifteen days after the due date, the assessment shall bear interest at the rate of ten percent per annum, and the Association may bring an action at law against the Owner personally obligated to pay the same, or foreclose the lien against the property, in either of which events interest, costs and reasonable attorney's fees shall be added to the amount of each assessment. No Owner shall waive or otherwise escape liability for the assessments herein provided for by non-use of the common facilities or abandonment of his Lot or Living Unit.

In addition to the ten percent per annum interest provided above, the Board of Trustees in its discretion, may establish a reasonable late charge to be paid in the event of any assessment that is not paid within fifteen days after the due date.

#### 4.11 Subordination of Lien to Mortgage.

The lien of the assessments provided for herein shall be subordinate to the lien of any first mortgage. Sale or transfer of any Lot shall not affect the assessment lien. However, any first mortgagee who obtains title to a Lot pursuant to the remedies in the mortgage or through foreclosure shall not be liable for more than six months of the Lot's unpaid assessments or charges accrued before the acquisition of title to the Lot by the mortgagee.

### ARTICLE V INSURANCE

#### 5.1 Liability Insurance.

The Association shall obtain and maintain a Comprehensive policy of public liability insurance covering all of the Storm Water Facilities, insuring the Association, Trustees, and Owners and members of their respective families, tenants and occupants in an amount of not less than One Million Dollars per occurrence for personal injury and/or property damage. This insurance shall include protection against such risks as are customarily covered with respect to a development similar in construction, location and use, as determined by the Board. The insurance shall contain a "severability of interest" endorsement which shall preclude the insurer from denying the claim of an Owner, tenant or occupant because of negligent acts of the Association, the Board, or other Owners, tenants or occupants.

## 5.2 Other Insurance.

In addition, the Association shall obtain and maintain contractual liability insurance, Trustees' and Officers' liability insurance and such other insurance as the Board may deem desirable from time to time.

## 5.3 Owners' Insurance.

Any Owner, tenant, or occupant may carry such insurance in addition to that provided by the Association pursuant to this Declaration, as that Owner, tenant, or occupant may determine, subject to the provision hereof. Each Owner of a Living Unit shall be responsible for obtaining casualty and liability insurance for his Lot.

## 5.4 Insufficient Insurance.

In the event the improvements forming a part of the Storm Water Facilities and/or entrance wall shall suffer damage or destruction from any cause or peril which is not insured against, or if insured against, the insurance proceeds from which shall not be sufficient to pay the cost of repair, restoration or reconstruction, then, the Association shall advance such costs in excess of available insurance proceeds.

The amount so advanced by the Association shall become a Special Assessment against all of the Lots for which whose benefit the amount was so advanced, and such assessment shall have the same force and effect, and if not paid, may be enforced in the same manner as herein provided for the nonpayment of assessments. The action required to be taken by the Association under this Section shall not require any vote of the Members of the Association.

## 5.5 Fidelity Bonds.

The Board shall obtain fidelity bond coverage, naming the Association as an insured, with respect to any person or agent handling Association funds in an amount of not less than Five Thousand Dollars as determined by the Board.

## ARTICLE VI ARCHITECTURAL CONTROL

### 6.1 Approval Required.

No building, fence, wall, deck, structure or other exterior improvement shall be commenced, erected or maintained upon the Properties, nor shall any exterior addition to or change or alteration therein be made until the plans and specifications showing the nature, kind, shape, height, materials and location of the same shall have been submitted to and approved in writing by the appropriate entity.

Review of the construction of the original dwellings and related improvements, including landscaping, shall be by the Declarant or such successors as may be appointed by the Declarant. All review associated with the remodeling of dwellings and related improvements shall be by the Board of Trustees of the Association. Such plans and specifications shall be reviewed as to harmony of external design and location in relation to surrounding structures and topography in accordance with the requirements hereinafter set forth and the design review criteria established from time to time by such entity.



The plans and specifications to be submitted shall be in such form and shall contain such information as the Declarant or the Board may reasonably require. All construction shall be performed substantially in accordance with the approved plans and specification and any modifications to such plans and specifications shall be resubmitted to the Declarant or the Board (as the case may be) for approval.

