




Instr: 198901080006464 01/08/1999  
 Pages: 05 Fee \$268.00 12:05PM  
 Richard B. Maloof T19890002893  
 Franklin County Recorder BXCHICAGO

# NEW ALBANY LINKS

NEW ALBANY, OHIO

## DECLARATION OF PROTECTIVE COVENANTS, CONDITIONS AND RESTRICTIONS

*Chicago Title Box  
 93160672.com*

CONVEYANCE TAX EXEMPT 
JOSEPH W. TESTA FRANKLIN COUNTY AUDITOR

TRANSFERRED  
 NOT NECESSARY  
 JAN 08 1999  
 JOSEPH W. TESTA  
 AUDITOR  
 FRANKLIN COUNTY, OHIO

**DECLARATION OF PROTECTIVE COVENANTS  
CONDITIONS AND RESTRICTIONS FOR  
NEW ALBANY LINKS**

**TABLE OF CONTENTS**

**ARTICLE I**

Declaration/Purpose ..... 1

**ARTICLE II**

Definitions ..... 3

2.01 Annexation Property ..... 3

2.02 Architectural Review Board (also referred to as the ARB) ..... 3

2.03 Articles ..... 3

2.04 Assessment ..... 3

    (i) Regular Assessment ..... 3

    (ii) Compliance Assessment ..... 3

    (iii) Special Assessment ..... 3

    (iv) Initial Reserve Assessment ..... 3

2.05 Association ..... 4

2.07 Builder ..... 4

2.08 Code of Regulations ..... 4

2.09 Common Area ..... 4

2.10 Common Expenses ..... 4

2.11 Declarant ..... 4

2.12 Declaration ..... 5

2.13 Design Review Manual ..... 5

2.14 Golf Company ..... 5

2.15 Golf Course ..... 5

2.16 Improvements ..... 5

2.17 Landscape Easement ..... 5

2.18 Lot ..... 5

2.19 Master Site ..... 5

2.20 Member ..... 5

2.21 Multi-Unit Parcel ..... 5

2.22 Notice of Annexation ..... 6

2.23 Operating Expenses ..... 6

2.24 Owner ..... 6

2.25 Parcel ..... 6

2.26 Plat ..... 6

2.27 Property (also "Project") ..... 6

2.28	Recreational Land	6
2.29	Registered Notice	6
2.30	Residence	7
2.31	Resident	7
2.32	Restrictions	7
2.33	Rules and Regulations	7
2.34	Supplemental Declaration	7
2.35	Tenant	7

ARTICLE III

	Development Plan	7
3.01	Initial Plat	7
3.02	Name	7
3.03	Addition of Property	7
3.04	Withdrawal of Property	8
3.05	Amendment	8
3.06	Governmental Regulations	8
3.07	Dedication Rights	8

ARTICLE IV

	Association	9
4.01	Identification and Formation	9
4.02	Membership	9
4.03	Voting Rights	9
4.04	Transfer Fee	9
4.05	Relationship to Parcel	9
4.06	Power; Authority; Duties	9
4.07	Specific Powers	9
4.08	Delegation of Duties	10
4.09	Right of Entry	10

ARTICLE V

	Architectural Control	11
5.01	Formation	11
5.02	Architectural and Design Standards	11
5.03	Plan Approval Requirement	11
5.04	Review Process	11
5.05	Review Fee	11
5.06	Basis of Approval	11
5.07	Failure to Approve	11
5.08	Complete Authority	12
5.09	Liability	12

5.10	Scope of Approval	12
5.11	Approval Subject to Governmental Regulations	12
5.12	Enforcement of Violation	12
5.13	Penalties	12
5.14	Recreational Land	13

ARTICLE VI

	Specific Architectural Requirements	13
6.01	Specific Requirements	13
6.02	Residential Lamp Post	13
6.03	Residential Mail Box	13
6.04	Standard House Numbering	13
6.05	Compliance with New Albany Development and Architectural Standards	13
6.06	Improvements on Lots adjoining Golf Course	13

ARTICLE VII

	Protective Covenants and Restrictions	13
7.01	Residential Usage	13
7.02	Splits prohibited	14
7.03	Temporary Improvements	14
7.04	Quiet Enjoyment/Nuisance	14
7.05	Trucks, Trailers, Mobile Homes, Recreational Vehicles and Boats	14
7.06	On-Street Parking Prohibited	15
7.07	Service Screening, Storage Areas	15
7.08	Animal Maintenance	15
7.09	Machinery and Equipment, Hobbies	16
7.10	Landscaping	16
7.11	Gardens	16
7.12	Removal of Trees	16
7.13	Drainage and Grading	16
7.14	Commercial Activity	17
7.15	Parking	17
7.16	Utility Service	17
7.17	Maintenance of Lots and Buildings	18
7.18	Signs	18
7.19	Mineral Exploration	18
7.20	Easement Across Lots Adjacent to Golf Course	18
7.21	Interference with Play of Golf Course	19
7.22	Right of Entry	19
7.23	View Restrictions	20
7.24	Private Golf Carts	20
7.25	Exemption of Declarant	20

ARTICLE VIII

Easements ..... 21  
8.01 Owners' Easements ..... 21  
8.02 Limitations on Owners' Easement Rights ..... 21  
8.03 Vehicular Traffic ..... 22  
8.04 Utility Easements ..... 23  
8.05 Landscape Easement ..... 23  
8.06 Golf Club Easement ..... 23  
8.07 Power of Attorney ..... 23  
8.08 Sidewalk Easements ..... 23  
8.09 Restriction on Easements Adjoining Golf Course ..... 23  
8.10 General ..... 24

ARTICLE IX Common Areas ..... 24

9.01 Transfer of Title ..... 24  
9.02 Maintenance and Use ..... 24  
9.03 Irrigation Systems ..... 24  
9.04 Third Party Conveyance ..... 25  
9.05 Commencement of Association Responsibilities ..... 25  
9.06 Use of Common Areas ..... 25  
9.07 Authority to Convey ..... 25  
9.08 Golf Company to Maintain Common Areas ..... 26

ARTICLE X

Assessments ..... 26  
10.01 Creation and Identification of Assessments ..... 26  
10.02 Regular Assessments ..... 26  
10.03 Regular Assessment ..... 27  
10.04 Compliance Assessment ..... 27  
10.05 Special Assessment ..... 27  
10.06 Initial Reserve Assessment ..... 27  
10.07 Annexation Property Assessment ..... 28  
10.08 Declarant Exemption ..... 28  
10.09 Annual Budget and Statements ..... 28  
10.10 Authority to Enter into Contracts ..... 28

ARTICLE XI

Enforcement ..... 29  
11.01 Rights to Enforce ..... 29  
11.02 Rights to Abate ..... 29  
11.03 Nuisance Declaration ..... 29  
11.04 Cost of Enforcement ..... 29

11.05	Mortgage Lien Priority	29
11.06	Voting Rights	30
11.07	Enforcement Failure/No Waiver	30
11.08	Golf Course Company Third Party Beneficiary	30

**ARTICLE XII**

	Real Estate Taxes	30
12.01	Owner	30
12.02	The Association	30

**ARTICLE XIII**

	Insurance	30
13.01	Public Liability Insurance	30
13.02	Casualty and Fire Insurance	31
13.03	Fidelity Bonds	31
13.04	D & O Liability Insurance	31
13.05	Workers' Compensation	31
13.06	Miscellaneous Coverage	31
13.07	Owner's Insurance	31

**ARTICLE XIV**

	Annexation of Property	32
14.01	Phase Development	32
14.02	Planned Annexation	32
14.03	Notice of Annexation	32
14.04	Uncontemplated Annexation	33
14.05	Right of De-Annexation	33

**ARTICLE XV**

	Mortgagee Protection	33
15.01	Mortgagee Protection Provisions	33
15.02	First Refusal	33
15.03	Lien Subordination	33
15.04	Assessment Methods	34
15.05	Real Estate Taxes	34
15.06	Insurance Distribution	34
15.07	Reserve Funds	35
15.08	Notice Information	35
15.09	Professional Management	35
15.10	Payment Reimbursement	35
15.11	Access to Information	36

15.12 Notice of Identity .....	36
15.13 Encroachments .....	36

**ARTICLE XVI**

General Provisions .....	36
16.01 Duration .....	36
16.02 Time Limits .....	37
16.03 No Liability for Declarant .....	37
16.04 Construction .....	37
16.05 Constructive Notice and Acceptance .....	37
16.06 Paragraph Headings .....	37
16.07 Singular includes Plural .....	37
16.08 Mutuality .....	38

**EXHIBIT A - Master Site Plan**

**EXHIBIT B - Phase I**

**EXHIBIT C - Articles of Incorporation of New Albany Links Homeowners Association, Inc.**

**EXHIBIT D - Code of Regulations of New Albany Links HomeOwners Association, Inc.**

DECLARATION  
OF  
COVENANTS, CONDITIONS AND RESTRICTIONS  
FOR  
NEW ALBANY LINKS

This Declaration is made by New Albany Links Development Company, Ltd. ("Declarant"), an Ohio limited liability company, for the purpose and intent noted herein.

