

# **DECLARATION OF SUBDIVISION**

**ESTABLISHING COVENANTS,  
CONDITIONS, EASEMENTS AND RESTRICTIONS  
FOR THE PROJECT KNOWN AS**

**VILLAS OF HALIFAX PATIO HOMES SUBDIVISION**

Prepared by:

**Michael A. Staudt  
FAULKNER, GARMHAUSEN, KEISTER & SHENK  
A Legal Professional Association  
Courtview Center - Suite 300  
100 South Main Avenue  
Sidney, OH 45365  
mstaudt@fgks-law.com  
937/492-1271**

**DECLARATION OF COVENANTS,  
CONDITIONS AND, RESTRICTIONS**

**HALIFAX LAND COMPANY, LLC**, an Ohio limited liability company ("Declarant"), is the Owner in fee simple of certain real property located in the City of Troy, Miami County, Ohio, known by official plat description as Villas of Halifax Patio Homes, pursuant to a record plan filed for record on \_\_\_\_\_ in Plat Book \_\_\_ Page \_\_\_, of the Miami County, Ohio Plat Records ("Subdivision"), the legal description of which real property is attached hereto as Exhibit A.

For the purpose of enhancing and protecting the value, attractiveness, and desirability of the Lots constituting the Subdivision, Declarant hereby declares that all of the real property described above together with such additional property as may be added to the Subdivision pursuant to Article VIII of the Declaration, and each part thereof shall be held, sold, and conveyed subject to the following easements, covenants, conditions, and restrictions, which shall constitute covenants running with the land and shall be binding on all parties having any right, title, or interest in the above-described property or any part thereof, their heirs, successors, and assigns, and shall inure to the benefit of each Owner thereof. This Agreement and the easements, covenants, conditions, and restrictions set forth in this Declaration shall not be binding upon any other land owned by Declarant other than the land contained within the Lots in the Subdivision, even though the other land may be contiguous with the land in the Subdivision.

**CONCEPT**

The Villas of Halifax Patio Homes Subdivision is a unique single family residential development which will, subject to Article VIII, consist of 101 Lots. Each Lot and the home constructed thereon will be wholly owned by each Lot owner. A Lot owners Association has been established which will provide the services provided for in this Declaration, including the maintenance of all Common Elements, such as streets, ponds and trails. Lot owners will generally be responsible for the maintenance of the improvements and landscaping on their own Lot.

In addition to the benefits provided to Lot owners by the Association, the Association will also be a member of the Villas of Halifax Lodge LLC ("Halifax Lodge"). Halifax Lodge has been established in close proximity to the Subdivision to provide recreational facilities to the owners of Lots in the Villas of Halifax Subdivision together with owners of Lots in the Villas of Halifax Patio Homes Subdivision. By virtue of being a member of Halifax Lodge, the Association will be able to provide Lot owners with the benefits and use of the amenities, recreational facilities and activities of Halifax Lodge subject to such rules and regulations as may be adopted by Halifax Lodge from time to time. The services provided by the Association together with the opportunity for access to Halifax Lodge shall be funded through assessments paid for by Lot owners as provided for in Article VII.

## DEFINITIONS

The terms used in this document shall have these meanings, unless the context requires otherwise:

1. “**Articles**” and “**Articles of Incorporation**” mean the articles, filed with the Secretary of State of Ohio, incorporating Villas of Halifax Patio Homes Association as a corporation not-for-profit under the provisions of Chapter 1702 of the Revised Code of Ohio, as the same may be lawfully amended from time to time. A true copy of the Articles are attached hereto as Exhibit B.
2. “**Association**” and “**Villas of Halifax Patio Homes Association**” mean the corporation not-for-profit created by the filing of the Articles.
3. “**Association Organizational Documents**” means these Covenants, Declaration, and the Articles and Bylaws of the Association.
4. “**Board**” and “**Board of Directors**” mean those persons who, as a group, serve as the board of directors of the Association.
5. “**Bylaws**” mean the by-laws of the Association, as the same may be lawfully amended from time to time, which serve as the code of regulations of the Association under and pursuant to the provisions of Chapter 1702. A true copy of the Bylaws is attached hereto as Exhibit C.
6. “**Common Elements**” means any property, whether it be real or personal, owned by the Association in fee, or in which the Association and or the members have an easement to use, or which the Association has an obligation to maintain. Common Elements shall include, without limitation: (a) real property owned in fee by the Association; and (b) those improvements identified in Section 3.1 of this Declaration.
7. “**Declarant**” means Halifax Land Company, LLC, an Ohio limited liability company, and its successors and assigns, provided that the rights specifically reserved to Declarant under these Covenants, or under any other Association Organizational Documents shall accrue only to such successors and assigns as are designated in writing by Declarant as successors and assigns of such rights.
8. “**Declaration**” or “**Covenants**” means this instrument.
9. “**Director**” and “**Directors**” mean that person or those persons serving, at the time pertinent, as a director or directors of the Association.
10. “**Eligible holder of a first mortgage lien**” means the holder of a valid recorded first mortgage on a Lot, which holder has given written notice to the Association stating the holder's name, address and Lot or Lots subject to its mortgage.
11. “**Lot**” or “**Lots**” mean one or more of Lots numbered \_\_\_\_\_ through and including \_\_\_\_\_ of Villas of Halifax Patio Homes Subdivision, as such Lots are numbered and delineated on the recorded plat thereof, of record in Plat Book \_\_\_\_, Page \_\_\_\_ in the Recorder's Office, Miami County, Ohio, and the portion of any later phase of Villas of Halifax Patio Homes Subdivision, which portions have been submitted by the Declarant to the jurisdiction of these restrictions.

12. “**Lot owner**” and “**Lot owners**” mean that person or those persons owning a fee-simple interest in a Lot or Lots, each of whom is also a “member” of the Association, as defined in Ohio's non-profit corporation statutory act.

13. “**Occupant**” means a person or entity lawfully residing in a dwelling on a Lot, regardless of whether that person is a Lot owner, and any agents, guests, invitees, customers, officers or employees of an Occupant.

14. “**Person**” means a natural individual, corporation, partnership, director, or other legal entity capable of holding title to real property.

15. “**Planned Community Act**” means the statutory law of the State of Ohio relating to the creation and operation of planned communities and is presently Chapter 5312 of the Revised Code of Ohio.

16. “**Subdivision**” means the portion of Villas of Halifax Patio Homes Subdivision, as shown on the recorded plat thereof (the “Plat”), of record in Plat Book \_\_\_, Page \_\_\_ in the Recorder's Office, Miami County, Ohio, and the portion of any later phase of Villas of Halifax Patio Homes Subdivision, which portions have been submitted by the Declarant to the jurisdiction of these restrictions.

17. “**Turnover Date**” means the date selected by the Declarant, in its sole and absolute discretion, for the Declarant to relinquish control over the selection and removal of the Association's Directors but no later than the date of the conveyance to purchasers of 100% of all Lots submitted or reasonably estimated by the Declarant to be submitted, to the jurisdiction of this Declaration. The Turnover Date shall be communicated to the Association in writing by the Declarant, as the date after which control of the Association, and the right to select, remove and replace Directors, will be turned over to the owners of Lots

## ARTICLE I. RESTRICTIONS

The lots shall be subject to the following restrictions:

1.1 Applicability of Zoning Regulations and Ordinances. Land use of all Lots is governed by the Zoning Regulations and other ordinances for the City of Troy, Ohio as presently enacted or hereafter amended. The Troy regulations and ordinances may in certain respects be more strict or stringent than these covenants and restrictions, and these covenants and restrictions shall not be deemed to relieve the Owner of obligations to comply with any applicable Troy regulations and ordinances.