## 6.2 Approval - Not a Guarantee.

No approval of plans and specifications shall be construed as representing or implying that such plans, specifications or standards will, if followed, result in properly designed improvements. Such approvals shall in no event be construed as representing or guaranteeing that any Living Unit or other improvement built in accordance therewith will be built in a good and workmanlike manner.

Neither Declarant nor the Association shall be responsible or liable for any defects in any plans or specifications submitted, revised or approved pursuant to the terms of this Article, any loss or damage to any person arising out of the approval or disapproval of any plans or specifications, any loss or damage arising from the noncompliance of such plans and specifications, any loss or damage arising from the non-compliance of such plans and specifications with any governmental ordinances and regulations, nor any defects in construction undertaken pursuant to such plans and specifications.

## 6.3 General Requirements.

The following requirements shall be applicable to the Properties:

6.3.1 General Conditions: No building shall be erected, altered, placed or be permitted to remain on any Lot other than one single family Living Unit with a private garage suitable for parking not less than one car or more than three cars which is to be attached to the principal dwelling, except as may be approved by Declarant.

6.3.2 . Grading: Residences and Lots shall conform to existing grade and drainage patterns as set forth on the grading plan for the Property filed with the appropriate Butler County governmental authorities. Existing grades at Lot lines shall not be altered more than one foot without the written consent of the Declarant and the appropriate governmental authorities. Each Lot Owner and/or Builder shall endeavor to retain as much of the natural woods as is practical and all tree removal must be approved by the Declarant.

6.3.3 Dwelling Floor Areas: Except as may be otherwise approved by Declarant, the minimum living area (net interior) of any dwelling constructed on the Properties, exclusive of porches, decks, basements (finished or unfinished) and garages, shall be as follows:

Ranch style dwellings: 1,300 square feet      Two story dwellings: 1,500 square feet

6.3.4 Driveways: Except as may be otherwise approved by Declarant, all driveways shall be surfaced with concrete.

6.3.5 Water Discharge: Storm water must be disposed of in accordance with the drainage plans on file with the Butler County Engineer. All drainage patterns on above said plans must be conformed to (to the extent practical) and all drainage swales shall be maintained and may not be filled.

6.3.6 Radio and Television Antennae and Satellite Dishes: All television and radio antennae, including CB radio antennae, must be enclosed within the residence located on the Lot. All satellite dishes are prohibited, unless such satellite dish has a diameter of 18 inches or less and screened from view from the public right of way.

6.3.7 Air Conditioning and Heat Pump Equipment: Such equipment shall be located only in side or rear yards and shall be screened from the roadway view.

6.3.8 Awnings: No metal or plastic awnings for windows, doors or patios may be erected or used. Canvas awnings may be used on any Lot subject to prior written approval of the Declarant.

6.3.9 Fences: No fence shall be erected or placed on any Lot in front of the set back line. Except as set forth herein, split rail (with wire mesh pet guard) in rear yard only will be permitted without approval. No other type of fence shall be installed without the prior written approval of Ross Estates, LLC. On a corner Lot, in addition to the restrictions set forth above, no fence or portion thereof shall be erected or placed or suffered to remain upon said corner Lot, closer to the side street than the shortest distance between the residence erected on said corner Lot and the side street. Fence as used herein, shall be liberally construed as to accomplish the purpose of these restrictions, and shall specifically include, but not be limited to, contrived barriers of any type, including those of shrubs, hedges or walls. Side street as used herein, shall refer to any street contiguous to any Lot but referred to in the mailing address of said Lot. This Section shall not apply to decorative fences or retaining walls installed by the Declarant in connection with the development of the Property.

6.3.10 Exterior Carpeting: No exterior carpeting shall be allowed if it is visible from the street or adjoining properties.

6.3.11 Completion: Construction of a residential building on any tract shall be completed within one year from the date construction is started and the entire yard of the house must be sodded or seeded and shrubs and mulching, in conformity with the neighborhood must be completed, provided, however, that the completion date shall be extended for stoppages caused by strike, lockout, labor disputes, fire, unusual delay in transportation, unavoidable casualty, weather and acts of God.