**ARTICLE I**

**Declaration/Purpose**

WHEREAS, Declarant is the owner in fee simple of, or has options to purchase, the real estate depicted on Exhibit A attached hereto and made a part hereof ("Master Site"); and

WHEREAS, Declarant intends to develop thereon a residential community to be known as "New Albany Links" ("New Albany Links"), and other Improvements which Declarant deems consistent therewith; and

WHEREAS, New Albany Links Golf Course Company, Ltd., an Ohio limited liability company ("Golf Company") intends to develop a golf course to be known as "New Albany Links Golf Course" ("Golf Course") on a portion of the Master Site, as depicted on the Master Site drawing attached hereto as Exhibit A; and

WHEREAS, Developer intends to develop New Albany Links in phases, the first phase of which is described on Exhibit B attached hereto, made a part hereof by reference and which is specifically subjected to this Declaration; and

WHEREAS, Declarant intends to, from time to time, subject additional phases of New Albany Links to this Declaration; and

WHEREAS, in order to advance the purposes of the Declaration, New Albany Links Homeowners Association, Inc. ("Association"), an Ohio non-profit corporation, has been established for the purpose of owning, operating, maintaining, and administering portions of New Albany Links, together with certain Improvements constructed and developed or to be constructed and developed thereon, including but not limited to, Common Areas, parks, and lakes as dedicated from time to time by Declarant for the common use by the owners of Lots within New Albany Links; and the Association, as formed by Declarant, has joined in this Declaration for purposes of acceptance of all powers and duties of operation, administration,



maintenance and repair as delegated and assigned by Declarant together with the collection and disbursement of "Operating Expenses" (as said term is hereinafter defined); and

WHEREAS, the Association shall administer and enforce the provisions of this Declaration with the costs incurred by the Association in connection with said operation, administration, maintenance and repair, being an encumbrance upon those portions of New Albany Links which are benefitted thereby (as more particularly set forth herein); and

WHEREAS, New Albany Links shall include a number of separate buildable real estate Lots intended for single family homes together with Multi-Unit Parcels(as hereinafter defined) established for the purpose of single family patio homes, attached single family dwellings, or condominiums which will be brought into existence by the recording of a subdivision record plan (plat) which incorporates the terms and conditions of this Declaration, all of which shall be deemed to run with the land and its accompanying exhibits; and

WHEREAS, in anticipation of each Multi-Unit Parcel developing a separate Homeowners' Association, it is hereby specifically noted and reserved that the establishment of each Multi-Unit Parcel Homeowners' Association will be subject to the conditions of this Declaration as well as all rights and authority of operation reserved herein by the Association which is hereby deemed to be the senior Homeowners' Association within New Albany Links; and

WHEREAS, Declarant hereby reserves the right within its sole and absolute discretion to create and record such supplemental declarations for each subsequent plat or replat with such terms and conditions as Declarant deems appropriate.

NOW, THEREFORE, in the interest of enhancing the inherent value of ownership within New Albany Links; to ensure proper development and use of the Property (as hereinafter defined); to provide for adequate maintenance of Common Areas and residential Lots; to promote the health, safety and welfare of the residents and to promote a cohesive aesthetically pleasing living community, the Declarant, for itself and its successors and assigns, hereby declares and agrees that all portions of the Property, shall hereafter be held, conveyed, leased, occupied, used and improved subject to the covenants, conditions, restrictions, liens, assessments and easements as set forth herein, which shall run with the Property for all purposes and shall be binding upon the Property, the Declarant and its grantees, together with its respective successors and assigns, and shall inure to the benefit of the Property, the Declarant, its grantees and owners of any portion of the Master Site, their respective successors and assigns.

## ARTICLE II

### Definitions

2.01 Annexation Property: Any portion of the Master Site or adjacent Property which may, from time to time, be subjected to this Declaration and thereafter be included in the term "Property", "Annexation Property" and "New Albany Links" have the same meaning for purposes of this Declaration.

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

2.03 Articles: The Articles of Incorporation of "New Albany Links Homeowners Association, Inc.", an Ohio non-profit corporation, which said Articles are attached hereto as Exhibit C, and made a part of this Declaration by such attachment and incorporated herein by reference, and as amended from time to time as provided therein.

2.04 Assessment: Shall be defined as follows:

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

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

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

(iv) Initial Reserve Assessment shall mean the charge against an Owner and respective Lot representing an initial contribution for purposes of creating an

operating reserve fund, thereby creating funds available to the Association to pay obligations when and as they become due.

2.05 Association: Is the "NEW ALBANY LINKS HOMEOWNERS ASSOCIATION, INC.", an Ohio non-profit corporation, and its successors and assigns. It is understood that all Owners of land subject to this Declaration will belong to said Association. However, if subsequent platting of Property added to the master plan should create a Common Area that pertains or relates only to the areas then to be developed, then a separate non-profit corporation shall be formed, whose members will be the Owners of Lots or units pertaining to the separate area ( Multi-Unit Parcels) and said Owners will be members of both the Association and the newly created association.

2.06 Board: The Board of Trustees of the Association.

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

2.08 Code of Regulations: The Code of Regulations of the Association which have been adopted by the Board, as such Code of Regulations may be amended from time to time. Said Code of Regulations are attached to this Declaration as Exhibit D, and made a part hereof by reference and as may be amended from time to time as provided therein.

2.09 Common Area: The land controlled and/or owned by the Association, as well as those areas of the Property shown on any recorded plat of all or any portion of the Property, or designated in any recorded Declaration, or both, as devoted to the common use and enjoyment of the Owners, including without limitation, buildings and Improvements now or hereafter constructed thereon. Common Area also includes those areas shown on the Master Site as "Common Area", "Parkland" or a similar designation which are deeded to the Village of New Albany but for which the Developer, the Association or the Golf Company retains maintenance responsibilities or other liabilities.

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

2.11 Declarant: New Albany Links Development Company, Ltd., an Ohio limited liability company, and any person or entity acquiring all of Declarant's then remaining interests in the Master Site from Declarant which acquisition is recorded with the County Recorder, Franklin County, Ohio.

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

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

2.14 Golf Company: New Albany Links Golf Course Company, Ltd., an Ohio limited liability company and current owner and developer of the Golf Course, and any person or entity acquiring all of the Golf Company's interest in the Golf Course, which acquisition is recorded with the County Recorder, Franklin County, Ohio.

2.15 Golf Course: That portion of the Master Site designated as "Golf Course" in accordance with a plat or plats, or as otherwise so designated by Declarant. At times these portions may also be referred to as Recreational Land as the term is defined herein.

2.16 Improvements: All structures and appurtenances thereto of every kind, including without limitation, buildings, out buildings, screen enclosures, porches, decks, patios, roads, driveways, parking areas, fences, grading, excavating, retaining walls, swimming pools, hot tubs, screening walls, ornamentation, signs, stairs, decks, patios, sport courts, exterior lighting, hedges, wind breaks, plantings, planted trees and shrubs, poles, irrigation equipment, exterior air conditioning equipment, drainage swales and other drainage facilities and all other installations, structures and landscaping.

2.17 Landscape Easement: That easement retained over portions of certain Lots for the installation and maintenance of decorative features. The retained Landscape Easements and the Lots affected thereby are identified on the Plat.

2.18 Lot: Each separate tract depicted, designated and shown upon any recorded subdivision Plat, excepting, however, any Lot described in the Declaration or subdivision Plat as:

- (i) Common Area
- (ii) Multi-Unit Parcel
- (iii) Golf Course

2.19 Master Site: The parcel of real estate depicted on Exhibit A attached hereto and made a part hereof consisting of approximately 464.45 acres owned by Declarant or the Golf Company, or for which Declarant has options to purchase, situated in the Village of New Albany, Franklin County, Ohio.