1.2 Residential Purposes. All Lots in the Subdivision shall be used exclusively for single family residential purposes.

1.3 Lot Subdivision and Building Sites. None of the Lots shall at any time be divided into more than one (1) building site and no building site shall be less in area than the area of the smallest Lot platted in the Subdivision. A single Lot together with contiguous portion or portions of one or more adjacent Lots or, subject to limitation on building site size, contiguous portions of adjacent Lots may be used for one (1) building site, but only upon approval of the Association. If approval of the City of Troy Planning Commission is required by the City of Troy Subdivision Regulations, then no Lot may be subdivided unless authorized by the City of Troy Planning Commission as well as the Association.

1.4 Building Setbacks. Building setbacks shall be observed as provided on the Plat that is filed of record with the Recorder of Miami County, Ohio, with respect to each individual Lot in the Subdivision. If encroachments are permitted by the Plat, then such encroachments shall also be permitted under this Declaration.

1.5 Lot Maintenance.

(a) All Lots, whether occupied or unoccupied, shall at all times be maintained in a neat and attractive condition and in such manner as to prevent their becoming unsightly by reason of unattractive growth on such Lot or the accumulation of rubbish or debris thereon. In order to implement effective control of this provision, there is reserved to the Association for itself and its agents, the right, but not the obligation, after ten (10) days notice to any Lot Owner, to enter upon any residential Lot with such equipment and devices as may be necessary for the purpose of mowing, removing, cleaning or cutting underbrush, weeds or other unsightly growth and trash which in the opinion of the Association detracts from the overall beauty or safety of the Subdivision.

(b) Entrance upon such property for such purposes shall not constitute a trespass. The Association may charge the Owner a reasonable cost for such services, which charge shall constitute a lien upon the Lot enforceable by appropriate proceedings at law or equity; provided, however, that the lien shall be subordinate to the lien of any first mortgage or deed of trust encumbering the Lot. The provisions of this section shall not be construed as an obligation on the part of the Association to mow, clear, cut, or prune any Lot, nor to provide rubbish or debris removal.

1.6 Garbage Containers. Garbage containers, if any, shall be kept in a clean and sanitary condition, and shall be so placed or screened by shrubbery, fencing, or other appropriate means so as not to be visible from any road, or within sight distance of the Lot at any time except during refuse collection.

1.7 Fuel Containers. Exterior containers for storage of home heating oil or propane gas (except for cooking grills) for use by the individual property Owner shall not be permitted.

1.8 Signs. Signs, billboards, and advertising structures of any kind are prohibited with the following exceptions:

(a) Builder and contractor signs during construction periods.

(b) One professional sign of not more than four square feet to advertise a Lot for sale during a sales period.

(c) Declarant's sign or signs advertising the Subdivision.

1.9 Utilities. Except for above ground electric lines around the perimeter of the Subdivision, all utilities shall be installed underground.

1.10 Landscaping. Plans for initial landscaping must be submitted to the Association for approval within ninety (90) days after completion of construction. Although the Association shall have the authority to approve any landscaping plan submitted, it is suggested as a guideline that a minimum of two percent (2%) of the building construction cost be allocated for landscaping each building site. Landscaping includes seeding and planting of trees, shrubs, and ground covers, excluding rough grading work. Landscape work must be completed within six (6) months of occupancy. The Association may require sod or other erosion protection as a condition of approval.

1.11 Completion of Construction.

(a) Construction of a residence building on any Lot is to be completed within two (2) years from the date of the original purchase from Declarant, and completion of construction is expected within one (1) year from the date of beginning construction. Declarant reserves the right to repurchase any Lot in the Subdivision upon which the construction of the residential building has not been completed within two (2) years from the date of the original sale from Declarant.

(b) In the event the Declarant exercises the repurchase right set forth in section 1.11(a), Declarant shall give written notice to the then Owner of record of the Lot or Lots, the notice to be by certified mail addressed to the mailing address for tax purposes. The repurchase price which the Declarant shall pay for such Lot, in the event of such repurchase, shall be the sales price of such Lot upon its original sale, without interest or allowance for appreciation in value. Declarant, at its sole discretion, may waive its right to repurchase any Lot or Lots in the Subdivision. In no event shall the Declarant be entitled to exercise the repurchase right after four (4) years from the original sale. The Owner shall transfer the Lot or Lots to Declarant by limited warranty deed free and clear of any liens and encumbrances arising subsequent to the date of the closing of the purchase of Lot or Lots from Declarant.

1.12 Fences. All fence designs and location shall be in keeping with the architectural character of the structure and shall be approved in writing in advance of construction by the Association. The Association may designate a fence design and fence material to be used by a Lot owner who seeks approval for the construction of a fence. No chain link fencing, barbed wire, wire field fencing, metal fencing, or similar fencing shall be permitted. No fence or hedge greater than four feet in height shall be placed or allowed to remain nearer to the street than the minimum setback line. Owner must comply with any applicable regulations set forth by the City of Troy.

1.13 Drainage. Drainage of surface water, storm water and/or foundation drains shall not be connected to sanitary sewers.

1.14 Sump Pump Effluent. Sump pump systems shall be connected to and all sump pump effluent shall be discharged into storm drains as approved by the Declarant or the Troy Engineer. No pump or piping device shall discharge sump pump effluent into a public right-of-way, into a detention basin, or into sanitary sewers.

1.15 Animals. No animals, livestock or poultry of any kind or description shall be raised, kept, or bred on any Lot in the Subdivision. Notwithstanding the foregoing, dogs, cats, or other usual household pets may be kept on any Lot, provided that no such household pet may be kept on any Lot for commercial purposes and provided further that no dog which constitutes a threat, danger or nuisance to any Owner or other individual may be kept on any Lot at any time. The determination as to whether any dog constitutes a threat, danger or nuisance shall be made within the sole discretion of the Declarant or the Association. The permitting of animals in the Subdivision shall be subject to such rules and regulations as the Board may from time to time promulgate, including, without limitation the right to levy fines and enforcement charges against persons who do not clean up after their pet. The right of an occupant to maintain an animal shall be subject to termination if the Board, in its full and complete discretion, determines that maintenance of the animal constitutes a nuisance or creates a detrimental effect on the Subdivision or other Lot owners or occupants.

1.16 Outbuildings and Structures.

(a) Outbuildings and detached structures shall not be permitted unless approval, in writing, is obtained from the Association prior to commencement of any construction. The decision of the

Association to either approve or disapprove any outbuilding or detached structure shall be within the sole discretion of the Association.

(b) No structure of a temporary character, trailer, tent, shack, garage, barn or other outbuilding shall be used on any Lot at any time as a residence, either temporarily or permanently.

