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ORIGINAL

**MASTER DECLARATION
OF PROTECTIVE COVENANTS,
CONDITIONS, RESTRICTIONS, AND EASEMENTS
FOR NORTH CLAYTON DEVELOPMENT**

**IN THE CITY OF CLAYTON,
MONTGOMERY COUNTY, OHIO**

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**MASTER DECLARATION
OF PROTECTIVE COVENANTS,
CONDITIONS, RESTRICTIONS, AND EASEMENTS
FOR NORTH CLAYTON
CLAYTON, OHIO**

THIS MASTER DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS, RESTRICTIONS, AND EASEMENTS FOR THE NORTH CLAYTON DEVELOPMENT, dated as of the _____ day of _____, 2006, (this "Declaration"), by **NORTH CLAYTON DEVELOPMENT, LLC** ("Declarant"), an Ohio limited liability company.

WITNESSETH:

WHEREAS, Declarant owns that certain real property located in the City of Clayton, Montgomery County, Ohio, defined below as "North Clayton"; and

WHEREAS, Declarant is developing and intends to develop the North Clayton property as a mixed-use development, consistent with the Master Plan approved by the City of Clayton, which shall include residential, commercial, municipal, retail, live/work homes, residential, and other components; and

WHEREAS, Declarant wishes to enter into this Declaration to provide a general plan (i) for the ownership, sale, use, and occupancy of North Clayton; and (ii) for the subdivision, development and improvement of North Clayton in an orderly manner, with appropriate architectural, landscaping, construction, development, and maintenance controls to maintain the value, aesthetic appearance, and architectural harmony of North Clayton during and after development; and

NOW, THEREFORE, Declarant hereby declares North Clayton is now and shall be hereafter owned, held, developed, transferred, sold, conveyed, leased, subleased, used, maintained, occupied, and mortgaged or otherwise encumbered subject to the protective covenants, conditions, restrictions, and easements hereinafter set forth in this Declaration, and every grantee of any interest in North Clayton, by acceptance of a deed or other conveyance, whether or not such deed or other conveyance shall be signed by such grantee and whether or not such grantee shall otherwise consent in writing, shall take subject to this Declaration and shall be deemed to have assented to and agreed to the same.

ARTICLE 1
DEFINITIONS

1.1. **Certain Defined Terms.** As used herein, the following terms shall have the following meanings (such meanings to be applicable to both the singular and plural forms of the terms defined):

1.1.1. "**Aggregate Assessment Allocation**" for North Clayton shall mean the sum of the Assessment Allocations for all Lots within North Clayton pursuant to Lot Declarations recorded as of the date of the computation of Assessments for any given Fiscal Year.

1.1.2. "**Appointing Authority**" shall mean the Person that from time to time possesses the power, pursuant to Article 3 hereof, to appoint the members of the DCC.

1.1.3. "**Approve," "Approved" or Approval**" shall mean an express prior approval in a written statement signed by the approving Person. When Approval by Developer or the DCC is required hereunder, such Approval shall be in the sole discretion of Developer or the DCC, as the case may be, unless expressly provided otherwise in this Declaration.

1.1.4. "**Approved Builder**" shall mean any Person who now or hereafter acquires a Lot for the purpose of constructing a dwelling thereon for resale to a third party, and who is designated in a written instrument signed by the Declarant or the DCC as an "Approved Builder" for North Clayton. Such designation may, but need not be, stated in the executed contract governing acquisition of such Lot from Declarant, and is subject to revocation by Declarant or the DCC.

1.1.5. "**Assessment Allocation**" shall mean the number of square feet of Gross Development Area (or portion thereof) allocated by Developer to a Lot pursuant to the terms and provisions of a Lot Declaration.

1.1.6. "**Assessment Ratio**" of a Lot for any Fiscal Year shall mean a fraction, expressed as a percentage, the numerator of which is (x) the Assessment Allocation for such Lot and the denominator of which is (y) the Aggregate Assessment Allocation.

1.1.7. "**Assessments**" shall mean the amounts payable by an Owner under this Declaration in accordance with Section 6.5 hereof.

1.1.8. "**Board of Directors**" or "**Board**" shall mean the board of directors of the Master Owners Association, which is the governing body of the Master Owners Association.

1.1.9. "**Building**" shall mean and include, but not be limited to, both the main portion of a structure built for permanent use and all projections or extensions thereof, including, but not limited to, garages, outside platforms and docks, carports, canopies, dumpster storage areas, pools and pool decks, and porches.

1.1.10. "**Business Day**" shall mean any day, excluding Saturdays and Sundays, on which Huntington National Bank, Dayton, Ohio or its successor is open for business.

1.1.11. "City" means the City of Clayton, Ohio.

1.1.12. "City Property" shall mean any property publicly dedicated to and accepted by the City for public use as noted on any recorded subdivision for North Clayton and shall further have the meaning ascribed to it in Section 14.1 of this Declaration. The City Property shall be held, maintained, and repaired by the City at its expense.

1.1.13. "Commercial Lot" shall mean any Lot which is designated by Developer as a "Commercial Lot" pursuant to the terms and provisions of a Lot Declaration, including, but not limited to, those Lots which shall be predominately utilized for and upon which the Zoning Conditions permit the development and operation of office, retail, entertainment, hotel, general commercial, and all other types of non-residential uses.

1.1.14. "Commercial Unit" shall mean an individual condominium unit located at North Clayton within a Building constructed on a Commercial Lot and created pursuant to the Ohio Condominium Act, which unit is devoted primarily to office, retail, entertainment, general commercial, or any other type of non-residential use.

1.1.15. "Common Areas" shall mean and include, (i) any parcels of land that are a part of North Clayton and which are designated by Developer or Declarant, or a designee or agent of Developer or Declarant, as "Common Areas" on any recorded plat of North Clayton or which are the subject of any deed or other conveyance to the Master Owners Association, or a utility provider by Developer or Declarant, or a designee or agent of Developer or Declarant, including, but not limited to, any City Property if the City ceases to operate such City Property and the rights and interests therein are transferred to the Master Owners Association or any other party for the benefit of North Clayton; (ii) any and all easements, rights and other interests for the benefit of property within North Clayton, including but not limited to all easements, rights and other interests reserved in the deed of the property to be used for the City Property; and (iii) any other property or areas intended to be devoted to the common use and enjoyment of the Owners and Occupants of North Clayton and so indicated on the plat of subdivision for the applicable section (regardless of the location within North Clayton of such property or areas). Title to the "Common Areas" may be vested in a utility provider, Declarant, Developer, a designee of Developer, an Owner or Occupant, or the Master Owners Association, but shall not include any land defined as City Property unless such City Property would revert to the Master Owners Association. Developer or Declarant shall have the right to reserve easements for any purpose and for its benefit over, through, to, and in portions of said "Common Areas" at the time of its conveyance of the same to the applicable entity. Developer and/or the Master Owners Association shall have the right, power, and authority to dedicate any Common Areas and/or Common Facilities to a Governmental Authority or non-profit organization. Areas or interests that may be designated as

common areas with respect to an individual Lot shall not be considered Common Areas for purposes of this Declaration unless they are clearly designated as being for the benefit of North Clayton as a whole and are accepted or Approved as such by Developer or the Master Owners Association.

1.1.16. "Common Expenses" shall mean and include all of those expenses and costs associated with and related to the operation, maintenance, management, repair and/or replacement of the Common Areas and the Common Facilities for which Owners must pay Assessments in accordance with Section 6.5 hereof. "Common Expenses" shall not include any costs used to pay for the operation, maintenance, management, repair and/or replacement of City Property unless such City Property would revert to the Master Owners Association, as such costs will be paid by the Owners directly to the City via special assessments levied by the City.

1.1.17. "Common Facilities" shall mean and include any and all Buildings and other Improvements located on or in Common Areas.

1.1.18. "DCC" shall mean the Design Control Committee for North Clayton created and established pursuant to Article 3 hereof.

1.1.19. "Declaration" shall mean this Master Declaration of Protective Covenants, Conditions, Restrictions, and Easements for North Clayton, including the exhibits attached hereto, as amended and in effect from time to time.

1.1.20. "Developer" shall mean North Clayton Development, Inc., a Ohio corporation, and any other Person or Persons (the "Successor Developer") that succeed to the rights, duties, and obligations of Developer hereunder pursuant to a written document or instrument executed by an authorized representative of Developer and an authorized representative of Successor Developer, which is filed in the Office of the Recorder of Deeds for Montgomery County, Ohio and which sets forth and outlines the assignment by Developer of its rights and duties hereunder as "Developer" to the Successor Developer and the assumption by Successor Developer of the obligations of "Developer" hereunder. The term "Developer" as used in this Declaration shall be construed in all cases to include any Successor Developer. Declarant has selected Developer to carry out the development of North Clayton and intends that Developer have complete authority to exercise the rights and authority reserved herein to either Developer or Declarant. Upon conveyance by Declarant of all its interests in the real property constituting North Clayton, all rights of Declarant hereunder shall automatically be assigned and transferred to Developer, without further action or conveyance being required.

1.1.21. "Development Standards" mean the North Clayton Development Standards and the North Clayton Architectural Styles Notebook adopted and approved by the Declarant, Developer, and the City, as amended.

1.1.22. "Distribution Share" for a Lot shall mean, for any Fiscal Year, a fraction, expressed as a percentage, the numerator of which is (x) the Assessment Allocation for such Lot and the denominator of which is (y) the Maximum Total Assessment Allocation.

1.1.23. "Entertainment Uses" means any destination-oriented entertainment facility used for any theatrical, amusement, or entertainment purpose (whether "live" or not), sporting events venue (whether live or telecast), motion seat or ride/simulator theater, including the use of interactive media, film, videotape or other media (whether now or developed in the future) in connection therewith, technology-based interactive and non-interactive entertainment, ride simulators, arcade games and pinball and other devices, redemption games and virtual reality equipment, movie and/or IMAX theaters, and the like

1.1.24. "Fiscal Year" shall mean the fiscal year of the Master Owners Association which, unless and until otherwise approved by the Board of Directors, shall be the calendar year.

1.1.25. "Foreclosure" shall mean, without limitation: (i) the judicial foreclosure of a Mortgage; (ii) the exercise of a power of sale contained in any Mortgage; (iii) conveyance of the property encumbered by a Mortgage in lieu of foreclosure thereof; or (iv) any action commenced or taken by a lessor to regain possession or control of property leased to a lessee in a transaction commonly known as a "sale/leaseback."

1.1.26. "Governmental Authority" shall mean the United States of America, the State of Ohio, Montgomery County, the City, and any agency, authority, court, department, commission, board, bureau or instrumentality of any of them.

1.1.27. "Gross Development Area" shall mean the maximum number of square feet of enclosed floor area intended for the exclusive use by the Owner or Occupant thereof and its customers, whether or not actually developed, leased or occupied, which is permitted by Developer pursuant to the terms of a Lot Declaration (or otherwise Approved by Developer) to be developed on a Lot. Unless included by a Lot Declaration, Gross Development Area shall not include: (i) outside selling areas which are not heated or air conditioned; (ii) loading docks and truck ramps; (iii) upper levels of multi-deck storage areas located on any single floor; (iv) rooftop mechanical structures; (v) penthouses used for mechanical purposes; and (vi) any other areas excluded under the applicable Lot Declarations. If not otherwise specified in a Lot Declaration, Gross Development Area shall be measured from the exterior face of the exterior walls.

1.1.28. "Improvement" or "Improvements" shall mean and include every structure and all appurtenances thereto of every kind and type and any other man-made or man-caused physical change upon, over, across, above or under North Clayton or part thereof. "Improvements" shall include, but not be limited to, the following facilities and activities, whether of a permanent or temporary nature: any and all Buildings, out buildings, streets, roads, fountains, access roads,

driveways, sidewalks, walkways, pedestrian malls, bike paths, ways or trails, running or jogging paths, traffic control devices and signs, parking lots and other parking areas, loading areas, signs, canopies, awnings, trellises, fences, lawns, landscaping (including, without limitation, landscaping of balconies, plazas and other portions of Buildings), plazas, patios, recreational facilities such as tennis courts and swimming pools, shelters, security and safety devices, bridges, construction trailers and other temporary construction outbuildings, screening walls, retaining walls, stairs, decks, benches and other exterior furniture, hedges, windbreaks, plantings, planted trees and shrubs, poles, exterior air conditioning, heating or air-handling equipment, water softener fixtures or equipment, aerials, antennas, lighting fixtures, drainage structures, communications equipment, including, without limitation, microwave dishes and relay equipment coaxial and fiber optic cables, W/FI, satellite transmitting and/or receiving ground stations, poles, pumps, wells, tanks, reservoirs, pipes, lines, meters, towers and other facilities used in connection with water, sewer, gas, electric, telephone, regular or cable television, or other utilities, and the color, texture, or material or other change to any Improvement.

1.1.29. "Lot" shall mean any parcel of land, including any airspace and/or subsurface rights, or any parcel consisting solely of an airspace estate, that is part of North Clayton and that is designated as a "Lot" by Developer on any subdivision or pursuant to a Lot Declaration filed by Declarant. Subject to Section 4.3 hereof, if the entirety of a Lot should be submitted to the Ohio Condominium Act, or if any portion of a Lot should be subdivided into lots intended for any other multi-owner regime, then the entirety of such property so submitted to the Ohio Condominium Act or so subdivided shall be deemed a single Lot for purposes of this Declaration. Subject to Section 4.3 hereof, if only a portion or part of a Lot is submitted to the Ohio Condominium Act, each of (x) that portion of the Lot submitted to the Ohio Condominium Act and (y) the remaining portion of the Lot not so submitted to the Ohio Condominium Act shall be deemed a separate "Lot" for purposes of this Declaration. Subject to Section 4.3 hereof, if a Lot is split, divided or subdivided with the written Approval of Developer, the resulting portions shall be deemed separate "Lots" for purposes of this Declaration if and to the extent Developer so provides in its written Approval.

1.1.30. "Lot Declaration(s)" shall mean and include each and all of those certain Lot Covenants, Conditions, and Restrictions for North Clayton that shall be Approved by Developer and executed and recorded by Declarant at the time of conveyance of a Lot, and that shall govern and control the use, operation, and development of each Lot, to the extent the same are in full force and effect.

1.1.31. "Maintenance and Operational Activity" shall mean any activity or function that takes place on an ongoing basis or intermittently for the purpose of maintaining or operating any Improvement subsequent to the time when the construction or installation of such Improvement

has been completed or substantially completed, or for the purpose of enabling or facilitating any Project Use to take place. A Project Use is not a Maintenance and Operational Activity.

1.1.32. "Master Owners Association" shall mean North Clayton Master Owners Association, Inc., a Ohio nonprofit corporation organized by Developer pursuant to Article 6 hereof, and its successors and assigns, if any.

1.1.33. "Maximum Total Assessment Allocation" for North Clayton shall mean the sum of the Assessment Allocations as of the date of the computation of Assessments for any given Fiscal Year for all Lots.

1.1.34. "Mortgage" shall mean a mortgage or other similar security instrument now or hereafter duly recorded in the Office of the Recorder of Deeds for Montgomery County, Ohio, conveying a lien upon or security title to North Clayton, any part thereof or any interest or estate therein, or any Improvements thereon, or any lease of North Clayton, any part thereof or any interest or estate therein, or any Improvements thereon, in a transaction commonly known as a "sale/ leaseback."

1.1.35. "Mortgagee" shall mean the holder of a Mortgage.

1.1.36. "Mortgagor" shall mean the grantor of a Mortgage.

1.1.37. "Neighborhood" shall mean an aggregation of Lots in a defined area of North Clayton characterized by common permitted uses, architectural design or size of Buildings, market value ranges, development density or other distinguishing factors. At the present time, the Developer intends to develop six different kinds of Neighborhoods as this term is used herein, to wit: the Village Core; Civic Area; Office and Retail Area; Live/Work Homes; Single Family Lots; and Multi-Family Homes.

1.1.38. "North Clayton" shall mean all that real property described on Exhibit "A" attached hereto and by this reference made a part hereof and any real property hereafter made subject to this Declaration pursuant to Article 7 hereof.

1.1.39. "Ohio Condominium Act" shall mean Ohio Revised Code Sections 5311.01, *et seq.*, as the same may be amended from time to time.

1.1.40. "Occupant" shall mean (i) any Person leasing, possessing or using any of the real property subject to this Declaration; (ii) any Person owning a Residential Unit located on a Lot which is subject to the Ohio Condominium Act; or (iii) any Person owning a Commercial Unit.

1.1.41. "Owner" shall mean any Person or Persons, including, without limitation, Declarant or Developer, who own or hold an aggregate fee simple interest in an entire Lot, as shown by and in the records of the Office of the Recorder of Deeds for Montgomery County, Ohio, subject to the following special rules:

1.1.41.1. Any Person having an interest in such real property solely as security under a Mortgage shall not be deemed an Owner, unless such Person shall have excluded the Mortgagor from possession thereof by appropriate legal proceedings following a default under such Mortgage or has acquired fee simple title to such property by Foreclosure;

1.1.41.2. Individual tenants or lessees of any portion of such real property shall not be deemed an Owner thereof, unless otherwise agreed by the fee simple or remainder title holder thereof and Approved in writing by the Master Owners Association;

1.1.41.3. Any Person holding or owning any easements, rights-of-way or licenses that pertain to or affect any such real property shall not be deemed an Owner solely by reason thereof;

1.1.41.4. With respect to a Lot created as a result of the submission of such Lot to the Ohio Condominium Act or a Lot otherwise subject to the Ohio Condominium Act or any other multi-owner regime, then for purposes of this Declaration, the condominium association of those Persons owning the Residential Units and/or Commercial Units that are a part of the condominium created pursuant to the Ohio Condominium Act or community association of those Persons owning the residential lots that are a part of the residential development shall be deemed the Owner of the Lot for purposes of this Declaration, including without limitation membership in the Master Owners Association and the obligation to pay Assessments in accordance with this Declaration; and

1.1.41.5. Except as otherwise provided in the preceding subsection of this definition, in the event an Owner of any Lot consists of more than one Person, such Persons shall, within thirty (30) days after the date of their acquisition of any Lot, execute and deliver to the Master Owners Association a written instrument, including a power of attorney appointing and authorizing one Person as their agent to receive all notices and demands to be given pursuant to this Declaration and to cast all votes and to take any and all actions required or permitted to be taken by them under this Declaration. Such owning Persons may change their designated agent by written notice to the Master Owners Association, but such change shall be effective only after actual receipt of such notice by the Master Owners Association.