2.20 Member: Every person or entity who holds membership in the Association. There are three categories of membership as follows: Declarant, Builders, and Owners of Lots.

2.21 Multi-Unit Parcel: See "Association".

2.22 **Notice of Annexation:** A written notice recorded in the Franklin County, Ohio Recorder's office annexing one or more phases of the Annexation Property to the Property, thereby subjecting such phase or phases to this Declaration.

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

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

2.25 **Parcel:** Also referred to as cluster area, and Multi-Unit Parcel; the Lots platted from time to time that are convenient to the residential construction of buildings with more than one living unit; also referred to herein as patio homesites or cluster homesites. These terms used interchangeably shall be distinguished from the term Lot which is referred to herein above. It is anticipated that in subsequent Plats, Parcels will be included for multi-family type construction and will then be resubdivided to identify the units for purposes of sale, with appropriate Common Areas. Parcels may be subdivided as "condominiums".

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

2.27 **Property (also "Project"):** All land described in the attached Exhibit B and all Improvements now or hereafter built, installed or erected thereon. From and after each addition of Annexation Property to the land described in Exhibit B hereto, subjecting it to the provisions of this Declaration, pursuant to Article XIV hereof, the term Property shall also include each such additional parcel of Annexation Property land and each Improvement then or thereafter built, installed or erected thereon.

2.28 **Recreational Land:** Certain portions of the Master Site so designated by Developer.

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

but was refused by the addressee or other persons at such address, to the extent that such refusal was witnessed by an employee of the Postal Service or other delivery service.

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

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

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

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

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

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

### ARTICLE III

#### Development Plan

3.01 **Initial Plat:** The initial Plat of 22.143 acres more or less, consisting of the lands described on the attached Exhibit B, creates 51 Lots for single-family detached homes; and identifies a number of areas that are Common Areas to be owned and maintained by the Association.

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

3.03 **Addition of Property:** From time to time, the Declarant or any successor, may subject any portion of the Master Site or adjacent Property to the terms and conditions of this

Declaration without the assent of the Association or the Owners of Lots already included in the Property. After each subsection, such Annexation Property shall thereafter be included in the defined term "Property" as used in this Declaration. The terms and conditions of this paragraph shall not be construed to obligate Declarant to subject any additional portion of the Master Site to this Declaration. Declarant reserves the sole and absolute discretion to add Property to this Declaration.

3.04 Withdrawal of Property: Declarant shall be entitled to withdraw any portion of the Annexation Property from the provisions and applicability of this Declaration and the Articles and Code of Regulations of the Association; provided, however, that this right of Declarant to withdraw shall not apply to any portions of the Property which have been conveyed to the Association or to an Owner unless the Association or its successor, and/or any Owner consents thereto.

3.05 Amendment: This Declaration is subject to amendment solely by the Declarant as long as Declarant owns at least one Lot or Property within the Master Site, and after all Lots and Property owned by Declarant are sold and/or transferred, then this Declaration is subject to amendment by a majority vote of all Members. Any such amendments must be approved by all applicable local governmental entities that have zoning control where appropriate and necessary. Declarant reserves the right to amend this Declaration as well as the Master Site in response to technological, economic, environmental or social conditions related to the marketing of New Albany Links, whether improved or unimproved, as well as in response to changes in requirements of governmental agencies and/or financial institutions; to eliminate errors and inconsistencies; to improve the manner of development; and to delineate exact location of Lots, Common Areas, Multi-Unit Parcels and Recreational Land. Where necessary or appropriate, Declarant may institute such amendments, including the execution of replats and amendments thereto, without the signatures of any other Members. Said reservation of right to sign such replats and amendments thereto is a covenant running with the land reserved exclusively unto Declarant or its successors and any subsequent conveyance from Declarant shall be subject to this reserved right so that no grantee in any deed or other instrument purporting to grant an interest in a Lot may claim to have received any right to execute replats or amendments referred to in this Section 3.05.

3.06 Governmental Regulations: This development is subject to the subdivision regulations and zoning regulations of the Village of New Albany and provisions of the Planned Unit Development zoning granted by the Village of New Albany in connection with the development of the Master Site.

3.07 Dedication Rights: Declarant and/or the Association hereby specifically reserves the right to "Dedicate to the Use of the Public" any part of or all of the roadways, streets, drives and utility easements in part or in full.

## ARTICLE IV

### Association

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

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

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

4.04 Transfer Fee: The Association may levy a reasonable transfer fee against new Owners and their Lots to reimburse the Association for the administrative cost of transferring the memberships to the new Owners on the records of the Association.

4.05 Relationship to Parcel: This Declaration applies to all land and all buildings included within New Albany Links. The Association shall have the responsibility of administering this Declaration throughout the entire Development. The administration of special covenants, conditions and restrictions created by one or more additional Declarations, with regard to those portions of the Master Site designated as Multi-Unit Parcels to be used for multi-family or patio homesites, shall be accomplished by a separate and additional homeowners' association, not by this Association.

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

4.07 Specific Powers: Among other things, the Association shall have the following specific powers:

- A. Enforce the provisions of this Declaration;
- B. Acquire title to, manage, maintain, repair and replace all Common Areas and facilities, maintain all street and traffic signs, and pay all costs of utilities, operation, maintenance, repairs, replacement, gardening and other necessary services for the Common Areas and facilities;



- C. Grant easements or licenses where necessary for utilities and other service facilities over, on and across the Common Areas and facilities and within platted easements across Lots;
- D. Levy and collect Assessments from the Owners of Lots and enforce payments of such Assessments;
- E. Pay all taxes and Special Assessments which would be a lien upon the Common Areas and facilities, and discharge any lien or encumbrance levied against the Project or the Common Areas and facilities;
- F. Pay for reconstruction of any portion of the Common Areas and facilities damaged or destroyed;
- G. Employ and retain a professional manager and/or management company and/or other administrative staff to perform all or any portion of the duties and responsibilities of the Board with respect to administration of the Association;
- H. Retain, if deemed appropriate by the Board, and pay for legal and accounting services necessary and proper, for the efficient operation of the Association;
- I. Enter onto a Lot when necessary in connection with maintenance or construction for which the Board is responsible;
- J. Perform any and all other acts and things that a non-profit, mutual benefit corporation organized under the laws of the State of Ohio is empowered to do, which may be necessary, convenient or appropriate in connection with the administration of the Association's affairs and the carrying out of the Association's duties as set forth in this Declaration.

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

4.09 Right of Entry: The Association, through its authorized representatives, shall have a right of entry and access to, over, upon and through all the Property to enable the Association to perform its obligations, exercise its rights and fulfill its duties pursuant hereto. Such representatives shall not be deemed to have committed a trespass as a result thereof; provided, however, except in an emergency, an occupied building may not be entered unless

written notice of such proposed entry shall have been given or sent to the Owner thereof at least five (5) days prior to such entry.

## ARTICLE V

### Architectural Control

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

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

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

5.04 Review Process: The review, evaluation and approval or disapproval of proposed plans for development of Lots within New Albany Links shall be processed pursuant to the procedures established by the ARB.

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

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

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

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

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

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

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

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

5.13 Penalties: The Association may adopt penalties for violation of the standards set forth by the ARB. Said penalties, if imposed, shall be in addition to the removal of non-approved construction and Improvements as set forth in Paragraph 5.12 hereinabove. Violations of these standards shall be deemed to be violations of the terms of this Declaration and, therefore, subject to sanctions applicable to violations of this Declaration.

5.14 Recreational Land: Under no circumstances shall the terms and conditions of this Article V be construed to control the design, maintenance or operation of the Recreational Land .

## ARTICLE VI

### Specific Architectural Requirements

6.01 Specific Requirements: In addition to the architectural and design standards set forth in the Design Review Manual, set forth in this Article VI are specific architectural requirements for New Albany Links which shall not be modified, amended or deleted by the ARB or the Design Review Manual.

6.02 Residential Lamp Post: Each Residence shall have a standard lamp post in a consistent location. Such standard lamp post shall be selected by the Developer.

6.03 Residential Mail Box: Each Residence shall have a standard mailbox with standardized numerals. Such standards shall be selected by the Developer.

6.04 Standard House Numbering: Each Residence shall have standard house numbers in a common location to the right of the front door.