6.3.12 Basketball Equipment. No, permanent or temporary, freestanding basketball hoops, goals, poles or backboards are permitted in the right of way area adjacent to a Lot.

6.3.13 Construction Materials. All materials used shall be in conformance with the approved plans as set forth in Section 6.1.

6.3.14 Zoning: All improvements shall be constructed in accordance with and subject to all applicable zoning regulations and building codes.

#### 6.4 Variances.

In order to avoid unnecessary hardship and/or to overcome practical difficulties in the application of certain provisions of the Declaration, the Board shall have the authority to grant reasonable variances from the provisions of Section 6.3. Additionally, so long as Declarant owns one or more Lots on the Property, the Declarant, may grant reasonable variances from the provisions of

Section 6.3 (including Section 6.3.3) and from the guidelines that it has established in connection with its review of the plans and specifications associated with original construction.

No variance shall materially injure or materially adversely affect any other part of the Property or any other Owner or occupant. No variance granted pursuant to the authority of this Section 6.4 shall constitute a waiver of any provision of the Declaration as applied to any other party or other part of the Property, and no variance may be granted to permit anything that is prohibited by applicable law. All provisions of the Declaration not affected by the grant of a variance shall continue to apply with full force and effect to the Lot for which the variance is granted and to the balance of the Property.

## ARTICLE VII USE RESTRICTIONS AND MAINTENANCE

### 7.1 Restrictions.

Except for activities of the Declarant during the Development Period and for any Lot owned by Declarant or a Builder and held for sale, the Property shall be subject to the following restrictions:

7.1.1 Purpose of Property: The Property shall be used only for residential purposes and common recreational purposes auxiliary thereto. Garages shall be used only for the parking of vehicles and other customary uses and shall not be used for or converted into living area, (e.g. family room, bedrooms, offices or recreational rooms). The Declarant or a Builder shall have the right to use unsold residences as model homes or sales offices.

7.1.2 Nuisance: No obnoxious or offensive activity of any kind shall be engaged in on any Lot nor shall any Owner or occupant thereof engage in any activities that interfere with the quiet enjoyment, comfort and health of the occupants of adjacent neighboring Lots.

7.1.3 Animals and Pets; No animals, livestock or poultry of any kind shall be raised, bred or kept on any Lot, except that dogs, cats or other household pets (excluding pot-belly pigs) may be kept, provided that they do not exceed three in number and they are not kept, bred or maintained for any commercial purpose. Notwithstanding the above, in the event such household pets have a litter, the Owner shall have a period of one hundred twenty days from the date of such birth to dispose of such excess pets. All animals must be kept within the Lot boundaries unless on a leash. There will be no outdoor kennels or dog runs permitted.

7.1.4 Signage: No sign of any kind shall be displayed to the public view on any Lot except one sign of not more than three square feet advertising the property for sale. This paragraph shall not apply to signs used by Declarant or a Builder to advertise the Property during the construction or sale period.

7.1.5 Trash: No burning of any trash and no accumulation or storage of litter, new or used building materials or trash of any kind shall be permitted on any Lot. Trash and garbage shall be placed in sanitary containers and shall not be permitted to remain in the public view except the day before and on days of trash collection.

7.1.6 Prohibited Accessory Structures: No permanent or temporary building, tent, storage shed, free standing greenhouse, or above ground pool or pool designed for above ground use shall be erected or permitted to remain upon a Lot. In-ground pools and decks are

permitted provided they are located within the building set back area of the Lot and approved pursuant to Section 6.1.

7.1.7 Maintenance: Each and every Lot and house thereon shall be maintained by the Owner thereof in a reasonable manner in accordance with the general standards of maintenance prevailing throughout the Property. All landscaping on the Lots shall be maintained in good condition. All Lots, including any areas designated as "open-space easements", "conservation areas" or "preservation easements" on such Lots, shall be kept free of debris and clutter and shall be kept mowed.