1.1.42. "Person" shall mean any corporation, partnership, co-tenancy, joint venture, individual, business trust, real estate investment trust, trust, banking association, federal or state savings and loan institution, or any other legal entity, whether or not a party hereto.

1.1.43. "Prime Rate" shall mean the interest rate announced, from time to time, by Huntington National Bank at its principal office in Dayton, Ohio, or by its corporate successor, as the Prime Rate (which rate is only a benchmark, is purely discretionary, and is not necessarily the best or lowest rate charged borrowing customers of Huntington National Bank). In the event such

bank discontinues the practice of announcing such rate, the term Prime Rate shall mean the highest rate charged by such bank on short term, unsecured loans to its most creditworthy large corporate borrowers for commercial loans of short-term maturities.

1.1.44. "Project" shall mean North Clayton, as defined herein.

1.1.45. "Project Interest" shall mean a continued role of Developer in North Clayton. A Project Interest may be a management, supervisory or oversight role as well as a direct or indirect ownership or economic interest. A Project Interest shall conclusively be deemed to exist until a written document or instrument executed by an authorized representative of Developer is filed in the Office of the Recorder of Deeds for Montgomery County, Ohio, referring to this Declaration and specifically canceling the Project Interest.

1.1.46. "Project Use" shall mean the intended functions of, or activities that take place on a temporary or ongoing basis on, in or with respect to any parcel or element of real property that is part of North Clayton, all of which shall be established, approved, governed, and controlled by Developer pursuant to the terms and provisions of each of the Lot Declarations.

1.1.47. "Proposed Plans" shall have the meaning ascribed to that term in Section 4.2 of this Declaration.

1.1.48. "Proposed Work" shall have the meaning ascribed to that term in Section 4.2 of this Declaration.

1.1.49. "Requirement of a Governmental Authority" shall mean and include any law, ordinance, order, requirement, rule, or regulation of a Governmental Authority, including, without limitation, the Zoning Conditions.

1.1.50. "Residential Lot" shall mean any Lot in, on, or upon which the Zoning Conditions and Developer permit the development and construction of a residential project and which is designated by Developer as a "Residential Lot" pursuant to the terms and provisions of a Lot Declaration with the predominant use of such Residential Lot being the development, construction, operation, and/or leasing of Residential Units.

1.1.51. "Residential Unit" shall mean any single apartment, residential condominium unit, townhouse, house, or other similar structure located on a Residential Lot at North Clayton.

1.1.52. "Retail Uses" means any establishment wherein the primary occupation is the sale of merchandise in small quantities for use or consumption by an end user. This term shall also include photographic and portrait studios, health clubs, salons, and eating establishments.

1.1.53. "Zoning Conditions" shall mean the zoning ordinances and related conditions presently or hereafter applicable to North Clayton, and all modifications, amendments, variances, special uses or special exceptions thereto hereafter made or granted by a Governmental Authority.

1.2. Other Terms. All capitalized terms used in this Declaration that are not defined in this Article I shall have the meanings set forth elsewhere in this Declaration.

ARTICLE 2

PURPOSE OF THIS DECLARATION

2.1. Purpose. The purpose of this Declaration, in conjunction and harmony with each of the Lot Declarations, is to ensure the proper use and appropriate development, improvement, and management of all real property which comprise and constitute North Clayton so as to provide a harmonious development that will promote the general welfare of the Owners and Occupants thereof and will protect the present and future value of North Clayton and all parts thereof; to ensure the orderly and attractive development and use of North Clayton; to prevent the erection in North Clayton of any Improvements built of improper or unsuitable design and/or materials; to prevent any haphazard and inharmonious improvement of Lots; to protect Owners against improper use of surrounding Lots that will depreciate the value of their Lots; to encourage the erection of attractive Improvements; to provide for the orderly and effective maintenance and operation of North Clayton; to provide for the construction, installation, and maintenance of Common Facilities; and to preserve the architectural integrity, aesthetic appearance, and economic value of North Clayton and the Improvements constructed thereon from time to time.

2.2. Run With the Land. This Declaration and all of the provisions hereof are and shall be real covenants running with the land within North Clayton and shall burden and bind North Clayton for the duration hereof. To that end, this Declaration shall be deemed incorporated into all deeds and conveyances hereinafter made by Declarant, Developer and/or any Owner or Occupant. Every Person, including a Mortgagee, acquiring or holding any interest or estate in any portion of North Clayton shall take or hold such interest or estate, or the security interest with respect thereto, with notice of the terms and provisions of this Declaration, and in accepting such interest or estate in, or a security interest with respect to, any portion of North Clayton, such Person shall be deemed to have consented to this Declaration and all of the terms, provisions, and conditions hereof.

ARTICLE 3

THE DCC

3.1. Creation. There is hereby established the Design Control Committee (the "DCC") for North Clayton. The number of members comprising the DCC at any given time shall be determined from time to time by the Appointing Authority, in its sole and absolute discretion, but shall not be fewer than three. This fact notwithstanding, unless otherwise stated herein, at least one member of the DCC must be a representative of Developer and one must be a representative of the City (the

"City Representative"). The individual who shall serve as the City Representative shall be as designated by the City from time to time and may be replaced at will by the City.

3.2. Purpose. The DCC is formed and established to provide an effective means of ensuring that all Buildings and other Improvements developed, constructed, installed, rebuilt, altered and renovated within North Clayton shall be aesthetically consistent and in harmony with the Development Standards and via the orderly and systematic review and approval processes outlined in Article 5 hereof.

3.3. Appointment of Members.

3.3.1. With the exception of the City Representative, all members of the DCC shall be appointed by the Appointing Authority. Members of the DCC need not be Owners, Occupants, or members of the Master Owners Association.

3.3.2. As long as Developer holds a Project Interest in North Clayton, Developer shall be the Appointing Authority and shall appoint all members of the DCC except the City Representative and shall have the right to remove any and all members except the City Representative from the DCC prior to the expiration of their respective terms, with or without cause, and may, from time to time, assign in writing, for a definite or indefinite period of time, this right of appointment and removal, of one or more of said members, to the Master Owners Association. When any such assignment occurs, for the specified period of time and with respect to the appointment or removal of that member or members only, the assignee of the right shall be the Appointing Authority.

3.3.3. When Developer no longer holds a Project Interest in North Clayton, the Master Owners Association shall be the Appointing Authority, and the Master Owners Association shall appoint all members of the DCC except the City Representative and shall have the right to remove, prior to the expiration of their respective terms, any and all members except the City Representative from the DCC, at any time and from time to time for any reason, with or without cause.

3.4. Term of Members. Terms of the members of the DCC will be staggered, with two of the initial members holding office for two (2) years, and the third holding office for three (3) years. There shall be no limit on successive terms. The Appointing Authority may remove, however, any members of the DCC except the City Representative prior to the expiration of their respective terms, at any time and from time to time for any reason, with or without cause, and, in such event, shall appoint a replacement or replacements for the member or members so removed. If any member of the DCC shall resign from the DCC prior to the expiration of his or her term, such member shall be replaced in conformance with Section 3.3 hereof. Notwithstanding the foregoing, however, to the extent any member of the DCC is not replaced as provided for in Section 3.3

hereof at the expiration of his or her term, such member shall be deemed to have been reappointed or reselected, as the case may be, to serve an additional two-year term on the DCC.

3.5. Chairman of the DCC. The Appointing Authority shall designate one of the members of the DCC to be Chairman of the DCC. The Person appointed Chairman shall serve in that capacity from the date of his or her appointment until such time as he or she has resigned as Chairman, has been removed, his or her term on the DCC has expired, or a successor has been appointed as provided herein, whichever occurs sooner. As of January 31 of each calendar year, the Appointing Authority shall determine whether to reappoint as Chairman the Person then serving in that capacity or to appoint someone else to that position and shall take action accordingly. The Appointing Authority may remove a Person as Chairman of the DCC at any time and from time to time, with or without cause and, in such event, shall appoint a replacement Chairman. The Appointing Authority also may appoint any member of the DCC as Acting Chairman to perform the duties of the Chairman in the absence of the Chairman.

3.6. DCC Staff.

3.6.1. The Appointing Authority may also appoint, employ or engage staff and consultants to the DCC, including, without limitation, architects, planners, engineers, attorneys, accountants and other Persons whose knowledge, expertise or skills will assist the DCC in carrying out its functions. Any costs and expenses incurred pursuant to this Section shall be paid for as provided for in Section 6.5 hereof.

3.6.2. These staff members and consultants may be authorized by the DCC to attend its meetings and to participate in all discussions that take place at such meetings, to advise the DCC in their respective areas of expertise, and to perform any and all other tasks requested by the DCC to assist the DCC in carrying out its functions.

3.7. Change in Developer. If, at any time, Developer assigns its rights as the "Developer" hereunder by, inter alia, filing in the Office of the Recorder of Deeds for Montgomery County, a written instrument or document executed by an authorized representative of Developer, which sets forth and outlines the assignment by Developer of its rights as "Developer" hereunder to another Person or Persons, the power of appointment of the members of the DCC, the staff thereof and the consultants thereto automatically shall pass to any Person or Persons that become the new Developer.

3.8. Voting. The affirmative vote or written consent of a majority of the members of the DCC shall constitute the decision of the DCC on any matter before the DCC. Voting need not occur at a meeting of the DCC but may take place through polling of members in writing or over the telephone or by any other means of communication.

3.9. Power and Authority of the DCC.

3.9.1. The DCC shall have the power and authority expressly conferred upon it pursuant to this Declaration and any power and authority set forth in any of the Lot Declarations which are delegated and/or assigned to the DCC by Developer. Once the Declarant no longer has a Project Interest in North Clayton the DCC shall further have the power and authority to designate Approved Builders in the North Clayton development.

3.9.2. All actions of the DCC shall be in accordance with or consistent with the purpose and intent of this Declaration, the Development Standards, and any specific criteria set forth in or promulgated pursuant hereto.

3.10. Bylaws; Meetings. The DCC may (but shall not be obligated to) adopt bylaws governing the time, place and manner in which the business of the DCC will be conducted. The DCC shall publish or otherwise make available its meeting schedule to all interested Persons. In order to be placed on the agenda of any meeting of the DCC, any matter shall have been submitted to the Chairman of the DCC, or his or her designee, no less than seven (7) Business Days prior to the scheduled meeting date at which action thereon is requested, unless such time period is waived by the Chairman of the DCC in his or her sole discretion.

3.11. Subcommittees. The DCC may (but shall not be obligated to) designate from among its members an executive subcommittee and one or more other subcommittees. Each such subcommittee shall have the authority set forth in the resolution or other action establishing said subcommittee.

3.12. No Disqualification of Members. No member (including the Chairman and any member of the DCC and no staff member) or consultant employed by the DCC shall be disqualified from taking part in any DCC action or discussion on account of such Persons having a financial interest in the matter under consideration.

3.13. Establishment of Additional Protective Covenants, Conditions, Restrictions, and Easements. Developer shall have the right and power at any time to create, declare and establish additional protective or restrictive covenants, conditions, and easements, in addition to those contained in this Declaration (herein called "Additional Covenants") if Developer, in its sole discretion, determines such establishment is advisable. Developer shall establish such Additional Covenants by recording appropriate documents in the Office of the Recorder of Deeds for Montgomery County, Ohio. Notwithstanding the foregoing, however, no Additional Covenants shall be created, declared, and/or established if such Additional Covenants shall have the effect of (i) materially and adversely affecting the value and marketability of any Lot; (ii) materially and adversely affecting the means of ingress and egress to and from any Lot; (iii) materially increasing the costs associated with the construction and development of the Improvements on any Lot,

which construction and development of said Improvements have been previously Approved by Developer pursuant to the terms and provisions of the applicable Lot Declaration; (iv) materially altering or changing the design and/or layout plans for the Improvements proposed to be constructed and developed on any Lot as such plans have been previously Approved by Developer pursuant to the terms and provisions of the applicable Lot Declaration; or (v) materially and adversely delaying the ability of an Owner to develop its Lot in accordance with plans that have been previously Approved by Developer pursuant to the terms and provisions of the applicable Lot Declarations.

3.14. Limitation on Liability. Subject to any applicable Requirement of a Governmental Authority, Declarant, Developer, any manager, member, director, officer, agent, or employee thereof, the DCC, any member thereof, any staff member thereof, any consultant thereto, the Appointing Authority, or any manager, member, director, officer, agent or employee thereof, shall not be liable to any Owner or Occupant or to any other Person for any loss, damage or injury, or claim thereof arising out of or in any way connected with the performance or nonperformance of the DCC's or the Appointing Authority's duties under this Article 3 unless due to the willful misconduct, gross negligence or bad faith of Declarant, Developer, any manager, member, director, officer, agent, or employee thereof, the DCC, any member thereof, any staff member thereof, any consultant thereto, the Appointing Authority, or any manager, member, director, officer, agent or employee thereof, as the case may be. The Master Owners Association shall indemnify, protect, defend, and hold harmless Declarant, Developer, the manager, members, directors, officers, agents, or employees thereof, the DCC, the members of the DCC, any staff member thereof, any consultant thereto, the Appointing Authority, or any manager, member, director, officer, agent, or employee thereof, from and against all claims, expenses, liabilities, losses, damages, and costs, including reasonable attorneys' fees, actually incurred in connection with, arising from, due to, or as a result of the performance or non-performance of the DCC's or the Appointing Authority's duties under this Article 3 unless due to the willful misconduct, gross negligence or bad faith of Declarant, Developer, any manager, member, director, officer, agent, or employee thereof, the DCC, any member thereof, any staff member thereof, any consultant thereto or the Appointing Authority, or any manager, member, director, officer, agent or employee thereof, as the case may be.

ARTICLE 4

CONTROL AND LAND-USE

4.1. Restrictions. To further the purpose of this Declaration as set forth in Article 2 hereof and in order to satisfy the conditions and requirements of the Zoning Conditions, North Clayton shall be subject to the restrictions outlined in this Article.

4.2. Buildings.

4.2.1. No Building shall be constructed on any parcel of land that is part of North Clayton unless that parcel constitutes a Lot Approved by Developer pursuant to the terms and provisions of a Lot Declaration. Prior to an Owner commencing, or permitting to be commenced, any work on the construction or alteration or removal of any Buildings or other Improvements on its Lot (the "Proposed Work"), (i) the plans and specifications (the "Proposed Plans") for the Proposed Work shall be Approved by Developer in accordance with the terms, provisions, and procedures set forth in the applicable Lot Declaration, and (ii) the Proposed Plans for the Proposed Work must be Approved by the DCC in accordance with the terms, provisions, and procedures set forth in Article 5 of this Declaration.

4.2.2. No Proposed Work shall be initiated by any Owner or Occupant on its Lot unless and until all Proposed Plans shall have been Approved by Developer pursuant to the terms and provisions of the applicable Lot Declaration and until the same have been Approved by the DCC pursuant to the terms and provisions of this Declaration; provided, however, that alterations or remodeling, which (i) take place completely within a Building; (ii) do not change the Project Use; (iii) do not change the exterior appearance of such Building or alter the structural integrity of such Building; (iv) are not visible from the outside of the Building; and (v) do not create a demand for extraordinary services or utilities, may be undertaken without the Approval of the DCC hereunder or without the Approval of Developer under the terms and provisions of the applicable Lot Declaration, unless specifically prohibited by said Lot Declaration.

4.3. No Subdivision. Unless otherwise provided for in the applicable Lot Declaration, no Lot shall be split, divided or subdivided nor shall the size, dimensions or boundaries of any Lot be otherwise changed or altered without the prior written Approval of Developer.

4.4. Use Restrictions.

4.4.1. Developer shall have the sole and exclusive right and authority to designate in the applicable Lot Declaration the Project Use for any Lot. No Project Use shall be engaged in and no change shall be made in any Project Use designated and Approved by Developer in the applicable Lot Declaration unless and until all plans for such Project Use or such change in Project Use shall have been Approved by Developer pursuant to the terms and provisions of the applicable Lot Declaration.

4.4.2. Each Lot shall be used only for the Project Use designated and Approved by Developer in and pursuant to the terms and provisions of the Lot Declaration applicable to such Lot.

4.4.3. Except as set forth in this subsection or as specifically permitted in applicable Lot Declarations, no Residential Lot shall be used for Entertainment Uses or Retail Uses.

4.4.4. No portion of North Clayton shall be used for any of the purposes listed and outlined below:

- (a) Flea Market;
- (b) Pawn shop, pawn shop;
- (c) Massage Parlor, but this exclusion shall not be deemed to apply to spa facilities;
- (d) Adult Bookstore;
- (e) Facility for the sale of paraphernalia for use with illicit drugs;
- (f) Gambling for money facility or operation, including, but not limited to: off-track or sports betting parlor, table games such as black jack poker slot machines, video poker/black-jack/keno machines or similar devices; or bingo hall. Notwithstanding the foregoing, the prohibition shall not apply to governmental sponsored gambling activities, or charitable gambling activities, so long as such governmental and/or charitable gambling activities are incidental to the business operation being conducted by the tenant, or to activities which might be associated with gambling but where no money changes hands;
- (g) Dry cleaning or laundry plants (except as to an establishment which receives and dispenses items for laundering and/or dry cleaning but the processing of which such items is done elsewhere); or
- (h) Tattoo parlor.

4.5. Temporary Structures. No temporary Buildings or other temporary Improvements, other than temporary construction, sales, or leasing trailers or offices, shall be permitted on any Lot unless otherwise Approved by Developer.