6.05 Compliance with New Albany Development and Architectural Standards: All construction and Improvements shall comply with the Development and Architectural Standards adopted by the Developer in connection with the Planned Unit Development Zoning for the Master Site granted by the Village of New Albany.

6.06 Improvements on Lots adjoining Golf Course: Anything elsewhere herein to the contrary notwithstanding, swimming pools, hot tubs, saunas, outdoor playsets or swingsets, fences and outbuildings of any nature are prohibited on Lots adjoining the Golf Course.

## ARTICLE VII

### Protective Covenants and Restrictions

7.01 Residential Usage: Subject to the consolidation of two or more Lots for construction of a Residence and related Improvements thereon, each Lot shall be used as a private single family dwelling and for no other purpose except such temporary uses as shall be permitted by Declarant while the Project is being developed and Lots are being sold by Declarant; provided, however, that Declarant reserves for itself the right, until all Lots in all phases are sold (and escrows closed), to carry on normal sales activity on the Master Site,

including the operation of models and sales offices, provided that Declarant shall not unreasonably interfere with any other Owners' use of the Common Area.

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

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

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

7.05 Trucks, Trailers, Mobile Homes, Recreational Vehicles and Boats: No parking spaces other than those enclosed in garages on the Property shall be used for the parking of any trucks, trailers, mobile homes, recreation vehicles and boats or anything other than operative passenger automobiles. The words "Trailer" and "Recreational Vehicle" shall include trailer coach, house trailer, mobile home, motor home, automobile trailer, camper, camp car, or any other vehicle whether or not self propelled, constructed or existing in such a manner as would permit the use and occupancy thereof for human habitation and constructed in such a manner that

it was, is, or may be mounted upon wheels or any similar transporting devices and used on streets and highways. The word "Truck" shall include and mean every form of cab, tractor and other attachments customarily hauled by such trucks including, but not limited to, flatbed trailers and other forms of platforms and enclosed or partially enclosed devices which would be pulled by a truck. Further the word "Truck" shall mean and include every other type of motor vehicle or equipment devised to be used with a motor vehicle with the exception of trailers and recreational vehicles and with the further exception of boats and operative passenger automobiles. This prohibition, however, shall not be construed to prohibit the parking upon any uncovered parking area of any Lot of not more than two bicycles, mopeds or motorbikes for temporary periods of time, not to exceed eight hours in any twenty-four hour day. The prohibitions in this Section shall not apply to such outdoor parking which is necessary or appropriate on a temporary basis to allow persons and/or their belongings to be moved in or out of, or delivered to, any Residence on the Property, or which is necessary or appropriate in connection with maintenance or repairs of any Lot, the Common Area or of Improvements on any portion of the Property which Improvements are required or permitted under this Declaration.

**7.06 On-Street Parking Prohibited:** No operative or inoperative passenger automobiles, trucks, trailers, mobile homes, recreation vehicles or boats shall be parked or placed on or within the streets at any time. This Paragraph 7.06 shall not be construed to prohibit the temporary stopping or parking of trucks on a temporary basis for purposes of providing goods and/or services to any Resident.

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

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

person. Any person bringing an animal upon or keeping an animal within the confines of New Albany Links shall be liable pursuant to the laws of the State of Ohio to each and all persons for any injury or damage to persons or Property caused by such animal.

7.09 Machinery and Equipment, Hobbies: No commercial machinery or equipment of any kind shall be placed, operated or maintained upon any Lot except such machinery or equipment reasonably necessary for use in connection with maintenance or construction of Improvements as approved by the ARB. Hobbies or activities that tend to detract from the aesthetic character of the Property, and Improvements used in connection with such hobbies or activities shall not be permitted unless carried out or conducted as authorized by the ARB. This paragraph refers to, but is not limited to, such activities as automotive and boat repair, and sport activities involving equipment placed on a Lot outside a Residence such as detached basketball hoops with backboards placed on a permanent pole or permanently anchored soccer goals, etc.

7.10 Landscaping: All landscaping installed on a Lot shall be installed only in accordance with the architectural and design standards established by the ARB. No alterations, modifications or changes shall be permitted except with permission of the ARB.

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

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

7.13 Drainage and Grading: No drainage ditches, swales, streams, impoundments, ponds or lakes; no mounds, knobs, dams, or hills; and no other physical Improvements or elements of the landscape or terrain which control or determine the location or flow of surface water and drainage patterns may be destroyed, altered or modified by or at the direction or with

the consent of any Owner without the prior written consent of the Association. No Improvements to any Lot shall be made in any manner whatsoever that are inconsistent with the master grading plans established by Declarant or its successors or assigns for the Property, as they now exist or may hereafter be modified from time to time, without the prior written consent of the Association. In the event of any destruction, alteration, modification, or Improvement made or occurring without such prior consent of the Association, Declarant, the Association and their respective representatives shall have the joint and several rights to enter upon any Lot, and to remedy or repair any such destruction, alteration, modification, or Improvement without being guilty of trespass and without liability to any Owner with respect to the same or the consequences thereof. Whenever, because of construction of Improvements on a Lot or for some other reason, silt would run off of a Lot, siltation control measures shall be implemented to prevent silt from running off of such Lot onto such adjacent Property.

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

7.15 Parking: All streets within the Project are subject to the covenants and terms of the Declaration, as well as all applicable laws, ordinances and regulations of all governmental agencies having jurisdiction over the Property. Additionally, the Association may adopt reasonable rules and regulations regarding the parking of vehicles on the Property and procedures to enforce such Rules and Regulations, including, but not limited to, the levying of fines and citing and towing violating vehicles. No vehicle shall be parked on the streets within the Project at any time. No vehicle shall be parked upon any driveway of any Residence or any continued period in excess of 48 hours without the express prior written approval of the Board. Each Owner shall keep the Owner's garage readily available for parking of the Owner's respective vehicles and shall not store any goods or materials therein nor use any portion of the garage for a workshop or other use if such storage or use would prevent said Owner from parking any of the Owner's respective vehicles therein. All garage doors shall remain closed at all times, except as reasonably required for entry to and exit from the garage. No Owner shall conduct repairs to any motor vehicle of any kind whatsoever in the Owner's garage or driveway or upon the Common Area, except for emergency repairs thereto, and then only to the extent necessary to enable the vehicle to be removed to a repair facility.

7.16 Utility Service: No lines, wires or other devices for communication purposes, including telephone, television, data and radio signals, or for transmission of electric current or energy shall be constructed, placed or maintained anywhere in or upon the Property unless the same shall be in or by conduits or cables constructed, placed and maintained underground or concealed in, under or on a Residence or other approved Improvements, provided, however,



above ground electrical transformers and electrical equipment may be permitted if properly screened and approved by the ARB. In addition, all gas, water, sewer, oil and other pipes for gas or liquid transmission, shall also be placed underground or within or under Residences. Nothing herein shall be deemed to forbid the erection and use of temporary power or telephone services incident to the construction of approved Improvements. In addition to the covenants set forth herein, no appliances or installations on the exterior of any Residence or accessory structure shall be permitted unless they are designed in such a manner that they are not visible from the streets, other Residences and adjoining Property, and they have been approved in writing by the ARB, which shall have the right to approve or disapprove the size, shape, style, noise level, and provisions for screening of any roof mounted equipment. Under no circumstances will outside antennas, disks, aerials, antenna poles, antenna masts, electronic devices, antenna towers, citizens band (CB) or amateur band (HAM) antennas, or flagpoles be permitted unless maintained completely inside a Residence.

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

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

**7.19 Mineral Exploration:** The Property shall not be used in any manner to explore for, use, or exploit commercially any water, oil or other hydrocarbons, minerals of any kind, gravel, earth, soil, or any other substance located in or under the ground. No wells for the extraction of water for any purpose shall be permitted.