7.1.8 Automobiles, Recreational Vehicles, Boats, Travel Trailers: No recreational vehicle, mobile home, boat or travel trailer shall be parked or stored on any Lot, for a period in excess of forty-eight hours during any calendar month, unless the same is in the garage and completely out of view. Commercial vehicles and trucks exceeding a three-quarter ton rating are prohibited, unless such commercial vehicles or trucks are kept in the garage and completely out of view. It is further provided that any vehicles being used for the purpose of construction or repair work upon any Lot or residence shall be permitted to park on or in front of a Lot for a reasonable period of time necessary for such purpose. No vehicle in inoperable condition or unlicensed condition shall be stored on any Lot for a period in excess of five days unless the same is in the garage and completely out of view.

7.1.9 Harmful Discharges: There shall be no emissions of dust, sweepings, dirt, cinders, odors, gases or other substances into the atmosphere (other than normal residential chimney emissions), no production, storage or discharge of hazardous wastes on the Property or discharges of liquid, solid wastes or other harmful matter into the ground or any body of water, if such emission, production, storage or discharge may adversely affect the use or intended use of any portion of the Property or may adversely affect the health, safety or comfort of any person. No waste nor any substance or materials of any kind shall be discharged into any public sewer serving the Property or any part thereof in violation of any regulation of any public body having jurisdiction over such public sewer.

7.1.10 Noise: No person shall cause any unreasonable loud noise (except for security devices) anywhere on the Property, nor shall any person permit or engage in any activity, practice or behavior for the purpose of causing annoyance, discomfort or disturbance to any person lawfully present on any portion of the Property.

7.1.11 No Trade or Business: No trade or business of any kind may be conducted in or from any Lot or living unit except that an Owner or occupant of a Lot or Living Unit may conduct such business activity within the Lot or Living Unit so long as:

(a) the existence or operation of the business activity is not apparent or detectable by sight, sound or smell from the exterior of the Lot or Living Unit;

(b) the business activity conforms to all zoning requirements for the Property;

(c) the business activity does not involve persons coming onto the Lot who do not reside in the Property; and

(d) the business activity is consistent with the residential character of the Property.

The terms "business" and "trade" as used in this provision shall be construed to have their

ordinary generally accepted meanings and shall include, without limitation, any occupation, work or activity undertaken on an ongoing basis which involves the provision of goods or services to persons other than the provider's family and for which the provider receives a fee, compensation or other form of consideration, regardless of whether (i) such activity is engaged in full-time or part-time; (ii) such activity is intended to or does generate profit; (iii) a license is required thereof.

7.1.12 Garage & Yard Sales, and Holiday Decorations: There shall be no more than two garage or yard sales held by the Owner or residents of any Lot during any twelve month period. Christmas lights and other holiday-type decorations may be erected no sooner than five weeks prior to and removed not later than two weeks after such holiday.

7.1.13 Obstruction of Easement and Drainage: No structure, planting or other material other than driveways, or sidewalks shall be placed or permitted to remain upon any Lot which may damage or interfere with any easement or the installation or maintenance of utilities, or which may change, obstruct or retard direction or flow of any drainage channels in the easement area. The easement area of each Lot and all improvements in the easement area shall be maintained by the Owner of the Lot, except for those improvements for which a public authority, utility company or the Association is responsible.

7.1.14 Lakes: All lakes, ponds and streams within the Property shall be aesthetic amenities only and no other use thereof, including without limitation, swimming, boating, playing or use of personal floatation devices shall be permitted except in accordance with rules and regulations established by the Declarant or the Association.

Neither the Declarant, a Builder nor the Association shall be responsible for any loss, damage or injury to any person or property arising out of the authorized or unauthorized use of the lakes, ponds or streams within the Property.

7.1.15 Leasing: Every lease on a Living Unit is subject to the following rules and regulations, regardless of whether such provisions are set forth in the lease:

- (i) the lease must be in writing;
- (ii) the lease must be for the entire Living Unit;
- (iii) the lease must be for a minimum period of not less than six months. Renewals can be for any length;
- (iv) the use of the leased premises is subject to this Declaration, the By-Laws and the rules and regulations for the Subdivision;
- (v) within thirty days of occupancy by the tenant, the name and telephone number of the tenant, together with a clear and complete copy of the lease, must be furnished to the management company or to an officer or Trustee of the Association;
- (vi) the Living Unit cannot be used as a motel or hotel or otherwise for transient tenants;
- (vii) if any Owner (landlord) or tenant is in violation of any of the provisions of the Declaration or By-Laws, or both, including any rules and regulations, the Association may bring an action in its

own name or in the name of the Owner, or both, to have the tenant evicted or to recover damages, or both.