4.6. Maintenance.

4.6.1. Each Owner shall be responsible for keeping, or for causing to be kept, its Lot (whether or not improved), Buildings, and other Improvements in a safe, clean, neat, and orderly condition and shall prevent rubbish from accumulating on its Lot and shall prevent any rubbish on its Lot from being blown or carried by the wind or otherwise transported onto the surrounding Common Areas, public areas, or other Lots. Landscaping of a Lot shall be maintained in a neat and orderly manner. Each Owner shall keep, or cause to be kept, its Lot and all Improvements in good working order and repair, including, but not limited to, painting and repairing Improvements, replacing worn or faded awnings or other external features, washing buildings and windows, care and refreshment of any flowers or planter boxes, prohibiting for sale signs or any other signs or displays on or in the windows of Residential Units, prohibiting clothing or towels or other such items from being hung on balconies or porches, and other appropriate external care of all landscaping and Improvements. Such Owner shall make, or shall cause to be made, diligent

efforts to prevent and promptly correct any unclean or unsightly conditions or Improvements on its Lot.

4.6.2. During any periods of construction or demolition of any Improvements on a Lot, the Owner of such Lot shall comply with, or cause to be complied with, the Development Standards. Furthermore, if in the course of any construction or demolition activity, including, but not limited to, activity to establish a utility hook-up to a Lot, any existing utility lines, streets, curbs or other Improvements are damaged in any way, the Owner or Occupant conducting such construction or demolition shall restore or repair such lines, streets, curbs or other Improvements to a condition at least as good as existed prior to the damage, and shall pay any cost or expenses, including attorneys fees, incurred by any Person other than such Owner or Occupant arising from or as a result of such damage and any repairs necessitated by such damage shall be completed within ten (10) Business Days.

4.6.3. The DCC and/or Developer may determine that a Maintenance and Operational Activity either causes or results in a violation of or is inconsistent with the purpose and intent of this Declaration and thereafter require the Person or Persons, so engaging in or permitting such activity to cease or to correct the activity and/or conditions that are violative of or inconsistent herewith.

4.6.4. All obligations of this Section shall be carried out in a manner at least consistent with the levels and standards of quality existing at comparable first class facilities located within the Clayton, Ohio, area.

4.7. Compliance with Zoning. Without the Approval of Developer or unless otherwise permitted pursuant to the applicable Lot Declaration, no Owner or Occupant shall file with any Governmental Authority having jurisdiction over North Clayton or any part thereof any application or petition for zoning, rezoning, special use permit, or zoning variance, any subdivision plan, plat or application, any request for annexation, or any similar filing affecting the use of any portion of North Clayton. To the extent the same are applicable, the Owners and Occupants of North Clayton shall develop and use their respective Lots in accordance with the Zoning Conditions, and all other requirements of this Declaration.

4.8. Hazardous Materials. Each Owner and Occupant shall, at all times, comply with the following:

4.8.1. Each Owner and Occupant agrees that it shall not bring onto and/or into North Clayton any Hazardous Materials, except to the extent the same are of a type and are held only in a quantity normally used in connection with the construction, occupancy, and/or operation of buildings and other improvements which are comparable to those Buildings and other Improvements located within the applicable Lot and which are in compliance with applicable

Hazardous Materials Laws. As used herein, "Hazardous Materials" shall mean any oil, flammable explosives, asbestos, urea formaldehyde, radioactive materials or waste, or other hazardous, toxic, contaminated or polluting materials, substances or waste, including, without limitation, any "hazardous substances," "hazardous wastes," "hazardous materials," or "toxic substances" (collectively, the "Hazardous Materials") under the Federal Water, Pollution Control Act (33 U.S.C. § 1251, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. §6901, et seq.), the Safe Drinking Water Act (42 U.S.C. §3000f, et seq.), the Toxic Substances Control Act (15 U.S.C. §2601, et seq.), the Clean Air Act (42 U.S.C. § 7401, et. seq), the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. § 9601, et seq.), and other applicable local, state and federal laws, ordinances, or regulations currently in force or enacted in the future (collectively, the "Hazardous Materials Laws"). Under no circumstances may any Owner or Occupant locate, place and/or store (or cause to be located, placed, and/or stored) an underground storage tank ("UST") in, on, and/or under its Lot or any other area of North Clayton.

4.8.2. Each Owner and Occupant shall, to the extent the same are applicable to its Lot and at its own expense, procure, maintain in effect and comply with all conditions of all permits, licenses, and other governmental and regulatory approvals required for each Owner's and Occupant's use of its Lot and the Improvements located thereon, including, without limitation, discharge of (appropriately treated) materials or wastes into or through any sanitary sewer and storm drainage facilities serving its Lot.

4.9. Conduct. No noxious or offensive activities shall be carried out upon or within any Lot, nor shall anything be done or placed on any Lot, that is or may become a nuisance, or that causes disturbance or annoyance or interferes with the enjoyment of Occupants of other Lots or of the general public outside the Lots. No activity shall be conducted upon any Lot that is or might be unsafe or hazardous to any Person or property. No sound shall be emitted from any Lot that is unreasonably loud or annoying. No odor shall be emitted from any Lot that is noxious or offensive to others. No light shall be emitted from any Lot that is unreasonably bright or causes unreasonable glare. Pets kept in Residential Units must comply with these limitations, and the Master Owners Association may establish rules regarding pets as set forth in the following subsection. The Master Owners Association shall make the determination of whether an activity or conduct violates this provision, and its determination shall be final.

4.10. Association Rules and Regulations. In addition to the requirements of this Article 4 and other provisions of this Declaration, the Master Owners Association may from time to time adopt such rules and regulations governing the conduct of Persons and the maintenance, operation and use of Lots and the Common Area as it may deem necessary or appropriate in order to assure the

peaceful and orderly use and enjoyment of North Clayton and the enhancement of the appearance and reputation of North Clayton, all as more specifically provided in Article 6.

4.11 Affirmative Covenants and Restrictions.

4.11.1 Compliance with Declaration. This Declaration applies to all Lots, Common Areas, Common Facilities, and all Improvements located in North Clayton. All property located throughout the Project will comply with this Declaration unless expressly exempted. The Board will have the responsibility of administering this Declaration throughout North Clayton. The administration of special covenants, conditions and restrictions created on one or more additional Declarations, with regard to any additional property to be added later shall be accompanied by a separate and additional homeowners association. However, any Lot within any phase of the North Clayton development will at all times remain subject to this Declaration as well.

4.11.2 Compliance with Rules and Regulations. All provisions of this Declaration, any supplemental declaration, and any rules and regulations promulgated by the Board which govern the conduct of Owners and which provide for sanctions against Owners will also apply to all users, guests and invitees of any Lot. Every Owner will cause all users, guests and invitees of Owner's Lot to comply with the Declaration, and applicable supplemental declaration, and the rules and regulations adopted by the Developer and the Board contained within those documents, and will be responsible for all violations and losses to the Common Areas and Common Facilities caused by such occupants, regardless that such Occupants are fully liable and may be sanctioned for any violation of the Declaration, supplemental declaration, and rules and regulations adopted according to these documents.

4.11.3 Use of Lot. Each Lot will be used only for its designated use as set forth in the plat of subdivision creating such Lot. Notwithstanding the foregoing, Developer reserves for itself so long as it owns a Project Interest in North Clayton the right to carry on normal sales activity anywhere on the North Clayton Property, including the operation of models and sales offices.

(a) **Quiet Enjoyment.** No Owner or User will permit anything to be done or kept on his/her Lot or within his/her Building that will obstruct or interfere with the rights of quiet enjoyment of any other Owner or resident, or that may constitute a nuisance, or that may be determined to be an immoral or illegal act under applicable law. Without limiting the generality of the this restriction, on any Lot there will be no open fires, no loud music, no audible, exterior alarms, no other noxious or offensive activity which may be or become an annoyance to other Owners or Users or no other activity which would create any odors or other unsightly, unsanitary, unhealthy, offensive or detrimental conditions, and no activities which would increase the costs of insurance or result in the cancellation of insurance on any Lot.

(b) Parking. Vehicles will be parked only in the garage or driveway serving the Lot or in other such areas as have been approved and designated by the Board or Developer for parking of vehicles. No garage will be enclosed, modified or otherwise used so as to reduce its capacity for parking vehicles below that originally approved by the Developer or DCC. The only exception is that a Builder may temporarily convert a garage into a sales or construction office, provided that it is converted back to a garage within thirty (30) days after cessation of construction and sale of new dwellings by such Builder. Garage doors will be required to remain closed except during ingress or egress or when the garage is actively being used by the Owner or User. No operative or inoperative passenger automobiles, trucks, trailers, mobile homes, recreation vehicles or boats will be parked or placed on or within the streets at any time except as permitted by the rules of the Association. This Section will not be construed to prohibit parking on a temporary basis for providing goods and/or services to any Owners or to prohibit on-street parking by guests or invitees of the Owners.

(c) Maintenance of Improvements. No Lot, Building, or other Improvement will be permitted to become overgrown, unsightly or to fall into disrepair, and all Buildings and Improvements will at all times be kept in good condition and repair and adequately painted or otherwise finished in accordance with specifications established by the Developer or the DCC. Each Owner, for himself and his successors and assigns, hereby grants to Developer and the Master Owners Association, jointly and severally, the right to make any necessary repairs, alterations or maintenance approved by the Board to carry out the intent of this provision and they further agree to reimburse Developer or the Association for any expenses actually incurred in carrying out the repair, alteration or maintenance of the dwelling. The Association may assess and collect any and all reimbursement (for itself or on behalf of the Developer, as the case may be), as a compliance assessment.

(d) Maintenance of Lawn. Every Owner will have a continuing obligation to maintain the lawn and plantings on his/her Lot in a good state of repair as originally approved by the Developer or the DCC, including keeping all grass mowed and landscaping property irrigated and trimmed. No Lot, nor any part of the areas dedicated for public use, will be used as a dumping ground for grass and landscaping trimmings except for properly screened composting for on-site garden use. Owners will also be responsible for the mowing and maintaining of all lawn areas between the sidewalk and the street.

(e) Maintenance of Landscape Improvements. All landscaping is required to be completed before final completion of the construction of the Building or Improvements on a Lot, weather permitting. All landscape improvements, once installed, will be properly maintained, weeded, mulched and kept free of trash and debris.

(f) Gardens. Any plot within a Lot utilized for the propagation of edible vegetation will not be permitted to exceed a total of eighty (80) square feet. Any such plot will be properly maintained to prevent the growth of weeds or other noxious plants. The plot needs to be fully screened by means of ornamental or decorative plants, shrubs and trees. All gardens will be maintained in accordance with the landscaping standards established by the Developer and the DCC.

(g) Screening. Garbage, trash and refuse will be placed within containers which will be concealed and contained within the Building or will be concealed by means of a screening wall of materials similar to and compatible with that of the Building on the Lot or will be concealed by sufficient landscaping to provide a permanent screen at all times of the year (i.e. evergreen vegetation). These screening elements will be designed so as not to attract attention, and will be located in as reasonably inconspicuous a manner as is possible.

(h) Fences and Walls. No fence, wall, dog run, animal pens or fence of any kind, specifically including the use of hedge or other growing plants as a fence, and for any purpose, except a retaining wall, will be erected, placed or allowed to remain on any Lot without the specific approval of the Developer or DCC.

(i) Exterior Lighting. No exterior lights, the principal beam of which shines upon portions of property other than the Lot upon which the exterior lights are located, which cause unreasonable interference with the use and enjoyment of the other property or Common Areas or Common Facilities will be permitted on any Lot. Except for holiday decorative lights, all exterior lights must be approved in accordance with the prior approval of the Developer or DCC. Holiday decorative lights may be displayed for two (2) months prior to and one (1) month after any commonly recognized holiday for which such lights are traditionally displayed. Holiday lights must not be of such size, intensity and quantity so as to unreasonably disturb or annoy neighboring Lots.

4.12 Affirmative Covenants and Restrictions.

4.12.1 Nuisance. No Owner will permit anything to be done or kept on any Lot which would obstruct or interfere with the rights of quiet enjoyment of other Owners or annoy them by unreasonable noises or otherwise. No Owner will commit or permit nuisance on the Lot or commit any immoral or illegal act on the North Clayton property, Lot or Common Area. Each Owner agrees to comply with all of the requirements of the Board of Health and any other Governmental Authorities with respect to the Lot and will remove all rubbish, trash and garbage from the Lot. No exterior lights, the principal beam of which shines on portion of the North Clayton property other than the Owner's Lot upon which the lights are located, or would otherwise cause unreasonable interference with the use and enjoyment of the property and the Common Areas. Music, either

live or by recording device, that is so loud as to disturb adjacent Owners is prohibited. Also prohibited is the discharge of firearms, provided the Board and the Association will have no obligation to take action to prevent or stop such discharge.

4.12.2 Noise. No speakers, horns, bells, whistles or other sound devices will be located, used or placed on any Lot except security devices used exclusively for security purposes which are activated only in emergency situations or for testing of same. Music, whether live or by recording device, that is so loud as to disturb adjacent Owners is prohibited.

4.12.3 Odors. No odors will be permitted to arise or be emitted from any Building or exterior receptacle which that render any portion of the Building or the Lot unsanitary, unsightly, offensive or detrimental to of the remainder of the North Clayton property or to the Owners or residents.

4.12.4 View Restrictions. No vegetation, dwelling or other obstruction will be planted, constructed or maintained on any Lot in a location or of such height as to unreasonably obstruct the view from any other Lot, any pedestrian and/or vehicular traffic on the sidewalks or streets within the North Clayton property, or which otherwise would pose a risk of Persons on the North Clayton property. However, the Developer makes no representation or warranty concerning the view from any Lot, or how that view may be affected by subsequent dwellings on any other Lot. Each Owner of a Lot will be responsible for periodic trimming, pruning and thinning of all hedges, shrubs and trees located on his or her Lot so as to not unreasonably obstruct the view of adjacent Owners. If an Owner fails to perform necessary trimming, pruning or thinning, the Association will have the right to enter upon the Lot for purposes of performing such work.

4.12.5 Open Burning. No exterior fires will be permitted except barbeque fires or fire pits within receptacles made for same. During the construction of a Building or other Improvements on the Lot, no burning of any trash and no accumulation or storage of litter, new or used building materials, or trash of any kind will be permitted to remain on any Lot.

4.12.6 Waste Disposal. Trash and garbage containers will not be permitted to remain outside any Building or on a Lot except on days of trash collection.

4.12.7 Exotic and Vicious Animals. No animals of any kind, including those which are considered exotic and specifically those breeds of dogs which are considered vicious, such as pit bulls and Dobermans, may be kept on any Lot. Each Owner may have a maximum of two (2) pets, which may include domestic dogs, domestic cats and other usual household pets. No pets may be bred commercially. No permitted household pet will be allowed to run loose or leave the Owner's Lot unless on a leash under the control of the Owner or any person capable of controlling the animal, or otherwise become a nuisance to any other Owner. Owners are responsible for cleaning up after their dogs on their own Lot, the Common Areas and along any publicly

dedicated streets, parks, and facilities, and other areas on the North Clayton Property. All animals maintained on a Lot must be kept within an enclosure, yard or patio. No "runs" or kennels will be permitted or maintained on the Lot. The Board will have the right to prohibit maintenance of any animal within the Property which, in the opinion of the Board, constitutes a private nuisance to any other person. Any person bringing an animal upon or keeping an animal within the North Clayton property will be liable pursuant to the laws of the State of Ohio to each and all persons for any injury or damage to persons or property caused by such animal.

4.12.8 Accessory Structures. No metal or plastic storage sheds, barns, shacks, dog houses, above ground swimming pools, or other permanent or temporary accessory structures shall be placed on any Lot for any purpose.

4.12.9 Antennas and Satellite Dishes. No exterior antennas, aerials, satellite dishes, or other apparatus for the transmission of television, radio, satellite or other signals of any kind will be placed, allowed or maintained on any Lot without the prior consent of the Developer or the Board, unless completely contained within the dwelling, not exceed twenty-four (24) inches in diameter and placed on a dwelling so as not be visible from adjacent Lots. No satellite dishes or dish antennas will be permitted in the front or side yards of any Lot.

4.12.10 Alteration of Improvements. No Improvements on any Lot will be remodeled or altered in any way which materially changes the exterior appearance of the Building, involves the erection of a new Improvement or otherwise increases the area under roof of any Building (including the garage area) unless detailed plans and specifications have been submitted for approval to the DCC as detailed in this Declaration. The plans and specifications will be in the form and will contain such information as the Developer and the Board may reasonably require through the DCC, as the same may be amended or supplemented from time to time.

4.12.11 Alteration of Easement Areas and Facilities. No structure, planting or other material other than driveways or sidewalks will be placed or permitted to remain on any Lot which may damage or interfere with any easement for the installation or maintenance of utilities, or which may change, obstruct or retard direction or flow of any drainage channels. Any Improvement, planting or other material which represents a safety problem (i.e. sight restriction) will be removed by the Board and at Owner's expense. No lines, wires or other devices for communication purposes, including telephone, television, data and radio signals, or for transmission of electric current or energy will be constructed, placed or maintained anywhere in or on the Lot which would interfere with those installed by the public utility services unless the same will be in or by conduits or cables constructed, placed and maintained underground or concealed in, under or on a Lot.

4.12.12 Encroachments. Catch basins and drainage areas on the North Clayton property are for the purpose of natural flow or water only. No obstructions or debris will be placed in these areas. No person other than Developer may obstruct or rechannel the drainage flows after location and installation of drainage swales, storm sealers or storm drains. Developer hereby reserves a perpetual easement across the North Clayton property for the purpose of altering drainage and water flow.

4.12.13 Mineral Exploration. No oil or water drilling, oil or water development operations, oil refining, quarrying or mining operations of any kind will be permitted on any Lot. No derrick or other structure designed for use in boring for water, oil, natural gas or other minerals will be erected and maintained or permitted on any Lot.

4.13. Community Associations. Subject to this Article 4, if all or any portion of a Lot should be submitted to the Ohio Condominium Act, then the Owner of such Lot shall establish and create, or cause to be established and created in accordance with applicable Ohio law, a condominium association of those Persons owning the Residential Units and/or Commercial Units that are a part of such condominium, which association shall be deemed the Owner of the Lot for purposes of this Declaration, including, without limitation, the obligation to pay Assessments in accordance with this Declaration and membership in the Master Owners Association.