1.17 Vehicles.

(a) No boat, boat trailer, house trailer, camper, van, recreational vehicle, tent, or equipment or vehicle of a similar nature shall be parked or stored on any road, street, driveway, yard, or Lot in the Subdivision for any period of time, except in an enclosed garage. No truck of any size greater than a pickup truck shall be parked on any part of the Subdivision at any time except such limited period as may be necessary to service any part of the Subdivision. No inoperable motor vehicle shall be parked on any part of the Subdivision at any time except within an enclosed garage. No Owner shall repair any motor vehicle, boat, trailer, or other vehicle on any portion of any Lot, or on any street in the Subdivision, except in an enclosed garage, unless and except for emergency repairs, and then only to the extent necessary to enable movement thereof to a proper repair facility.

(b) The provisions of this section are not intended to replace any applicable Troy ordinance or regulation, and every Owner shall comply with all applicable Troy ordinances and regulations.

1.18 Parking.

(a) On-street parking on any street in the Subdivision shall not be permitted except in parking spots specifically designated as such by the Association.

(b) The provisions of this section are not intended to replace any applicable Troy ordinance or regulation, and every Owner shall comply with all applicable Troy ordinances and regulations.

1.19 Association Responsibility. Neither the Association nor Declarant nor their representative agents shall be responsible for defects in plans or specifications submitted, revised, or approved in accordance with the foregoing provisions, nor for any structural or other defect in any work done according to such plans and specifications.

1.20 Size of Residence. Each single family residential structure erected on any Lot shall have not less than 1,600 square feet of finished area. The square footage shall exclude unfinished garage space and basement, decking, patios and porches. The first floor of all structures shall have a ceiling height of not less than eight (8) feet in all enclosed, heated, habitable space. The minimum roof pitch of all structures shall be no less than 6/12.

1.21 Garage. All single family residences shall have a minimum two (2) car attached garage.

1.22 Solar Panels. The use of solar panels may be permitted provided that Association approval is obtained in writing with respect to the placement and type of solar panels to be installed prior to installation.

1.23 Antennas and Satellite Dishes. No exposed or exterior radio or television transmission or receiving antennas, and no satellite dishes which exceed 24 inches in diameter shall be erected, placed, or maintained on any part of the Subdivision.

1.24 Vents. Vents protruding through the roof should be placed on rear roof surfaces when possible and must be painted a color to blend with roof coloring.

1.25 Swimming Pools. Swimming pools shall match architectural character of the structure and be approved by the Association in writing in advance of installation. No above ground pools shall be permitted except for one portable children's wading pool not to exceed 49 square feet in size and 16 inches in height.

1.26 Mailboxes. The Association may designate a mailbox design which must be used by each Lot Owner. The mailbox erected by the Lot Owner shall meet U.S. Postal Service specifications and applicable Troy ordinances.

1.27 Driveways. All driveways shall be concrete or other non-asphaltic hard surface pavement and should extend from the garage door to the rear of the sidewalk and shall be approved by the Association. The driveway approach shall be concrete pavement from the curb to the sidewalk and shall be constructed in accordance with Troy specifications.

1.28 Clothes Lines. The use of exterior clothes lines shall not be permitted.

1.29 Basketball Goals. No basketball goals shall be permitted to be attached to any residential structure; however, freestanding basketball goals may be permitted provided that Association approval is obtained with respect to the placement and type of basketball goal and supporting structures.

1.30 Nuisances. No noxious or offensive activity which would constitute a nuisance shall be carried on in any Lot.

1.31 Repairs. Each Owner shall, at his sole cost and expense, repair his residence, keeping the same in a condition comparable to the condition of the residence at the time of its initial construction, normal wear and tear excepted.

1.32 Construction Material. 100% of the exterior walls of all residential structures constructed in the Subdivision shall be covered with brick, or other cementitious material approved in writing by the Association. No exterior wall may be covered with vinyl siding. Notwithstanding the foregoing, vinyl soffits and gables may be permitted if approved in writing by the Association. All roofing material must be a minimum of three-dimensional 30 year shingles.

1.33 Common Elements Uses. Common Elements owned by the Association or over which the Association has an easement, shall be held and operated for the benefit of the Declarant and the Lot owners and occupants and their agents, servants, customers, invitees and licensees, subject to such rules and regulations as may from time to time be promulgated by the Board.

1.34 Sex Offenders. No person who:

(a) is adjudicated or designated to be a sexual predator or a habitual sex offender by an appropriate court or law enforcement agency, and

(b) is required to register with a designated registering agency under the laws of the State of Ohio pursuant to the Ohio Sex Offenders Act, or any similar laws or ordinances of the State of Ohio, any other state or federal jurisdiction, or any political subdivision of any of the foregoing, as the same may be, from time to time amended may reside in or occupy a Lot for any length of time, nor enter upon a Lot as a guest, visitor, employee or contractor of a Lot Owner or Occupant.



The Association may enforce the provisions of this section by commencing an action to enjoin such person from occupying a Lot and/or from coming on a Lot; or to evict such person (in an action commenced in the name of the Lot owner); or to levy enforcement charges for the violation of this section; or any combination of the foregoing; and all costs in connection therewith, including attorneys and paralegal fees, shall be charged to the Lot, and the Owner of the Lot, in which such person resides or of which such person is a guest, visitor, employee or contractor, as a Special Individual Unit Assessment, enforceable in accordance with the provisions of this Declaration.

1.35 Conveyances. Each Lot shall be conveyed subject to the terms, conditions and provisions of this Declaration. To enable the Association to maintain accurate records of the names and addresses of Lot owners, each Lot owner agrees to notify the Association, in writing, within five days after an interest in that Lot owner's Lot has been transferred to another person, identifying the name and address of each new Owner. In addition, each Lot owner agrees to provide to a purchaser of that owner's Lot a copy of the Association Organizational Documents and all effective rules and regulations.

1.36 Architectural Control. No building, fence, wall, sign, structure, driveway, swimming pool, drainage improvement, grade of the property or other improvements shall be commenced, erected or maintained upon a Lot, or any part thereof, 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, color and location of the same shall have been submitted to and approved in writing by the Declarant until the Turnover Date, and thereafter, by the Board or its designated representative, as to appropriateness and as to harmony of external design, color and location in relation to surrounding structures and topography. Notwithstanding any other provision of this Declaration to the contrary, the Declarant or Board shall have the authority, exercisable in its sole discretion, to approve any structure, improvement or feature, even though the same is not similar to those constructed or approved for other Lots, and such approval shall not be considered as a waiver of the requirements of this paragraph, nor shall it be considered as a precedent binding the Declarant or the Board to approve similar structures, improvements or features for any other Lot. Subject to the Declarant's discretion set forth above, all buildings shall be of similar or compatible style, construction and materials. The Board may, in addition to all other costs, charges and Special Individual Lot Assessments levied against a Lot for failure to comply and for the cost of causing compliance with the restrictions contained in this paragraph, levy an additional Special Individual Lot Assessment against any Lot, for up to \$100, for each day that such violations continue until corrected. The Board may establish rules consistent with the standards set forth on this Declaration to govern the construction of any improvements, landscaping, additions, or changes on Lots in the Subdivision.