If the court finds that the tenant is or has violated any of the provisions of the Declaration, the By-Laws of the Association or the rules and regulations, the court may find the tenant guilty of forcible detainer despite the facts that the Owner is not a party to the action and/or that the tenant is not otherwise in violation of tenant's lease or other rental agreements with Owner.

For purposes of granting the forcible detainer against the tenant, the court may consider the Owner a person in whose name a contract (the lease or rental agreement) was made for the benefit of another (the Association). The remedy provided by this subsection is not exclusive and is in addition to any other remedy, or remedies available to the Association.

If permitted by present or future law, the Association may recover all of its costs, including court costs and reasonable attorney's fees, and these costs shall be a continuing lien on the Living Unit and Lot that shall bind the Living Unit and Lot in the hands of the then Owner and the Owner's successors and assigns. The Association shall give the tenant and the Owner written notice of the nature of the violation of the rules, and twenty days from the mailing of the notice in which to cure the violation before the Association may file for eviction.

By becoming a tenant, each tenant agrees to be bound by this Declaration, the By-Laws and the other rules and regulations of the Subdivision, and recognizes and accepts the right and the power of the Association to evict the tenant for any violation by the tenant of this Declaration, the By-Laws and the other rules and regulations of the Subdivision.

To protect first mortgage lenders and to encourage first mortgage lenders to make loans on Living Units and Lots in the Subdivision, only subsections (iv) and (v) of this Section 7.1.15 shall apply to a first mortgage lender who has title to the Living Unit and Lot through (a) foreclosure of its first mortgage on the Living Unit and Lot; or (b) a deed in lieu of foreclosure on its first mortgage on the Living Unit and Lot. Any subsequent purchaser from the first mortgage lender is subject to all of the rules and regulations.

## ARTICLE VIII EASEMENTS AND MAINTENANCE,

### 8.1 Access Easements & Open Space Easements.

All Lots shall be subject to an access easement in favor of the Declarant and the Association for the purposes of maintaining, cleaning, repairing, improving, regulating, operating, replacing and otherwise dealing with the Storm Water Facilities and entrance wall and related landscaping.

As may be set forth on the record plat or plats for the Property, certain Lots may be subject to "open-space easements", "conservation areas" or "preservation easements". Such "open-space easements", "conservation areas" and "preservation easements" are in favor of the Declarant and the Association and are for the purposes of providing access to the common facilities and for allowing the Declarant and the Association to maintain improvements constructed by the Declarant in such easement areas.

Such easements are also created for the purpose of retaining the easement areas as conservation land in their natural, scenic and undeveloped condition. Except as otherwise provided herein, no one other than the Declarant, the Association or the Owner on whose Lot is situated an "open-space easement", "conservation areas" or "preservation easement", shall be permitted to have

access to, or enter onto, such easement area or to trim, cut, or otherwise remove trees or vegetation from such easement area.

## 8.2 Common Driveway Easement.

The Lots sharing a Common Driveway shall be subject to and benefited by a perpetual nonexclusive easement for ingress and egress over the Common Driveway. The Owners of such Lots shall use the Common Driveway situated on the easements with due regard for the rights of any other Owner and such Owner's use of such driveway. No Owner shall use or permit the use of the driveway in any manner which impairs the right of any other Owner to his use, nor shall any Owner park or store vehicles or personal property on, or obstruct or encroach upon, or permit the use of, or permit the obstruction of or encroachment upon, the Common Driveway in any manner whatsoever without the concurrence of all Owners entitled to use the Common Driveway.

The Owners using the Common Driveway shall share equally in the expense and cost of maintaining, improving and repairing the Common Driveway, except that any damage other than ordinary wear and tear caused by any Owner, or any party claiming through such Owner, whether by negligence or otherwise, shall be repaired at the expense of such Owner.