ARTICLE 5 APPROVAL OF PLANS

5.1. Jurisdiction.

5.1.1. Each Owner, by accepting a deed or other instrument of conveyance of a portion of North Clayton, acknowledges that as the developer of North Clayton, Developer has a substantial interest in ensuring that the Buildings and other Improvements within North Clayton enhance Developer's reputation as a community developer and do not impair Developer's ability to market, sell, and/or lease any portions of North Clayton. Therefore, subject to Section 4.2.2 hereof, each Owner agrees that it shall not initiate, or permit to be initiated, any Proposed Work unless and until Developer has given its prior written Approval of the Proposed Plans for such Proposed Work as provided for in the applicable Lot Declaration. In reviewing and Approving any Proposed Plans pursuant to the terms and provisions of each of the Lot Declarations, Developer shall be acting in its own interest and shall have no duty to any other Person. The rights reserved to Developer under the various Lot Declarations are or will be exercised as independent rights of Developer and not as an agent or instrumentality of the DCC or the Master Owners Association.

5.1.2. The DCC shall have all of the Approval rights conferred to it under this Declaration and all of those additional rights under the Lot Declarations delegated and/or assigned to it by Developer, if any, from time to time.

5.2. Approval Required. Subject to the provisions of Section 4.2.2 hereof, no Proposed Work may be initiated without the Approval of the Proposed Plans by the DCC pursuant to the terms and conditions of this Declaration and without the Approval by Developer of the Proposed Plans for the Proposed Work in accordance with the terms and provisions of the applicable Lot Declaration. The provisions of this Article shall be in addition to, not in lieu of, the requirements, covenants, conditions and restrictions contained in any of the Lot Declarations.

5.3. Application.

5.3.1. Subject to 4.2.2 hereof, prior to commencing, or permitting to be commenced, any Proposed Work on its Lot, an Owner must submit to the DCC, in accordance with any and all procedures outlined herein or as may be promulgated by the DCC in the future, (i) a written certification from Developer wherein Developer certifies that it has Approved the Proposed Plans for the Proposed Work as required pursuant to the terms, provisions, and procedures set forth in the applicable Lot Declaration, including copies of the Plans (as defined in the applicable Lot Declarations), and (ii) the Proposed Plans showing, inter alia, the proposed site layout, structural design, exterior elevations, exterior materials and colors, signage, landscaping, drainage, lighting, utility facility layout, and screening therefor and any other features of the Proposed Work reasonably required by the DCC.

5.3.2. In reviewing any submitted Proposed Plans, the DCC may consider with respect to the proposed Improvements the following: visual impact, natural platforms and finish grade according to specifications approved by the DCC, harmony of external design with surrounding structures and the environment, location of the proposed Improvements in relation to surrounding structures and plant life, and other related aesthetic considerations. The DCC may also consider other aesthetic features of the submitted Proposed Plans as it, in its sole discretion, may deem relevant. Each Owner acknowledges that determinations as to such matters are purely subjective and opinions may vary as to the desirability and/or attractiveness of particular Buildings and other Improvements. Decisions of the DCC may be based upon purely aesthetic considerations. The DCC shall have no power or authority to Approve or disapprove other non-aesthetic features of the submitted Proposed Plans unless such power and authority has been delegated and/or assigned to the DCC by Developer.

5.3.3. Within fifteen (15) Business Days after receipt of each submission of Proposed Plans, the DCC shall (i) if it Approves the Proposed Plans, advise in writing the Owner submitting such Proposed Plans, at an address specified by such Owner at the time of submission, of the

DCC's Approval of the Proposed Plans; or (ii) if the DCC disapproves the Proposed Plans, advise the submitting Owner in writing of such disapproval, specifying in detail the segments or features of the Proposed Plans which are objectionable and suggestions, if any, for the curing of such objections. The DCC shall also make other reasonable efforts, at no cost to the DCC or Developer, to aid the submitting Owner in preparing Proposed Plans that would be acceptable to the DCC. If any costs are incurred by the DCC in connection with such efforts, the payment of such costs by the submitting Owner shall be a condition precedent to final Approval. Any subsequent resubmission by any Owner shall be reviewed and acted upon by the DCC as outlined herein as soon as reasonably practicable. Any Proposed Plans which are resubmitted by any Owner to the DCC and which are subsequently Approved by the DCC pursuant to this Section shall be deemed to have been Approved by Developer as such Approval is required pursuant to the terms and provisions of the applicable Lot Declaration.

5.3.4. The Proposed Plans required to be submitted to the DCC pursuant to this Article 5 shall be submitted in both hard copy form and in an electronic form Approved by the DCC. The Owner shall submit four (4) copies of the Proposed Plans to the DCC for its consideration.

5.4. Effect of Approval. Approval of any Proposed Plans with regard to a Lot (i) shall not be deemed a waiver of the DCC's right, in its discretion, to disapprove similar plans, or any of the features or elements included therein, submitted for any other Lot, and (ii) shall be final as to the Lot for which they have been submitted; provided, however, that the Improvements on such Lot are constructed and maintained in substantial conformity with the Approved Proposed Plans.

5.5. Plan Submittals to Governmental Authority. Under no circumstances shall a Person submit its Proposed Plans to the Governmental Authority having jurisdiction for review and approval unless and until it shall have received DCC Approval of such Proposed Plans, unless otherwise Approved by Developer.

5.6. Payment of Fees. The DCC may require payment of reasonable fees by Persons requesting Approval of Proposed Plans for Improvements with said payment to be used to cover costs of the DCC and compensation of its consultants. Furthermore, the DCC may promulgate and adopt, as part of the DCC's rules, fee schedules for applications and inspections.

5.7. Design Criteria. The following criteria, together with the criteria outlined elsewhere in this Article 5, or other criteria adopted by the DCC in accordance with Section 5.8 hereof, shall be used by the DCC to determine the suitability of all proposed Improvements in or on North Clayton.

5.7.1. Building Codes and Development Standards. Any Improvement, including but not limited to electrical, plumbing and mechanical systems, shall be of an appropriate type of construction or installation as defined in applicable Requirements of a Governmental Authority and/or the Development Standards.

5.7.2. Landscaping. Landscaping shall be designed to unify the Building and its site, existing adjacent buildings, and existing adjacent landscaping. Plant and paving materials shall be consistent with any Development Standards and shall be appropriate in type and amount to local climatic conditions and to the overall design and theme of development in or on North Clayton. Landscaping, as Approved by the DCC, shall be installed within thirty (30) days after occupancy or substantial completion of the Building, whichever occurs first, subject to such reasonable extensions of time as may be granted by the DCC for weather conditions or other circumstances beyond the reasonable control of an Owner.

5.7.3. Parking, Loading, and Unloading Areas. Except as maybe Approved by Developer pursuant to any of the Lot Declarations, parking shall only be permitted on any street or drive that is striped or designated by Developer as an area in or upon which on-street parking is permitted, and loading and unloading of vehicles shall only be permitted on any street or drive that is striped and designated by Developer as an area in or upon which loading and unloading is permitted.

5.7.4. Service, Screening, and Storage Areas. Garbage and refuse containers shall be concealed and contained within the Buildings or other areas Approved by Developer. These elements shall be integrated with the concept of the Building plan, shall be designed so as not to attract attention, and shall be located in the most inconspicuous manner possible. Unless specifically Approved by the DCC hereunder and Developer pursuant to the terms and provisions of the applicable Lot Declaration, no materials, supplies, garbage, refuse, or equipment shall be stored in any area on a Lot except inside a closed Building, so that they are not visible from neighboring Lots, Common Areas, or public streets.

5.7.5. Exterior Materials, Colors. Finished building materials shall be applied to all sides of a Building and shall be harmonious and compatible with colors of the natural surroundings and other adjacent Buildings. In this regard, hard-surface materials such as brick, stone, masonry, marble, granite, limestone, finished concrete, glass and metal curtain walls are encouraged and desired.

5.7.6. Signs. All signs, including neon or illuminated signs, and other advertising devices located within North Clayton shall be designed, erected, altered, reconstructed, moved, and maintained in whole or in part in accordance with the Proposed Plans Approved by the DCC hereunder and by Developer pursuant to the terms and provisions of the applicable Lot Declaration. No sign or other advertising device of any nature, including neon or illuminated signs, shall be placed or maintained on any Lot, on any Building or other any Improvement on any Lot, or on any other portion of North Clayton without the prior Approval of the DCC hereunder and Developer pursuant to the terms and provisions of the applicable Lot Declaration and the Development Standards. The location and height of Building identification signs shall conform to

design criteria for signs adopted by the DCC and the terms and provisions of each of the Lot Declarations and the Development Standards.

5.7.7. Utilities, Mechanical Equipment, and Roof Projections.

5.7.7.1. All mechanical equipment, utility meters, and storage tanks shall be located in such a manner as not to be visible to the general public from the Lots, Common Areas, or public streets. If concealment within the Building is not possible, then such utility elements shall be concealed by screening. The location, placement, operation, and maintenance of antennae, satellite dishes, and other communications devices, if any, on the tops of roofs or other portions of any Improvements located within North Clayton shall be consistent with any applicable Requirement of a Governmental Authority and, in addition, shall be subject to the Approval of Developer or DCC, who may impose additional requirements or limitations.

5.7.7.2. Penthouses and mechanical equipment screen walls shall be of a design and materials similar to and compatible with those of the Building.

5.7.7.3. Underground utility lines throughout North Clayton shall be used unless exception is made and/or granted by Developer pursuant to the terms and provisions of the applicable Lot Declaration. Unless otherwise Approved by Developer pursuant to the terms and provisions of the applicable Lot Declaration, no transformer, electric, gas, water, or other meter of any type or other apparatus shall be located on any power pole or hung on the outside of any Building, and they must be placed in locations Approved by Developer on or below the soil surface, and where so placed, shall be adequately screened from view.

5.7.7.4. Large items such as air conditioning, ventilating, or other mechanical equipment must be placed in locations Approved by Developer and, where so placed, shall be adequately enclosed or screened from view.

5.8. Additional Design Criteria. In addition to the design criteria set forth herein, the DCC may from time to time promulgate and adopt, with the prior written Approval of Developer, additional design criteria that are not inconsistent with those set forth in this Article 5 and that implement the statement of purpose set forth in Article 2 hereof. Any such additional design criteria promulgated by the DCC may from time to time be amended by further action of the DCC with the prior written Approval of Developer.

5.9. Variances. The DCC, in its sole discretion, may from time to time authorize variances from compliance with any of the design criteria set forth in or promulgated in accordance with this Declaration when circumstances such as topography, natural obstructions, hardship, aesthetic, environmental, or planning objectives or considerations may so warrant. Each such variance must be Approved by a majority of the members of the DCC. If such a variance is granted, no violation of this Declaration shall be deemed to have occurred with respect to the matter for which the

variance was granted. The granting of a variance shall not operate to waive or to render unenforceable any of the terms and provisions of this Declaration for any purpose except as to the particular Lot, provision, and instance covered by the variance, nor shall the granting of a variance be deemed to set a precedent with respect to any subsequent requests for variances. Notwithstanding any provision to the contrary contained in this Declaration, the DCC shall not delegate to any single member or group of members or to any other Person the power to grant variances pursuant to this Section 5.9.

5.10. Construction After Approval. Pursuant to the terms hereof, upon receipt of Approval from the DCC, the Owner to whom the Approval is given, as soon as practicable, shall satisfy any conditions thereof and diligently proceed with the commencement and completion of all Approved construction. Unless work on the Approved construction on any Lot located within North Clayton shall be commenced within six (6) months after the later of (i) the date of such Approval or (ii) the date upon which the Owner acquires its Lot and thereafter continuously prosecuted to completion, the Approval automatically shall be revoked, unless the DCC has given written permission for an extension of time for commencing work or otherwise Approved a different schedule for the commencement of such work.

5.11. Communications to DCC and Developer. All communications and submittals to the DCC and Developer shall be addressed in accordance with Section 13.15 hereof.

5.12. Limitation on Liability. Subject to any applicable Requirement of a Governmental Authority, Developer, any manager, member, director, officer, agent, or employee thereof, the DCC, any member thereof, any staff member thereof, any consultant thereto, the Appointing Authority, or any manager, member, director, officer, agent or employee thereof shall not be liable to any Owner or Occupant or to any other Person for any loss, damage or injury, or claim thereof arising out of or in any way connected with the performance or nonperformance of the DCC's or the Appointing Authority's duties under this Declaration. The Master Owners Association shall indemnify, protect, defend, and hold harmless Developer, any manager, member, director, officer, agent, or employee thereof, the DCC, the members of the DCC, any staff member thereof, any consultant thereto, the Appointing Authority, or any manager, member, director, officer, agent, or employee thereof, from and against all claims, expenses, liabilities, losses, damages, and costs, including reasonable attorneys' fees, actually incurred in connection with, arising from, due to, or as a result of the performance or non-performance of the DCC's or the Appointing Authority's duties under this Declaration.

5.13. Rights of Third Parties. Approval by the DCC and/or Developer, as the case may be, of any Plans with regard to a Lot shall not constitute any judgment or opinion on the part of the DCC, Developer, or any members thereof, or the Appointing Authority or any officer, director, employee,

agent, or member thereof, as to the quality or soundness of the matters described in such plans or their fitness for any particular use or application. In particular, such Approval shall not be construed as a representation to third parties concerning the quality of the construction of any Improvements or the absence therefrom of any defects.

5.14. Insurance Requirements for Lots.

5.14.1. Property Insurance. Effective upon the commencement of the construction of any Improvements on a Lot, each Owner or Occupant shall obtain and maintain, or cause to be obtained and maintained, a policy of property insurance as is reasonably available from time to time and used with respect to property located in Montgomery County, Ohio, which is of a similar size and which has a similar use and occupancy (which at the date of this Declaration is a policy insuring against "causes of loss - special form"), including coverage for earthquake loss and, at such Owner's or Occupant's sole option, coverage for flood loss, covering all Improvements (including all signs affixed to all Buildings and other Improvements) on its Lot, in an amount consonant with the full replacement value of such insurable Improvements; provided, however, for all Improvements insured under any such policy, the policy may contain a reasonable deductible provision. Any of the insurance required under this Section 5.14.1 may be carried under a "blanket" policy or policies covering other properties of the Owner or Occupant and its subsidiaries, controlling or affiliated corporations. Each Owner or Occupant shall receive such insurance coverage annually and make (or cause to be made) any changes necessary to satisfy the requirements of this Section 5.14.1. Each Owner and/or Occupant shall furnish to the Master Owners Association certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Section 5.14.1. Unless otherwise Approved by the Master Owners Association, any insurance required pursuant to this Section 5.14.1 shall be issued by a financially responsible insurance company licensed to do business in the State of Ohio with a rating of A-VIII or better by The A.M. Best Company ("Best's"). During the term of this Declaration, the insurance industry may change, among other things, the scope of coverage afforded by the various policies of insurance named in this Declaration or the nomenclature by which the scope of coverages contemplated under the various policies of insurance named in this Declaration are known in the insurance industry. In the event of such or similar change, it is the intent of this Declaration and the obligation of the Owners and Occupants at all times during the term of this Declaration to maintain the scope of insurance coverage afforded at the date of this Declaration by the forms of the various policies of insurance named in this Declaration, to the extent that maintaining the same is reasonably or commercially practicable, regardless of the nomenclature by which such scope of coverages may be or become known in the insurance industry.

5.14.2. General Liability Insurance. Each Owner or Occupant shall at all times during the term of this Declaration maintain or cause to be maintained commercial or comprehensive general liability insurance covering such Owner's or Occupant's Lot, the Improvements located thereon, and any rights or interests in the Common Areas, insuring against the risks of bodily injury, property damage and personal injury liability, with a limit of not less than Two Million and No/100 Dollars (\$2,000,000.00) in the general aggregate, One Million and No/100 Dollars (\$1,000,000.00) for products and completed operations aggregate, One Million and No/100 Dollars (\$1,000,000.00) per occurrence, and One Million and No/100 Dollars (\$1,000,000.00) for personal injury and advertising injury and which amounts otherwise shall be reviewed and adjusted by the Master Owners Association annually for increases recommended by insurance industry-recommended standards for property located in Montgomery County, Ohio, coverage to be in a commercial or comprehensive general liability form. Unless otherwise Approved by the Master Owners Association, said insurance shall be issued by an insurance company with a Best's rating of A-VIII or better. Any increase in the coverage amounts described in this Section 5.14.2 shall be made by written notice from the Master Owners Association to the various Owners and Occupants of North Clayton. Each Owner and/or Occupant shall furnish to the Master Owners Association certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Section 5.14.2 and shall have Developer and the Master Owners Association named as "additional insureds" in the policy required to be carried pursuant to this Section 5.14.2 (with any and all rights of subrogation against said additional insureds being waived). Notwithstanding anything to the contrary contained in this Section 5.14.2, however, (i) Persons which own a Residential Unit shall maintain the types of coverages outlined in this Section 5.14.2, but the amount of said coverages shall be in the minimum amount of Five Hundred Thousand and No/100 Dollars (\$500,000.00); and (ii) Persons which lease a Residential Unit shall not be required to maintain the types of coverages required under this Section 5.14.2; but nothing in this sentence shall affect the coverages required to be maintained by the Owner of the Residential Lot.