1.37 Arbitration. The interpretation of the Declarant as to the application of these restrictions or any rule or regulation promulgated by the Board, shall be binding upon all Lot owners until the Declarant has sold and conveyed all lots. Thereafter, in the event of any dispute between Lot owners as to the application of these restrictions or any rule or regulation promulgated by the Board, the party aggrieved shall submit a complaint in writing to the Board specifying the dispute. The Board shall set a time, date and place for a hearing within sixty (60) days thereafter, and give written notice to each party no less than three days in advance of the hearing. The Board shall hear such evidence on the dispute as the Board deems proper and render a written decision on the matter within thirty (30) days of the hearing. No action at law may be instituted by either party to such a dispute unless arbitration pursuant hereto has first been had.

## ARTICLE II. OWNERS' ASSOCIATION

2.1 Establishment of Association. The Association has been formed to be and to serve as the Lot owners' association for the Subdivision. The Declarant is presently the sole member of the Association.

2.2 Membership. Membership in the Association shall be limited to the Declarant and the Lot owners. Every person or entity who is or becomes a record owner of a fee or undivided fee-simple interest in a Lot is a Lot owner and shall be a member of the Association. The foregoing is not intended to include persons or entities who hold an interest merely as security for the performance of an obligation. Membership shall be appurtenant to and may not be separated from ownership of any Lot, and transfer of a Lot shall automatically transfer membership to the transferee.

2.3 Voting Rights. Prior to the Turnover Date, all voting power in the Association shall be vested in the Declarant. From and after the Turnover Date, each Lot owner, including the Declarant, shall be entitled to one vote for each Lot owned in fee simple and a proportionate part of a vote for ownership of a fractional fee-simple interest in a Lot, provided, that unless timely challenged by an owner of a fractional fee-simple interest in a Lot, any owner of a fee-simple interest in that Lot may cast the entire vote with respect to that Lot.

2.4 Board of Directors. The Board initially shall be those three persons named as the initial Directors pursuant to the provisions of the Articles, or such other person or persons as may from time to time be substituted by Declarant. Because of the substantial financial undertakings of the Declarant, the Declarant shall continue to control the makeup of the Board until the Turnover Date selected by the Declarant. From and after the Turnover Date, there shall be six Directors elected by the Lot owners, which Lot owners shall include the Declarant as the owner of any unsold Lots. Such Directors must be owners, the spouses of owners, or the principal, member, partner, director, officer, trustee or employee of an owner which is not an individual, or any other party which Ohio law permits to be a member of the Board. The terms of the six directors shall be staggered so that the terms of one-third of the Directors will expire and successors be elected at each annual meeting of the Association. Thereafter, at such annual meetings, successors to the two directors whose terms then expire shall be elected to serve three-year terms.

2.5 Authority. The Board shall have all authority to manage, maintain, repair, replace, alter and improve any Common Elements and to contract with third parties to perform such services, and, with the approval of Owners of Lots holding a majority of the voting power of the Association, convey, any Common Elements and do all things, and exercise all rights provided by the Association Organizational Documents and permitted by Ohio Law that are not specifically reserved to Lot owners, and to assess and collect funds for the payment of all costs and expenses incurred in connection therewith. The Board shall have the authority to borrow funds, as needed, and pledge such security and rights of the Association as might be necessary or desirable to obtain any such loan including, without limitation, the conveyance of a security interest in the Common Elements and the assignment of the right of the Association to levy assessments upon Lots in the Subdivision, without requirement for approval by the members.

2.6 Indemnification. The Association shall indemnify every person who is or has been a Director, officer, agent or employee of the Association and those persons' respective heirs, legal representatives, successors and assigns, against expenses, including attorneys' fees, and judgments, decrees, fines, penalties and amounts paid in settlement actually and reasonably incurred in connection with any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative, and whether in an action or proceeding by or in the right of the Association, or otherwise, in which such person was or is a party or is threatened to be made a party by reason of the fact that person was a Director, officer, employee or agent of the Association, or is or was serving in such capacity at the request of the Association, provided that person (a) acted in good faith and in a manner that person believed to be in, or not opposed to, the best interests of the Association, and (b) in any

matter the subject of a criminal action or proceeding, had no reasonable cause to believe the questioned conduct was unlawful, but provided that in the case of any threatened, pending, or completed action or suit by or in the right of the Association to procure a judgment in its favor against any such person by reason of that person serving in such capacity, no indemnification shall be made in respect of any claim, issue, or matter as to which such person shall have been adjudged to be liable for gross negligence or willful and wanton misconduct in the performance of a duty to the Association unless and only to the extent that the court in which such action was brought shall determine upon application that in view of all the circumstances of the case that person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper.

Unless ordered by a court, the determination of indemnification, pursuant to the foregoing criteria, shall be made: (a) by a majority vote of a quorum of Directors of the Association who were not and are not parties to or threatened with any such action, suit, or proceeding; or (b) if such a quorum is not obtainable, or if a majority of a quorum of disinterested Directors so direct, in a written opinion by independent legal counsel other than an attorney, or a firm having associated with an attorney, who has been retained by or who has performed services for the Association or any person to be indemnified within the past five years; or (c) by the Lot owners; or (d) by the court in which such action, suit or proceeding was brought.

Any such indemnification shall not be deemed exclusive of any other rights to which such person may be entitled under law, any agreement, or any insurance purchased by the Association, or by vote of Lot owners, or otherwise.

### ARTICLE III. MAINTENANCE AND REPAIR

3.1 Common Elements. The Common Elements include (but are not necessarily limited to) streets, parking areas, storm water retention ponds and/or lakes and green space surrounding such ponds or lakes, any detention basins, any area containing entry signs for the Subdivision or other decorative signs, any walking bicycling and/or golf cart trails, and landscaping and improvements within any portion of the Common Elements.

3.2 Maintenance of Common Elements by the Association. Except as provided herein, the Association shall have the right to maintain, repair and replace all Common Elements to the extent that the Board, in the exercise of its duty to use ordinary care and prudence in the management of the property and affairs of the Association, allocates funds therefore, including, without limitation, the maintenance of Common Elements owned by the Association, and the maintenance of any improvements constructed by the Declarant or the Association

The Association shall maintain the Common Elements in such manner to allow storm water to accumulate in and/or discharge regularly from the storm water retention and detention facilities. The maintenance responsibilities of the Association shall include, but are not limited to, the following:

(a) The Association shall be responsible for the removal of any debris and sediment in the storm water retention facility.

(b) The Association shall be responsible for keeping any inflow and discharge pipes associated with any such facility free from obstruction.

(c) The Association shall be responsible for routine irrigation, mowing and maintenance of the grounds within the Common Elements not covered with water.

(d) The Association shall have the power and duty to keep the Common Elements free from debris and obstructions, to remove any obstruction which may be placed in the Common Elements and to take

such other corrective action as may be necessary to permit proper drainage, retention and detention of storm water through the Subdivision.

(e) The Association shall be responsible for the maintenance of all improvements within the Common Elements, including, but not limited to, fountain equipment, playground equipment, picnic shelter, basketball court, trees, and landscaping, walking paths and signs identifying the subdivision.