The driveway shall be maintained in good repair and in a condition substantially similar to that of its original construction. Upon conveyance of a Lot, the Grantor of such Lot shall be, as of the closing date for such conveyance, relieved of the obligation to share in the expense and cost of future maintenance and repair imposed hereby, and those obligations shall bind thereafter the Grantee of said conveyance.

The Grantor shall, however, be obligated personally during and after his period of ownership for expenses and costs incurred for maintenance and repair during his period of ownership of the Lot. The obligation of an Owner of a Common Driveway to share in the cost and expense of maintaining a Common Driveway, is separate and distinct from the obligation of such Owner to pay the assessments levied pursuant to Article V.

## 8.3 Maintenance of Storm Water Facilities.

The Association shall also be responsible for the care and maintenance of the Storm Water Facilities in a manner satisfactory to the Butler County, Ohio Engineer including the replacing of any piping and the maintaining of good appearance around these easement areas. The Association shall be responsible for any required maintenance of pipes, concrete gutters, fixtures or mechanical devices.

Should any Owner fail to maintain his Lot, or a Common Driveway, to the extent provided in the Declaration, the Association may do so, after notice, and assess such Owner for the cost. The assessment shall be a lien on the Owner's Lot to the same extent as other liens provided for herein.

## 8.4 Reservation of Easements.

The Declarant shall have and hereby reserves easements in favor of itself, its successors and assigns, and such other persons or entities as it may designate as follows:

8.4.1 In, on and over a twenty foot wide strip of land on either side of all publicly dedicated rights of way on the Property for the purposes of access to construct, use and maintain, utilities, sidewalks,

signage, lighting, landscaping and recreational uses and other uses deemed appropriate for or necessary to intergrade the Property into other real estate.

8.4.2 In, on and over all utility and drainage easements set forth on the Property for the installation and maintenance of utility and drainage systems.

8.5 Right of Association to Remove or Correct Violations of this Article.

The Association may, in the interest or the general welfare of all of the Owners, enter upon any Lot or the exterior of any dwelling at reasonable hours on any day for the purpose of removing or correcting any violation or breach of any attempted violation of any of the covenants and restrictions contained in this Article, or for the purpose of abating anything herein defined as a prohibited use or nuisance, provided however, that no such action shall be taken without a resolution of the Board of Trustees of the Association authorizing access to such Lot or property covered under this Section and any charges incurred by the Association in correcting the violation hereunder, (including court costs and reasonable attorney's fees) shall constitute a charge against the subject property and a personal obligation of the Owner thereof, and the Association shall have a lien upon the property and Lot for such expenses, and including costs of collection of said lien amount, which lien shall be subordinate to first mortgages as provided in Section 4.11.

8.6 Developer's Reservation of Entry Rights.

The Declarant for itself and any Developer reserves the right during the Development Period to enter upon the Lot for purposes of correcting grade and drainage patterns for the benefit of the entire Properties, provided that the Lot shall be restored with any pavement, grass or sod which shall have been removed.

8.7 Declarant's and Association's Right to Grant Easements.

Notwithstanding any other provisions herein, as long as there exists Class B membership, the Declarant, and thereafter the Association is authorized without consent of the Members to grant across, through or under any Lot, any utility easement, including a Television Cable easement, deemed by the granting party to be necessary or convenient in the development or enjoyment of the Properties, provided no easement shall be granted across, through or under any Living Unit or building which restricts ingress or egress to such Living Unit or building.

8.8 Handicap Accessibility.

Notwithstanding any other provisions herein, an Owner of any Lot may, at his expense, have such reasonable modifications made to the interior and exterior of his Living Unit and Lot as may be necessary to afford physically handicapped persons full enjoyment of his premises. Any modifications to be undertaken to the exterior of a Living Unit and Lot comply with the guidelines and regulations of the United States Department of Housing and Urban Development for buildings and facilities providing accessibility and usability for physically handicapped people; and shall be undertaken pursuant to a contract, the terms, conditions and specifications of which, shall be approved by the Board of Trustees. The approved contractor shall provide an adequate performance bond for the benefit of the Association.