5.14.3. Insurance Coverage During Construction. Prior to commencing any construction activities within North Clayton, each Owner or Occupant shall obtain, or require its contractor to obtain and thereafter maintain, so long as such construction activity is occurring, at least the minimum coverages set forth below.

a. **Worker's compensation and Employer's Liability Insurance.**

- (1) Workers compensation insurance as required by any applicable law or regulation; and

- (2) Employer's liability insurance in the amount of One Million and No/100 Dollars (1,000,000.00) for each accident for bodily injury, and One Million and No/100 Dollars (\$1,000,000.00) for each employee for bodily injury by disease.
- b. General Liability Insurance. Commercial general liability insurance covering all operations by or on behalf of the general contractor, which shall contain the following coverages:
- (1) Premises and operations;
 - (2) Products and completed operations;
 - (3) Contractual liability, insuring any indemnity obligations assumed by the contractor under various contract documents;
 - (4) Broad form property damage (including completed operations);
 - (5) Explosion, collapse and underground hazards; and
 - (6) Personal injury liability. Each of the above coverages shall have the following minimum limits of liability: (1) One Million and No/100 Dollars (\$1,000,000.00) for each occurrence (for bodily injury and property damage); (2) One Million and No/100 Dollars (\$1,000,000.00) for personal injury liability; (3) One Million and No/100 Dollars (\$1,000,000.00) in the aggregate for products and completed operations (which shall be maintained for a three (3) year period following final completion of the work); and (4) One Million and No/100 Dollars (\$1,000,000.00) in the general aggregate applying separately to North Clayton. (5) The policy for general liability insurance shall be endorsed to provide that each of the aforementioned coverages shall be aggregate per job site coverages for said contractor.
- c. Automobile Liability Insurance. Any automobile liability insurance (bodily injury and property damage liability) including coverage for owned, hired, and non-owned automobiles, shall have limits of liability of not less than One Million and No/100 Dollars (\$1,000,000.00) combined single limit each accident for bodily injury and property damage combined. The general contractor shall require each of its subcontractors to include in their liability insurance policies coverage for automobile contractual liability.
- d. Builder's Risk Insurance. During the construction period for any improvements, all general contractors shall also procure and maintain "builder's risk" insurance in an

amount not less than the total cost of the contractor's construction Improvements on a particular Lot.

- e. Umbrella and Excess Liability Insurance. Each general contractor shall also procure Two Million and No/100 Dollars (\$2,000,000.00) for each occurrence and in the aggregate to provide excess coverage for those items described in subparagraphs a, b, c, and d above.

The amount of coverage required under this Section may be reviewed and adjusted by the Master Owners Association periodically. Each Owner and/or Occupant shall furnish to the Master Owners Association certificates of insurance evidencing the existence of the insurance required to be carried pursuant to this Section 5.14.3 and shall have Developer and the Master Owners Association named as "additional insureds" or "loss payees," as the case may be, in the policies required to be carried pursuant to subsections b, c, and d above (with any and all rights of subrogation against said additional insureds waived). Unless otherwise Approved by the Master Owners Association, all insurance required to be carried pursuant to this Section shall be issued by companies having a Best's rating of at least A-VIII.

5.14.4. Lot Indemnity. Each Owner or Occupant shall indemnify, protect, defend and hold the other Owners and Occupants, Developer, Declarant, and the Master Owners Association harmless from and against all claims, expenses, liabilities, loss, damage and costs, including any actions or proceedings in connection therewith and including reasonable attorneys' fees, incurred in connection with, arising from, due to or as a result of the death of or any accident, injury, loss or damage, howsoever caused, to any Person or loss or damage to the property of any Person as shall occur on the indemnifying Owner's or Occupant's Lot or as shall result or arise from anything falling, emanating, or otherwise coming from such Lot, except claims that result from the gross negligence or willful misconduct of such indemnified Owner, Occupant, Developer, Master Owners Association, or the agents, servants, employees, visitors or guests of such indemnified Owner, Occupant, Developer, or Master Owners Association.

ARTICLE 6

MASTER OWNERS ASSOCIATION

6.1. Establishment.

6.1.1. On or prior to the effective date of this Declaration, Developer shall establish North Clayton Master Owners Association, Inc., (the "Master Owners Association") as an association consisting of all of the Owners in accordance with the provisions of the Ohio Nonprofit Corporation Code, as then in effect, and this Declaration. Each Owner and any other Person which owns a Residential Unit or Commercial Unit, by accepting a deed to any portion of North Clayton, or

otherwise being deemed an "Owner" for purposes of this Declaration, as the case may be, shall be deemed to have consented to be bound by the Articles of Incorporation, the by-laws and the rules and regulations of the Master Owners Association.

6.1.2. Developer (whether or not an Owner) and each Owner shall automatically be a member of the Master Owners Association. Developer shall remain a member of the Master Owners Association so long as it holds a Project Interest in North Clayton. Each Owner shall remain a member of the Master Owners Association for the entire period of its ownership of a Lot. Membership in the Master Owners Association shall be appurtenant to the Lot to which it appertains, shall be transferred automatically by conveyance of that Lot, and, subject to subsection 2 in the definition of "Owner," may be transferred only in connection with the conveyance of title of that Lot.

6.1.3. So long as Developer holds a Project Interest in North Clayton, Developer shall automatically be a member of the Master Owners Association. The membership rights granted to Developer under this Section 6.1.3 may only be transferred to a Successor Developer as defined in the definition of "Developer" in Article 1.

6.1.4. **So long as Developer holds a Project Interest in North Clayton, Developer shall have the sole and exclusive right, power and authority to appoint or remove the members of the Board of Directors and the officers of the Master Owners Association.** Upon the cancellation of Developer's right to appoint and remove members of Board of Directors and officers of the Master Owners Association, or, if earlier, upon Developer's filing a written notice in the Office of the Recorder of Deeds of Montgomery County, Ohio, that it has and does thereby relinquish its rights, powers and authorities hereunder, then such right shall automatically pass to the Master Owners Association, and such election processes shall be conducted and governed in accordance with the by-laws of the Master Owners Association.

6.1.5. Upon the cancellation of Developer's right to appoint and remove members of Board of Directors and officers of the Master Owners Association, or sooner if Developer should so elect, Developer shall convey, transfer, and assign to the Master Owners Association, and the Master Owners Association shall accept, Developer's right, title, and interest in and to the Common Areas and Common Facilities (as then existing), reserving and excepting from such conveyance, transfer, and assignment, however, the rights, privileges, and easements granted herein to it as an Owner or otherwise reserved by it hereunder.

6.2. Purpose.

6.2.1. The Master Owners Association is formed to provide for the maintenance, improvement, and beautification of the Common Areas and Common Facilities of North Clayton,

and to undertake such other activities as are related to maintaining North Clayton as a desirable development for members of the Master Owners Association.

6.2.2. The Master Owners Association shall be authorized to hold title to real property and shall accept and retain legal title to those lands designated as Common Areas or Common Facilities within North Clayton and such other open or park areas as may hereafter be deeded to such legal entity or nominee; whether such legal title is deeded by Developer in accordance with Section 6.1.5 hereof, is deeded by any other Person, or passes to the Master Owners Association by operation of law in accordance with the terms of any recorded instrument of title.

6.3. Duties.

6.3.1. The duties and powers of the Master Owners Association shall be those granted to it in this Declaration, the Ohio Nonprofit Corporation Code, and its Articles of Incorporation and by-laws, together with those reasonably implied to effect the purposes of the Master Owners Association.

6.3.2. The Master Owners Association shall have the authority to enforce the obligations of Owners and Occupants under this Declaration, the Lot Declarations, and any rules, regulations, operating manuals and other interpretations issued pursuant thereto. In furtherance of that authority, the Master Owners Association may exercise any of the enforcement rights and remedies provided in Article 12.

6.3.3. The Master Owners Association shall be responsible for the maintenance, landscaping and upkeep of the Common Areas and the Common Facilities.

6.3.4. The Master Owners Association shall provide services of benefit to North Clayton as a whole and to the Owners and Occupants generally, including but not limited to security, promotions, general marketing of North Clayton, the sponsoring of events, oversight and approval of events sponsored by Owners or Occupants, and other activities approved by the Board of Directors.

6.3.5. The Master Owners Association shall carry out the other functions identified in Section 6.5.2.1 which, in the judgment of the Board of Directors, are of common benefit to the Owners and Occupants.

6.3.6. The Master Owners Association may provide shared services to fewer than all the Owners by agreement with those Owners, as provided in Section 6.5.2.4. Any Owner may take advantage of any such shared service, provided the Owner agrees to the terms and conditions under which the service is provided and the allocation of cost established by the Master Owners Association.

6.3.7. Except to the extent otherwise required by the Ohio Nonprofit Corporation Code, this Declaration, or the Master Owners Association's Articles of Incorporation and by-laws, the

powers herein or otherwise granted to the Master Owners Association shall be exercised by the Board of Directors, acting through its officers, without any further consent or action on the part of the Owners.

6.4. Voting.

6.4.1. The right to cast votes, and the number of votes that may be cast, for the election of members of the Board of Directors and on all matters to be voted on by the members of the Master Owners Association shall be calculated in accordance with this Section, subject, however, to Section 6.1.4 hereof. Each member of the Master Owners Association, including Developer, shall be entitled to the following number of votes: (i) each Owner of a Residential Lot shall have one (1) vote; (ii) each Owner of a Commercial Lot with twenty-five thousand (25,000) square feet of Gross Development Area or less shall have one (1) vote; (iii) each Owner of a Commercial Lot with more than twenty-five thousand (25,000) square feet of Gross Development Area shall have two (2) votes; and (iv) Developer shall have one vote for each vote existing under items (i), (ii) and (iii) of this 6.4.1 at any point in time, plus one additional vote. The total votes for all members of the Master Owners Association may increase if any additional property is made subject to this Declaration pursuant to Article 7 hereof. Unless expressly set forth herein or in the by-laws of the Master Owners Association to the contrary, a majority vote (based on the number of votes cast) of the members of the Master Owners Association shall control. Subject to Section 6.4.2 hereof, any Owner may assign any vote to which it is entitled to any Occupant on such terms as they may agree upon, and so long as any Occupant holds such a vote assignment, the Occupant shall be deemed a member of the Master Owners Association to the extent of the vote assignment; but the total number of votes attributable to that Owner shall not be increased by any such assignment.

6.4.2. Any member of the Master Owners Association Owner may give a revocable, written proxy to any other member of the Master Owners Association authorizing such other member to cast that member's vote on any matter. Such written proxy shall be in such form as may be prescribed by the Bylaws of the Master Owners Association.

6.5. Assessments.

6.5.1. Obligation. Each Owner, by accepting a deed for any portion of North Clayton or otherwise being deemed an "Owner" for purposes of this Declaration, covenants and agrees to pay to the Master Owners Association annual Assessments or charges and special Assessments or charges provided by this Declaration, together with interest thereon, which shall be fixed, established and collected from time to time as hereinafter provided.

6.5.2. General Assessments. Commencing January 1, 2007, the amount of all Common Expenses to be incurred in and for Fiscal Year 2007 and beyond not specially assessed pursuant to the other provisions of this Declaration, less the amount of all undistributed and unreserved

common profits, shall be assessed against each Lot. The annual Assessments payable by each Owner under this Section shall be levied by the Board of Directors after the same is determined in the manner set forth herein. At or before December 1, 2007, and at or before December 1 of each succeeding year, the Board of Directors shall prepare, adopt, and submit in writing to the members of the Master Owners Association a budget of the Common Expenses for the next succeeding Fiscal Year to be paid by Assessments collected from the Owners, together with notice of the amount of the annual Assessment payable by each Owner during such Fiscal Year. If the budget proves inadequate for any reason, then the Board of Directors may levy at any time additional Assessments against the Owners and notify the Owners accordingly. If for any reason an annual budget is not adopted by the Board of Directors as required hereby, a payment in the amount required by the last prior Assessment shall be due upon each Assessment due date until changed by a new budget adopted by the Board of Directors.

6.5.2.1. Common Expenses of the Master Owners Association to be paid through annual Assessments shall include, but shall not be limited to, the following:

- (a) costs and expenses associated with the general maintenance, operation, utility costs, repair, and/or replacement of the Common Areas and Common Facilities;
- (b) costs of providing services to enhance North Clayton as a whole and to benefit the Owners and Occupants generally, including but not limited to security, promotions, general marketing of North Clayton, the sponsoring of events, oversight and approval of events sponsored by Owners or Occupants, and other activities approved by the Board of Directors;
- (c) any costs and expenses associated with the landscaping and appearance of the Common Areas and of the rights of way of public and private roads, streets and amenities in the vicinity of North Clayton;
- (d) costs and expenses incurred in connection with the procurement and maintenance of comprehensive general liability insurance, property damage insurance, director's and officers' insurance, and any other insurance required to be maintained by the Master Owners Association hereunder or which the Board of Directors may from time to time approve.
- (e) real and personal property taxes assessed against the Common Areas and Common Facilities owned by the Master Owners Association;
- (f) principal, interest, and other charges payable with respect to loans made to or assumed by the Master Owners Association to perform its authorized functions;

- (g) expenses and costs associated with the organization and operation of the Master Owners Association and the DCC, including rent for any central office maintained by the Master Owners Association;
- (h) reasonable management fees paid to Developer or any other party; expenses of administration, including legal and accounting fees;
- (i) any governmental charges and assessments not separately assessed against Lots;
- (j) costs and expenses associated with the establishment and maintenance of a reasonable reserve fund or funds for the maintenance, operation, repair, and replacement of the Common Areas and Common Facilities that must be replaced on a periodic basis; and
- (k) such other expenses as may be contemplated by this Declaration or determined from time to time by the Board of Directors to be appropriate Common Expenses under this Declaration.

6.5.2.2. Assessments for Common Expenses for each Lot for a given Fiscal Year shall equal the product of (x) the Assessment Ratio for such Lot multiplied by (y) the total Common Expenses for North Clayton for that Fiscal Year.

6.5.2.3. Each Owner shall be obligated to pay its share of the Common Expenses as an Assessment, in accordance with the above-described formula, to the Master Owners Association annually or in such other reasonable manner as the Board of Directors shall designate from time to time. In any year in which there is an excess of Assessments and other income over expenditures, the Board of Directors, by resolution and without the necessity of a vote of the members of the Master Owners Association, shall determine either to apply such excess or any portion thereof against and reduce the subsequent year's Assessments or to allocate the same to one or more reserve accounts of the Master Owners Association described above.

6.5.2.4. Where the Master Owners Association agrees to provide a service to be shared by less than all of the Owners by agreement with those owners, such as an emergency power supply or a community fire pump, the Master Owners Association will charge those Owners sharing the service for their respective shares of the cost thereof. The allocation of the cost may be calculated differently than the allocation of Assessments for Common Expenses and shall be based upon the actual cost of providing the service to the sharing Owners, together with a reasonable charge for managing the service, all as determined by the Master Owners Association. No charge for such a shared service shall be made to Owners who do not share in the benefit of the service. The cost of such shared service shall be considered an additional

Assessment against the sharing Owners for purposes of this Declaration, specifically including all remedies for collection and enforcement of Assessments.

6.5.3. Special Assessments for Capital Improvements. In addition to the Assessments authorized above, the Board of Directors may levy special Assessments for the purpose of defraying, in whole or in part, the cost of any capital addition to or capital improvement (including, but not limited to, upgrades to existing Common Facilities) of the Common Areas and Common Facilities (including, without limitation, the necessary fixtures and personal property related thereto), or for the cost of repair or replacement of a portion of the Common Areas or Common Facilities (including, without limitation, the necessary fixtures and personal property related thereto), which is for the benefit of all Owners and Occupants. The special Assessments under this Section shall be assessed against each Lot on the basis of such Lot's Assessment Ratio. The due date for payment of any special Assessment shall be as specified in the resolution authorizing such Assessment; provided however, that the Board of Directors may make special Assessments payable in installments over a period that may, in the Board's discretion, extend beyond the Fiscal Year in which adopted.

6.5.4 Initial Assessment. In addition to the Assessments authorized above, there shall be a one time Assessment charged to each Owner when it closes on its Lot. Until changed by the Board, such one time Assessment shall be in the amount of \$100.00 for any Residential Lot and \$200.00 for any Commercial Lot. This initial Assessment will be due and payable to the Master Owners Association and will be used to offset operating expenses of the Master Owners Association.

6.5.5. Priority of Lien. All sums assessed against any Lot pursuant to this Declaration, together with court costs, reasonable attorneys' fees, late charges, and interest as provided herein, shall be the personal obligation of each Owner and shall be secured by an equitable charge and continuing lien on such Lot in favor of the Master Owners Association, to the extent not prohibited by any applicable Requirement of a Governmental Authority. Subject to any applicable Requirement of a Governmental Authority, such lien shall be superior to all other liens and encumbrances on such Lot except only for: (i) liens of property taxes, and (ii) the lien of any first priority Mortgage held by an institutional lender or by Developer, including all amounts advanced pursuant to any such Mortgage and secured thereby in accordance with the terms of such instrument; provided, however, that the subordination of the lien for Assessments to the foregoing Mortgages shall apply only to Assessments that have become due and payable prior to a sale or transfer of such Lot (or Residential Unit or Commercial Unit) pursuant to a Foreclosure. Such sale or transfer shall not relieve such Lot (or Residential Unit or Commercial Unit) from liability for any Assessments accruing after such sale or transfer. All Persons acquiring Mortgages

other than a first priority Mortgage held by an institutional lender or by Developer, or other liens or encumbrances, on any Lot (or Residential Unit or Commercial Unit) after the effective date of this Declaration shall be deemed to have subordinated such Mortgages, liens or encumbrances to such future liens for Assessments as provided herein, whether or not such subordination shall be specifically set forth in such Mortgages or other instruments creating such liens or encumbrances.

6.5.6. Nonpayment of Assessments. Any Assessments or any portion thereof that are not paid when due shall be delinquent. Any Assessment delinquent for a period of more than ten (10) calendar days shall incur a late charge in an amount as may be determined by the Board of Directors from time to time, and the Board of Directors shall cause a notice of delinquency to be given to any Owner not paying within ten (10) calendar days following the due date. If any installment of an Assessment has not been paid within thirty (30) calendar days of the due date therefor, the entire unpaid balance of the Assessment may be accelerated at the option of the Board of Directors and, if so accelerated, shall thereupon become forthwith due and payable in full. The continuing lien and equitable charge of such Assessment shall include the late charge established by the Board of Directors, interest on the principal amount due at the maximum rate allowable under the laws of the State of Ohio (not to exceed the Prime Rate, as it may change from time to time, plus four percentage points,) all costs of collection, including reasonable attorneys' fees and court costs, and any other amounts provided or permitted hereunder or by law. If the Assessment remains unpaid after sixty (60) calendar days from the original due date, the Master Owners Association may, as the Board of Directors shall determine, institute suit to collect such amounts and to foreclose its lien. The equitable charge and lien provided for in this Section shall be in favor of the Master Owners Association, and each Owner and any other Person which owns a Residential Unit or Commercial Unit, by accepting a deed to any portion of North Clayton, or otherwise being deemed an "Owner" for purposes of this Declaration, vests in the Master Owners Association or its agents the right and power to sue or otherwise proceed against such Owner or other Person, as the case may be, for the collection of such charges and/or to foreclose the Master Owners Association's liens. The Master Owners Association shall have the power to bid on the Lot, the Residential Unit, or the Commercial Unit, as the case may be, which is the subject of the lien, at any foreclosure sale and to acquire, hold, lease, mortgage, and convey the same. Subject to any applicable Requirement of a Governmental Authority, the Master Owners Association shall also have the power and authority to impose and assess fines and suspend temporarily voting rights if any Assessments or any portion thereof are not paid when due.