(f) The Association shall be responsible for providing trash and garbage collection for the Lots in the Subdivision at such reasonable times and in such manner as determined by the Association and shall have the power and duty to keep the Common Elements (including the streets located within the Subdivision) free from debris and obstructions, to remove any obstruction which may be placed in the Common Elements and to take such other corrective action as may be necessary.

(g) The Association shall be responsible to maintain and repair the streets within the Subdivision and to provide for snow removal services and such other services as the Board shall deem appropriate.

3.3 City of Troy Maintenance. The City of Troy shall have the right, but not the responsibility, to enter upon any Lot in the Subdivision to inspect and monitor any storm water detention basin areas or drainage facilities constructed in the Subdivision. In the event that the facilities are not properly constructed or maintained, upon the failure of the Declarant or the Association to take corrective action after being duly notified in writing by the City, the City shall have the right, but not the obligation to take whatever action is necessary to correct any improper construction or to maintain storm water detention basin areas and drainage facilities; provided, however, that the Declarant and/or the Association shall first have a reasonable period of time, taking into account the urgency of the matter, to take corrective action. Any cost incurred by the City of Troy for such maintenance may be assessed to the Association or, if the Association has ceased to exist, against individual Lots in accordance with the Declaration. Storm water drainage restrictions shall run with the land, and shall bind the Owners, successors, and assigns unless and until a modification is agreed to and approved by the Council of the City of Troy.

3.4 Regulations of Common Elements. The Association shall have the right to establish rules regarding the use of any portion of the Common Elements, provided such rules are not in conflict with any provision contained in this Declaration, and are reasonably established to protect the safety and welfare of the Owners and their guests, or are established to assure the continued service of the Common Elements for the purpose for which they were designed.

3.5 Lot Owners' Responsibility. The owners of Lots shall be responsible for the maintenance of their respective Lots and all improvements thereon which are not designated as Common Elements.

#### ARTICLE IV. UTILITY SERVICES

4.1 The Association shall arrange for the provision of utility services to the Common Elements under its control and shall pay the costs of such services separately metered to the Association by the utility company.

#### ARTICLE V. INSURANCE

5.1 Fire and Extended Coverage Insurance. The Board shall have the authority to and shall obtain appropriate property insurance for Common Elements which are owned by the Association, and any entrance features constructed by the Declarant or the Association, against loss as are ordinarily insured against by standard extended coverage endorsements, and all other perils which are customarily covered with respect to projects similar in construction, location and use, in amounts as determined appropriate by the Board. This insurance shall contain a waiver of subrogation of rights by the carrier as to the Association, its officers and Directors, and all Lot

Owners and occupants, and the rights of the various parties to collect pursuant to such insurance shall not be prejudiced by the acts or failure to act of any Lot Owner, Director or Officer of the Association, or any person under the control of the Association.

5.2 Liability Insurance. The Board shall have the authority to and shall obtain appropriate general liability insurance regarding occurrences on property in the control of the Association with such limits as the Board may determine. This insurance shall contain a “severability of interest” endorsement which shall preclude the insurer from denying the claim of a Lot owner because of negligent acts of the Association, the Board, or other Lot owners and shall include, without limitation, coverage for legal liability of the insureds for property damage, bodily injuries and deaths of persons in connection with the operation, maintenance or use of any Common Elements, and legal liability arising out of lawsuits related to employment contracts of the Association.

5.3 Other Association Insurance. In addition, the Board shall purchase Directors and Officers liability insurance, provided the same is available at reasonable cost, and may purchase and such other insurance as the Board may determine.

5.4 Cost of Insurance a Common Expense. The cost of insurance obtained by the Association shall be a common expense, payable by the Association. Certificates evidencing such insurance shall be issued to each Lot Owner and mortgagee upon request.

#### ARTICLE VI. GRANTS AND RESERVATIONS OF RIGHTS AND EASEMENTS

6.1 Right of Entry for Repair, Maintenance and Restoration. The Association shall have an easement and right of entry and access to, over, upon and through all of the Lots to enable the Association to perform its obligations, rights and duties pursuant hereto with regard to maintenance, repair, and replacement of any property owned by the Association or which the Association is obligated to maintain.

6.2 Easements for Utilities and Landscaping. There is hereby created upon, over and under all of the Lots, easements to the Association for ingress and egress to the Lots, and for the installation, replacing, repairing and maintaining of all utility lines and equipment thereon. It shall be expressly permissible for the Association to grant to the providing company permission to construct and maintain the necessary poles and equipment, wires, circuits and conduits on, above, across and under the Lots so long as such poles, equipment, wires, circuits and conduits do not unreasonably interfere with the use and enjoyment of the Lots. Should any utility company furnishing a service request a specific easement by separate recordable document, the Board shall have the right to grant such easement without conflicting with the terms hereof. Easements for the installation and maintenance of utilities, landscaping and drainage facilities are reserved as shown on the plat of the Subdivision. No structure or other materials or improvements, including fencing, that may damage or interfere with the installation and maintenance of utilities or landscaping shall be placed or permitted to remain within these easements. The easement area of each Lot shall be maintained continuously by the Owner of the Lot, except for those improvements for which a public authority or utility are responsible.

6.3 Easement for Maintenance. The Association shall have an easement over, under, and through all Lots and Common Elements, for ingress and egress and to allow the Association to perform its maintenance duties and other obligations and exercise its rights as set forth in this Declaration.

6.4 Common Elements Easement. Every Owner or Lot on which Common Elements are located hereby grants, conveys, and assigns to the Association an easement and right-of-way over the Lot for purposes of access to such Common Elements and for performing any landscaping, maintenance, and/or repair to such Common Elements.

6.5 Power of Attorney. Each Lot owner, by acceptance of a deed to a Lot, hereby irrevocably appoints the President of the Association, as his, her or its attorney-in-fact, to execute, deliver, acknowledge and record, for and in the name of such Lot owner, such deeds of easement and other instruments as may be necessary or desirable, in the sole discretion of the Board, to further establish or effectuate the foregoing easements. This power is for the benefit of each and every Lot owner, the Association, and the real estate to which it is applicable, runs with the land, is coupled with an interest, and is irrevocable.

6.6 General. The easements and grants provided herein shall in no way affect any other recorded grant or easement.

## ARTICLE VII. ASSESSMENTS AND ASSESSMENT LIENS

### 7.1 Types of Assessments.

(a) The Declarant, for each Lot, hereby covenants, and each Lot owner, by acceptance of a deed to a Lot, (whether or not it shall be so expressed in such deed), is deemed to covenant and agree to pay to the Association:

- (i) Monthly operating assessments,
- (ii) Special assessments for capital improvements, and
- (iii) Special individual Lot assessments,

all of such assessments to be established and collected as hereinafter provided. All such assessments shall be paid by each Lot owner whether or not any such Lot owner uses any of the Common Elements or uses any of the facilities or activities provided by Halifax Lodge.

(b) Until the Turnover Date, the Declarant shall not pay any assessments with respect to such Lots owned by it or conveyed by it to persons or entities affiliated with the Declarant or one of Declarant's members or to entities in which a member of the Declarant owns an equity interest.

7.2 Monthly Operating Assessments Prior to Turnover Date. Commencing on the filing of this Declaration with the Recorder of Miami County, Ohio through the Turnover Date, the owners of all Lots which have been conveyed by the Declarant shall pay monthly installments of operating assessments in such amounts as are determined by the Board from time to time, in advance, on or before the first day of each month. The amount of the initial monthly operating assessments shall be \$\_\_\_\_\_ but such assessment amount shall be subject to change in the sole discretion of the Board.