Notwithstanding the other provisions herein, including those requiring approval of the Members of the Association, the Board of Trustees is authorized to make reasonable accommodations to any



rules, policies, practices or services as may be necessary to afford a handicapped person equal opportunity to use and enjoy his Living Unit and Lot.

#### 8.9 Arbitration.

In the event of any dispute between Owners, other than the Declarant, regarding the application of these restrictions or any rule or regulation, the party aggrieved shall submit a complaint in writing to the Board specifying the dispute. The Board shall set a time and place for a hearing thereon within thirty days thereafter, and give written notice to each party thereof not less than five days in advance of such hearing. The Board, after hearing such evidence and arguments as it deems proper, shall render a written decision on the matter to each party within thirty days after such hearing. No legal action may be instituted by either party on such a dispute unless the arbitration provided for herein has occurred, or unless both parties have waived the requirement for arbitration.

### ARTICLE IX FEDERAL HOME LOAN MORTGAGE CORPORATION PROVISIONS

#### 9.1 FHLMC.

The following provisions are included herein for the benefit of the holders of first mortgages on any Lot within that portion of the Ross Estates subdivision which is subject to the provisions of this Declaration (PUD), in order to permit compliance with the requirements of Federal Home Loan Mortgage Corporation (FHLMC) as a condition to the purchase of loans on Living Units in the PUD.

The covenants and provisions hereinafter set forth shall run in favor only of the first mortgage holders, and the provisions hereinafter set forth may be altered, amended, revised or rescinded by actions of the Board of Trustees of the Association, without approval of the Members of the Association, but only without such approval to the extent that such alteration, amendment, revision or rescission is necessary to comply with the requirements of FHLMC.

#### 9.2 Approvals.

It is provided as follows:

(a) Unless at least two-thirds of the first mortgagees (based upon one vote for each first mortgage owned) or Owners (other than the Declarant or Developer) of the individual units in the PUD have given their prior written approval, the Association shall not be entitled to:

(i) By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer the common property owned, directly or indirectly, by such homeowners association for the benefit of the units in the PUD (the granting of easements for public utilities or for other public purposes consistent with the intended use of such common property by the Association shall not be deemed a transfer within the meaning of this clause);

(ii) change the method of determining the obligations, assessments, dues or other charges which may be levied against a PUD unit owner; by act or omission change, waive or abandon any scheme of regulations, or enforcement thereof, pertaining to

the architectural design or the exterior appearance of units, the exterior maintenance of units, the maintenance of units, the maintenance of the common property party walks or common fences and driveways, or the upkeep of lawns and plantings in the PUD;

(iii) by act or omission, change, waive or abandon any scheme of regulations or enforcement thereof pertaining to the architectural design or the exterior appearance of units, the exterior maintenance of units, the maintenance of units, the maintenance of the common property party walks or common fences and driveways, or the upkeep of lawns and plantings in the PUD;

(iv) fail to maintain fire and extended coverage on insurable PUD common property on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value (based on current replacement cost);

(v) use hazard insurance proceeds for losses to any PUD common property for other than the repair, replacement or reconstruction of such common property.

(b) First mortgagees of PUD units may, jointly or singly, pay taxes or other charges which are in default and which may or have become a charge against any PUD common property and may pay overdue premiums on hazard insurance policies, or secure new hazard insurance coverage on the lapse of a policy, for such common property and first mortgagees making such payments shall be owed immediate reimbursement therefor from the PUD homeowners association. All first mortgagees of units in the PUD shall be entitled to such reimbursement.

(c) No PUD Unit Owner, or any other party, has priority over any rights of any first mortgagee of a PUD unit pursuant to its mortgage in the case of a distribution to such PUD Unit Owner of insurance proceeds or condemnation awards for losses to or taking of PUD common property

(d) A first mortgagee, upon request, is entitled to written notification from the homeowners association of any default in the performance by the individual PUD unit Borrower of any obligation under the PUD constituent documents which is not cured within sixty (60) days.