6.5.7. Suit to Collect. In addition to the lien rights granted herein, any delinquent Assessment shall be a personal obligation of the then Owner, or, in the case of a Residential Unit

that is part of a Lot subject to the Ohio Condominium Act, or in the case of a Commercial Unit, the Occupant of such Residential Unit or Commercial Unit, and, upon any conveyance of the property subject to such lien, shall become the joint and several obligation of such Owner or Occupant, as the case may be, and of such Owner's or Occupant's, as the case may be, successors-in-title, whether or not expressly assumed by them.

6.5.8. Limitations with Respect to Condominiums. Notwithstanding anything to the contrary contained in this Article 6, with respect to any Residential Unit that is a part of a Lot subject to the Ohio Condominium Act or any Commercial Unit, the Master Owners Association's right to enforce the remedies provided for in Sections 6.5.4, 6.5.5, and 6.5.6 hereof shall be limited as follows: (i) the maximum amount for which any such Occupant may be liable in any suit to collect any delinquent Assessment is such Occupant's pro rata share of any delinquent amount and (ii) any lien which attaches to any Residential Unit that is a part of a Lot subject to the Ohio Condominium Act or any Commercial Unit shall only attach to such Residential Unit or Commercial Unit to the extent of that Residential Unit's or Commercial Unit's pro rata share of the delinquent amount. For purposes of this Section 6.5.7, a Residential Unit's or Commercial Unit's pro rata share of any delinquent amount shall equal such Residential Unit's or Commercial Unit's allocated interest in the common elements of the condominium of which it is a part.

6.5.9. Exemptions. The following property and Persons subject to this Declaration shall be exempted from the Assessments hereunder:

6.5.9.1. The grantee in conveyances made for the purpose of granting utility easements;
and

6.5.9.2. All Common Areas and Common Facilities owned in fee simple by Declarant, Developer, the Master Owners Association, or any Governmental Authority, and all Improvements of every kind constructed, installed, or planted by Declarant, Developer, the Master Owners Association, or any Governmental Authority in any part of the Common Areas.

6.5.10. Special Assessments for Damage. In addition to all other Assessments and special Assessments authorized above, the Board of Directors may at any time, in its discretion, levy a special Assessment against an Owner for the repair of any damage to any area, including, without limitation, Common Areas and public road rights of way (other than normal wear and tear), caused by such Owner, such Owners, Occupants, or their permittees. The notice of such special Assessment shall describe the nature of the damage and the necessary repairs, and any such special Assessment shall be due and payable to the Master Owners Association on or before the tenth (10th) day following such Owner's receipt of such notice. The Board of Directors may, in its discretion, levy any such special Assessment prior to the commencement of the repairs for which

such special Assessment is levied; provided, however, that upon receipt of payment of such special Assessment the Board of Directors shall promptly undertake to have such repairs made and shall refund to such Owner any excess of the amount assessed and paid over the cost of such repairs. In the event that the cost of such repairs exceeds the amount assessed and paid, the Board of Directors may assess the Owner for such excess costs. By way of illustration and not limitation, the special Assessments provided for in this Section may be made for the purposes of repairing roadway damage caused by heavy trucks and construction vehicles during construction on any Lot.

6.5.11. Waiver of Use. No Owner may exempt itself from liability for Assessments duly levied by the Master Owners Association, nor release the Lot or other property owned by it from the liens and charges hereof, by non-use or waiver of the use and enjoyment of the Common Areas and Common Facilities or by abandonment of its Lot or any other property owned by such Owner within North Clayton.

6.6. By-Laws. The Board of Directors shall establish by-laws for the conduct of the Master Owners Association's affairs that shall include notice to each member prior to any meeting of the members of the Master Owners Association, Decisions of the Master Owners Association shall be by majority of votes cast at any meeting, except as otherwise provided hereinabove or in the by-laws.

6.7. Employment of Manager. In performing its responsibilities hereunder, the Master Owners Association, through its Board of Directors and officers, shall have the authority to delegate to Persons of its choice (including, without limitation, Developer or Persons affiliated with Developer) such duties of the Master Owners Association as may be determined by the Board of Directors. In furtherance of the foregoing and not in limitation thereof, the Master Owners Association may employ any Person (including, without limitation, Developer or Persons affiliated with Developer) to manage its affairs or any part thereof, as well as such other personnel as the Master Owners Association shall deem necessary or desirable, whether such personnel are furnished or employed directly by the Master Owners Association or by any Person with whom or with which it contracts. All costs and expenses incident to the employment of a manager shall be Common Expenses of the Master Owners Association.

6.8. Legal and Accounting Services. The Master Owners Association may pay, as a Common Expense, for such legal and accounting services as are necessary or desirable in connection with the conduct of the business and affairs of the Master Owners Association or the interpretation, amendment, or enforcement of this Declaration, the By-Laws of the Master Owners Association, or the published rules and regulations of the Master Owners Association.

6.9. Rules and Regulations. The Master Owners Association, through its Board of Directors, may from time to time and at any time (but is not obligated to) make, establish, abolish, amend and/or enforce reasonable nondiscriminatory rules and regulations concerning the use of North Clayton or any portion thereof, including, without limitation, the Common Areas and Common Facilities, which do not materially and adversely affect any Project Use(s) previously Approved by Developer pursuant to the terms and provisions of any Lot Declaration. The text of any such rules and regulations and amendments thereto shall be furnished by the Master Owners Association to each Owner. Such rules and regulations shall be binding upon the Owner and Occupants until and unless such rules or regulations are specifically overruled, cancelled or modified by the Master Owners Association by the vote of its members, in person or by proxy, holding sixty percent (60%) of the total votes in the Master Owners Association. Notwithstanding the foregoing, the approval of the Master Owners Association shall not be required in order to give effect to any Approvals of the DCC and/or Developer provided for herein or in any of the Lot Declarations.

6.10. Limitation on Liability. Subject to any applicable Requirement of a Governmental Authority, neither Developer nor the Master Owners Association, or any director, officer, manager, member, agent, or employee thereof, as the case may be, shall be liable to any Owner or Occupant or to any other Person for any loss, damage or injury, or claim thereof, arising out of or in any way connected with the performance or nonperformance of the Master Owners Association's duties under this Article 6.

6.11. Directors' and Officers' Insurance. The Master Owners Association may purchase and maintain, as a Common Expense, directors' and officers' insurance on behalf of any person who is or was a director or officer of the Master Owners Association against any liability asserted against him and incurred by him in such capacity, or arising out of his status as such.

6.12. Enforcement of Directors' Duties. In the event that the Board of Directors shall fail to perform any duty or duties which, under this Declaration, the Ohio Nonprofit Corporation Code or the Articles of Incorporation and bylaws of the Master Owners Association, are to be performed by it, any Owner who is aggrieved by such failure shall have the right to proceed in equity to compel the Board of Directors to perform such duty or duties. In no event, however, except as otherwise provided in Section 6.10 hereof, shall any member or members of the Board of Directors have any liability to any owner for any failure by the Board of Directors to perform any such duty or duties. If any such Owner prevails in such proceeding, the Master Owners Association shall pay to such Owner, as a Common Expense of the Master Owners Association, such Owner's reasonable costs and expenses incurred in connection with such proceeding, including court costs and reasonable attorneys' fees actually incurred. If the Board of Directors or the Master Owners Association prevails in such proceeding, the Owner instituting the proceeding shall pay to the

Master Owners Association the reasonable costs and expenses incurred in the defense of such proceeding, including court costs and reasonable attorneys' fees actually incurred.

6.13. Insurance. The Master Owners Association may purchase and maintain, as a Common Expense, (a) insurance for all of the insurable improvements which can be insured for a reasonable premium on the Common Areas insuring against "causes of loss-special form," including, if determined by the Master Owners Association to be reasonably necessary, coverage for earthquake or flood (in an amount consonant with the full replacement value of any of such Improvements); (b) fidelity coverage against dishonest acts on the part of its directors and officers responsible for handling funds belonging to or administered by the Master Owners Association in an amount deemed reasonable by the Board of Directors; (c) comprehensive general liability insurance, in amounts established by the Board of Directors from time to time; and (d) such other types of insurance as are either required by law or authorized by the Board of Directors from time to time.

ARTICLE 7
EXTENSION OF DECLARATION TO
ADJOINING REAL PROPERTY

7.1. Contiguous Property. Declarant or Developer may, at any time during the pendency of this Declaration, add all or a portion of any real property contiguous to North Clayton to the Declaration (whether or not such properties are separated by any street, roadway, railroad, right-of-way, easement, City Property, or Common Area) and such property shall be included within the meaning and definition of the terms "Project" and "North Clayton" as used herein. Declarant or Developer shall file in the Office of the Recorder of Deeds for Montgomery County, Ohio, a Supplemental Declaration that such additional real property is made subject to this Declaration and that such property shall be included within the meaning and definition of the terms "Project" and "North Clayton" as used herein. The Supplemental Declaration may contain such complementary additions and modifications of the provisions contained in this Declaration as may be necessary or convenient in the judgment of Developer to reflect the different character, if any, of the added properties.

7.2. Declaration Binding on Additional Property. Upon such recordation in the Office of the Recorder of Deeds for Montgomery County, Ohio, this Declaration shall run with the real property already subject hereto and with the additional real property as if this Declaration had always applied to all of the additional real property from the inception hereof and as if such additional real property had always been included within the meaning and definition of the terms "Project" and "North Clayton" as used herein (provided, however, nothing contained in this Section 7.2 shall be

construed to require the Owners of any of such additional, property to pay any Assessments with respect to such additional property for any period of time prior to the date Declarant or Developer files its aforementioned notice in the Office of the Recorder of Deeds for Montgomery County, Ohio), and shall inure to the benefit of, and be binding upon, the Owners of all such property, Declarant, Developer, and any others having an interest therein, as Occupants or otherwise, their respective heirs, successors, and assigns.

ARTICLE 8

DURATION, MODIFICATION, AND TERMINATION

8.1. Duration.

8.1.1. The provisions of this Declaration shall run with and bind title to North Clayton and shall be binding upon and inure to the benefit of Declarant, Developer, the Master Owners Association, and all Owners, Occupants, and Mortgagees, the City, and their respective heirs, executors, legal representatives, successors, and assigns, and shall be and remain in effect perpetually, to the extent permitted by Ohio law, In the event that Ohio law limits the period during which covenants restricting lands to certain uses may run, any provisions of this Declaration affected thereby shall run with and bind North Clayton for a period of twenty (20) years from the date this Declaration is filed in the Office of the Recorder of Deeds for Montgomery County, Ohio, after which time such provisions shall be automatically extended, if permitted by Ohio law, for successive periods of fifty (50) years, unless an instrument, signed by members of the Master Owners Association holding not less than fifty-one percent (51%) of the total votes in the Master Owners Association has been recorded in the Office of the Recorder of Deeds for Montgomery County, Ohio, agreeing to terminate such provisions in whole or in part.

8.1.2. Notwithstanding anything in this Section to the contrary, the easements granted and reserved in Article 11 hereof are and shall be perpetual, unless otherwise provided for herein, except that dedication to and acceptance by an appropriate Governmental Authority or conveyance or grant to an appropriate public utility of the facilities that are the subject of any such easements shall terminate those easements if such dedication, conveyance, or grant so provides.

8.1.3. Notwithstanding anything in this Section to the contrary, to the extent Declarant or Developer conveys and/or dedicates any portion of North Clayton for public purposes to any Governmental Authority, any terms, conditions, and provisions of this Declaration that are inconsistent with the terms or purposes of the conveyance or dedication shall automatically cease to be applicable to or affect such areas so conveyed and/or dedicated.

8.2. Amendment.

8.2.1. Except as otherwise provided in Article 7 and Sections 8.2.2 and 8.2.3 hereof, this Declaration may be amended at any time and from time to time by (i) the members of the Master Owners Association holding not less than sixty percent (60%) of the total votes in the Master Owners Association, voting in person or by proxy at a meeting duly called and held for such purpose, and/or (ii) Developer, so long as Developer holds a Project Interest in North Clayton. Notwithstanding anything to the contrary contained in this Section 8.2, however, this Declaration may not be amended if such amendment would have the effect of (i) materially and adversely affecting the means of ingress and egress to and from any Lot; (ii) materially increasing the cost of the construction and development of the Improvements on any Lot, which construction and development of said Improvements have been previously Approved by Developer pursuant to the terms and provisions of the applicable Lot Declaration; or (iii) materially altering or changing the design and/or layout plans for the Improvements proposed to be constructed and developed on any Lot as such plans have been previously Approved by Developer pursuant to the terms and provisions of the applicable Lot Declaration; or (iv) materially and adversely delaying an Owner's ability to develop its Lot in accordance with plans that have been previously Approved by Developer pursuant to the terms and provisions of the applicable Lot Declarations.

8.2.2. Subject to the right of annexation by Declarant or Developer as set forth in Article 7 hereof, so long as the same shall not (a) adversely affect the title to any Lot; or (b) materially alter or change any Owner's right to the use and enjoyment of its Lot and the Common Areas and Common Facilities, each Owner agrees that this Declaration may be amended solely by Developer by an instrument in writing executed by Developer and placed of record in the Office of the Recorder of Deeds for Montgomery County, Ohio, (i) if such amendment is necessary to bring any provision hereof into compliance or conformity with, or remove any conflict or inconsistency with, the provisions of any applicable Requirement of a Governmental Authority; (ii) if such amendment is required by any Requirement of a Governmental Authority applicable to or promulgated by a governmental lender or purchaser of mortgage loans, including, for example, the Federal National Mortgage Association or Federal Home Loan Mortgage Corporation, or a private lender, including, for example, Bank of America, to enable such lender or purchaser to make or purchase mortgage loans on any portion of North Clayton; (iii) if any such amendment is necessary to enable any Governmental Authority to insure mortgage loans on any portion of North Clayton based on any Requirements of such Governmental Authority; or (iv) if such amendment is necessary in order to conform with the Developer's development plans for North Clayton; or (v) any such amendment is permitted by any other provision hereof.

8.2.3. Notwithstanding anything to the contrary contained in this Declaration, any amendment to this Declaration which would change, alter, modify or rescind any right, title, interest or privilege herein expressly granted to a Mortgagee, shall require the prior written approval of such Mortgagee.

8.2.4. Amendments to this Declaration may be proposed by Developer, by the Board of Directors or by a petition signed by members of the Master Owners Association having at least thirty percent (30%) of the total votes in the Master Owners Association. Agreement of the required Owners or any members of the Master Owners Association to any amendment of this Declaration shall be evidenced by the sworn statement of the President, any Vice President or the Secretary of the Master Owners Association, attached to or incorporated into an amendment executed by the Master Owners Association, in which sworn statement it is stated unequivocally that agreement of the required Owners or members of the Master Owners Association was otherwise lawfully obtained.

8.2.5. Amendments made pursuant to the provisions of this Section 8.2 shall inure to the benefit of and be binding upon Declarant, Developer, all Owners, and Occupants and their respective Mortgagees.

8.3. Binding Effect. Each purchaser or grantee of any interest in any real property now or hereafter made subject to this Declaration, by acceptance of a deed or other conveyance thereof, thereby agrees that the conditions, covenants, restrictions, easements, and reservations of this Declaration may be amended, terminated, or extended as provided above.

8.4. Effective Date of Declaration. The effective date of this Declaration shall be the date of the filing of the Original Declaration for record in the Office of the Recorder of Deeds for Montgomery County, Ohio.

8.5. Rights of Third Persons. This Declaration shall be recorded for the benefit of Declarant, Developer, the Owners, the Occupants, and their respective Mortgagees as herein provided, and the City and by such recording, no adjoining property owner or other Person shall have any right, title or interest whatsoever in North Clayton, this Declaration, the operation or continuation of this Declaration or the enforcement of any of the provisions hereof, and this Declaration may be amended, modified or otherwise changed in accordance with its terms without the consent, permission or approval of any adjoining owner or third Person.

ARTICLE 9

ESTOPPEL CERTIFICATES

9.1. Estoppel Certificates. Any Owner, Occupant, the DCC, the Master Owners Association, or Developer, as the case may be, shall, from time to time, within ten (10) days after receipt of

written request from any other Owner, Occupant, the DCC, Developer, or the Master Owners Association, as the case may be (the "Requesting Party"), execute, acknowledge and deliver to the Requesting Party or to any existing or prospective purchaser or mortgagee designated by the Requesting Party, a certificate (the "Estoppel Certificate") stating, to the extent applicable:

- (1) that the terms and provisions of this Declaration are unmodified and are in full force and effect or, if modified, identifying any such modifications;
- (2) whether there is any existing default hereunder (or grounds therefor after giving the requisite notice hereunder) by the Requesting Party and, if so, specifying the nature and extent thereof;
- (3) whether there are any sums (other than those arising out of the normal course of operation of North Clayton within the previous forty-five (45) days) which the Person executing such Estoppel Certificate owes as an Assessment or is entitled to receive or demand from the Requesting Party, and if there is any such sum, specifying the nature and amount thereof;
- (4) the nature and extent of any set-offs, claims, counterclaims, and/or defenses then being asserted or capable of being asserted after giving the notice, if any, required hereunder or otherwise known by the Person executing the Estoppel Certificate against the enforcement of the Requesting Party's obligations hereunder;
- (5) the total amount of all sums owed as Assessments hereunder and all liens being asserted or capable of being asserted after giving notice, if any, required hereunder by the Person executing the Estoppel Certificate under the provisions of this Declaration, describing the applicable provision or provisions and the details of any such lien claim;
- (6) the current address or addresses to which notices given to the Person executing such Estoppel Certificate are to be mailed; and
- (7) such other facts or conclusions as may be reasonably requested.