**7.20 Easement Across Lots Adjacent to Golf Course:** The Golf Company and the Golf Course operator shall have the license to permit and authorize their agents and registered golfers and their caddies to enter upon a 10' strip of land on Golf Course Lots located contiguous and parallel with the property line of the Golf Course to do every act reasonable and proper to the playing of golf on the Golf Course. Such acts shall include, but not be limited to, the recovery of

golf balls from such area of the Lot and the flight of golf balls over and upon such area of the Lot. No Owner shall have any right to object to or seek the enjoining of the common and usual activities associated with the game of golf and with all the normal and usual activities of operating and maintaining a Golf Course, including the usual and common noise level created by the playing of the game of golf and operating equipment to irrigate and maintain the Golf Course. Further, no Bermuda Grass, except that of a variety recognized to be pollen free, shall be grown or permitted adjacent to the Golf Course. Each Owner hereby acknowledges and agrees that the Property is burdened with an easement permitting golf balls unintentionally to come upon the Common Areas and Lots. Each Owner by acceptance of a deed to any Lot acknowledges the possibility of personal injuries and/or property damage resulting from errant golf balls as a consequence of living in a residence situated on or near a golf course. EACH OWNER HEREBY WAIVES AND RELEASES AND AGREES TO INDEMNIFY AND HOLD HARMLESS THE GOLF COURSE OWNER (AND ANY PERSON RETAINED BY THE GOLF COURSE OWNER TO OPERATE THE GOLF COURSE), DECLARANT, THE ASSOCIATION AND ANY AUTHORIZED USER OF THE GOLF COURSE FROM ANY AND ALL ACTION, CAUSE, SUIT, CLAIM OR DEMAND WHATSOEVER, IN LAW OR IN EQUITY, AS A RESULT OF PROPERTY DAMAGE OR PERSONAL INJURY TO SUCH OWNER, THEIR GUESTS, FAMILY MEMBERS, EMPLOYEES, LICENSEES OR INVITEES CAUSED BY AN ERRANT GOLF BALL OR OTHERWISE ATTRIBUTABLE TO THE DESIGN, PLAY OR MAINTENANCE OF THE GOLF COURSE.

Declarant reserves to itself and to the Golf Course Owner a perpetual easement in, through, under and over a 10' strip of land on Golf Course Lots located contiguous to and parallel with the property line of the Golf Course for the purpose of maintaining the Golf Course including, without limitation, any landscaping and fencing located thereon.

**7.21 Interference with Play of Golf Course:** Owners of Lots bordering the Golf Course shall be obligated to refrain from any actions which would detract from the playing qualities of the Golf Course. During any golf tournament held at the Golf Course which is sanctioned by any professional golfers' association or international, national or state amateur golf organization, Owners of Lots bordering the Golf Course shall suspend all construction activity, lawn maintenance and all other abnormally noisy activities which may cause disturbance to the play on the Golf Course.

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

unless written notice of such proposed entry shall have been given to the Resident at least five (5) days prior to such entry.

**7.23 View Restrictions:** Subject to the provisions set forth in the Design Review Manual, no vegetation, Improvement, wall, fence or other obstruction shall be planted, constructed or maintained on any Lot in such location or of such height as to unreasonably obstruct the view from any other Lot. Each Owner of a Lot shall 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 shall have the right to enter upon such Lot for purposes of performing such work. Each Owner by accepting a deed to a Lot hereby acknowledges that any construction or installation by Declarant and other Owners may impair the view of such Owner, and hereby consents to such impairment. In addition, by virtue of the promulgation, adoption and enforcement of architectural and landscape guidelines and the building envelopes or otherwise, neither the Declarant, the ARB nor the Association, or the Members, employees or consultants of the foregoing, have made any representation whatsoever concerning the view, if any, from any Lots, Residence, or other Improvement thereon.

**7.24 Private Golf Carts:** No Resident will be permitted to maintain, own or operate a private golf cart within the Master Site. The Golf Company will operate Golf Course golf carts according to The Golf Company's rules and regulations. No carts should be driven on the streets of the Property unless said operation is within clearly marked and identified golf cart corridors for purposes of traveling to and from play within the Golf Course.

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

- A. The right to maintain and operate one (1) or more advertising, sales or leasing office(s) located upon any Lot(s) owned by Declarant or upon any Common Area without payment of rent or approval of the Association;
- B. The right to post and display from any Lot owned by Declarant or from any Common Area any sign, flag, banner, billboard or other advertising which Declarant may, in its sole discretion, deem appropriate, irrespective of size, color, shape or materials of such items;

- C. The right to install, place, replace, construct, reconstruct, modify or remove any Improvement from any Lot owned by Declarant or from any Common Area, as Declarant may, in its sole discretion, deem appropriate; provided that in the event Declarant removes any Association owned Improvement it shall replace said Improvement with an Improvement of substantially similar value, appearance, and utility within a reasonable period following completion of any work necessitating the removal of the Improvement;
- D. The right to conduct any commercial activity upon any Lot owned by Declarant or upon any Common Area and facility which reasonably relates to the development, marketing, leasing or sale of the Lots; and
- E. The right to park vehicles upon any Lot owned by Declarant or upon any Common Area and facilities.

All or any portion of the rights of Declarant herein and elsewhere in this Declaration may be assigned by Declarant to any successor-in-interest in the Master Site, including the Annexation Property, by an express written assignment recorded in the Records of Franklin County, Ohio.

## ARTICLE VIII

### Easements

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

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

- A. The right of the Association to establish and enforce reasonable Rules and Regulations pertaining to the use of the Common Area and all facilities located thereon;
- B. The right of the Association to dedicate or transfer all or any part of the Common Area to any public agency, authority or utility for such purposes and subject to such conditions as may be required by the Village of New Albany or as may be agreed to by the Owners. Except for such dedications or transfers required by the Village of New Albany in connection with its

zoning approvals pertaining to the Master Site, no such dedication or transfer shall be effective unless approved by two-thirds (2/3) of the voting power of the Association and a certificate executed by the President and the Secretary of the Association evidencing such approval shall be recorded in the office of the County Recorder for Franklin County, Ohio;

- C. The Right of the Declarant (and its sales agents, representatives and customers) to the nonexclusive use of the Common Area and the facilities located thereon, without charge, in order to market, show, sell and otherwise dispose of Lots in Phase I and in the Annexation Property, which rights Declarant hereby reserves; provided, however, that such use shall cease upon the date that Declarant no longer owns a Lot or Property;
- D. The right of the Association acting by and through its ARB to enact uniform and reasonable architectural guidelines;
- E. The right of Declarant to designate additional Property;
- F. The right of the Association to fulfill its obligations for maintenance, operation, repair and replacement of all Common Areas;
- G. The right of the Association to reasonably restrict access to the Common Areas;
- H. Any limitations, restrictions or conditions affecting the use, enjoyment or maintenance of the Common Area imposed by the Declarant or public agencies including, but not limited to, the rights of the township, village and county, or such other governmental agency having jurisdiction to use their vehicles over those portions of the Common Area designed for vehicular movement to perform municipal functions or emergency or essential public services.

8.03 Vehicular Traffic: Vehicular Traffic shall be limited to the public streets depicted on the Plat of the Property, with the exception that the Declarant, the Association, the Golf Company and suppliers of utility and governmental services shall have the additional easement right to take vehicles and equipment over any part of the Common Area (and shall also have the obligation to repair and pay for any damage done through the exercise of this additional easement, even though not negligent). This easement is also for the benefit of all persons and organizations who or which supply necessary or appropriate health, police, fire, safety, utility or any form of government services to any Lot or any portion of the Property or to any person, Resident or Property thereon.

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

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

8.06 Golf Club Easement: The Golf Company and its respective successors and assigns, is hereby granted a non-exclusive easement in, through, under and/or over the Common Area, public streets, and those portions of the Property identified on any Plat as being reserved for utility purposes. The uses permitted by virtue of this easement shall include, but not be limited to, construction, operation and maintenance of the Golf Course. Additionally, the Golf Company, its employees, members, guests, invitees, contractors, subcontractors and agents are hereby granted a non-exclusive easement to use designated crossings within any public street for the purpose of access to all areas of the Golf Course.

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

8.08 Sidewalk Easements: Declarant hereby covenants for itself, its grantees, successors and assigns that the Golf Course, and each and every Owner, Resident, Tenant and invitee shall have non-exclusive reciprocal easements appurtenant on and over all sidewalks located on Lots for pedestrian access, use and enjoyment.

8.09 Restriction on Easements Adjoining Golf Course: Each Owner of a Lot, by acceptance of a deed to a Lot, acknowledges and agrees that (a) there are no light, air, access,

view or similar easements or rights appurtenant to any Lot and constituting a burden on the Golf Course or the Golf Company and nothing in this Declaration shall prevent or prohibit the Golf Company from constructing landscaping, mounding, fencing and/or other improvements on the Golf Course in such manner and locations as the Golf Company may determine.