### 7.3 Monthly Operating Assessments After the Turnover Date.

(a) Promptly after the Turnover Date, and thereafter, prior to the beginning of each fiscal year of the Association, the Board shall estimate the expenses of the Association consisting of the following:

(i) the estimated next fiscal year's cost of the maintenance, repair, replacement, and other services to be provided by the Association;

(ii) the estimated next fiscal year's costs for insurance and bond premiums to be provided and paid for by the Association;

(iii) the estimated next fiscal year's costs for utility services charged to or otherwise properly payable by the Association;

(iv) the estimated next fiscal year's costs for the operation, management and administration of the Association, including, but not limited to, fees for property management, fees for legal and accounting services, costs of mailing, postage, supplies and materials for operating the Association, and the salaries, wages, payroll charges and other costs to perform these services, and any other costs constituting common expenses not otherwise herein specifically excluded;

(v) the estimated amount required to be collected to maintain a general operating reserve to assure availability of funds for normal operations of the Association, in an amount deemed adequate by the Board;

(vi) an amount deemed adequate by the Board to maintain a reserve for the cost of unexpected repairs and replacements of major capital items in the normal course of operations without the necessity of a special assessment, unless owners exercising a majority of the voting power of the Association waive the reserve requirement for the year in question; and

(vii) the estimated next fiscal year's costs for any fees, dues or expenses charged to the Association by Halifax Lodge.

(b) The Board shall thereupon allocate the remaining expenses among all Lots which have been conveyed by the Declarant or, if not yet conveyed, are occupied by residents. As a Lot is conveyed such purchaser shall, on the first day of the first month following such conveyance, commence paying assessments equal to those being charged to the owners of other Lots conveyed pro rated for the remainder of the month.

(c) The monthly operating assessment appurtenant to a Lot shall be payable in advance, in such installments as determined by the Board. The due dates of any such installments shall be established by the Board.

(d) If the amounts so collected are, at any time, insufficient to meet all obligations for which those funds are to be used, the deficiency shall be assessed by the Board among the Lots in proportion to the regular assessments.

(e) If assessments collected during any fiscal year are in excess of the funds necessary to meet the anticipated expenses for which the same have been collected, the excess shall be retained as reserves, and shall in no event be deemed profits nor available, except on dissolution of the Association, for distribution to Lot owners.

#### 7.4 Special Assessments for Capital Improvements.

(a) In addition to the monthly operating assessments, the Board may levy special assessments to construct, reconstruct or replace capital improvements on or constituting a part of the Common Elements required to be replaced by the Association, to the extent that reserves therefore are insufficient. The Board may also levy special assessments to satisfy any fees, dues or expenses charged to the Association by Halifax Lodge which have not otherwise been included in the monthly Operating Assessment.

(b) Any such assessment shall be divided equally among all Lots (except Lots owned by the Declarant prior to the Turnover Date) and shall become due and payable on such date or dates as the Board determines following written notice to the Lot owners.

7.5 Special Individual Lot Assessments.

(a) In addition to Monthly Operating Assessments and Special Assessments for Capital Improvements, the Board may levy an assessment against an individual Lot, or Lots for any of the following:

(i) Enforcement assessments and individual assessments for utility service that are imposed or levied in accordance with this Declaration, as well as expenses the board incurs in collecting those assessments;

(ii) Costs of maintenance, repair, or replacement incurred due to the willful or negligent act of an Owner or occupant of a Lot or their family, tenants, guests, or invitees, including, but not limited to, attorney's fees, court costs, and other expenses;

(iii) Costs associated with the enforcement of the Declaration or the rules and regulations of the Association, including, but not limited to, attorney's fees, court costs, and other expenses;

(iv) Costs or charges the Declaration or Bylaws permit.

7.6 Procedures for Levying Charge for Damages or Enforcement Assessment.

(a) Notice. Prior to imposing charges for damages to the Common Elements or other property, or assessments for the enforcement of violations of the provisions of the Declaration, Bylaws or rules and regulations of the Association, the Board shall give the Owner of the Lot written notice containing all of the following:

(i) A description of the property damaged or the violation;

(ii) The amount of the proposed charge or assessment;

(iii) A statement that the Owner has a right to a hearing before the Board to contest the proposed charge or assessment;

(iv) A statement setting forth the procedures to request a hearing; and

(v) A reasonable date by which the Lot Owner must cure the violation to avoid the proposed charge or assessment, if such an opportunity to cure is applicable.

(b) Hearing. A Lot Owner may request a hearing by delivering written notice of such request no later than the tenth day after receiving the notice provided in Subsection 7.6(a) of this Section. If the Lot Owners fail to make a timely request for a hearing, the right to such hearing shall be considered waived, and the Board may immediately impose a charge for damages or an enforcement assessment referenced in the notice provided in Subsection 7.6(a) of this Article or may allow a reasonable time to cure the violation before imposing a charge or assessment. If a Lot Owner requests a hearing, the Board shall not levy the charge or assessment before holding a hearing, and will, at least seven days prior to the hearing, provide the Lot Owner with a written notice of the date, time and location of the hearing. Within 30 days following a hearing at which the Board imposes a charge or assessment, the Board shall deliver a written notice of the charge or assessment to the Lot Owner.

(c) Manner of Notice. Any notice required under this Section to be served:



(i) upon the Lot Owners shall be delivered personally to the Lot Owner or any Occupant of the dwelling unit on the Lot, or mailed by certified mail, return receipt requested, or by regular mail, to the Owner at the address of the Lot, provided that if the Owner has provided the Association with an alternate address, all such notices shall be mailed by certified mail, return receipt requested, or ordinary mail to the Owner at such alternative address.

(ii) upon the Association shall be delivered personally to the President or Secretary of the Association or to any on-site representative of any professional management company hired by the Association; or mailed by certified mail, return receipt requested, to the President or Secretary of the Association or to the management company hired by the Association.

7.7 Effective Date of Assessments. Any assessment created pursuant to this Declaration shall be effective on the date determined by the Board. Written notice of the amount of any assessment shall be sent by the Board to the Lot owner subject thereto at least ten days prior to the due date thereof, or the due date of the first installment thereof, if to be paid in installments. Written notice shall be mailed or delivered to a Lot owner's Lot unless the Lot owner has delivered written notice to the Board of a different address for such notices, in which event the Board shall mail such notice to the last designated address. Failure of the Association to provide such notice within the above-described time periods, or failure of the Lot Owner to receive such notice, for whatever reason, shall not be a defense to the Lot owner's obligation to pay such assessment.

7.8 Effect of Nonpayment of Assessment; Remedies of the Association.

(a) If any assessment or any installment of any assessment is not paid within ten (10) days after the same has become due, the Board, at its option, without demand or notice, may (i) declare the entire unpaid balance of the assessment immediately due and payable; (ii) charge interest on the entire unpaid balance, (or on an overdue installment, alone, if it hasn't exercised its option to declare the entire unpaid balance due and payable), at the highest rate of interest then permitted by law, or at such lower rate as the Board may from time to time determine; (iii) charge reasonable return check charges and late fees, as determined from time to time by the Board; and (iv) restrict and/or suspend voting privileges and the use of any Common Elements or recreational facilities and the use of Halifax Lodge by the Owners and Occupants of the Lot. Such privileges and use may be restricted until the assessments with respect to the Lot have been paid.