ARTICLE 10

EMINENT DOMAIN AND CASUALTY

10.1. Damage, Destruction or Condemnation to or of Common Areas and Common Facilities. In the event of damage to, destruction of, or condemnation of all or any portion of the Common Areas or Common Facilities, the provisions of, this Section 10.1 shall govern the repair and restoration thereof.

10.1.1. If the insurance proceeds or condemnation award are sufficient to effect total restoration or replacement, then the Master Owners Association shall cause the Common Areas

and the Common Facilities to be so repaired, reconstructed and/or replaced substantially as they previously existed. The Master Owners Association may employ any Person to manage and oversee this work as provided in Section 6.7.

10.1.2. If the insurance proceeds or condemnation award, when combined with any special Assessments for capital improvements permitted to be levied by the Board of Directors in accordance with Section 6.5.3 hereof without a vote of the Master Owners Association are sufficient to effect total restoration, repair or replacement of the Common Areas and Common Facilities, then the Board of Directors shall levy such a special Assessment in accordance with Section 6.5.3 hereof and shall cause the Common Areas and Common Facilities to be repaired, reconstructed and/or replaced substantially as they previously existed. The Master Owners Association may employ any Person to manage and oversee this work as provided in Section 6.7.

10.1.3. If the insurance proceeds or condemnation award, when combined with any special Assessment for capital improvements which the Board of Directors may levy in accordance with Article 6 hereof without a vote of the Master Owners Association are insufficient to effect total restoration, repair and/or replacement of the Common Areas and Common Facilities, then the Board of Directors may (i) cause the Common Areas and Common Facilities to be repaired, reconstructed and/or replaced in a way which utilizes all available insurance proceeds or condemnation award and any special Assessment to the extent of such proceeds; or (ii) elect not to rebuild, repair and/or replace such Common Areas and Common Facilities and elect to distribute the available insurance proceeds and condemnation award to the Owners and Developer, and their respective Mortgagees, based upon their respective Distribution Share. In the event after any such repair, reconstruction and/or replacement there remains any unused insurance proceeds, condemnation award or special Assessments, the Board of Directors, by resolution and without the necessity of the vote of the members of the Master Owners Association, shall determine either (a) to apply such excess or any portion thereof against and reduce the subsequent year's general Assessments under Section 6.5.2 hereof; (b) to allocate the same to one or more reserve accounts of the Association described in Section 6.5.2 hereof; or (c) to distribute such excess or any part thereof proportionately to the Owners and Developer, and their respective Mortgagees, based upon their respective Distribution Share.

ARTICLE 11

EASEMENTS

11.1. General Easements. Exclusive easements for the installation, construction, use, maintenance, repair, and/or replacement of (i) underground and above-ground utilities supply and transmission lines in the Common Areas (provided other uses may be made of such areas so

long as the aforesaid easement rights are not unreasonably impacted by such other uses), and in all public and/or private roads, streets, drives and transit ways (ii) drainage facilities, (iii) pedestrian walkways; and (iv) roads, streets, drives, and transit ways are hereby reserved by Declarant on, over, across, and through all parts of North Clayton, together with rights of access, ingress and egress to effect the same and together with the right and privilege of granting to others rights and easements to use the same.

11.2. Encroachment Easements. Declarant hereby reserves for its own benefit and for the benefit of Developer and each Owner and their successors and assigns non-exclusive perpetual easements for the minor encroachments that will not substantially interfere with the property encroached upon created by the construction, reconstruction, renovation, settling, shifting or other causes of movement and for overhangs.

11.3. General Construction Easements. Declarant hereby reserves for its own benefit and for the benefit of Developer and each Owner and their respective successors and assigns non-exclusive perpetual easements over the Common Areas for access and temporary encroachments by contractors and subcontractors (and the equipment and employees thereof) during construction to the extent reasonably necessary to construct the Improvements on the various Lots and the Common Areas; provided, however, (i) Declarant, Developer, Owner, and Occupants and their respective lessees, successors, assigns, employees, and invitees shall exercise their rights under this Section in such a manner as to minimize disruption of all other parties' quiet enjoyment, use and operation of their respective Lot within North Clayton; (ii) any access and encroachment activities permitted by this Section shall be completed as soon as reasonably possible once commenced; (iii) no easement is herein granted to any Owner or Occupant for the storage of materials or equipment upon any other Owner's or Occupant's property; and (iv) each Owner or Occupant exercising its rights under this Section agrees to hereby indemnify the other Owners or Occupants from any loss, costs, damages or expenses incurred by such other Owners or Occupants as a result of the exercise by the indemnifying Owner of its right under this Section.

11.4. Emergency Access. Declarant hereby reserves for its own benefit and for the benefit of Developer and each Owner and their respective successors and assigns non-exclusive perpetual easements over a Lot, and the Common Areas for emergency ingress, egress, and access.

11.5. Pedestrian Easements. Declarant hereby reserves for its own benefit and for the benefit of Developer and each Owner and their respective successors and assigns non-exclusive, perpetual easements, rights, and privileges of pedestrian passage and use on, over, and across all private pedestrian walkways, if any, now existing or hereafter constructed in, on, under, over, and through the Common Areas.

11.6. Vehicular Easements. Declarant hereby reserves for its own benefit and for the benefit of Developer and each Owner and their respective successors and assigns non-exclusive, perpetual easements, rights, and privileges of vehicular ingress, egress, access, passage and use, on, over, and across all private roads, streets and drives, if any, now existing or hereafter constructed in, on, under, and through the Common Areas.

11.7. Utility Easements. Prior to such time as Developer Approves an Owner's plans pursuant to the applicable Lot Declaration and the DCC Approves such Owner's Proposed Plans hereunder, Declarant shall have the right to reserve for its own benefit and for the benefit of Developer and each Owner and their respective successors and assigns non-exclusive, perpetual easements, rights, and privileges to construct, install, operate, maintain, repair, and replace utility lines and other related utility facilities (including, without limitation, water, gas, electric, telephone, cablevision, computer or other communication or telecommunication, and sanitary sewer and storm drainage lines and facilities) on, in, over, across, through, and under certain designated areas of such Owner's Lot. Subsequent to the date upon which the aforementioned Approvals are granted, Declarant shall no longer have the right, without the prior Approval of the Owner of the affected Lot, to establish and create the utility easements referenced in the preceding sentence. Notwithstanding the foregoing, no Owner or Occupant or their respective lessees, successors, assigns, employees, or invitees shall construct, install, operate, maintain, repair and/or replace utility lines and other related utility facilities (including, without limitation, water, gas, electric, telephone, cablevision, computer or other communication or telecommunication, and sanitary sewer and storm drainage lines and facilities) on, in, over, across, through, or under any of the Common Areas, including any public or private roads, streets, drives, or transit ways located outside of the boundaries of any Lot without the prior Approval of Developer.

11.8. Slope Easements. Prior to such time as Developer Approves an Owner's plans pursuant to the applicable Lot Declaration and the DCC Approves such Owner's Proposed Plans hereunder, Declarant shall have the right to reserve for its own benefit and for the benefit of Developer and each Owner and their respective successors and assigns on all portions of North Clayton lying within twenty-five (25) feet of any roadway perpetual and/or temporary slope easements for the purpose of providing reasonable and adequate lateral support for such roadways or portions of North Clayton adjacent to such roadways. Subsequent to the date upon which the aforementioned Approvals are granted, Declarant shall no longer have the right, without the prior Approval of the Owner of the affected Lot, to establish and create the slope easement referenced in the preceding sentence.

11.9. Signage Easements. Easements for the location, erection, maintenance, use, installation and removal of one or more street, traffic, directional, Project identification, and other related

signs are reserved by Declarant on and over all Lots and Buildings located thereon; provided, however, nothing contained in this Section shall permit the location, erection, maintenance, use, and/or installation of such signs if such location, erection, maintenance, use, and/or installation shall cause the signage to materially obstruct access to or visibility of any Building located on such Lot.

11.10. Grading Easements. Declarant hereby reserves for its own benefit and for the benefit of Developer and each Owner and their respective successors and assigns non-exclusive easements over the Common Areas (the "Grading Easement") for grading purposes during construction to the extent reasonably necessary to construct the contemplated Improvements; provided, however, (i) each Owner, Declarant, and Developer shall exercise their rights under this Section in such a manner as to minimize disruption of Declarant's, the other Owners' or Developer's quiet enjoyment, use and operation of their respective portions of North Clayton; (ii) any grading activities permitted by this Section shall be completed as soon as reasonably possible once commenced; (iii) no easement is herein granted to Declarant, any Owner or to Developer for the storage of materials or equipment upon any other Owner's or Declarant's or Developer's property or the Common Areas; and (iv) Declarant, each Owner or Developer who exercises its rights under this Section agrees to hereby indemnify the other Owners or Declarant or Developer from any losses, costs, damages or expenses incurred by such other Owners, Declarant or Developer as a result of the exercise by the indemnifying Owner or Declarant or Developer of its rights under this Section.

11.11. Cross Utility Easements. Declarant hereby reserves for its own benefit and for the benefit of Developer, each Owner and their respective successors and assigns non-exclusive, perpetual easements, rights and privileges of ingress, egress, access, passage and use, on, over and across those portions of adjacent Lot(s) which contain utility systems, structures, lines, pipes and other related utility Improvements that are shared and utilized by both said Owner or Occupant and the Owner or Occupant of the adjacent Lot (the "Shared Facilities") for the purpose of installing, maintaining, operating, repairing or replacing said Shared Facilities; provided, however, the easement in this Section shall terminate at such time, if ever, as the Shared Facilities are dedicated to a Governmental Authority or utility provider.

11.12. Easements for Enforcement. Declarant hereby declares, establishes, creates, and reserves for Developer, the Master Owners Association and the DCC, as the case may be, non-exclusive, perpetual easements for and of access to the applicable areas of North Clayton to undertake any inspections authorized pursuant to Section 12.5 hereof and to take any enforcement actions authorized pursuant to Section 12.3 and Section 12.5 hereof; provided, however, Developer, Master Owners Association, and the DCC shall not have the right to

exercise the easements established, created, and reserved in this Section with respect to any Residential Unit, except in situations in which Developer, Master Owners Association, and/or the DCC, as the case may be, in their sole, but reasonable, discretion determine an emergency exists. Any entry and access pursuant to this Section shall not constitute a trespass.

11.13. Access. All easements reserved and established in this Article 11 shall include the rights of ingress and egress; provided, that any damage to a Lot or Improvements thereon resulting from the installation, maintenance, or repair of any underground utilities, supply and transmission lines, or drainage facilities shall be repaired or replaced at the expense of the party which undertook the activities causing the damage.

11.14. Dedication and Transfer of Easements for Utilities and Roadways. Declarant shall have the exclusive right and power (i) to convey or dedicate all or any part of the Common Areas, the Common Facilities, rights of way, streets, ways, utilities, and any of the easements reserved and established by this Declaration, to public use and benefit and/or the District Owners' Association, with respect to rights of way, streets, ways, and utilities in the District; (ii) to grant easements over and across any of the Common Areas or any of the roads, streets, drives, and/or transit ways within North Clayton for access, ingress, and egress to and from any portion of North Clayton; (iii) to grant easements on, in, under, over, through, and across any of the Common Areas, the Common Facilities or any of the roads, streets, drives, and/or transit ways located within North Clayton for the purposes of installing, replacing, repairing, maintaining and using master television antenna systems, security and similar systems, and all utilities, including, but not limited to, electrical, gas, telephone, water, sanitary sewer, and storm drainage lines and related facilities; (iv) to permit any Governmental Authority or utility to exercise any of the rights and easements reserved and established in this Declaration; and (v) to grant such other easements with respect to the Common Areas as Declarant may Approve. Declarant shall also have the sole and exclusive right and power (but not the obligation) to reserve, in connection with any of the conveyances and dedications referenced in this Section, exclusive subsurface and above-ground rights, as the case may be, to own, operate, use, connect to, repair and/or replace any and all utility lines, cables, devices and related utility facilities (including, but not limited to, water, gas, electric, telephone, cablevision, computer or other communication or telecommunication, and sanitary sewer and storm drainage lines and facilities).

11.15. Installation, Maintenance and Repair. Developer, the Master Owners Association, each and every Owner and Occupant and any other Person exercising their respective rights under the easements granted, reserved and created in this Article 11 agree to, with and for the benefit of Developer, the DCC, the Master Owners Association and the other Owners that any and all construction, installation, repair, replacement, relocation and maintenance of any such streets,

roads, driveways, walkways, sidewalks, trails, paths, connections, utility lines, signs and other facilities (i) shall be done by, and at the sole cost and expense of, the Person so exercising its rights under this Article 11; (ii) shall be done only upon reasonable notice to the Owner whose Lot is so affected; and (iii) shall be done in a manner so as to minimize, to the extent reasonably possible, any interruption and interference to the Owners in the normal operation of their properties and the Improvements thereon. After the completion of any such construction, installation, repair, replacement, relocation and maintenance of any such streets, roads, driveways, walkways, sidewalks, trails, paths, connections, utility lines, signs, and other facilities, the Lot on, over, under or through which such work was done, shall be left in a clean and good condition, with all debris removed therefrom, with trenches and cuts properly filled, with any plants, shrubbery or other landscaping which may have been disturbed by such work restored to their former condition and with all area within which dirt has been exposed, reseeded.

11.16. No Rights in Public Generally. The easements and rights created in this Article 11 do not, are not intended to and shall not be construed to create any easements or rights in or for the benefit of the general public. The Owners and Occupants, as to their respective Lots, hereby reserve the right to close temporarily, to the extent reasonably practicable, upon fifteen (15) days prior written notice (which may be given by posting in conspicuous locations upon the relevant portion of the Lot) to all the other Owners and Occupants, all or any portion of the motor vehicular and/or pedestrian easements, which, in the reasonable opinion of the Owner or Occupant involved, may be legally necessary to prevent a dedication thereof, or any accrual of any rights therein, in the general public or in any Person other than the Persons for which such easements are expressly created in this Declaration. In the event that any other Owner or Occupant should deem the temporary closing of such easements necessary to prevent such dedication or accrual of rights, and should such other Owner or Occupant so advise the other Owners or Occupants, the other Owners or Occupants hereby agree not to refuse unreasonably to close temporarily such easements upon the request of such other Owner or Occupant therefor.

11.17. Rights of Other Parties. Each of the easements created, granted, conveyed, and/or reserved pursuant to this Article 11 may be utilized by the lessees, employees, invitees, permittees, contractors, subcontractors, assigns, and successors of each Owner, Occupant, and/or Developer, as the case may be.

11.18. Scope of Easements. Each of the easements created by this Declaration shall (unless expressly provided herein to the contrary) be perpetual in duration and shall, both as to the benefits and the burdens thereof, run with the title to, and burden the title to, the property identified.

11.19. Easements Related to City Property. All Lots shall be subject to easements benefitting the City Property and shall have the benefit of easements reserved over the City Property, all as set forth in Declarant's deed to North Clayton Master Owners Association, Inc.

11.20. Common Areas. To the extent that easements described in this Article 11 involve the Common Areas, it is understood that they may initially be of limited applicability because of the City ownership of the City Property as defined in Article 14. However, Article 14 describes the possibility of the City Property becoming Common Area at some time in the future, at which time the easements may become more significant in the operation of North Clayton.

ARTICLE 12

ENFORCEMENT

12.1. Responsibility of Owner. Each Owner shall be responsible for compliance with the terms, provisions, and conditions of this Declaration by its Occupants, employees, agents, independent contractors, tenants, customers, invitees, and visitors.

12.2. Failure to Pay Assessments. If any Assessment is not paid when due, the applicable Owner and the Lot shall be subject to the provisions of Section 6.5 hereof.

12.3. Nonmonetary Violations. If any Owner or Occupant shall violate or breach any of the provisions, covenants, conditions, restrictions, and/or obligations set forth in this Declaration, and such breach or violation is not cured within fifteen (15) Business Days after such Owner or Occupant has received written notice from one or more of the DCC, the Master Owners Association, Developer, or another Owner or Occupant (all such parties joining in the notice being collectively referred to as the "Notifying Owner") of such breach or violation, the Notifying Owner shall be entitled to: (i) institute and prosecute proceedings for the recovery of damages against such Owner or Occupant for such violation or breach; (ii) institute and prosecute proceedings for the purpose of preventing or enjoining any or all such violation or breach or attempted violation or breach of the provisions, covenants, conditions, restrictions, and/or obligations set forth in this Declaration; (iii) bring a suit for specific performance of the same; (iv) terminate services provided to such Owner or Occupant by the Notifying Owner; (v) terminate the right of such Owner or Occupant to the use of Common Areas; and/or (vi) to the extent applicable, exercise those rights and remedies set forth in Section 12.6 hereof; provided, however, if such breach or violation is not cured within the aforementioned notice and cure period and such Owner or Occupant is diligently prosecuting to completion the cure of such breach or violation the Notifying Owner shall not be entitled to exercise the remedies set forth in subsections (i), (iv), (v) and (vi) of this Section 12.3. Except as otherwise provided for in this Declaration, such remedies shall be cumulative of and in addition to any and all other remedies expressly provided for in this Declaration or which

otherwise may now or hereafter be available at law or in equity, separately, concurrently, or in any combination.

12.4. Failure to Enforce Not a Waiver. The failure of the DCC, the Master Owners Association, Developer, or another Owner to enforce any of the provisions, covenants, conditions, restrictions, and/or obligations set forth in this Declaration shall in no event be deemed to be or constitute a waiver of the right to thereafter enforce the same as to any continuing or subsequent violation or breach or attempted violation or breach of the same provision, covenant, condition, restriction and/or obligation, whether occurring prior or subsequent thereto. No suit shall lie against the DCC, the Master Owners Association, Developer; or any Owner for any failure, refusal, or omission to institute or join in any action or proceeding for the enforcement hereof or to restrain the violation of any of the provisions hereof.