8.10 General: The easements and grants provided within this Article VIII shall in no way affect any other recorded grant or easement. Failure to refer specifically to any or all of the easements and/or rights described in this Declaration in any deed of conveyance or in any mortgage or any other evidence of obligation shall not defeat or fail to reserve said rights or easements, but the same shall be deemed conveyed or encumbered, as the case may be, along with the Lot, Common Area, Multi-Unit Parcel and Golf Course.

## ARTICLE IX

### Common Areas

9.01 Transfer of Title: Declarant hereby covenants, for itself, its grantees, successors and assigns that it will convey to the Association, fee simple title to, or a nonexclusive easement in, the Common Areas, free and clear of all liens and encumbrances, subject to the covenants set forth in this Declaration and any amendments thereto. It is the intent of Declarant to transfer, by means of the platting process, and/or by limited warranty deed, fee simple title in all portions of the Property designated on the Plat for Phase I and for all Annexation Property those portions noted thereon on as Common Areas which include, but are not limited to, entrance features, and open space.

9.02 Maintenance and Use: Subject to the further provisions of this Article IX, once the Association or the Village of New Albany acquires title to the Common Areas, or any portion thereof, or acquires a non-exclusive easement in the Common Areas or any portion thereof, said Association shall undertake full responsibility for maintenance of the Improvements within the Common Areas and shall not alter, nor shall it permit the alteration, of any Improvements contained within the Common Areas or any portion thereof. Specifically, the Association shall maintain at the level of their current standards of quality all entrance features, signs, lighting and landscaping constructed upon the Property by Declarant. The Association shall not abandon, partition, subdivide, alienate, release, transfer, hypothecate, or otherwise encumber the Common Areas unless specifically permitted pursuant to Paragraph 9.07 herein.

9.03 Irrigation Systems: Declarant has installed or contemplates installing and/or having installed irrigation systems at the main entrance and other Common Areas which are under the care and control of the Association. The water supplied to the irrigation system is integrally tied into the Golf Course irrigation system. The water supplied by the Golf Company to the Association for the Association's benefit and maintenance of features at the main entrance

and other Common Areas will be metered and the Association will be billed for the quantity of water used. The Association shall be responsible for payment of the quantity of water used.

Supply of water by the Golf Company through the irrigation system is subject to termination by the Golf Company at any point and within the sole discretion of the Golf Company. In the event of termination by the Golf Company, the Association shall irrigate the main entrance and other Common Areas by use of the public water supply.

9.04 Third Party Conveyance: The Association shall not accept the conveyance of any real property from any third party, in either an improved or unimproved condition, without the prior written consent of Declarant.

9.05 Commencement of Association Responsibilities: Subject to the further provisions of this Article IX, the Association's responsibility to maintain the Common Areas conveyed by Declarant to the Association or the Village of New Albany, shall commence concurrently with the recordation of the Plat and/or limited warranty deed, whichever occurs first, conveying the Common Areas, as the case might be. The Association shall be obligated to accept title to the Common Areas, as applicable, and undertake all maintenance responsibilities for the Common Areas when title is conveyed and maintenance responsibilities are tendered by Declarant.

9.06 Use of Common Areas: All Owners by reason of such ownership, shall have a right and easement of enjoyment in the Common Areas and facilities for so long as they are Owners. Such right and easement is appurtenant to each Lot and shall not be transferrable except that it shall automatically transfer with the transfer of the ownership of a Lot. The Golf Company, its successors and assigns shall have a non-exclusive easement and right of enjoyment in the Common Areas and facilities and the Improvements thereon. Said non-exclusive easement is appurtenant to the Recreational Land. All Residents shall have a nontransferable privilege to use and enjoy the Common Areas for so long as they are Residents within the previously defined meaning of that term. For purposes of this Article only, the terms Owner and Resident shall also include the guests, and invitees of any Owner and Resident, if and to the extent the Board in its absolute discretion so directs. All such rights, easements, and privileges in this Section set forth, however, shall be subject to the further provisions of this Declaration and the right of the Board to promulgate and adopt reasonable rules and regulations pertaining to the use of the Common Areas, which in the sole discretion of the Board shall serve to promote the safety and convenience of the users of the Common Areas and will be in the interests of the Owners and Residents.

9.07 Authority to Convey: Notwithstanding the rights, easement and privileges granted under this Article IX, the Association shall nevertheless have the power and authority to convey and dedicate any Property or easement or right of way over any Property referred to in this Article IX, free and clear of all such rights, easements and privileges, if such conveyance or dedication is for use as a public roadway or pedestrian walkway, or to a public or private utility for the installation, operation or maintenance of utility services. Any other conveyance or



dedication of Common Areas and facilities shall be made only for public purpose and, if made for a purpose other than those specified in this Section 9.07, only by an affirmative vote of at least two-thirds (2/3) of the voting members of the Association represented in person or by proxy entitled to vote at a meeting (annual or special) called for such purpose.

9.08 Golf Company to Maintain Common Areas. The Golf Company shall maintain the Common Areas for the benefit of the Association and the Residents and shall be paid reasonable fees for such maintenance by the Association.

## ARTICLE X

### Assessments

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

- A. Regular Assessments;
- B. Compliance Assessments;
- C. Special Assessments;
- D. Initial Reserve Assessments;
- E. Annexation Property Assessments;
- F. Such other Assessments as the Association may periodically establish.

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

- A. To defray the administrative costs or expenses incurred by the Association in the exercise of its powers, authority and duties described herein;
- B. For the protection of the health, safety, enjoyment and welfare of the Owners, Builders and occupants of the Property;
- C. To enhance the values and amenities of the Property, by means of the construction, repair, and maintenance of the Common Areas, and, to the

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

**10.03 Regular Assessment:** For the purpose of providing funds for uses specified in Section 10.02 hereof, the Board shall, for each year, commencing with the year 1999, affix and assess a yearly assessment against each Lot by establishing a budget for 1999 and dividing the budget by the number of Lots included in the Property. Notwithstanding anything in this Section 10.03 to the contrary, there shall be a minimum annual Regular Assessment for any Lot in the amount of Two Hundred Dollars (\$200). In making each such assessment, the Board shall separately assess each Lot, and each such Lot shall be charged with and be subject to a lien for the amount of the Regular Assessment.

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

**10.05 Special Assessment:** In any fiscal year the Board may not, without the affirmative vote or written assent of Owners in attendance at a duly called meeting of the Association, levy Special Assessments to defray the costs of any action or undertaking on behalf of the Association which, in the aggregate, exceeds five percent (5%) of the budgeted gross expenses of the Association for that fiscal year. Every Special Assessment shall be levied upon the same basis as that prescribed for the levying of Regular Assessments set forth in Paragraph 10.03 herein above. The five percent (5%) limitation shall not apply to the levy of Special Assessments necessary to cover expenses incurred in emergency situations which include extraordinary expenses required by a court of competent jurisdiction; extraordinary expenses necessary to repair or maintain Improvements within the Project where a threat to personal safety is discovered; and an extraordinary expense necessary to repair or maintain any Improvement to the Property to which the Association is responsible that could not have been reasonably foreseen by the Board in preparing the operating budget

**10.06 Initial Reserve Assessment:** Each initial purchaser of a Lot (whether from Declarant or a grantee, successor or assignee of Declarant, and whether of a Lot now subject hereto or a Lot hereafter subject to this Declaration), shall, at the time of the closing of the purchase of the Lot, contribute to the Association a sum equal to one-sixth (1/6) of the annual Regular Assessment to create an operating reserve fund, so that funds will be available to the Association to pay its obligations when and as they become due. This contribution shall be non-

refundable and shall not be in lieu of or a credit against any other assessments hereinafter provided. Declarant for itself, its successors or assigns, reserves the absolute right to use and appropriate any portion or all of the operating reserve fund for any purpose that Declarant in its absolute discretion determines is in the best interest of and for the use and benefit of the Association and/or the Property.

**10.07 Annexation Property Assessment:** With respect to Lots and Annexation Property, hereafter subjected to this Declaration, those Lots and the Owners thereof shall be subject to operating assessments at the later of (i) the first month following the month and year those Lots are subjected to this Declaration, and (ii) the time when the Lots subjected to the Declaration hereby are subjected to operating assessments. The amount levied against Lots subjected to this program during a calendar year shall be the same amount levied against the Lots already subjected hereto, prorated, however, in the proportion that the number of full calendar months remaining in that calendar year from the date subjected to this program is to twelve.