(b) Monthly operating and both types of special assessments, together with interest, late charges and costs, shall be a charge and a continuing, perfected lien in favor of the Association upon the Lot against which each such assessment is made. (Whenever the term "costs" is used herein, it shall include, without limitation, reasonable attorneys' fees incurred by the Association, to the extent that the recovery of such fees is not prohibited by Ohio law.) Such lien shall be considered to be perfected upon the date levied by the Board and shall run with the land until paid.

(c) At any time after an installment of an assessment levied pursuant hereto remains unpaid for ten (10) or more days after the same has become due and payable, a certificate of lien may be filed with the Recorder of the county in which the Lot is located, pursuant to authorization given by the Board. The certificate shall contain a description of the Lot for which Assessments are unpaid, the name or names of the record owner or owners thereof, and the amount of the unpaid portion of the assessments, interest, late charges and costs, and shall be signed by the president or other officer of the Association.

(d) Each such assessment together with interest, late charges and costs, shall also be the joint and several personal obligation of the Lot owners who owned the Lot at the time when the assessment fell due. The obligation for delinquent assessments, interest, late charges and costs shall not be the personal obligation of that owner or owners' successors in title unless expressly assumed by the successors, provided, however, that

the right of the Association to any lien upon the Lot for non-payment of Assessments, and the right of the Association to suspend the voting privileges and restrict the use of Common Elements by the Owners and Occupants of such Lot shall not be impaired or abridged by reason of the transfer.

(e) The Association, as authorized by the Board, may pursue any other remedy available to the Association pursuant to Ohio law, and without limiting the generality of the foregoing, may bring an action at law against the owner or owners personally obligated to pay the same, and an action to foreclose a lien, or any one or more of these or other remedies. In any foreclosure action, the owners and Occupants shall be required to pay a reasonable rental for that Lot during the pendency of such action, and the Association, in any such action, shall be entitled to become a purchaser at the foreclosure sale.

(f) No owner may waive or otherwise escape liability for the assessments provided for in this Declaration by non-use of any facilities of the Association, or by abandonment of his, her or its Lot.

7.9 Priority of Lien. The lien of the assessments and charges provided for herein is prior to any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments of political subdivisions and liens of first mortgages that have been filed for record prior to the recording of the lien, and may be foreclosed in the same manner as a mortgage on real property in an action brought by the Association.

7.10 Certificate Regarding Assessments. The Board shall, upon demand, for a reasonable charge, furnish a certificate signed by the president, treasurer, secretary or other designated representative of the Association, setting forth whether the assessments on a specified Lot have been paid. This certificate shall be conclusive evidence of payment of any assessment therein stated to have been paid.

7.11 Advancements by Declarant. Declarant recognizes that until a sufficient number of Lots are conveyed to Owners, the expenses of the Association to maintain the Common Elements may be greater than the amount assessed. Declarant, at its option, may advance funds to the Association in such amounts as are appropriate to pay the maintenance expenses of the Association. Such advances shall be recognized by the Board of Directors of the Association as a loan repayable at such time and in such installment amounts, together with reasonable interest, as Declarant shall determine; it being Declarant's intention to permit the Association to operate and maintain the Common Elements for the benefit of all Members in the early phases of the Subdivision.

## ARTICLE VIII. ANNEXATION OF ADDITIONAL PROPERTY

8.1 Future Annexation by Declarant. Declarant reserves the right at any time, and from time to time, to add real property which may hereafter be acquired by Declarant to this Declaration so that such additional property will become in all respects part of the Subdivision.

8.2 Reservation of Right to Amend Declaration. Declarant hereby reserves the right at any time, and from time to time, to amend this Declaration in such respects as Declarant may deem advisable so as to include any real property hereafter acquired by the Declarant and the improvements constructed thereon as part of the Subdivision. Declarant further reserves the right from time to time to amend this Declaration in such respects as Declarant may deem advisable so as to add additional property to the definition of "Common Elements," so that such additional Common Elements will become subject to all of the terms and conditions of this Declaration, including those terms governing the maintenance and control of Common Elements by the Association.

8.3 Consent and Approval for Annexation Amendments. Declarant on its own behalf as the Owner of all Lots in the Subdivision and on behalf of all subsequent Owners, hereby consents and approves, and each Owner and each Owner's Mortgagee by accepting of a deed conveying such Ownership, or a Mortgage encumbering such interest, as the case may be, hereby consents and approves the provisions of this Article and

each Owner and the respective Mortgagees by the acceptance of a deed conveying such Ownership or a Mortgage encumbering such interest, as the case may be, hereby irrevocably appoints Declarant their Attorney-in-Fact, coupled with an interest, and authorizes, directs, and empowers such Attorney, at the option of the Attorney in the event that the Declarant exercises the rights reserved above to add to the Subdivision additional property to execute, acknowledge, and record for and in the name of such Owner an amendment of this Declaration for such purpose and for and in the name of such respective Mortgagees a consent to such amendment.

#### ARTICLE IX ENFORCEMENT

9.1 In the event of an actual or threatened violation or breach of any of these restrictions, or any amendments or supplement to them, by any Lot Owner or by any person or entity using or occupying any Lot, then Declarant, the Association, or any Lot Owner or Owners shall have the right to compel compliance with the terms and conditions of this Declaration, by any proceeding at law or in equity in and by any other course of action or use of any other legal remedies which may be appropriate. No delay or failure on the part of an aggrieved party to invoke any available remedy shall be held to be a waiver of any right or remedy available to the party upon the recurrence or continuation of the violation. Nothing herein shall be construed to require the Declarant, the Association, or any Lot Owner or Owners to take any action contemplated in this Article to enforce the restrictions.

9.2 All costs, expenses, and attorney fees incurred by the Declarant or the Association in connection with their efforts to compel compliance with the terms and conditions of this Declaration shall be paid by the Owner or Owners against whom such compliance is sought and all such costs, expenses, and attorney fees shall constitute a lien upon the Owner's Lot which lien shall be enforceable by appropriate proceedings at law or equity.

9.3 The Owner or grantee of any Lot which is subject to these restrictions, by acceptance of a deed or other instrument conveying title to the Lot, shall agree, and shall be deemed to have agreed to the filing of a certificate or affidavit of lien in the Office of the Recorder of Miami County, Ohio which shall constitute a lien upon the Owner's Lot for any and all unpaid assessments and any and all costs incurred by the Declarant or the Association in connection with their efforts to compel compliance with the terms and conditions of this Declaration, together with interest, costs and attorney fees incurred by the Declarant or the Association to collect such assessments or in connection with the enforcement of this Declaration. The Owner or grantee of any Lot shall agree, and shall be deemed to have agreed that the filing of the affidavit or certificate of lien shall constitute a lien upon the Lot for a period of five (5) years from the date of filing, unless sooner released or satisfied in the same manner provided by law for the release and satisfaction of mortgages on real property. The Owner or grantee of any Lot shall agree, and shall be deemed to have agreed, that such lien shall be prior to any lien or encumbrance subsequently arising or created, except liens for real estate taxes and assessments, and may be foreclosed in the same manner as a mortgage on real property in an action brought by the Declarant or on behalf of the Association.