12.5. Inspection. Subsequent to reasonable notice to the applicable Owner, the DCC, the Master Owners Association, Developer, and their authorized representatives may from time to time at any reasonable hour or hours, enter and inspect any Building or Lot to ascertain compliance with this Declaration and any other documents promulgated pursuant hereto.

12.6. Right to Enter and Cure.

12.6.1. If any Owner or Occupant violates or breaches any covenant, provision, condition, restriction, and/or obligation contained herein or in any other document promulgated pursuant hereto and fails to cure the same within fifteen (15) Business Days after the Owner has received written notice from the DCC, the Master Owners Association, or Developer of the same (or without notice if the DCC, the Master Owners Association, or Developer, as the case may be, in its sole, but reasonable, discretion, determines that such violation or breach has resulted in an emergency situation, i.e., poses an immediate risk to any Persons or property), the DCC, the Master Owners Association, and/or Developer shall have the right to enter upon said Lot and summarily abate and remove, at the expense of the Owner or Occupant thereof, any structure, thing, or condition that may be or exist thereon contrary to the intent and meaning of the provisions hereof or any documents promulgated pursuant hereto, or to do anything that should have been done by an Owner or Occupant hereunder or under any other document promulgated pursuant hereto; provided, however, notwithstanding anything to the contrary contained in this Section 12.6.1, the DCC, the Master Owners Association, and Developer shall not have the right under this Section 12.6.1 to enter upon any applicable Lot to summarily abate and remove any structure or thing which is attached to, connected to, or a part of any Building on such Lot if such structure or thing has been previously Approved by Developer under the applicable Lot Declaration and by the DCC pursuant to this Declaration, Notwithstanding any other provision contained in this Section 12.6.1, if a breach or violation is not cured within the notice and cure

period set forth in this Section 12.6.1, the DCC, the Master Owners Association, and Developer shall not be entitled to exercise the rights conferred upon them in this Section 12.6.1 so long as such Owner or Occupant is diligently prosecuting to completion the cure of such breach or violation, unless the DCC, the Master Owners Association, and/or Developer, as the case may be, in their sole, but reasonable, discretion, determine that such violation or breach has resulted in an emergency situation.

12.6.2. By purchasing or leasing property subject to this Declaration, each Owner or Occupant binds itself, its successors and assigns, to pay to the DCC, the Master Owners Association, or Developer, as the case may be, the actual cost to cure any violation hereunder, together with liquidated damages equal to ten (10%) percent of such cost, which damages are, when collected, to be allocated by the DCC, the Master Owners Association, or Developer, as the case may be, toward defraying the cost of enforcing this provision. In addition, the amounts so expended by the DCC, the Master Owners Association, and/or Developer, as the case may be, in accordance with this Section 12.6.2 shall be Assessments against the Lot on which the violation occurred.

12.7. Attorney's Fees. Any Owner or Occupant shall be obligated to pay reasonable attorney's fees and related costs and expenses, including court costs, actually incurred by the DCC, the Master Owners Association, or Developer, as the case may be, in bringing an action against such Owner or Occupant for the enforcement of the provisions of this Declaration, to the extent the DCC, the Master Owners Association, or Developer, as the case may be, is the prevailing party in such action.

12.8. Assessments. All sums expended by the DCC, the Master Owners Association, or Developer in enforcing this Declaration, including, without limitation, sums expended pursuant to Section 12.6.2 hereof, shall be immediately due and payable by the Owner or Occupant in violation, shall be deemed Assessments against such Owner or Occupant and such Owner's or Occupant's Lot(s), and shall constitute a lien and be subject to enforcement and collection as provided in Section 6.5.

12.9. Remedies Cumulative. The remedies provided herein shall be in addition to and not in substitution for any rights and remedies now or hereafter existing at law or in equity. The remedies provided herein or otherwise available shall be cumulative and may be exercised concurrently. The failure to exercise any one of the remedies provided herein shall not constitute a waiver thereof, nor shall use of any of the remedies provided herein prevent the subsequent or concurrent resort to any other remedy or remedies.

ARTICLE 13**MISCELLANEOUS**

13.1. Governing Law. This Declaration concerns real property located in the State of Ohio and shall be governed by and interpreted in accordance with the laws of the State of Ohio. The venue for any action or suit brought against any Owner or Occupant relating to this Declaration or the enforcement of any provisions hereof shall be Montgomery County, Ohio.

13.2. Severability. The invalidity of any one of the covenants, agreements, conditions or provisions of this Declaration, or any portion thereof, shall not affect the remaining portions of this Declaration, or any part hereof, and this Declaration shall be modified to substitute in lieu of the invalid provision, a like and valid provision which reflects the intent of Declarant with respect to the covenant, agreement, condition or provision which has been deemed or determined to be invalid.

13.3. Waiver. No consent or waiver, express or implied, by any Owner or Occupant to or of any breach or default by any other Owner or Occupant in the performance by such other Owner or Occupant of the obligations thereof under this Declaration shall be deemed or construed to be a consent or waiver to or of any other breach or default in the performance by such other Owner or Occupant of the same or any other obligations of such other Owner or Occupant under this Declaration. Failure on the part of any Owner or Occupant to complain of any act or failure to act of any other Owner or Occupant or to declare such other Owner or Occupant in default, irrespective of how long such failure continues, shall not constitute a waiver by such Owner or Occupant of the rights thereof under this Declaration.

13.4. Conflicts. The Zoning Conditions, applicable building and inspection codes and regulations, the Development Standards, and any and all other Requirements of a Governmental Authority shall be observed. In the event of any conflict among this Declaration, the Development Standards, any of the Lot Declarations, and any such Requirements of a Governmental Authority, the provisions which require more restrictive standards shall apply.

13.5. Unavoidable Delays. No Person shall be deemed to be in default in the performance of any obligation created under or pursuant to this Declaration, other than an obligation requiring the payment of a sum of money, if and so long as non-performance of such obligation shall be caused by fire or other casualty, national emergency, governmental or municipal laws or restrictions, enemy action, civil commotion, strikes, material adverse weather conditions, inability to obtain labor or materials, war or national defense preemptions, acts of God, delays in obtaining applicable approvals pursuant to any Requirement of a Governmental Authority (so long as such approvals are being diligently pursued), energy shortages or similar causes beyond the reasonable control of such Person (other than inability to make payment of money) ("Unavoidable

Delays") and the time limit for such performance shall be extended for a period equal to the period of any such Unavoidable Delay. The Person unable to perform (the "Non-Performing Party") shall notify any other Person affected by the Unavoidable Delay (including Developer, the Master Owners Association, and any other Owners or Occupants) in writing of the existence and nature of any Unavoidable Delay within a reasonable time after the onset of any such Unavoidable Delay. The Non-Performing Party shall keep any Person affected by the Unavoidable Delay fully informed, in writing, of all further developments concerning any such Unavoidable Delay.

13.6. No Reverter. No covenant or restriction set forth in this Declaration is intended to be or shall be construed as a condition subsequent, a conditional limitation, or as creating a possibility of reverter.

13.7. Terminology. All personal pronouns used in this Declaration, whether used in the masculine, feminine or neuter gender, shall include all other genders; the singular shall include the plural; and the plural shall include the singular. Titles of Articles, Sections and Subsections of this Declaration are for convenience only, and neither limit nor amplify the provisions of this Declaration, and all references in this Declaration to Articles, Sections or Subsections shall refer to the corresponding Article, Section or Subsection of this Declaration unless specific reference is made to the articles, sections or subdivisions of another document or instrument.

13.8. Grants and Agreements. The grants, reservations, creation and establishment of the easements, rights and privileges in this Declaration are independent of any contractual agreements or undertakings hereunder and a breach by Declarant, Developer, any Owner or any Occupant of any such contractual agreements or undertakings shall not cause or result in a forfeiture, termination or reversion of the easements, rights and privileges created by this Declaration.

13.9. Interpretations. In all cases, the provisions set forth or provided for in this Declaration shall be construed together and given that interpretation or construction which will best effect the intent of the purpose set forth in Article 2 hereof. No provision of this Declaration shall be construed against or interpreted to the disadvantage of any Owner, including, without limitation, Declarant or Developer, by any court or other Governmental Authority by reason of such Owner's having or being deemed to have structured or dictated such provision.

13.10. Captions. The captions of each Article, Section and paragraph hereof are inserted only for convenience and are in no way to be construed as defining, limiting, extending or otherwise modifying or adding to the particular Article, Section or paragraph to which they refer.

13.11. Rule Against Perpetuities. It is the understanding, intent and desire of Declarant and Developer that the provisions of this Declaration do not and shall not violate the Rule Against Perpetuities or any other rule of law with respect to remoteness of vesting of property interests,

and Declarant and Developer hereby covenant not to make any contrary assertion, contention, claim or counterclaim, or seek the benefit of the Rule Against Perpetuities or other such rule of law, in any action, suit or other legal proceeding involving this Declaration. In the event, however, that the Rule Against Perpetuities, or any rule of law with respect to remoteness of vesting of property interests, shall limit the time within which any property interest granted herein must vest, then such vesting shall occur only within the period of time permitted for such vesting by the Rule Against Perpetuities or such other rule of law, which period of time shall be measured as that period commencing on the date of this Declaration and terminating on the date which is the later of ninety (90) years from the date of this instrument or twenty-one (21) years from and after the date of the death of the last survivor of the now living descendants of (i) George W. Bush, President of the United States; and (ii) Her Majesty Queen Elizabeth II, Queen of the United Kingdom of Great Britain and Northern Ireland. In the event that the future vesting of such property rights ever shall be so limited in time, Declarant and Developer hereby state their further intent and desire to amend or supplement this Declaration, if and to the extent permitted by law, at some future time to cause such future property rights to be valid, enforceable and exercisable throughout the term of this Declaration.

13.12. Mortgagee Rights. Any Mortgagee shall have the right to enforce or perform any rights or obligations of any Owner or Occupant hereunder to the same extent as the Owner or Occupant of the portion of Project encumbered by such Mortgagee's Mortgage may do so hereunder; provided, however, that no Mortgagee may exercise the voting rights of any Owner or Occupant hereunder. The breach of any covenants or restrictions contained in this Declaration shall not defeat or render invalid the lien of any Mortgage made in good faith, but all of the provisions, restrictions and conditions contained herein shall be binding upon and effective against any Owner or Occupant of any portion of North Clayton that acquires title by Foreclosure.

13.13. Exhibits. All exhibits referred to herein and attached hereto are deemed incorporated herein by reference with the same force and effect as if each exhibit were set forth in the body of this Declaration in its entirety.

13.14. Successors and Assigns. This Declaration is and shall be binding upon and shall inure to the benefit of each of the parties hereto, each Owner and Occupant of North Clayton, and their respective successors, assigns, heirs, administrators, executors, and legal representatives.

13.15. Notice. Any and all notices, elections or demands permitted or required to be made under this Declaration shall be in writing, signed by the party giving such notice, election or demand, and shall be delivered by hand delivery (in which case a written, signed receipt shall be obtained), by overnight delivery service providing proof of delivery (such as Airborne, Federal Express, UPS or similar service) for next day delivery, delivery charges prepaid, or by certified mail, return receipt

requested, to the other party at the address set forth below, or at such other address within the continental United States of America as such party may designate in writing in accordance with the provisions hereof.

Notices to Developer shall be addressed to:

North Clayton Development, Inc.

4400 Willow Creek Circle

Bellbrook, OH 45305

Attn: President

Notices to the Master Owners Association shall be addressed to:

The Master Owners Association

c/o North Clayton Development, Inc.

4400 Willow Creek Circle

Bellbrook, OH 45305

Attn: President

Notices to the DCC shall be addressed to:

Design Control Committee

c/o North Clayton Development, Inc.

4400 Willow Creek Circle

Bellbrook, OH 45305

Attn: President

13.16. Right to Transfer Developer's Interests. Any or all of Developer's rights and obligations set forth in this Declaration or the by-laws may be transferred or assigned in whole or in part to other Persons; provided, however, such transfer or assignment shall not release Developer from liability for any of Developer's obligations accruing hereunder prior to the date of such transfer, reduce an obligation, or enlarge a right beyond that which Developer has under this Declaration or the by-laws, as the case may be. No such transfer or assignment shall be effective unless it is evidenced by a written instrument signed by Developer and the Person to whom such assignment is made and filed in the Office of the Recorder of Deeds Office for Montgomery County, Ohio.

13.17. Time of Essence. Time is of the essence with respect to this Declaration and every provision hereof.

IN WITNESS WHEREOF, Declarant has caused this Declaration to be duly executed and delivered the date first above written.

DECLARANT:

NORTH CLAYTON DEVELOPMENT, LLC

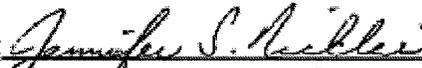
An Ohio Limited Liability Company

By: 

Thomas H. Peebles, Managing Member

MORTGAGEE:

HUNTINGTON NATIONAL BANK

By: 

Print Name: *Jennifer S. Nickles*

Print Title: *Vice President*

Reviewed and Approved:

CITY OF CLAYTON, OHIO

By: 

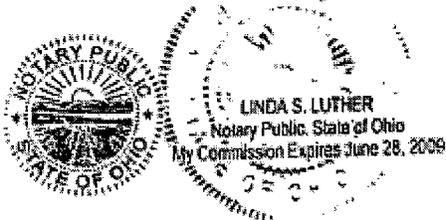
David Rowlands, City Manager

STATE OF OHIO)

) SS:

COUNTY OF MONTGOMERY)

The foregoing instrument was acknowledged before me on this 24 day of July, 2006, by **THOMAS H. PEEBLES**, in his capacity as the duly authorized and acting Managing Member of **NORTH CLAYTON DEVELOPMENT, LLC**, an Ohio limited liability company, on behalf of the Company.




Notary Public

STATE OF OHIO)
) SS:
COUNTY OF HAMILTON)

The foregoing instrument was acknowledged before me on this 20 day of JULY, 2006,
by JENNIFER S. NICKLES, in ^{HER}his capacity as VICE PRESIDENT of **HUNTINGTON**
NATIONAL BANK, on behalf of the bank as mortgagee on the Property.

Shirley W. Carlisle
Notary Public

THIS INSTRUMENT PREPARED BY:
Cynthia P. McNamee, Attorney at Law
McNAMEE & McNAMEE, PLL
2625 Commons Blvd.
Beavercreek, Ohio 45431
(937) 427-1367
Facsimile: (937) 427-1369
cmcnamee@mcnameelaw.com



SHIRLEY W. CARLISLE
Notary Public, State of Ohio
My Commission Expires 01-14-08

EXHIBIT A

Legal Description of the Entire
North Clayton Property

Jul. 21. 2006 3:35PM

MCNAMEE & MCNAMEE

No. 8118 P. 2

EXHIBIT "A"

Legal Description
For File: GMIS05107869

* ~~NE 1/4~~ CITY OF CLAYTON

Situate in the Township of Randolph, County of Montgomery, and state of Ohio and in the northeast quarter of Section 20, Town 5, Range 5 East, etc. Being a part, consisting of approximately 61.50 acres out of a 84.7 acre tract described in a deed from Robert M. Blank, as Sheriff of Montgomery County, Ohio to Eli Seivel filed March 6, 1930 and recorded in Volume 578, Page 562 of the Deed Records of Montgomery County, Ohio and more particularly bounded and described as follows: Beginning at a point, which is the northeast corner of said tract, in the centerline of State Route #40 and which is 768.5 feet westward from the east line of Section 20 measured along the center of said road. Thence South 1 degree 26 minutes East along the east line of said 84.7 acre tract and the west line of Miller's 35.7 acre tract for 2016.5 feet to the southeast corner of the above mentioned 84.7 acre tract and on the south line of said quarter section. Thence along the south line of said tract and the south line of the quarter section South 87 degrees 22 minutes West for 1442.0 feet to the southeast corner of a 10 acre tract described in Deed Book 732, Page 302. Thence along the east line of said 10 acre tract North 2 degrees 00 minutes West for 1269.8 feet to a corner. Thence North 87 degrees 20 minutes East for 200.92 feet to a corner; Thence North 2 degrees 00 minutes West for 638.4 feet to a point in the center of State Route #40. This point is 668.85 feet eastward measured along said center line from the northwest corner of said 84.7 acre tract. Thence North 62 degrees 28 minutes East along the center of Route #40 for 1266.65 feet to the place of beginning, containing approximately 61.56 acres. Subject to all legal highways, as surveyed by A. E. Finfrock, Registered Engineer, on June 19, 1942.

Excepting from the above the tract of land set forth as follows: Situate in the Northeast Quarter of Section 20, Town 5, Range 5 East, Randolph Township, Montgomery County, State of Ohio, and being part of the 61.56 acre tract conveyed to Irene M. Roth by Deed recorded in Deed Book 1844, Page 615, of the Montgomery County Deed Records, and being more fully bounded and described as follows: Beginning at a railroad spike in the centerline of Old National Road (U.S. Route 40), and in the north line of said Roth 61.56 acre tract, South 83 degrees 28 minutes West, 528.0 feet from a railroad spike at the northeast corner of said Roth 61.56 acre tract, and said beginning point being South 82 degrees 28 minutes West, 1296.6 feet from an iron pipe in the east line of said Section 20. Thence South 01 degree 47 minutes East, 717.5 feet to an iron pipe. Thence South 87 degrees 18 minutes West, 327.4 feet to an iron pipe. Thence North 01 degree 32 minutes West, 690.0 feet to a railroad spike in the centerline of said Old National Road and in the north line of said Roth 61.56 acre tract. Thence with the centerline of said Old National Road, and with the north line of said Roth 61.56 acre tract, North 82 degrees 28 minutes East, 326.0 feet to the place of beginning, and containing 5.264 acres, more or less, subject to all legal highways and easements of record. The above description was prepared and based on a survey made in September, 1973, by Donald R. Bowman, and based on surveys made previously by Surveyors R.L. Woopert and J.L. Finfrock.

Parcel No. M50-31-2-31