**10.08 Declarant Exemption:** The Declarant is specifically exempt from application of the assessment portions of this Article X. Specifically, Declarant is exempt from the assessments set forth in Sections 10.03, 10.04, 10.05, 10.06, and 10.07. Until such time as a sufficient number of Lots are owned by Residents, as determined by Declarant in its reasonable judgment, Declarant shall annually contribute a sum of money in an amount sufficient to subsidize the Association's shortfall in its actual operating costs for each budget year.

**10.09 Annual Budget and Statements:** On or before December 1st of each year, or as soon as shall be practicable thereafter, the Board shall establish a budget for the Association for the ensuing calendar year, which shall be the basis of the Regular Assessment calculations referred to in Section 10.03 above. As soon after said budget is established, the Board shall send a written statement to each Owner setting forth the amount of the budget established for the ensuing calendar year, together with the amount of the Regular Assessment set for the ensuing year and the frequency of payment therefore (e.g. monthly, quarterly, etc.). In the event the Board determines for some reason that the budget must be adjusted after the initial budget has been distributed to the Owners, the Board may send a written statement to each Owner setting forth the amount of the revised budget, together with the amount of the adjusted Regular Assessment required to fund said revised budget. If a Residence is built across two Lots, or an Owner combines two or more Lots to create one assessable parcel for real property tax purposes, the Owner shall be charged a Regular Assessment for each Lot. The Regular Assessment may be billed, in annual, semiannual, quarterly or monthly installments, as the Association shall determine in its sole discretion.

**10.10 Authority to Enter into Contracts:** The Association shall have the power and authority to contract with any person, corporation, firm or other entity, including, but not limited to, Declarant and Golf Company, for the exercise of any one or more of the various powers and authority granted to and duties to be performed by the Association hereunder, and to delegate such powers and authority to any agent or employee of the Association, and the exercise of those

powers and authority by such person, corporation, firm, entity, agent or employee shall be deemed the exercise of those powers and authority by the Association, except that no independent contractor shall be deemed by virtue of these provisions to be the agent of the Association, its agents, employees, or others assuming the exercise of the powers and authority granted hereunder except as the Board shall in its sole discretion deem necessary or desirable for the safeguarding of any funds received by the Association.

## ARTICLE XI

### Enforcement

11.01 **Rights to Enforce:** Any Owner, the Association, and/or the Declarant has the right to enforce, by proceedings at law or in equity, all of the covenants now or hereafter imposed by this Declaration, the Code of Regulations of the Association, (and any Rules and Regulations duly adopted by the Association), and the standards and guidelines contained in the Design Review Manual, including, without limitation, the right to prosecute a proceeding at law or in equity against the person or persons who have violated or are attempting to violate any of said covenants, to enjoin or prevent them from doing so, to cause said violation to be remedied and/or to recover damages for said violation.

11.02 **Rights to Abate:** The Association and/or Declarant hereby reserves the right to enter a Lot in violation of this Declaration and abate and remove said violation at the expense of the Owner of the Lot involved. The remedy provided herein shall be cumulative and not exclusive of any other remedies available, either at law or in equity.

11.03 **Nuisance Declaration:** The result of every act or omission whereby any of the covenants contained in this Declaration, the Code of Regulations, and the Rules and Regulations duly adopted by the Association, are violated, in whole or in part, is hereby declared to be, and constitute a nuisance, and every remedy allowed by law or equity against a nuisance shall be applicable against every such result and may be exercised by the Association, the Declarant, or any Owner and/or their successors in interest.

11.04 **Cost of Enforcement:** All costs of enforcement proceedings undertaken by the Association, the Declarant, or any Owner, under the Provisions of this Declaration that are successful by virtue of arbitration or court action, as well as reasonable attorneys' fees and expenses of arbitrators and court costs, shall constitute a Compliance Assessment against the Lot owned or occupied by the person or persons against whom such enforcement was successful.

11.05 **Mortgage Lien Priority:** A breach of the covenants in this Declaration or of the Code of Regulations of the Association or any Rules and Regulations duly adopted by the Association shall not affect or impair the lien or charge of any bona fide mortgage made in good faith and for value on any Lot; provided, however, that any subsequent Owner shall be bound by

said covenants, whether or not such Owner's title was acquired by foreclosure, trustee sale, or other judicial proceeding.

11.06 Voting Rights: The Association may, after notice and hearing, temporarily suspend an Owner's voting rights for a period not to exceed thirty (30) days for any infraction of the Association's published Rules and Regulations.

11.07 Enforcement Failure/No Waiver: The failure of the Association, Declarant, or any Owner to enforce any of the covenants contained in this Declaration, the Code of Regulations, or any Rules and Regulations duly adopted by the Association, shall in no event constitute a waiver or estoppel of the right to enforce at a later date the original violation or any subsequent violation. The doctrine of laches shall not bar such enforcement at a later date.

11.08 Golf Course Company Third Party Beneficiary. The Golf Company is a third party beneficiary of this Declaration and in such capacity is authorized to enforce the Declaration to the same extent as if it were an Owner or Declarant.

## ARTICLE XII

### Real Estate Taxes

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

12.02 The Association: The Association shall be responsible for the payment of all real estate taxes and Assessments that from time to time are levied against all of the Common Areas and other real estate owned by the Association.

## ARTICLE XIII

### Insurance

13.01 Public Liability Insurance: The Association shall obtain and maintain a policy or policies of comprehensive public liability insurance (with costs liability endorsement, if obtainable) insuring the Association, the Trustees, the Owners, the Declarant, and the agents and employees of each of the foregoing against any liability to the public or to any Owner, his family, invitees and/or Tenants arising from, or incident to the Ownership, occupation, use, maintenance and/or repair of the Common Areas. The limits of liability under this Section shall be set by the Association and shall be revised at least annually and increased or decreased at the discretion of the Association; provided, however, that said limits shall not be less than \$1,000,000 for bodily injury, including deaths of persons and Property damage arising out of a single occurrence. In the

event the Federal Home Loan Mortgage Company (FHLMC), and/or the Federal National Mortgage Association (FNMA) participate in the financing of Lots in the Project, said limits shall not be less than the minimum limits required under the then current FHLMC and FNMA regulations.

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

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

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

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

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

13.06 Miscellaneous Coverage: The Association may obtain and maintain such other forms of insurances and in such coverages as the Association shall determine to be required or beneficial for the protection and/or preservation of the Property, and any buildings and Improvements now or hereafter located thereon, or in the best interests of the Association.

13.07 Owner's Insurance: Each Owner may obtain insurance on his personal Property and all other Improvements located on his Lot. Nothing herein shall preclude any Owner from carrying any public liability insurance as deemed desirable to cover individual liability for damage to person or Property occurring inside Owner's individual Lot or elsewhere on the Property. If obtainable, such liability insurance coverage carried by an Owner shall contain

a waiver of subrogation of claims against the Declarant, the Association, their agents and employees and all other Owners. Such other policies shall not adversely affect or diminish any liability under insurance obtained by the Association. If any loss intended to be covered by insurance carried by the Association shall occur and the proceeds payable thereunder shall be reduced by reason of insurance carried by any Owner, such Owner shall assign the proceeds of such insurance carried by him or her to the Association, to the extent of such reduction, for application by the Association to the same purposes as the reduced proceeds are to be applied.

## ARTICLE XIV

### Annexation of Property

14.01 Phase Development: Declarant intends to develop the Project in a series of phases, each of which may be annexed to the Project. However, Declarant is under no obligation to continue development of the Project. In addition, Declarant may elect to annex some or all future phases in any given order and at any given time. No annexation hereunder shall be effective unless the procedures set forth in this Article XIV have been properly executed.

14.02 Planned Annexation: All or any part of the real Property described as "Annexation Property" in Article II herein entitled "Definitions", and described in Exhibit A to this Declaration, may be annexed to the Property and added to the scheme of this Declaration and be subjected to the jurisdiction of the Association without the assent of the Association or its Members, provided, and on condition that:

- A. The development of the Annexation Property shall be in substantial conformance with the overall general plan of development for the Project originally submitted to and approved by the Village of New Albany; and
- B. A Notice of Annexation as described in this Article XIV shall be recorded covering the Annexation Property.