#### ARTICLE X AMENDMENTS

10.1 Power to Amend. This Declaration may be amended only by the sole act of Declarant up to the time Declarant relinquishes control of the Association being the Turnover Date. Thereafter, amendment of this Declaration (or the Articles of the Association or Bylaws) shall require the consent of Lot owners exercising not less than seventy-five percent (75%) of the voting power of Lot owners. Notwithstanding the foregoing the consent of all Lot owners shall be required for any amendment effecting a change in:

- (a) the method of allocating liability for common expenses; or
- (b) the number of votes in the Association appertaining to any Lot;
- (c) to terminate the applicability of the Declaration and dissolve the Association;

10.2 Method to Amend. An amendment to this Declaration, adopted with the consents hereinbefore provided, shall be executed with the same formalities as this Declaration by two officers of the Association and shall contain their certification that the amendment was duly adopted in accordance with the foregoing provisions. Any amendment adopted by the Declarant or a duly empowered successor Declarant pursuant to authority granted it pursuant to this Declaration shall be duly executed by them with the same formalities as the execution of this Declaration and shall contain the certification of such signors that such amendment is made pursuant to authority vested in the Declarant or any duly empowered successor Declarant by this Declaration. Any amendment duly adopted and executed in accordance with the foregoing provisions shall be effective upon the filing of the same with the Recorder of Miami County, Ohio.

#### ARTICLE XI. LOT OWNER ACCEPTANCE

11.1 The Owner or grantee of any Lot which is subject to this Declaration, by acceptance of the deed or other instrument conveying title to the Lot, or by the execution of a contract of the purchase of the Lot, whether from Declarant or from a subsequent Owner of the Lot, shall accept, and shall be deemed to have accepted, the deed or other contract upon and subject to the restrictions contained in this Declaration, all of them being covenants running with the land.

#### ARTICLE XII. SEVERABILITY

12.1 Each restriction is hereby declared to be independent from the remainder of the restrictions. Invalidation of any one of the restrictions shall in no way affect any of the other restrictions.

The provisions of these restrictions are in addition to, and supplemental of, any ordinances, laws and regulations of the City of Troy, Ohio.

#### ARTICLE XIII. ASSOCIATION ADDRESS

13.1 All matters or plans required to be submitted to the Association for approval or review shall be addressed and delivered to:

Halifax Land Company, LLC  
701 N. Market Street  
Troy, Ohio 45373

or to such other address as the Association shall subsequently designate by written instrument recorded in the office of the Recorder of Miami County, Ohio.

#### ARTICLE XIV. MISCELLANEOUS PROVISIONS

14.1 Covenants Running With the Land. The covenants, conditions, restrictions, easements, reservations, liens and charges created hereunder or hereby shall run with and bind the land, and each part thereof, and shall be binding upon and inure to the benefit of all parties having any right, title or interest in or to all or any part of the Subdivision, and the Association and the Declarant and their respective heirs, executors, administrators, successors and assigns.

14.2 Enforcement. In addition to any other remedies provided in this Declaration, the Declarant, the Association, and each Lot owner, shall have the right to enforce, by any proceeding at law or in equity, all restrictions, conditions, covenants, easements, reservations, liens and charges set forth herein or in the Articles or Bylaws or now or hereafter imposed by or through the Association's rules and regulations. Failure by Declarant,

the Association or by any Lot owner to proceed with such enforcement shall in no event be deemed a waiver of the right to enforce at a later date the original violation or a subsequent violation, nor shall the doctrine of laches nor any statute of limitations bar the enforcement of any such restriction, condition, covenant, reservation, easement, lien or charge. Further, the Association and each Lot owner shall have rights of action against each other, and the Declarant shall have a right of action against each Lot owner, for failure to comply with the provisions of the Association Organizational Documents, rules and regulations, and applicable law, and with respect to decisions made pursuant to authority granted thereunder, and the Association and the Declarant shall have the right to assess reasonable charges against a Lot owner who fails to comply with the same, including the right to assess charges for the costs of enforcement and arbitration (including, without limitation, attorneys' fees not prohibited by law).

14.3 Captions. The captions of the various provisions of this Declaration are not part of the context hereof but are merely labels to assist in locating the various provisions hereof.

14.4 Finality of Association and Declarant Decisions. In all matters involving the interpretation and construction of the terms and provisions of this Declaration, the decisions of the Association and/or the Declarant shall be final and in no event be deemed arbitrary or capricious.

14.5 Non-Liability. Neither the Declarant nor the Association, nor any of their members, agents, employees, contractors, successors or assigns, shall be liable to any Owner or any other party for loss, claims, or demands asserted on account of their administration of the Association or these restrictions or the performance of their duties hereunder or any failure or defect in such administration and performance.

14.6 Rights of Declarant. Nothing in this Declaration shall be understood or construed to prevent Declarant or the employees, contractors, or subcontractors of Declarant from:

(a) Doing on any part or parts of the Subdivision property owned or controlled by Declarant, or its representative, whatever it determines may be reasonably necessary or advisable in connection with the completion of the work of developing the Lots within the Subdivision, of establishing the Subdivision as a residential community, or of disposing of the Lots;

(b) Constructing and maintaining on any part or parts of the Subdivision property owned or controlled by Declarant, or its representative, such structures as may be reasonably necessary for the completion of such work, the establishment of the Subdivision as a residential community, and the disposition of Lots by sale, lease, or otherwise;

(c) Maintaining such sign or signs on any of the Lots owned or controlled by any of them as may be necessary in connection with the sale of Subdivision Lots.

IN WITNESS WHEREOF, the undersigned have caused this instrument to be executed on the dates set forth below.

Halifax Land Company, LLC,  
an Ohio Limited Liability Company

By: \_\_\_\_\_  
Frank D. Harlow, Jr., General Manager

STATE OF OHIO  
COUNTY OF MIAMI, SS:

Before me, a notary public, personally appeared Frank D. Harlow, Jr., the General Manager and authorized member of Halifax Land Company, LLC, an Ohio Limited Liability Company, the Declarant, who acknowledged the execution of this instrument to be his free act and deed, on behalf of the Declarant, for the uses and purposes set forth herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal on this \_\_\_\_\_ day of \_\_\_\_\_, 2019.

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

This instrument prepared by: FAULKNER, GARMHAUSEN, KEISTER & SHENK, A Legal Professional Association, Courtview Center - Suite 300, 100 South Main Avenue, Sidney, Ohio 45365 | (937) 492-1271

X:\Files\Villas of Halifax Patio Homes Assoc\Dec of Sub-Cond&Rstri 1-17-19

EXHIBIT A

Situate in the City of Troy, County of Miami, in the State of Ohio and being Inlots numbered \_\_\_\_\_ through and including \_\_\_\_\_ in the Villas of Halifax Patio Homes Subdivision as recorded in Plat Book \_\_\_\_\_, Page \_\_\_\_\_ of the Plat Records of Miami County, Ohio.