## ARTICLE X GENERAL PROVISIONS

### 10.1 Enforcement.

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

### 10.2 Severability.

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

### 10.3 Amendment.

Except as otherwise provided in this Declaration, the covenants and restrictions of this Declaration shall run with and bind the land for a term of twenty years from the date this Declaration is recorded, after which time they shall be automatically extended for successive periods of ten years.

This Declaration may be amended during the first twenty year period by an instrument signed by not less than seventy-five percent of the Lot Owners, and thereafter by an instrument signed by not less than fifty-one percent of the Lot Owners. Any amendment must be recorded.

No amendment to the covenants and restrictions of this Declaration shall be binding upon any Lot owned by the Declarant or upon any additional property annexed to the terms of this Declaration by the Declarant, or upon any Lot upon which a single-family dwelling has not yet been erected unless the Declarant or any such Lot Owner agrees to said amendment in a recorded writing.

### 10.4 Right to Amend Documents.

Notwithstanding anything above to the contrary, this Declaration and the By-Laws may be amended at any time without the vote of Owners by a written instrument executed by the Declarant for the purpose of eliminating or correcting any typographical or other inadvertent error herein; eliminating or resolving any ambiguity herein; making nominal changes; clarifying Declarant's original intent; conforming to any requirements imposed or requested by any governmental agency, public authority or financial institution; provided, however, that no such amendment shall materially affect any Owner's interest in the Association.

Each Owner and his mortgagees, by acceptance of a deed to a Lot or a mortgage encumbering such Lot, shall be deemed to have consented to and approved of the provisions of this paragraph and the amendment of this Declaration and the By-Laws by Declarant as provided in the immediately preceding sentence. All such Owners and their mortgagees, upon request of Declarant, shall execute and deliver from time to time all such instruments and perform all such acts as may be deemed by Declarant to be necessary or proper to effectuate the provisions of this paragraph.

### 10.5 Personal Liability.

Nothing in this Declaration, the Articles or the regulations of the Association, or any rules or regulations enacted pursuant to any of the aforesaid, shall impose personal liability upon any member of the Board of Trustees or any officer of the Association acting in his capacity as such, for the use, maintenance, repair or replacement of any Living Unit or of any part of the common facilities or give rise to a cause of action against any of them except for damages resulting from their own willful omissions or misconduct and each person who becomes an Owner or Member hereby releases and discharges all liability for injury or damages to such Member or Owner or to such Member's or Owner's property and covenants not to initiate any legal proceedings against any such person or persons unless such said person is covered by insurance and in such event the amount of recovery shall be limited in the amount of insurance.

### 10.6 Non liability of Declarant or Developer.

Neither Declarant nor its representatives, successors or assigns shall be liable for any claim whatsoever arising out of or by reason -of any actions performed pursuant to any authorities

granted or delegated to them by or pursuant to this Declaration or the By-Laws, whether or not such claims shall be asserted by an Owner, occupant, the Association, or by any person or entity claiming through any of them; or shall be on account of injury to person or damage to or loss of property wherever located and however caused.

Without limiting the generality of the foregoing, the foregoing enumeration includes all claims for, or arising by reason of, the Property or any part thereof becoming out of repair or by reason of any act or neglect of any Owner, occupant, the Association and their representative agents, employees, guests and invitees or by reason of any neighboring property or personal property located on or about the Property, or by reason of the failure to furnish or disrepair of any utility services (heat, air conditioning, electricity, gas, water, sewage, cable television, etc.), except as provided by any written warranty provided by the Declarant to an Owner or the Association.

#### 10.7 Notices.

Any notice required to be sent to any Member or Owner under the provisions of this Declaration shall be deemed to have been properly sent when mailed, by first class mail, postpaid, to the last known address of the person who appears as Member or Owner on the records of the Association at the time of such mailing.

#### 10.8 Professional Management Contracts.

The Association may delegate all or any portion of its authority to discharge its responsibilities herein to a manager or managing agent. Any management agreement shall not exceed three years and shall provide for termination by either party without cause or without payment of a termination fee on ninety days or less written notice.

IN WITNESS WHEREOF, the undersigned Declarant, Ross Estates, LLC, an Ohio limited liability company, has hereunto set its signature on the day and year first above written.