14.03 Notice of Annexation: The Annexation of additional Property authorized under this Article shall be made by filing of record a Notice of Annexation with a Plat or record plan, or similar instrument, covering said additional Property, and the Notice of Annexation shall expressly provide that the scheme of this Declaration shall extend to such additional Property. The Notice of Annexation shall contain such complementary additions to and modifications of the covenants set forth in this Declaration which are necessary to reflect the different character, if any, of the Annexation Property, and which are not inconsistent with the general scheme of this Declaration. Except as set forth in this Section, no Notice of Annexation shall add, delete, revoke, modify or otherwise alter the covenants set forth in this Declaration. All Notices of Annexation shall be approved as to form by Declarant, in writing, prior to the recordation thereof.

14.04 Uncontemplated Annexation: Upon obtaining the approval, in writing, of the Association, pursuant to the vote or written assent of two-thirds (2/3) of the total voting power of the Association Members, the Owner of any Property who desires to annex said Property to the scheme of this Declaration and to subject it to the jurisdiction of the Association may file or record a Notice of Annexation as described in the preceding Section of this Article.

14.05 Right of De-Annexation: Declarant hereby reserves the right to de-annex any Property which may be annexed to the Property pursuant to this Declaration, and to delete said Property from the scheme of this Declaration and from the jurisdiction of the Association provided and on condition that the de-annexation shall be made prior to the closing of the sale of the first Lot in the phase to be de-annexed.

## ARTICLE XV

### Mortgagee Protection

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

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

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



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

- A Change the method of determining the obligations, Assessments, dues or their charges which may be levied against an Owner's Lot;
- B. By act or omission seek to abandon, partition, subdivide, encumber, sell or transfer all or any portion of the Common Area. The granting of easements for public utilities or for other public purposes consistent with the intended uses of the Common Area shall not be deemed a transfer within the meaning of this clause;
- C. Use hazard insurance proceeds for losses to the Common Area for other than repair, replacement or reconstruction;
- D. Effect any decision of the Association to terminate professional management and assume self management of the Project, where such professional management was previously a requirement by a holder, insurer or guarantor of any first Mortgage;
- E. By act or omission, change, waive or abandon any provisions of this Declaration or enforcement thereof, pertaining to architectural design of the Residences situated on a Lot, or the maintenance and operation of the Common Areas within the Project, including without limitation, sidewalks, fences, driveways, and landscaping within the Project;
- F. Fail to maintain fire and extended coverage on the insurable Common Area on a current replacement cost basis in an amount not less than one hundred percent (100%) of the insurable value thereof; and
- G. Abandon or terminate the Association, except for abandonment, partition or termination as may be provided by law.

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

**15.06 Insurance Distribution:** No provision of the Constituent Documents shall be interpreted to give any Owner or any other party priority over any rights of the first Mortgagee in the case of distribution to such Owner of insurance proceeds or condemnation awards for losses

to or a taking of all or any portion of the Common Area or such Owner's Lot. All applicable fire and casualty insurance policies shall, if requested, contain loss payable clauses acceptable to each Mortgagee, naming the Mortgagee, as their interests appear, as additional insureds.

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

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

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

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

15.10 Payment Reimbursement: First Mortgagees of Lots may, jointly or singly, pay taxes or other charges which are in default and which may have become a lien on the Common

Areas, and may pay overdue premiums on hazard insurance policies, secure new hazard insurance coverage on the lapse of a policy for the Common Areas, and first Mortgagees making such payments shall be owed immediate reimbursement therefore from the Association. Upon demand by any first Mortgagee, the Board shall execute, on behalf of the Association, an agreement establishing the right of all first Mortgagees to such reimbursement.

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

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

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

15.13 Encroachments: In the event any portion of the Common Areas or the Golf Course encroaches upon any Lot, or any Lot encroaches upon the Common Areas or the Golf Course as a result of the construction, reconstruction, repair, shifting settlement or movement of any portion of the Project, a valid easement for the encroachment and for the maintenance of the same shall exist so long as the encroachment exists.

## ARTICLE XVI

### General Provisions

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

recorded within one (1) year prior to the termination of the initial thirty-five (35) year term, or within one (1) year prior to the termination of any successive ten year period.

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

**16.03 No Liability for Declarant:** Neither the Declarant nor its employees, agents, successors or assigns shall be liable for any claim whatsoever, arising out of or by reason of any actions performed or decisions made pursuant to any authority granted or delegated or reserved to the Declarant by or pursuant to this Declaration, or out of, or by reason of any actions performed or decisions made in the capacity of the Declarant or seller of any Lot whether or not such claim (a) shall be asserted by any Owner, occupant of any Lot, the Association, or by any person or entity claiming through any of them; or (b) shall be on account of injury to persons or damage to or loss of Property wherever located and however caused. Without limiting the generality of the foregoing, the previous enumeration includes all claims for the Property or any part thereof becoming or being out of repair or by reason of any act or neglect of any Owner, occupant of any Lot, the Association, their respective agents, employees, guests, invitees and trespassers or by reason of any neighboring Property or of personal Property located on or about the Property, whether by reason of the failure to function of, or disrepair of, or interruption of service of, any utility services, including but not limited to, heat, air conditioning, electricity, gas, water, sewage, etc.

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

**16.05 Constructive Notice and Acceptance:** Every person who now or hereafter owns or acquires any rights, title or estate in any portion of the Property is and shall be conclusively deemed to have consented and agreed to every restriction contained herein, whether or not a reference to these Restrictions is contained in the instrument by which such person acquired an interest in said Property.

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

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

16.08 Mutuality: All restrictions, conditions, and covenants contained herein are made for the direct mutual and reciprocal benefit of Declarant, the Association, the Golf Company, the Owners and their respective successors, heirs, executors and assigns; these restrictions shall create mutual equitable servitude upon the Property in favor of other real Property within the Master Site, these restrictions shall create reciprocal rights and obligations between the respective Owners and privity of contract and estate between all grantees thereof; and these Restrictions shall, as to the Owner of any Lot, his or her heirs, personal representatives, successors and assigns, operate as covenants running with the land for the benefit of all the Property and the Owners' property.

IN WITNESS WHEREOF, Declarant and the Association have duly signed and acknowledged this Declaration this 6 day of January, 1999.

Signed and acknowledged  
in the presence of:

Jeffrey A. Auker  
Witness

Jeffrey A. Auker  
Name printed or typed

Linda L. Moore  
Witness  
**Linda L. Moore**

\_\_\_\_\_  
Name printed or typed

DECLARANT:

NEW ALBANY LINKS DEVELOPMENT  
COMPANY, LTD., an Ohio limited liability  
company

By: [Signature]  
Member

ASSOCIATION:

NEW ALBANY LINKS HOMEOWNERS  
ASSOCIATION, INC., an Ohio non-profit  
corporation

By: [Signature]

Its: TRUSTEE

Jeffrey A. Auker  
Witness

Jeffrey A. Auker  
Name printed or typed

Linda L. Moore  
Witness  
**Linda L. Moore**

\_\_\_\_\_  
Name printed or typed

IN WITNESS WHEREOF, Golf Company has duly signed and acknowledged this Declaration solely (i) as a third party beneficiary and (ii) to evidence its agreement to comply with the terms and provisions of Section 9.08 hereof, this 6<sup>th</sup> day of January, 1999.

Jeffrey A. Auker  
Witness

Jeffrey A. Auker  
Name printed or typed

Linda L. Moore  
Witness

**Linda L. Moore**  
Name printed or typed

NEW ALBANY LINKS GOLF COURSE  
COMPANY, LTD., an Ohio limited  
liability company

By: Joseph A. Cimelle  
Member

**ACKNOWLEDGMENTS**

STATE OF OHIO )  
                          )     SS:  
COUNTY OF FRANKLIN )

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of January, 1999, by Joseph A. Cimelle, the Member of New Albany Links Development Company, Ltd., an Ohio limited liability company, on behalf of such company.

Jeffrey A. Auker  
Notary Public

My Commission Expires: \_\_\_\_\_

STATE OF OHIO )  
                          )     SS:  
COUNTY OF FRANKLIN )

The foregoing instrument was acknowledged before me this 6<sup>th</sup> day of January, 1999, by Joseph A. Cimelle, the Trustee of New Albany Links Homeowners Association, Inc., an Ohio non-profit corporation, on behalf of such corporation.

Jeffrey A. Auker  
Notary Public

My Commission Expires: \_\_\_\_\_